



**Report 2009**



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

# Report 2009

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Cover:  
*Prometheus chained to a rock* after P.P. Rubens (NK 3082)



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## **Disclaimer**

This English version is a translation of the original Dutch report 'Verslag 2009', in case of possible differences in translation we refer you to the Dutch report.

## **Frequently used abbreviations:**

BHG	Origins Unknown Agency
ICN	Netherlands Institute for Cultural Heritage
NK-collection	Netherlands Art Property Collection
OCW	Education, Culture and Science
SNK	Netherlands Art Property Foundation

## Foreword

You have before you the Restitutions Committee's public annual report for 2009. The implementation of restitution policy is a matter of dual public importance. Firstly, its implementation is the responsibility of a public administration body (the Ministry of Education, Culture and Science – OCW) and, secondly, it must be played out in public wherever possible.

The first aspect has to do with the fact that it involves works of art owned by the State of the Netherlands, for which the Minister for OCW is responsible, while Parliament must be able to perform its supervisory task.

The second aspect is important because it involves, above all, a just consideration of, on the one hand, the interests of the heirs of the original owners who lost their possessions as a result of an incomparably unjust Nazi regime and who, after the war, were met by a wall of bureaucratic indifference and, on the other, the possibility of unjust enrichment. This dilemma has been elaborated in the Washington Principles, which are also at the root of Dutch policy and which were reaffirmed and further detailed in the 'Terezín Declaration' during the year under review. Given that the State is also a stakeholder in all this, the Restitutions Committee must serve as an indispensable link of impartiality and consistency in government policy.

It is also the public character of policy that has prompted the reference in this report to three scientific contributions to the public debate about restitution policy. The Committee considered it beyond the scope of its task to take a stand on these contributions in this annual report. That does not alter the fact, of course, that it regards it as its task to incorporate the sometimes ambiguous or conflicting signals reflected in those contributions into its considerations.

W.J.M. Davids  
chairman



1. American soldiers of the 101<sup>st</sup> Airborne Division find a stash of paintings and sculptures in one of Hermann Göring's bunkers. After Germany had been defeated, deposits of looted art were discovered in hundreds of mines, bunkers, quarries and castles.

# 1. Introduction

The Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (hereafter also referred to as: the Restitutions Committee) is an independent advisory committee, which was established by order of the State Secretary for Education, Culture and Science (hereafter referred to as: OCW). Since January 2002, at the request of the Minister for OCW, the Committee has been investigating and assessing claims to items of cultural value which were lost involuntarily by their owners due to circumstances directly related to the Nazi regime.<sup>1</sup> Pursuant to current national policy, the Committee issues advice to the Minister regarding decisions to be taken on applications for restitution.

This is the Committee's eighth annual report. The report should be considered as a continuation of the earlier annual reports, which address the Committee's history, policy framework and working method. Readers who wish more information on these issues are referred to these earlier publications, which are available on the Committee's website or from the secretariat.<sup>2</sup> This publication focuses on the activities in 2009.

Chapter 2 contains a brief description of the Committee's tasks as well as an introduction of its members and secretariat. Chapter 3 then outlines the activities and developments 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 2009. Finally, Chapter 5 presents all recommendations issued during the year under review.

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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 2008) 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).

## 2. The Restitutions Committee

### 2.1 Tasks

Based on the Decree establishing the Restitutions Committee of 16 November 2001, the Committee's task is to advise the Minister for OCW, at the latter's request, 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).<sup>3</sup>

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 cases relating to the National Art Collection involve works of art that are part of a specific subsection of the National Art Collection, namely the Netherlands Art Property Collection (hereafter also referred to as: NK collection).<sup>4</sup> The NK collection currently comprises 3,827 works of art with a 'war history', mostly objects that were confiscated or sold during the Nazi regime, most of which were taken to Germany, whereupon they were recovered by the Allied Powers in 1945 and returned to the Netherlands, under whose state-administration they then fell. Instructions at the time were to return the recovered works of art to the rightful owners or their heirs.

The Restitutions Committee must assess 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.<sup>5</sup>

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 the current owners of the works, on the other. The distinguishing feature of these claims with regard to cases relating to the National Art Collection is that the current owner is *not* the State of the Netherlands but

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<sup>3</sup> Decree establishing the Advisory Committee, Article 2, first and second paragraphs. Appendix 1.

<sup>4</sup> The Netherlands Art Property Collection contains some 3,827 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.

<sup>5</sup> 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.

a private individual, a foundation or a provincial or municipal government institution.<sup>6</sup> In accordance with the Decree, the Committee will be guided by the ‘principles of reasonableness and fairness’ in issuing advice on these cases.<sup>7</sup> In this context, the Restitutions Committee established regulations in 2007 outlining the procedure for such claims. The regulations stipulate that the Committee performs its advisory tasks in these cases by means of a *‘binding recommendation within the meaning of Section 7:900 of the Netherlands Civil Code or by promoting a settlement between the parties’*.<sup>8</sup>

## 2.2 Restitutions Committee members and secretariat

In 2009, the Restitutions Committee convened 11 regular meetings. During the year under review, the Committee comprised the following members:

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

Former chairs Mr J.M. Polak and Mr R. Herrmann assist the Committee with advice at the latter’s request.

As of 1 January 2010, Prof. J.C.M. Leijten resigned on account of his age. In a decision dated 27 November 2009, the Minister for OCW granted him honourable discharge with thanks for services rendered. The Committee loses in him a legal expert who, in his reasoning, combined sagacity, thoroughness and empathy. He always believed that only as a very last resort is the State entitled to the items of cultural value looted during and recovered after the war. Mr D.H.M. Peepkorn has been appointed member of the Committee in his place for the period from 1 January 2010 up to 23



2. Chair of the Restitutions Committee, Mr W.J.M. Davids.

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

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

8 ‘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’. See for the full text of these Regulations: *Report 2008*, Appendix 5.

December 2010.<sup>9</sup> The chair and other members of the Restitutions Committee have also been (re)appointed until 23 December 2010.<sup>10</sup>

In the performance of its duties, the Restitutions Committee enlists the support of its secretarial staff under the management of Ms E. Campfens (secretary/rapporteur). In addition, the secretariat comprises the following staff: Ms A. Marck (deputy secretary/researcher), Ms T. Brandse (office manager), 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). During (part of) the year under review, the secretariat was reinforced by the following new and/or temporary employees: Ms I. El Achkar (management assistant), Mr C.C. Brienen (researcher) and Ms R.E.D. van Egmond (researcher), Ms P. Schimmel (secretary), Ms M. Stek (legal assistant) and Mr C.P.L. van Woensel (legal assistant). The Committee secretariat is located at Lange Voorhout 9 in The Hague and also has an office in the National Archive in The Hague.



3. Members of the Restitutions Committee and members of the secretariat.

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9 'Decision by the Minister for Education, Culture and Science dated 27 November 2009, no. DCE/09/170990, regarding the appointment and honourable discharge of members of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War'. *Government Gazette*, no. 19707, 21 December 2009. Appendix 3.

10 'Appointment of chair of Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War', 30 September 2008; 'Appointment of member/chair and reappointment of members of Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War', 12 December 2007. See Appendices 3 and 4 to the 2008 Report.

### 3. A review of 2009

#### 3.1 International restitution policy

In 2009, a lot of attention was given on a European level to ten years of restitution policy, following the formulation in 1998 of the *Washington Principles* for research and restitution of Nazi-confiscated items of cultural value, and the adoption of a similar resolution on *Looted Jewish Cultural Property* by the Parliamentary Assembly of the Council of Europe in 1999. The tenth anniversary prompted the government of the Czech Republic – which assumed Presidency of the European Union during the first six months of 2009 – to organise an international conference on the state of affairs regarding the restitution of art looted during the war.

The 1990s saw a growing awareness in Europe that various national policies on the restitution of Nazi-looted art of deported Jews had not been very generous. Predominant thinking was that all were victims of the war and that, contrary to the racial politics of the Nazis, no distinction should be made between different sections of the population. This often caused a lack of sympathy for the needs of Jewish citizens or their children in particular, who, after the war and the deportations, wanted to reverse the confiscation of their goods. It took some doing before this awareness was generally accepted. The United States in particular did a lot to heighten this awareness and put new opinions about the need to return works of art on the political agendas of European governments.

The international conference that was held in Prague at the end of June 2009, in the final days of Czech EU Presidency, resulted in the *Terezín Declaration*, which was approved by the representatives of 46 countries.<sup>11</sup> The German name of Terezín is Theresienstadt, the Nazi concentration camp that was located in the fortress there. The Declaration first of all reaffirms the 1998 Washington Principles. It also recommends that the participating states – particularly in Eastern Europe – strongly support efforts to enable victims of the Nazi regime and their descendants to live in dignity. It was also agreed that restitution policy should pay attention to immovable property seizures.

The Dutch delegation to Prague was headed by P.J. Wolthers (Ministry of Foreign Affairs). The Restitutions Committee was represented by its vice-chair, Ms I.C. van der Vlies. The discussions showed that the Dutch model of an informal advisory committee instead of time-consuming legal procedures has also been implemented in many other states. Dutch policy was openly praised in Prague several times. The conference called public attention to two subjects. The first is the importance of research into the provenance of looted art and cultural property. This means that archives in the participating states must pay particular attention to identify, catalogue and protect relevant sources. Also, international cooperation is indispensable to the success of provenance research. The participating delegations further agreed to look for ways to keep the memory of the atrocities of persecution during World War II alive.

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<sup>11</sup> See Appendix 5.

The Restitutions Committee is a Dutch institution pursuant to policy ensuing from the Washington Principles. It originated from one of the advisory bodies established by the government in the 1990s to research the confiscation of items of cultural value during World War II and their post-war restitution; in this case the Origins Unknown Committee headed by Prof. Dr R.E.O. Ekkart. At the moment, the Restitutions Committee is the only remaining organisation in the Netherlands to put into practice the realisation that post-war restitution policy was not set up and implemented adequately; at least not adequately enough in the collective awareness of a generation of public administrators in the 1990s. That was why the key legal principle of the period of limitation was deliberately put into a new perspective in that decade – only then would it be possible to consider the restoration of rights procedures, or lack thereof.

Corrective measures require time, particularly where items of cultural value are concerned. After all, every application needs to be tested against the new restitution criteria selected by government and parliament while, moreover, research into the provenance of items of cultural value usually requires thorough archive research, which also takes time. The scarcity of data is an international problem. This was, therefore, one of the main themes at the international conference in Prague.

### 3.2 National discussion

In a national context, too, restitution policy has been the subject of ongoing debate. On 23 October 2009, Prof. Dr W.J. Veraart presented his inaugural lecture on *De passie voor een alledaagse rechtsorde* (*The passion for everyday rule of law*) as professor of jurisprudence at VU University Amsterdam.<sup>12</sup> He avowed this passion because it is precisely the everyday rule of law that enables the peaceful coexistence of a diversity of people and cultures. Characteristics of this rule of law are the creation of a period of limitation, the principle of double jeopardy, the binding character of judicial decisions and the principle that legal proceedings are finite in time.

It was against that background that he wanted to discuss the Restitutions Committee's 2005 recommendation to grant the Goudstikker claim. In his opinion, the Committee was established by the government to develop a more generous policy on looted art, which the Dutch authorities 'evidently [handled] incorrectly' after the war. However, the authorities were not allowed to act on matters in which the restoration of rights could be considered as 'definitely settled'. Prof. Veraart holds the view that the Restitutions Committee adopted a more liberal interpretation of the concept of 'new facts', making it possible, in his opinion, to ignore the 1999 decision of the The Hague Court of Appeal in the Goudstikker claim.

Such an assessment is a negation of the 'everyday rule of law'. Prof. Veraart holds the view that, when seeking absolute justice in cases resulting from the lawlessness, looting

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<sup>12</sup> Wouter Veraart, *De passie voor een alledaagse rechtsorde* [*The passion for everyday rule of law*]. Lecture at VU University Amsterdam (23 October 2009), to be published by Boom Juridische Uitgevers.



4. Member of staff Mrs A. Marck and Ms M. Albers, textile restorer of the Rijksmuseum Amsterdam, at a depot in Lelystad examining a carpet that is subject of a claim presented to the Committee.

and persecution during the Second World War, we are faced with the paradox that claimants continue to assert their rights within the existing legal system and can even reject the binding power of legal decisions.

The introduction and qualification of the concept of ‘new facts’ were also studied and criticised in the thesis of legal specialist Katja Lubina. On 25 November 2009, she obtained her doctorate from Maastricht University with a dissertation entitled *Contested Cultural Property. The Return of Nazi Spoliated Art and Human Remains from Public Collections*.<sup>13</sup> Her study of two recommendations issued by the Restitutions Committee and policy pursued by the Dutch government were put in an international comparative framework. This was one of her main themes, the other being the history and policy on ‘human remains’. In her chapters on Dutch restitution policy, she adds a second item for discussion to that of ‘definitely settled restoration of rights’: the importance of preserving the work of art for public art collections. While the Restitutions Committee did refer to this in its recommendation on the Goudstikker claim, they did not discuss it substantively, according to the PhD student. Lubina argues in favour of a supplement to the Washington Principles, notably in terms of research into the provenance of items of cultural value. She sees this as a new form of art-historical research alongside the older form of determining the authenticity of a painting or sculpture – but there still is insufficient consideration for financial compensation received.

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<sup>13</sup> Katja Lubina, *Contested Cultural Property. The Return of Nazi Spoliated Art and Human Remains from Public Collections*. Thesis at Maastricht University (Maastricht 2009).



5. *A country wedding* by Pieter Brueghel the Younger (NK 2227). See recommendation RC 1.101.

In the *NRC Handelsblad* daily newspaper of 25 November 2009, Dr Lubina summarised her thesis in respect of the part on Dutch restitution policy. She observed a discrepancy between what the government intended and what the Origins Unknown Committee and the Restitutions Committee, respectively, understand ‘new facts’ to mean. She also touched upon the importance of public art collections. The chairman of the Origins Unknown Committee, Prof. Ekkart, responded to this argument in *NRC Handelsblad* of 4 December 2009. He emphasised that almost all recommendations issued by the Restitutions Committee are related to the Dutch National Art Collection, that is, works of art that the Allied Forces transferred to the Netherlands after the Second World War with the express condition of returning them to their rightful owners wherever possible.

In a *Liber amicorum* for legal scholar Prof. Gr. van der Burght, lawyer P.W.L Russell raised the question of whether public opinion on restitution policy has changed.<sup>14</sup> In its *Report 2007*, the Restitutions Committee observed that the media had cast doubts on the legitimacy of returning stolen items of cultural value. The Committee noted the beginnings of a change in public opinion, ‘in which the importance of public art collections

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14 P.W.L.Russell, ‘Beleidswijzigingen bij de Restitutiecommissie’ [Policy changes in the Restitutions Committee]. In: A.H.N.Stollenwerck et al (ed.), *In dienst van het recht grenzen verleggen. Liber amicorum aangeboden aan prof. Mr. Gr. Van der Burght [In the service of the right to push back boundaries. Liber amicorum presented to Prof. Gr. van der Burght]* (Deventer 2009) 199-212.

was more expressly weighed against the moral satisfaction of returning items of cultural value that had been stolen by the Nazis'.<sup>15</sup> Referring to a 2003 decision by the European Parliament and various statements from the Allied Forces during the Second World War, Russell believes that the international context provides sufficient arguments to tip the balance towards restitution.

In his paper, Russell also commented on two new formulations in the Restitution Committee's general considerations<sup>16</sup> and on some of the provisions in the Regulations it established to deal within binding recommendation cases (Article 2, paragraph 2 of the Decree establishing the Restitutions Committee).<sup>17</sup> He concluded his argument with a response to an editorial in *NRC Handelsblad* that raised the matter of legal certainty of buyers who acquired items of cultural value in good faith only to find out later that they had been sold involuntarily during the war in consequence of repression by the Nazi regime. Referring to the legal exceptions that have been formulated for this particular situation, he considered the required 'legal certainty' a form of 'bad law'.

### 3.3 Extension of restitution policy terms

The discussion about the possible extension of the terms of restitution policy was concluded in 2009. In his letter to the Lower House of 10 July 2009, Minister R.H.A. Plasterk presented his conclusions<sup>18</sup> and availed himself of the opportunity to announce that the initial closing date of 4 April 2007 for submitting claims would no longer apply. After that date, his Ministry received a further 20 applications for restitution. This number was surprisingly large and had not been anticipated. The Minister extended the restitution policy term because of the importance of a consistent and equal handling of cases. He expressed his satisfaction about the apparent possibility of efficient research into the provenance of items of cultural value.

In his letter to the Lower House, the Minister drew attention to the obligations ensuing from the Washington Principles (1998) and the recent Terezín Declaration (2009). He intends to carefully monitor international developments in the area of restitution of war-looted art. He also wants to await the results of new investigations by the Netherlands Museum Association before specifying an end date for a lenient restitution policy. This association decided to investigate the provenance of items of cultural value acquired by museums in the period between 1933 and 1940 and from 1948 onward. Started in 2009, this undertaking is a follow-up to an earlier study into museum purchases in the 1940-1948 period.

The Museum Association is expected to submit its final report in the autumn of 2012. The Restitutions Committee will play a role in implementing the findings, in that it

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<sup>15</sup> See *Report 2007*, section 2.2.

<sup>16</sup> For more information, see *Report 2007*, p.16 and *Report 2008*, section 4.2.

<sup>17</sup> See section 2.1 of this report. For the Regulations, see Appendix 5 to the *2008 Report*.

<sup>18</sup> 'Letter from the Minister for Education, Culture and Science to the Chairman of the Lower House of the States General', 10 July 2009. Lower House, 2008/2009 session year, 25.839, no. 40. Appendix 4.

is conceivable that disputes ensuing from this investigation will be brought before the Committee for a binding recommendation. This means that the Minister expects to be able to inform the Lower House in 2012 about terminating restitution policy and the activities of the Restitutions Committee.

The permanent committee for Education, Culture & Science of the Lower House endorsed this policy intention without debate.

6. Numerous crates filled with artworks were found in the Heilbronn mine after the war.



## 4. An overview of recommendations in figures

### 4.1 State of affairs 2002 - 2009

In the period since the Restitutions Committee took up its duties in January 2002 until the end of 2009, the Minister for OCW has requested its advice in 117 cases, 113 of which related to items of cultural value from the National Art Collection, while the remaining 4 involved binding recommendations.<sup>19</sup> The overviews and figures shown in this section only relate to the former claims, i.e. claims submitted to the Committee on the basis of Article 2, paragraph 1 of the Decree establishing the Restitutions Committee. Section 4.3 presents an overview of figures relating to binding recommendation cases.

Of the 113 cases relating to the National Art Collection that the Committee received until the end of 2009, 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 105 requests for advice. In that same period, the Restitutions Committee issued 80 recommendations on the basis of Article 2, paragraph 1 of the Decree.<sup>20</sup>

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 80 recommendations issued, 43 cases were fully in the applicants' favour. In 24 instances, it was recommended that the claim be rejected in full. In 13 recommendations, the claim was partly granted and partly rejected, and in 2 instances, the Committee considered itself unauthorised to issue advice.

Number of cases related to the National Art Collection put before 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 <sup>21</sup>	2009	16
<b>Total</b>	<b>113</b>	<b>Total</b>	<b>80<sup>22</sup></b>

<sup>19</sup> At the end of 2009, one binding recommendation case was still pending.

<sup>20</sup> See Appendix 6 for an index by case number of all recommendations published by the Committee in the 2002-2009 period, with a reference to the file numbers, the dates of adoption and the names as given on the website. All recommendations issued by the Committee can be consulted via the Restitutions Committee website.

<sup>21</sup> In effect, the Minister asked the Committee's advice on 8 new National Art Collection cases in 2009. The 10 requests for advice as indicated in the table include two requests submitted earlier that were subsequently changed and renumbered.

<sup>22</sup> See note 17.

Until the end of 2009, the Committee issued recommendations in cases claiming some 766 items of cultural value. They granted the applications in the case of 410 objects (approx. 54%) and advised rejection for the remaining 356 objects (approx. 46%). Below is an overview of the number of objects regarding which the Committee issued recommendations in the period from 2002 to 2009:

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
<b>Total</b>	<b>410</b>	<b>356</b>

#### 4.2 State of affairs in 2009

In 2009, the Restitutions Committee had a total of 41 cases regarding the National Art Collection under consideration, 8 of which were presented by the Minister for OCW in 2009. During the year under review, the Committee issued 16 recommendations concerning objects from the National Art Collection, 6 of which were granted in full, 6 of which were rejected, and 4 of which were granted in part and rejected in part.<sup>23</sup> All in all, this means that at the beginning of 2010, there were still 27 cases relating to the National Art Collection waiting to be settled.

#### 4.3 Binding recommendations

The Committee did not issue any binding recommendations in 2009. Until the end of 2009, the Restitutions Committee handled four requests for advice in the context of this advisory task, three of which were handled in 2008. At the end of 2009, the Committee still had one binding recommendation case to deal with. Information on this case will be provided after it is concluded.

<sup>23</sup> Granted: RC 1.65 (Nardus), RC 1.70 (Larsen), RC 1.75 (Semmel), RC 1.77 (Proehl), RC 1.84 (Cassirer) and RC 1.97 (Hollander). Rejected: RC 1.79 (Heppner), RC 1.80 (Von Pannwitz), RC 1.81 (Schönemann), RC 1.88 (Bachstitz II), RC 1.90-A (Katz: *partial recommendation*) and RC 1.101 (Wolf). Granted in part/rejected in part: RC 1.78 (Bachstitz I), RC 1.87 (Van Lier), RC 1.89-A (Mautner: *partial recommendation*) and RC 1.91 (Adelsberger).

## 5. Recommendations issued in 2009

This chapter contains the complete text of the recommendations issued by the Restitutions Committee to the Minister for OCW in 2009. All recommendations published in 2009 were related to the National Art Collection. The recommendations are presented in chronological order, with the date on which the recommendation was adopted being taken as the starting point.<sup>24</sup>

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### 1. Recommendation regarding Bachstitz II (case number RC 1.88)

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On 3 April 2007, E. Dolev of Dolev Consulting in Tel-Aviv (hereafter referred to as: Dolev), *‘on behalf of the heirs of Kurt Walter Bruno Bachstitz and on behalf of the Nussbaum family’*, sent a letter to the Ministry of Education, Culture and Science (hereafter referred to as: OCW) requesting restitution of 31 objects. The objects in question are part of the Netherlands Art Property Collection (hereafter referred to as: the NK collection) under inventory numbers: NK 394, NK 602, NK 604A-B, NK 615, NK 620, NK 631, NK 636A-B, NK 864A-B, NK 1552, NK 1553, NK 1618, NK 1627, NK 1664, NK 1763, NK 1787, NK 1798, NK 1892, NK 1940, NK 2402, NK 2436, NK 2441, NK 2447, NK 2462, NK 2484, NK 2577, NK 2581, NK 2707A-B NK 2904, NK 2905, NK 2919, and NK 3230.

#### The procedure

In a letter dated 11 June 2007, the Minister requested the Restitutions Committee to issue a recommendation regarding this application for restitution. The Minister informed the Committee that a large number of the currently claimed works were also the subject of an earlier claim, RC 1.78. On 21 October 2008, the Restitutions Committee sent Dolev a letter asking him to provide the names and powers of attorney of those people he claimed to be representing by 26 November 2008 at the latest. Dolev replied by email on 6 November 2008, stating that he was unable to supply these details. He also stated that he was now of the opinion that members of the Nussbaum family were not the heirs of K.W. Bachstitz. In a letter dated 12 November 2008, the Restitutions Committee asked Dolev a second time to supply the names and powers of attorney of his clients before 26 November 2008. He, however, again failed to do so. Dolev re-established contact with the Restitutions Committee in an email dated 3 January 2009, but, like before, failed to divulge the persons for whom he was working.

#### Special considerations<sup>25</sup>

Dolev requested restitution of 31 works of art from the national collection. He claimed to be acting *‘on behalf of the heirs of Kurt Walter Bruno Bachstitz and on behalf of Nussbaum family’*. However, it is not clear from the documents received that he is authorised to do so, which is why the Committee is of the opinion that insufficient evidence has been presented to show that Dolev is acting on the instructions of a possible heir or claimant. This means that Dolev’s claim is inadmissible and must be rejected.

#### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application in question.

Adopted at the meeting of 12 January 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, 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 secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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<sup>24</sup> For an index by case number of all recommendations issued by the Committee in the 2002-2009 period, see Appendix 6. This appendix contains a list of all recommendations issued by the Restitutions Committee, with a reference to the file number, date of adoption and name as given on the website.

<sup>25</sup> The general considerations have been left out of this recommendation and can be found in the published version on the Restitutions Committee website under [http://www.restitutiecommissie.nl/rc\\_1.88/advies\\_rc\\_1.88.html](http://www.restitutiecommissie.nl/rc_1.88/advies_rc_1.88.html).

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## 2. Recommendation regarding Proehl

(case number RC 1.77)

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On 23 March 2007, Mrs I.M.L.-P. and Mrs G.C.V.P., represented by their lawyer, M.H. Stötzel of Marburg, Germany, submitted a letter to the Minister for Education, Culture and Science (hereafter referred to as 'OCW') requesting the restitution of the painting *Prometheus chained to the rock*, a copy after P.P. Rubens. Since its return to the Netherlands after the Second World War, the work has been part of the Netherlands Art Property Collection (hereafter referred to as the 'NK collection') under inventory number NK 3082 and is currently housed in the depot of the Netherlands Institute for Cultural Heritage.

### The procedure

The reason for the application for restitution was a publication on the website of the Origins Unknown Agency (hereafter referred to as 'the BHG'), in which it appeared that, during the Second World War, the painting NK 3082 was sold by the German-born banker Ernst Paul Caesar Heinrich Proehl (hereafter referred to as 'Proehl'). In a letter dated 4 May 2007, the Minister for Education, Culture and Science asked the Restitutions Committee to issue a recommendation. In a letter dated 10 April 2008, the applicants' representative sent word that Mrs I.M.L.-P. had died in September 2007 and that her sons, E.M.L. and F.H.L., would be acting as (joint) applicants in her place.

On the basis of this request for a recommendation, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 3 July 2008. This draft report was sent to the Ministry on 22 July 2008, and to the applicants on 21 July 2008, with a request for additional information or comments. The applicants responded to the report in writing on 1 September 2008 and 31 October 2008. They also provided additional documentation regarding Proehl's life and the circumstances under which he sold the painting during the war. The report was subsequently adopted during the meeting of 9 February 2009. For the facts of the case, the Committee refers to the investigatory report, which is considered an integral part of this recommendation.

