

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



Annual Report 2005



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## Annual Report 2005

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Cover:

*Ferry boat with cattle on the river Vecht near Nijenrode* by S.J. van Ruysdael (NK 1519) (Goudstikker case)



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1. J. Goudstikker's notebook

## Foreword

One of the most important topics during the reporting year was the investigation and advice in relation to the application for restitution in the Goudstikker case. The application concerned 267 works of art. The Committee advised the State Secretary to return 202 works. After discussing the matter with the Cabinet, the State Secretary adopted the advice, although some of the reasons given differed from those of the Committee. Despite the fact that the Committee does not subscribe to some of the State Secretary's arguments, the outcome is nevertheless satisfactory, particularly in light of the considerable effort that the Committee and Secretariat put into this case.

The Committee also submitted advice on five other applications for restitution, including two involving art galleries. The State Secretary adopted the Committee's advice in all of these cases.

The Committee convened fifteen times. In addition to the time spent in the meetings, the preparations and follow-up required a great deal of time and energy from all involved.

During the early months of the reporting year, our Secretary/Reporter, who was on maternity leave, was replaced by Nicole Hagemans who was initially coached in the job by the Secretary/Reporter and was supported by the other members of the Secretariat. She was very good replacement.

At present, 19 more applications for restitution are still waiting to be processed. In view of the fact that potential applicants are being specifically approached, some 20 further applications for restitution can be expected.

The Committee will be able to continue its duties assured in the knowledge that it is assisted by an enthusiastic Secretariat and research team.

B.J. Asscher  
Chairman





# I. Introduction

## 1.1. The Restitutions Committee

The Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (*Adviescommissie restitutieverzoeken cultuurgoederen en Tweede Wereldoorlog*, hereinafter referred to as ‘the Restitutions Committee’) advises the State Secretary of Education, Culture and Science on applications for the return of items of cultural value whose original owners lost possession involuntarily owing to circumstances relating directly to the Nazi regime.

The Restitutions Committee is made up of lawyers, an art historian and a historian, and is independent from the Ministry of Education, Culture and Science. The Restitutions Committee commenced its activities in January 2002. Since the members of the Committee were initially appointed for a period of three years, with effect from 23 December 2004 five members were reappointed and two new members were appointed for three years (until 23 December 2007).<sup>1</sup> The Restitutions Committee now consists of the following members:

Mr B.J. Asscher (Chairman)  
Prof. J.Th.M. Bank  
Prof. J.C.M. Leijten  
Mr P.J.N. van Os  
Dr E.J. van Straaten  
Ms H.M. Verrijn Stuart  
Prof. I.C. van der Vlies.

## 1.2. Looking back on 2005

The year 2005 was characterised by a substantial rise in the number of cases to be processed. In 2005 alone, the State Secretary referred sixteen new applications for restitution to the Restitutions Committee: double the number in previous years. Last year the Committee issued six recommendations, including, for the first time since it was established, recommendations concerning art dealerships. Such cases involve the loss of works of art by Jewish art dealers during the occupation. Compared with cases involving private ownership of art, the involuntary aspect of the loss of possession is less obvious with art dealerships, since the sale of art continued to be part of normal business operations during the occupation. One of the art-trade cases that the Restitutions Committee considered last year was the Goudstikker claim, a case that has received a great deal of media attention for several years. The Goudstikker restitution applications concern a large number of paintings, several of which are very important from an art-historical point of view, and which are

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<sup>1</sup> Netherlands Government Gazette, 17-1-2005, no. 11.

currently included in the Netherlands Art Property Collection (*Nederlands Kunstbezit-collectie*, hereinafter referred to as the ‘NK collection’). Two applications have been submitted in connection with this case, with a distinction being made between the so-called old trading stock and the new trading stock. Toward the end of December 2005, the Restitutions Committee issued its advice on the application for the return of 267 works of art that belonged partly to the old trading stock.<sup>2</sup> That advice is discussed in Chapter 4.

### 1.3. The organisation

The Restitutions Committee is supported in its activities by the Secretariat, which is headed by Secretary/Reporter Ms E. Campfens. With effect from June 2005, Ms T. Brandse succeeded Ms T. Bodenhorst as Office Manager.

Research into the provenance of works of art is primarily carried out by Ms A. Marck, who has also been appointed as Deputy Secretary, and by Ms E. Muller and Ms A.J. Kool. Halfway through the year, the Secretariat obtained the temporary assistance of Ms S.C.L. Olie and Mr F.M. Kunert. The art-trade cases, in particular, took up a great deal of the available research capacity in 2004 and 2005, since those cases frequently involve large numbers of art objects. Despite the deployment of extra researchers, it proved impossible to launch the investigation into the facts for all sixteen new requests submitted for advice. The handling of several requests was therefore postponed until early in 2006. This means that a significantly larger number of cases will have to be addressed during the coming years than has been the case until now. This was one of the reasons why a request for an increased budget was submitted to the Ministry of Education, Culture and Science at the end of 2004.

### 1.4. Summary of the Annual Report

Chapter 2 briefly sets out the background and origins of the Restitutions Committee. Chapter 3 addresses the government policy on which the Restitutions Committee bases its advice, with special focus on the policy for the restitution of art dealers’ works of art. Chapter 4 contains a summary of the Restitutions Committee’s recommendations. The full recommendations are enclosed as appendices to the Annual Report. Chapter 5 presents a survey of the total number of recommendations issued from 2002 onward, and reports on two international conferences on stolen art attended by members of the Committee.

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<sup>2</sup> The old trading stock comprises the art objects that were in the art dealer’s possession at the moment that he was forced to hand over management of the gallery; the new trading stock comprises works of art that were purchased under the responsibility of the new manager. See also footnote 3.

## 2. Background and origins of the Restitutions Committee

Between 1940 and 1945, under the Nazi regime works of art were taken from the Netherlands to Germany on a large scale. Private Jewish owners were forced to surrender their possessions, or their homes were looted after they fled or were deported. Jewish art galleries were put under the supervision of a manager or sold, and their stocks of art mostly found their way to Germany.<sup>3</sup> After the occupation had ended, the government attempted to have as many works of art as possible brought back to the Netherlands (recovery), and the original owners, or their surviving relatives, were given the opportunity to submit an application for works of art to be returned (restitution). Most of those applications were handled by the Netherlands Art Property Foundation (*Stichting Nederlands Kunstbezit*, 'SNK'), under the supervision of the Netherlands Property Administration Institute (*Nederlands Beheersinstituut*). Based on internal guidelines, the burden of proof of the loss of ownership under duress lay with the owner, and the works could only be returned in exchange for payment of any sale price received during the war and payment of the costs of recovery. In July 1951, the possibility to submit an application for restitution ended with the lapsing of the term within which such applications were permitted in accordance with the prevailing regulations. For a comprehensive description of the post-war restoration of rights, please refer to the 2002 Annual Report, which can be read on the Restitutions Committee's website (<http://www.restitutiecommissie.nl>) or obtained from the Secretariat.

To this day, the State of the Netherlands still has a great many works of art in its custody that were recovered from Germany after the Second World War. The part of the Dutch National Art Collection that comprises these works with a 'war record' is called the Netherlands Art Property Collection (*NK-collectie*). This collection includes over 4000 works of art, and is in the custody of the Netherlands Institute for Cultural Heritage (*Instituut Collectie Nederland* (ICN)) of the Ministry of Education, Culture and Science. The collection is partly on loan to various museums and government institutions, while the remainder is in storage at the ICN.

From the late 1990s onward, the return of looted art possessions became the focus of renewed attention in the Netherlands and abroad. For example, at an international conference in 1998, the *Washington Principles on Nazi Confiscated Art* were adopted, while the following year the Parliamentary Assembly of the Council of Europe issued a resolution on *Looted Jewish Cultural Property*. These statements advocate a lenient restitution policy for possessions looted during the war, with a simultaneous recommendation to opt for a form of alternative dispute settlement that does not fall within the scope of the regular judicial process.

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<sup>3</sup> At the instructions of the German occupiers, all Jewish businesses were placed under management, pursuant to Order 48/1941 of 12 March 1941, also known as the 'Order for the Removal of Jews from the Business Sector' (*Verordening tot verwijdering van joden uit het bedrijfsleven*). There were two types of managers: the *Treuhänder*, whose task was to wind up the business, and the *Verwalter*, for long-term management. Most Jewish art galleries in the Netherlands were faced with a *Verwalter*, who took over the running of the business and in some cases even bought up the entire gallery. See Gerard Aalders, *Roof, de ontvreemding van joods kunstbezit tijdens de Tweede Wereldoorlog* (Amsterdam, 1999), Chapter 5.



2. Hitler inspects the new works of art for the Führermuseum in Linz.

During the same period, the Dutch government set up a number of committees, which addressed various aspects of looted property and the possibilities for the restoration of rights offered after the war.<sup>4</sup> In response to the outcome of that investigation, the government concluded that – looking back with today’s understanding and perspective – the system for restoration of rights had been too formal and bureaucratic and had been particularly cold.<sup>5</sup> The Origins Unknown Committee (*Commissie Herkomst Gezocht*), which is generally referred to under the name of its Chairman, Prof. R.E.O. Ekkart, was established in this connection and played an important part in the history of the Restitutions Committee. From 1997 onwards, the Origins Unknown Committee supervised the investigation into the provenance of the entire Netherlands Art Property Collection (NK collection) by the Origins Unknown Project Office (*Projectbureau Herkomst Gezocht*), which had been especially established for that purpose. The Ekkart Committee also submitted a number of recommendations to the government as to the policy to be adopted for applications for the return of works of art from that collection. In general terms, those recommendations advocate a more generous restitution policy.

In light of these developments, the government decided in 2001 to establish an independent advisory committee to deal with individual applications for the return of looted items of cultural value. This was in line with a more policy-based than juristic approach to the restitutions issue. At the same time the committee’s independence would be conducive to the acceptance of the decisions made, because, as owner/custodian of the NK Collection, the government is directly involved in the decision about restitution.<sup>6</sup> The Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (*Adviescommissie restitutieverzoeken cultuurgoederen en Tweede Wereldoorlog*, ‘the Restitutions Committee’) was therefore established by a Decree issued by the State Secretary of Education, Culture and Science on 16 November 2001.

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<sup>4</sup> The WWII Assets Contact Group (*Contactgroep Tegoeden Tweede Wereldoorlog*, the Van Kemenade Committee), the WWII Financial Assets Research Supervisory Committee (*Begeleidingscommissie onderzoek financiële tegoeden Tweede Wereldoorlog*, the Scholten Committee), the Liro Archives Research Committee (*Commissie Onderzoek Liro-archieven*, the Kordes Committee), the Indonesian Assets Research Supervisory Committee (*Begeleidingscommissie Onderzoek Indische Tegoeden*, the Van Galen Committee), and the Origins Unknown Committee (*Commissie Herkomst Gezocht*, the Ekkart Committee).

<sup>5</sup> See the letter from the Prime Minister, Minister of General Affairs, and the Minister of Health, Welfare and Sport and the Minister of Finance to the Speaker of the Lower House of the Dutch Parliament of 21 March 2000 (*Lower House of Parliament, 1999-2000, 25 839, no. 13*).

<sup>6</sup> See the letter from the State Secretary of Education, Culture and Science to the Speaker of the Lower House of the Dutch Parliament of 29 June 2001 (*Lower House of Parliament, 2000-2001, 25 839, no. 26*).

### 3. Mandate and policy framework

#### 3.1. General

The task of the Restitutions Committee is to respond to requests from the State Secretary of Education, Culture and Science by issuing advice on decisions to be made about the restitution of items of cultural value that the original owner lost involuntarily as a result of circumstances connected directly to the Nazi regime. If those items are in the possession of the State of the Netherlands, the Committee is required to perform that task with due observance of the relevant *government policy*. If the items are not in the government's possession, the Restitutions Committee must judge the case based on standards of *reasonableness and fairness*.<sup>7</sup> To date, almost all applications have pertained to the Dutch National Art Collection, for which government policy forms the assessment framework.

Government policy on returning works of art is based largely on the Ekkart Committee's recommendations to the government, which were drawn up in three phases:

- a. Interim recommendations on private art property (April 2001)
- b. Recommendations on restitution of works of art belonging to art dealers (January 2003)<sup>8</sup>
- c. Final recommendations (December 2004)

To provide a full and convenient overview, all the recommendations are included in Appendix 1.

The government has adopted the main points of the 'Interim recommendations on private art property'<sup>9</sup>, and the 'Recommendations regarding the art trade'<sup>10</sup> and the 'Final recommendations'<sup>11</sup> in their entirety. These recommendations therefore constitute part of the government policy that the Restitutions Committee takes as its standard.

Government policy on restitution of private art property has already been discussed at length in previous Annual Reports of the Restitutions Committee, particularly the 2002 Annual Report. As the Restitutions Committee issued advice in cases concerning art dealerships for the first time in 2005, this Annual Report devotes extra attention to the policy for art dealerships (see section 3.2). Section 3.3 discusses the government's response to the 'Final Recommendations' of the Ekkart Committee.

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<sup>7</sup> Decree establishing the Advisory Committee on the Assessment of Restitution Applications (*Instellingsbesluit Restitutiecommissie*), Article 2(1), (4) and (5).

<sup>8</sup> In this report these recommendations will be cited as 'Recommendations regarding the art trade'.

<sup>9</sup> See Lower House of the Dutch Parliament, 2000-2001, 25 839, nos. 26 and 27 (*Tweede Kamer, 2000-2001, 25 839, nr. 26 and nr. 27*), which are included in the 2002 Annual Report, Appendices 6 and 7. Please refer to the 2002 Annual Report, p. 15, for a number of notes in this regard.

<sup>10</sup> See Lower House of the Dutch Parliament, 2003-2004, 25 839, no. 34, which is included in the 2003 Annual Report, Appendix 4.

<sup>11</sup> See the Netherlands Government Gazette (*Staatscourant*) 4-4-2005, no. 64, (Appendix 2, Dutch version Annual Report 2005).

### 3.2. Restitution policy in art-trade cases

In general, the Ekkart Committee's explanatory notes to the 'Recommendations concerning the art trade' state that it is more difficult to formulate policy recommendations for liberalising the restitution policy for art dealerships than for private parties.<sup>12</sup> The principal complicating factors that the committee lists in that regard are as follows:

- 'that the objective of the art trade is to sell trading stock, which means that a substantial part of the transactions effected, even those of Jewish art dealers, were in principle normal sales;
- that it was very often unclear whether a transaction was effected by the Jewish art dealer himself or by a ('good' or 'bad') Verwalter, that it often was not even clear whether a particular work of art was part of the trading stock from the time before a Verwalter was appointed or was purchased by such a Verwalter himself
- that besides the regular art dealers, who had mostly been established long before war broke out, a growing number of 'occasional dealers' were active from 1940 onward, both Jewish and non-Jewish individuals, who were not established as art dealers but who were involved, to a greater or lesser extent, in the purchase and sale of works of art'.

According to the Ekkart Committee, it would, therefore, be wrong to judge sales of works of art by art dealers in precisely the same manner as those by private parties. In particular, the assumption that sales in the Netherlands by private Jewish parties were made involuntarily from 10 May 1940 onward, as set out in the third Recommendation on private art property, cannot be adopted for art dealerships. In its place, the Ekkart Committee recommends that value be attributed to the qualifications that the owner or heirs used when reporting the loss of property to the Netherlands Art Property Foundation (*Stichting Nederlandsch Kunstbezit* (SNK)) after the war, assuming that such a report was made, in order to assess whether or not a particular sale by an art dealer was voluntary or not. For example, qualifications such as 'theft' or 'confiscation' in the SNK report forms, or 'involuntary' or 'voluntary loss of property', can, in principle, be assumed to be correct. This is set out in recommendations 4, 5 and 6 of the 'Recommendations regarding the art trade'.

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<sup>12</sup> These explanatory notes are included with the 2003 and 2004 Annual Reports as Appendix 3.

Blad 2

## Intern aangifteformulier

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

<p>1. Voorwerp: <b>Schilderij.</b></p> <p>2. Kunstenaar, maker, auteur: <b>H.v. Sebem.</b></p> <p>3. Voorstelling of titel en beschrijving: <b>Twee meisjes met korenschoof.</b></p> <p>4. Materiaal:</p> <p>5. Afmetingen:</p> <p>6. Handtekening, uitgever, merk:</p> <p>7. Dateering:</p> <p>8. Herkomst:</p> <p>9. Litteratuur:</p> <p>10. Tentoonstelling:</p> <p>11. Gefotografeerd of gereproduceerd:</p> <p>12. Naam fotograaf:</p> <p>13. Bijzonderheden:</p> <p>14. Was oorspronkelijk in bezit, gebruik, bewaring of anderszins van: (volledige naam en adres) <b>Henri Druyf, Koninginneweg 47, Amsterdam.</b></p> <p>15. Is door confiscatie, diefstal, gedwongen of vrijwillige verkoop in bezit gekomen van: (volledige naam en adres) <b>Steinecker, Leistikowstrasse 7, Berlin-Charlottenburg 9.</b></p> <p>16. Toelichting: <b>Ingeleverd by Lippmann Rosenthal &amp; Co (20584/7a) volgens fact. 210/1 d.d. 14.5.43. Tax. waarde f. 35.- Verk. prijs f. 100.-.</b></p> <p>17. Deze aangifte geschiedt ingevolge Artikel 1, lid 1 of lid 2 der Verordening, door: (volledige naam en adres) <b>Stichting Nederlandsch Kunstbezit.</b></p> <p>18. Datum: <b>13.10.1946.</b></p>	<p>Volgnr: <b>17360.</b></p> <p>Dat.: <b>13 October 1946.</b></p> <p><b>SCHILDERLIJEN</b> Naam schilder: <b>Sebem H.v.</b></p> <p>Voorstelling: <b>2 Meisjes met korenschoof.</b></p> <p><b>VOORWERPEN</b> Groep: Naam:</p> <p><b>PERSONEN-EIGENAARS</b> Naam oorspr. eigenaar (bewaarder): <b>Druyf H.</b></p> <p><b>PERSONEN-KOOPERS</b> Naam koper (laatste bezitter): <b>Steinecker (via Lippmann).</b></p> <p><b>KANTOOR DEN HAAG</b> Toegenonden met adviesbrief d.d.: Bijlagen:</p> <p style="text-align: center;"><i>Inw. 2004 Tactief TERUG IN NEDERLAND TERUG AAN EIGENAAR</i></p> <p style="text-align: right;"><b>Heyl.</b></p>
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### 3. Report form for internal use by SNK

If these report forms are missing from the available archive material, the second part of the sixth recommendation, and the relevant explanatory note, provide a point of reference:

Involuntary sales include at least the following situations with regard to Jewish art dealers:

- direct sales, under threat of reprisals, to representatives of the occupying power or to Dutch persons convicted after the war for collaboration or other relevant malevolent practices;



- sales in which the supply of passports, the granting of safe conduct, etc., constituted part of the transaction;
- sales against the wishes of the art dealer by Verwalters or by other managers not appointed by the owner, unless proof can be presented that the original owner received the full profits from the sale and he or his heirs or the representative appointed by him or his heirs explicitly waived their rights after the war’.

In the three art-trade cases referred to the Restitutions Committee, the Committee concluded, partly based on this sixth recommendation, that the sale of the works of art was involuntary. The advice in these art-trade cases is discussed in Chapter 4.

Aside from the difference between the policies for returning privately owned art and those for returning art owned by art dealers, as set out above, the majority of the recommendations apply equally to both categories. This follows from the first recommendation regarding the art trade, which states that various recommendations regarding private art property apply equally to art-trade cases. This means that:

- ‘cases in which a decision has been handed down by the Council for the Restoration of Rights or another competent court or in which a formal settlement has been reached between the entitled parties and the organs placed above the SNK, will, in principle,<sup>13</sup> be regarded as closed cases [Recommendations regarding private art property, no. 1];
- repayment of sales revenues will only become an element in the proceedings if and insofar as those revenues were actually placed at the free disposal of the then owner or his heirs [idem no. 4];
- if there is any doubt as to whether the parties in question actually received the revenues, the entitled parties should be given the benefit of the doubt [idem no. 5];
- if full or partial repayment of sales revenues is necessary in connection with a restitution, the amount must be indexed according to the general price index figure [idem no. 6];
- in the case of restitutions, the management costs that the SNK previously established must not be charged on [idem no. 7];
- the pieces may be returned if the proprietary rights are highly reasonable and if no evidence has been revealed to contradict this [idem no. 8].<sup>14</sup>

<sup>13</sup> In its response to the phrase ‘in principle’, the government notes that this may not imply abandonment of the current government policy, which assumes that the post-war restoration of rights will not be reviewed. For the reference, see footnote 10.

