INVOLUNTARY LOSS OF POSSESSION

(Making sense of the actions of Franz Koenigs and Lisser & Rosenkranz)

The Dutch State and the Koenigs heirs are involved in a long-lasting dispute. This relatively concise exposé serves to explain to those who are interested in the backgrounds of this dispute the basic arguments of the respective sides.

If all deadwood is cut away from the discussions between the Koenigs heirs and the Dutch government, anyone intent on getting to the heart of the Koenigs case will soon see the shape of the basic argument used against the Koenigs heirs and composed of the following suppositions: (1) that because of the 'Stillhalte', Franz Koenigs got into private financial problems and in 1931 found himself compelled to take a loan from the Lisser & Rosenkranz bank, and (2) that in 1940 he was forced to immediately repay his debt to the bank, within a day, (3) and because he was unable to do so, (4) he had to hand over his much-loved art collection in its entirety and in all legality as payment to the bank, (5) in settlement for his debt, entailing (6) a transfer to the bank of a full and free title of ownership to his collection, and (7) that all of this had nothing at all to do with the extreme threat of the Nazi regime. In other words, what happened is presented as an ordinary business misadventure, just another deal gone sour, as if Koenigs' extraordinary loss of property and the role played by Lisser & Rosenkranz can be explained by a story of childish simplicity, requiring only that the specific historical context be eliminated and a blind eye be turned to problems revealed by legal analysis.

Remarkably similar variations of this story have been making their rounds of the Netherlands since the war and immediate post-war years, and still today. Without exception, all of these variations can be traced back to the actions and statements of two Nazi-sympathizers, D.G. van Beuningen and Dr. Hannema, and to testimony they gave after the war. Although driven by the need to cover up questionable deeds and repair their reputations, the truth content of their testimonies and explanations and the significance of their actions have never been tested by serious, deep going, and independent research. All seven suppositions on which the now automatically used basic argument depends, all the components of what has become the commonly accepted story, were unreliable to start with, and when seen in the light shed by a serious and critical investigation of primary sources, can only be characterized as incorrect and unworthy of belief, rather than be accepted in isolation at face value, as does the Dutch government. Point by point, all of these suppositions will be dealt with in what follows.

Point (1) ignores the factual context of Franz Koenigs' loan from Lisser & Rosenkranz. The "Stillhalte" did not create a private liquidity problem for Koenigs, but rather, the bank[1] of which Koenigs was a director and part owner needed an increase in capital. Concerning this, see the analysis by the economist, Dr. Helen Junz, who is the only expert to have thoroughly researched the transactions involved and their circumstances.[2] Her analysis shows that although at first other

[1] Rhodius-Koenigs

[2] See appendix 7 of *the Response of the Koenigs Heirs to the Concept-Research Report of the Committee of Restitution in case RC 1.35* (Response). All of the statements and opinions referred to in this document are in principle available for viewing from Christine F. Koenigs (see www.koenigs.nl).

stock holders were also to have participated, in the end it was only Franz Koenigs who, by putting his private fortune into play, was able to realize the capital increase by contracting a loan and pumping the money into the bank. To put it mildly, such an outcome does not justify the conclusion that the person remarkably successful in raising capital is the one having financial problems. Plainly said, it would be reasonable to conclude that point (1) is not supported by the facts, or even more reasonably, that it is not in the least supported by the facts.

The only support point 2 can find is in a demonstration that Franz Koenigs' loan contract with Lisser & Rosenkranz had a formal term of five years. What we long knew of the formalized agreement has only been provable since February, 2008, when W.O.Koenigs gave the Restitution Committee the original text of the 1935 agreement, thus introducing a novum, at least as far as the State's line of argument is concerned. Keeping that formality in mind, we also know for certain that the relation between Koenigs and Lisser & Rosenkranz was one both of personal friendship and business partnership.[3] In the 1920's, Koenigs had rescued Lisser & Rosenkranz from a financial debacle, and then helped them to establish a flourishing business in Amsterdam, in which he was also a shareholder.

There is not a single indication, nor is there the least shred of evidence, to support the assumption that Lisser & Rosenkranz wished to force repayment of the loan in the spring of 1940. There is not one document from the archives of Koenigs or of Lisser & Rosenkranz, and not a single notation from a shareholders' meeting or a single verbal report, that supports such an interpretation[4]. Seen from Lisser & Rosenkranz's point of view, as a business proposition, there was no need for an immediate repayment of the loan, nor was it to be desired. It was not needed, because the bank was flourishing and making a good profit[5] from the loan, and it was not desirable, because the 1930's and the beginning of the 1940's were characterized by great uncertainty and a high inflation rate, as is commonly known. In contrast to money, at that conjuncture, art was one of the most secure investments a person could hope for, and represented a stabile and easily exportable value, when required by the circumstances. Many businesses and many persons, Jewish and non-Jewish alike, had invested in or secured their investments with works of art. To cash in such a security would have been the equivalent of killing the proverbial goose that laid the golden egg, or putting water in a pail with a hole in the bottom.