### Considerations

1. The applicants are the grandchildren of Proehl (1885-1973) and his wife Julia Ilse Schwarz (1883-1977), and are requesting restitution of the painting *Prometheus chained to the rock* (NK 3082), which belonged to their grandparents. The Proehls had two children: E.W.P.H.P. (1910-1952) and I.M.L.-P. (1918-2007). The applicant G.C.V.P. is the daughter of E.W.P.H.P.; the applicants E.M. and F.H.L. are the children of I.M.L.-P. As such, the Committee has taken cognisance of several documents pertaining to the law of inheritance. These documents have given the Committee no reason to doubt the applicants' status as rightful heirs.
2. The relevant facts are described in the investigatory report dated 9 February 2009. The following is a summary. Proehl was born in Hamburg, Germany in 1885. His wife, Julia Ilse Schwarz, was born of Jewish parents in Austria in 1883. Proehl himself was not Jewish. In 1916, he moved to the Netherlands with his family, becoming a Dutch citizen in 1925. Together with Fritz Gutmann, he founded Proehl & Gutmann in 1920, a bank in which the Dresdner Bank also had an interest. In 1934, Proehl & Gutmann was wound up, possibly due to more than the financial crisis that Germany was struggling with at the time. According to the applicants, this may also have been a result of anti-Jewish measures taken against the Dresdner Bank in Germany. From 1934, Proehl worked for Proehl & Co., the company founded by his son, which provided financial services.
3. Various documents provided by the applicants show that the Nazis mistrusted Proehl at an early stage due to his close family ties and business dealings with the Jewish community. The applicants have claimed that as a result of this mistrust, the Nazis forced him to sell off part of his estate, *Gut Pünstorf*, close to the German city of Itzehoe in 1937 and in 1941 forced him to sell off the remainder. On the basis of archival material found, the Committee has concluded that Proehl was also soon affected by the consequences of the occupation. In early 1942, he was prosecuted for evading the regulations established by the Nazis concerning the registration of Jewish capital held by his company. This was also the reason that Proehl & Co was put under the administration of a *Verwalter* on 24 February 1942. At a later stage, both Proehl's and his son's private bank accounts were frozen by the Nazis. Eventually, Proehl was arrested on 23 June 1944 and sent, via Camp Vught, to the concentration camp at Sachsenhausen-Oraniënburg, which was intended for political prisoners. After the liberation, he returned to Amsterdam.
4. It is a known fact that Proehl was an art collector who owned a collection of valuable paintings. The investigation into the provenance of the claimed painting NK 3082 has shown that, in 1924, it was in the possession of J. Goudstikker art dealers, where it was later bought by Proehl. The exact date of sale is unknown; however, it can be concluded from archival material that the painting was certainly in Proehl's possession in 1934. Proehl sold the painting, originally attributed to Rubens, in or around March 1941 to P. de Boer art dealers in Amsterdam for NLG 20,000. It was one of several works of art that he sold to De

Boer during that period. The painting NK 3082 was sold on to the *Dienststelle Mühlmann* in April 1941 for NLG 25,000, after which it ended up at *Sonderauftrag Linz*, the institution that bought works of art for Hitler's future Führermuseum.

5. Shortly after the war, Proehl reported the sale of the painting NK 3082 to the Netherlands Art Property Foundation (SNK). On the declaration form, he states that the work was 'sold' to P. de Boer art dealers. In February 1949, in connection with an investigation into the art dealers, Proehl stated:  
*It is true that I sold four paintings to P. de Boer art dealers in 1941. [...] The Rubens was too big and because it stood out in my collection, I wanted to get rid of it. I mentioned this to Mr P. de Boer, who asked me to name my price a few weeks later. I offered him the painting for NLG 20,000, and he bought it.*

In the same statement, he also states:

*I then sold the other paintings to de Boer. I wanted to get rid of these ones too because I knew that I would need money. I didn't know that the paintings would be sold to the Germans. De Boer never mentioned this.*

6. In July 1951, the Bureau for Restoration Payments and the Restoration of Property of the Ministry of Finance (Hergo, successor to the SNK) informed him that the painting NK 3082 had been recovered, after which they exchanged correspondence about possible restitution. Although Hergo was initially of the opinion that there were no grounds for restitution because Proehl had not been forced to sell the painting by the German authorities, in late November 1952, Hergo gave Proehl the chance to buy the painting back for the amount at which it was valued at that moment. Hergo probably changed its mind about reselling the painting as a result of a letter sent by Proehl on 12 November 1952:  
*I return to your letter of 1 October 1952 and request that you inform me whether you are prepared to sell the painting by Rubens, Prometheus, and for what price.*  
*While it is true that I sold the painting without being directly forced to do so by the German authorities, I felt – as I also informed you – that I was compelled to do so in connection with the imminent confiscation of my house at Koningslaan 17.*



7. *Prometheus chained to a rock* after P.P. Rubens (NK 3082) .

7. The negotiations did not result in restitution. In March 1959, Proehl once again contacted Hergo, which had been wound up in the meantime, but this also failed to result in restitution.
8. With regard to the admissibility of the applicants, the Committee considered the following. Archival material has shown that negotiations between Proehl and the Dutch restitution authorities after the war

did not lead to a judgement by the Council for the Restoration of Rights or another competent court, nor to a settlement with a body which in hierarchy ranks above the SNK. Furthermore, Proehl did not explicitly renounce his claim for restitution after the war. With reference to the first recommendation of the Ekkart Committee regarding private art property, the Committee therefore concludes that this case cannot be considered to have been settled in the past and deems the applicants' request admissible.

9. Pursuant to current national policy in respect of the restitution of items of cultural value, the Committee can only recommend restitution if there is a convincing case regarding the right of ownership and if the original owner relinquished possession involuntarily as a consequence of circumstances directly related to the Nazi regime. According to the third recommendation of the Ekkart Committee of 26 April 2001, adopted by the government, all sales by Jewish private owners in the Netherlands from 10 May 1940 until the end of the war are deemed involuntary, unless expressly proven otherwise. In its response to this recommendation, the government also indicated that other specific groups who were victims of persecution could invoke these evidentiary rules (TK 2001-2002, 25 839, no. 27).
10. With regard to the question of ownership, the Committee concludes that it has been established that the claimed painting, in any case, belonged to Proehl from 1934 and that when it was sold in or around March 1941, it was in his possession.
11. Given the nature of the loss of possession, the Committee notes the following. The investigation showed that, from the late 1930s, Proehl was under threat by the Nazis, before being eventually arrested and sent to the concentration camp at Sachsenhausen. Although he was not Jewish himself, his wife and, therefore, his children were of Jewish origin and this alone was sufficient for Proehl to find himself in a vulnerable position. Also his involvement with Jewish bankers and clients and the help he provided them contributed to his persecution. The Committee is, therefore, of the opinion that Proehl should be seen as a victim of Nazi persecution. In accordance with government policy, the Committee, therefore, assumes that Proehl sold the painting involuntarily in March 1941 as a consequence of circumstances directly related to the Nazi regime.  
The Committee believes that the declarations made by Proehl after the war (see sections 5 and 6), although contradictory at first sight, do not provide evidence to the contrary. The fact that in his SNK declaration shortly after the war, Proehl spoke of a 'normal' sale is entirely understandable in light of the ideas concerning voluntariness and involuntariness at the time. The Committee attaches less importance to the testimony of February 1949 during the investigation into P. de Boer art dealers than to Proehl's later statement of 1952, given the fact that it is likely that Proehl did not wish to incriminate the art dealer, with whom he had done business on a number of previous occasions. In the statement of November 1952, a clear link is established between the sale of the painting and the persecution Proehl suffered at the hands of the German occupying forces.
12. 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 recommendation of the Ekkart Committee of 26 April 2001, which stipulates that an obligation for repayment applies only if the then seller, or their heirs, obtained the free disposal of the proceeds. If doubt exists whether the proceeds were actually obtained, the benefit of doubt must be given to the claimants, as stipulated in the fifth of Ekkart's recommendations. Given the vulnerable position in which the Proehl family found themselves, the Committee accepts that Proehl would have been unable to spend the proceeds freely, but as a result of the wartime circumstances was obliged to use them to protect his family. This is also evidenced in Proehl's statement of February 1949 (section 5), in which he states that he sold the paintings because, at the time, he knew he was going to need the money. The facts that Proehl & Co was put under administration in 1942 and the business and private accounts of Proehl and his son were frozen, also make it plausible that Proehl could not use the proceeds of the sale freely.  
Based on the information available, it must be assumed that restitution of the work without repayment does not constitute unjustified enrichment.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to return the painting *Prometheus chained to the rock* (NK 3082) to the heirs of Ernst Paul Caesar Heinrich Proehl.

Adopted at the meeting of 9 February 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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### 3. Recommendation regarding Heppner

(case number RC 1.79)

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In a letter dated 4 May 2007, the Minister for Education, Culture and Science (hereafter referred to as: the Minister) requested the Restitutions Committee to issue a recommendation regarding the application for restitution of the painting *Paintress and servant in a studio* by J. Voorhout I. After its return to the Netherlands after World War II, this work of art became part of the Netherlands Art Property Collection (hereafter referred to as: the NK collection) under inventory number NK 1973. NK 1973 is currently housed in the depot of the Netherlands Institute for Cultural Heritage in Rijswijk.

#### The procedure

In a letter dated 23 March 2007, M.B. (A.) H. (hereafter referred to as: the applicant) submitted an application for restitution of NK 1973 to the Minister. The reason for the claim was a publication on the website of the Origins Unknown Agency (hereafter referred to as: BHG) which stated that Albert Heppner owned NK 1973 during World War II. The applicant's claim originally included a second work, the painting *Wooded landscape with herd near a pond* by J.S. van Ruysdael (previously: NK 2653). In a letter dated 4 May 2007, the Minister informed the applicant that the restitution of this work was not possible, the reason being that it had already been returned to a third party, on the recommendation of the Restitutions Committee (RC 1.41).

On the basis of the Minister's request for a recommendation regarding NK 1973, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 6 October 2008. This draft report was sent to the Ministry and the applicant on 30 October 2008, with a request for additional information or comments. The applicant responded to the draft report in letters dated 17 November 2008 and 2 December 2008. He also provided additional documentation regarding the Heppner family's life during the war. The report was subsequently adopted during the meeting of 9 March 2009. For the facts of the case, the Committee refers to the investigatory report.

During the procedure, the applicant was represented before the Committee by M.H. Stötzel, a lawyer based in Marburg (Germany).

#### Considerations

1. The applicant stated that: '[he is] *the only son and the direct heir of the late Dr. Albert Heppner's estate, including his artwork respectively the assets from his company A. Heppner art dealers*'. The Committee sees no evidence in the inheritance documents submitted, in particular the certificate of inheritance concerning Albert Heppner and his widow's will, to question the applicant's status as the son and heir of Albert Heppner.
2. The following is a summary of the facts in the investigatory report of 9 March 2009. Albert Heppner (hereafter referred to as: Heppner) was born in Berlin on 28 September 1900 and was of Jewish descent. He married Irene Marianne Krämer in 1927. On account of their Jewish background, the couple emigrated to the Netherlands in 1933. Heppner established an art dealership '*A. Heppner*' in Amsterdam. According to the applicant, Heppner and his family attempted to escape to the United States after the German invasion, to no avail. The applicant states that Heppner's '*business activities legally ended in 1940*' because of anti-Jewish measures taken by the Nazis, but that he continued dealing illegally in art on a small scale.
3. With the help of two men acting as fronts, Heppner is said to have then set up the 'aryan' art dealership '*Wicoram*' in Amsterdam, apparently operating behind the scenes in a leading position. According to the applicant, '*Wicoram*' sold paintings belonging to Heppner between 1941 and 1944. After another, likewise unsuccessful, attempt to flee the country, Heppner and his family went into hiding in August 1942, where they remained until the end of the war. In November 1942, the firm '*A. Heppner*' was placed under the administration of a *Verwalter* and liquidated. Heppner died shortly after the war. His widow and son then emigrated to the United States. '*Wicoram*' was disbanded on 1 January 1965. It is not known who the legal successors of this firm were.
4. The applicant stated that the currently claimed painting NK 1973 was part of '*the Heppner-collection at the time, when A. Heppner had to face severe threatenings and persecution measurements and had to bear massive losses by confiscation*'. On the basis of a collection of 178 '*art catalogue cards, detailing Albert Heppner's inventory, 1933-1941*' in the Jewish Museum of Maryland in the United States, the applicant states that Heppner had this painting in his possession and sold it to an unknown buyer on 15 July 1941.
5. The card system referred to in consideration 4 contains an index card concerning the currently claimed painting on which is written, probably in Heppner's handwriting, '*Prov.: Mr. Schretlen, A'dam, 29-4-'41*', which seem to suggest that Heppner (art dealers) acquired the painting on the said date from art dealer M.J. Schretlen at Herengracht 390 in Amsterdam. Photo documentation at the Netherlands Institute for Art History also shows that the painting was in the hands of '*Ksth. Dr. A. Heppner, A'dam*' in 1941.
6. The card referred to in consideration 5 also contains the entry '*K. 15-7-'41*', which seems to suggest that

the painting was sold on 15 July 1941. The card does not name the buyer, but information from the Netherlands Art Property Foundation (SNK) suggests that this was a Dutch art collector, A.C.J.A. Stoecker of Amsterdam. On an SNK declaration form completed after the war, Stoecker gave the provenance of the painting as: *'Dr. Heppner'*.

7. Heppner may have sold the painting through the art dealership *'Wicoram'*, which had been established shortly beforehand (in June 1941), though it is equally likely that he sold it directly. The card mentioned in consideration 5 gives what appears to be a sales price, written in code, though neither the amount nor what happened to this sum is known. The card also gives another amount, NLG 2,800, but what this refers to is likewise unknown.
8. The results of the investigation show that Stoecker sold the work at some point and that eventually, after several successive transactions, it was purchased by a German buyer in 1944 for the *Führermuseum* which was to be established in Linz (Austria). After the war, the painting was returned to the Netherlands.
9. Heppner's business activities in 1941 and later should, in the applicant's view, be regarded as *'a simple matter of an attempt to just survive the deadly menace, since he and his family could not escape from Holland any more'*. According to the applicant, any profits Heppner made through the sale of the paintings in the years after 1940 he had to use to finance his escape attempts and to meet the cost of living in hiding, as well as to provide for *'the bare necessities during these years'*. This, therefore, also applies to the currently claimed painting sold in 1941, according to the applicant.



8. *Paintress and servant in a studio* by J. Voorhout I (NK 1973).

10. As far as is known, Heppner (or the Heppner family) did not report the claimed painting to the SNK as missing after the war and there was no correspondence with the family about a possible restitution after the work was returned to the Netherlands. The family did, however, report the loss of several other paintings, which were said to have been seized in or around November 1941.
11. Regarding the ownership of NK 1973, the Committee considers the following. Available archival records provide sufficient basis to assume that Heppner bought the claimed painting on 29 April 1941 and then sold it again on 15 July 1941, either directly or through 'Wicoram'. The card in Heppner's catalogue referred to in considerations 5 and 6 gives these dates. Moreover, other information concerning the provenance history of the work of art to which the Committee has access also points to Heppner. The Committee therefore deems it sufficiently plausible that Heppner did possess this work and that it passed out of his possession through sale. Following on from this, the Committee finds that the claimed painting should be regarded as old trading stock, seeing as Heppner bought it before the *Verwalter* referred to in consideration 3 was placed in charge of art dealership 'A. Heppner'. Pursuant to current restitution policy in respect of the trading of art, restitution is only possible for goods that belonged to old trading stock.
12. The Committee then investigated whether there was any evidence making it very likely that loss of possession was involuntary, as referred to in the Ekkart Committee's Recommendations for the Art Trade 4, 5 and 6. In the absence of declaration forms indicating involuntary loss of possession, as in the case of Heppner, the required high degree of probability can also be assumed if the applicants can prove it was a case of theft, confiscation or coercion.
13. With regard to Heppner's loss of possession, the Committee finds that this case involves a sale by the owner, directly or with the help of front men of the art dealership 'Wicoram', to a Dutch art collector, while with regard to this sale, no evidence was found of any direct threat or a sale under duress by the Nazis. The Committee finds that both the purchase of the work during the war (in 1941) and the sale less than three months later is in line with normal art dealing practice, which centres on the sale of trading stock and where works of art often change hands after short periods. The Committee is of the opinion that losing possession of a work in this way does not imply that the loss was involuntary or that it took place as a result of circumstances directly related to the Nazi regime. The applicant's viewpoint as cited in consideration 9 does not, in the Committee's opinion, suffice to review its position with regard to this sale.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for the restitution of painting *Paintress and servant in a studio* by J. Voorhout I (NK 1973).

Adopted at the meeting of 9 March 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, 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. David, chair)

(E. Campfens, secretary)

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#### 4. Recommendation regarding Adelsberger

(case number RC 1.91)

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In a letter dated 4 July 2007, the Minister for Education, Culture and Science (hereafter referred to as ‘the Minister’) requested the Restitutions Committee to issue a recommendation regarding the application for the restitution of *Jupiter, disguised as a satyr, approaches the sleeping Antiope* by H. Goltzius, *Mountain landscape* by A. von Stadler and *Landscape* by A. von Stadler. Since their return to the Netherlands after the Second World War, these works of art have been part of the Netherlands Art Property Collection (hereafter referred to as ‘the NK Collection’) under inventory numbers NK 2425, NK 3277 and NK 3278. NK 2425 is at present on loan to the Frans Halsmuseum in Haarlem, while NK 3277 and NK 3278 are currently housed in the depot of the Netherlands Institute for Cultural Heritage.

##### The procedure

In a letter dated 27 March 2007, Mrs R.F.-I. of H., Israel (hereafter referred to as ‘the applicant’) sent a letter to the Minister requesting restitution of the three said paintings. The reason for the application for restitution was a publication on the website of the Origins Unknown Agency (hereafter referred to as ‘the BHG’), which states with regard to the provenance of NK 2425, NK 3277 and NK 3278: ‘*A. Adelsberger (collectie), Nürnberg*’ [*A. Adelsberger (collection) Nuremberg*]. In the request for recommendation, the Minister asked the Committee to pay attention to the admissibility of the claim, given that ‘*op het departement met betrekking tot de ontvankelijkheid serieuze vragen zijn gerezen*’ [serious questions have arisen at the Ministry regarding the admissibility]. Also in the light of a note by Prof. R.E.O. Ekkart included with the request sent on 20 June 2007, the Committee understands the Minister’s question in the sense that the loss of possession of the currently claimed works of art may have occurred as early as 1930/1931 and that the Committee must assess whether the application for restitution can be considered in pursuance of the current restitutions policy.

On the basis of this request for a recommendation, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 18 August 2008. This draft report was sent to the Minister on 7 October 2008, and to the applicant on the same day, with a request for additional information or comments. The applicant responded to the report in writing on 20 November 2008. This reply included hitherto unknown information, on the basis of which it was possible to rule on the admissibility of this claim. An additional investigation was conducted in response to this information, and together with the detailed information sent by the applicant to the Committee on 27 January 2009, these results were incorporated into the draft investigatory report. The investigatory report was subsequently adopted during the meeting of 9 March 2009. For the facts of the case, the Committee refers to the investigatory report.

During the procedure, the applicant was represented by L. Fremy, a lawyer based in Berlin, Germany.

##### Considerations

1. The applicant declared that she is a granddaughter and heir of Abraham Adelsberger. In this context, the Committee has taken cognisance of several inheritance documents, which have not led the Committee to question the applicant’s status as heir. According to the applicant, Adelsberger lost possession of the paintings in question as a result of the Nazi regime in Germany.
2. The relevant facts are described in the investigatory report of 9 March 2009. The following summary of events will suffice for the present purposes. Abraham Adelsberger (hereafter: Adelsberger) was born in Hockenheim, Germany, on 23 April 1863. He was married to Clothilde Reichhold (1872-1954) and both were of Jewish descent. Two children were born into this marriage: Paul Adelsberger (1894-1973) and Sophie Adelsberger (1897-1983). Adelsberger was a toy manufacturer who lived with his family in Nuremberg. According to the applicant, Adelsberger possessed a large art collection.
3. The applicant claimed that Adelsberger came up against anti-Jewish measures in Germany, as early as 1934. In 1937, he was forced to sell his house, and two other properties and his toy factory were ‘aryanised’. His son Paul probably emigrated to New York in 1934, where he married Rosalie Weill. Daughter Sophie married Alfred Isay, also of Jewish descent, in 1920. The applicant was born into this marriage on 28 June 1921, followed by a son, Walter, in 1927. Sophie’s family was also faced with anti-Jewish measures due to the Nazi rule. She and her family emigrated to the Netherlands in February 1934, and settled in Amsterdam. Adelsberger and his wife also moved to the Netherlands in 1939, living first of all with their daughter Sophie and son-in-law Alfred Isay at Schubertstraat 66 in Amsterdam. When he emigrated, Adelsberger was forced to give up his valuable possessions, including the family jewels, to the Nazis. He did, however, manage to take some paintings with him to Amsterdam, though several of them eventually had to be sold.



9. *Jupiter, disguised as a satyr, approaches the sleeping Antiope* by Hendrick Goltzius (NK 2425).

4. Adelsberger died in Amsterdam on 24 August 1940. His daughter Sophie and her family survived the war in hiding. Adelsberger's widow Clothilde was arrested by the Germans in 1943 and deported to transit camp Westerbork from where she was taken to Bergen-Belsen. She survived the war.
5. The investigation did not reveal that there had been any contact between Adelsberger's heirs and the Dutch restitutions authority about the currently claimed works. With reference to the first recommendation of the Ekkart Committee regarding private art property, the Committee therefore concludes that this case cannot be considered to have been settled in the past.
6. Pursuant to current national policy in respect of the restitution of items of cultural value, the Committee can only recommend restitution if there is a convincing case regarding the right of ownership and if the original owner relinquished possession involuntarily as a consequence of circumstances directly related to the Nazi regime.
7. The provenance details of the work NK 2425 are inconclusive. The BHG reconstruction of the provenance states that this painting was part of Adelsberger's collection that was put up for auction at auction house Hugo Helbing of Munich, Germany, on 10 August 1930. The BHG concluded that the painting was not sold at the auction. It then established that the work came into the hands of art dealership D.A. Hoogendijk & Co of Amsterdam on 11 February 1941. The name 'Jay' was also found in the provenance details, a name that also appeared on an inventory card in Hoogendijk's archive, stating that the work in question was from: 'den heer A. Jay, Schubertstr. 66 Amsterdam [Mr A. Jay, Schubertstr. 66, Amsterdam], and the date: '11/2/'41'. This is very probably an incorrect spelling of the name 'Isay', which, in all probability, refers to Adelsberger's son-in-law Alfred Isay (mentioned in consideration 3), who was registered at that address from 1936. On the basis of this information, the Committee concludes that the current NK 2425 was, in all likelihood, sold by Isay on 11 February 1941.
8. The Committee was not able to deduce from the documentation consulted whether the painting, when it was sold, was still part of Adelsberger's undivided estate or whether it had since passed into Isay's possession. The applicant notes the following about this:

*'Due to the difficult situation for Jews in 1940 and later it was not possible for Abraham Adelsberger's heirs to settle the estate after his death and to divide up the assets. The single items were in the possession of the heirs in Amsterdam who lost them later due to persecution.'*

The Committee regards this as a very plausible statement and hence takes the view that up until its sale, NK 2425 was part of Adelsberger's undivided estate. Based on the above, the Committee believes that a very plausible case has been made that NK 2425 was the property of Adelsberger's heirs during the war, until 11 February 1941.

9. Regarding the loss of possession of NK 2425, the Committee notes the following. According to the third recommendation of the Ekkart Committee of 26 April 2001, all sales by Jewish private owners in the Netherlands from 10 May 1940 must be deemed involuntary, unless expressly proven otherwise. This painting was sold by Adelsberger's heirs, private persons of Jewish descent, in Amsterdam on 11 February 1941, a sale which the Committee therefore regards as involuntary.
10. The provenance details with regard to the two other claimed works, NK 3277 and NK 3278, are likewise inconclusive. It is stated in the provenance reconstruction conducted by the BHG that various works by A. von Stadler from the Adelsberger collection had been put up for sale at Hugo Helbing auction house in Munich at the auction held on 8 October 1930, referred to in consideration 7. In terms of illustration and measurements, both NK 3277 and NK 3278 correspond to the works listed in the auction catalogue under numbers 155 and 154. It is not known whether the paintings were actually sold at this auction. In any case, the names of potential buyers are not known. Investigations further revealed that the two paintings were sold by a certain Weinberg to Kunsthandel N.V. voorheen Kunsthandel J. Goudstikker (Goudstikker/Miedl) on 13 November 1941. The investigation was unable to shed any more light on what happened to these paintings during the war. In connection with this, the applicant stated the following:

*'Regarding the two paintings by Toni von Stadler (NK 3277 and NK 3278) no further evidence was found. As both paintings appeared in 1941 in Amsterdam, it has to be concluded that Abraham Adelsberger also managed to take these paintings with him to Amsterdam and that the paintings were sold to finance the subsistence of the family.'*

11. As regards this statement of the applicant, the Committee's consideration is as follows. It is possible that Adelsberger or his heirs sold the works in question in Amsterdam. However, it is equally likely that they were sold voluntarily by Adelsberger at the abovementioned auction at Hugo Helbing in 1930, or possibly in subsequent years. The Committee rules that as long as no new information is discovered regarding the loss of possession of NK 3277 and NK 3278, the investigation has thus far yielded insufficient evidence to accept the applicant's argument that the works were sold during the war for the benefit of Adelsberger and/or his family. Therefore, with regard to NK 3277 and NK 3278, the Committee is unable to accept that Adelsberger or his heirs suffered involuntary loss of possession due to circumstances directly related to the Nazi regime.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to return the painting H. Goltzius, *Jupiter, disguised as a satyr, approaches the sleeping Antiope* (NK 2425), to the heirs of Abraham Adelsberger.

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for the restitution of the paintings A. von Stadler, *Mountain Landscape* (NK 3277) and A. von Stadler, *Landscape* (NK 3278).

Adopted at the meeting of 9 March 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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## 5. Recommendation regarding Nardus

(case number RC 1.65)

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In a letter dated 26 March 2007, the Minister for Education, Culture and Science (OCW) requested the Restitutions Committee (hereafter referred to as: 'the Committee') to issue a recommendation regarding the application by S.N. of France for the restitution of two paintings that are currently part of the Netherlands Art Property Collection under inventory numbers NK 2894 and 2895. The request concerns two anonymous Florentine paintings from the final quarter of the 15th century entitled *Portrait of a Woman* and *Portrait of a Man*. Both paintings are currently on long-term loan to the Bonnefantenmuseum in Maastricht.

### The procedure

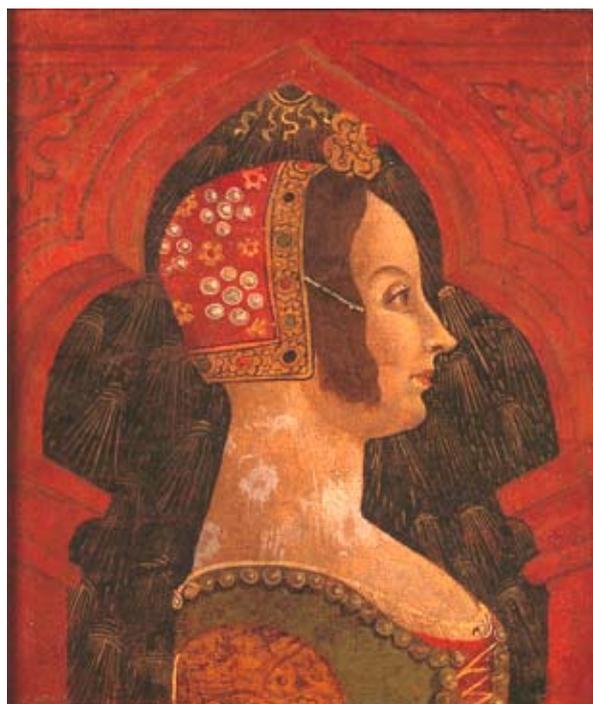
On 3 February 2007, S.N. (hereafter referred to as: 'the applicant') submitted an application for restitution to the Minister. The applicant made it known that he would be represented in this matter by Patrick Neslias of France. On the basis of the application for restitution, the Committee formulated a draft investigatory report (7 April 2008), which was sent to the applicant for comments on 25 April 2008. The applicant responded to the report on 24 June 2008. This response is enclosed in the final investigatory report and constitutes an integral part of the report. On 16 March 2009, the applicant provided additional information concerning the facts of the case. This is also an appendix in the final report. In the context of its investigation, the Committee asked the French lawyer Corinne Hershkovitch of Paris to conduct further investigation into certain aspects of the case. Her response of 16 March 2009 has been incorporated into the report. For the facts underlying the application for restitution, the Committee refers to its investigatory report, which was adopted at the meeting on 6 April 2009. R. Herrmann, former chair of the Committee acted as an advisor in this case.