<sup>14</sup> See the explanatory notes to the Recommendations regarding the art trade.

The Ekkart Committee's notes also explain that the assumptions that apply to Jewish art dealers established in the Netherlands from the start of the occupation of the Netherlands in May 1940 should apply equally to Jewish art dealers in Germany from 1933 onward and in Austria from 1938 onward.

As regards the admissibility of applications for restitution, the following should also be noted. In general, restitution applications are not taken into consideration (not admissible) if they were already dealt with previously as part of the post-war restoration of rights. This is because the government's point of departure is that the post-war restoration process will not be reconsidered. However, an exception is made in cases involving privately owned art, in that cases dealt with previously may be reconsidered if there is a 'novum' in the broad sense with which the Ekkart Committee defines that concept.<sup>15</sup> Contrary to the common legal meaning, this policy-based concept of a novum includes not only 'new facts' but also 'new insights' in respect of the justice and consequences of the policy followed after the war. Initially, it was unclear to the Restitutions Committee whether that broad interpretation of the concept of a novum also applied to art dealerships because the second recommendation regarding private art property has not been explicitly declared applicable with equal force to the art-trade recommendations.<sup>16</sup> However, inquiries put to the Ekkart Committee revealed that the broad concept of a novum also applies to art dealerships, and was not repeated in the art-trade recommendations only because of its obvious applicability.<sup>17</sup>

### 3.3. Final recommendations

The Ekkart Committee submitted its 'Final Recommendations' to the government on 14 December 2004. In a letter dated 8 March 2005, the government announced that it was adopting those recommendations in their entirety (Appendix 2). The 2004 Annual Report of the Restitutions Committee discusses the implications of those recommendations for government policy and for the activities of the Restitutions Committee (see the *2004 Report*, section 4.4). This will not be repeated in this Annual Report; only the first and second recommendations require discussion here:

#### Recommendation 1

The Committee advises the government to leave open the possibility for claiming works of art from the Netherlands Art Property Collection until two years after the government policy based on these final recommendations has been published in the Netherlands Government Gazette.

<sup>15</sup> See the second Recommendation regarding private art property.

<sup>16</sup> See the first Recommendation regarding the art trade.

<sup>17</sup> This means that a previous comment on this matter in the 2003 Annual Report has been superseded (see footnote 15 in that report).

The government responded to this recommendation as follows:

‘The government agrees with the arguments put forward by the Committee to place a limit on the amount of time during which works of art from the Netherlands Art Property Collection may be claimed. The current restitution policy should indeed be regarded as a temporary measure. The government adopts the period of two years after publication of the present government response in the Netherlands Government Gazette, as recommended by the Committee, as the timeframe during which restitution applications may be submitted. A restriction on the possibilities for claiming works of art from the Netherlands Art Property Collection will also have implications for the Restitutions Committee. We foresee that the Restitutions Committee will still have recommendations to issue until a year after the possibility of filing claims has lapsed. As a result, it will probably be possible to repeal the Decree establishing that Committee toward the end of 2007. The members of the Restitutions Committee have now been appointed until the end of 2007’.

The publication of the government’s response in the Netherlands Government Gazette of 4 April 2005 makes it clear that it is possible to submit restitution applications to the State Secretary of Culture, Education and Science until **4 April 2007** by citing the more generous government policy.

It will depend on the number of restitution applications whether the Restitutions Committee can be disbanded at the end of 2007. During the course of 2005, the Restitutions Committee expressed the expectation in its long-term budget that it might prove impossible to complete all cases by the end of 2007, considering the number of requests for advice that the State Secretary has referred to the Committee.

#### Recommendation 2

A year prior to the lapsing of the possibility to file claims, the government should give ample publicity to the approaching end of that possibility.

In response to this recommendation, the government states:

‘The government also agrees, in accordance with recommendation two, to give extensive publicity to the lapsing of the possibility to file claims under the expanded government policy well before the possibility lapses. The publicity will be provided via Dutch embassies, consulates, etc. outside the Netherlands, as well as through regular methods of publication such as daily newspapers in the Netherlands and abroad. A second exhibition concerning the Netherlands Art Property Collection is certain to generate a great deal of publicity once again. Consideration should be given to who might organise such a second exhibition, and where’.

It is now known that the Ministry of Education, Culture and Science will start a campaign from March 2006 to publicise the final date for submission of applications for restitution. On the date of publication of this Annual Report, it was not yet known whether a new exhibition of the Netherlands Art Property Collection would be organised.

The Ekkart Committee completed its activities with a final report published on 14 December 2004.<sup>18</sup> At present, Prof. R.E.O. Ekkart is still seeking further information, on behalf of the Ministry of Education, Culture and Science, concerning works from the Netherlands Art Property Collection whose original owners are now known and where there might have been involuntary loss of possession. This is expected to lead to several more restitution applications.



4. SNK poster

<sup>18</sup> The report can be found at <http://www.minocw.nl/herkomstgezocht/kamerbrieven>.

## 4. Discussion of the recommendations issued by the Restitutions Committee

### 1. *The maternity visit* and *The doctor's visit* by Cornelis Troost and *Still life with iris, peonies and other flowers in a vase* by Herman van der Mijn (RC 1.14 and 1.20).

In 2003, the State Secretary asked the Restitutions Committee for advice on an application by G.'s heirs for restitution of the paintings *The maternity visit* and *The doctor's visit* by Cornelis Troost. These paintings were included in the Dutch National Art Collection under inventory numbers NK 1434 and NK 1435.

During the investigation of the facts commissioned by the Restitutions Committee regarding the Troost paintings that were the subject of the claim, it emerged that there was a third painting in the Dutch National Art Collection that had belonged to the same owner: *Still life with iris, peonies and other flowers in a vase* by Herman van der Mijn, registered under number NK 1672, for which the applicants submitted an additional restitution application.

#### *Facts*

The original owner of the three works of art was G., a wealthy German businessman and art collector of Jewish origin. To escape the Nazi regime, G. decided in 1935 to emigrate. In order to be able to leave Germany with his family, he required an *Unbedenklichkeitsbescheinigung* from the *Finanzamt*. To obtain that document, the G. family had to meet the stringent tax obligations that the German Reich had imposed on Jewish citizens, including the *Reichsfluchtsteuer* and the *Judenvermögensabgabe*. In total, the G. family was charged a total of RM 914,000 in taxes. In order to meet these substantial tax obligations, G. was forced to sell his home in Berlin, including the household effects and his art collection. On 19 August 1936, G. presented a large number of works of art for auction in Berlin, including the aforementioned paintings by Troost and Van der Mijn. The final settlement of the payments to the German Reich took so much time that it had not yet been completed when G. died in 1939, before he was able to emigrate. In 1940, his widow left Germany and settled in the United Kingdom.

Before the Second World War broke out in the Netherlands on 10 May 1940, the two paintings by Troost came into the possession of the Amsterdam Jewish art gallery I. Rosenbaum NV. In April 1942, a *Verwalter* was appointed to take over that gallery at the instructions of the occupying forces. In the same month, part of the gallery's trading stock, including the two paintings by Troost, was sold to *Dienststelle Mühlmann*, which was one of the principal purchasers of art for Nazi Germany on the Dutch market during the war.

The painting by Van der Mijn was purchased at the Berlin auction in 1936 by an Amsterdam art dealer. The work then turned up at the Jewish art gallery Katz in Dieren, which most probably held the painting on consignment for a private person. In July 1942, Katz sold the painting to a German buyer for the collection of the new *Führermuseum* that was to be founded in Linz.



5. *The maternity visit* by Cornelis Troost (NK 1434)



6. *The doctor's visit* by Cornelis Troost (NK 1435)

### *Discussion of the advice*

This case involved a series of separate instances of (possibly involuntary) loss of possession, which suggested that conflicting claims regarding the paintings might be possible. The Restitutions Committee therefore adopted the following approach.

Firstly, the Committee formed an opinion on the sale of the works by G., and concluded in that regard that the sales were involuntary. This was based on the recommendation of the Ekkart Committee that sales of works of art by private Jewish parties in Germany from 1933 onward be regarded as sales under duress, unless the opposite is explicitly shown.<sup>19</sup>

Since both the paintings by Troost and the work by Van der Mijn subsequently came into the possession of Dutch Jewish art dealers and were purchased by Nazi buyers, the Committee then considered whether the legal successors of those art dealers had to be offered the opportunity to submit claims as well because those sales might also have taken place under duress. It should be borne in mind in this connection that the Final Recommendations of the Ekkart Committee, setting out policy lines for such conflicting claims, had not been published at that time. Consequently, the Restitutions Committee decided to ask the Ministry of Education, Culture and Science<sup>20</sup> to notify the legal successor of the Rosenbaum gallery, but that legal successor finally announced that they would not submit a claim because of G.'s prior claims. When the Ekkart Final Recommendations were published, toward the end of December 2004, and they were subsequently adopted by the government, it became apparent that official policy also generally gave priority to the first loss of ownership in the event of conflicting claims. The Restitutions Committee has sufficient latitude in this regard to compare the weight of the various competing claims.<sup>21</sup> In light of this policy, and based on the outcome of the Committee's further research, the Restitutions Committee decided that the involuntary loss of ownership on the part of the G. family in 1936 prevailed over the possible involuntary loss of ownership by parties involved at later stages.

Therefore, the Restitutions Committee advised the State Secretary on 7 February 2005 to return the paintings by Troost and the still life by Van der Mijn to G.'s heirs. No conditions were attached as regards the repayment of any sales revenues received at the auction, as those funds were used to leave Germany. The State Secretary's final decision on 22 April 2005 followed the advice of the Restitutions Committee.

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<sup>19</sup> See the third Recommendation regarding private art property.

<sup>20</sup> The Committee did not believe it to be part of its task to contact potential applicants directly, which is why this was left to the Ministry.

<sup>21</sup> See the notes to the second Final Recommendation.

## 2. Application for the restitution of nine NK works from the collection of the Amsterdam art dealer A.V. (RC 1.19)

In an application dated 10 December 2000 and an additional application dated 25 June 2004, two grandsons of the Jewish art dealer A.V. asked the State Secretary of Education, Culture and Science for the return of nine works:

- A. Lutz, *Courtyard in a town* (NK 2145)
- Glazed pottery jug, decorated in blue and white with floral motifs and a bird in a medallion (NK 206)
- Delft plate with blue and white decor, painted in the centre with the Apostle Peter and an angel (NK 210)
- China vase and cover with blue and white decor of floral motifs and landscape (NK 948 A-B)
- P. Verbrugghen, *Still life with a vase of flowers* (NK 2845)
- The Master of the Aachen altarpiece, *The Mass of St. Gregory* (NK 2702)
- J. Leemans, *Still life with gun and other hunting attributes* (NK 2161)
- C. Netscher, *Portrait of a woman* (NK 2102)
- C. Netscher, *Portrait of a man* (NK 2103)

The State Secretary initially put the application on hold, in anticipation of the recommendations of the Ekkart Committee in relation to restitution applications from art dealers. After the publication of recommendations regarding the art trade, the application was referred to the Restitutions Committee in February 2004.

### *Facts*

The applicants are grandsons of the Jewish art dealer A.V., who closed his Amsterdam art gallery in 1939 because of the threat of war. He sent part of his trading stock to the United States and Great Britain, and stored another part in a warehouse in Amsterdam. At the instructions of the occupying forces, the business was reopened in 1941, and the items that were stored in Amsterdam were brought back to the shop. In February 1942, the *Niederländische Aktiengesellschaft für Abwicklung von Unternehmen* (NAGU) took over the business. A business relation of A.V. was appointed *Verwalter*, all of which was done in order to maintain the business in the best possible condition. However, after a few months, that *Verwalter* was interned. He later declared in this regard:

*‘Long before the war, from 1929 onward I believe, I was friends with A.V., who had a business at Rokin in Amsterdam. This A.V. was of Jewish blood. In 1941, the Germans made it impossible for people with Jewish blood to continue to do business, as the Germans excluded them from commerce. Mr A.V. then asked me to help him, and I attempted to save his business, in which I succeeded by joining the Wirtschaftsprüfstelle as a Treuhänder, so that I could be appointed as manager of Mr V.’s business. This was, I believe, in February 1942. (...) I was manager of that business until June 1942, after which I was arrested as a hostage by the Germans’.*



A new *Verwalter* was then appointed for a short time, after which the NAGU sold the gallery to a Dutch businessman early in November 1942. That businessman paid the purchase price to the German looting organisation *Vermögensverwaltungs- und Renten-Anstalt* (VVRA) using money from a loan that was repaid with funds that were subsequently withdrawn from the art gallery.

After the liberation, a settlement was agreed between the original owner A.V. and the businessman who had bought the gallery. Under that settlement, the original owner took over the business again, and it was established that he was entitled to the purchase price paid during the war. Finally, the art dealer was paid 68% of the purchase price by the VVRA. In addition, A.V. recognised a number of works at a claim exhibition that he believed had been part of the former trading stock of his gallery. He submitted an application to the SNK for the restitution of those works. That application was finally dismissed because in the SNK's view the art dealer was neither able to prove that the works in question had been part of the old trading stock, nor that he had lost ownership of them involuntarily.



7. *Courtyard in a town* by A. Lutz (NK 2145)

### *Discussion of the advice*

In its advice, the Restitutions Committee concluded, based on this account, that the case had not been settled and as such it deemed the applicants admissible. The Committee then considered whether the criteria for restitution of the works had been met. Pursuant to government policy, a plausible case must be made that a claimed work was part of the trading stock of the art gallery at the time, and that loss of ownership was involuntary. The Committee was able to use an undated inventory of the gallery that was found in the files, and which may have been drawn up in connection with the transfer to the NAGU in 1942, as a starting point for determining which objects belonged to the old trading stock of the gallery.

Despite the existence of the inventory, the facts surrounding several objects involved in this case proved difficult to ascertain. It was often unclear whether certain works of art described in the inventory corresponded to claimed works. This meant that for some of the works whose restitution had been requested it remained unclear whether they had been part of the former trading stock of the business. In addition, it was sometimes uncertain whether the objects had been sold voluntarily or involuntarily. With reference to its general considerations (item C), which place the risk that certain facts can no longer be ascertained owing to the passing of time with the government, the Restitutions Committee recommended that several of the objects in question be returned. The works concerned were those registered as NK 2145, NK 206, NK 210 and NK 948-AB.

For painting NK 2845, more details were revealed during the research, namely that it had certainly been part of the trading stock of the art dealership at the start of the war, and had been sold by A.V. himself. The buyer was the art dealership of Alois Miedl, a German residing in the Netherlands who had a dubious reputation, owing to his art purchases for high-ranking Nazis. Partly in view of this circumstance, the Committee did not rule out the possibility that the sale was effected under duress, and as such the Committee recommended that the work be returned.

For paintings NK 2702 and 2161, it became apparent during the research that A.V. had sold the works at the start of the war to Amsterdam art dealer P. de Boer, of whom it is known that he regularly came to the assistance of his Jewish colleagues. The Restitutions Committee therefore assumed that these sales came about voluntarily, and recommended that the restitution application for these two works be rejected. As regards paintings NK 2102 and NK 2103, the research into their provenance did not provide any clarity as to when they became part of the trading stock of the art dealership. However, the Committee deemed it reasonable to assume that they were part of the new trading stock, and were sold in 1944 under the responsibility of the new owner. The Committee recommended that the restitution applications for these works of art also be rejected, based in part on the consideration that they had never been reported as missing and that there had been no contact with the SNK after the war about their restitution.

The Committee therefore advised in its meeting on 7 March 2005 that five claimed objects be returned and that the applications for the remaining four works be rejected. In her decision of 22 April 2005, the State Secretary adopted the Committee's advice.

### 3. Application for the restitution of eleven NK works from the collection of the Amsterdam art dealer J.S. (RC 1.10)

In a letter dated 19 September 2002, the daughter of Jewish art dealer S. of Amsterdam applied for the restitution of 11 works from the Netherlands Art Property Collection (NK Collection). The works in question were as follows:

- N. Molenaer, *Skaters near a village* (NK 2736)
- W. Verschuur I, *Interior of a stable with horses and a donkey* (NK 1594)
- L. Meléndez de Ribera, *Still life with basket of fruit and asparagus* (NK 1596)
- Louis XV commode (NK 2)
- E.J. Verboeckhoven, *A meadow with cows, sheep and ducks* (NK 2240)
- P. Gijssels, *Church interior with market scene* (NK 1790)
- P. Gijssels, *Market scene* (NK 1863)
- B.H. Thier, *Landscape with farm and cattle* (NK 1347)
- Delft garniture (NK 179)
- P. van Hillegaert I (formerly attributed to R. van den Hoecke), *Siege of a town* (NK 2822)
- Dutch cupboard (NK 554)

In February 2004, the State Secretary referred the application to the Restitutions Committee, after the restitution policy for art-trade cases had been adopted.



8. *Still life with basket of fruit and asparagus* by L. Meléndez de Ribera (NK 1596)

### *Facts*

The art gallery concerned, an Amsterdam family business like the one in the case described above, had been established in Amsterdam since 1898. When the war broke out, the S. brothers were in charge of the gallery. Initially, the occupying forces left the business alone. However, several months after the ‘Order for the Removal of Jews from the Business Sector’ (*verordening tot verwijdering van joden uit het bedrijfsleven*) was issued in March 1941, the art gallery was closed down and sealed. Toward the end of November 1941, the management of the business was assumed by a *Verwalter*. The two brothers lost all control, but continued to work for the art gallery as salaried employees. Early in August 1942, the *Verwalter* bought the art dealership, including the company name, the land and the entire trading stock for a sum of fl. 46,765, with the inventory being valued below its actual worth. At the time that the agreement was signed, one of the brothers had already gone into hiding. He arranged a power of attorney for the sale, as the *Verwalter* threatened that his brother would be arrested by the *Sicherheitsdienst* for whom the *Verwalter* had worked as an interpreter. The brother later stated:

*‘I personally never signed for the transfer, but fled just before that date and went into hiding. However, I suddenly received the bad news from my brother, that he would be arrested by K. if I had not signed within two days. I was very shocked, and took a scrap of paper and wrote a sort of power of attorney on it, accompanied by a letter to the civil-law notary that he was to arrange matters to make it appear as if I had signed, because I trembled at the thought that my brother would be arrested. I also lived in terrible fear for some days, and material matters left me cold when I thought about my brother’s life.’*

Both brothers survived the war. The premises in which the art dealership was established were returned to them, almost entirely empty. The owners never had the disposal of the purchase price that the *Verwalter* had deposited in a bank account during the war.

After the war, the S. brothers turned to the Jurisdiction Department of the Council for the Restoration of Rights (Afdeling Rechtspraak van de Raad voor het Rechtsherstel) in Amsterdam and claimed annulment of the sale of the art gallery, as well as compensation from the *Verwalter*. Although the Council annulled the sale of the gallery, no decision was handed down in connection with the claim for compensation. In 1947, the Tribunal sentenced the *Verwalter* to internment for two years and four months for aiding and abetting the enemy. No information was found in the available sources in connection with a final financial settlement of the case.

### *Discussion of the advice*

In its meeting of 18 April 2005, the Restitutions Committee drew up its advice in this case. The Committee judged that the sale of the gallery to the *Verwalter* was not voluntary. Based on the facts outlined above, the Committee also stated that the case had not been settled, taking into account the fact that the S. brothers never received any form of compensation for the losses they incurred.

The Committee then considered whether it could recommend that the claimed works should be returned. According to prevailing policy, an important factor in this regard is whether a convincing case can be presented that the work of art was part of the trading stock of the art gallery at the time and that it was sold involuntarily.

With regard to several paintings (NK 2736, NK 1594 and NK 1596), the Committee established, based on the investigation of the facts, that they were part of the art gallery's former trading stock and were sold by the S. brothers themselves at the start of the occupation, when no Verwalter had yet been appointed. The buyer of those three works was Alois Miedl, of whom it is known that he profited considerably from the war by selling art to highly placed Nazis. The paintings in question then ended up in Hitler's private collection. In the Committee's opinion, it is impossible now to determine whether the sale was made voluntarily, and the possibility of a sale under duress cannot be ruled out. The Committee stated that the risks relating to the lack of further evidence so many years afterwards were to be borne by the government, and recommended that these paintings be returned. This also applied to the Louis XV commode (NK 2), which is portrayed in a picture of the art gallery from 1936 and therefore was also part of the trading stock of the business. However, it proved impossible to determine when the commode was sold, by whom and under what circumstances. The lack of available facts owing to the passage of time constituted a risk to be borne by the government, the Committee decided.