On reconsideration, there is only one prima facie reason that can be found for insistence on repayment of the loan, and that is the liquidation of Lisser & Rosenkranz on April 2, 1940, as conceived by Franz Koenigs, to put the bank out of reach of the Nazis in the event of a Nazi invasion of the Netherlands. In fact, the Restitution Committee recognized this reason in the case of Lisser & Rosenkranz, but not for Franz Koenigs. However unjust and illogical it is to exclude Koenigs from this line of reasoning, it cannot change a realistic assessment of the motive behind the action taken on April 2, 1940, which is to be found when the reasons of need for profit and security, including keeping the bank out of Nazi hands, are combined with a third reason, the

[3] The German banker, Franz Koenigs, and the German bank, Lisser & Rosenkranz from Hamburg, were already business partners before the 1920's. Rosenkranz was a distant relative of Franz Koenigs' mother, Johanna Koenigs-Bunge.

[4] A simple fact that has been ignored by all the adepts of the dominant story.

[5] At least since 1935, when the loan formally began to yield interest.

desire shared equally by Lisser & Rosenkranz and Koenigs to get the collection transported out of the war zone, when it became obvious that the delaying tactics of van Beuningen and Hannema[6] had made impossible the planned acquisition of the collection by the Boymans Museum, by means of a partial donation/partial purchase that would have both secured the collection in public ownership and allowed an easy repayment of the loan. Liquidation of the bank and transportation of the collection out of the country were the only remaining options for both Koenigs and Lisser & Rosenkranz, representing together the only way to survive and to keep the collection, or the collateral (depending on whose point of view), out of Nazi hands.

Also, only the combination of reasons sketched above is consistent with the nature of the legal relation between Lisser & Rosenkranz and Franz Koenigs, which had always been based on trust and was fiduciary, and then precisely as fiducia cum amico[7], a holding in trust between friends. It is the inherent link between the second and third reasons, as discovered in the primary sources, that leads to an interpretation consistent with those sources. For more detail, see the Answer to the Response/Appeal (appendix 2 of the Response/Appeal, July 30, 2008). Tragically, the strategy linking the second and third reasons was nullified by, or to put it more accurately in relation to historical events, found its justification in Van Beuningen and Hannema's intervention by way of an ultimatum on April 9, 1940, aimed at a liquidator who believed that he had run out of options, on the sad day of Hitler's invasion of Denmark and Norway and General Winkelman's mobilization order to the Dutch army, a day when the Dutch public believed that the German army was knocking at the door.

Even if none of this were true, the story constructed from the alibis fabricated by Van Beuningen and Hannema, and still maintained as the dominant story by the State and its allies, bases itself on the blatantly false claim, expressed in the third point of the State's basic argument, that Franz Koenigs was unable to repay his loan. It has already been demonstrated what kind of income Koenigs had at his disposition, and how wide-spread and substantial his private fortune was both in the Netherlands and in Germany, independent of his world famous collection. Similarly, in the Response it has been explained why the point most recently added to the State's argument, after W.O. Koenigs brought up the matter of the so-called English claim, makes no difference in the case. According to Dr. Helen Junz, it is a plain fact that Koenigs and Lisser & Rosenkranz could have easily settled the 'English claim' by bringing a few paintings to London for auction, where the art market was active and prospering. At the same time, such a sale could easily have settled Lisser & Rosenkranz's entire claim as well. There is something to be added here. Late in the 1940's, Franz Koenigs' heirs reached a settlement with the English banks, and after completing payment were still left with a great fortune, a fortune that was not in any substantial way of their own making, but represented in simple fact their inheritance from Franz Koenigs, and of which, alas, by then the collection no longer formed a part.