### Considerations

1. The applicant is the grandson of Leonardus Salomon (1868-1955) and is requesting restitution of the paintings in his capacity as heir. The Committee has taken cognisance of the document submitted by the applicant pertaining to the law of inheritance and sees no reason to doubt the applicant's status as the rightful heir.
2. Leo Nardus, born Leonardus Salomon, was born in the Netherlands, the son of an antiques dealer. He married the daughter of an art dealer in 1904 and moved to Paris. The couple had two daughters. According to the applicant, Leo Nardus (hereafter referred to as: 'Nardus') was very wealthy and built up a substantial art collection. From 1921, Nardus lived with his daughters in Tunisia, where he remained throughout the Second World War. He entrusted his collection to his good friend, Arnold van Buuren (hereafter referred to as: 'Van Buuren'), who was of Jewish descent. In July 1928, Nardus and Van Buuren agreed to become joint owners of the collection of paintings and that both were authorised to sell works, the proceeds of which would be divided.
3. During the war, the art collection was housed in Van Buuren's residence in Haarlem. It can be concluded from a list of art works that Van Buuren was required to give to the occupying forces in 1940, entitled *Kollektion van Buuren/Nardus* that the two currently claimed paintings were part of the collection at that time. Anti-Jewish measures forced Van Buuren to surrender these works to the German looting bank Lippmann, Rosenthal & Co., Sarphatistraat in Amsterdam. The two claimed works were included on a list of works surrendered to the bank. In 1943, the claimed works were sold to or by Mak van Waay auction house in Amsterdam, for the probable sum of 220 guilders for both pieces.
4. Van Buuren and his wife died in Sobibor on 23 April 1943. Their children survived the war. In October 1945, one of Van Buuren's daughters indicated on the SNK declaration form that the two currently claimed paintings were owned by *'Arnold van Buuren en Leo Nardus'* and that they had been confiscated.
5. In 1947, Nardus and the legal successors to Van Buuren concluded an agreement to separate and divide the art collection, under which Nardus acquired all rights to the paintings, as well as existing or future right of action towards third parties, such as Lippmann, Rosenthal & Co (henceforth: LVVS), with regard to the collection. The Council for the Restoration of Rights acknowledged the agreement in a judgement from 1949. The Committee has concluded, therefore, that the rights to the currently claimed paintings have lain with Nardus or his heirs from 1947 onwards.
6. After the war, Nardus, who resided in Tunisia, authorised his daughter Flory Nardus to trace works of art from the collection that had been lost during the war. In 1948, Flory entered into an alliance with Georges Schiff-Giorgini (hereafter referred to as: 'Giorgini'), a banker in Paris. This alliance led to a significant dispute between Giorgini and the Nardus family in later years and to uncertainty among those Dutch authorities responsible for the restoration of rights.
7. With regard to this alliance, the Committee has taken cognisance of two agreements, one drafted in French (unsigned) from 1 October 1948 and another in Dutch from 11 February 1950. The agreement

from 1948 states that Giorgini would receive 25% of the proceeds from paintings he sold from the Nardus collection, and Nardus would receive the other 75%. In addition, Giorgini assumed certain debts from Flory Nardus. The agreement from 1950 stipulates that '*Partij Nardus draagt hierbij aan partij Giorgini over, welke overdracht partij Giorgini hierbij aanvaardt, alle rechten, welke hij kan doen gelden tegen LVVS (...), in het bijzonder zijn vordering op LVVS uit hoofde van de verkoop van de z.g. collectie Nardus. Deze overdracht geschiedt tot zekerheid voor de betaling van hetgeen partij Giorgini van partij Nardus te vorderen heeft krachtens de overeenkomst van partijen d.d. 8 oktober 1948 (...)*' [Nardus hereby transfers, which transfer Giorgini hereby accepts, all rights and claims against L.V.V.S. (...), in particular his claim with regard to the sale of the Nardus/Van Buuren collection. This transfer is effected as security for payment of the amount that Nardus owes Giorgini under the agreement between the parties dated 8 October 1948 (...)] In addition, the documents refer to the establishment on 9 February 1951 of what was known as an '*association en participation*', a partnership under French law, on the basis of which – as the Committee understands it – Giorgini was given representative authority and could act as the rightful claimant to the art collection with respect to third parties. Based on this, the Committee assumes that Giorgini was given certain (limited) rights with regard to the collection as security for a monetary claim.

8. Several works from the Nardus/Van Buuren collection were recovered after the war and, at a certain moment, the two currently claimed NK works came to be administered by the Dutch authorities for the restoration of rights. The investigation has shown that, from 1951, Giorgini presented himself to the authorities as the owner of the collection. The file also contains a statement from Flory Nardus of 9 February 1951 in which she confirms that the ownership rights to the recovered works and to works yet to be recovered had been transferred to Giorgini. The Dutch lawyer representing Giorgini sent this statement to the authorities in reply to their questions regarding Giorgini's position as rightful claimant. However, the Committee has also taken cognisance of a letter from Flory Nardus to a French judicial body on 18 April 1953, in which she argues that this statement was only formulated to provide Giorgini with more clout in negotiating with the authorities responsible for the restoration of rights: '*La déclaration ci-dessus n'ayant pas d'autre but, disait-il [Giorgini, RC], que de lui donner plus d'autorité à l'égard des tiers.*' The Committee knows neither the facts nor the outcome of the legal procedure that Flory Nardus started against Giorgini in France in 1953, and the context in which she apparently formulated this letter. Although the investigation by C. Hershkovitch revealed that in the 1950s Flory Nardus brought various legal actions in France against Giorgini, more detailed particulars are unknown, as the relevant files were probably destroyed.
9. Some time after the war, the currently claimed NK works came into Giorgini's possession together with a third painting that also belonged to the Nardus/Van Buuren collection. How and when Giorgini took possession of the NK works is unknown. However, Giorgini returned both paintings to the Bureau for Restoration Payments and the Restoration of Property of the Ministry of Finance (Hergo) in December 1951 with the statement '*welke nader gebleken zijn niet tot de verzameling Van Buuren/*



10. Anoniem, *Portrait of a woman* (NK 2894).



11. Anoniem, *Portrait of a man* (NK 2895).

*Nardus te behoren* [which later proved not to have been part of the Van Buuren/Nardus collection.] In the deed of assignment that was drawn up for this transaction, Giorgini renounces his claims to the paintings. His ownership of one of these three paintings was in all probability based on a mistake, given that there are indications that the painting did not belong to the Nardus/Van Buuren collection. The other works Giorgini returned were the currently claimed NK works, which the Committee has determined were definitely part of the Nardus/Van Buuren collection. Giorgini's motives for returning the paintings are unknown.

10. In addition, the investigation has shown that all funds to which Nardus was entitled as a result of his claims against Lippmann, Rosenthal & Co, Sarphatistraat in liquidation (LVVS) were transferred to Giorgini. The applicant contends that this payment by LVVS far exceeded Giorgini's costs, a fact that the Committee considers plausible.
11. On the basis of this account of the facts, the Committee must consider whether it should recommend the restitution of the currently claimed paintings. Pursuant to current national policy in respect of the restitution of items of cultural value, the Committee can only recommend restitution if there is a convincing case regarding the right of ownership and if the original owner relinquished possession involuntarily as a consequence of circumstances directly related to the Nazi regime.
12. With regard to the question of ownership, the Committee has established that the investigation shows that when possession was lost in 1943, the two claimed paintings were part of the Nardus/Van Buuren collection. As indicated in consideration 5 above, the rights to the collection were allocated to Nardus from 1947 onwards.
13. The Committee is of the opinion that Nardus must be considered the owner also in relation to Giorgini. The Committee considers the following in this respect:
  - a) Giorgini took possession of the paintings at some point but returned them voluntarily in 1951 for reasons unknown to the Committee – see 9 –, thus relinquishing his rights to the paintings. In any case, this means that any claim for restitution that Giorgini may have had against Nardus has now lapsed.
  - b) Based on the facts as described in 7, 8 and 10, the Committee assumes that the transfer of ownership by Nardus to Giorgini in 1950 was a means of providing security for outstanding claims, but that these claims were very probably met. If this was not the case, these claims have now similarly lapsed, which means that any rights Giorgini may have had concerning the transfer of the works as security have also lapsed in favour of Nardus.
14. Furthermore, regarding Giorgini's position in relation to the Dutch State, the Committee considers it impossible for him to still have a claim on NK works. To this end, Giorgini declared in the deed of assignment from 1951 (see consideration 9): *'Dat hij prijsgeeft alle aanspraken, die hij jegens het Bureau Herstelbetalingen- en Recuperatiegoederen, alsmede jegens andere organen van de Nederlandse Staat mocht hebben of verkrijgen terzake van schade aan voormelde schilderijen, of uit welke andere oorzaak ook met deze schilderijen samenhangende'* [That he relinquished all claims, which he may have had or may have acquired against the Bureau for Restoration Payments and the Restoration of Property or any other body of the Dutch State with regard to damage to the above-mentioned paintings or for any other reason related to these paintings].
15. The Committee is of the opinion that the loss of possession was directly attributable to the Nazi regime, seeing as the loss of the works was the direct consequence of the circumstances that the works had to be surrendered to the German looting bank Lippmann, Rosenthal & Co by order of the Nazi regime.
16. Given that there is no known judgement by the Bureau for Restoration Payments and the Restoration of Property or any other authorised judicial body and that Nardus (or his heirs) did not renounce their right of action after the war for the benefit of the Dutch authorities responsible for the restoration of rights, there is no question of a case that has been settled in the past. The applicant's request, therefore, is admissible and the Committee is of the opinion that the conditions for restitution have been met.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to grant the application for restitution by S.N. and to return the paintings NK 2894 and NK 2895 to the heirs of Nardus.

Adopted at the meeting of 6 April 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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## 6. Recommendation regarding Von Pannwitz

(case number RC 1.80)

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In a letter dated 7 May 2007, the Minister for Education, Culture and Science (OCW) requested the Restitutions Committee (hereafter referred to as: 'the Committee') to issue a recommendation regarding the application of 30 March 2007 by G.P. of B. A., Argentina (hereafter referred to as: 'the applicant') for the restitution of six paintings that are currently part of the Netherlands Art Property Collection (NK collection). The applicant is represented by her lawyer, L. Fremy of Berlin. The application concerns the following paintings:

*Man with beard and turban*, follower of Rembrandt van Rijn (NK 1602);  
*St. Werner*, Master of Messkirch (NK 1633);  
*Mary with the Christchild and the infant John the Baptist*, L. Cranach (NK 1883);  
*St. Barbara* (NK 2554) and *St. Catherine of Alexandria* (NK 2555), Master of Frankfurt;  
*The Birth of Mary*, H.S. von Kulmbach (NK 2559).

The painting NK 1602 is currently housed in the depot of the Netherlands Institute for Cultural Heritage in Rijswijk, the paintings NK 1633 and NK 1883 are part of the collection at the Bonnefantenmuseum in Maastricht and the paintings NK 2554, NK 2555 and NK 2559 are housed in the Mauritshuis in The Hague.

### The procedure

The applicant has had research conducted into the provenance of the paintings, which were formerly the property of her grandmother Catalina Carolina Friedericke Georgine Roth, the widow of Walter Sigismund Emil Adolf von Pannwitz. Based on this research, the applicant has decided to submit an application for restitution to the Minister.

In response to the request for a recommendation, the Committee instituted a fact-finding investigation, the results of which were summarised in a draft investigatory report dated 8 September 2008. On 29 September 2008, the draft investigatory report was sent to both the Minister and the applicant, providing them with the opportunity to add more information. The applicant replied in writing on 7 November 2008. The report was subsequently altered and adopted on 6 April 2009. For the facts of the case, the Committee refers to this report.

### Considerations

1. In her capacity as heir, the applicant requests the restitution of six paintings formerly owned by her grandmother. The applicant is the daughter of Ursula von Pannwitz, who was the only child of Catalina Carolina Friedericke Georgine Roth (1876-1959) and Walter Sigismund Emil Adolf von Pannwitz (1856-1920). In this context, the Committee has taken cognisance of several documents pertaining to the law of inheritance. These documents have given the Committee no reason to doubt the applicants' status as the rightful heir.
2. The relevant facts are described in the investigatory report dated 6 April 2009. The following is a summary. Catalina Carolina Friedericke Georgine Roth was born of Jewish descent in Rostock, Germany in 1876. Her family owned a substantial amount of land in Argentina. In 1908, she married Walter Sigismund Emil Adolf von Pannwitz, a German lawyer from an aristocratic family. In 1919, she was granted Argentinean nationality. The couple built up a large art collection which included Italian, French, German and Dutch paintings from the 15th to the 17th centuries, bronze and ceramics. After her husband's death in 1920, Catalina Von Pannwitz-Roth (hereafter referred to as: 'Von Pannwitz') settled in the Dutch country estate of 'De Hartekamp' in Heemstede.
3. On 18 October 1940, more than five months after the German occupation of the Netherlands, Von Pannwitz sold the six claimed paintings to Reichsmarschall Hermann Goering in exchange for a sum of money and an exit visa to Switzerland. The negotiations were conducted via Goering's art collector Walter Andreas Hofer. The purchase price was NLG 390,000, a price that, even at the time, was deemed to be high. The Committee has taken cognisance of various documents relating to this transaction, which show that the money was transferred into Von Pannwitz's bank account at the Handel-Maatschappij H. Albert de Bary & Co N.V. (hereafter referred to as: 'De Bary') in Amsterdam. Von Pannwitz was given permission to export approximately 15,000 Swiss francs (approx. NLG 6,500). The investigation shows that during the war 'De Hartekamp' was under Goering's protection and was left untouched. Similarly, Von Pannwitz's art collection, which was transferred to the Rijksmuseum in Amsterdam after her departure, remained intact.
4. On 12 September 1945, Von Pannwitz submitted a declaration of the sale of the six paintings to Goering to the Netherlands Art Property Foundation (SNK). She wrote on the declaration form that the sale had been involuntary. In the accompanying letter, she wrote: *I hereby inform you that, in October 1940, the following paintings from my collection were sold on request to the Reichsmarschall Hermann Goering via Mr Walter Andreas Hofer and subsequently transported to Germany.* The letter also contained a summary of the six paintings, including photographs of five of them. In addition, Von Pannwitz stated that she hoped that *'it will be possible to trace these paintings and return them to the Netherlands.'*

5. On 19 November 1949, the SNK informed Von Pannwitz in writing about the recovery of the paintings. Documentation shows that, at the time, the SNK valued the paintings at NLG 130,000. The letter also states that the director of the Rijksmuseum in Amsterdam had informed them that Von Pannwitz was not interested in restitution of the works. Von Pannwitz was asked to confirm this. After receiving a reminder on 23 March 1950, Von Pannwitz's secretary replied to the SNK in writing on 27 April 1950, enclosing a signed statement by Von Pannwitz, which stated the following:

*'The undersigned hereby declares that she is not interested in the restitution of the following paintings that belonged to her collection and have been recovered from Germany:*

<i>Master of Frankfurt</i>	<i>St. Barbara,</i>
<i>Ibid.</i>	<i>St. Catherine,</i>
<i>Hans von Kulmbach</i>	<i>The Birth of Mary,</i>
<i>Lucas von Cranach</i>	<i>Mary with John the Baptist,</i>
<i>Rembrandt</i>	<i>Portrait of a Man,</i>
<i>Master of Messkirch</i>	<i>St. Werner,</i>

and that your office is free to make use of them as you see fit.'

No further correspondence between the SNK and Catalina von Pannwitz has been found in the SNK file, and the investigation uncovered no further documentation in the archives of the Netherlands Property Administration Institute and the Council for the Restoration of Rights concerning the claimed paintings. The Committee concludes, therefore, that Von Pannwitz did not change her mind at a later date.



12. *Mary with the Christchild and St. John the Baptist* by Lucas Cranach (NK 1883).

6. To substantiate her claim, the applicant states that given the fact that wartime sales to the Germans were deemed null and void under the Dutch law of war (the Legal Transactions (Wartime) Decree), Von Pannwitz never legally relinquished ownership of the works. However, on the basis of Section 2 (d) of the Decree establishing the advisory committee on the assessment of restitution applications of 16 November 2001, the Committee considers that it is the government's policy on restitution rather than the post-war law that acts as the decision-making framework when assessing claims for restitution. Moreover, the Committee deems that the applicant's interpretation of the rules is incorrect: with regard to the restoration of property, the invalidity of transactions with the Germans was abolished after the war and the Dutch State acquired ownership of property that, contrary to the ban on transactions with the enemy, was sold during the war. However, until the early 1950s, the original owner could make a claim for the restoration of their property rights with the Jurisdiction Department on the basis of the Restitution of Legal Rights Decree E100 of 21 September 1944.
7. The investigation described above has shown, however, that Von Pannwitz did not seek the restoration of her rights after the war. In the Committee's opinion, her statement of April 1950, as quoted in section 5 above, provides explicit evidence of her renunciation of her rights of action. The statement provides no room for doubt: Von Pannwitz was '*not interested in restitution*' of the six paintings and the SNK were '*free to make use of them as you see fit*'. The statement was made unreservedly and Von Pannwitz did not change her mind at a later date.
8. The question is whether the applicant's claim in this case is admissible. The basic premise of restitution policy is that the post-war restoration of rights should not be repeated. This means that, in principle, settled cases will not be reopened. This rule, therefore, also applies if the claim concerns works of art that were forcibly sold during the war. The government has decided that a case is settled if the '*claimant explicitly waives their right to restitution*' (Government response of 29 June 2001 to the recommendations of the Ekkart Committee, TK 2000-2001, 25 839, no. 26). Only in the event of new facts or insights will the Committee have the jurisdiction to reassess a case.
9. In this regard, the applicant responded to the draft investigatory report by stating that Von Pannwitz's 1950 statement must be seen in light of the then SNK policy, which stated that sold works would only be restituted upon payment of the sale price and any additional costs. According to the applicant, Von Pannwitz was financially unable to meet this requirement in 1950. While the applicant concedes that the purchase price was transferred into Von Pannwitz's bank account during the war, it is uncertain what happened to the account and that it should be presumed that Von Pannwitz was only able to take a small amount (if anything at all) with her to Switzerland and that whatever the case may be, it was not at her disposal. The applicant refers to the SNK declaration form dated 12 September 1945 (see section 4) in which Von Pannwitz states that she is interested in the restitution of her paintings and the restoration of her property rights. The applicant has provided no documentation to substantiate these theories.
10. The Committee does not agree with the applicant's point of view. With regard to the significance that can be attached to Von Pannwitz's declaration of 1945, the Committee points to the fact that on the basis of post-war regulations imposed by the military authorities, anyone who sold works of art to the Germans during the occupation was required to report it. The aim of this was to enable the Dutch authorities to have a better overview of the missing works and use the declarations to help trace and recover the works more quickly. Von Pannwitz's declaration of 12 September 1945 merely meant that she had satisfied this legal obligation. A claim for restitution cannot be derived from it. In addition, the Committee also observed that the wording in the accompanying letter, as quoted in section 4, does not imply such.
11. The Committee deems the applicant's other theories to be similarly unconvincing, pointing to the fact that Von Pannwitz never indicated that her financial position was the reason she renounced her request for restitution. Additional research in the archives of the Netherlands Property Administration Institute regarding Von Pannwitz and the trading bank De Bary has also failed to uncover anything that suggests Von Pannwitz did not receive the purchase price or did not have it at her disposal. Furthermore, it has not been proven that, in 1950, Von Pannwitz had insufficient means to buy back the paintings. The price she received for the paintings was transferred into her current account at De Bary and there is nothing to suggest that Von Pannwitz's account was frozen or that her assets were confiscated, as was the case with Dutch Jews during the occupation. Due to Argentina's neutrality, Argentinean subjects – Jewish or otherwise – enjoyed protection against such measures.

The Committee recognises the possibility that, during the war, Von Pannwitz may not have been able to access her assets in the Netherlands due to limitations in international money transfers. This could also explain why Von Pannwitz was only given permission to export a limited amount of Swiss francs. However, there is no reason to assume that Von Pannwitz could not access her assets with De Bary at the moment that she decided not to claim the paintings. Extant documentation from the NBI has shown that she was not considered an enemy subject by the Dutch authorities given that she had lost her German nationality in 1919, and her bank accounts were not frozen after the war. It can be derived from an extant letter from De Bary to the Ministry of Finance from January 1956 that, after the war, Von Pannwitz was required to

pay capital growth tax and, therefore, must have enjoyed capital appreciation during the war, and that she had significant assets at her disposal after the war. The Committee, therefore, deems it improbable that her decision not to claim the works was based on financial straits.

12. Now that there is no question of negligence in the post-war procedure, the Committee has found no new facts that would justify reopening the case.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for restitution of the works registered under inventory numbers NK 1602, NK 1633, NK 1883, NK 2554, NK 2555 and NK 2559.

Adopted at the meeting of 6 April 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart and I.C. van der Vlies, and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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## 7. Recommendation regarding Cassirer

(case number RC 1.84)

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In a letter dated 22 May 2007, the Minister for Education, Culture and Science (hereafter referred to as: 'OCW') asked the Restitutions Committee to issue a recommendation regarding the application of 27 February 2007 by the É. in Switzerland (hereafter referred to as: 'the applicant') for the restitution of the watercolour *View of Salzburg* by Rudolph von Alt, which has been part of the Netherlands Art Property Collection (hereafter referred to as: 'the NK collection') since its recovery after the Second World War and is registered under the inventory number NK 2897. The applicant is represented by her lawyer, Imke Gielen, Germany. The work is currently part of the National Print Collection in Amsterdam.

### The procedure

In the request for restitution, the applicant enclosed a report by the historian M. Blumberg concerning the life of Max Cassirer, who, according to the applicant, was the original owner of the watercolour. In response to the request for a recommendation, the Committee instituted a fact-finding investigation, the results of which were summarised in a draft investigatory report dated 12 January 2009. On 28 January 2009, the draft investigatory report was sent to both the Minister and the applicant, providing them with the opportunity to add more information. The applicant replied in writing on 27 February 2009. The report was subsequently adopted on 6 April 2009. For the facts of the case, the Committee refers to this report.

### Considerations

1. The applicant is requesting restitution of the watercolour *View of Salzburg* by Rudolph von Alt in its capacity as heir to Max Cassirer (hereafter referred to as: 'Cassirer'). Cassirer (1857-1943) and his wife had two children, Kurt (1883-1975) and Edith (1885-1982). In her will, Edith Cassirer nominated the applicant as her sole heir. Kurt Cassirer nominated his sons, Reinhart (Henry) and Thomas Cassirer, as his heirs. They have transferred their share of Max Cassirer's estate to the applicant. In this context, the Committee has taken cognisance of several documents pertaining to the law of inheritance. These documents have given the Committee no reason to doubt the applicants' status as the rightful heir.
2. The relevant facts are described in the investigatory report of 6 April 2009. The following is a summary. Cassirer was born of Jewish descent on 18 October 1857 in Schwientochlowitz, then part of Prussia. His family occupied a prominent position in (art) trade and science. Cassirer himself was a successful businessman in Danzig and Berlin. He owned a considerable art collection, which was housed in his residence on the *Kaiserallee* in Berlin. In order to escape the anti-Jewish measures implemented by the Nazis, he emigrated to Switzerland in 1939. He died in England in 1943.



13. *View of Salzburg*, watercolour by Rudolf von Alt (NK 2897).

3. The investigation has shown that when he left Berlin in 1939, Cassirer stored his possessions, including his art collection, with a number of transport companies in Berlin. In August 1941, the Nazis withdrew Cassirer's nationality and confiscated all his possessions. The *Finanzamt Moabit-West* [Moabit-West tax office] gave the Hans W. Lange auction house in Berlin the task of auctioning a proportion of the possessions Cassirer had stored before he left. The applicant contends that the currently claimed watercolour was among the auctioned items. She has provided various documents as evidence of this. The Committee has taken cognisance of a valuation of the work made on 15 January 1942 as well as the auction catalogue, in which the watercolour is listed as lot number 221 with the following description:

*Rudolf von Alt*

*Wien, 1812-1905*

*221 Motiv aus Salzburg. Links von Bäumen überragte Parkmauer mit Wappen. Im Hintergrunde die Domtürme und die Veste Hohensalzburg. Figurenstaffage. Unten rechts bezeichnet: R. Alt 873. Aquarell, H. 13,5 cm, Br. 17,6 cm.*

The auction took place on 12 and 13 May 1942 with the proceeds going to the Gestapo. According to the extant 'Abrechnung über den Auktionsbeitrag Cassirer' [settlement of Cassirer auction amount], the watercolour fetched RM 1,800. The work ended up in Hitler's collection, which was intended for the future Führermuseum.

4. The claimed work was recovered from Munich in 1952 and returned to the Netherlands on the basis of information regarding the provenance of the work that later turned out to be incorrect (see under 6). There was no contact after the war between Cassirer's heirs and the Netherlands Art Property Foundation (SNK) with regard to restitution of the work. With reference to the first recommendation of the Ekkart Committee regarding private art property, the Committee therefore concludes that this case cannot be considered to have been settled in the past.
5. Based on the investigation, the Committee concludes that it is highly likely that the watercolour owned by Cassirer and auctioned in 1942 is identical to the currently claimed work NK 2897. The description of the work in the auction catalogue, as quoted in section 3, is identical to the picture of the work NK 2897. In addition, the Committee has taken cognisance of the SNK inventory card for the work NK 2897, on which the markings and labels on the rear of the work at the time of its recovery are described. The inventory card includes mention of a label from the *Finanzamt*, which also confirms that the work was auctioned by order of *Finanzamt Moabit-West*.

6. The investigation also uncovered archival information that suggests that the work had another provenance. This information related to an SNK internal declaration form from 1946, on which an SNK employee has indicated that the watercolour was originally owned by the art dealership Goudstikker/Miedl (previously J. Goudstikker NV, operated by Alois Miedl) and sold voluntarily in May 1942 to the Lange auction house in Berlin. However, research into the administration of the art dealership Goudstikker/Miedl has failed to provide any information to confirm this. Based, in part, on the documentation mentioned in section 3, which unequivocally points to Cassirer as the original owner, the Committee assumes that the SNK's provenance details are a mistake. Given that the provenance details in the Federal Archive in Koblenz concerning the work are presumably based on the SNK internal declaration form, the Committee assumes that the information in this archive concerning the original ownership and loss of possession of the watercolour are similarly erroneous.
7. Pursuant to current national policy in respect of the restitution of items of cultural value, the Committee can only recommend restitution if there is a convincing case regarding the right of ownership and if the original owner relinquished possession involuntarily as a consequence of circumstances directly related to the Nazi regime.
8. The Committee concludes that the conditions for restitution have been met and deems it highly likely that the watercolour NK 2897 belonged to Cassirer until mid-1941, after which the work was confiscated and sold by the Nazis. As a result, loss of possession was involuntary. The Committee deems the application for restitution of the claimed painting admissible.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to return the watercolour NK 2897 to the heirs of Max Cassirer.

Adopted at the meeting of 6 April 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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## 8. Recommendation regarding Van Lier

(case number RC 1.87)

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In a letter dated 11 June 2007, the Minister for Education, Culture and Science (hereafter referred to as: 'the Minister') requested the Restitutions Committee to issue a recommendation regarding the application for restitution of seven ethnographic objects, which were returned to the Netherlands after the Second World War and are now part of the Netherlands Art Property Collection (hereafter referred to as: 'the NK collection') under inventory numbers NK 130, NK 133-A-B, NK 136, NK 137, NK 390, NK 396 and NK 3222. Four of the objects are currently housed in the depot of the Netherlands Institute for Cultural Heritage and three in the depot of the National Museum of Ethnology in Leiden.