9. Lodewijk XV commode (NK 2)

The Restitutions Committee also recommended that a group of works of art be returned that belonged, or might have belonged, to the new trading stock.<sup>22</sup> The paintings concerned were NK 1790, NK 1863, NK 2240 and NK 1347. The Committee decided that because of the special circumstances surrounding this case the restitution application for the four paintings in question was admissible, referring to the fact that the *Verwalter* used the goodwill, infrastructure and capital of the art gallery built up by the S. brothers to make the sale and to the fact that the S. brothers never received the purchase price for their business and did not receive any form of financial compensation for their losses after the war.

The Committee advised against returning three works. In respect of two works (NK 179 and NK 2822), the Committee stated that they had been sold voluntarily during the time that no *Verwalter* had yet been appointed. The garniture (NK 179) was sold to a private buyer; the painting (NK 2822) to art dealer P. de Boer, who regularly came to the aid of fellow Jewish dealers. Little is known about the Dutch cupboard (NK 554), but the art dealer himself indicated after the war that the cupboard had been sold voluntarily.

The State Secretary adopted the advice in a decision dated 22 April 2005.



10. *Skaters near a village* by N. Molenauer (NK 2736)

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<sup>22</sup> See footnote 2.

#### **4. *Landscape with river and windmills* by J.M. Graadt van Roggen (RC 1.25)**

In a letter dated 23 December 2004, the State Secretary asked the Restitutions Committee for advice about the application for restitution of the etching *Landscape with river and windmills* by J.M. Graadt van Roggen. This work of art was part of the Dutch National Art Collection under inventory number NK 3537. The restitution application was submitted by a second cousin of Ms S. E., who was possibly the original owner of the etching. The restitution application came about following correspondence with the Origins Unknown Agency, which had approached various relatives of S. E. in an attempt to gather more information about this etching. Research by the Origins Unknown Agency had revealed that the work of art might well have originated from the possessions of S. E. that were surrendered to Amsterdam looting bank Lippmann, Rosenthal & Co during the Second World War.

##### *Facts*

The Jewish S. E., who was born on 8 March 1871, owned an art collection, which included an etching with the picture by Graadt van Roggen described above. During the Second World War, she lived in The Hague, where she died on 1 February 1943. After her death, the household effects were seized by the looting organisation *Einsatzstab Rosenberg*. One of that organisation's documents that was retrieved showed that S. E.'s effects included some 'Wandbilder' about which no further information was given. A number of works that were looted from S. E.'s house were surrendered to the looting bank Lippmann, Rosenthal & Co. (the so-called 'Liro Bank') during the war. This is evident from a post-war transcription of lists of data from the records of the Liro Bank, which includes various objects from the possessions of 'S. E., resident at Ruychrocklaan 54 in The Hague'. The works listed as having belonged to S. E. included the etching 'Windmills by the water', with 'in the style of J. Maris by Gr. v. Roggen' being named as the artist. In January 1944 the Liro Bank sold the work to a Berlin firm, which also purchased almost all of S. E.'s art collection. These other works have not been found in the Netherlands Art Property Collection.

The following is known about the claimed work, which is known as NK 3537. Shortly after the liberation, the Amsterdam criminal investigation department delivered this etching by Graadt van Roggen to the *Stedelijk Museum* in Amsterdam. Although the *Stedelijk Museum* suspected that the art object originated from a Jewish estate or was an enemy asset, it was completely in the dark about the etching's precise provenance. More than a decade later, in 1957, the museum registered the etching as a loan from an unknown lender, under the name '*Landscape with a stream (1909)*'. Eighteen years later, in March 1975, the *Stedelijk Museum* transferred management of the etching to the *Dienst voor 's Rijks Verspreide Kunstvoorwerpen* in The Hague. When the object was transferred, Museum Director E. de Wilde stated that 'should any rightful claim be made on these items by third parties, they will be transferred to the rightful owner'.

### *Discussion of the advice*

In its advice of 27 June 2005, the Restitutions Committee stated, based on this information and on the current restitution policy, that the art collection was lost involuntarily from S. E.'s estate, as a result of circumstances relating directly to the Nazi regime.

The Committee then considered whether the case involved an application for the restoration of rights that had been settled previously, in which case the current application would not be allowed. Since neither S. E.'s family, nor the Dutch post-war authorities entrusted with the restoration of rights were aware of the location of the etching by Graadt van Roggen, the Committee was of the opinion that there was no question of a previously settled application. The Committee then addressed the question of whether it was sufficiently plausible that the etching by Graadt van Roggen, which was known as NK 3537, was the same etching by Graadt van Roggen that was looted from S. E.'s household effects. Although multiple copies may exist of such an etching, the Committee believed that the investigation into the facts had revealed sufficient points to answer this question in the affirmative, referring also to the less stringent burden of proof in the current restitution policy and to the third general consideration of the Restitutions Committee, which places the risk entailed by the absence of further information with the government.

Consequently, the Restitutions Committee recommended that the etching be returned to the heirs. The State Secretary adopted the advice in her decision of 26 July 2005.



11. *Landscape with river and windmills* by J.M. Graadt van Roggen (NK 3537)



## 5. *Venus and Adonis with Amor* by J.A. Uytewael (RC 1.24)

Another recommendation by the Restitutions Committee in 2005 concerned the painting *Venus and Adonis with Amor* by J.A. Uytewael. The painting was part of the Dutch National Art Collection under inventory number NK 3424. Following two restitution applications from various relatives of the original owner, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice in letters dated 23 December 2004 and 25 March 2005.

### *Facts*

The painting NK 3424 was one of a collection of objects in the Netherlands Art Property Collection that were presumably not transported to Germany during the war, but instead remained in the Netherlands. After the war, the painting was located in the buildings of the Ministry of Foreign Affairs in The Hague, which had been used by the occupying authorities during the war. In the late 1950s, an inventory was drawn up of the works of art that had been left behind. The painting NK 3424 was found in the attic of the official home of the Minister for Foreign Affairs, at Plein 1813, and was described as ‘*Rottenhammer: Venus, Mars and Amor*’. After subsequent corrections to the title and the artist’s name, the painting was registered in the Dutch National Art Collection as *Venus and Adonis with Amor* by J.A. Uytewael, with the previous attribution ‘*in the style of H. Rottenhammer*’.

During the 2002-2004 period, the Origins Unknown Agency conducted research into the provenance of the painting NK 3424. One of the matters investigated was whether the painting was listed in the inventory of works of art surrendered to the looting bank Lippmann, Rosenthal & Co (the Liro Bank). This research revealed that a painting had indeed been surrendered during the war that might have been NK 3424. The painting concerned was ‘*Mythological representation*’ by ‘*J. Rottenhammer*’, which the Liro Bank sold to a German firm in 1943. The Liro painting in question belonged to Jewish owner I. G., who was arrested at his hiding place with his family, and who died, together with his wife, two daughters and youngest grandson in the Sobibor extermination camp on 9 April 1943. The occupying forces seized G.’s collection of valuable objects, including the painting in question.

### *Discussion of the advice*

In its meeting on 7 September 2005, the Restitutions Committee drew up its advice in this case. After having established that the original owner lost possession of the painting *Mythological Representation* by J. Rottenhammer involuntarily through confiscation, the Committee’s advice addressed the question of whether that painting was identical to painting NK 3424. Although no conclusive evidence about the provenance of NK 3424 during the war was available, the Committee deemed it to be highly probable that the painting was identical, in light of the artist’s name, the representation and the location where NK 3424 was found after the war. The Committee’s judgment also took into account the statements from one of the two applicants, who as a child had seen the painting hanging in his grandparents’ house and said about it:



12. *Venus and Adonis with Amor* by J.A. Uytewael (NK 3424)

*‘Although I cannot describe the painting in your possession and cannot give you any details about it – I last visited my grandparents on 28 August 1942, and had therefore just turned 12 years old – I seem to remember that there was a “mythological” painting in the library behind the dining room, hanging on the wall next to the double doors that led from the dining room to the library. [...] Another reason is that every time I saw my grandmother she greeted me with the nickname “Adonis” (I was then their only grandson) referring to that mythological picture.’*

Based on the matters set out above, the Restitutions Committee advised the State Secretary to return the painting *Venus and Adonis with Amor* by J.A. Uytewael to the joint heirs. The State Secretary adopted this advice on 7 November 2005.

## **6. Recommendation regarding the application by Amsterdamse Negotiatie Compagnie NV in liquidation for the restitution of 267 works of art from the Dutch National Art Collection: the Goudstikker recommendation (RC 1.15)**

On 19 December 2005, the Restitutions Committee issued its recommendation in the Goudstikker case. This last and most comprehensive recommendation of 2005 addresses the restitution application by Amsterdamse Negotiatie Compagnie NV in liquidation, formerly gallery Kunsthandel Goudstikker, as submitted to the State Secretary on 26 April 2004, to which application several works of art were added on 31 July 2005. In this recommendation, the Committee advised the State Secretary to return 202 of the 267 claimed works of art. These works were part of the trading stock of the Amsterdam Kunsthandel J. Goudstikker N.V. at the beginning of the war and, at the time the claim was filed, were part of the Dutch National Art Collection. In 2005, the Netherlands Institute for Cultural Heritage had loaned the works of art, among which a large number of paintings by 17th-century Dutch Masters, to various Dutch museums and government agencies. Amid great national and international interest, the recommendation was publicised in early February 2006, together with the announcement of the State Secretary's decision on the application.

### *Facts*

Jacques Goudstikker, the Jewish director and principal shareholder of Kunsthandel J. Goudstikker NV in Amsterdam (referred to below as: 'Goudstikker'), fled the Netherlands on 14 May 1940. Two days later, on 16 May 1940, Jacques Goudstikker died after an unfortunate fall into the hold of the ship that was to take him to England. His widow and son, Désirée and Eduard Goudstikker – who, in the 1950s, would both assume the surname of Désirée's second husband, Von Saher – ultimately reached the United States, where they settled.

After Jacques Goudstikker's flight, the gallery, perhaps the Netherlands' most influential art dealership in the period between the two world wars, was left behind without management. Subsequently, under contracts dated 1 and 13 July 1940, the gallery's employees sold almost the entire business to the Germans Alois Miedl and Hermann Göring for a total of NLG 2,500,000. The sale included real estate – premises on the Amsterdam Herengracht, in Breukelen and in Ouderkerk aan de Amstel – the trade name and the trading stock of at least 1,113 works of art. The Goudstikker notebook, as it became known, which Jacques Goudstikker carried with him on his flight in 1940 and which has been preserved, lists these 1,113 inventoried works by name. After the sale, Göring came in possession of the most precious works of art from the gallery's trading stock. After acquiring the trade name, the real estate and the less important works from the trading stock in early July, Miedl continued running the gallery on his own behalf under the name 'Kunsthandel Voorheen J. Goudstikker NV'.

Of the purchase price of NLG 2,500,000, an amount of NLG 1,363,752.33 remained for Goudstikker after the war. The works of art that the Dutch authorities found on the premises of Kunsthandel Voorheen J. Goudstikker NV after the war came under the administration of the Dutch authorities as Miedl's 'enemy property'. They included several hundred works of art from Goudstikker's old trading stock, that is to say, works that Jacques Goudstikker

had left behind at the gallery at the beginning of the war.<sup>23</sup> In addition, the allied forces found a large number of works of art from Goudstikker's old trading stock in Germany and returned them to the Netherlands. After the war, Goudstikker's widow opened negotiations with different Dutch restoration of rights authorities on the restitution of the first category of works of art and Goudstikker's real estate – in other words, the Miedl transaction. As regards the works of art, these protracted negotiations ultimately resulted in a settlement (agreement) of 1 August 1952, with Goudstikker buying back several hundreds of works from the Dutch State. After the war, Désirée Goudstikker – later known as Désirée von Saher – waived the restoration of rights to the Göring transaction (i.e. the works of art Göring acquired in 1940). One of the reasons for doing so concerned doubts regarding the condition of the works of art that would be or had already been recovered. Another factor was that, in exchange for the restitution, the Dutch State claimed repayment of the purchase price Göring had paid at the time. In the settlement agreement of 1 August 1952, the heirs reserved the rights to these 'Göring works'.

However, in 1998, Goudstikker decided to submit an application for restitution of the works of art that were part of the Göring transaction to the successor of the Council for the Restoration of Rights, the Court in The Hague. The Court rejected this application on 16 December 1999, several years prior to the publication of the recommendations by the Ekkart Committee and the introduction of the expanded restitution policy. The Court found that the application had been submitted too late, that is, after expiry of the term of 1 July 1951 included in the post-war restoration of rights arrangement (E 100). In its considerations, the Court also stated that, despite the inadmissibility of the application, there are, in its opinion, no substantial reasons to act *ex officio* (grant *ex officio* restoration of rights). As a result, at the beginning of the Goudstikker procedure before the Restitutions Committee in 2004, 267 works of art from Goudstikker's old trading stock were still part of the Dutch National Art Collection.

### *Procedure*

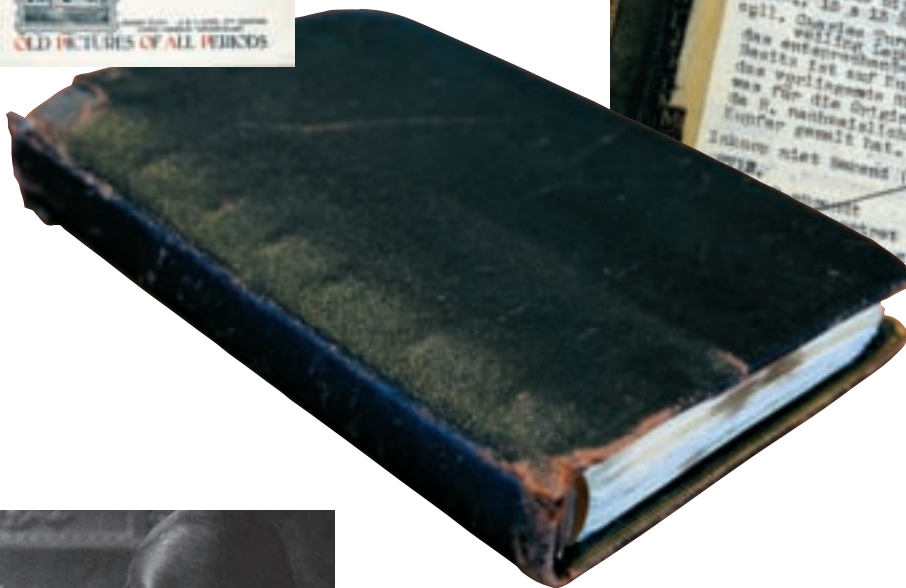
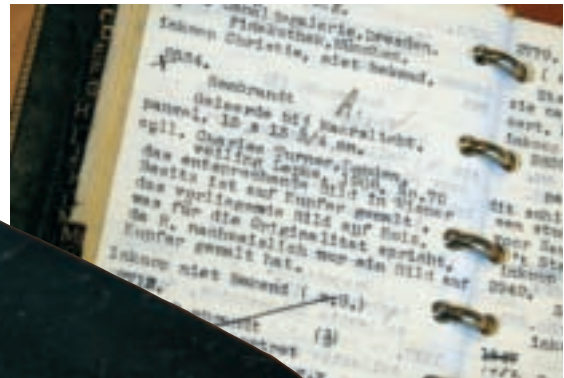
After the State Secretary had submitted the restitution application by Amsterdamse Negotiatie Compagnie NV in liquidation (referred to below as: the applicant) to the Restitutions Committee on 10 June 2004, the Committee first started an investigation of the facts. In its investigation, the Committee used direct sources wherever possible, including documentation on the loss of possession and the post-war restoration of rights negotiations as were available in the various archives. The Committee attempted to be as impartial as possible towards reports drawn up as part of previous procedures. In accordance with the Committee's usual procedure, a draft version of the investigatory report was sent to the applicant, with a request for its comments, on 4 May 2005. The Committee received the applicant's comments on 31 July 2005. On 19 December 2005, the final version of the more than 70-page Report was adopted together with the recommendation. The Committee did not incorporate the applicants' comments in the text, but attached them to the Report as an appendix. As part of the investigation, the Committee also organised a hearing. Speakers during this hearing, held on 12 September 2005, included Jacques Goudstikker's daughter-in-law and granddaughter, Marei and Charlène von Saher.

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<sup>23</sup> See footnote 2.



13. J. Goudstikker and Queen Wilhelmina



14. J. Goudstikker's notebook and business card



15. J. Goudstikker



16. H. Göring leaves the art gallery

### *Discussion of the recommendation*

The Restitutions Committee's recommendation is to return to the applicant 202 of the 267 works of art in question. As with all matters related to the Dutch National Art Collection, in reaching its decision the Committee tested the current Goudstikker application against the relaxed restitution policy introduced by the government in 2001. This policy is based on the recommendations by the Ekkart Committee. In its recommendation, the Committee addresses the following questions:

1. Were the works of art *owned* by Goudstikker in May 1940?
2. Was there *involuntary loss of property as a result of circumstances directly related to the Nazi regime*?
3. Has the restitution application been *conclusively settled* in the past?
4. Should *repayment* be considered in the event of restitution?
5. Are there any *public interests* that could impede restitution?

**(re 1)** As regards the ownership question, the Committee determines that 227 of the claimed works of art were part of Goudstikker's trading stock in 1940. Based on its investigation, the Committee deems it plausible that 40 works of art were not owned by gallery Goudstikker at the start of the war and advises against restitution of these 40 paintings.

**(re 2)** The Committee answers the question regarding the involuntary loss of possession of the 227 claimed paintings due to circumstances directly related to the Nazi regime in the affirmative. Its considerations include the fact that in 1940 Jacques Goudstikker's widow – who, after his death, represented the majority of shares, also on behalf of her underage son – refused to grant permission to sell the works of art to high-ranking Nazi officer Göring and Miedl, a friend of his. Moreover, the Committee questioned the proceedings surrounding the sale of the gallery to Miedl, in which an employee who was well-disposed towards the Germans played a key role.

**(re 3)** The grounds for the Goudstikker recommendation are also largely rooted in the admissibility of the application. As described above, the Goudstikker heirs had instituted proceedings for restoration of rights before, which led the Committee to question the fact whether the application was *conclusively* settled in the past. If that were the case, the Committee would have to declare the application inadmissible by virtue of government policy. In this context, the 227 paintings from Goudstikker's old trading stock must be divided into the following three categories: (a) 21 paintings acquired by Miedl, (b) 194 works of art that were part of what is known as the Göring transaction, and (c) 12 paintings acquired by parties other than Miedl or Göring.

(a) The Committee concludes that the restitution application for the works of art acquired by Miedl was conclusively settled in the past. In 1952, a settlement (agreement) was reached, under which Goudstikker bought back over 300 paintings from the Dutch State and in which, in Article 1.4, it waived its rights of ownership to the other works of art acquired by Miedl during the war, in favour of the Dutch State. The Committee considers itself bound to this stipulation and therefore determines that the application for restitution of works of art acquired by Miedl during the war has been conclusively settled:

*In this case, in the settlement, Goudstikker waived ownership rights to the benefit of the Dutch State and opted to put an end to the lawsuit brought before the Council for the Restoration of Rights. The Committee, citing the general considerations under e, is of the opinion that waiving ownership rights, as Goudstikker has done, unlike deciding against submitting an application for the restoration of rights, is of such a definitive nature, that, despite the broad concept of new facts, it cannot be applied here.*

The Restitutions Committee therefore advises against restitution of the 21 claimed works of art in this category.



17. *Still life with cheeses, candlestick and smoker's accessories* by F. van Schooten (NK 2457)

(b) The situation is different for the category works of art belonging to the Göring transaction. Although the Goudstikker heirs had opted not to submit an application for the restoration of rights to this category, they never waived their ownership rights to these works of art. This category of works of art is not covered by the relinquishing of rights set forth under Article 1.4 of the settlement agreement referred to above.