Even in the absence of all of the above, the fourth point of the State's argument still breaks up from its own lack of merit. Seen in the light of expert analyses by the prominent authorities in

[6] Hitler had made it known that he was putting together his collection for Linz from the market and private collections. and that he would not take from museum collections. For this same reason, also Eduard de Rothschild tried to put his collection in the safety of the Louvre,

[7] Also this fiduciary, or holding in trust, character of the loan and security agreement between Lisser & Rosenkranz and Koenigs is completely and systematically ignored by the State and other supporters of the dominate story, although it is in reality an undenied and well established fact.

civil law, professors Schoordijk, Stein, Salomons, and Vranken, against which not a single counter argument or evidentiary statement has been brought forward, it stands as evident that the "giving in payment" of the entire collection (if that interpretation of the transaction on April 2, 1940[8] be accepted) was necessarily null and void, or otherwise vulnerable to invalidation under the laws in force in April, 1940, and then not subject to a single, but to a whole array of objections.[9]

The fifth point of the State's argument also faces a factual obstacle in that the value of the collection far exceeded Lisser & Rosenkranz's claim, at conservative estimate by a factor of two or three,[10] a surplus value that should in any case have been repaid to Franz Koenigs by the bank. Of course, we know now that the bank did not get anything even close to a true value for the collection. To say it in everyday speech, it had been given away for nothing, sold for peanuts. All other arguments aside, it is remarkable that neither the State, nor any other proponent of the dominant story, has ever dealt with the question of what valid business reason could possibly have driven the bank to sell an extremely valuable security at a price representing only slightly more than half the amount of the loan, and to complicate the disaster, to lay itself open for a legally justifiable claim from the collection's economic owner, Franz Koenigs. The only possible explanation, and it is irreconcilable with the dominant story, is that the actions of both Lisser & Rosenkranz and Franz Koenigs were driven not by short term business interests, but by a shared long-term aim in the face of the storm threatening from the East, namely, to maintain the unity of the collection and thus also the maximum value it represented.

The sixth point, transparently false, depends on the unlikelihood that Franz Koenigs would be willing to give Lisser & Rosenkranz a complete and unqualified title of ownership to his entire collection, in return for not even the disappearance of the loan. The reasons for concluding that the supposition of such a gift must be seen as fallacious have already been presented and represented, and to avoid further repetition, the reader is referred to the above argumentation.

The seventh point refers to the greatest of all the misrepresentations of the course of events, the refusal to recognize that in April, 1940, it was the extreme threat presented by the Nazi regime that overwhelmingly determined the events concerned in this case. Anyone who looks deeper than the varnished surface of the picture painted by the inventers of the dominant story will find it impossible to accept such a refusal. As if this ex-patriot German, Koenigs, an active opponent of the Nazi regime and sharply watched by Nazis[11] who suspected his role as informant for the Dutch Military Intelligence and the British Intelligence Service[12], was unaware of how much he had to fear. And as if the other stockholders and directors of Lisser & Rosenkranz were stupidity personified and blew up a prospering business for no good reason, and as if Van Beuningen was

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[8] Why that cannot be the case, also not according to the laws in force in April, 1940, has already been extensively demonstrated.

[9] For the sake of brevity here, refer to the Response and its appendices.

[10] As has been demonstrated by Dr.Junz, in *the Response,* and previously.

[11] He was one of the most prominent among the leading German (in the end, ex-German) bankers. He had (or more accurately, the Delbrück bank, of which he was a partner) many prominent clients, such as the German Kaiser, and ironically enough, after a certain date in the 1930's, also Adolf Hitler. One of the bitterest ironies in the Koenigs case is the fact that Hans Posse, Hitler's agent, paid Van Beuningen's asking price in Dutch guilders from Hitler's private account at the Delbrück Bank for the drawings from the Koenigs collection, in the purchase settled with Van Beuningen in August, 1940.

[12] To whom, among other things, he spoke of the weaknesses of the Maginot Line and of the existence of Hitler's effort to produce what was to become known as the atom bomb.

just an ordinary Rotterdam businessman, who happened to have something special going with Hitler's chief art buyer, and as if Hannema had been a great patriot, or in short, as if this story could have taken place in any first half of April in any other year, other than precisely of that April in 1940.[13]

To sum up the case rather starkly[14], it is a question of which story to believe: (1) the dominant one, based on testimony from men anxious to conceal the ugliness of their deeds, testimony never tested by serious research and unable to make sense of the many abnormalities present in the factual record, a story only kept alive by those whose interests it still serves, or (2) the story of the Koenigs heirs, which although based on thorough-going research into primary sources, has been suppressed until the present day, despite having earned the as yet unopposed support of many outstanding experts, and despite the fact that within it every abnormality finds a reasonable meaning and historically convincing significance.

[13] See also the statements of expert opinion by Professor De Vries and Professor Jansen, respectively appendix 2 of *The Response*, and an appendix to the preparatory documents for the hearing of the Restitution Committee held on October 6, 2008.

[14] And taking account of the care for fair treatment that a citizen should be able to expect from the government.