### The procedure

On 30 March 2007, B.v.L. (hereafter referred to as: 'the applicant') submitted to the Minister an application for the restitution of NK 128, NK 130, NK 133-A-B, NK 136, NK 137, NK 390, NK 396 and NK 3222 (hereafter referred to as: 'the currently claimed objects'). Given the fact that NK 128 has been missing since 1990, the Minister has not submitted the application for the restitution of this object to the Restitutions Committee. The recommendation of the Committee does not, therefore, concern NK 128, although the applicant asked that this object be included in the investigation due to information that is potentially relevant to the other claimed works.

In response to the Minister's request for a recommendation, the Committee instituted a fact-finding investigation, the results of which were included in a draft investigatory report dated 12 January 2009. On 29 January 2008, the draft investigatory report was sent to both the Minister and the applicant, providing them with the opportunity to add more information. The applicant replied in writing on 26 February 2008. The report was subsequently altered and adopted on 6 April 2009. For the facts of the case, the Committee refers to this report.



14. Artdealer Van Lier at the Rokin in Amsterdam, c. 1930.



15. Labels, some of them from the Netherlands Art Property Foundation (SNK), on the back of ethnographic works from the Van Lier collection.

### Special considerations

1. The applicant claims to be the grandson of the Amsterdam-based art dealer 'Carel van Lier' (hereafter referred to as 'Van Lier') and has stated that the currently claimed objects were sold by Van Lier to the 'Museum für Völkerkunde in Frankfurt am Main' in Germany (hereafter referred to as: 'Städtisches Völkermuseum') on 11 April 1941. Van Lier died in Mühlenberg concentration camp in Germany between 1 and 15 March 1945. Documentation from the archive of the Netherlands Property Administration Institute (NBI) shows that Van Lier left four heirs: his wife E.M.M. (Elisabeth Magdalena Maria) van Lier-van de Velde and his three children E.F.B. de R.-v.L., F.C.v.L. and J.M.v.L. The applicant says he is acting on behalf of the three children. To support this claim, his father, F.C.v.L., has sent an authorisation of representation to the Restitutions Committee. Based on the above, the Committee sees no reason to doubt the status of the applicant as the grandson of Van Lier and as the representative of one or more of Van Lier's heirs.
2. The following is a summary of facts in the above-mentioned investigatory report. Van Lier was born in The Hague on 5 September 1897. He came from a Jewish family and had Dutch nationality. In 1924, Van Lier married Elisabeth van de Velde, who was not Jewish, and the couple had three children. On 1 September 1927, Van Lier opened Kunstzaal Van Lier, a one-man business, in Amsterdam. Due to the fact that Van Lier was married to a non-Jewish woman, he enjoyed some degree of protection from the Jewish persecution under the German occupation. However, his art dealership was put under administration (*Verwaltung*) on 8 July 1942, after which he was most likely unable to continue as an art dealer.
3. The currently claimed objects were sold by Van Lier on 11 April 1941 as part of a larger sale to the 'Städtisches Völkermuseum' in Frankfurt am Main, Germany. The sale took place shortly after 12 March 1941, the date on which the regulation came into force that was designed to remove all Jews from business life. Van Lier was arrested by the Germans on 6 April 1943 due to his involvement in the resistance. It is not known when Van Lier first became involved in the resistance movement. After deportation and internment in concentrations camps, Van Lier died in Mühlenberg in March 1945. After the war, Van Lier's widow continued to run Kunstzaal Van Lier for a few years until she sold it in 1949. It closed down in 1956.
4. As far as is known, there was no contact after the war between Kunstzaal Van Lier and the Dutch restoration of rights authorities. More specifically, the investigation failed to uncover an administration file at the Netherlands Art Property Foundation (SNK). Based on this information, the Committee concludes that there has not been an earlier request for the restitution of objects formerly in the possession of Kunstzaal Van Lier and therefore deems the applicant's request to be admissible.

5. With regard to the ownership of the currently claimed objects, the Committee considers the following. It has been impossible to find out when and from whom Van Lier acquired these objects. Based on the statement from Van Lier's daughter that he always bought his ethnographical objects in London, Paris, Brussels and Antwerp, it is probable that he bought them from importers who had the objects imported from British, French and Belgian colonies. The applicant has photographs of NK 128 and NK 133-B, taken from a photo album that Van Lier is said to have compiled around 1930. In addition, the Committee has a photograph from the same period, in which Van Lier is holding an ivory hunting horn. The Committee has been unable to determine with any certainty whether this hunting horn is NK 396, although the likeness is so great that they assume this to be the case.
6. The date on which Van Lier sold the currently claimed objects is known to have been 11 April 1941. The applicant has provided a copy of a receipt sent to Kunstzaal Van Lier from the *'Institut für Stadtgeschichte'* in Frankfurt am Main, Germany, which records the sale of 61 items of ethnography by Kunstzaal Van Lier to the *'Stadt-Völkermuseum'* (referring to the above *'Städtisches Völkermuseum'*) in Frankfurt am Main on 11 April 1941. The currently claimed objects are included in this receipt and it can be assumed, therefore, that they were part of the sale. After the war, they were identified on what was known as the Koblenz list as *'Van Liers, Amsterdam an das Völkerkundemuseum, Frankfurt'* [Van Liers, Amsterdam to the Völkerkundemuseum, Frankfurt] and were returned to the Netherlands with a number of other objects from Van Lier. As far as is known, the currently claimed objects are the only pieces from this larger group of objects that are still part of the NK collection.
7. Based on the information mentioned in considerations 5 and 6 above, the Committee feels that sufficient evidence has been presented to suggest that Van Lier was the previous owner of the currently claimed objects and that he lost possession through their sale. Following from this, the Committee also feels that the objects should be regarded as old trading stock, given that Van Lier bought (and sold) them before Kunstzaal Van Lier was put under administration on 8 July 1942.
8. According to the applicant, the question is how free a Jewish art dealer would have felt when approached in person by the curator of a German museum. The applicant feels that it is striking in this respect that the sale included at least one statuette (NK 128, which is not part of the recommendation) that was amongst the very first in Van Lier's collection. At the same time, the applicant has stated that the prices that Van Lier received from the sale would appear to be in line with the market value at that time.
9. The Committee also investigated whether there are any indications to suggest that it was highly likely that this is a case of involuntary loss of possession as stipulated in Recommendations for the Art Trade 4, 5 and 6 issued by the Ekkart Committee. In the absence of claim forms indicating involuntary loss of possession – which is the case here – the required high degree of probability can also be assumed if the applicants can prove that the sale was the result of theft, confiscation or coercion.
10. In this context, the Committee feels that the currently claimed paintings were sold by Van Lier himself and that there is no evidence that this sale was the result of any direct threat or coercion on the part of the Nazi authorities. While it is true that Van Lier sold the objects to a German buyer during the occupation, there is no evidence of coercion on the part of that buyer, the *'Städtisches Völkermuseum'* in Frankfurt am Main. Furthermore, information regarding the proceeds Van Lier received from the sale is also indicative of a fair transaction.
11. The Committee is of the opinion that the loss of possession as indicated in consideration 10 cannot be construed as theft, confiscation or coercion. The Committee also feels that the applicant's opinion with regard to the general circumstances that influenced the way in which Van Lier traded, as stated in consideration 8, is insufficient to arrive at any other conclusion with respect to the sale.



16. Hunting horn made of elephant tusk, Kassai (NK 396).

12. However, the Committee feels that there is sufficient cause for another judgement with regard to one object, NK 396, an ivory hunting horn. In a family portrait of Van Lier from around 1930, he is blowing this horn. For the family, this photograph provides a salient image of their forefather and of an art object that was of unique value to him, thus giving the object an emotional value to the family. In accordance with Recommendation for Art Trade 3 issued by the Ekkart Committee, requests for restitution are handled according to the standards for private art property if there are indications to suggest that a work of art did not belong to the art dealer's trading stock but to his private collection. This relates to objects that, according to the Ekkart Committee, 'were part of his private collection or the decoration of his home before the war', whereby a certain amount of leniency can be exercised with regard to the relevant evidence. The Committee feels that this recommendation provides a sufficient foundation to assess NK 396 in accordance with the more lenient standards for private art possession in the context of this claim. Given that, pursuant to these standards, private sales by Jewish subjects in the Netherlands after 10 May 1940 were, in principle, considered involuntary, the Committee feels that the loss of NK 396 by Van Lier can be considered involuntary and that, as such, the hunting horn should be returned to the family.

### **Conclusion**

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the request for restitution of the objects NK 130, NK 133-A-B, NK 136, NK 137, NK 390, and NK 3222.

The Restitutions Committee advises the Minister for Education, Culture and Science to return NK 396 to the heirs of Carel van Lier.

Adopted at the meeting of 6 April 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, 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. David, chair)

(E. Campfens, secretary)

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## **9. Recommendation regarding Larsen** (case number RC 1.70)

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In a letter dated 10 April 2007, the Minister for Education, Culture and Science (hereafter referred to as: 'the Minister') requested the Restitutions Committee to issue a recommendation regarding twelve works of art. These are paintings by Jan van Goyen, Nicolaes Berchem, Thomas de Keyser and others that were returned to the Netherlands from Germany after World War II, becoming part of the Netherlands Art Property Collection (hereafter referred to as: 'NK collection'). The works have the following NK inventory numbers: NK 1410, NK 1412, NK 1414, NK 1417, NK 1420, NK 1424, NK 1428, NK 1441, NK 1447, NK 1451, NK 2243 and NK 2463. The claimed works are currently housed in the depot of the Netherlands Institute for Cultural Heritage (ICN) and in various museums in the Netherlands.

### **The procedure**

In a letter dated 12 March 2007, J.S., J.B., D.B., E.B., M.B. and J.W.S., all resident in the United States, submitted an application to the Minister for the restitution of twelve paintings that were said to have belonged to Hans Ludwig Larsen's collection. The claim was prompted by a letter sent to J.S. and others in 2007 by the Origins Unknown Agency (hereafter referred to as: 'BHG') about paintings from the collection of her grandfather Hans Ludwig Larsen (hereafter referred to as: 'Larsen') found in the NK collection.

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 25 June 2007. This draft report was sent to J.S. on 5 November 2007 with a request for comments. In a letter written on 25 April 2008, J.S. stated that she would henceforth be acting on her own behalf and that of J.B., D.B. and E.B. (and no longer on behalf of M.B. and J.W.S.). Subsequently, the Committee corresponded separately with M.B. and J.W.S., but the latter informed the Committee in an email of 9 June 2008 that he wished to withdraw as applicant.

In the letter of 25 April 2008 referred to above, J.S. responded to the draft investigatory report on behalf of J.B., D.B. and E.B., giving additional information. In a letter dated 16 June 2008, M.B. provided information about his status as heir (see consideration 1 for details). The information and documentation supplied by the applicants as well as the results of an additional investigation conducted by the Committee were incorporated into the investigatory report, which was adopted on 1 July 2009. For the facts of the case, the Committee refers to the investigatory report.

The object NK 2463 was also part of an application for restitution concerning the art dealership Firma D. Katz of Dieren (RC 1.90-A). The Committee was obliged to defer its recommendation in the present case until the investigation of NK 2463 was also completed. The applicants were informed about this in the draft investigatory report and in a letter of 28 October 2008. After concluding its investigation, the Committee rejected the claim to NK 2463 regarding the art dealership Firma D. Katz. The Committee refers to the text of the recommendation in RC 1.90-A for its decision in that case. NK 2463 will therefore be included in this recommendation.



17. *Peasants on a wagon* by Pieter Bruegel II (NK 1410).

### Considerations

1. The applicants request the restitution of twelve paintings that are said to have been part of Larsen's art collection. Hans Ludwig Larsen (1892-1937) was married to Susanne Menzel (1911-2001). The couple had two children, Harald Eduard (1933-1987) and Ingrid Louise (1935-1985). The applicants J.S., J.B., D.B. and E.B. state that they are Larsen's grandchildren. Based on statements and legal inheritance documents, the Committee has no reason to doubt their status as Larsen's heirs. The applicant M.B. stated that he is a stepson of Larsen's daughter. In connection with this, the Committee notes that the information M.B. provided does not indicate that he is an heir of Larsen.
2. The relevant facts are described in the investigatory report dated 1 July 2009. The following is a summary. Larsen and his wife were Jewish, hailing from Germany and Austria, respectively. The Larsen couple lived in the Netherlands, at any rate from 1930 on. Larsen owned a business dealing in chemicals, known by the name of Wijnhoff, Van Gulpen & Larsen N.V., abbreviated as Wijgula. He also owned a private art collection. Larsen died in 1937. In his last will dated 16 March 1937, Larsen appointed his children as his heirs, a third part of each child's inheritance being encumbered with usufruct, which he bequeathed to his wife Susanne Menzel (hereafter referred to as: 'Menzel'). Furthermore, in said will, Larsen named Mr G.A.v.H., Mr J.W.C.v.S. (who died in 1944, and who was later replaced by Mr G.H.A.G. in 1945), Mr B.P.G., Dr C.H. and Mr C.K. as executors of his will (hereafter referred to as 'the executors'). Menzel and her children acquired Dutch nationality in 1939, and due to the threat posed by the Nazi regime in Germany, the family moved to the United States in that same year. Before leaving, Menzel loaned thirty-one paintings and a sculpture from the estate to Museum De Lakenhal in Leiden (hereafter referred to as: 'De Lakenhal'). Among these were the twelve works now claimed by the applicants.
3. The documentation about the ownership and loss of possession of the paintings in question is complete. The Committee deems the identification of the claimed works of art to be conclusive. After the German invasion, the parts of Larsen's estate that were still in the Netherlands, including the works loaned to De Lakenhal, were considered enemy property by the occupying authorities, after which they were placed under the administration of Mr M.H.H. Franssen, a 'Verwalter' appointed by the Germans. In late 1942, Franssen had the artworks that had been given on loan to the De Lakenhal collected with a view to having them sold at public auction. Before this took place, however, twelve artworks were purchased privately by one of Adolf Hitler's buyers, Dr E. Göpel, on 14 January 1943. Initially, the sales price for these twelve paintings was the same as the assessed value of NLG 126,500, but this was later unilaterally reduced by the occupying forces to NLG 75,000. The remaining artworks went under the hammer on 25 January 1943. Nine of the currently claimed paintings are part of the group purchased by Hitler, and three are part of the group sold at auction. Judging from an annotated auction catalogue of 25 January 1943, the buyers paid a total of NLG 17,275 for these three artworks that were auctioned off (NLG 8,500 for NK 1447, NLG 7,800 for NK 1451 and NLG 975 for NK 2243). Although no currency is specified in the investigation details, the Committee considers it highly likely that all sums given here are in Dutch guilders.

4. As for the question whether the Committee can recommend restitution, it is important to know whether loss of possession of the claimed paintings was involuntary due to circumstances directly related to the Nazi regime. The Committee concludes that the works were removed from the executors' control by placing them under the administration of a *Verwalter* appointed by the Germans, who then had them sold at auction. However, before the auction, a number of these artworks were purchased at Hitler's behest at a purchase price below the assessed value. The Committee concludes that this procedure constitutes involuntary loss of possession.

5. The proceeds of the sale to Hitler and those of the auctioned works were added to Larsen's estate by the *Verwalter* who administered it. After the war, the *Verwalter* stated the following with regard to this:

*Vermogen LARSEN was groot ongeveer 1.600.000 gulden, het heeft onder mijn beheer een belangrijke aanwas ondergaan. Ik heb het vermogen tot aan de bevrijding onder mijn beheer gehouden en dit niet aan de Treuhand overgedragen. (...) Alle belanghebbenden hebben hun vermogen met aanwas en renten terugontvangen.*

[The Larsen estate totalled roughly NLG 1,600,000. Under my stewardship it experienced significant growth. I administered the estate until the Liberation and did not transfer it to Treuhand. (...) All interested parties got their property back with increased value and interest.]

During the war, the *Verwalter* transferred the daily administration to the office of H.J. Vooren in The Hague, concerning which a post-war report, probably drawn up by the Political Investigation Section, states:

*Niet afgewikkeld is het beheer over het (..) privé-vermogen van H.L. Larsen, dat plusminus f 1.600.000,- - groot was. De afwikkeling daarvan werd opzettelijk tegengegaan door het kantoor H.J. Vooren, Korte Vijverberg 2A, 's-Gravenhage, waar dit vermogen, ook gedurende het beheer van Franssen, in administratie was. Zodoende kon worden verhinderd, dat dit aanzienlijk vermogen in Duitse handen kwam.*

[The administration of the (..) private estate of H.L. Larsen, which was worth approx. NLG 1,600,000, was not settled. This was deliberately thwarted by the office of H.J. Vooren, Korte Vijverberg 2A, The Hague, where this estate was also administered under the stewardship of Franssen. This prevented this sizable estate from falling into German hands.]

6. While the Committee found no accounts of the executors of the estate during its investigation evidencing the receipt and the total sales proceeds, it did find letters from the executors from which this information can be inferred. After the war, in a declaration to the Netherlands Art Property Foundation (SNK), the executors indicated that the money received for the paintings during the war had been kept and had not fallen into German hands. In a letter to the SNK dated 28 December 1946, the executors wrote:

*De desbetreffende gelden zijn door een toevallige omstandigheid gered, zoodat wij in dit geval niet behoeven te volstaan met een cessie van vorderingen op het een of andere roofinstituut der Duitse bezetting.*

[The relevant moneys were opportunely saved, so that, in this case, we do not need to limit ourselves to an assignment of claims against some German looting body.]

In this letter, the executors specified sums that correspond to the sales proceeds named in consideration 3. They said on this subject:

*Ontvangen van het Rijkscommissariaat voor de Dr. Goepel overgenomen schilderijen (..) f 75.000,-- (..). Opbrengst in de veiling (..) N. Berchem (..) f 8.500,-- (..) Vermeer van Haarlem (..) f 3.400,--.*

[Received from the Rijkscommissariaat (Reichs commissionership) for the paintings acquired by Dr Goepel (...) NLG 75,000 (...). Proceeds of the auction (...) N. Berchem (...) NLG 8,500 (...) Vermeer van Haarlem (...) NLG 3,400].

The works they refer to as 'N. Berchem' and 'Vermeer van Haarlem' are consistent with NK 1447 and NK 1451, respectively. These are two of the three works now claimed that were among those in the auction in 1943. At that point, the current NK 2243 was not under discussion and was not identified as former property of Larsen until much later. In their letter accompanying the 'Vermeer van Haarlem', the executors recorded far lower proceeds than the sales sum given in the annotated auction catalogue of 1943 (NLG 3,400 instead of NLG 7,800). The reason for this is not known. Furthermore, in connection with the two auctioned works, they included an item auction costs of NLG 1,844.50 (15.5 %) as well as an item valuation costs, probably associated with this same auction, which amounted to NLG 2,070.

7. With reference to considerations 3, 5 and 6, taken together, the Committee is convinced that after the war, the executors received the proceeds of the sale of the twelve claimed artworks, in favour of Larsen's estate.
8. According to correspondence available to the Committee, after the war, the executors first sought to regain possession of the works recovered from Germany that were formerly owned by Larsen. This concerned

eleven of the twelve works now claimed (the current NK 2243 has only recently been identified as having belonged to Larsen). In the period from 1945 to 1947, the executors contacted the SNK on several occasions regarding these eleven works. In the letter to the SNK of 28 December 1946 mentioned in consideration 6, the executors stated the following:

*Al deze schilderijen waren bekend als te behoren tot een z.g. Joodsche verzameling, en zijn door Uw goede zorgen, waarvoor wij U uiterst dankbaar zijn, uit Duitschland teruggebracht. Wij verzoeken in onze rechten tegenover deze schilderijen te worden hersteld onder aanbod onzerzijds om terug te betalen aan den rechthebbende al hetgeen aan de boedel voor deze schilderijen is ten goede gekomen.*

[All these paintings are known to have belonged to what is known as a Jewish collection, which, thanks to your great care, for which we are very grateful, have been returned from Germany. We request restoration of our rights to these paintings in return for an offer on our part to recompense the rightful person for all that the paintings from this estate have accrued.]

In reply to this letter, the SNK declared that it was prepared to transfer to the executors the recovered works that were part of Larsen's estate, in return for payment of the proceeds of the works purchased at Hitler's behest and the two works sold at auction, plus the costs of recovery and management. The SNK did not allow the deduction of the valuation costs quoted by the executors, which were (probably) incurred in connection with the auction in 1943. Then, in 1947, the executors had the works in question valued, and then informed the SNK in a letter dated 23 July 1947 that, on reflection, they did not wish to take up the offer made to them:

*Executeurs in de nalatenschap Larsen zijn na herhaalde overweging tot de slotsom gekomen, dat zij beter doen te berusten in de plaats gehad hebbende vervreemding der schilderijen en derhalve af te zien van rechtsherstel.*

[The executors of the Larsen estate have come to the conclusion after repeated deliberation that they can better resign themselves to the alienation of the paintings and therefore abandon their claim for restitution.]

In 1949, the SNK sent a following letter requesting information from the executors about one of the paintings that had belonged to Larsen, the current NK 2463. In their reply, the executors said that they had already:

*van rechtsherstel inzake de verschillende schilderijen, die wij oorspronkelijk gereclameerd hadden (...), afzagen.*

*[abandoned their claim for restitution concerning the various paintings that we originally claimed]*

The SNK then stamped this letter 'vroeg. eigen. claimt niet' [*former owner is not making a claim.*]

9. Larsen's heirs, his son and daughter, had lived in the United States with their mother Susanne Menzel (Larsen's widow) since 1939. Susanne Menzel married again, to Frank Brower (hereafter referred to as: 'Brower'). After the war, Menzel and Brower visited the Netherlands to settle Larsen's estate. A report sent in by the applicants (*Larsen Family Account*) contains the following passage about Menzel and Brower's efforts:

*Together they embarked on a long effort to regain control of the Larsen estate. Old correspondence left by Frank [Brower] indicates that by 1948 he was able to restore control over the shipping business and subsequently began working to energize and stabilize the business. According to Frank, who was fluent in Dutch, the Executors did not manage the business properly, and it took him many years of hands-on effort to stabilize the business and to arrange for its sale around 1956.*

According to the applicants, Larsen's estate was probably settled in mid-1956. The Committee believes that this date may be related to the fact that that was the year in which Larsen's children reached the age of majority.

10. With regard to the admissibility of the applicants, the Committee considers the following. In their letter of 25 April 2008, the applicants said about the executor who corresponded with the SNK on behalf of the other executors 'that the executor, Mr. B.P.G., was not authorized to make decisions on restitution efforts in 1945-1947'. According to the applicants, the heirs were not consulted after the war about the executors' decision to abandon the possibility of buying back the artworks. As the applicants stated in their letter of 25 April 2008:

*No evidence has been discovered of any G.'s prior consultation either with the v.S.'s, or with the Larsen heirs, before writing to the SNK in July 1947 to abandon restitution efforts.*

The Committee also found no evidence in correspondence from that period showing that the family had been involved in the executors' decision. It is possible that the above-mentioned contact Menzel and Brower had with the executors after the war was focused on Larsen's business.

11. While the Committee considers that waiving restitution upon payment of the sale price received during the war may, from a pragmatic point of view, have been a deliberate choice on the part of the executors, it is certainly possible that the heirs (or, given that they were minors, their legal representative/representatives) would have decided otherwise on account of their emotional attachment to the paintings in their deceased father's collection. The Committee considers that by today's standards, the heirs should have been consulted about the decision to give up the works. The Committee is therefore of the opinion that the choice of the executors concerning eleven of the twelve claimed works does not stand in the way of the current application for restitution. The twelfth claimed painting, NK 2243, has only recently been identified as being the former property of Larsen and there are no indications that there were any contacts between the SNK and the executors about this work. With reference to the first recommendation of the Ekkart Committee regarding private art property, the Committee therefore concludes that this case cannot be considered to have been settled in the past and therefore deems the applicants' request admissible.
12. The Committee discussed whether, in connection with the proceeds from the sale received at the time, a payment obligation should be imposed in return for the restitution of the claimed works. In this context, the Committee refers to the fourth recommendation of the Ekkart Committee of April 2001, which stipulates that an obligation for repayment only applies if and to the extent that the then seller or his or her heirs actually obtained the free disposal of the proceeds. In their letter of 25 April 2008, the applicants declared that the proceeds of the sold works did not accrue to the family in the United States. As stated in consideration 7, investigation has shown that the sales proceeds came under the control of the executors of Larsen's estate.
13. The Committee is of the opinion that, given the fact that the executors as appointed by Larsen in his will received the proceeds of the sale, these did fall to the property of the heirs, and it must therefore be concluded that the heirs obtained free disposal of the sale proceeds. As to what occurred after the war with regard to the settlement of Larsen's estate, the Committee considers this a matter that goes beyond its policy framework. For that reason alone, the applicants' defence that the family in the US did not receive the sales proceeds cannot succeed. On those grounds, the Committee believes that repayment of the sales proceeds is legitimate in return for restitution of the claimed artworks.
14. This repayment should, in principle, consist of the sales prices received at the time, adjusted according to the general price index. As the sales amounts can no longer be retrieved in all cases, repayment will, in those cases, have to be made up of the assessed values quoted in connection with the auction in 1943, adjusted according to the general price index. Based on the assessed values and sales sums for the twelve claimed works in 1943, and taking into consideration the non-payment of part of the purchase price with regard to the transaction with Göpel and the costs incurred for valuation and auction in 1943, a total of



18. *Village in winter time* by Jan van Goyen (NK 2463).

NLG 66,768.25 went to Larsen's estate. Adjustment using the general price index leads to a sum rounded to EUR 325,000, which amount the Committee will state in its conclusion.<sup>26</sup> The Ekkart Committee's seventh and eighth Final Recommendations of 14 December 2004 shall apply here.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to grant the application for restitution by the applicants and to return the artworks NK 1410, NK 1412, NK 1414, NK 1417, NK 1420, NK 1424, NK 1428, NK 1441, NK 1447, NK 1451, NK 2243 and NK 2463 to the persons entitled to the said works.

In addition, the Restitutions Committee advises the Minister for Education, Culture and Science to impose a payment obligation to the amount of EUR 325,000 in return for the restitution.

Adopted at the meeting of 1 July 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, 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)



19. *The Holy family* by Cornelis Engelbrechtsz (NK 1412).

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<sup>26</sup> The calculation is as follows (with reference to considerations 3, 6 and 8). The total assessed value of the works sold at Hitler's behest before the 1943 auction was NLG 126,500. After the sale, the buyer unilaterally reduced this to NLG 75,000, so that in the end, the buyer paid 59.29% of the assessed value (75,000/126,000). Nine of the claimed works come under this group. Adding up the *individual* assessed values for these 9 works gives a sum of NLG 97,500, and of this, the sum of NLG 57,807.75 (NLG 97,5000 x 59.29%) based on the 59.29% calculated above was received for the sale to Hitler. The (probable) individual sales prices of the 3 remaining works in the claim are known from the annotated auction catalogue of 1943, viz.: NLG 8,500, NLG 3,400 – the (lower) sum specified by the executors is adhered to here – and NLG 975, a total of NLG 12,875. Added together, the proceeds of the sale to Hitler and those of the auction come to NLG 70,682.75, in favour of Larsen's estate in 1943. This sum pertains to the 12 claimed artworks. From the calculated sum, the Committee subtracts auction costs of NLG 1,844.50 and valuation costs of NLG 2,070, which were probably incurred in connection with the 1943 auction and which will have kept the final proceeds down. The sum that will ultimately have been received from the sales is therefore set at NLG 66,768.25. An adjustment of NLG 66,768.25 in 1943 gives a sum of EUR 324,795.75. The following consumer price index series were used for this adjustment: 1900 = 100; 1940 = 153; 1950 = 312; 2008 = 2,493. These figures were supplied by Statistics Netherlands (CBS) on 29 April 2009. The multiplication factor that can be determined from these figures is 10.72 (2,493/232.50), where 232.50 is the average price index figure for the years 1940-1950). The associated indexation sum is NLG 715,755.64, which corresponds to EUR 324,795.75, at the exchange rate of EUR 1 = NLG 2.20371.