Despite the fact that, in 1999, the Court in The Hague had rejected Goudstikker's claim to these works of art on formal-legal grounds, thus hearing the application, the current application is admissible under the relaxed restitutions policy. The Committee is of the opinion that the Court's decision in 1999 on inadmissibility of the claim based on expiry of the period of limitation cannot be considered settlement of the content of the Goudstikker application and, as such, cannot result in 'conclusively settled proceedings'. Moreover, the Committee points out that the expanded restitutions policy allows it to reconsider previously handled cases in the event of new facts – in the broad sense of 'new insights' – as defined by the Ekkart Committee. The Committee says the following about this:

*Added to that is the fact that in 1999, the court could not take into consideration the expanded restitution policy the government formulated after that time, which renders the Committee able and imposes an obligation on the Committee to issue a recommendation more on policy than strict legality. This expanded policy and the resulting expanded framework for assessment, representing generally accepted new insights, causes the Committee to decide that the Applicant's current application is still admissible, despite the court's previous handling of the application.*

Given the involuntary nature of the loss of possession during the war, the application for restitution of the 194 works of art in the Göring transaction is allowable.

(c) Furthermore, the Committee recommends restitution of a small group of paintings that were not among the objects acquired by Miedl and Göring, and of which Goudstikker had never claimed restitution until 2004. The Committee considers that loss of possession of this third category was likewise involuntarily.

Given that the two categories last mentioned (b and c) include four paintings that have gone missing and the Committee cannot recommend their restitution, the Committee's recommendation covers the restitution of (192 plus 10) 202 works of art.





18. *Landscape with an episode from the conquest of America* by J. Mostaert (NK 3259)

(re 4) The fourth question the Committee asked itself in its recommendation, is whether a payment obligation should compensate for restitution of the works. The Committee answers this question in the negative. Although Goudstikker did receive a sum of money for the sale, with the amount that actually became available to Goudstikker being much lower than the amount paid by Miedl and Göring during the war, this is offset by the fact that Goudstikker suffered significant losses. In its decision, the Committee also takes into account the fact that, in the 1950s, the Dutch State sold at least 63 works of art from Goudstikker's trading stock, the proceeds of which were channelled into state coffers. Moreover, by 2005, four paintings that would be eligible for restitution under the recommendation, were missing. Finally, the Committee points out that the State has had the right of usufruct to the works of art for almost 60 years.

(re 5) The Committee also investigated whether, given the art-historical interest of some of the works to be returned, a public interest exists that could impede restitution. In consideration 18, it concludes that this is not the case. A decisive factor for the Committee was the moment prior to the loss of possession. The Committee judges that any post-war change in valuation of the works of art can and should not influence the recommendation for restitution. In this context, the Committee observes that in 1940, the works (which Goudstikker on many occasions brought to the Netherlands from other countries) were intended for sale, and that protection of Dutch cultural heritage was not at issue in 1940.

### *Decision by the State Secretary*

In a letter dated 27 December 2005, the Committee sent its recommendation to the State Secretary. After discussing the recommendation with the Cabinet, the State Secretary issued a decision on 6 February 2006. In this decision, the State Secretary agrees to the conclusion of the recommendation, but has a different opinion regarding several important points of the reasons given. The State Secretary's opinion differs from that of the recommendation as regards the admissibility of the application for the Göring transaction, and the Committee's reasons for possible repayment of a consideration. In a letter to the Dutch Lower House dated 6 February 2006, the State Secretary explained her decision (Appendix 9).<sup>24</sup> Below is the passage explaining the decision regarding the application for restitution:

*'Unlike the Restitutions Committee, I am of the opinion that the issue of restoration of rights has been conclusively settled in this case. In 1999, in its capacity as restoration of rights court, the Court in The Hague settled this case conclusively. Consequently, this case falls outside the scope of prevailing restitutions policy. Nevertheless, I believe there are sufficient grounds in this special case to grant restitution in accordance with the Committee's recommendation. The most important consideration concerns the facts and circumstances surrounding the involuntary loss of possession and the handling of this case in the early 1950s, as put forward by the Committee in its extensive investigation.'*

Despite this difference in points of view, the Committee can be satisfied with the final outcome, namely restitution of the works as recommended by the Committee.



19. *View of Delft* by D. Vosmaer (NK 2927)

<sup>24</sup> Letters were sent to the applicants and the Restitutions Committee on that same date, informing them of the decision.

## 5. In conclusion

### 5.1. State of affairs 2002 – 2005

Between 2002 and 2005 the State Secretary of Education, Culture and Science requested the advice of the Restitutions Committee about 41 applications for restitution from both Dutch and non-Dutch applicants. With the exception of one claim, these cases all involved art objects from the Dutch National Art Collection. The scope of the cases varies from claims to a single work of art to claims for the return of several hundred works, although it should be noted that the difficulty of the cases does not always depend on their scope. During the same period the Restitutions Committee issued 21 recommendations,<sup>25</sup> leading to the return of more than four hundred objects in total, varying from paintings by 17th century Dutch masters to silver and porcelain utensils. The Restitutions Committee recommended that claims be rejected in three instances.<sup>26</sup> In seventeen cases, the advice was that the claim should be granted in whole or in part. In a few instances an additional condition was attached to the return, such as repayment of a sum received upon sale during the war.<sup>27</sup> In one case, the Committee did not deem itself competent to issue any advice.

### 5.2. Activities of the Restitutions Committee outside the Netherlands

In 2005, members of the Restitutions Committee attended two international conferences on the subject of returning looted art, where they gave presentations about the Dutch situation.

#### *Luxembourg*

Prof. J.Th.M. Bank represented the Committee in the autumn at the ‘*Le Grand Pillage*’ conference in the city of Luxembourg, which was linked to an exhibition in the *Musée d’histoire de la Ville de Luxembourg* about art theft during the Second World War. The museum had taken this initiative to stimulate the discussion about art theft and restitution of works of art in the Grand Duchy.

During the round table meeting, where Prof. Bank spoke about the activities of the Restitutions Committee, it became apparent that the Dutch developments are similar to those in France. Where the origins of the Netherlands Art Property Collection in the Netherlands have been thoroughly researched, the same was done in France with the Musée Nationale Réserve. Moreover, France also has a committee charged with the restitution to or compensation of Jewish owners or heirs. Another topic that was discussed

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<sup>25</sup> By 31 December 2005, the Committee had issued 21 recommendations, of which one combined two separate applications for restitution. The Committee also deemed itself not to be competent with regard to one of the cases referred to it.

<sup>26</sup> Advice on RC 1.6, RC 1.9 and RC 1.11.

<sup>27</sup> Advice on RC 1.4.

was the role of museums, auction houses and art dealers. The general opinion was that such parties are also expected to research the provenance of paintings, now that various governments in Western Europe have already researched their national collections.

### *Czech Republic*

Prof. I.C. van der Vlies gave a presentation on behalf of the Restitutions Committee at the international conference 'Future of the Lost Cultural Heritage' in the Czech Republic in November 2005. Ms A. Marck from the Secretariat also attended that conference. The conference covered a wide range of topics, varying from lectures about the use of the Internet for provenance research to more legally oriented lectures on international and European cooperation in research into looted art. Prof. Van der Vlies outlined the background and origins of the Restitutions Committee, its activities and the policy framework within which the Committee issues its advice. Several cases in which the Committee had issued advice in prior years were presented as examples.

### 5.3. Afterword

There was a significant increase in the number of claims in 2005. At the end of 2005 the Restitutions Committee were dealing with 19 claims on which no advice had yet been issued. Since then the government has announced, in accordance with the Ekkart Committee's recommendation, that it will terminate the period allowed for submitting an application for restitution under the more generous restitutions policy on 4 April 2007. The Committee expects that a significant number of claims will be submitted before that date and therefore that a lot of work will have to be done in the coming years.





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## Interim recommendations in respect of private art property (April 2001)

1. The committee recommends that the notion of "settled cases" be restricted to those cases in which the Council for the Restoration of Property Rights or another competent court has pronounced judgment or in which a formal settlement was made between the lawful owners and the bodies which in hierarchy rank above the SNK.
2. The committee recommends that the notion of *new facts* be given a broader interpretation than has been the usual policy so far and that the notion be extended to include any differences compared to judgments pronounced by the Council for the Restoration of Property Rights as well as the results of changed (historic) views of justice and the consequences of the policy conducted at the time.
3. The Committee recommends that sales of works of art by Jewish private persons in the Netherlands from 10 May 1940 onwards be treated as forced sales, unless there is express evidence to the contrary. The same principle should be applied in respect of sales by Jewish private persons in Germany and Austria from 1933 and 1938 onwards, respectively.
4. The Committee recommends that the sales proceeds be brought into the discussion only if and to the extent that the then seller or his heirs actually obtained the free disposal of said proceeds.
5. The Committee recommends that for the purposes of applying this rule the rightful claimants be given the benefit of the doubt whenever it is uncertain whether the seller actually enjoyed the proceeds.
6. The Committee recommends that whenever it is necessary to couple a restitution to the partial or full repayment of the sales proceeds, the amount involved be indexed in accordance with the general price-index figure.
7. The Committee recommends that the authorities, when restituting works of art, refrain from passing on the administration costs fixed by the SNK at the time.
8. The Committee recommends that a work of art be restituted if the title thereto has been proved with a high degree of probability and there are no indications of the contrary.
9. The Committee recommends that owners who did not use an earlier opportunity of repurchasing works of art be reafforded such opportunity, at any rate insofar as the works of art do not qualify for restitution without any financial compensation according to other applicable criterions.

## Recommendations regarding the restitution of art dealer's works of art (January 2003)

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

## Final recommendations (December 2004)

1. The committee recommends the government to provide the opportunity to submit claims on works of art from the NK collection within a period of two years following publication in the Staatscourant of the government policy formulated on the basis of these final recommendations.
2. One year prior to the termination of the period in which claims may be submitted, the government should widely publicize the impending lapse of this opportunity.
3. Claims from foreign private individuals on works of art possibly unjustly recuperated to the Netherlands should be dealt with conform the claims of (the heirs) of owners who lost works of art within the Netherlands.
4. The committee recommends that possible claims from another country on works of art in the NK collection should not be submitted to the Restitutions Committee, but should be dealt with in bilateral consultations with the government of the country concerned.
5. The committee recommends that the works of art from the NK collection, which can definitely or to a high degree of certainty be categorised as stolen, confiscated or lost to their original Jewish owners through forced sale and for which no legally entitled parties can be indicated, should, during an exhibition be fitted with a plate which states their provenance. The committee also recommends that these objects be valued and that the counter value ascertained on the basis of this valuation be made available to a Jewish cultural charity.
6. The committee recommends making an indexed percentage of the proceeds of the recuperated works of art sold up until 1952 available to a Jewish cultural charity.
7. The committee recommends the allocation of half the amounts referred to in Recommendation 5 and 6 to the Cultural Heritage Foundation of the Portuguese-Israeli Community and the remainder to the Jewish Historical Museum, which should use the fund thus created to stimulate a wide range of expressions of contemporary Jewish culture.
8. The committee recommends the allocation of any possible incoming repayments for the restitution of works of art in accordance with Recommendation 7.
9. The committee recommends that the documentation compiled during the Origins Unknown Agency's research should be preserved permanently and as complete as possible and be lodged in the National Archives. There, the material must be made accessible to official interested parties and – in due course – to all interested parties. The government should take suitable measures in order to preserve this documentation and to keep it accessible.

## Recommendation concerning the application for restitution of NK 1434, NK 1435 and NK 1672

### ***(Case numbers RC 1.14 and 1.20)***

In letters dated 21 March 2003 and 28 May 2004, the State Secretary for Education, Culture and Science asked the Restitutions Committee for advice concerning the applications dated 10 February 2003 and 24 October 2003 by heirs of F.I.G. (referred to below as the ‘applicants’), as represented by Dr. I. Gielen, a lawyer practising in Berlin, for restitution of the paintings *The maternity visit* and *The doctor’s visit* by Cornelis Troost (NK 1434 and NK 1435) and *Still life with iris, peonies and other flowers in a vase* by Herman van der Mijn (NK 1672). As both claims pertain to the same complex of facts, the Committee decided to merge both applications into a single recommendation request.

### **The facts**

Further to the first request for advice regarding the two paintings by Troost, the Restitutions Committee requested the Origins Unknown Agency (referred to below as ‘BHG’) to initiate an investigation into the facts and the results were recorded in a provisional report dated 5 August 2003. The investigation also considered the investigative report by the German historian M. Blumberg, which the applicants had enclosed with their application for restitution. During the BHG investigation into the paintings by Troost it emerged that there was a third painting with G. provenance in the Dutch National Art Collection, namely the painting by Van der Mijn that bore the number NK 1672. The Committee informed the applicants verbally about the presence of this painting and they subsequently submitted a new claim. The results of the BHG investigation concerning the Van der Mijn painting were recorded in a separate investigative report dated 5 August 2003. The Committee revised the reports on the investigations into the Van der Mijn painting and the two paintings by Troost and then adopted them and sent them to the applicants for comment on 30 August and 13 September 2004, respectively. The applicants sent brief reactions to both reports to the Committee and these reactions were incorporated into the reports.

### **General considerations (with respect to private individuals and art dealers)**

- a) The Restitutions Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b) The Restitutions Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.

- c) The Restitutions Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue the Committee believes that, if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save cases where exceptional circumstances apply.
- d) The Restitutions Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of nova (new facts).

### **General consideration (solely with respect to art dealers)**

- e) Involuntary sales shall also include sales – without the approval of the art dealer – by *Verwalters* or other administrators not appointed by the owner, from the old trading stock placed under their administration, in so far as the original owners or their heirs have not enjoyed the full benefit of the transaction and in so far as the owner has not expressly waived his or her rights after the war ended.

### **Special considerations**

1. The applicants are heirs of F.I.G. (1859-1939) and are represented by the lawyer Dr. I. Gielen. F.I.G. was a wealthy German businessman of Jewish origin who lived in Berlin and Potsdam-Neubabelsberg. In order to escape the Nazi regime, the G. family decided to emigrate in 1935. Before they could leave Germany they had to comply with very extensive tax obligations that had been imposed on Jewish citizens by the German Reich (including the *Reichsfluchtsteuer* [tax on fleeing the Reich] and the *Judenvermögensabgabe* [expropriation of Jewish property]). The G. family was taxed a total of RM 914,000, which obliged the family to sell the house in Berlin – including the household effects and the art collection with the two paintings by Troost and the painting by Van der Mijn. The paintings were sold at auction on 19 August 1936 in Berlin. F.I.G. died in 1939 before the G. family were able to emigrate. His wife M.G.-K. left Germany in 1940.  
In the light of the above and partly with regard to the Ekkart Committee's recommendation 3, which recommends that sales of works of art by private Jewish individuals in Germany from 1933 onwards should be considered forced sales unless there is express evidence to the contrary, G.'s loss of possession of the three paintings was involuntary and as a result of circumstances that were directly related to the Nazi regime.
2. After G. sold them in Berlin, the two paintings by Troost – NK 1434 and NK 1435 – ended up at the Jewish art dealers I. Rosenbaum N.V. in Amsterdam. There the Dienststelle Mühlmann placed them under an embargo in April 1942 before they were taken into storage in the vaults of the Kröller-Müller Rijksmuseum in Otterlo on 9 July 1942. The purchase price was only paid after the paintings had been taken to Germany in 1944. The Rosenbaum art dealers had been under the administration of a Verwalter

since 10 April 1942. It is not known whether Mühlmann imposed the embargo in that April before or after the Verwalter took over the administration of the art dealers. Under (e) of the “General Considerations” set out above, a sale entered into by a Verwalter without the approval of the art dealer can in certain circumstances be an involuntary sale, which may make the sold painting eligible for restitution. Therefore, having taken note of the facts as revealed by the investigation, the Restitutions Committee decided that the heirs/legal successors of the Rosenbaum art dealers must also be given the opportunity to make a claim. In a letter dated 26 November 2003, the Committee asked the State Secretary to write to the Rosenbaum heirs. With an accompanying letter dated 3 December 2004, the Ministry of Education, Culture and Science (OCW) sent the Committee a message from G.G. Stiebel dated 24 October 2004. Stiebel is a great-nephew of I. Rosenbaum and representative of the firm Rosenberg & Stiebel. This art dealership was founded in New York in 1939 by family of Saemy Rosenberg, the pre-war Director of the I. Rosenbaum N.V. art dealership and a nephew of the childless I. Rosenbaum. Saemy Rosenberg joined this company during the war. In this message Stiebel waives the opportunity to submit a claim due to the existence of older G. claims. In the same letter Stiebel draws the Ministry’s attention to the existence of a grandson of Saemy Rosenberg. The Restitutions Committee subsequently decided not to ask the Ministry of OCW to write to this potential heir, given that the Ekkart Committee in its final recommendations had in the meantime devoted one of its considerations to the subject of conflicting claims. See Consideration 4 below for more details.

3. The painting by Van der Mijn, NK 1672, was sold at the auction in 1936 to the art dealers P. de Boer of Amsterdam. The painting subsequently turned up in exhibition catalogues published by the Jewish art dealers D. Katz of Dieren between July 1937 and September 1939. Indications emerged during the investigation that this art dealership very probably had the painting in consignment for “Baroness De Vos van Steenwijk”, given that in July 1942 the painting was sold to the Germans for the Sammlung Linz, which was the art collection destined for the Führermuseum in Linz. This sale is indicated on a German inventory list as: “10.7.1942 von Baronesse de Vos-van Steenwijk über Katz für hfl. 25.000,- an SL” [“10.7.1942 from Baroness de Vos-van Steenwijk via Katz for hfl 25,000 to SL”]. This indicates that the painting was bought from the baroness with Katz acting as intermediary and the Restitutions Committee therefore assumes that Katz had the painting in consignment. The Committee has had a genealogical investigation carried out into the person who was this baroness. That investigation revealed that three people could be the baroness in question. The Restitutions Committee decided not to carry out any further investigation into the possibilities for these individuals to lay claim to the painting by Van der Mijn, given that the Ekkart Committee had in the meantime devoted one of the considerations in its final recommendations to the subject of conflicting claims. See consideration 4 below for more details.
4. At the beginning of October 2004 the Ekkart Committee presented its Final Recommendations to the government. The explanation of the third recommendation reveals that the Ekkart Committee believes that the first loss of ownership should generally prevail in the case of conflicting claims to a work of art. The Ekkart Committee adds that the Restitutions Committee should be given the freedom to consider

the relative weight of such conflicting claims, depending on the specific circumstances. In the light of this recommendation and partly because of the results of the investigation carried out for the Restitutions Committee into the possibly involuntary loss of ownership suffered by the art dealers I. Rosenbaum N.V., by a Baroness De Vos van Steenwijk, or by the Katz art dealers, the Restitutions Committee decided that the involuntary loss of ownership suffered by the G. family prevails over the possibly involuntary loss of ownership suffered by the aforementioned parties at a later date. The Committee sees no special circumstances to substantiate any other judgement in this case.

5. After the war the G. family was not in a position to locate the paintings by Troost and Van der Mijn or to submit an application for restitution. Nothing is known about any such application. However, M.G.- K- the widow G., who by now was living in England and had assumed British nationality – did submit an application for damages (*Wiedergutmachung*) after the war to the *Entschädigungsamt Berlin* [Berlin compensation office]. M.G.-K. finally received a total of DM 99,164.17 in compensation for damages. However, this payment did not specifically relate to the loss of the paintings by Troost and Van der Mijn. Given this fact and given also that the proceeds from the auction in 1936 were used to meet the tax obligations so that the family could leave the country, i.e. the proceeds are not considered to have been at the free disposal of G., the Restitutions Committee – in accordance with the Ekkart Committee’s recommendation 4 – has not considered repayment of the proceeds from the sale or deduction of part of the damages payment.
6. In view of the above, the Restitutions Committee considers the application for restitution of the paintings by Troost (NK 1434 and NK 1435) and Van der Mijn (NK 1672) to be sustainable.

## **Conclusion**

The Restitutions Committee recommends that State Secretary for Education, Culture and Science restitute the objects NK 1434, NK 1435 and NK 1672 to the heirs of F.I.G.

Adopted at the meeting of 7 February 2005.

B.J. Asscher (chair))  
J.Th.M. Bank  
J.C.M. Leijten  
P.J.N. van Os  
E.J. van Straaten  
H.M. Verriijn Stuart  
I.C. van der Vlies

## Recommendation concerning the request for the restitution of nine works from the Netherlands Art Property Collection: NK 2102, NK 2103, NK 2145, NK 2161, NK 2702, NK 2845, NK 206, NK 210 and NK 948 A-B

### *(Case number RC 1.19)*

In letters dated 5 February and 4 October 2004, the State Secretary for Education, Culture and Science asked the Restitutions Committee for advice concerning the applications dated 10 December 2000 and 25 June 2004 respectively, submitted by C.V. and his brother J.V. (hereinafter to be referred to as: the applicants) for the restitution of the nine above-mentioned works from the Netherlands Art Property Collection.