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## 10. Recommendation regarding Semmel

(case number RC 1.75)

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In a letter dated 18 April 2007, 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 by I.K. of South Africa (hereafter referred to as: 'the applicant') of 12 March 2007 for the restitution of the painting *Portrait of a man* by T. de Keyser. Following its recuperation to the Netherlands after the Second World War, the painting became part of the national collection and is registered under inventory number NK 2693. According to the Netherlands Institute for Cultural Heritage, the claimed work is currently housed in MuseumgoudA in Gouda.

### The procedure

The application for restitution originally concerned three works, NK 2693, NK 2412 and NK 1636. However, in a letter dated 18 April 2007, the Minister informed the applicant that only the application concerning NK 2693 could be submitted to the Committee for a recommendation, since the other two works had been returned to the Goudstikker heirs on 6 February 2006. On the basis of 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 2 June 2008. This report was sent to both the Minister and the applicant on 12 June 2008 with a request for comments and additional information, the latter responding in writing on 24 July 2008. In a letter dated 26 August 2008, the Committee asked the applicant to provide further information regarding the identification of the claimed work as being formerly owned by her family and about the persecution of Semmel in 1933. On 19 December 2008, the Committee received a document file from the applicant with the relevant additional documentation. This information was incorporated into the draft investigatory report, which was subsequently adopted on 1 July 2009. For the facts of the case, the Committee refers to this report. During the procedure, the applicant was represented by the Berlin-based lawyer O.S. Ossmann.

The painting NK 2693 was also part of an application for restitution concerning the art dealership Firma D. Katz of Dieren (RC 1.90-A). The Committee was obliged to defer its recommendation in the present case until the investigation of NK 2693 was also completed in the other case. The applicant was informed about this in the draft investigatory report and in a letter dated 26 August 2008. After concluding its investigation, the Committee rejected the claim to NK 2693 regarding the art dealership Firma D. Katz. The Committee refers to the text of the recommendation in RC 1.90-A for its decision in that case.

### Special considerations:

1. The applicant requests the restitution of the painting *Portrait of a man* by T. de Keyser (NK 2693) and claims to be the heir of her mother G.G.-E., who was the sole heir of the Jewish businessman Richard Semmel (hereafter referred to as: 'Semmel'). In this context, the Committee has taken cognisance of several legal inheritance documents, which have given the Committee no reason to doubt the applicant's status. According to the applicant, Semmel 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 dated 1 July 2009. The following is a summary. Semmel was a wealthy German industrialist of Jewish descent. It can be concluded from various post-war statements made by people involved that the applicant's parents were friends with Semmel. When the Nazis assumed power in Germany in 1933, Semmel resided with his wife in a villa in Berlin. The applicant has stated that, as a child, she regularly visited this villa, which was full of art and antiques, with her parents.
3. The applicant claims that in 1933 Semmel was already under severe pressure by the Nazis. According to the applicant, this was not only due to his Jewish background but also because of his close involvement in the *Deutsche Demokratische Partei* [German Democratic Party]. In a post-war statement concerning his persecution by the Nazis, Semmel stated the following:

'Im Anschluß hieran will ich noch sagen, daß der Inhalt der Schreiben von Peck u. Gross nur zum kleine Teil zeigen, was ich durch den Beginn der Hitler-Zeit zu leiden hatte. Ich wurde buchstäblich Tag und Nacht mit Drohungen telefonisch und schriftlich bombardiert, unflätige Zettel kamen täglich in meine Wohnung, es war eine von der Nazipartei organisierte Hetze mit Hilfe der aufgepöschelten Angestellten. Obgleich ich immer Demokrat war, hat man behauptet, ich konspirierte mit Severing u. Braun, weil Severing mal in meinem Kontor war und u. um Beisteuerung für einen Jugendbund bat, dessen Name mir entfallen ist. (...) Ich war gerade geschäftlich in St. Gallen, als die Hitler-Katastrophe herinbrach, sofort kam ich zurück, wurde schon auf dem Bahnhof bei der Ankunft gerwarnt, in meine Wohnung zu gehen, so daß ich ein Zimmer in dem Hotel in der Fasanenstr. nahm. Wie richtig diese Maßnahme war, sollte sich bald zeigen, denn im Geschäft spielten sich die Vertrauensleute der Nazis als Herren auf und es kam so weit, daß ich, wie schon gesagt, im letzten Moment nach Holland entkam.'

The applicant claims that Semmel was forced to flee Germany in 1933 to avoid persecution, forcing him to sell part of his art collection. According to the applicant, the currently claimed work was consequently

auctioned in 1933 at Frederik Muller & Cie auction house in Amsterdam. She also indicated that Semmel had to sell his villa in 1934 for a price far below its value. The applicant submitted a report drawn up in 2001 by Prof. F.J. Peine regarding a claim concerning registered property located in Berlin. In this report, Prof. Peine states that Semmel left Germany in April 1933:

‘He finally left Berlin and Germany in April 1933 and fled to Holland. (...) The contents of the Amsterdam People’s Register show that from 27 November 1934 Richard and Clara Semmel were registered as coming to Holland from St. Gallen’.

Subsequently, Semmel left the Netherlands again, certainly before the German invasion in May 1940, eventually settling in New York.

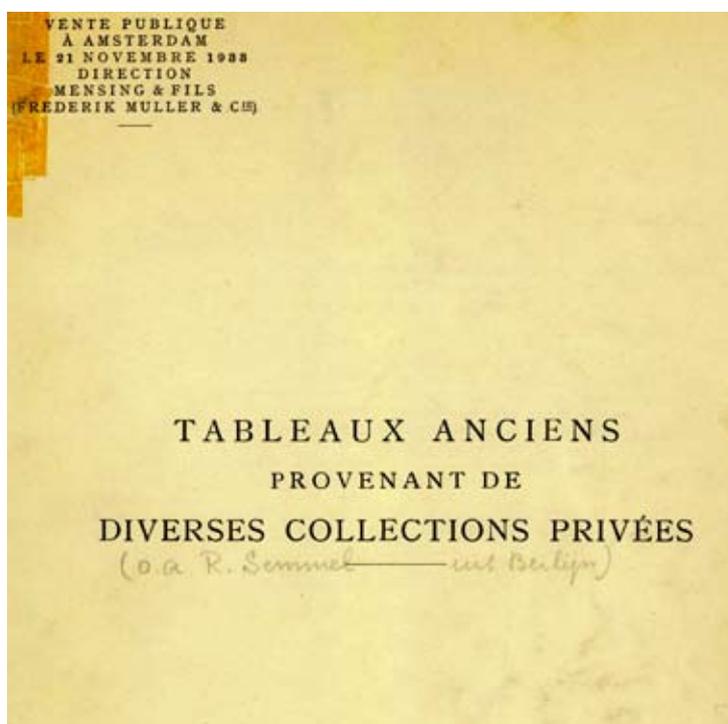
4. The applicant has stated that she emigrated to South Africa with her stepfather in 1937, while her mother fled to Cuba in 1939, relocating to New York two years later. According to the applicant, her mother re-established contact with the Semmels in New York, who were living there in destitution. The applicant’s mother is said to have cared for Semmel, who was in very poor health, on a daily basis after his wife’s death in 1945. The applicant stated that her mother was named sole heir in gratitude for looking after him. Semmel died in New York on 2 December 1950.
5. It can be concluded from the provenance reconstruction carried out by the Origins Unknown Agency (hereafter referred to as: ‘the BHG’) that, in 1928, the painting in question was in the possession of the Amsterdam branch of the Galerie van Diemen & Co art dealers, which had its head office in Berlin. Furthermore, it appears from an exhibition catalogue from the Gemeente Museum Arnhem that was uncovered during the investigation that, in March 1934, the currently claimed painting was in the possession of Dieren-based art dealership Firma D. Katz. This catalogue indicates the painting’s earlier provenance as: ‘*Semmel, Berlijn*’ [Semmel, Berlin]. With regard to the work in question, this provenance was also mentioned in a copy of an exhibition catalogue from the Stedelijk Van Abbe Museum in Eindhoven from 1936 which was submitted by the applicant. In addition, it can be concluded from a photo card from the Netherlands Institute for Art History (hereafter referred to as: ‘the RKD’) that the currently claimed painting was once part of a ‘*Semmel*’ collection.



20. *Portrait of a man* by Thomas de Keyser (NK 2693).

According to the applicant, Semmel was in possession of the currently claimed painting between 1930 and 21 November 1933, the date on which he had it auctioned by Frederik Muller & Co in Amsterdam. The auction catalogue does list the currently claimed painting, but not the provenance name. However, the title page of the copy of this catalogue from the RKD, which was consulted by the BHG during their investigation, contains, under the title *'Tableaux Anciens provenant de Diverses Collections Privées'* [Old paintings from various private collections], the hand-written note *'(o.a. R. Semmel uit Berlijn)'* [(a.o. R. Semmel of Berlin)]. It is unclear who wrote this and to which of the individual works in the catalogue it refers. It is also unknown whether the painting was actually sold at the auction.

6. According to the applicant, Semmel developed initiatives after the war to regain his lost assets. However, the applicant also stated that no post-war report was submitted to the Netherlands Art Property Foundation with regard to the missing works. The Committee has established that in so far as contact was made with the Dutch authorities, this did not lead to a decision regarding the painting for which the applicant is currently seeking restitution. The case has not been settled in the past and the applicant's request is, therefore, admissible.
7. Pursuant to current restitution policy, the Committee can only recommend restitution if the original owner lost possession involuntarily due to circumstances directly related to the Nazi regime. According to the Ekkart Committee's eighth recommendation of 26 April 2001, art objects can only be returned if the title thereto has been proved with a high degree of probability and there are no indications to the contrary.
8. In terms of ownership, the Committee deems it highly probable that the currently claimed painting NK 2693 was once part of Richard Semmel's art collection in Berlin. In this context, the Committee refers to the BHG's conclusion regarding provenance and the art-historical sources mentioned under consideration 5, in which the painting in question is linked to the provenance *'Semmel'* and *'Semmel, Berlijn'* [Semmel, Berlin]. The Committee also noted that Richard Semmel's collection was internationally known at the time. The Committee is therefore of the opinion that it is sufficiently likely that the annotation *'(o.a. R. Semmel uit Berlijn)'* [(a.o. R. Semmel of Berlin)] on the catalogue from the auction of 21 November 1933 mentioned in consideration 5 relates to the currently claimed painting. With that, the Committee deems that the ownership rights have been proved with a high degree of probability.
9. The next question is whether Semmel lost possession of the claimed work involuntarily due to circumstances directly attributable to the Nazi regime.



21. Cover of the Frederik Muller & Co catalogue of the auction held on 21 November 1933 in Amsterdam, with the annotation 'a.o. R. Semmel, from Berlin'.

10. It can be concluded from statements made by applicants that Semmel experienced the anti-Jewish climate in Germany from as early as 1933 onwards. As stated in consideration 3, Semmel was persecuted immediately after the Nazis assumed power not only because of his Jewish background but also because of his active involvement in the *Deutsche Demokratische Partei* [German Democratic Party]. It appears that Semmel was put under such pressure that he fled Germany in April 1933 and as a result was forced to sell his property or leave it behind. The Committee assumes that Semmel offered his work for auction at the Amsterdam-based auction house Frederik Muller & Cie in relation to his flight from Nazi Germany. It is unclear whether the painting was actually sold at this auction. The Committee assumes that if this was not the case, the painting was re-auctioned at a later date or sold privately, since the Committee's investigation has shown that the painting was no longer in Semmel's possession in March 1934. The Committee, therefore, considers the painting to have been sold in connection with Semmel's flight, and deems, therefore, the loss of possession involuntary as a result of circumstances directly related to the Nazi regime.
11. The Committee is, therefore, of the opinion that it has been proved with a high degree of probability that Semmel lost possession of NK 2693 as a result of circumstances directly related to the Nazi regime.
12. Finally, the Committee has considered whether a payment obligation should be imposed in return for restitution of the work. It is plausible that Semmel received the purchase sum when the painting was sold. However, no such information was found during the investigation. In accordance with the Ekkart Committee's fourth recommendation of 26 April 2001, a payment obligation only applies if the seller had free disposal of the proceeds. In accordance with current national policy, repayment is unnecessary if the purchase sum was probably used to escape Nazi persecution, as was the case with Semmel. In the Committee's opinion, therefore, no payment obligation is required in this case.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to grant restitution of the painting *Portrait of a man* by T. de Keyser (NK 2693) to the rightful heirs to the estate of Richard Semmel.

Adopted at the meeting of 1 July 2009 by W.J.M. Davids (chairman), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, 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)

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## 11. Recommendation regarding Katz-A

(case number RC 1.90-A)

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In a letter dated 29 March 2007, S.G.-K. and her husband S.S.G. of B.B., Florida, United States of America, submitted an application to the Ministry of Education, Culture and Science (hereafter referred to as: OCW) for the restitution of a large number of objects that are part of the Netherlands Art Property Collection (NK collection). This recommendation is limited to a selection of 31 of the NK works claimed. This is explained below.

Applicant S.G. died on 14 June 2007, which means that S.G.-K. is acting as sole applicant in this case. S.G.-K. is a daughter of Nathan Katz, who owned an art dealership in Dieren with his brother Benjamin Katz. The applicant is represented in the United States by Tina M. Talarchyk of West Palm Beach, Florida, and in the Netherlands by *mr.* Ph.W.M. ter Burg of Buren van Velzen Guelen lawyers of The Hague. On 13 June 2007, the Minister for OCW asked the Restitutions Committee to issue a recommendation regarding the application for restitution.

### The procedure

The applicant previously submitted an application for the restitution of the work *River landscape with ferry* by S. J. van Ruysdael (NK 1789) on 13 September 2004. This application was submitted to the Committee by the then State Secretary for OCW on 1 December 2004. A draft investigatory report with the results of the Committee's fact-finding investigation was sent to the applicant for comment on 21 August 2006. As the applicant repeatedly requested an extension of the reply deadline, ultimately until 25 August 2007, it was decided in consultation with the applicant to incorporate this case (RC 1.121) in the later application for

restitution of 29 March 2007 (RC 1.90).

In a letter of 12 June 2008, the Committee informed the applicant that it would be instituting a fact-finding investigation. Enclosed with this letter was a questionnaire relating to such matters as the identification and ownership of the claimed works. After conferring with the applicant, the Committee set the reply deadline at 1 September 2008. At the end of August 2008, the applicant requested that the deadline be extended to 1 December 2008, whereupon the Committee granted a postponement. However, with regard to a selection of 34 claimed works – 31 of which are handled in this recommendation – the Committee set the deadline at 22 October 2008 in order to prevent any further delay, especially since several of these objects were being claimed by other parties (NK 1532, NK 1537, NK 2245, NK 2366, NK 2463 and NK 2693). The investigation into the ownership of the selection of works had not furnished any evidence that they had belonged either to the Katz brothers during the occupation or to their legal heirs, or that they had been owned privately by one of the owners of the art dealership. The Committee subsequently registered the case involving these NK works under number RC 1.90-A, which case is now the subject matter of this recommendation. The recommendation concerning the other claimed works has been registered as RC 1.90-B and will be issued later.

The results of the investigation into the ownership of the 34 NK works were set out in a draft investigatory report dated 22 September 2008. The results of the provenance research by the Origins Unknown Agency (hereafter referred to as: BHG) were attached as an appendix to the report, which was sent to the applicant for comment and to the minister with a request for additional information on 24 September 2008. The Committee specifically asked the applicant to provide evidence of the ownership rights of the art dealership or the Katz brothers during the occupation, substantiated with documents. The applicant replied on 22 October 2008, indicating, in brief, that she no longer had access to the sources on which the provenance research was based and that she reserved the right to assess these sources. In a letter dated 11 November 2008, the Committee informed the applicant that the sources on which the provenance research was based are accessible to interested parties and are cited in the results of the BHG research. The Committee then afforded the applicant a further opportunity to provide proof of ownership of the 34 NK works, whereupon the applicant sent an additional reply on 30 March 2009 (see consideration 5).

The investigatory report was adopted on 1 July 2009. For the facts of the case, the Committee refers to this report.

### Considerations

1. In her application for restitution, the applicant indicated that she was acting as heir of her father Nathan Katz (1893-1949). The applicant states that she is also acting on behalf of the other heirs of Nathan Katz. She has not submitted sufficient powers of attorney for this, however. During the procedure, the applicant stated that her cousin, V.K.-B., daughter of Benjamin Katz (1891-1962), should also be regarded as applicant. V.K.-B. (born in 1918) should be seen as acting as direct heir of Benjamin Katz and also as representative of the other heirs of Benjamin Katz. However, the Committee has not received any documents which prove conclusively that V.K.-B. is an applicant in the current case. Given that the Committee has no reason to doubt the position of the applicant as Nathan Katz's heir, it has decided to proceed with a recommendation in this case, despite defects in terms of representative authority. The Committee wishes to point out that in its investigation, it looked into whether Benjamin Katz's heirs could also claim the restitution of 31 of the claimed works, despite the fact that questions have arisen with regard to the representative authority of the applicant in this case.
2. During the procedure, the applicant provided information about the art dealership of the Katz family, a summary of which follows. From 1930 on, Nathan and Benjamin Katz managed the art dealership Firma D. Katz in Dieren that was set up by their father. The family was of Jewish origin. Nathan and Benjamin Katz were the only partners in the art dealership. On 1 May 1940, a branch was established in The Hague. On 17 February 1941, the company went into liquidation in order to prevent it – as a Jewish firm – from falling into the hands of the Germans. The company was formally wound up on 1 June 1943. The 'Schilderijen en Antiquiteitenhandel v/h D. Katz N.V.' was established on 19 May 1941 so that business could continue. Non-Jewish business partners were appointed as directors. According to documents in the trade register, these directors resigned after the war and Benjamin Katz continued the business. According to the applicant, the shares were allocated to Benjamin and Nathan Katz (50% each). Based on this, the applicant stated that Benjamin and Nathan Katz were the de facto owners of Schilderijen en Antiquiteitenhandel v/h D. Katz N.V. The Committee deems this plausible. The recommendation refers to the 'Firma D. Katz' and 'Schilderijen en Antiquiteitenhandel v/h D. Katz N.V.' jointly as 'Katz art dealers'.
3. Under the Decree of 16 November 2001 establishing the Restitutions Committee, it has the task of providing advice to the Minister concerning decisions about the restitution of items of cultural value, of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime. The Committee can only recommend restitution if *'the title thereto has been proved with a high degree of probability and there are no indications to the contrary'*. The Committee refers to the Ekkart Committee's eighth recommendation concerning the private ownership of works of art, which also applies to art dealerships and is part of restitution policy. The involuntary loss of possession is not addressed until the ownership issue has been settled. The investigation in this case was therefore limited to a study of the rights of ownership to the claimed works.

4. The Committee should therefore assess whether it has been proved with a high degree of probability that the claimed works were at any point during the occupation of the Netherlands in the possession of Katz art dealers or belonged privately either to Nathan Katz or to Benjamin Katz. Below, this recommendation refers to the 'Katz property or 'Katz's ownership'. The Committee observes that it regards the period during which the Netherlands was occupied by the Germans (10 May 1940 - 5 May 1945) as the relevant period with regard to ownership rights, seeing as Katz art dealers and the Katz brothers were established and settled in the Netherlands, respectively, and hence could indeed have involuntarily lost possession as a consequence of circumstances directly related to the Nazi regime.
5. On several occasions, the Committee requested the applicant to provide documentation to prove Katz's ownership of the 34 NK works during the occupation. However, in her additional reply of 30 March 2009, invoking the American law of evidence, the applicant argued that proof of ownership should not rest with the applicant and that in the event of doubt concerning the origin of the paintings, the case should be decided in the applicant's favour. The applicant is of the opinion that the State of the Netherlands is responsible for the loss of a stock book of the art dealership, also known as the 'Blue Book', which was said to have contained details of purchases and sales made before and during the occupation. The applicant believes that this can be concluded from several official records found in the archive of the office of the Procurator General in The Hague which she requested from the Committee and submitted together with her reply of 22 October 2008. These reports are the results of interviews with various people held in the course of a post-war investigation into irregularities surrounding the return of artworks to Katz art dealers by the Netherlands Art Property Foundation (SNK).

The applicant states:

*The records mention that the notebook, which obviously could be of assistance in identifying works that belonged to the stock of the gallery, went missing when in custody of the Dutch state ("Lost Blue Book"). Since the Dutch government is responsible for the loss of this notebook, it should be argued that any remaining doubts about the origin of the painting should be decided in favor of claimants.* (From: Additional reply of 30 March 2009, chapter II; see also Response of 22 October 2008, p. 5).

The applicant also states:

*[...] it is clear that the loss of the key and most likely sole evidence that was available to answer the evidentiary burden imposed on the Katz family severely prejudices the Katz family from carrying that burden of proof. The Katz family, heirs and Applicants believe that based upon the Government's loss of the Katz Blue Book, there should be a shifting in the burden of proof that the Katz Heirs are required to meet. The loss of the Katz Blue Book is almost a complete impediment to the meeting of the Dutch Government's burden of proof and should be acknowledged as such.* (From: Additional reply of 30 March 2009, chapter V, p. 9/10).



22. Interior of art dealership Katz in Dieren, 1936.

6. It can now no longer be ascertained who was responsible for the disappearance of the Blue Book. Be that as it may, in the event of ambiguous or missing provenance details, the loss of the Blue Book is not automatically a reason to decide in the applicant's favour. Such a sweeping assumption would be contrary to restitution policy as cited in consideration 3. In addition, the Committee notes that when researching the provenance of artworks, various sources can be consulted, such as auction catalogues, buyers' and sellers' inventories, extant invoices, statements of account and information gathered by the allied forces after the war and now in the safekeeping of, among others, the Netherlands Art Property Foundation and the Federal Archive in Koblenz, Germany. This means that the investigation does not depend on the availability of the Blue Book. Moreover, claimants sometimes still have access to private documents such as photo albums or correspondence, and, in the case of art dealerships, business documents such as accounts or other records. That is the reason why, particularly in cases involving art dealerships, claimants are asked to provide documentation themselves about ownership and in that sense, the burden of proof also rests with them.
7. However, the applicant has not provided the Committee with any information demonstrating that the 34 NK works were part of Katz's property during the occupation. Having said that, in each case, and hence also in this case, the Committee conducts independent research into the provenance of the claimed works. In the case at issue, the BHG's provenance research of the individual NK works was used as a basis; the consulted sources are cited in the investigatory report and the appendices. As a result of this, the Committee concluded that Katz's ownership of 31 NK works during the German occupation period has not been proven with a high degree of probability. This concerns the following works: NK 1683, NK 1929, NK 1532, NK 1537, NK 1547, NK 1551, NK 1757, NK 2384, NK 2614, NK 2732, NK 1515, NK 1521, NK 1564, NK 1604, NK 1842, NK 2084, NK 2186, NK 2245, NK 2366, NK 2496, NK 2497, NK 2586, NK 2597, NK 2693, NK 2463, NK 1658, NK 2487, NK 1663, NK 1766, NK 2209 and NK 2594.
8. The following explanation is provided:

As regards NK 1683, in its research results the BHG regarded 'Katz' as provenance as 'very uncertain'. Further research conducted by the Committee has shown that on the 'White Card', an SNK inventory card, the name Katz is crossed out and replaced with the name of another art dealership, a name borne out in other documents found. The Committee is therefore of the opinion that 'Katz' as provenance on the White Card is a mistake.

With reference to NK 1929, the BHG regarded 'Katz' as provenance as 'uncertain'. After additional research, the Committee concluded that the available provenance details are so fragmented and contradictory that ownership by Katz is not plausible.

As far as NK 1532, NK 1537, NK 1547, NK 1551, NK 1757, NK 2384, NK 2614 and NK 2732 are concerned, indications were found in the sources consulted from which it could be concluded that Katz art dealers did, at an unknown time, have something to do with these works, such as an entry 'Katz' on a photo card found in the Netherlands Institute for Art History or in an SNK inventory book. Clear indications are lacking, however. The Committee regards these indications as insufficient to bear out the conclusion that ownership by Katz during the occupation is plausible.

As regards the works with inventory numbers NK 1515, NK 1521, NK 1564, NK 1604, NK 1842, NK 2084, NK 2186, NK 2245, NK 2366, NK 2496, NK 2497, NK 2586, NK 2597, NK 2693 and NK 2463, indications have been found that they were in Katz art dealers' possession during the 1930s. However, no indications were found that would suggest that they were in Katz's possession during the occupation. Moreover, possession of the vast majority of these works passed from a party other than Katz to a German buyer during the occupation. With regard to one of the works in this group, NK 2463, the results of the investigation show that the painting was on the premises of Katz art dealers in 1934 and/or 1935 but that it was part of the collection of Jewish entrepreneur Hans Ludwig Larsen in 1937 and was purchased from the latter's estate for Adolf Hitler's *Sonderauftrag Linz*. This rules out Katz as owner of NK 2463 during the occupation.

As regards NK 1658 and NK 2487, these works were, at any rate from the mid-1930s on, the property of J.G. Fockema-Vié and her husband H.W.J. Fockema of Brussels and, until August 1939 and June 1941, respectively, on loan to the Gemeente Museum Arnhem. Both paintings were sold to Adolf Hitler's *Sonderauftrag Linz* in 1941 by or through Katz art dealers. Concerning NK 1658, BHG stated that: *'Het is waarschijnlijk dat kunsthandel Katz het schilderij in juli 1941 voor mevrouw Fockema - Vié heeft verkocht. Katz heeft meerdere schilderijen uit het bezit van de familie Fockema (o.a. NK 2487), in bruikleen bij het Gemeentemuseum Arnhem, verkocht in Duitsland.'* [It is likely that Katz art dealers sold the painting in July 1941 on behalf of Mrs Fockema - Vié. Several art works belonging to the Fockema family (among others NK 2487) and on loan to the municipal museum in Arnhem were sold by Katz in Germany.]

On the basis of the fact-finding investigation, the Committee, too, is of the opinion that Katz art dealers did not act as owner but as intermediary in this sale.

Similarly, the Committee believes that Katz acted as intermediary in the case of NK 1663. The painting was at Katz art dealers in 1939 and was then purchased by W.A. Hofer, Hermann Göring's representative, during the occupation. It can be concluded from documents prepared by the Allies after the war that at the time of the sale, the work was part of the collection of H.E. ten Cate, an art collector from Almelo, who sold the work through Katz. BHG states in the provenance details that *'Katz was als tussenpersoon betrokken bij de verkoop tussen Ten Cate en Hofer'* [Katz acted as intermediary between Ten Cate and Hofer for the sale of the painting], a conclusion shared by the Committee.

The investigation of NK 1766 also points to Katz as intermediary rather than owner. From reports drawn up by the Allies after the war, which are currently in the *Bundesarchiv Koblenz*, it can be concluded that the painting was sold to the *Sonderauftrag Linz* by J. de Wit on 9 November 1942. Moreover, information on the SNK's 'White Card' indicates that the painting originated from *'Katz, Dieren'* in 1942. As regards its provenance, the BHG concluded on the basis of this that: *'Het is mogelijk dat kunsthandel Katz bemiddeld heeft bij een verkoop door J. de Wit'* [It is possible that art dealer Katz mediated in a sale by J. de Wit]. On the strength of this information, the Committee deems it plausible that Katz's relationship to NK 1766 was one of intermediary rather than owner.