As both claims pertain to the same complex of facts, the Committee decided to merge both applications into a single recommendation request.

### **The facts**

The state secretary at first deferred the recommendation request to await the Ekkart Committee's recommendations with regard to the art trade. In a letter dated 5 December 2003, the state secretary informed the Lower House that she would adopt the recommendations and would submit the applications for restitution from art dealers to the Restitutions Committee. The state secretary then submitted the first recommendation request applications to the Restitutions Committee on 5 February 2004. Occasioned by the first recommendation request, the Committee asked the Origins Unknown Agency that research be carried out into the facts, and the results of this were laid down in a preliminary research report dated 23 April 2004. The contents of this report was sent to the applicants for comment, without first being assessed by the Committee, on 26 April 2004.

On 21 June 2004, a hearing took place attended by applicant C.V. On this occasion he handed in documents, also on behalf of applicant J.V. A report was drawn up of this hearing which the applicants responded to in a letter dated 9 August 2004. A second version of the report was occasioned by that response. The report was laid down by the Committee on 13 September 2004. As a result of the hearing the applicants submitted an additional application for restitution on 25 June 2004, which was submitted to the Committee in a letter dated 4 October 2004 by the State Secretary of Education, Culture and Science. In a letter dated 1 September, applicant C.V. provides an extensive clarification of his applications for restitution, thereby submitting further documentation. Occasioned by the more detailed facts and arguments thus obtained, the Committee drew up a new version of the research report on 26 November 2004. This report was sent to the applicants and was accepted by them, with the exception of the comment on the inventory list (see below, Special considerations No. 1). The passage concerned was adapted as stated in the definitive version of the report. The contents of all abovementioned documents and pieces of information are supposed to be included in this recommendation and to be part of it.



### **General considerations (with regard to private individuals and art dealers)**

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

### **General considerations (solely with regard to art dealers)**

- e) Involuntary sales shall also include sales without the art dealer's approval by *Verwalters* or other administrators not appointed by the owner, from the old trading stock placed under their administration, in so far as the original owners or their heirs have not enjoyed the full benefit of the transaction and in so far as the owner has not expressly waived his rights after the war ended.

### **Special considerations**

1. The applicants are the grandsons of the Jewish art dealer A.V., who had run a gallery in Amsterdam since 1921. The trials and tribulations of this gallery before, during and after the Second World War have been described extensively in the abovementioned research report dated 26 November 2004. Here the following will suffice:  
Due to the impending war A.V. closed his art dealership in 1939. He sent part of his trading stock to the United States and Great Britain. The rest was stored in a warehouse on the Nieuwe Keizersgracht in Amsterdam. There is an inventory list of the goods stored there (Appendix 3 to the research report). C.V. pointed out – in a letter dated 21 December 2004 in response to the research report (26 November 2004 version) – that, in deviation from the probability assumed in the report that the inventory concerned the pre-war stock, it is equally possible that the list was drawn up in the framework of the transfer to the NAGU on 13 February 1942. This comment is justifiable. However, so many years later and without other proof, the correct view of the matter can no longer be ascertained. This is the government's risk (see 'General Considerations' under **c** above). At the occupying force's order the goods stored were returned to the

gallery and the business was reopened in 1941. On 12 March 1941, A.V.'s gallery was forced to comply with an ordinance concerning 'Removal of Jews from Business'. On 13 February 1942, the art dealership became controlled by the NAGU (*Niederländische Aktiengesellschaft für Abwicklung von Unternehmungen*). On that same day the NAGU appointed R.F. Groeninx van Zoelen (one of A.V.'s contacts), and after the former was imprisoned by the occupying forces in June 1942 the German H. Wieth as *Verwalter*. The latter only held the post for a short while as on 2 November 1942 the gallery was sold to M.R.J. Brinkgreve (an acquaintance of Groeninx van Zoelen). The purchase price of (21,774.73 guilders, according to Brinkgreve in a post-war statement) was paid by Brinkgreve to the *Vermögensverwaltungs- und Renten-Anstalt* (VVRA) with a loan repaid using money taken from the gallery.

2. After the war the gallery was returned to A.V. in accordance with the agreements concluded on 13 May 1946 and 5 November 1948 between Brinkgreve and the former. Brinkgreve hereby declared that V. was the only party legally entitled to the purchase price paid to the VVRA. V. contacted the VVRA and eventually received a total of 68% of the purchase price, which – according to the VVRA amounted to 21,255.94 guilders. A.V. then contacted the Netherlands Art Property Foundation (hereinafter to be referred to as the SNK) concerning the artworks he had lost. The correspondence between A.V. and the SNK's director, J. Jolles, ground to a halt because V. could not indisputably prove to the SNK's satisfaction that he was the former owner of the goods and that he had lost them under duress during the occupation.
3. On the basis of the story the story provided ad 1 and 2, the Restitutions Committee determines that this is a settled case so that the applicants' requests are admissible.
4. The Netherlands Art Property Collection (NK) currently houses ten NK numbers which are linked to the provenance name V. The applicants have currently applied for the restitution of nine of these objects. The following discusses each of these objects.

#### **NK 2145: A. Lutz, *Courtyard in a town***

The inventory list (Appendix 3 to the research report), which the Restitutions Committee assumes was drawn up before 13 February 1942, lists '2 paintings by Lutz' under Inventory number 976. Because only a few works by this artist are known to exist, the Committee assumes that *Courtyard in a town* is one of these two paintings. Because of the annotation 'v' alongside the number on the list it can be assumed that both paintings belonged to A.V.'s old trading stock up until the drawing up of the list at the start of 1942.

The painting was purchased from V.'s gallery together with another painting by Lutz on 28 August 1942 by the German firm Pongs. It can no longer be ascertained who at gallery V. was involved in the transaction and whether the transaction took place with the approval or cooperation of A.V. According to Appendix 19 to the research report, Pongs then voluntarily sold the painting to Fritz Sinn in Krefeld. The painting returned to the Netherlands in May 1948.

In as far as necessary, referring to Point c of the ‘General Considerations’, the Restitutions Committee concludes that the painting *Courtyard in a town* by A. Lutz belonged to A.V.’s old trading stock and the latter lost the property involuntarily. The Restitutions Committee will therefore recommend that the application be granted.

**NK 206: Glazed pottery jug, decorated in blue and white with floral motifs and a bird in a medallion**

The abovementioned inventory list mentions two jars and one jug (respectively Numbers 31, 321 and 994). The descriptions on this list are too brief to be able to ascertain whether one of these objects is the jug claimed. An ‘Intern Aangifteformulier’ [Internal Declaration Form] drawn up by the SNK states that NK 206 was voluntarily sold to the *Museum für Hamburgische Geschichte*. The qualification ‘voluntarily’ did not, the Restitutions Committee assumes, originate from A.V. A so-called ‘Witte Kaart’ [White Card] which accompanies the form states that *Kunstzalen A.V.* sold to the *Talon Museum* in Kiel. Because both the form and the accompanying card do not state the date of sale and the question also remains unanswered whether the sale came about through or with the approval of A.V., and there is no other proof available, the question with regard to the involuntary nature of the loss of property cannot be answered with certainty.

The risk of this uncertainty should in this case, in accordance with the ‘General Considerations’ under c be lodged with the government. In this way the distribution of the risk is reinforced by the circumstance that A.V. had recognised NK 206 as his former property at a ‘claim exhibition’ and that in a letter to the SNK dated 29 June 1950 he recognised ‘1 *Hamburgsch aardewerk kruikje, blauw decor*’ [1 pottery jug, blue decor from Hamburg] ‘*als te hebben toebehoord tot de inventaris van mijn zaak*’ [as having belonged to the inventory of my business].

The Restitutions Committee will therefore recommend that the application be granted.

**NK 2845: Verbrugghen, *Still life with a vase of flowers***

This painting is not listed on the abovementioned inventory list. Nevertheless, the Restitutions Committee assumes that the painting belonged to A.V.’s old trading stock on the basis of the following facts. The painting was sold by V.’s gallery on 15 October 1940 to Alois Miedl’s gallery (*Kunsthandel Voorheen J. Goudstikker N.V.*). *Kunsthandel Voorheen J. Goudstikker N.V.*’s accounts reveal that this did not concern consignment and that the painting, along with dozens of others, was resold the very same day, at a profit, to E. Gritzbach, who was a buyer for Hermann Göring. At the time of the sale/resale, A.V. had already closed his gallery. However, the business had not been closed down yet and he was still the director and owner of the business. It is currently no longer possible to ascertain whether this sale should be seen as a voluntary trading transaction by V. in his function as art dealer. Owing to the German Miedl’s dubious reputation it cannot be ruled out that the sale was involuntary. Although Miedl helped Jewish families during the Second World War and was himself married to a Jewish woman, he was clearly also pro-Nazi. He benefited from the war through massive profits

made trading with the Germans, whereby he made particular efforts for the art collections of his friend Göring and of Hitler. Taking into account the 'General Considerations' under c the risk of the lack of further evidence is that of the government.

The Restitutions Committee will therefore recommend that the application be granted.

**NK 2702: Master of the Aachen altarpiece, *The Mass of St. Gregory***

The painting does not occur on the abovementioned inventory list which means it is impossible to ascertain whether it was part of the old trading stock. It is not likely that it was part of A.V.'s private collection as this primarily consisted of modern art. No declaration form in A.V.'s name has been found for this work either.

Nevertheless, the painting was sold to the Dutch *Kunsthandel P. de Boer* shortly after the start of the occupation in June 1940, by V's art dealership. The former sold the work to W.A. Hofer on 19 September 1940 for the benefit of Göring's collection. It is known that *Kunsthandel De Boer* regularly came to the aid of Jewish colleagues. Due to the elapsed time between the purchase and sale of the work by De Boer this transaction does not suggest a consignment, but more a voluntary trading transaction from A.V.'s gallery's trading stock.

Taking these facts into account and partly in the light of the consideration included in the text of the art trade recommendations of the Ekkart Committee that '*the art trade's objective is to sell the trading stock so that the majority of the transactions even at the Jewish art dealers' in principle constituted ordinary sales*', the Restitutions Committee assumes that the sale was a voluntary trading transaction by A.V. in his function as art dealer.

The Restitutions Committee will therefore recommend that the application be rejected.

**NK 2161: J. Leemans, *Still life with gun and other hunting attributes***

The painting does not occur on the abovementioned inventory list which means it is impossible to ascertain whether it was part of the old trading stock. It is not likely that it was part of A.V.'s private collection as this primarily consisted of modern art.

No declaration form in A.V.'s name has been found for this work either.

Nevertheless, the painting was sold to the Dutch *Kunsthandel P. de Boer* shortly after the start of the occupation in July 1940, by V's art dealership. The former sold the work to the Museum in Krefeld in May 1941. It is known that *Kunsthandel De Boer* regularly came to the aid of Jewish colleagues. Due to the elapsed time between the purchase and sale of the work by De Boer this transaction does not suggest a consignment, but more a voluntary trading transaction from A.V.'s gallery's trading stock.

Taking these facts into account and partly in the light of the consideration included in the text of the art trade recommendations of the Ekkart Committee that '*the art trade's objective is to sell the trading stock so that the majority of the transactions even at the Jewish art dealers' in principle constituted ordinary sales*', the Restitutions Committee assumes that the sale was a voluntary trading transaction by A.V. in his function as art dealer.

The Restitutions Committee will therefore recommend that the application be rejected.

**NK 210: Delft plate with blue and white decor, painted in the centre with the Apostle Peter and an angel**

Due to the brief descriptions on the abovementioned inventory list it cannot be stated with any certainty whether NK 210 belonged to the old trading stock. The list includes, under Number 548 '4 Delft plates'. It is possible that one of these plates is NK 210.

A list in the Bundesarchiv in Koblenz reveals that NK 210 was sold in '1943 by Gallery Brinckgreve, Amsterdam (previously V.)' to the *Schlossmuseum* in Berlin. It is unknown whether A.V. agreed to the sale.

He did recognise the plate as his former property at a post-war 'claim exhibition'.

The lack of further information is, taking the 'General Considerations' under c into account, the government's risk.

The Restitutions Committee will therefore recommend the granting of the application.

**NK 948 A-B, Chinese vase and cover with blue and white decor of floral motifs and landscape**

Due to the brief descriptions of the objects on the abovementioned inventory list it is impossible to say with any certainty whether NK 948 A-B belonged to the old *Kunstzalen A.V.'s* trading stock. The bottom of the vase bears the number '1942-57'.

This number occurs on a list of purchases by *Kunstsammlungen der Stadt Düsseldorf*.

According to this source the vase was purchased in 1942 from V's gallery. Owing to the year this transaction was concluded in it is reasonable to assume that it was concluded by one of the *Verwalters*. Any involvement on A.V.'s part cannot be ascertained.

V. recognised the vase as his former property at a post-war 'claim exhibition'.

He thereby commented that if the lid was new the vase was his property. The SNK file contains a handwritten expert opinion which concludes, among other things, that the lid is indeed new.

The correspondence between V. and the SNK after the war concerning this vase ground to a halt because V. could not to the SNK's satisfaction prove his property rights nor the fact that he had lost his property under duress.

On the basis of the above, it is the Restitutions Committee's opinion that the applicants' claims to the vase are sufficiently plausible and it will recommend granting the application.

**NK 2102: C. Netscher, *Portrait of a woman* and  
NK 2103: C. Netscher, *Portrait of a man***

These two paintings by Contantijn Netscher do not occur on the abovementioned inventory list. The supposition by applicant C.V. that the ‘2 *paintings attributed to Van Dijk*’ which do occur on the list could possibly be both Netschers did not stand up under scrutiny. Research in the photographic documentation at the Rijksbureau voor Kunsthistorische Documentatie and at the Iconografisch Bureau in The Hague’s did not lead to any relevant information. The paintings by Netscher also do not occur in a trio of exhibition catalogues from A.V.’s gallery (catalogues from 1914, 1933 and 1935). It therefore remains unclear when both paintings entered the gallery’s property. Both works were submitted to the auction of 13 June 1944 by *Kunstzalen A.V.*, according to auction house Mak van Waay’s records. There they were purchased by gallery *Bierich & Co* of Hamburg. At the time of the auction, Brinkgreve owned *Kunstzalen A.V.* The Restitutions Committee assumes that the sale at auction took place entirely under his supervision and that both paintings did not belong to A.V.’s old trading stock. The Committee is supported in this by the circumstance that the name ‘V.’ does not occur in connection with paintings in the SNK’s documentation; furthermore that, in as far as can be ascertained, A.V. did not report the loss of both paintings and finally that the SNK never contacted A.V. with regard to these paintings.

The Restitutions Committee will therefore recommend that this application be refused.

5. Against the background of the total sum of the damages incurred by the applicants the Restitutions Committee has been unable to find any leads for the idea of adding the obligation to pay any sum to its recommendation to grant the applications submitted.

## **Conclusion**

The Restitutions Committee recommends that State Secretary of Education, Culture and Science restitute the objects NK 2145, NK 206, NK 2845, NK 210 and NK 948 A-B to the heirs of A.V.

The Restitutions Committee recommends that the State Secretary of Education, Culture and Sciences refuse the applications to restitute NK 2702, NK 2161, NK 2102 and NK 2103.

So laid down at the meeting on 7 March 2005,

B.J. Asscher (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

Recommendation concerning the application for restitution of eleven works from the Netherlands Art Property Collection: NK 179, NK 2736, NK 1594, NK 1596, NK 2822, NK 2, NK 2240, NK 1790, NK 1863, NK 1347 and NK 554

***(Case number RC 1.10)***

In a letter dated 11 February 2004, the State Secretary for Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the application made on 19 September 2002 by Ms S.L.-S. (referred to below as the applicant), on behalf of *S.S. Antiquités* for the restitution of a number of works from the Netherlands Art Property Collection (NK collection).

**The facts**

The State Secretary deferred the request for advice on the application for restitution dated 19 September 2002 pending the recommendations of the Ekkart Committee for the restitution policy with regard to the art trade. In a letter dated 5 December 2003, the State Secretary informed the Lower House of the Dutch Parliament that the recommendations would be adopted and that applications for restitution from art dealers would be submitted to the Restitutions Committee for advice. The State Secretary subsequently presented the request for advice dated 11 February 2004 to the Committee. On 15 June 2004, the applicant let it be known that she was abandoning claims to a number of works that had been part of the application for restitution, namely NK 2784, NK 1988 and NK 1762. The claim to NK 671 was also abandoned because this object is no longer part of the Dutch National Art Collection. Since January 2004, R.W. Polak, lawyer in The Hague, has been acting for the applicant.

As a result of the request for advice, the Restitutions Committee asked the Origins Unknown Agency to start an investigation into the facts, the results of which were recorded in a preliminary investigatory report dated March 2004. The content of this report was presented to the applicant on 22 April 2004, before the Committee had assessed it.

The applicant responded to the substance of the report through R.W. Polak on 15 June 2004. On 13 September 2004 a hearing took place, at which the applicant, her brother, J.S., and R.W. Polak were present. A report on this hearing was drawn up, to which R.W. Polak responded in a letter dated 23 November 2004 on behalf of the applicant.

The Committee revised and accepted the investigatory report in January 2005, after which it was again sent to the applicant. The applicant responded to this revised version of the report through her lawyer and this response, in so far as it related to the text of the report, has been incorporated into the report.

The content of all the above-mentioned documents and records is considered to be included in this advice and to form a part of it.

### **General considerations (with regard to private individuals and art dealers)**

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

### **General consideration (solely with regard to art dealers)**

- e) Involuntary sales shall also include sales – without the art dealer’s approval – by *Verwalters* or other administrators not appointed by the owner, from the old trading stock placed under their administration, in so far as the original owners or their heirs have not enjoyed the full benefit of the transaction and in so far as the owner has not expressly waived his rights after the war ended.

### **Special considerations**

1. The applicant and her brother, J.S., are the children of the Jewish art dealer S.S., who at the outbreak of the Second World War was a partner, together with his brother B.S., in the art dealership *J.S. VOF*. The Jewish art dealership *J.S.* had had its principle place of business at Rokin 70 in Amsterdam since 1936. The trials and tribulations of this dealership are described in the investigatory report dated 7 March 2005, to which the reader is also referred. The following information shall suffice here:  
On 12 March 1941 the ‘Removal of Jews from Business’ ordinance took effect. However, until October 1941, the German occupiers left the art dealership *J.S.* alone. The partners were able to continue dealing undisturbed and were free to travel. In October 1941 that came to an end when the occupiers closed and sealed up the art dealership *J.S.*  
A few weeks later, on the advice of a fellow art dealer, B.S. approached a *Verwalter* himself for his company. “*There was no doubt that a ‘Verwalter’ would come anyway. It would be good if I tried to get a relatively good ‘Verwalter’*,” B.S. said after the war. He contacted the Dutchman, Johan Peter Joseph Kalb. In a report on the company *J.S.*, found in the archives of the Netherlands Art Property Foundation (SNK) and dated



5 December 1944, Kalb was described as a man “*who went over to the Germans immediately after the Netherlands surrendered in May 1940 and worked for them.*”

In the period between May 1940 and May 1941, Kalb worked as an interpreter for the *Sicherheidsdienst* [‘Security Service’] in Amsterdam. At the end of 1941 he worked for three months at *Lippman Rosenthal & Co.* (a clearing house for stolen works of art) on Sarphatistraat in Amsterdam.

Kalb took over the running of the art dealership S. on 27 November or 1 December 1941. The partners lost all control of the business, but were expected to continue buying and selling for the *Verwalter* and each was paid a salary of NLG 125 a week to do so.

On 5 August 1942, Kalb bought the company S. The purchase concerned “*the antique dealership run by S. in Amsterdam at Rokin 70, as it was, including the property (...), everything in the state as of 1 December 1941, for NLG. 46,765.*” The sale included all works of art, antiques, furniture and paintings contained in the building. The price for the fixtures and fittings present was based on the inventory book drawn up by employees of the company S. on the instructions of Kalb. It is unclear whether this inventory book contains the entire list of fixtures and fittings of the art dealership *J.S.* The employees were instructed to set the value of the items at one-third of the purchase price.

Comparing the inventory book with the list of fixtures and fittings in the deed of transfer shows that the sale price was much lower than the sum of the amounts included in the inventory book. Kalb paid the purchase price with a loan that was subsequently paid off using income from the art dealership. Kalb deposited the purchase price with *Handelmaatschappij H. Albert de Bary & Co* in Amsterdam in the names of S. and B.S. However, the S. brothers never had the money at their disposal. Taking these facts and the various witness statements quoted in the investigatory report together, it can be concluded that the sale to Kalb was not voluntary.

2. B. and S.S. survived the war. After the war, the premises of the company S. on Rokin were found to be almost completely empty. B.S. found a few objects that the S. brothers had sold to Kalb in 1942 at various addresses.

On 5 August 1946, the art dealership *J.S.* filed a petition with the Jurisdiction Department of the Council for the Restoration of Rights in Amsterdam, containing a claim against Kalb for NLG 187,846.11. On 10 June 1947, based on the Decree on Restoration of Legal Transactions, KB E 100, the Council declared “*the purchase and sale of the antiques dealership at Rokin 70 in Amsterdam run by the applicant, as well as [of, RC] the goods still on the premises to be invalid*”. The Council did not pursue the matter of the damages requested. On 18 June 1947, Kalb was sentenced by the 13<sup>th</sup> Chamber of the Amsterdam Tribunal to two years and four months’ internment for helping the enemy and because he “*had tried to benefit from measures taken by the enemy by becoming the ‘Verwalter’ for the Jewish company J.S. in December 1941.*” The tribunal considered it irrelevant that S. had approached Kalb himself to be the *Verwalter*. An extensive ‘record of objections’, dated 19 March 1951, was found in the archive of the Netherlands Property Administration Institute (NBI), in which all the disputes between S. and Kalb are described. Although this record indicates that the document would be submitted to the Council for the Restoration of Rights with both parties’ agreement, the Council’s archives do not reveal that this case was ever actually submitted. No evidence of a settlement has been found in the available sources. The Restitutions Committee

assumes that S. never received any damages from Kalb or from anyone else. S. only recovered the premises and found a few paintings.

Based on the above, the Restitutions Committee finds that this matter has not been settled and so the applicant's applications are admissible.

3. There are currently a few dozen items in the NK collection to which the provenance name S. is linked. The applicant is currently applying for restitution of eleven of these items. Each of these items is considered below.

### **NK 179: Delft garniture**

According to an exhibition catalogue, the Delft garniture was part of the trading stock of the art dealership *J.S.* in 1936. In the S. inventory book that was drawn up on Kalb's instructions between 1 December 1941 and 5 August 1942, number 108 is given as "*1 Bl. Delftsch geribd stel*" ["1 Bl. Delft ribbed set"]. The Restitutions Committee assumes that this description refers to NK 179, partly based on the fact that, after inspecting NK 179, *J.S.* – the brother of the applicant – recently confirmed that the object is the same garniture as the garniture shown in a photograph still in his possession. There is a note in the S. inventory book that this garniture was sold to "*a private individual*" on 19 September 1941. No further details have been found concerning the sale. Documents in the SNK archives show that NK 179 was sold in 1943 via the art dealership *A. Staal* to the *Kunstsammlungen der Stadt Düsseldorf*. After the war, the garniture was recovered and returned to the Netherlands.

At the time NK 179 was sold, the art dealership *J.S.* was not yet under the control of *Verwalter* Kalb. B. and S.S. had freedom to trade and freedom of movement at the time of the sale. In view of these facts and partly in the light of the consideration included by the Ekkart Committee in the text of the art trade recommendations that "*the art trade's objective is to sell the trading stock, so that the majority of the transactions even at the Jewish art dealers' in principle constituted ordinary sales*", the Restitutions Committee assumes that the sale of the Delft garniture was a voluntary transaction arranged by the S. brothers in their capacity as art dealers. This assumption is reinforced by the fact that no declaration form or correspondence relating to NK 179 in the name of S. has been found in the SNK archives.

The Restitutions Committee will therefore recommend that the application for restitution be rejected.

### **NK 2736: N. Molenaer, *Skaters near a village***

The art dealership *J.S.* sold this painting on 25 October 1940 to the art dealership *Voorheen J. Goudstikker N.V.*, which the German businessman, Alois Miedl, had set up on 14 September 1940 using the trade name of the Jewish art dealers *J. Goudstikker N.V.* Under Miedl's management, *Voorheen J. Goudstikker N.V.* sold works of art worth millions of guilders to art buyers in Nazi Germany during the war years. At the time when NK 2736 was sold by the company *J.S.*, the S. brothers were at liberty to trade

independently. It is not known whether the sale took place under any form of duress. Owing to the German Miedl's dubious reputation it cannot be ruled out that the sale was involuntary. Although Miedl helped Jewish families during the Second World War and was himself married to a Jewish woman, he was clearly also pro-Nazi. He benefited from the war through massive profits made trading with the Germans, whereby he made particular efforts for the art collections of his friend Göring and of Hitler. After purchasing the painting, *Voorheen J. Goudstikker N.V.* sold it again on 11 December 1940 at a profit of several thousand guilders to Heinrich Hoffmann, one of Adolf Hitler's art advisors. Via Hoffmann the painting came into the possession of the *Reichskanzlei* in Berlin on 16 December 1940, where on the same day it ended up in the collection for what was known as the *Führermuseum* in Linz.

The question of whether the loss of ownership by the art dealership S. was voluntary or under duress remains unanswered. In line with the 'General Considerations', part **c**, the risk in relation to this uncertainty should be borne by the government. The Restitutions Committee will therefore recommend that the application be granted in respect of this item.

**NK 1594: W. Verschuur I, *Interior of a stable with horses and a donkey* and  
NK 1596: L. Meléndez de Ribera, *Still life with basket of fruit and asparagus***

The art dealership *J.S.* sold these paintings on 17 July 1940 to the German businessman Alois Miedl who was living in the Netherlands at the time. When these paintings were sold, the S. brothers were still at liberty to trade and travel without restrictions.

Owing to the German Miedl's dubious reputation it cannot be ruled out that the sale was involuntary. Although Miedl helped Jewish families during the Second World War and was himself married to a Jewish woman, he was clearly also pro-Nazi. He benefited from the war through massive profits made trading with the Germans, whereby he made particular efforts for the art collections of his friend Göring and of Hitler. It is known that at an early stage of the occupation he exerted pressure on Jewish art collectors to persuade them to sell – via Miedl – to Göring. One week after purchasing the paintings, Miedl sold them to Heinrich Hoffmann, one of Adolf Hitler's closest associates.

Hoffmann sold the paintings on 29 August 1940 to the *Reichskanzlei* in Berlin, after which, on the same day, they turned up in Adolf Hitler's private collection.

The question of whether the loss of ownership by the art dealership S. was voluntary or under duress remains unanswered. In line with the 'General Considerations', part **c**, the risk in relation to this uncertainty should be borne by the government. The Restitutions Committee will therefore recommend that the application be granted in respect of these items.

**NK 2822: P. van Hillegaert I (formerly ascribed to R. van den Hoecke),  
*Siege of a town***

Research conducted in the archives of the art dealership *P. de Boer* in Amsterdam has revealed that that art dealership bought this painting from the art dealership *J.S.* on 1 September 1940. It is known that the art dealership *P. de Boer* regularly came to the aid of Jewish colleagues. The sale took place under the direction of B. and S.S., whose freedom to trade and freedom of movement had not yet been curtailed. No post-war declaration form, nor any correspondence relating to this painting has been found in the SNK archives under the name of the art dealership *J.S.* Based on this information and with reference to the consideration included by the Ekkart Committee in the text of the art trade recommendations that “*the art trade’s objective is to sell the trading stock, so the majority of the transactions even at the Jewish art dealers in principle constituted ordinary sales,*” the Restitutions Committee concludes that the sale of NK 2822 was a voluntary trading transaction by the S. brothers that took place in their capacity as art dealers.

The Restitutions Committee will therefore recommend that the application be rejected in respect of this item.

**NK 2: Louis XV-commode**

A Louis XV commode appears in a photograph of the interior of the art dealership *J.S.* in 1936 that was found in the archives of that art dealership. The object was thus part of the former trading stock of *J.S.* A form in the SNK archive filled in following a post-war “claims exhibition” held in 1949 reveals that S.S. recognised NK 2 as former property: “*Probably misappropriated during the time that J. Kalb was managing the business. May, however, have been sold by him or by the company itself before 1941.*” No further information has been found in the available sources to establish when, by whom – S. or Kalb – and under which conditions the commode was sold. In an internal declaration form found in the SNK archives and dated 22 January 1947 the SNK indicates that the commode finally turned up via C.E. Pongs in the *Düsseldorf Museum* collection by way of a voluntary sale by an unknown owner. The available sources reveal no further details about the provenance of NK 2.

After the war some correspondence took place about the commode between the company *J.S.* and the SNK, but the exchange of letters came to an end when S. failed to respond to a question from the SNK as to whether the art dealership S. would be laying a claim to the commode.

The fact that further information is not – or no longer – available is a risk to be borne by the government, given part c of the ‘General Considerations’.

Consequently, the Restitutions Committee will recommend that the application be granted in respect of this item.

**NK 2240: E.J. Verboeckhoven, *A meadow with cows, sheep and ducks***

According to the above-mentioned inventory book, the art dealership S. both bought and sold this painting on 27 January 1942. Further information about the sale was found on an internal SNK declaration form drawn up in 1947, which states that the art dealership S. sold the painting voluntarily to “Höll” via the German art dealership *Paffrath*. The Restitutions Committee assumes that the qualification ‘voluntarily’ did not come from the S. brothers. At the time of the sale by the art dealership S., Kalb had been appointed as *Verwalter* for the art dealership, with B. and S.S. working as ‘advisors’. Nothing is known regarding their possible involvement in or approval of this sale. Based on part c of the ‘General Considerations’, this lack of evidence is the government’s risk. It can be assumed that the painting was purchased with the aim of selling it on immediately to the German art dealership. The Restitutions Committee concludes that the goodwill, infrastructure and capital of the company *J.S.* were used in the sale of the Verboeckhoven painting. The Tribunal found Kalb guilty in this regard in 1947. Based on the information above and due to the fact that the S. brothers never received the purchase price for their art dealership and, after the war, received no financial compensation whatsoever for the losses they had suffered, the Restitutions Committee considers the application for restitution to be sustainable. The Restitutions Committee will therefore recommend that the application be granted in respect of this item.

**NK 1790: P. Gijssels, *Church interior with market scene and***

**NK 1863: P. Gijssels, *Market scene***

Kalb bought these two paintings on 14 March 1943 as the owner of the art dealership *J.S.* On the same day, he sold the paintings on to the art dealership *Voorheen J. Goudstikker N.V.* At the time of the sale, the S. brothers were in hiding. The Restitutions Committee assumes that the buying and selling took place entirely under Kalb’s responsibility. He traded by means of the goodwill, infrastructure and the capital accumulated for the company built up by the S. brothers. The Tribunal in Amsterdam found Kalb guilty in this regard in 1947. Based on the information above and due to the fact that the S. brothers never received the purchase price for their art dealership and, after the war, received no financial compensation whatsoever for the losses they had suffered, the Restitutions Committee considers the application for restitution to be sustainable. The Restitutions Committee will therefore recommend that the application be granted in respect of these items.

**NK 1347: B.H. Thier, *Landscape with farm and cattle***

The above-mentioned inventory book does not contain any description that might refer to this water colour. This would indicate that the work came into the possession of the art dealership S. after Kalb came into the business. It is, however, not known whether Kalb acquired the painting in his capacity as *Verwalter* or as owner of the art dealership.

This also means that it is unclear whether the painting was part of the old or the new trading stock. This uncertainty is the government's risk under part c of the 'General Considerations'. On 27 April 1944, Kalb, who at that time was the owner of the art dealership *J.S.*, sold the painting by Thier to the art dealership *Bierich & Co.* in Hamburg. B. and S.S. were in hiding at the time. The Restitutions Committee assumes that the sale took place entirely under Kalb's responsibility. Kalb made use of the goodwill, infrastructure and the capital of art dealership S. The Tribunal in Amsterdam found Kalb guilty in this regard after the war. Based on the information above and due to the fact that the S. brothers never received the purchase price for their art dealership and, after the war, received no financial compensation whatsoever for the losses they had suffered, the Restitutions Committee considers the application for restitution to be sustainable.

The Restitutions Committee will therefore recommend that the application be granted in respect of this item.

#### **NK 554: Dutch cupboard**

The cupboard cannot be linked to a description in the aforementioned inventory book. This would indicate that the object came into the possession of the art dealership S. after Kalb had come into the business. It is, however, not known whether Kalb acquired the cupboard in his capacity as *Verwalter* or as the owner of the art dealership. This means that it is still unclear as to whether the cupboard was part of the old or the new trading stock. The available archive material also fails to provide certainty about the date of the sale. All that is known is that the art dealership *J.S.* sold NK 544 "*während des Krieges*" ["during the war"] to the *Münchener Kunsthandelsgesellschaft*. Uncertainty therefore remains as to whether the cupboard was sold during Kalb's management as *Verwalter* or by Kalb as the owner after 1 December 1941. This lack of certainty is a risk to be borne by the government under part c of the 'General Considerations'.

A declaration form in the SNK archive shows that the company *J.S.* on 10 December 1945 reported that a "walnut cupboard" was missing. In this declaration, *J.S.* indicated that the object had come into the possession of the '*Münchener Kunsthandel, Ger. München*' in a voluntary sale. A note has been added to the form in pencil – in all probability by employees of the SNK – that reads: "*NK 554? Is this the cupboard in question?*" The Restitutions Committee assumes that this question can be answered in the affirmative. In view of the qualification 'voluntary' given by the company S. in relation to the sale, the Restitutions Committee refers to the Ekkart Committee's art trade recommendation 5. There, the Ekkart Committee recommends "*viewing the qualification binding in all cases in which the art dealer himself, his heirs or an immediate representative appointed by him or by his heirs has filled in "voluntary sale", unless very clear clues are submitted which make it probable that a mistake was made when the form was filled in or that the filling in of the form took place under disproportionately burdening circumstances.*"

The Restitutions Committee has found no evidence that makes it likely that an error was made in filling in the declaration form or that it was filled in under unreasonable circumstances, and so the Committee considers that the qualification 'voluntary' is binding.

The Restitutions Committee will therefore recommend that the application be rejected in respect of this item.

4. In view of the circumstance that the S. brothers never received the purchase price for their art dealership and, after the war, received no financial compensation whatsoever for the losses they had suffered, and in view of the fact that the Restitutions Committee does not know whether the S. brothers were given any freely disposable proceeds from the sale, the Committee will not consider repayment of the proceeds in line with recommendation 4 by the Ekkart Committee.

## **Conclusion**

The Restitutions Committee recommends that the State Secretary for Education, Culture and Science restitute the objects NK 2736, NK 1594, NK 1596, NK 2, NK 2240, NK 1790, NK 1863 and NK 1347 to the heirs of S.S.

The Restitutions Committee recommends that the State Secretary for Education, Culture and Science reject the application for restitution of NK 179, NK 2822 and NK 554.

Adopted at the meeting on 18 April 2005,

B.J. Asscher (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

## Restitutions Committee advice concerning an etching by Graadt van Roggen from the Netherlands Art Property Collection (NK 3537)

### ***(Case number RC 1.25)***

In a letter dated 23 December 2004, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the application made on 24 September 2004 by Ms A. K.-M. (referred to below as the applicant) for restitution of the etching *Landscape with river and windmills* by J.M. Graadt van Roggen (NK 3537) from the Dutch National Art Collection.

### **The procedure**

On 24 September 2004, the applicant submitted to the State Secretary of Education, Culture and Science an application for restitution of the etching *Landscape with river and windmills*, which is in the storage facility of the Netherlands Institute for Cultural Heritage (ICN) as part of the Dutch National Art Collection. The reason for this application for restitution was a letter, dated 2 July 2004, from the Origins Unknown Agency (referred to below as BHG) to various members of the M. family requesting information about the etching with inventory number NK 3537. In that letter of 2 July, BHG informed the family members that NK 3537 might well be one of the possessions of S.E. that were handed over to the looting bank Lippmann, Rosenthal & Co. of Amsterdam, S.E. being a relation of the addressees who died on 1 February 1943.

Following the request for advice submitted by the State Secretary, the Restitutions Committee initiated an investigation into the facts, the results of which are presented in a draft investigatory report dated 13 June 2005. This draft was presented to the applicant with an accompanying letter dated 14 June 2005. The applicant subsequently informed the Committee that she agreed with this description of the facts. On 27 June 2005 the Restitutions Committee formally adopted the investigatory report. The content of all the above-mentioned documents and records is considered to be included in this advice and to form a part of it.

### **General considerations (with respect to private individuals and art dealers)**

- a) The Restitutions Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b) The Restitutions Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.



- c) The Restitutions Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue the Committee believes that, if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- d) The Restitutions Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of nova (new facts).

### **General consideration (solely with respect to art dealers)**

- e) Involuntary sales shall also include sales – without the approval of the art dealer – by *Verwalters* or other administrators not appointed by the owner, from the old trading stock placed under their administration, in so far as the original owners or their heirs have not enjoyed the full benefit of the transaction and in so far as the owner has not expressly waived his or her rights after the war ended.

### **Special considerations**

1. The applicant is requesting restitution of the etching *Landscape with river and windmills* by Graadt van Roggen in her capacity as heir to her great-aunt S.E. In this connection the Committee took note of the certificate of inheritance drawn up by civil-law notary J.W.Th. Küller of The Hague, which can be found in the Committee's file on the investigation and which shows who S.E.'s heirs were on 1 July 1959.

In this procedure the applicant is acting on her own behalf and not on behalf of all the heirs, although the Committee concludes from the correspondence with the applicant that she is attempting to achieve restitution of the etching to the joint heirs.

2. S.E., who was born on 8 March 1871 and died on 1 February 1943, owned an art collection that included an etching of the aforementioned illustration by Graadt van Roggen. Please see the investigatory report for an extensive description of Ms E.'s loss of ownership of the art collection. The following information will suffice here.

S.E., who was of Jewish origin, lived during the war at Ruychrocklaan 54 in The Hague, where she died unmarried and childless on 1 February 1943. Immediately after her death the household effects were seized by the so-called 'Einsatzstab Rosenberg', an organisation whose aim was the systematic plunder of art and cultural objects belonging to Jews in Europe. As stated in a recovered confirmation of receipt provided by this looting organisation, the household effects included some '*Wandbilder*', or wall paintings. After the works of art had been looted from S.E.'s house, they were delivered to the looting bank Lippmann, Rosenthal & Co. (the so-called 'Liro bank'), as evidenced by the inclusion on the so-called Liro list of various works of art from the estate of '*S. E., resident at Ruychrocklaan 54 in The Hague*'. The aim was to sell the works on to various Dutch and

German buyers. Almost all of S.E.'s art collection was bought by the Berlin company Reinheldt, which was one of the major buyers of art owned by Jews that was handed over to the Liro bank during the war. The works of art owned by S.E. on the Liro list include the etching '*Molens a/h water*' ['Windmills by water'] for which '*n/J.Maris door Gr. v. Roggen*' is named as the maker. The Liro bank valued the work at fifteen guilders and on 18 January 1944 it was sold for twenty guilders to the aforementioned Reinheldt company.

3. Based on this information, the Committee determined that the loss of the art collection from S.E.'s estate was involuntary and was a result of circumstances that were directly connected to the Nazi regime.
4. Until recently, S.E.'s family did not know the location of the etching by Graadt van Roggen, and the Dutch post-war authorities responsible for the restoration of rights did not know where the etching was either. There has therefore been no settled application for restoration of rights.
5. After the war, the E. family – via the Foundation of Jewish Communities and Social Organisations for Damage Reimbursement (*Stichting Jokos*) – applied for damages for the seizure and transfer to Germany of the contents of S.E.'s home. In addition, there may have been a payment made in the 1950s of part of the sale price of twenty guilders for the etching that the Liro bank received during the war. The investigation does not offer any answers as to how to handle these two issues. In this regard the Committee considers that further investigation is not necessary given that such payments could not affect the current application for restitution.
6. The Committee then had to answer the question as to whether there was sufficient evidence to assume that the etching by Graadt van Roggen – which is known as NK 3537 in the National Art Collection – is the etching by Graadt van Roggen from S.E.'s looted art collection.