As far as NK 2209 is concerned, a single entry on a photo card found in the Netherlands Institute for Art History points to the work having been at Katz art dealers at some point in 1940. Finally, it is also known of NK 2594 that Esher Surrey art dealers of The Hague purchased it from Katz art dealers at an unknown date and then sold it to Adolf Hitler's *Sonderauftrag Linz* in September 1940. However, no exact date is known for either work nor whether Katz was the owner or acted as intermediary. The Committee therefore deems it insufficiently proven that Katz owned them at the time of the German invasion on 10 May 1940. The Committee also takes into consideration that, as shown above, Katz frequently mediated in sales transactions and that a mention of the name Katz in provenance details – or the presence of a work on the art dealers' premises – does not automatically mean that Katz should be regarded as the owner of that work.

9. The Committee advises the Minister to reject the application for the restitution of said 31 NK works.

## Conclusion

The Restitutions Committee:

- advises the Minister for Education, Culture and Science to reject S.G.-K.'s application for the restitution of the following works: NK 1683, NK 1929, NK 1532, NK 1537, NK 1547, NK 1551, NK 1757, NK 2384, NK 2614, NK 2732, NK 1515, NK 1521, NK 1564, NK 1604, NK 1842, NK 2084, NK 2186, NK 2245, NK 2366, NK 2496, NK 2497, NK 2586, NK 2597, NK 2693, NK 2463, NK 1658, NK 2487, NK1663, NK 1766, NK 2209 and NK 2594;
- stays the application for restitution of the other claimed works.

Adopted at the meeting of 1 July 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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## 12. Recommendation regarding Bachstitz

(case number RC 1.78)

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In a letter dated 4 May 2007, the Minister for Education, Culture and Science (hereafter referred to as: 'the Minister') requested the Restitutions Committee (hereafter referred to as: 'the Committee') to issue a recommendation regarding the application submitted by A.R.W.I. on 22 March 2007, also on behalf of his sister M.F.J.C.-Y. (hereafter jointly referred to as: 'the applicants'), for the restitution of 25 works of art. When these works were returned to the Netherlands after the Second World War, they became part of the Netherlands Art Property Collection (NK collection) and are registered under inventory numbers NK 394, NK 602, NK 604a-b, NK 615, NK 620, NK 631, NK 636a-b, NK 864a-b, NK 1552, NK 1553, NK 1618, NK 1627, NK 1763, NK 1787, NK 1798, NK 1892, NK 1940, NK 2436, NK 2447, NK 2484, NK 2581, NK 2707a-b, NK 2904, NK 2905 and NK 2919.

### The procedure

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 12 January 2009. The draft investigatory report was sent to the applicants for comment in a letter dated 20 March 2009 and to the minister with a request for additional information on 23 March 2009. The applicants responded to the draft investigatory report in a letter dated

1 April 2009, which was appended to the report. The report was subsequently adopted on 14 September 2009. For the facts of the case, the Committee refers to this report.

The painting NK 2919 has also been claimed in another application for restitution (RC 1.88). The applicants have been informed of this. The Committee rejected this claim in its recommendation RC 1.88 of 12 January 2009.

### Considerations:

1. The applicants request the restitution of 25 works of art from the NK collection in their capacity as heirs of their grandfather, Kurt Walter Bachstitz (hereafter referred to as: 'Bachstitz'), who, according to the applicants, involuntarily lost possession of the works as a consequence of the Nazi regime. In this context, the Committee has taken cognisance of several legal inheritance documents submitted by the applicants, which have not led the Committee to question their status as heirs.

#### The facts

2. The relevant facts are described in the investigatory report of 14 September 2009. The following is a summary. Bachstitz was born on 4 October 1882 in what was still the German town of Breslau. He was of Jewish origin and held Austrian nationality. He married Elfriede Pesé and the couple had two children. His son Walter died, probably in 1940 or 1941 and, as far as the Committee is aware, unmarried and childless. His daughter, Margit Martha, is the applicants' mother. After his first marriage ended, Bachstitz remarried in 1918, his second wife being the German, non-Jewish Elisa Emma Hofer. As far as the Committee is aware, this marriage remained childless. In 1938, the couple settled permanently in the Netherlands. Bachstitz waived his Austrian nationality, thus becoming a stateless citizen.
3. Bachstitz was an internationally renowned art dealer. The head office of the art dealership was in The Hague. Since 1920, this gallery was run as a public limited company under the name *Kunsthandel K.W. Bachstitz (Bachstitz Gallery) N.V.* (hereafter referred to as: 'Bachstitz Gallery'). From 1922 until 1926, Bachstitz' brother-in-law Walter Andreas Hofer, who later became an art buyer for Hermann Göring, managed the gallery. In the period from 1926 to 1931, the company had no board of management, which meant that supervisory director Bachstitz was the *de facto* manager. When war broke out, Bachstitz was the only person actually involved in the management of the Bachstitz Gallery. The investigation did not establish who the shareholders of the company were, but it is very likely that Bachstitz himself had a substantial interest in the business. The Committee considers it sufficiently proven that Bachstitz was indeed a stakeholder. In the context of the current application for restitution, his heirs can therefore be regarded as rightful claimants.
4. Bachstitz continued working as art dealer after the German invasion of the Netherlands in May 1940. The investigation has shown that in the early years of the war, the Bachstitz Gallery sold a large number of paintings to the Germans, in particular to Dr H. Posse, an art buyer for Hitler, and to other Nazi buyers such as Dr E. Göpel and Bachstitz' brother-in-law W.A. Hofer. This is discussed under consideration 16. On 17 February 1941, K.W. Bachstitz formally resigned as supervisory director of the Bachstitz Gallery, while his non-Jewish wife became managing director. In this way, they avoided having the Gallery placed under the administration of a *Verwalter* for the duration of the war. Moreover, the couple had their marriage dissolved on 27 September 1943, probably to prevent the confiscation of the gallery. After the war, the couple were again registered as officially married. During the occupation, the actual management of the Bachstitz Gallery probably rested with Bachstitz himself, in any case up until his emigration in 1944.

5. The investigation revealed that in the early years of the German occupation, the Germans left both the gallery and Bachstitz himself undisturbed. People in mixed marriages, such as Bachstitz, were at first protected from deportation. Post-war statements indicate that Bachstitz and his wife held anti-Nazi sentiments and were dedicated to protecting Jews by offering them a place to hide and holding their goods in trust. From 1942, things apparently became more difficult for Bachstitz. For instance, in 1942, he was summoned to the *Wirtschaftsamt* (economic office) in The Hague because he had failed to register the gallery as 'non-Aryan property'. Extant documents have shown that he was subsequently declared a 'Volljude' [full Jew] as defined in the Neuremberg Racial laws in May 1943. In July 1943, Bachstitz was arrested by the *Sicherheitsdienst* and put in Scheveningen prison. However, thanks to his marriage to Hofer's sister, and on account of his position as art supplier to the German art market, Bachstitz had some important connections who afforded him protection from the Nazis. In July 1943, Hofer managed to secure his brother-in-law's release from prison within a week, putting forward Bachstitz' importance as art dealer for the German market as an argument. In his letter of 5 July 1943 to the *Brigadeführer* in The Hague, Hofer wrote:

*Fuer das Linzer Museum wurden in den letzten Jahren von Prof.Posse hochklassige Kunstwerke durch Vermittlung von Bachstitz angekauft; auch andere deutsche Museen haben durch Bachstitz wichtige Kunstgegenstaende erworben.*

*[In recent years, Prof. Posse purchased high-quality works of art for the Museum in Linz through the agency of Bachstitz; other German museums have also acquired key art objects through Bachstitz.]*

Hofer also reported that Göring was taking Bachstitz under his wing:

*Der Herr Reichsmarschall wuenscht, dass Bachstitz die Ausreise in das Ausland ermoeoglicht & das Verfahren gegen ihn solange ausgestellt wird, bis ich ihm ueber die Angelegenheit persoanlich Bericht erstattet habe. Im Auftrage des Herrn Reichsmarschalls bitte ich um Freilassung des Bachstitz, der schwer Herzkrank ist & um Rueckfuehrung in seine Wohnung. Ich uebernehme jede Verantwortung dafuer, dass Bachstitz bis zur Regelung der Angelegenheit durch den Reichsmarschall seine Wohnung nicht verlasst, dass jede Veraenderung seines bis heute Einwandfreien Geschaeftsbetriebes & jede Verschiebung seines Geschaefst- & Privatvermoegens unterbleibt.*

*[The Reichsmarschall wishes that Bachstitz be allowed to travel abroad and that the procedure against him be postponed until I have personally notified him about the matter. By order of the Reichsmarschall I hereby request that Bachstitz, who has a severe heart condition, be released and allowed to return home. I will take all responsibility to ensure that Bachstitz does not leave his home until the affair has been settled by the Reichsmarschall and that no changes are made to his to date impeccably run business, nor any shift in his business and private capital.]*

Bachstitz was moreover exempted from the obligation to wear a Star of David on account of his importance as art dealer for Hitler's Führermuseum that was to be established in Linz (*Sonderauftrag Museum Linz*). This is evidenced by a report of a meeting of Germans held in The Hague in October 1943, in the course of which Dr E. Göpel, Hitler's art buyer, pleaded in favour of Bachstitz:

*Unter den von Tragen des Sterns befreiten befindet sich auch Bachstitz, auf dessen besondere Verdiensten für den Sonderauftrage von Seiten Dr. Göpel hingewiesen wurde.*

*[Among those exempted from wearing the Star was Bachstitz, whose special merits for the Sonderauftrage had been pointed out by Dr Göpel.]*

6. Bachstitz no longer left his house after his release in July 1943. After various raids by the *Sicherheitsdienst*, Bachstitz wanted to emigrate. Ultimately, with the help of his brother-in-law and with Göring's permission, he obtained an exit visa for Switzerland, and left in 1944. In exchange for this help, Bachstitz did have to surrender several precious works of art to Göring, without receiving payment for them. These works of art are, however, not part of the current application for restitution.
7. Shortly after the war, in letters dated 2 and 18 July 1945, Bachstitz' wife wrote to the Netherlands Art Property Foundation (SNK) in her capacity as director of the Bachstitz Gallery, submitting a declaration regarding the art sales by the gallery to the Germans. The letters do not indicate the sums for which the works were sold, nor whether the sales were, in Mrs Bachstitz-Hofer's opinion, voluntary. In doing so, she met an obligation as laid down in post-war regulations. Contrary to the applicants' opinion, an application for restitution on the grounds of involuntary sale cannot be concluded from this. Based on the information provided, the SNK completed internal declaration forms, indicating that the sales had been voluntary. Bachstitz himself said the following after the war about his sales to Germans to an official handling his request for naturalisation:

*'dat hij verschillende schilderijen naar Duitsland had verkocht. Volgens hem moest hij verkopen. Had hij zulks niet gedaan, dan was alles weg geweest. Hij moest, zoals dat met iedereen het geval was, af en toe bukken voor de pressie. Hij kon dit ook makkelijker doen dan menigeen, doordat hij vrijwel alle kopers kende. Zoals hij toen verklaarde, werden alle verkopen gedaan aan musea-directeuren, met wie hij lang vóór de oorlog zaken had gedaan.'*

*[that he had sold various paintings to Germany. He said he was forced to sell. If he had not, everything would have been gone. Like everyone, he had to bend to pressure every once in a while. This was easier for him than for many others, because he knew almost all the buyers. As he declared at the time, all sales were made to museum directors, with whom he had done business long before the war.]*

8. Bachstitz died in 1949. In early 1950, the SNK asked Mrs Bachstitz-Hofer for more information about the provenance of some twenty works of art that had been recovered from Germany. After indicating that the works all originated from the Bachstitz Gallery's collection, Mrs Bachstitz-Hofer replied to the SNK's question whether the works had been sold voluntarily or under duress on 6 February 1950 as follows:

*'In antwoord op Uw schrijven van 30 Januari jl. deel ik U mede, dat mijn man ook de genoemde kunstvoorwerpen – evenals de destijds opgegeven verkopen – tijdens de vijandelijke bezetting onder onbehoorlijke invloed heeft moeten verkopen.'*

*[In answer to your letter dated 30 January 1950, I state that during the enemy occupation my husband was forced to sell the art objects listed – as well as the sales recorded at the time – under undue influence.]*

9. The post-war correspondence between the Bachstitz Gallery and the SNK was directed in particular to the return of three objects that Göring had appropriated. No evidence was found in the archive records that the Bachstitz Gallery had submitted a request for restitution after the war or that they had explicitly refrained from applying for restitution. Referring to the first recommendation of the Ekkart Committee of April 2001, which also applies to art dealership cases, the Committee concludes that this case cannot be considered to have been settled in the past and deems the applicants' request admissible.

#### Assessment of the claim

10. The applicants are claiming 25 NK works. Pursuant to current restitution policy, when assessing whether restitution can be considered, it is important whether it can be assumed with a high degree of probability that the works were indeed in the possession of the Bachstitz Gallery at the time of sale during the occupation. The investigation has shown that the majority of the works were part of the Bachstitz Gallery's trading stock well before the war. In common with the applicants' argument in response to the draft investigatory report, the Committee also accepts that these works were owned by the Bachstitz Gallery during the occupation and that they had not been commissioned for sale.
11. With regard to three claimed works, the Committee does not consider it highly likely that the Bachstitz Gallery was the owner at the time of sale during the occupation:
- NK 1763: the investigation results point to the Bachstitz Gallery as a possible intermediary in the sale of this work to Dr E. Göpel on behalf of a customer, so that ownership has not been sufficiently demonstrated.
  - NK 1940: the provenance details of this work are inconclusive. Given that evidence has been found suggesting that the work was sold by a Dutch auction house to the *Dienststelle Mühlmann* during the occupation, it cannot be demonstrated with a high degree of probability that the Bachstitz Gallery sold it to a German buyer.
  - NK 2905: although there are indications that this object was in the possession of the Bachstitz Gallery in 1920, it cannot be concluded from the provenance details whether it still belonged to the Gallery at the time of sale during the war.

The Committee advises the Minister to reject the application for restitution of these three works for this reason alone.

12. As for the other claimed works, the Committee investigated whether there is any evidence from which loss of possession by the Bachstitz Gallery could be demonstrated with a high degree of probability. Pursuant to current restitution policy in respect of the art trade as stipulated in the Recommendations for the Art Trade 4, 5 and 6 issued by the Ekkart Committee, only in such cases can restitution be recommended. Loss of possession is, in any case, deemed involuntary if objects were stolen or confiscated by the Nazis, or sold under duress. Pursuant to the sixth recommendation, evidence for involuntary loss of possession can be found in post-war declaration forms, among others, in which the art dealer or their heir or representative indicates that the sale was involuntary. In the absence of declaration forms, threats of reprisals and promises to supply passports or safe-conduct as part of the transaction constitute evidence of involuntary sale.
13. The Committee first concludes that none of the claimed works were stolen or confiscated. This can be inferred from Mrs Bachstitz-Hofer's letter of 6 February 1950 (consideration 8) in which she states that the works were, in all cases, sold. In as far as documentation has been kept, it is plausible to assume that prices were paid that were in line with market conditions. Reference is made to considerations 15 and 16. The question is, therefore, whether the sales made by the Bachstitz Gallery should nonetheless be

deemed involuntary in the sense that the seller was pressurised by or on behalf of the Nazis. No mention is made of the nature of the loss of possession in the declaration made by the Bachstitz Gallery in July 1945. That Bachstitz and his wife were of the opinion that the sales were involuntary, because otherwise *'alles weg [was] geweest' [everything would have been gone]* and hence that the sales had taken place under *'onbehoorlijke invloed' [undue influence]* is evident from the passages quoted in considerations 7 and 8.

14. The Committee finds that the Bachstitz Gallery either sold or consigned three works to Dutch buyers – who were, as far as we know, not collaborators. In the absence of proof to the contrary, the Committee deems it plausible that these were everyday transactions and that there was no question of duress.
  - This concerns NK 394, regarding which the Committee considers it plausible that the object was sold or consigned to Amsterdam art dealership Delaunoy between 1934 and 1943. This art dealership sold the object to the Kunstsammlungen der Stadt Düsseldorf in 1943.
  - With respect to NK 1618, it is plausible that the Bachstitz Gallery sold the work to a Dutch collector (Thurkow) in 1941, who sold it to a German museum in 1942.
  - With respect to NK 1787, the Committee considers it plausible that the Bachstitz Gallery sold the work to a Dutch collector (Wigman) in 1941, who sold it to Posse in 1944.
15. During the occupation, the Bachstitz Gallery sold four works to German museums. In the light of the purchase prices paid for them, it is again reasonable to assume that these were also normal transactions with clients. Nor is there any evidence that Bachstitz was pressurised. In connection with this, the Committee refers to Bachstitz' statement quoted in consideration 7, namely that he sold work to *'musea-directeuren, met wie hij lang vóór de oorlog zaken had gedaan.'* [...museum directors, with whom he had done business long before the war.] This concerns the works NK 602, NK 604a-b and NK 615, which the Bachstitz Gallery sold to Dr W.H. Hupp, director of the Kunstsammlungen der Stadt Düsseldorf, in 1942. RM 4,000 was paid for NK 602, a sum of RM 1,000 for NK 604a-b, and NLG 2,500 for NK 615. During the occupation, NK 2436 was sold for an unknown sum to K. Martin, director of the Kunsthalle in Mühlhausen.



23. *Roman capriccio* by P. Cappelli (NK 1892).

16. With regard to the remaining objects, it has been established that they were sold to Hitler and Göring's art buyers.
- a) The works NK 620, NK 631, NK 636a-b, NK 864a-b, NK 1552, NK 1553, NK 1627, NK 1798, NK 2484, NK 2581 and NK 2707a-b were sold to Posse for the Führermuseum in Linz in the period from August to 10 December 1940. NK 2904 was sold for an unknown sum to the Führermuseum on 21 June 1941, presumably also through Posse.  
The following sums were paid: a sum of NLG 6,000 for NK 620, together with another statue; a sum of NLG 4,750 for NK 631; a sum of NLG 8,000 for NK 636a-b; a sum of NLG 24,000 for NK 864a-b, together with two other gold objects; a sum of NLG 50,000 for NK 1552; a sum of NLG 50,000 for NK 1553; a sum of NLG 30,000 for NK 1627; a sum of NLG 5,400 for NK 1798; a sum of NLG 10,000 for NK 2484; a sum of NLG 12,000 for NK 2581 and a sum of NLG 45,000 for NK 2707a-b.
  - b) The works NK 2447 and NK 2919 were sold to Hofer for Carinhall, Göring's estate, on 10 June 1940. NLG 6,800 was paid for NK 2447 and NLG 2,600 for NK 2919.
  - c) The work NK 1892 was sold on 10 June 1943 to Göpel for the Führermuseum in Linz for the sum of NLG 15,000.
17. The following applies to the sold objects in categories a and b.  
While allowing for the fact that, as a result of the pressures of war, Bachstitz effected transactions with representatives of the Nazis and could therefore count on a certain degree of protection, the Committee is of the opinion that these sales were not involuntary. In cases concerning the art trade, the Committee considers the sole fact that the selling party was part of the Nazi regime insufficient to conclude involuntariness, especially if these were transactions for which prices appear to have been paid that were in line with the market and, moreover, no evidence has been found of direct threats or sale under duress. Bachstitz' statement (see consideration 7) that *'zoals dat met iedereen het geval was, [hij] af en toe [moest] bukken voor de pressie'* [*Like everyone, [he] had to bend to pressure every once in a while*] refers not so much to a direct threat to Bachstitz himself as to the difficult circumstances during the occupation for art dealers in general. The Committee also points out that the majority of sales to Posse and Hofer took place in 1940, the first months of the German occupation of the Netherlands. Object NK 2904 was also sold in the early stages of the occupation. Due to his connections in the art world in the early years of the war, Bachstitz was evidently able to operate freely on the market and do business. No evidence was found of coercion towards his person or his family at that stage.
18. The sale of NK 1892, referred to under category c, took place under completely different circumstances, however. This work was sold on 10 June 1943, the year in which the persecution of the Jews was at its most violent. One month prior to the sale, Bachstitz had been declared a *'Volljude'* [full Jew]. Bachstitz, who was a stateless, Jewish resident at the time of the sale, was therefore in a very delicate position. In contrast to the early years of the occupation, he had attracted the attention of the German police who may have suspected him of helping Jews to go into hiding and who were aware of statements that were in breach of Nazi laws (see consideration 5). Eventually, this did indeed lead to his arrest in July 1943. Under such circumstances, Bachstitz is likely to have felt himself browbeaten by someone such as Göpel when the latter expressed his desire to buy NK 1892 for Hitler's museum. The fact that Göpel had seen to it that Bachstitz had been released from the obligation to wear the Star of David in 1943 (see end of consideration 5) may well have been part of the deal. Pursuant to current restitution policy as described in consideration 12, the Committee concludes that this therefore constitutes evidence of involuntary sale and therefore advises the Minister to grant the application for restitution and return the painting NK 1892.
19. The Committee sees no reason to recommend repayment of the consideration received at the time (see consideration 16, under c). It is, after all, plausible that Bachstitz had to use this sum for his escape to Switzerland, so that he was not able to freely dispose of this money within the meaning of the restitution policy. In this context, the Committee refers to the fourth recommendation of the Ekkart Committee of 2001.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to

- reject the application for restitution of the objects NK 394, NK 602, NK 604a-b, NK 615, NK 620, NK 631, NK 636a-b, NK 864a-b, NK 1552, NK 1553, NK 1618, NK 1627, NK 1763, NK 1787, NK 1798, NK 1940, NK 2436, NK 2447, NK 2484, NK 2581, NK 2707a-b, NK 2904, NK 2905 and NK 2919.
- to return NK 1892 (P. Cappelli, *Roman capriccio*) to the heirs of Kurt Walter Bachstitz.

Adopted at the meeting of 14 September 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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### 13. Recommendation regarding Schönemann

(case number RC 1.81)

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In a letter dated 14 May 2007, the Minister for Education, Culture and Science (hereafter referred to as: 'the Minister') requested the Restitutions Committee (hereafter referred to as: 'the Committee') to issue a recommendation regarding the application submitted by A.W.M. (hereafter referred to as 'the applicant') on 3 April 2007 for the restitution of three works of art in the Netherlands Art Property Collection (hereafter referred to as: 'the NK collection'). According to the applicant, the art dealership of his stepfather Moritz Schönemann involuntarily lost possession of these works during the occupation. The applicant is represented by Imke Gielen, lawyer in Berlin.

The application concerns *The archangel Michael and St. Laurence* (NK 2082) by an anonymous artist, *Landscape with fighting horses and birds* (NK 2085) by R.J. Savery and *A man-of-war firing a salute: ships in a calm at sunset* (NK 2366) by W. van de Velde II. The painting NK 2082 is on loan to the Bonnefantenmuseum in Maastricht, the painting NK 2085 is on loan to Kasteel Doorwerth and NK 2366 is currently housed in the depot of the Netherlands Institute for Cultural Heritage. The last-named painting is also part of another application for restitution (RC 1.90A). The Minister rejected that application in accordance with the Committee's recommendation on 31 August 2009.

#### The procedure

Together with the application for restitution, the applicant added an investigation report by historian Marian Blumberg of Berlin, dated 29 March 2007. At the Committee's request, the applicant also provided additional information concerning the ownership and the subsequent loss of possession of the claimed works of art in letters dated 1 August 2008 and 29 October 2008. The Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 24 November 2008. This draft report was sent to the applicant for comment on 19 December 2008, with the request for more information about the ownership and subsequent loss of possession of the works. The RC also indicated which archives the applicant could still consult. The draft investigatory report was sent to the Minister in a letter dated 19 December 2008 with a request for factual information. On 28 January 2009, the Ministry informed the Committee that no further information would be brought to its attention. The applicant responded to the draft investigatory report in a letter dated 30 March 2009. On 4 May 2009, the Committee again asked the applicant to provide more information about the ownership of the claimed works. In letters dated 22 May and 8 July 2009, the applicant did provide the Committee with some further research details. The investigatory report was subsequently adopted during the meeting of 12 October 2009. For the facts of the case, the Committee refers to the investigatory report.

#### Considerations:

1. The applicant requests the restitution of three paintings in the Netherlands Art Property Collection in his capacity as heir of his stepfather, Moritz Schönemann (1883-1969), whose art dealership, according to the applicant, involuntarily lost possession of the work as a consequence of the Nazi regime. The applicant is the son from the first marriage of Charlotte Schönemann (1896-2005), Moritz Schönemann's second wife. In this context, the Committee has taken cognisance of several legal inheritance documents submitted by the applicant, which have not led the Committee to question his status as heir.
2. The relevant facts are described in the investigatory report of 12 October 2009. The following is a summary. Moritz Schönemann was born on 7 April 1883 in Burgpreppach, Germany. He was of German nationality and Jewish descent. He operated an art dealership on the Kurfürstendamm in Berlin. Schönemann had at least three brothers, Ferdinand, Josef and Martin. Ferdinand dealt in carpets, and, like their brother Moritz, Josef and Martin were also art dealers. After the Nazis had assumed power in Germany, Moritz Schönemann was forced in 1935 by the *Reichskulturkammer*, the Reich Chamber of Culture, to dissolve his art dealership. In September 1936, he and his first wife fled to the Netherlands, where he set up a new art dealership on 1 October 1936 at Minervalaan 57 II in Amsterdam. According to the registration in the Chamber of Commerce, the art dealership traded under the name 'M. Schönemann', and was an 'art dealership, agency and art broker'.
3. As evidenced in a statement he gave in July 1954, Moritz Schönemann was in France during the occupation of the Netherlands. According to the applicant, Moritz Schönemann and his wife were travelling in France in 1939 and were caught unawares at the outbreak of the Second World War. They were subsequently incarcerated in various concentration camps in France up until May 1941. After that, the couple went into hiding in France or Monaco and survived the war. It is not known whether the art dealership M. Schönemann was engaged in trading activities in the Netherlands during the war, nor whether the dealership had any trading stock at the start of the German occupation of the Netherlands. No evidence was found in the archives that the art dealership was placed under the administration of a German Verwalter. Documents from the Chamber of Commerce show that the art dealership M. Schönemann officially went into liquidation on 8 February 1943.