In this connection the Committee considers that several copies of the same etching could exist. However, there are a number of points in the conclusion published by BHG regarding the provenance investigation into NK 3537 on which an identification might be based. The conclusion reads as follows:

*'The ICN archive shows that this etching was given to the local Municipal Museum together with two paintings by Amsterdam detectives shortly after the war. The museum transferred the works in 1975 to the State Art Collections Service ['Dienst voor 's Rijks verspreide kunstwerken'] at which time the suspicion was expressed that the works were either Jewish or enemy assets.'*

This is supported by the statement in the Committee's investigatory report regarding the intervening period:

*'If the etching NK 3537 is indeed identical to the print mentioned on the Liro list, that raises the question as to how it is possible that the work of art was in the Netherlands just after the war – more than a year after it was purchased by the German company Reinheldt. There are a number of conceivable possibilities. It may well be that the company owned a storage facility in the Netherlands where part of the purchased stock was stored, or maybe Reinheldt sold the etching on to a buyer in the Netherlands. However, this remains guesswork: there are few indications to work with because it is not known where the print was found after the war and under what circumstances it came into the hands of the Amsterdam detectives.'*

7. Given the relaxed burden of proof in the current restitutions policy, the Committee considers that there is sufficient evidence to conclude that the etching lost by S.E. is etching NK 3537 for which the applicant has applied for restitution. With reference as far as necessary to the Committee's third general consideration, namely that the risk presented by the lack of more detail is a risk that should be borne by the government, the Committee considers that the present application for restitution to the heirs of S.E. can be granted.

## **Conclusion**

The Restitutions Committee advises the State Secretary of Education, Culture and Science to return the etching *Landscape with river and windmills* by J.M. Graadt van Roggen (NK 3537) to the heirs of S.E.

Adopted at the meeting on 27 June 2005,

B.J. Asscher (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

## Advice concerning the applications for restitution of the painting *Venus and Adonis and Amor* by J.A. Uytewael (NK 3424)

### ***(Case number RC 1.24)***

In letters dated 23 December 2004 and 25 March 2005, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the applications for restitution of the painting NK 3424, *Venus and Adonis and Amor* by J.A. Uytewael from the Dutch National Art Collection.

### **The procedure**

The two requests for advice from the State Secretary are based on two applications for restitution of the painting NK 3424. On 11 November 2004, G. (referred to below as 'the first applicant') submitted an application for restitution, which, on 1 March 2005, was followed by an application for restitution from v.H.M. (referred to below as 'the second applicant'), a cousin of G, relating to the same painting.

The rationale for both applications for restitution was a letter from the Origins Unknown Agency (referred to below as 'BHG') dated 20 October 2004 in which a number of members of the G. family were asked to provide information relating to the painting with inventory number NK 3424. In that letter, BHG mentioned that NK 3424 probably originated from the estate of I.G., the grandfather of the applicants, which was surrendered to the looting bank Lippmann, Rosenthal & Co. in Amsterdam.

As a result of the request for advice, the Restitutions Committee began an investigation into the facts, the results of which were incorporated in a draft investigatory report dated 20 June 2005. This draft was presented to the applicants in letters dated 28 June 2005. Both applicants responded to the draft report, after which some points in the report were altered. On 4 August 2005 the Restitutions Committee adopted the definitive investigatory report and sent it to the applicants for their information. The content of all the above-mentioned documents and records is considered to be included in this advice and to form a part of it.

### **General considerations (with respect to private individuals and art dealers)**

- a) The Restitutions Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b) The Restitutions Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.

- c) The Restitutions Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue the Committee believes that, if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- d) The Restitutions Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of nova (new facts).

### **General consideration (solely with respect to art dealers)**

- e) Involuntary sales shall also include sales – without the approval of the art dealer – by *Verwalters* or other administrators not appointed by the owner, from the old trading stock placed under their administration, in so far as the original owners or their heirs have not enjoyed the full benefit of the transaction and in so far as the owner has not expressly waived his or her rights after the war ended.

### **Special considerations**

1. The applicants are requesting the restitution of the painting NK 3424, *Venus and Adonis and Amor* by J.A. Uytewael in their capacity as heirs of their grandfather, I.G.

In this context, the committee has noted two attestations of admissibility to the estate of I.G. which are in the investigatory dossier, the first drawn up on 16 July 1948 by the civil-law notary Adolph Roos in Amsterdam and the second drawn up on 15 June 1959 by the civil-law notary Antonie Wouter Voors in Heemstede.

In this procedure, the applicants are not acting on behalf of the joint heirs. The first applicant is acting for himself and the second applicant has stated that he is acting jointly for himself and his sister, S.-M.

2. The Committee has considered the following with regard to the loss of ownership during the war. I.G., who was born on 19 May 1882 in Amsterdam and died on 9 April 1943 in Sobibor, was the owner of a painting described in the 1940s as a *Mythological representation* by J. Rottenhammer. A detailed description of the loss of ownership can be found in the investigatory report. The following description is considered sufficient in this context.

I.G., who was of Jewish origin, lived and worked in Amsterdam until the end of 1942. On 15 September 1942, he and his family went into hiding but he was arrested shortly after that. He and his wife, two daughters and his youngest grandson died in Sobibor extermination camp on 9 April 1943. His daughter G. and his eldest grandson G., who is one of the present applicants, were among the few direct members of his family who survived the war.

Before his arrest, I.G. had stored a quantity of valuable objects with non-Jewish acquaintances but the occupier was nonetheless able to get hold of them. On 22 January 1943, the *Devisenschuttkommando* sent a list of these goods to the German looting institution, Lippmann, Rosenthal & Co. (known as the 'Liro bank'). Apart from six other paintings and many silver objects, the list mentions an '*Oelgemälde von dem Maler J. Rotenhammer*' ['Oil painting by the painter J. Rotenhammer']. According to the Liro list of paintings, the looting bank sold the '*Mythologische voorst.*' ('*Mythological representation*') by '*J. Rottenhammer*' on 13 September 1943 for 100 guilders to the Lempertz company in Cologne, which was one of the most important customers for Jewish art property handed in to the Liro bank. What happened to the painting by Rottenhammer after it was bought by Lempertz is unknown.

On this basis the Committee firmly believes that I.G. did involuntarily lose a painting described as a *Mythological representation* by the artist J. Rottenhammer, as a direct consequence of the Nazi regime.

3. The following is known concerning the provenance of the claimed painting *Venus and Adonis and Amor* by J.A. Uytewael (NK 3424). Records kept by successive administrators of the Netherlands Art Property Collection (NK collection) show that the painting NK 3424 was part of a group of objects in the NK collection that were probably not transported to Germany during the war but instead remained in the Netherlands, and after the war were in the buildings of the Ministry of Foreign Affairs in Het Plein in The Hague. That location was used by the occupying authorities during the war. After the war various goods were found, particularly in the official residence at Plein 1813, no. 2, which had apparently been left behind by the German occupying forces. These goods included the painting NK 3424 that at that time was still described in an inventory list as '*Rottenhammer: Venus, Mars and Amor*'. Corrections to both the title and the artist's name were made at a later date. The painting is currently registered in the Dutch National Art Collection as *Venus and Adonis and Amor* by J.A. Uytewael, with '*in the style of H. Rottenhammer*' referring to its previous attribution. Conclusive proof of the provenance history of NK 3424 during the war is therefore not available. However, it is probable that NK 3424 is identical to the Liro G. painting, in view of the name of the person to whom the painting is attributed, the representation and the location where NK 3424 was found after the war. After consulting the information collected by BHG during its investigation, Dr R.E.O. Ekkart, former head of BHG and Director of the Netherlands Institute for Art History concluded: '*The likelihood that NK 3424 is indeed G.'s painting is, in my opinion, very great.*' These findings from the provenance investigation by BHG formed a rationale for the agency to contact the G. family at the end of 2004, which led to these two claims being submitted.

On the request of the Restitutions Committee, the first applicant described the painting lost by his grandfather as follows:

*"Although I cannot describe the painting in your possession and cannot give you any details about it – I last visited my grandparents on 28 August 1942, and had therefore just turned 12 years old. I seem to remember that there was a “mythological” painting in the library behind the dining room, hanging on the wall next to the double doors that led from the dining room to the library. [...] Another reason is that every time I saw my grandmother she greeted me with the nickname “Adonis” (I was then their only grandson) referring to that mythological picture."*

The Committee thus considers it sufficiently probable that NK 3424 is the painting that I.G. lost.

4. Until recently, the family of I.G. was unaware of the location of the painting concerned. There is therefore no question of a settled application for restitution of this painting.

At the end of the 1950s, the Dutch government did return another painting from the I.G. estate to the family. This work of art had likewise fallen into the hands of the Liro bank during the war. It depicted a landscape with cows by the artist A. Verhoesen, which it had been possible to recover from Germany after the liberation. The painting was handed over to the son of M.-G., v.H.M., the second applicant in the current procedure, on 9 October 1959. In this context the Committee has taken note of the complaint made by the first applicant, G., that he was never informed by the Dutch authorities of the discovery of the Verhoesen painting in 1959 and its return to his cousin.

5. Based on the above, the Committee considers the application for restitution of the painting *Venus and Adonis and Amor* by J.A. Uytewael (NK 3424) to the joint heirs of I.G. to be admissible.

## **Conclusion**

The Restitutions Committee advises the State Secretary of Education, Culture and Science to return the painting *Venus and Adonis and Amor* by J.A. Uytewael (NK 3424) to the heirs of I.G.

Adopted at the meeting on 7 September 2005,

B.J. Asscher (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

# Recommendation Regarding the Application by Amsterdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection

## *(Case number RC 1.15)*

In letters dated 10 June 2004 and 20 September 2005, the State Secretary for Culture, Education and Science asked the Restitutions Committee to issue a recommendation regarding the decision to be taken concerning an initial application and additional application by Amsterdamse Negotiatie Compagnie NV in liquidation for the restitution of the works of art which are currently in the possession of the State of the Netherlands and that were part of the trading stock of the gallery Kunsthandel J. Goudstikker NV, as it existed on 10 May 1940.

## **The Proceedings**

On 26 April 2004, Amsterdamse Negotiatie Compagnie NV in liquidation (referred to below as ‘the Applicant’) filed a substantiated application with the State Secretary for Culture, Education and Science (referred to below as ‘the State Secretary’) for the restitution of 241 itemised art objects described in the application as *‘the goods that the State of the Netherlands has in its custodianship and that were part of the Goudstikker Collection’*. The State Secretary submitted this application to the Restitutions Committee (referred to below as ‘the Committee’) for its advice in a letter dated 10 June 2004. In a letter of 31 July to the State Secretary and letters of 8 January 2005 and 31 July 2005 to the Committee, the Applicant revised the list of 241 art objects enclosed with the letter of 26 April 2004, expanding it to a list of 267 art objects.

According to a statement in the first application, the application is ‘supported’ by Marei von Saher-Langenbein (referred to below as ‘von Saher-Langenbein’), the widow of Eduard von Saher, Jacques Goudstikker’s only son. At the request of the Committee, the authorised representatives explained the meaning of this support in a letter of 8 January 2005. This was provided *‘in case goods were included among the reclaimed art objects that belonged to the private assets of Mr Jacques Goudstikker and/or Mrs Desi Goudstikker-von Halban.’* Because this was not the case, the Committee regards Amsterdamse Negotiatie Compagnie NV in liquidation as the sole applicant. Amsterdamse Negotiatie Compagnie NV has been the new name of Kunsthandel J. Goudstikker NV (referred to below as ‘Goudstikker’) since a 1952 resolution. The liquidation of assets of the company wound up as from 14 December 1955, which was concluded on 28 February 1960, was reopened on 31 March 1998 by order of the Amsterdam District Court.

R.O.N. van Holthe tot Echten, Master of Laws, and Prof. H.M.N. Schonis, Master of Laws, are acting in the proceedings before the Committee as the authorised representatives of the Applicant and of von Saher-Langenbein.



The Committee has reviewed all the written documents submitted in this case, specifically including the applications and explanatory notes filed with the State Secretary on behalf of the Applicant on 26 April 2004 and 31 July 2005, the reply dated 8 January 2005 from the Applicant's authorised representatives to the Committee's questions and the response of 31 July 2005 to the draft investigatory report compiled by the Committee. For the State Secretary's part, the Committee has read a letter with appendices of 30 September 2004 from deputy State Advocate H.C. Grootveld, Master of Laws, to the director of the Cultural Heritage Department of the Ministry of Culture, Education and Science with respect to the status of judicial cases pending before the court in which the State of the Netherlands and the Applicant are involved.

During a hearing on 12 September 2005 organised by the Committee, the Applicant provided a verbal explanation of its application. Besides the authorised representatives Van Holthe tot Echten and Schonis, the following persons attended on behalf of the Applicant: Von Saher-Langenbein (the Applicant's liquidator as well as the 'supporter' of the application), Charlène von Saher (Jacques Goudstikker's granddaughter), A. Bursky (the Applicant's liquidator), L.M. Kaye, Esq. (Von Saher-Langenbein's counsel), Prof. I. Lipschits (the Applicant's advisor), Mr C. Toussaint (the Applicant's art history advisor), R. Smakman (colleague of authorised representative Van Holthe tot Echten), as well as the interpreters Van den Berg and Cillekens. A transcript was drafted of the hearing, which the Committee sent to the authorised representatives in a letter dated 13 October 2005.

In response to the requests for advice it has received, the Committee instituted a fact-finding investigation, the results of which are documented in a draft report dated 25 April 2005 that was sent to the Applicant on 4 May 2005. In a letter of 31 July 2005, the Applicant sent its response to the Committee's draft report. Subsequently, points of the draft report were revised. This response has been appended to the documentary report (referred to below as 'the Report') adopted by the Committee on 19 December 2005. The Report is deemed to comprise part of this recommendation.

### **General Considerations (regarding art dealers)**

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

- d) Finally, the Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

## **Special Considerations**

A few basic assumptions are first explained below under Section I. Section II addresses the loss of possession during the first months of the war in 1940, the period during which Jacques Goudstikker, sole managing director and principal shareholder of Goudstikker, had already fled the Netherlands, and some of his employees had sold the immovable and movable property of his gallery, mainly to Alois Miedl and Hermann Göring. Section III discusses previous applications for the restoration of Goudstikker's rights, namely:

- the negotiations with the Dutch rights restoration authorities conducted after the war that ultimately, on 1 August 1952, resulted in a settlement agreement in respect of the art objects, and
- a restitution application filed with the State Secretary by Jacques Goudstikker's heirs in 1998, which, following its rejection, was brought before the Court of Appeals of The Hague.

In Section IV, the Committee provides its judgement of the works of art delivered in 1940 to Miedl and Göring, respectively. In Section V, the Committee then sets out its position on the other art objects included in this restitution application. Finally, in Section VI, the Committee discusses the consequences of possible restitution.

### *I. Basic Assumptions*

#### **The Facts**

1. For the facts serving as the basis of this recommendation, the Committee refers the reader to the Committee's Report, deemed to comprise an integral part of this recommendation.

#### **The Committee's Decision-Making Framework**

2. Under Article 2 of the Decree of 16 November 2001 establishing its tasks and responsibilities, the Committee has the task of advising the State Secretary 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 must observe relevant government policy.

## **Items of Cultural Value Concerned**

3. The Applicant seeks the restitution of 267 works of art, mainly paintings, from the Dutch National Art Collection that are claimed to have been part of Goudstikker's trading stock, as stated in List I appended to this recommendation. After the war, the State of the Netherlands recovered these works of art primarily from Germany and they were subsequently incorporated into the National Art Collection. As of 2005, a large portion of the works of art is on loan to various Dutch museums and government agencies under Netherlands Art Property (NK) inventory numbers.

The Committee has determined that the majority of the art objects whose restitution is requested (227 in number) were the property of Goudstikker when in May 1940, Jacques Goudstikker was forced to leave the gallery behind, although some of the paintings were co-owned by Goudstikker and others. In Jacques Goudstikker's papers and below, these paintings (21 in number) are called the 'meta-paintings'. The Committee's recommendation regarding the meta-paintings can be found under 14.

4. It is certain or likely that a total of 40 of the 267 works of art whose restitution is requested were not part of Goudstikker's property on 10 May 1940. It is true that the provenance of some of the works of art from this category may not be entirely conclusive, but it is not likely that they belonged to Goudstikker's old trading stock. Three of the paintings were present in the gallery on 10 May 1940 owing to consignment or commission. As for the other works of art from this category, some may have been part of Goudstikker's trading stock at one time or another, but not during the period that is relevant to this application.

As these 40 art objects cannot be regarded as Goudstikker's former property, the Committee concludes that there are no grounds whatsoever for granting the restitution application in respect of these paintings. The considerations provided below do not pertain to these works of art, which are specified in List II appended to this recommendation.

## *II. Involuntary Loss of Possession during the War*

5. The foremost question the Committee feels it must address is whether Goudstikker's loss of possession should be regarded as involuntary. The Committee deems the following events relevant to answering this question.

When the war broke out on 14 May 1940, Jacques Goudstikker, principal shareholder and sole managing director of Goudstikker, managed to flee the Netherlands by boat with his wife Désirée Goudstikker-von Halban and son Eduard. During the journey, Jacques Goudstikker lost his life in an accident; Désirée and Eduard ultimately reached the United States. The gallery, with a trading stock of 1,113 (inventoried) works of art, was left behind without management, as Jacques Goudstikker's authorised agent also died suddenly in early May 1940. Two of Goudstikker's employees, A.A. ten Broek and

J. Dik, Sr., took on the management of the gallery, and Ten Broek was subsequently named company director during an extraordinary general meeting of shareholders held on 4 June 1940. Almost immediately after the capitulation of the Netherlands, Alois Miedl, a German banker and businessman living in the Netherlands, joined the art business and took over the actual management.

In a contract dated 1 July 1940, Miedl purchased all of Goudstikker's assets, including the trading name of the gallery. This contract was then amended shortly thereafter in connection with the concurrent interest of General Field Marshal Hermann Göring in the gallery. On 13 July 1940, two purchase agreements were subsequently concluded between Goudstikker, represented by Ten Broek, and Miedl and Göring, respectively:

- Under the agreement with Miedl, Miedl acquired from Goudstikker, for an amount of NLG 550,000, the co-ownership of the meta-paintings, the right to the trade name 'J. Goudstikker' and the immovable property, i.e. Nijenrode castle in Breukelen, the building in which the gallery was located on the Herengracht in Amsterdam, and 'Oostermeer', the country house in Ouderkerk aan de Amstel;
- Under the agreement with Göring, Göring acquired, for an amount of NLG 2,000,000, the rights to all art objects that belonged to Goudstikker on 26 June 1940 and that were located in the Netherlands. Göring acquired a right of first refusal to the meta-paintings, which right was exercised, resulting in Göring's acquisition of several meta-paintings.

Although both agreements stipulated that '*as accurate a list as possible would be drawn up as soon as possible*', no such list was ever compiled. For their part in arranging the sale, the gallery's personnel received from Miedl a combined sum of NLG 400,000.

In addition, at the time the agreement was concluded, Mrs Goudstikker-Sellisberger, Jacques Goudstikker's mother who had stayed behind in Amsterdam, was said to have been granted the protection of Miedl or Göring.

Désirée Goudstikker – heir of Jacques Goudstikker and representing 334 of the 600 shares partly on behalf of her underage son – refused to grant permission for the sale as requested of her by Ten Broek.

On 14 September 1940, Alois Miedl founded 'Kunsthandel Voorheen J. Goudstikker NV' [Gallery formerly known as J. Goudstikker NV] (referred to below as: 'Miedl NV'). The decision to wind up Goudstikker was made on 2 October 1940, and the company was thus wound up. This winding-up was reversed with retroactive effect on 26 February 1947. Of the purchase price of NLG 2,550,000 involved in the sale to Miedl and Göring, an amount of NLG 1,363,752.33 (also see Part VII) was left for Goudstikker after the war.

6. The Committee feels that the loss of possession as described above can be considered involuntary under the current restitution policy.

This conclusion is legitimised by the mere circumstance that Jacques Goudstikker's widow refused permission for the transactions and that there is doubt about the authority of those who sold the works of art on behalf of Goudstikker. The Committee also takes into consideration that the possible legal validity of the transactions resulting in loss of possession could only have occurred because of the appointment as director of the gallery

of an employee who was sympathetic towards the German buyers (Ten Broek), and that this appointment occurred during an extraordinary general meeting of shareholders on 4 June 1940 that was convened in a manner that rendered decision-making invalid.

Contributing to this opinion is also the fact that both buyers purchased works of art on a large scale immediately after the capitulation of the Netherlands, a situation in which Göring could – and undoubtedly did – use the influence of his high rank in the Nazi hierarchy. In respect of Miedl, it cannot be ruled out and so it must be assumed (see the general consideration under c) that sales to him, as a friend of Göring's, were involuntary. It is true that Miedl helped Jewish families during World War II and he himself was married to a Jewish woman, but he also had clear Nazi sympathies. He profited from the war by deriving sizable profits from trade with Germans, working particularly to amass the art collections of Göring and Hitler. It is known that even in an early phase of the occupation, Miedl pressured Jewish art owners in an attempt to sway them to sell to Göring via him.

In the years shortly after the war, the Council for the Restoration of Rights also established that the transaction in which Miedl purchased the Goudstikker gallery should be labelled as involuntary, as evident from the considerations dedicated to the matter by the Council for the Restoration of Rights, judicial division, Chamber of Amsterdam on 21 April 1949, in which involuntariness was determined even *'if the sale were to have occurred at a normal purchase price'*.

The Committee would also like to mention, perhaps superfluously, the recommendations of the Ekkart Committee made in January 2003 in respect of the gallery, to the effect that: *'in any case, threats of reprisal and promises of the provision of passports or safe-conducts as a component of the transaction should be considered among the indications of involuntary sale'*.

The Committee's judgement in respect of art objects obtained during the war by others besides Göring or Miedl will be addressed in section 15 below.

### *III. Previous Applications for Restitution*

7. The next question the Committee feels it must answer is whether the application to return the works of art should be regarded as a matter that has been conclusively settled based on a previous settlement. The result of this would be that the current application would no longer qualify as admissible. In its memorandum of 14 July 2000, the government formulated its position regarding restitution and recovery of items of cultural value, stating that an application can only be taken into consideration if:

- *it is a new application, i.e. not an application that was already settled by a decision of a competent judicial body for the restoration of rights or by amicable restoration of rights*
- *it is an application already settled as part of a restoration of rights in respect of which new, relevant facts have subsequently become available*

The Ekkart Committee proposed the following additions to this in its recommendations to the government in 2001:

- *The Committee advises restricting the concept of ‘settled cases’ to those cases in which the Council for the Restoration of Rights or another competent court has handed down a verdict or in which a formal settlement between entitled parties and the agencies that supersede the SNK [Netherlands Art Property Foundation] has been reached;*
- *The Committee advises interpreting the concept of new facts more broadly than has been customary in policy thus far and to also include deviations in respect of the rulings handed down by the Council for the Restoration of Rights as well as the results of changed (historical) insight in respect of the justice and consequence of the policy pursued at the time.*

On 29 June 2001, the government also refined the concept of a ‘settled case’ as follows:

*The government is consequently willing to follow the Committee in its recommendation but feels that the concept of an ‘official settlement’ can lead to uncertainty. In the government’s opinion, a case will be considered settled if the claim for restitution has intentionally and deliberately resulted in a settlement or the claimant has explicitly withdrawn the claim for restitution*

Pursuant to the recommendations of the Ekkart Committee of 28 January 2003 regarding the art trade and a written clarification thereof by its chairman Prof. R.E.O. Ekkart, the cited recommendations apply integrally to this application.

8. In respect of the art objects delivered to Miedl in 1940, it is important to note here that a settlement agreement was signed by Goudstikker on 1 August 1952, and in respect of the works of art delivered to Göring in 1940, a ruling was handed down by the Court of Appeals of The Hague on 16 December 1999.

### **Settlement Agreement of 1 August 1952**

After World War II, Goudstikker sought restoration of rights in respect of the so-called ‘Miedl transaction’. For years starting in 1947, Désirée Goudstikker negotiated the matter with the administrators who were appointed on behalf of the Netherlands Property Administration Institute (NBI) for Miedl’s assets and the gallery Miedl NV he had founded. The NBI represented the Dutch state in these negotiations. The negotiations on the restoration of rights ultimately, on 1 August 1952, resulted in a settlement agreement in respect of the works of art. This firstly arranged for the (re-)purchase by Goudstikker of more than three hundred art objects from the assets of Miedl that had been put under

administration, as well as the termination of the pending lawsuit Goudstikker had brought before the Judicial Division of the Council for the Restoration of Rights. In this agreement, Goudstikker also waived the ownership rights to the other art objects delivered to Miedl NV during the war:

*(Art. 1.4) In respect of the Party of the one part [in summary: the State], the Party of the other part [i.e. Goudstikker] waives all rights it could invoke towards anyone whomsoever in respect of paintings and art objects and shares in paintings and art objects that were delivered by GOUDSTIKKER NV to MIEDL NV between May of nineteen hundred and forty and May of nineteen hundred and forty-five, regardless of whether these have since been recovered from foreign countries or are located in foreign countries, as well as proceeds that in the event of sale have been or will be in lieu thereof.*

Unlike in a previous draft of the settlement agreement, in the final agreement, Goudstikker did not waive rights to the items that were delivered to Göring during the war.

#### **Application for Restitution to the State Secretary and Ruling by the Court of The Hague of 16 December 1999**

On 9 January 1998, Von Saher-Langenbein requested that the State Secretary return the ‘Goudstikker collection’. The State Secretary rejected this application, ruling that in his view, even according to current standards, the restoration of rights had been carefully settled after the war, and that he saw no reason to reconsider the matter. The Applicant and Von Saher-Langenbein subsequently appealed this decision before the Court of Appeals of The Hague, at which time they also submitted an application for the restoration of rights for the ‘Göring transaction’ on the basis of post-war legislation on the restoration of rights (Decree on Restoration of Legal Transactions, E 100 from 1944). The court found this application inadmissible, given that the period from the post-war arrangement had expired on 1 July 1951 and the application was thus submitted too late. In addition, the court also examined whether there was a ‘compelling reason’ to officially grant restoration of rights, giving consideration to the following:

*The court first of all takes into consideration that nearly 50 years have passed since the time when the last applications for restoration of rights could be submitted.*

*Also of significance is the following.*

*It is evident from the documents that the Company intentionally and deliberately decided against seeking restoration of rights in respect of the Göring transaction at the time. The court cites the Memorandum from M. Meyer, Master of Laws, of 10 November 1949, as well as the report by A.E.D. von Saher, Master of Laws, of April 1952 (...)*

*Goudstikker now avers that the Company decided against requesting restoration of rights in respect of the Göring transaction under the sway of the position of the State (or its bodies), purporting that the Göring transaction occurred voluntarily, and because Desirée Goudstikker-Halban was misled by the then director of the*

*SNK, Dr A.B. de Vries, with respect to the value of the paintings that comprised part of this transaction.*

*In the court's opinion, regardless of any position the SNK, the NBI or other State bodies may have taken in the matter at any time after the war, the Company was free to submit an application for restoration of rights to the Council.*

*The Company had expert legal advisors who could have argued the involuntariness of the Göring transaction during proceedings before the Council, yet this was not done for the Company's own reasons.*

*Goudstikker's assertion that De Vries misled Desirée Goudstikker-Halban with respect to the value of the paintings does not carry sufficient weight. If this were the case – which the State refutes – then, the court feels, it should have been up to the Company or its advisors Meyer and Lemberger, since the SNK was (in a certain sense) its counterparty, to have one or more independent experts make (counter) assessments of the value of the paintings*

#### *IV. Judgement of the Committee regarding the Works of Art delivered to Miedl and Göring, respectively*

##### **Works of Art delivered to Miedl**

9. As for the validity of the settlement, the Committee's first consideration is that it has not been convinced by legal arguments that the agreement should not be deemed valid. The Applicant's authorised representatives have claimed that the settlement is null and void because it came about under coercion and deception. It is certain, as documented in the settlement itself, that Jacques Goudstikker's widow was very disappointed with the content of the agreement that was reached after many years. The circumstance that she signed the settlement despite this disappointment indicates that she opted for the lesser of (what she considered to be) two evils. In legal terms, this cannot be termed coercion, and no compelling arguments to support the accusation of deception have been submitted nor found by the Committee. The Committee will not address the issue that the legal nullity or voidableness of the settlement was not invoked on time. In the Committee's opinion, the settlement is thus legally valid.
10. The Committee also answers the question of whether, as a result of the validity of the settlement, this category of works of art can be regarded as a conclusively settled case in the affirmative.

In the Committee's view, a valid settlement is distinct from a valid legal ruling in that the former contains an individual statement by the parties who had previously been in disagreement but who have now met in the middle by reaching a settlement, whereas the legal ruling creates a situation imposed from above with which the losing party will generally disagree and remain in disagreement.



In this case, in the settlement, Goudstikker waived ownership rights to the benefit of the Dutch State and opted to put an end to the lawsuit brought before the Council for the Restoration of Rights. The Committee, citing the general considerations under e, is of the opinion that *waiving ownership rights*, as Goudstikker has done, unlike *deciding against submitting an application for the restoration of rights*, is of such a definitive nature, that, despite the broad concept of new facts, it cannot be applied here.

In conclusion, the Committee has arrived at the judgement that, even by present-day standards, by signing the settlement agreement in 1952, Goudstikker unconditionally waived the ownership rights to the art objects delivered to Miedl, on the basis of which the Committee cannot advise the State Secretary to return these art objects.

11. The Committee has considered what is known as the Elte Report as definitive when it comes to categorising the individual art objects covered by the settlement. This is an accountant's report written by J. Elte for Miedl NV in 1942, shedding light on the performance of the July 1940 agreements between Goudstikker and Miedl and Göring, respectively. In the Committee's view and according to the Elte list, among the category of works of art covered by the settlement are also some paintings that Göring purchased under contract but that were actually delivered to Miedl.

The Committee is consequently of the opinion that the works of art stated in LIST III under A are covered by the settlement, whereas the works of art that were delivered to Göring stated on LIST III under B, are *not* covered by the settlement.

### **Works of art delivered to Göring**

12. It has been established that Goudstikker involuntarily lost the other art objects in LIST III under B and that they were not covered by the settlement. Given those circumstances, these works of art should be returned to the Applicant, unless the case should be deemed to have already been conclusively settled. The government policy which the Committee is bound to observe stipulates that the restoration of rights must not be reiterated.

In its first recommendation to the government, the Ekkart Committee advises restricting the concept of a 'settled case' to those cases in which the Council for the Restoration of Rights or another competent court has handed down a ruling or in which a formal settlement between entitled parties and agencies that supersede the Netherlands Art Property Foundation [SNK] has been reached. The government evidently agreed with this recommendation, according to a government statement of 29 June 2001, on the understanding that they refined the concept as follows: '*A case will be considered settled if the claim for restitution has resulted intentionally and deliberately in a settlement or the claimant has explicitly withdrawn the claim for restitution.*' With this addition, the government has apparently sought continuity with the wording of the court's ruling (as the legal successor of the Council for the Restoration of Rights) of 16 December 1999, in which the court decided that there were no substantial reasons to officially grant

restoration of rights to applicants, because at the time, applicants had intentionally and deliberately decided against requesting the restoration of rights in respect of the Göring transaction.

Although the Committee cannot ignore this determination by the court, that does not automatically mean that by deciding against asking for the restoration of rights, the Applicant's actual *rights* to the Göring collection have been surrendered. Goudstikker could have had various reasons at the time for deciding against seeking restoration of rights that in no way suggest the surrender of ownership rights to the Göring collection. One example that can be cited is that the authorities responsible for restoration of rights or their agents wrongfully created the impression that Goudstikker's loss of possession of the trading stock did not occur involuntarily. As another indication that Goudstikker did not want to surrender the rights to the Göring collection in 1952, the Committee would like to point out the deliberate omission of this category of works of art from the final revision of Article 1.4 of the aforementioned settlement.

Added to that is the fact that in 1999, the court could not take into consideration the expanded restitution policy the government formulated after that, which renders the Committee able and imposes an obligation on the Committee to issue a recommendation is based more on policy than strict legality. This expanded policy and the resulting expanded framework for assessment, representing generally accepted new insights, causes the Committee to decide that the Applicant's current application is still admissible, despite the court's previous handling of the application.

13. Based on the above and given the involuntary nature of the loss of possession, the Committee concludes that the application for restitution of the works of art delivered to Göring in 1940 as specified in appendix III-B, which are not covered by the waiver of rights in the settlement agreement of 1 August 1952, should be granted.

The Committee's opinion in respect of the meta-paintings that were delivered to Göring follows below under 14.

### **The meta-paintings**

14. Of the 21 meta-paintings – the paintings Goudstikker co-owned with others – specified in List IV appended to the recommendation, the thirteen paintings listed under B on that list belong to the 'Göring collection'. The remaining eight meta-paintings, under A of this list, belong to the works of art delivered to Miedl.

Goudstikker involuntarily lost possession of these thirteen meta-paintings, as was the case with the other works of art that Göring obtained, and the rights to these paintings were not waived either. The only reason that might stand in the way of restitution is thus the co-ownership of those paintings by third parties, largely art dealers. Evidently, those third parties did not have any objection whatsoever at the time to

leaving these paintings – which were, after all, intended for sale – in Goudstikker’s physical possession. The Committee sees no reason why it should now rule any differently. The object of such an arrangement is to obtain the highest possible sale price, and apparently the co-owners had great confidence in that respect in the skills and renown of Goudstikker, who, incidentally, was not allowed to sell these paintings below the purchase price without the co-owners’ consent and who would not be allowed to do so after their restitution either.

As it is the Committee’s job to provide advice in such a way that, if the State Secretary accepts the advice, a situation is achieved that as closely as possible approximates the former situation of 10 May 1940, it recommends returning the paintings listed in LIST IV under B as meta-paintings to the Applicant, who should, if possible, notify the co-owners after the restitution is effected.

## V. *Other Art Objects*

### **The ‘Ostermann Paintings’**

15. The twelve paintings designated in the first application and the Committee’s Report as the ‘Ostermann paintings’ (numbers 1 to 12 on LIST V appended to this recommendation) comprised part of Goudstikker’s trading stock at the time that Jacques Goudstikker was forced to leave his gallery behind in May 1940. In all likelihood, they were sold with the assistance of Goudstikker’s staff to the German W. Lüpkes in May 1940, before Miedl took over the gallery. E.J. Ostermann, a German who became a naturalised Dutch citizen in 1919, acted as the agent, receiving a sum of NLG 20,000 from Miedl. It is very likely that Goudstikker never received the purchase price of NLG 400,000. The circumstances of the loss of possession are otherwise the same as outlined above under 5 and 6.

Given these circumstances, it can be assumed that Goudstikker’s loss of possession of these paintings was involuntary as a result of circumstances directly related to the Nazi regime. As the paintings do not fall under the ambit of the settlement of 1 August 1952 nor were the subject of any other application for the restoration of rights, the Committee’s recommendation shall consequently be that these paintings should be returned to the Applicant. This is only partially possible, however, as will become evident below under consideration 17.

## *VI. Consequences of Restitution*

### **Consideration in exchange for restitution**

16. Another question that must be addressed is whether, in exchange for the restitution of a portion of the art objects to the Applicant, as considered above, there should be a repayment of the consideration received at the time for the sale.

At the recommendation of the Ekkart Committee, government policy states in this respect that restitution of the proceeds of sale should only be raised in the case if and in so far as the former seller or his heirs did actually receive the free disposal of those proceeds. In cases of doubt, the Applicant shall be given the benefit of the doubt.

As far as possible, the Committee has attempted to gain an impression of the amounts involved in the loss of possession of the works of art by Goudstikker. Stating the caveat that the Committee had information to go on that was collected during and after the war, information that does not always match up, an overview is provided below. After the war, an amount of NLG 1,363,752.33 remained for Goudstikker from the amount of NLG 2,500,000 that was paid by Miedl and Göring for the sale of the gallery, as a result primarily of costs involved in sales transactions and disbursements of amounts connected with Goudstikker's winding up. In exchange for repossession of the immovable property and more than three hundred art objects as part of the amicable restoration of rights after the war, Goudstikker then had to pay the authorities responsible for restoration of rights a sum of NLG 483,389.47. Accordingly, the amount of sales proceeds that was at the free disposal of Goudstikker can be set at NLG 880,362.86. On the other hand, besides losing the trading stock of 1,113 inventoried works of art, Goudstikker was confronted with other sizeable losses. The loss of the gallery's goodwill and the loss of a large number of non-inventoried works of art and other goods can be designated as the largest, unsettled loss items. The second spouse of the widow Goudstikker, A.E.D. von Saher, Master of Laws, has estimated the value of just the non-inventoried works of art alone at between NLG 610,000 and NLG 810,000.

The Committee has determined that, after so many years, it is not possible to gain an accurate idea of Goudstikker's financial consequences of losing the gallery. In view of the following facts:

- (a) that Goudstikker suffered heavy losses during and because of the war and occupation of such a nature that a significant, if not the most significant, gallery of the Netherlands ceased to exist after the war;
- (b) that at least 63 paintings from Goudstikker's trading stock were sold by the Dutch State in the fifties and that the proceeds from that sale were channelled into state coffers and, in any case, were not allocated to Goudstikker;
- (c) that the Dutch State has enjoyed a right of usufruct to the paintings for a period of nearly six decades without paying any consideration in exchange;

(d) and that, as proposed below under 17 of this recommendation, no compensation will be paid for the four paintings that have gone missing; the Committee recommends that restitution should not involve any financial obligation on the part of the Applicant

### **Missing and Stolen Works of Art**

17. Two of the paintings belonging to the Göring transaction (NK 1437 and NK 1545) have been reported missing, while two paintings that are part of the Ostermann category (NK 1887 and NK 1889, numbers 9 and 10 on LIST V) are registered as stolen.

It must be established in respect of these four paintings that they cannot be returned (at this time), although they do qualify for restitution according to the Committee's opinion as set out above. Consequently, the Committee does not consider it unreasonable for the Applicant to be indemnified for them. However, now that it has been established that Goudstikker did receive the amounts from the transaction with Göring, whereas the recommendation under 16 is not to require the obligation for any (re)payment in exchange for the restitution of numerous art objects, the Committee feels that that compensation need not occur. If one or more of these paintings should return to the custodianship of the State of the Netherlands, this must result, the Committee feels, in the restitution thereof to the Applicant.

### **Public Interest**

18. In conclusion of this recommendation, the Committee has asked itself whether there are weighty considerations, besides those mentioned above, that could impact the recommendation to return the art. In this framework, the question has been raised of whether there could be a public interest that should be weighed as part of this recommendation. After all, the restitution concerns a large number of works, including some that are very significant in terms of art history, some of which have already been on display in the permanent exhibitions of Dutch museums for years.

Pursuant to the criteria of the Cultural Heritage Protection Act (referred to below as 'the WBC'), if a work of art has such significance in terms of cultural history or science that it should be kept for the Netherlands, there can be a case of a public interest to keep a collection or individual objects permanently for the cultural assets of the Netherlands. Article 2 of the WBC states that this concerns works of art that are irreplaceable and indispensable: irreplaceable, if no equivalent or similar objects in good condition are present in the Netherlands, and indispensable, if they have symbolic value for Dutch history, play a linking role in the exercise of research in a broad sense and/or represent comparative value in that they make a substantial contribution to the research or knowledge of other important objects of art and science.

The Committee considers that, in establishing a public interest, it matters whether this determination was applicable to the situation immediately prior to the loss of possession, or whether the understanding of the irreplaceability and indispensability arose in the period after recovery, while the works were under the custodianship of the Dutch state. In that respect, it can be observed that in 1940 there was as yet no protection of Dutch cultural assets, as the WBC aims to do. The Committee also feels that any post-war shift in the appreciation of the works of art cannot and should not have any influence on the recommendation to restore the art to the Applicant.

Regardless of the application of the WBC after effectuation of the restitution of the art, the Committee concludes that, in this case, no public interest is deemed present that could impede restitution to the Applicant.

## **Conclusion**

The Committee advises the State Secretary:

1. to reject the application to return the works of art specified under consideration 4, in respect of which it has been established that Goudstikker cannot be designated as the original owner (List II);
2. to reject the application to return the paintings that were delivered to Miedl during the war and that are subject to the provisions of Article 1.4 of the settlement agreement of 1 August 1952 (List III-A);
3. to grant the application in respect of the works of art that are part of the Göring transaction (List III-B), with the exception of NK 1437 and NK 1545 that have gone missing, while the meta-paintings included there are to be returned in their capacity as meta-paintings (and in List IV-B);
4. to grant the application in respect of the works of art belonging to the 'Ostermann paintings', with the exception of NK 1886 and NK 1887 which have been stolen (List V).

Adopted in the meeting of 19 December 2005,

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