4. Martin Schönemann, a brother of Moritz, was living in Amsterdam in the late 1930s, where he and a trading partner operated an art dealership at Stadionweg under the name 'Firma Herman Rotschild & Co' established in March 1938. Martin dissolved this art dealership on 27 August 1940. On the basis of extant documents at the Netherlands Art Property Foundation (SNK), the Committee considers it plausible that in the summer/autumn of 1940, Martin Schönemann was still dealing in art. Martin Schönemann had had a Panamanian passport since late 1938. He left for Switzerland in October 1940. Josef Schönemann, another of Moritz's brothers, also had an art dealership in Amsterdam in the 1930s, a public limited company with the name 'Heraldus NV'. Investigation has shown that Josef Schönemann emigrated to the United States in 1937 or thereabouts. The art dealership Heraldus NV was dissolved in October 1940.
5. In 1961, via his lawyer, Moritz Schönemann enquired with the Netherlands Property Administration Institute (NBI) about objects of art, carpets and gobelins which the German authorities were said to have confiscated at his address. However, it was not specified which objects were missing. The NBI referred the lawyer to a forerunner of the NIOD, in connection with archive records held there of the Einsatzstab Reichsleiter Rosenberg (ERR), a looting unit that was active during the occupation. No further correspondence was found. The Committee's research in the ERR archives did not reveal any further information.
6. During provenance research of the claimed works at the Federal Archive in Koblenz, various records were found that provided insight into the period during which the works were traded, such as particulars concerning the buyer and the sums for which they were purchased. For instance, the archive contains an overview of works returned to the Netherlands after the war which includes the currently claimed works. The provenance of the works NK 2082 and NK 2085 is given as: '1940 von Schönemann an / Dienststelle Dr. Mühlmann' [1940 from Schönemann to / Dienststelle Mühlmann] (next to NK 2085 is an insertion 'für hfl. 3.850,' [for NLG 3,850]). The following is said about the provenance of the painting NK 2366: 'von Schönemann an Dr. / Plietzsch, den Haag / 17.12.1942 von dort für / RM 40.000,- an A. Neuerburg, / Hamburg' [from Schönemann to Dr / Plietzsch, The Hague / 17 December 1942 from there for / RM 40,000 to A. Neuerburg, / Hamburg]. It can be concluded from so-called Property Cards in the same archive for the works NK 2082 and NK 2366 that this concerned a certain Schönemann from Amsterdam. The card belonging to NK 2366 notes that the work came from an 'art dealer Schönemann' of Amsterdam. No initials are specified in conjunction with the surname 'Schönemann'.
7. The claimed works are also mentioned in correspondence provided by the applicant between the Wiedergutmachungskammer (Chamber of Reparation) of the Landesgericht (District Court) of Berlin and the Oberfinanzdirektion München (regional finance office in Munich) in the 1960s, concerning the property of Martin Schönemann and his wife. According to the regional finance office in Munich, the three works did not belong to the couple but to 'einer Kunsthandlung Schönemann in Amsterdam' [an art dealership Schönemann in Amsterdam]. The office also noted that: 'Die Kunsthandlung Schönemann verkaufte sie 1940 und 1942 über eine deutsche Dienststelle in Den Haag nach Deutschland.' [The art dealership Schönemann sold them in 1940 and 1942 through a German agency in The Hague to Germany.] This probably refers to the Dienststelle Mühlmann, as given in the overview of returned works (consideration 6).
8. Information about the works was also found in the Netherlands Art Property Foundation (SNK) archive. These are internal declaration forms drawn up by the SNK itself, on which it is noted that the works were originally the property of 'Schönemann', with the addition of the place name Amsterdam in the case of the works NK 2082 and NK 2366. All three works were said to have been sold voluntarily. No evidence was found in the archive that Moritz Schönemann reported the loss of the three currently claimed works to the SNK after the war, nor does the archive contain any declarations made by Martin or Josef Schönemann concerning these claimed works.
9. Under the Decree establishing the Restitutions Committee of 16 November 2001, the Committee's task is to advise the Minister for OCW 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. The Committee can only recommend restitution if 'the title thereto has been proved with a high degree of probability and there are no indications to the contrary'. The Committee refers to the Ekkart Committee's eighth recommendation concerning the private ownership of works of art, which also applies to art dealerships and is part of restitution policy.
10. On the basis of the investigation, the Committee regards it as uncertain whether the claimed paintings were traded by art dealership M. Schönemann (Moritz) during the occupation. While the investigation makes a plausible case for the fact that one of the three brothers Schönemann – or their art dealerships – sold the works to employees of the Dienststelle Mühlmann, it has not been made clear which art dealer/ art dealership was involved in the transactions. Contrary to what the Origins Unknown Agency assumed, the investigation did not show that the transactions were conducted by a Schönemann art dealership with the initial 'M'. The Committee regards the applicant's contention that Moritz Schönemann was the only brother who did business under the name 'Schönemann', and therefore that the documentation concerning the sales relates exclusively to the latter's art dealership, as unconvincing. Experience has shown that trade names and surnames of art dealers in documents from the war and in post-war archives were often mixed up. Contrary to the applicant's opinion, the Committee regards it as unlikely that art dealership M. Schönemann was involved in the transactions seeing as at the time these were conducted, Moritz was in

France. Nor has it been made plausible that paintings were sold from stock by a third party.

11. Moreover, the Committee considers the following. Even if the art dealership M. Schönemann had sold the works during the occupation, it would still be far from clear whether the art dealership actually owned the works at that point. As indicated in consideration 2, the art dealership was also active as an agency, trading works belonging to others. The provenance history of the three paintings is anything but conclusive: no documents were found from which it can be concluded when and from whom art dealership M. Schönemann purchased the works. In connection with this, the applicant was unable to provide documentation showing what the art dealership's property consisted of, such as auction details, proofs of purchase or stock records. Nor did the Committee's investigation reveal any relevant information.
12. In view of the above, the Committee advises the Minister to reject the application for restitution of the paintings NK 2082, NK 2085 and NK 2366.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject A.W.M.'s application for the restitution of the paintings NK 2082, NK 2085 and NK 2366.

Adopted at the meeting of 12 October 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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## 14. Recommendation regarding Mautner - A

(case number RC 1.89-A)

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In a letter dated 13 June 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 five works of art in the Netherlands Art Property Collection (hereafter referred to as: 'the NK collection'). This concerns paintings that may have been owned by Mautner (1889-1944) and that were returned to the Netherlands from Germany after the Second World War. This recommendation is confined to four of the five works (see explanation in the paragraph below), namely:

- F. Timmermann, *The Beheading of St. John the Baptist* (NK 1655);
- A. van Blocklandt (formerly attributed to F. Floris), *The Judgement of Paris* (NK 1783);
- J.G. Platzer, *The Marriage Feast at Cana* (NK 2216);
- copy after P. Brueghel II, *A Tax Collector's Office* (NK 2297).

The works in question are currently housed in the depot of the Netherlands Institute for Cultural Heritage (ICN) or on loan to Dutch museums.

### The procedure

In a letter dated 4 April 2007, J.M.P. of A. (USA) and J.H.-M. of A. (USA) (hereafter referred to as 'the applicants') submitted an application to the Minister for the restitution of five paintings said to have been part of the collection of a member of their family, Wilhelm Mautner (hereafter referred to as: 'Mautner'). The applicants were represented in this procedure by the lawyer Henning Kahmann of Von Trott zu Solz Lammek of Berlin.

In the context of the request submitted to it for recommendation, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 9 February 2009. The draft investigatory report was sent to the applicants for comment and to the minister with a request for additional information on 9 February 2009. On 9 March 2009, the Minister said that he would not be using this opportunity. After the Committee granted the applicants' request for additional response time, the applicants

sent a response by letter on 25 May 2009, in which, with regard to NK 1783, the applicants also requested more time. This request was granted by the Committee. However, in a letter dated 30 June 2009, the applicants said that they were unable to provide more information.

The Committee also conducted additional research into the role played by Hans Alfred Wetzlar (hereafter referred to as: 'Wetzlar'), who, at the time, probably acted as agent in transactions with Mautner. The Committee asked Wetzlar's family about this in May 2009, but they were unable to provide any information. The applicants' responses and the Committee's additional research were included in the investigatory report, which was subsequently adopted on 12 October 2009. For the facts of the case, the Committee refers to this report. It emerged during the procedure that NK 2655 is also part of an application for restitution concerning the art dealership D. Katz of Dieren, known from 1941 onwards as 'Schilderijen en Antiquiteitenhandel v/h D. Katz N.V.', referred to here jointly as 'kunsthandel Katz' [art dealership Katz] (RC 1.90-B). In a letter dated 13 July 2009, the Committee informed the applicants that it would postpone its recommendation until the investigation of NK 2655 in the RC 1.90-B case had also been concluded. During the consultations regarding RC 1.89, the Committee decided to split the case into two recommendations to accelerate progress. This means that NK 1655, NK 1783, NK 2216 and NK 2297 are included in the current recommendation RC 1.89-A while the recommendation regarding NK 2655 will be postponed.

#### Considerations:

1. The applicants request the return of five paintings – four of which are discussed in this recommendation – that are said to have been the property of Wilhelm Mautner (1889-1944). The applicants stated that Mautner lost possession of the works with inventory numbers NK 1655, NK 1783, NK 2216 and NK 2297 '*due to Nazi persecution during the German occupation of The Netherlands*'. The applicants are J.M.P. and J.H.-M., a daughter and a granddaughter, respectively, of F. Mautner, a brother of Wilhelm Mautner. According to the applicants, they form '*the community of heirs after Dr. Wilhelm Mautner*'. The Committee has several inheritance documents. On the basis of these documents and the applicants' statements, the Committee deems it plausible that within the framework of this application, the applicants are among those with entitlement rights.
2. Under the terms of the recommendations of the Ekkart Committee from 2001 and the Government's 2001 response to these recommendations, a case is only settled if '*the Council for the Restoration of Property Rights or another competent court has pronounced judgment*' or if '*the claim for restitution resulted in a conscious and deliberate settlement or the claimant expressly renounced his claim for restitution*'. Since the Committee found nothing to indicate that any of these circumstances has arisen, the Committee deems the applicants' application for restitution admissible.
3. The relevant facts are described in the investigation report of 12 October 2009. The following summary of events will suffice for the present purposes. Mautner was a German '*economist en procuratiehouder*' [economist and attorney-in-fact] of Jewish extraction who had moved to the Netherlands before the Second World War. Resident in Amsterdam, Mautner had a collection of paintings that also included some Dutch Masters. During the German occupation of the Netherlands, he gave works of art to various people for safekeeping. Mautner probably also acquired and sold a number of artworks during the war years. After the war, Hans Alfred Wetzlar, a friend of Mautner, stated '*dat de Heer Mautner nogal het een en ander in schilderijen deed*' [that Mr Mautner dabbled in paintings], but that from 1941, he was no longer able to do so in his own name because of his Jewish origins. According to Wetzlar, this is why he '*verschillende schilderijen voor hem op mijn naam gekocht*' [bought several paintings for him in my name]. Mautner was deported in December 1943 and died in Auschwitz around 29 September 1944.
4. In their letter of 25 May 2009, the applicants wrote that '*Mautner, who was a wealthy banker before the German occupation of the Netherlands, had the intention to keep his art collection and even expanded it during the German occupation rather than setting up an art dealership business (...)*'. According to the applicants, the Committee should, because of this fact, consider Mautner's situation in accordance with the regulations concerning private art property. The Committee considers in this regard that Mautner was not officially established as an art dealer and that no evidence was found to suggest that he was heavily involved in the purchase and sale of works of art. For these reasons, the Committee will indeed consider Mautner's situation in accordance with the regulations concerning private art property.
5. Pursuant to the regulations concerning private art property, the Committee can recommend restitution if the original owner of the claimed object lost possession involuntarily due to circumstances directly related to the Nazi regime. According to the Ekkart Committee's eighth recommendation of 2001, the title to the object must be proven with a high degree of probability and there must be no indications to the contrary. The sale of an object in the Netherlands between 10 May 1940 and 5 May 1945 by private persons who belonged to a population group that was persecuted is regarded as involuntary unless expressly proven otherwise.
6. Given the available information about the ownership of the current works NK 1655, NK 1783, NK 2216 and NK 2297, the Committee proposes the following classification.



24. *A tax collector's office*, copy after Pieter Bruegel II (NK 2297).

Category A: ownership Mautner not highly probable

NK 1783

The Committee does not deem it highly probable that the painting NK 1783, *The Judgement of Paris* by the artist A. van Blocklandt (formerly attributed to F. Floris), was at any time before and/or during the war in Mautner's possession. In their letter of 25 May 2009, the applicants stated that Mautner had sent a photograph of the work to the Netherlands Institute for Art History during the war, a fact that in their view indicates that the work was in Mautner's possession. However, the Committee is of the opinion that this evidence alone is insufficient to prove ownership by Mautner with a high degree of probability. The Committee will therefore recommend that the application for the restitution of NK 1783 be rejected.

NK 2216

With regard to the painting NK 2216, *The Marriage Feast at Cana* by the artist J.G. Platzer, no evidence was found that Wilhelm Mautner was the owner. It was probably owned by someone with the same surname, namely Franziska (Fanny) Mautner and/or her husband Alfred George Mautner. As far as the RC knows, they were not directly related to Wilhelm Mautner. The applicants endorse this reading of the facts in their response to the draft investigatory report of 9 February 2009. The Committee will therefore recommend that the application for the restitution of NK 2216 be rejected.

Category B: ownership Mautner highly probable

NK 1655

With regard to NK 1655, the Committee has evidence that Mautner owned this painting, *The Beheading of St. John the Baptist*, by the artist F. Timmermann. The applicants stated that the work was, in all probability, in Mautner's possession well before the occupation (letter of 25 May 2009), but the Committee was unable to establish exactly when Mautner acquired it. Nevertheless, the Committee is of the opinion that it is highly probable that the work was in his possession, a conclusion it bases on a post-war statement by Wetzlar that the painting was 'oorspronkelijk in bezit' [originally in possession] of 'Dr. W. Mautner (overleden)' [Dr W. Mautner (deceased)] and that it came into the possession of 'Goepel, 1943' as a result of 'vrijwillige verkoop' [voluntary sale]. 'Goepel' probably refers to Erhard Göpel, who bought works of art for the 'Sonderauftrag Linz' on Adolf Hitler's behalf. The Committee has found documentation in the Federal Archive in Koblenz (Germany) that confirms these transaction details. On the basis of Wetzlar's statement and the Federal Archive documents, the Committee has come to the conclusion that Wetzlar acted as middleman for Mautner in the sale of the current NK 1655 and that the year of loss of possession was, in all likelihood, 1943.

### NK 2297

With regard to the painting NK 2297, *A Tax Collector's Office*, a copy after the artist P. Brueghel II, the Committee likewise comes to the conclusion that there is a high degree of probability that Mautner owned the work during the war. When and from whom he acquired it is not known, but the Committee does have access to a post-war letter to the Dutch authorities in which Wetzlar states that Mautner sold it '*aan den Heer Walter Kadzik te Weenen*' [to Mr Walter Kadzik of Vienna] during the war. Wetzlar also stated that he acted as middleman for Mautner in this transaction and that Mautner received payment. In the Committee's opinion, this all shows that Wetzlar did indeed act in that capacity in the sale of the current NK 2297 and that loss of possession took place during the war.

7. Given the fact that Mautner, a Jewish man, belonged to a persecuted population group, it must be assumed that the sales of the current NK 1655 and NK 2297 during the war took place under duress (see consideration 5). No evidence was found during the investigation that contradicts the enforced nature of the sales. On the contrary, the Committee considers it entirely conceivable that bit by bit, Mautner's freedom of movement was curbed during the war on account of anti-Jewish measures and that for that reason, he asked his friend Wetzlar to conduct the sales on his behalf. In the light of an escape plan Mautner hatched during the war with the help of his brother in the US, evidence for which was found in the archive of the Ministry of Justice in London, this is even more plausible. For these reasons, in its final report the Committee will recommend that NK 1655 and NK 2297 be returned to Mautner's heirs.
8. Finally, the Committee is considering whether, in connection with the proceeds from the sale received at the time, a payment obligation should be imposed in return for the restitution of the current NK 1655 and NK 2297. In this context, the Committee refers to the fourth recommendation of the Ekkart Committee of April 2001, which stipulates that an obligation for repayment only applies if and to the extent that the then seller or his or her heirs actually obtained the free disposal of the proceeds. In connection with this, with regard to NK 1655, the Committee notes that during the investigation a German source was found in which sales proceeds of NLG 24,000 are mentioned, although it does add that it is unclear what happened to that sum of money. Similarly, the applicants state that it is not clear whether Mautner received the proceeds. As for NK 2297, the Committee has access to Wetzlar's statement saying that Mautner was paid in full, although other sources mention proceeds of RM 68,000. In this case, too, the applicants state that it is unclear whether Mautner received this sum. They also add that this sale of Mautner's (to Kadzik in Vienna) comprised twelve works of art, and that the said sum may have been the proceeds of the sale of all these works together.  
For the Committee, this constitutes evidence to suggest that payments were made for the current NK 1655 and NK 2297, and that Mautner may have received sums of money from sales. This evidence is, however, insufficient to establish the amounts of any sums received and to determine whether Mautner or his heirs did indeed obtain the free disposal of any such sums. The Committee takes into consideration the fact that shortly after the sale, at least of NK 1655 in 1943 (see consideration 6), Mautner was deported to a concentration camp. For these reasons, the Committee is of the opinion that it is not plausible that Mautner or his heirs had free disposal of the sum that he may have received, and that imposing a payment obligation in return for the restitution of these two works of art is therefore not justifiable.

### **Conclusion**

The Restitutions Committee advises the Minister for Education, Culture and Science to

- reject the application for the works NK 1783 and NK 2216;
- grant the application for the works NK 1655 and NK 2297 and to return them to Mautner's heirs.

The Committee is postponing the case involving the other work (NK 2655).

Adopted at the meeting of 12 October 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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## 15. Recommendation regarding Hollander

(case number RC 1.97)

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In a letter dated 17 October 2008, the Minister for Education, Culture and Science (hereafter referred to as: 'the Minister') requested the Restitutions Committee to issue a recommendation regarding the application for the restitution of the watercolour *Horses by a stable* by W. Verschuur II, which is currently in the Dutch National Art Collection and has inventory number NK 2569. It concerns a work of art that may have belonged to Eduard Hollander (1897-1944, hereafter referred to as: 'Hollander') that was returned to the Netherlands from Germany after the Second World War. The work is on loan to the Rijksmuseum's National Print Collection in Amsterdam.

### The procedure

In June 2007, J.C.M.-F. of B. (US) submitted an application for restitution to the Minister, also on behalf of her brother J.M. (hereafter also referred to as: 'the applicants'), as '*heir[s] of Eduard Hollander*'. In her letter she refers to correspondence conducted with the Origins Unknown Agency (BHG). The application for restitution is based on evidence from the BHG that the current NK 2569 was owned by their grandfather Eduard Hollander (1897-1944) and that he may have involuntarily lost possession of it during the war.

Following the request for a recommendation, the Committee instigated a fact-finding investigation, the results of which were included in the draft investigatory report dated 8 June 2009. This draft report was sent to the applicants on 26 June 2009 for comment and also to the Minister with a request for additional information. On 23 July 2009, the Minister informed the Committee that no further information would be brought to its attention. Despite a further invitation in a letter dated 25 August 2009, the applicants have not responded. The Committee therefore assumes that the applicants have no wish to add any further comments. The investigatory report was subsequently adopted by the Committee on 12 October 2009. For the facts of the case, the Committee refers to this report.

### Considerations:

1. The applicants requested the restitution of the watercolour *Horses by a stable* by W. Verschuur II (NK 2569). M.-F. stated that she and her brother J.M. are heirs of Hollander. The applicants stated that their mother, Anna Elisabeth Hollander-Marinissen (1926-2000), was the only child from Hollander's first marriage to Marion Clara Johanna Cats (1899-1943), which lasted until 1934 when it ended in divorce. Hollander was remarried to Louise Marie Hortense Emmanuel van den Berg (1905-1996) in 1938.
2. The Committee examined whether this case should be considered to have been settled in the past. In connection with this, the Committee is not aware of any judgements issued by the Council for the Restoration of Rights or any other authorised judicial body regarding Hollander's former art collection. Nor does the Committee have any evidence showing that Hollander's heirs renounced their right of action. The Committee therefore deems the applicants' request admissible.
3. The relevant facts are described in the investigatory report of 12 October 2009. The following summary suffices for this purpose. Hollander was a Dutch lawyer of Jewish descent from The Hague who died in Auschwitz in 1944. On various occasions during the Second World War, Hollander offered works of art for sale and/or sold works of art to the Kunsthandel voorheen J. Goudstikker N.V. in Amsterdam, under the management of the German Alois Miedl. It can be concluded from the records of the Kunsthandel voorheen J. Goudstikker N.V. that Hollander very probably sold the watercolour on or around 31 October 1940 to this art dealership for the sum of NLG 450. According to these records, the watercolour was then sold to '*Breidenbacherhof*' in Düsseldorf on 25 August 1943. As far as is known, Hollander's heirs did not notify the Dutch authorities after the war that the watercolour was missing.
4. Based on the regulations concerning private art property, restitution is possible if the original owner of the claimed object involuntarily lost possession of it due to circumstances directly related to the Nazi regime. According to the Ekkart Committee's eighth recommendation from 2001, the title to the object must be proved with a high degree of probability and there must not be any indications to the contrary. The sale of an object in the Netherlands between 10 May 1940 and 5 May 1945 by private persons who belonged to a population group that was persecuted is regarded as involuntary unless expressly proven otherwise.
5. The Committee notes the following with regard to the right of ownership of the currently claimed work NK 2569. Although it is not known when and how Hollander came into possession of this work, the Committee regards it as proven that the work was, in any event, in Hollander's possession on 31 October 1940. The Committee bases this on a letter from Hollander of that date in which he talks of the sale of the watercolour to the Kunsthandel voorheen J. Goudstikker N.V. for a sales price of NLG 450, as well as on an invoice with the date 8 November 1940 and on a record of the details of the sale in the ledgers of the Kunsthandel dated 9 November 1940.
6. Regarding the nature of this loss of possession, the Committee notes the following. Given the fact that as a Jew, Hollander belonged to a persecuted population group and that the sale of the claimed work must be dated somewhere around 31 October 1940, it must be assumed that this sale took place under duress. It

can be concluded therefore that as the original owner, Hollander involuntarily lost possession of the current work NK 2569 due to circumstances directly related to the Nazi regime. No evidence was found during the investigation to contradict this conclusion.

7. The Committee therefore deems that all grounds for restitution have been met. The Committee sees no reason to recommend repayment of the consideration of NLG 450 received at the time. Pursuant to the fourth recommendation of the Ekkart Committee of 26 April 2001, repayment of the sales proceeds can only be considered if the seller actually obtained the free disposal of the proceeds, and in case of doubt, the previous owner should be given the benefit of the doubt.  
In the absence of further information, the Committee considers the following in this respect. As a Jew living in a country occupied by the Nazis, Hollander's situation was perilous. He was picked up in 1943 and deported to the Auschwitz concentration camp where he perished in 1944. The Committee deems it plausible that Hollander was forced to use the sales proceeds he received in 1940 to finance ways of avoiding Nazi persecution. The Committee therefore considers it implausible that Hollander obtained the free disposal of this sum within the meaning of restitutions policy.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to return the watercolour *Horses by a stable* by W. Verschuur II (NK 2569) to the heirs of Eduard Hollander.

Adopted at the meeting of 12 October 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, 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)



25. *Horses by a stable*, watercolour by W. Verschuur II (NK 2569).

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## 16. Recommendation regarding Wolf

(case number RC 1.101)

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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 'the applicants') on 14 November 2007 for the restitution of three works of art in the Netherlands Art Property Collection (hereafter referred to as: 'the NK collection'). The applicants are the daughters of Daniel Wolf, to whom the objects are said to have belonged during the Second World War. The applicants are represented by Mr P.L., Daniel Wolf's grandson.

The application concerns *A country wedding* by P. Brueghel II (NK 2227), the painting *Madonna and child* by L. Cranach (NK 3071) and a *Medallion carpet made of wool with star flower in the centre* (NK 1042). The object NK 1042 is also at issue in another application for restitution and will be dealt with in connection with that (RC 1.104). The painting NK 2227 is on loan to the Noordbrabants Museum in Den Bosch; the painting NK 3071 is under the administration of the Mauritshuis in The Hague.

### The procedure

The reason for the application for restitution was that a German lawyer approached Mr P.L. in October 2007, alerting him to the presence of the current objects in the NK collection. After carrying out his own research, L. then decided to submit an application for restitution on behalf of his mother and aunt. At the Minister's request, L. provided some additional information in a letter dated 10 December 2007.

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 14 September 2009. The draft investigatory report was sent to the applicants for comment in a letter dated 30 September 2009 and to the Minister with a request for factual information on

1 October 2009. On 15 October, the Minister informed the Committee that no further information would be brought to its attention. The applicants responded to the draft investigatory report in a letter dated 29 October 2009, on the basis of which it was subsequently amended. The draft report was subsequently adopted on 9 November 2009 and sent to the applicants on 10 November 2009. For the facts of the case, the Committee refers to this report.

### Considerations:

1. The applicants requested the restitution of the paintings NK 2227 and NK 3071 in their capacity as heirs to their father Daniel Wolf. In this context, the Committee has taken cognisance of several documents pertaining to the law of inheritance. These documents have given the Committee no reason to doubt the applicants' status as rightful heirs.
2. The relevant facts are described in the investigatory report of 9 November 2009. The following is a summary. Daniel Wolf (hereafter referred to as: 'Wolf'), of Jewish descent, was born in Arnhem, the Netherlands, on 3 January 1893. He married Renée Louise Gokkes in 1919 and the couple had two daughters (the present applicants). Wolf was a successful businessman. He had a great interest in antiques and art and owned a substantial collection of paintings. From 1937, the family lived at 'Groot Haesebroek', an estate in Wassenaar. The applicants stated that Wolf was in France at the time of the German invasion. Soon after, he managed to escape to England. Later in the war, he moved to the United States and died in New York in 1943.
3. 'Groot Haesebroek' was seized shortly after the German invasion of the Netherlands, and subsequently served as residence for a high-ranking Nazi. Wolf's assets were placed under the administration of a *Verwalter* in November 1940. According to the applicants, the claimed paintings were in their father's house when it was confiscated. In connection with this, the applicants submitted a document drawn up in 1952 by Loyens & Volkmaars, a firm of accountants, during the settlement of Wolf's estate. The document provides an overview of Wolf's painting collection on 10 May 1940 (hereafter also referred to as: 'the 1952 overview'). Among the works listed is a painting by Brueghel and one by Cranach. Despite the fact that the overview contains no titles or descriptions of the paintings, the Committee deems it highly likely that these are the currently claimed works, given the other documentation found (see considerations 4 and 5). However, in the 1952 overview, the works by Brueghel and Cranach are part of a group of paintings alongside which is the note '*in pand van Dr. Tietje*' [pledged by Dr Tietje]. This refers to H.C.W. Tietje, who, like Wolf, was a wealthy industrialist and art lover.
4. That a situation of pledge did exist is also evident in extant documents from the audit and trust company *Deutsche Revisions- und Treuhand-Aktiengesellschaft* (DRT), which recorded Wolf's financial circumstances in 1942. According to a DRT report, Wolf and Tietje were mutually involved in various business transactions and Tietje had given Wolf a number of paintings in pledge as security for the repayment of a several monetary loans. On the basis of this report too, the Committee deems it likely that the currently claimed Brueghel (NK 2227) and Cranach (NK 3071) were part of the pledge.

5. The Committee concludes that the rest of the documents also indicate that Wolf was not the owner of the claimed paintings but that he held them as pledgeholder. Reference is also made to information contained in the archives of the Netherlands Art Property Foundation (SNK) such as a letter of 22 January 1946 by or to Mr C.J. Kuyser of the Military Investigation Department of the Central Property Investigation Department, and to provenance details from the Federal Archive in Koblenz, Germany.
6. It also appears from the 1952 overview that the Cranach painting (NK 3071) was sold to Alois Miedl with Tietje's permission for a sum of NLG 35,000 in June 1940, and was then sold on to Göring. As regards the Brueghel painting (NK 2227), it is noted that the *Verwalter* returned it to Tietje in March 1943 as part of a settlement related to the business relations between Tietje and Wolf. This is consistent with information in the DRT report. The applicants challenged the legal validity of these acts in their response of 29 October 2009. This is discussed in considerations 10 and 11.
7. In October 1945, Wolf's heirs reported the loss of the painting '*Merry-making peasants (fair)*' by Brueghel (NK 2227) to the SNK. It was noted in the report that Wolf was holding the painting in pledge for Tietje. However, the report also noted that the *Verwalter* returned it to Tietje by mistake. Wolf's heirs seem to have changed this viewpoint at a later date. In a letter dated 9 January 1951, they inform the competent authorities as follows:  
*'Inderdaad was Dr. Tietje eigenaar van het bovengenoemde schilderij en de heer D. Wolf pandhouder. [...] Uit de ons in 1945 ter beschikking staande gegevens meenden wij destijds te moeten concluderen, dat deze teruggave van het schilderij inderdaad ten onrechte was geschied. Bij het afwikkelen van de boedel van thans wijlen de Heer D. Wolf, [...] hebben wij eerst onlangs inzake onze verhouding tot de Heer Tietje moeten concluderen, dat door ons voor deze dading tussen de toenmalige beheerder, de Heer Kattenstroth en Tietje, geen rechtsherstel moet worden aangevraagd. Daar door ons van de theoretische mogelijkheid van rechtsherstel voor deze dading geen gebruik wordt gemaakt, kunnen door ons geen rechten meer worden geldend gemaakt op het bovengenoemde schilderij en trekken wij hierbij de aangifte van vermissing daarvan in.'*  
[Dr Tietje was indeed the owner of the aforementioned painting and Mr D. Wolf the pledgeholder. (...) Based on the information we had in 1945, we believed at the time that this painting had indeed been wrongfully returned. Only recently, when the late Mr D. Wolf's estate was being settled, (...), have we been obliged to conclude with regard to our relationship with Mr Tietje that we should not request the restoration of rights for this settlement between the former administrator Mr Kattenstroth and Tietje. As we are not taking advantage of the theoretical possibility of the restoration of rights, we can no longer exert our rights to the above painting and therefore withdraw our declaration of loss thereof.]
8. In October 1945, Wolf's heirs also reported the loss of the painting '*Madonna and child*' by Cranach (NK 3071) to the SNK. However, in a letter dated 22 January 1953, the heirs stated that: '*dat door ons afstand wordt gedaan van alle rechten, welke wij mogelijkerwijs zouden kunnen doen gelden i.v.m. ons bovengenoemd schilderij, vroeger eigendom van thans wijlen de Heer D. Wolf en verplichten ons geen stappen te zullen ondernemen om al of niet tegen betaling van de door U genoemde f. 35.000 dit schilderij in ons eigendom terug te verkrijgen.*' [We are waiving all rights which we may have been able to exert to our painting mentioned above, the former property of the late Mr D. Wolf, and undertake to refrain from taking any steps to regain possession of said painting, whether for payment of the sum of NLG 35, 000 mentioned by you or otherwise.]  
In connection with the Cranach painting, the Committee concludes that in 1953, the heirs refer to it as Wolf's property, even though this is contrary to the information in the 1952 overview and to the other provenance details. As the applicants have, for that matter, not provided any information that would suggest title to ownership, the Committee concludes in the light of considerations 3 to 6, that Wolf held the painting in pledge.
9. In a letter to the Minister dated 10 December 2007, the applicants noted that the lack of financial resources was the reason why the heirs decided not to claim the paintings in the 1950s. The Committee does not consider this plausible, however. Rather, the correspondence shows that the heirs had resigned themselves to the settlement and believed that they could not exert any rights to the paintings. In this context, the Committee refers to the last part of the quotation cited in consideration 8, which shows that possible repayment did not play a part in the decision not to claim the Cranach painting.
10. In their response to the draft investigatory report, the applicants argued that the sale of the Cranach painting (NK 3071) in June 1940 probably took place without Wolf's knowledge or permission as he was abroad at the time. Hence they are of the opinion that the sale was involuntary and, therefore, unlawful. In this regard, the applicants refer to another painting from Wolf's collection (Jan Steen's *The Alchemist*), which was also sold to Alois Miedl in Wolf's absence in the summer of 1940. After the war, the SNK assumed that the Jan Steen painting had been sold by an unauthorised party, after which it returned to the heirs of Wolf on payment of the sales price received during the war. As for the Brueghel painting (NK 2227), the applicants challenge the legal validity of the March 1943 settlement between Tietje and the *Verwalter* and the painting's return to Tietje related to it. In their opinion, the settlement was probably reached without Wolf having been consulted and the return of the painting was unlawful, given that Tietje's debt to Wolf had not been redeemed.

11. As regards the applicants' arguments, the Committee considers it perfectly possible that the sale of NK 3071 to Miedl in June 1940 and the return of NK 2227 to Tietje in March 1943 took place without Wolf's knowledge or permission. It is no longer possible to find out whether due to these events, Wolf, as pledgeholder, was at a disadvantage. It is not the task of the Committee, however, to advise the Minister on the reparation of financial loss that may have occurred during the war. The Committee's exclusive task, as described in Article 2, paragraph 1 of the Decree establishing the Restitutions Committee of 16 November 2001, is to advise the Minister 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. 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. The results of the investigation suggest however, that Wolf was not the owner of the claimed paintings but held them in pledge. In the Committee's opinion, the comparison with the return of the Jan Steen painting does not hold. After all, according to the 1952 overview, the Jan Steen painting was Wolf's property while the claimed work NK 3071 was owned by Tietje, according to that overview.
12. In the light of the above, the Committee considers that the conditions for restitution have not been met and recommends that the application for restitution of the works NK 2227 and NK 3071 be rejected.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for the restitution of *A country wedding* by P. Brueghel II (NK 2227) and the painting *Madonna and child* by L. Cranach (NK 3071).

Adopted at the meeting of 9 November 2009 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, 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)



26. *Madonna and child* by Lucas Cranach (NK 3071).

## Appendices

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

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

Zoetermeer  
16 November 2001

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

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

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

Herewith decrees as follows:

#### **Article 1**

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

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

#### **Article 2**

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

#### **Article 3**

1. The Committee shall comprise no more than 7 members, including the chairman and the deputy chairman.
2. Both the chairman and the deputy chairman shall be qualified lawyers (*meester in de rechten*).

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

#### **Article 4**

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

#### **Article 5**

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

#### **Article 6**

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

#### **Article 7**

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

#### **Article 8**

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

**Article 9**

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

**Article 10**

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

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

**Article 11**

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

**Article 12**

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

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

The State Secretary for Education, Culture and Science

[signed]

F. van der Ploeg

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

## **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

**Decision by the Minister for Education, Culture and Science of 27 November 2009, no. DCE/09/170990, regarding the appointment and honourable discharge of members of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War**

The Minister for Education, Culture and Science,

Having regard to Article 3, paragraphs five and six, of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War;

decides:

**Article 1**

Accompanied by an expression of thanks for services rendered, honourable discharge is granted, at his own request, to Prof. J.C.M. Leijten as member of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War as of 1 January 2010.

**Article 2**

Mr D.H.M. Peeperkorn, of Amsterdam, has been appointed member of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War, from 1 January 2010 until 23 December 2010.

A copy of this decision, notification of which shall appear in the Government Gazette, will be sent to all those concerned.

*The Minister for Education, Culture and Science,*  
R.H.A. Plasterk.

Published in the Government Gazette 21 December 2009, no. 19707

## **LETTER FROM THE MINISTER FOR EDUCATION, CULTURE AND SCIENCE (OCW)**

To the Speaker of the Lower House of the States General

The Hague, 10 July 2009

The Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (Restitutions Committee for short) was established in 2001. The Restitutions Committee's primary task is to give the Minister for OCW, at the latter's request, independent advice on 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.

The government's decision to set up the Restitutions Committee was the result of a discussion that ensued in the Netherlands and abroad in the second half of the 1990s concerning Nazi-looted possessions and the question regarding the extent to which post-war restoration of rights had succeeded in remedying the material injustice done to victims of persecution. The investigations that the government instructed several committees to conduct from 1997 onward showed that – with hindsight and in the light of current insights – post-war restoration of rights had been formalistic, bureaucratic and cold. In its letter to the Lower House of 21 March 2000 (TK 1999–2000, 25 839, no. 13), the government fully acknowledged this and took the position that this required they draw certain conclusions, including the handling of applications for restitution submitted by owners or their descendants.

At the time, the Origins Unknown Committee chaired by Prof. Dr R.E.O. Ekkart played an important role in terms of government policy on the restitution of stolen works of art. From 1997 to 2004, this committee headed the research into the provenance of works in what is known as the Netherlands Art Property Collection (remaining works of art recovered for the most part from Germany after the war that were still in the possession of the State of the Netherlands) and into the methods deployed by the Netherlands Art Property Foundation (SNK), which was responsible for the recovery and restitution of items of cultural value in the years after the war. The Ekkart Committee also made a number of recommendations for government policy on the restitution of stolen works of art.

The government adopted most of the Ekkart Committee's recommendations at the time. They constituted the basis of a lenient restitution policy that could serve as an assessment framework for claims presented to the Restitutions Committee. With it, the Netherlands complied with international recommendations such as those down in the Washington Principles on Nazi Confiscated Art (1998). In the past seven years, the Netherlands has earned an

excellent reputation nationally and internationally where the elaboration and implementation of its lenient restitution policy is concerned.

In its final recommendations of December 2004, the Ekkart Committee advised that the period for submitting applications for restitution under the lenient restitution policy expire two years after publication of the government response to these final recommendations (Parliamentary Documents II, 2004–2005, 25 839, no. 36) in the Government Gazette. This set the end date of the lenient restitution policy at 4 April 2007. In a letter of 3 April 2007, of which I sent a copy to the Lower House, I informed the Restitutions Committee that it could continue to issue advice on applications for restitution submitted after 4 April 2007 on the basis of government policy adopted in 2000.

On further consideration, I have decided to continue the lenient restitution policy for the following reasons:

- Since the initial closing date of 4 April 2007, a further 20 applications for restitution have been submitted. This number is surprisingly large and was not anticipated when the end date was set at 4 April 2007. In terms of content, there is no difference between claims submitted before 4 April 2007 and claims that have been or will be submitted after that date. The importance of a consistent and equal handling of these claims is therefore a key argument in my decision to continue the lenient restitution policy for the time being. I would also like to note that an important argument for setting the initial end date was that, as time passed, it became increasingly difficult to gain first- and second-hand information on the circumstances of loss of possession during the war. Practical experience with the handling of applications for restitution has since shown that the lack of such information is not decisive, because the Restitutions Committee can also draw on other sources of information (such as archival records).
- National and international interest in 'looted art' continues unabated, as evidenced by the interest in the Holocaust Era Assets Conference held in Prague in late June 2009. The conference theme was 'Ten years after the Washington Conference on Holocaust-Era Assets'. The Prague conference resulted in a declaration (the Terezin Declaration) in which the 46 participating countries reconfirmed their support for the Washington Principles on Nazi-Confiscated Art and called for the continued application thereof in national restitution procedures.
- Moreover, early this year the Netherlands Museum Association started a four-year investigation into museum acquisitions in the 1933–1940 period and from 1948 onward. This investigation is a follow-up to the study conducted in 1999 into museum purchases in the 1940–1948 period and concerns both items of cultural value that are not part of the National Art Collection (municipalities, provinces) and objects owned by the State of the Netherlands. Where this museum investigation results in applications for the restitution of objects from the National Art Collection, I will ask the Restitutions Committee to advise me. Moreover, the Restitutions Committee will be able to perform its advisory task in ownership disputes between third parties that do not involve objects from the National Art Collection.

At this point in time it is difficult to judge when the number of claims will dry up. With the completion of the museum investigation, the end of an important chapter in the restoration of rights is in sight. Both the Dutch National Art Collection and museum collections owned by others (municipalities, provinces) will by then have been studied and a good understanding of the potentially problematic provenance of the items of cultural value in these collections will have been gained. It will then be necessary to set a reasonable claims term to give stakeholders the opportunity to respond. I have therefore decided not to set an end date for the lenient restitution policy yet, but to await the findings of the museum investigation. The final report on the museum investigation is expected in the autumn of 2012. Based on that report and also in the light of international developments in the area of restitution of Nazi-confiscated art, I will then consider how and within what term the lenient restitution policy and, with it, the work of the Restitutions Committee can be terminated. I will inform the Lower House after the museum investigation has been concluded (autumn of 2012). On that occasion I will also effectuate an amendment to the Decree establishing the Advisory Committee on the Assessment of Restitution Applications geared to termination of restitution policy.

The Minister for Education, Culture and Science,  
R.H.A. Plasterk

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## TEREZIN DECLARATION

June 30, 2009

Upon the invitation of the Prime Minister of the Czech Republic we the representatives of 46 states listed below met this day, June 30, 2009 in Terezin, where thousands of European Jews and other victims of Nazi persecution died or were sent to death camps during World War II. We participated in the Prague Holocaust Era Assets Conference organized by the Czech Republic and its partners in Prague and Terezin from 26-30 June 2009, discussed together with experts and non-governmental organization (NGO) representatives important issues such as Welfare of Holocaust (Shoah) Survivors and other Victims of Nazi Persecution, Immovable Property, Jewish Cemeteries and Burial Sites, Nazi- Confiscated and Looted Art, Judaica and Jewish Cultural Property, Archival Materials, and Education, Remembrance, Research and Memorial Sites. We join affirming in this Terezin Declaration on Holocaust Era Assets and Related Issues

- Aware that Holocaust (Shoah) survivors and other victims of Nazi persecution have reached an advanced age and that it is imperative to respect their personal dignity and to deal with their social welfare needs, as an issue of utmost urgency,
- Having in mind the need to enshrine for the benefit of future generations and to remember forever the unique history and the legacy of the Holocaust (Shoah), which exterminated three fourths of European Jewry, including its premeditated nature as well as other Nazi crimes,
- Noting the tangible achievements of the 1997 London Nazi Gold Conference, and the 1998 Washington Conference on Holocaust-Era Assets, which addressed central issues relating to restitution and successfully set the stage for the significant advances of the next decade, as well as noting the January 2000 Stockholm Declaration, the October 2000 Vilnius Conference on Holocaust Era Looted Cultural Assets,
- Recognizing that despite those achievements there remain substantial issues to be addressed, because only a part of the confiscated property has been recovered or compensated,
- Taking note of the deliberations of the Working Groups and the Special Session on Social Welfare of Holocaust Survivors and their points of view and opinions which surveyed and addressed issues relating to the Social Welfare of Holocaust Survivors and other Victims of Nazi Persecution, Immovable Property, Nazi Confiscated Art, Judaica and Jewish Cultural Property, Holocaust Education, Remembrance and Research, which can be found on the weblink for the Prague Conference and will be published in the Conference Proceedings,
- Keeping in mind the legally non-binding nature of this Declaration and moral responsibilities thereof, and without prejudice to applicable international law and obligations,

1. Recognizing that Holocaust (Shoah) survivors and other victims of the Nazi regime and its collaborators suffered unprecedented physical and emotional trauma during their ordeal, the Participating States take note of the special social and medical needs of all survivors and strongly support both public and private efforts in their respective states to enable them to live in dignity with the necessary basic care that it implies.
2. Noting the importance of restituting communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution, the Participating States urge that every effort be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress of property, which were part of the persecution of these innocent people and groups, the vast majority of whom died heirless.
3. Recognizing the progress that has been made in research, identification, and restitution of cultural property by governmental and non-governmental institutions in some states since the 1998 Washington Conference on Holocaust-Era Assets and the endorsement of the Washington Conference Principles on Nazi-Confiscated Art, the Participating States affirm an urgent need to strengthen and sustain these efforts in order to ensure just and fair solutions regarding cultural property, including Judaica that was looted or displaced during or as a result of the Holocaust (Shoah).
4. Taking into account the essential role of national governments, the Holocaust (Shoah) survivors' organizations, and other specialized NGOs, the Participating States call for a coherent and more effective approach by States and the international community to ensure the fullest possible, relevant archival access with due respect to national legislation. We also encourage States and the international community to establish and support research and education programs about the Holocaust (Shoah) and other Nazi

crimes, ceremonies of remembrance and commemoration, and the preservation of memorials in former concentration camps, cemeteries and mass graves, as well as of other sites of memory.

5. Recognizing the rise of Anti-Semitism and Holocaust (Shoah) denial, the Participating States call on the international community to be stronger in monitoring and responding to such incidents and to develop measures to combat anti-Semitism.

### **The Welfare of Holocaust (Shoah) Survivors and other Victims of Nazi Persecution**

Recognizing that Holocaust (Shoah) survivors and other victims of Nazi persecution, including those who experienced the horrors of the Holocaust (Shoah) as small and helpless children, suffered unprecedented physical and emotional trauma during their ordeal. Mindful that scientific studies document that these experiences frequently result in heightened damage to health, particularly in old age, we place great priority on dealing with their social welfare needs in their lifetimes. It is unacceptable that those who suffered so greatly during the earlier part of their lives should live under impoverished circumstances at the end.

1. We take note of the fact that Holocaust (Shoah) survivors and other victims of Nazi persecution have today reached an advanced age and that they have special medical and health needs, and we therefore support, as a high priority, efforts to address in their respective states the social welfare needs of the most vulnerable elderly victims of Nazi persecution – such as hunger relief, medicine and homecare as required, as well as measures that will encourage intergenerational contact and allow them to overcome their social isolation. These steps will enable them to live in dignity in the years to come. We strongly encourage cooperation on these issues.
2. We further take note that several states have used a variety of creative mechanisms to provide assistance to needy Holocaust (Shoah) survivors and other victims of Nazi persecution, including special pensions; social security benefits to non-residents; special funds; and the use of assets from heirless property. We encourage states to consider these and other alternative national actions, and we further encourage them to find ways to address survivors' needs.

### **Immovable (Real) Property**

Noting that the protection of property rights is an essential component of a democratic society and the rule of law, Acknowledging the immeasurable damage sustained by individuals and Jewish communities as a result of wrongful property seizures during the Holocaust (Shoah), Recognizing the importance of restituting or compensating Holocaust-related confiscations made during the Holocaust era between 1933-45 and as its immediate consequence, Noting the importance of recovering communal and religious immovable property in reviving and enhancing Jewish life, ensuring its future, assisting the welfare needs of Holocaust (Shoah) survivors, and fostering the preservation of Jewish cultural heritage,

1. We urge, where it has not yet been effectively achieved, to make every effort to provide for the restitution of former Jewish communal and religious property by either in rem restitution or compensation, as may be appropriate; and
2. We consider it important, where it has not yet been effectively achieved, to address the private property claims of Holocaust (Shoah) victims concerning immovable (real) property of former owners, heirs or successors, by either in rem restitution or compensation, as may be appropriate, in a fair, comprehensive and nondiscriminatory manner consistent with relevant national law and regulations, as well as international agreements. The process of such restitution or compensation should be expeditious, simple, accessible, transparent, and neither burdensome nor costly to the individual claimant; and we note other positive legislation in this area.
3. We note that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences.
4. We recommend, where it has not been done, that states participating in the Prague Conference consider implementing national programs to address immovable (real) property confiscated by Nazis, Fascists and their collaborators. If and when established by the Czech Government, the European Shoah Legacy

Institute in Terezin shall facilitate an intergovernmental effort to develop non-binding guidelines and best practices for restitution and compensation of wrongfully seized immovable property to be issued by the one-year anniversary of the Prague Conference, and no later than June 30, 2010, with due regard for relevant national laws and regulations as well as international agreements, and noting other positive legislation in this area.

### **Jewish Cemeteries and Burial Sites**

Recognizing that the mass destruction perpetrated during the Holocaust (Shoah) put an end to centuries of Jewish life and included the extermination of thousands of Jewish communities in much of Europe, leaving the graves and cemeteries of generations of Jewish families and communities unattended, and Aware that the genocide of the Jewish people left the human remains of hundreds of thousands of murdered Jewish victims in unmarked mass graves scattered throughout Central and Eastern Europe, We urge governmental authorities and municipalities as well as civil society and competent institutions to ensure that these mass graves are identified and protected and that the Jewish cemeteries are demarcated, preserved and kept free from desecration, and where appropriate under national legislation could consider declaring these as national monuments.

### **Nazi-Confiscated and Looted Art**

Recognizing that art and cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution was confiscated, sequestered and spoliated, by the Nazis, the Fascists and their collaborators through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress, during the Holocaust era between 1933-45 and as an immediate consequence, and Recalling the Washington Conference Principles on Nazi-Confiscated Art as endorsed at the Washington Conference of 1998, which enumerated a set of voluntary commitments for governments that were based upon the moral principle that art and cultural property confiscated by the Nazis from Holocaust (Shoah) victims should be returned to them or their heirs, in a manner consistent with national laws and regulations as well as international obligations, in order to achieve just and fair solutions,

1. We reaffirm our support of the Washington Conference Principles on Nazi-Confiscated Art and we encourage all parties including public and private institutions and individuals to apply them as well,
2. In particular, recognizing that restitution cannot be accomplished without knowledge of potentially looted art and cultural property, we stress the importance for all stakeholders to continue and support intensified systematic provenance research, with due regard to legislation, in both public and private archives, and where relevant to make the results of this research, including ongoing updates, available via the internet, with due regard to privacy rules and regulations. Where it has not already been done, we also recommend the establishment of mechanisms to assist claimants and others in their efforts,
3. Keeping in mind the Washington Conference Principles on Nazi-Confiscated Art, and considering the experience acquired since the Washington Conference, we urge all stakeholders to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Naziconfiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties. Governments should consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.

### **Judaica and Jewish Cultural Property**

Recognizing that the Holocaust (Shoah) also resulted in the wholesale looting of Judaica and Jewish cultural property including sacred scrolls, synagogue and ceremonial objects as well as the libraries, manuscripts, archives and records of Jewish communities, and Aware that the murder of six million Jews, including entire communities, during the Holocaust (Shoah) meant that much of this historical patrimony could not be reclaimed after World War II, and Recognizing the urgent need to identify ways to achieve a just and fair solution to the issue of Judaica and Jewish cultural property, where original owners, or heirs of former original Jewish owners, individuals or legal persons cannot be identified, while acknowledging there is no universal model,

1. We encourage and support efforts to identify and catalogue these items which may be found in archives, libraries, museums and other government and non-government repositories, to return them to their original rightful owners and other appropriate individuals or institutions according to national law, and to consider a voluntary international registration of Torah scrolls and other Judaica objects where appropriate, and
2. We encourage measures that will ensure their protection, will make appropriate materials available to scholars, and where appropriate and possible in terms of conservation, will restore sacred scrolls and ceremonial objects currently in government hands to synagogue use, where needed, and will facilitate the circulation and display of such Judaica internationally by adequate and agreed upon solutions.

### **Archival Materials**

Whereas access to archival documents for both claimants and scholars is an essential element for resolving questions of the ownership of Holocaust-era assets and for advancing education and research on the Holocaust (Shoah) and other Nazi crimes, Acknowledging in particular that more and more archives have become accessible to researchers and the general public, as witnessed by the Agreement reached on the archives of the International Tracing Service (ITS) in Bad Arolsen, Germany, Welcoming the return of archives to the states from whose territory they were removed during or as an immediate consequence of the Holocaust (Shoah), We encourage governments and other bodies that maintain or oversee relevant archives to make them available to the fullest extent possible to the public and researchers in accordance with the guidelines of the International Council on Archives, with due regard to national legislation, including provisions on privacy and data protection, while also taking into account the special circumstances created by the Holocaust era and the needs of the survivors and their families, especially in cases concerning documents that have their origin in Nazi rules and laws.

### **Education, Remembrance, Research and Memorial Sites**

Acknowledging the importance of education and remembrance about the Holocaust (Shoah) and other Nazi crimes as an eternal lesson for all humanity, Recognizing the preeminence of the Stockholm Declaration on Holocaust Education, Remembrance and Research of January 2000, Recognizing that the Universal Declaration of Human Rights was drafted in significant part in the realization of the horrors that took place during the Holocaust, and further recognizing the U.N. Convention on the Prevention and Punishment of the Crime of Genocide, Recalling the action of the United Nations and of other international and national bodies in establishing an annual day of Holocaust remembrance, Saluting the work of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (ITF) as it marks its tenth anniversary, and encouraging the States participating in the Prague Conference to cooperate closely with the Task Force, and Repudiating any denial of the Holocaust (Shoah) and combating its trivialization or diminishment, while encouraging public opinion leaders to stand up against such denial, trivialization or diminishment,

1. We strongly encourage all states to support or establish regular, annual ceremonies of remembrance and commemoration, and to preserve memorials and other sites of memory and martyrdom. We consider it important to include all individuals and all nations who were victims of the Nazi regime in a worthy commemoration of their respective fates,
2. We encourage all states as a matter of priority to include education about the Holocaust (Shoah) and other Nazi crimes in the curriculum of their public education systems and to provide funding for the training of teachers and the development or procurement of the resources and materials required for such education.
3. Believing strongly that international human rights law reflects important lessons from history, and that the understanding of human rights is essential for confronting and preventing all forms of racial, religious or ethnic discrimination, including Anti-Semitism, and Anti-Romani sentiment, today we are committed to including human rights education into the curricula of our educational systems. States may wish to consider using a variety of additional means to support such education, including heirless property where appropriate.
4. As the era is approaching when eye witnesses of the Holocaust (Shoah) will no longer be with us and when the sites of former Nazi concentration and extermination camps, will be the most important and undeniable evidence of the tragedy of the Holocaust (Shoah), the significance and integrity of these sites including

all their movable and immovable remnants, will constitute a fundamental value regarding all the actions concerning these sites, and will become especially important for our civilization including, in particular, the education of future generations. We, therefore, appeal for broad support of all conservation efforts in order to save those remnants as the testimony of the crimes committed there to the memory and warning for the generations to come and where appropriate to consider declaring these as national monuments under national legislation.

### Future Action

Further to these ends we welcome and are grateful for the Czech Government's initiative to establish the European Shoah Legacy Institute in Terezin (Terezin Institute) to follow up on the work of the Prague Conference and the Terezin Declaration. The Institute will serve as a voluntary forum for countries, organisations representing Holocaust (Shoah) survivors and other Nazi victims, and NGOs to note and promote developments in the areas covered by the Conference and this Declaration, and to develop and share best practices and guidelines in these areas and as indicated in paragraph four of Immovable (Real) Property. It will operate within the network of other national, European and international institutions, ensuring that duplicative efforts are avoided, for example, duplication of the activities of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (ITF).

Following the conference proceedings and the Terezin Declaration, the European Commission and the Czech Presidency have noted the importance of the Institute as one of the instruments in the fight against racism, xenophobia and anti-Semitism in Europe and the rest of the world, and have called for other countries and institutions to support and cooperate with this Institute.

To facilitate the dissemination of information, the Institute will publish regular reports on activities related to the Terezin Declaration. The Institute will develop websites to facilitate sharing of information, particularly in the fields of art provenance, immovable property, social welfare needs of survivors, Judaica, and Holocaust education. As a useful service for all users, the Institute will maintain and post lists of websites that Participating States, organizations representing Holocaust (Shoah) survivors and other Nazi victims and NGOs sponsor as well as a website of websites on Holocaust issues.

We also urge the States participating in the Prague Conference to promote and disseminate the principles in the Terezin Declaration, and encourage those states that are members of agencies, organizations and other entities which address educational, cultural and social issues around the world, to help disseminate information about resolutions and principles dealing with the areas covered by the Terezin Declaration.

A more complete description of the Czech Government's concept for the Terezin Institute and the Joint Declaration of the European Commission and the Czech EU Presidency can be found on the website for the Prague Conference and will be published in the conference proceedings.

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- |                           |                     |                                  |
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| 2. Argentina              | 18. FYROM           | 34. Portugal                     |
| 3. Australia              | 19. Germany         | 35. Romania                      |
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| 6. Belgium                | 22. Ireland         | 38. Slovenia                     |
| 7. Bosnia and Herzegovina | 23. Israel          | 39. Spain                        |
| 8. Brazil                 | 24. Italy           | 40. Sweden                       |
| 9. Bulgaria               | 25. Latvia          | 41. Switzerland                  |
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| 16. Finland               | 32. Norway          | Serbia ( <i>observer</i> )       |

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