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ETHICS IN POLICY IS BASED ON EMPIRICAL EXPERIENCES IN MY CAPACITY AS A CLAIMANT WITH WWII RESTITUTION PRACTICES IN THE NETHERLANDS FROM 1997 TO THE PRESENT
6 MAY 2020

- The Netherlands' position is that looted art recovered from Nazi Germany after the Allied victory became the property of the Dutch state.
- The Dutch state argues that it has no obligation to return art looted by Nazis to the private collectors because it considers that Hitler became the legitimate owner during the Nazi era. The Dutch state obtained the art from Hitler, not the plundered collectors.
- This perverse and amoral line of reasoning is little known, and a powerful weapon in the battle against Holocaust-era claimants.
- In addition, the Dutch state introduced the notion of "weighing of interests", which means that the Netherlands can keep an exceptionally valuable and important artwork, simply because it wants to.

ETHICS IN POLICY

With regard to the request made by Minister Ingrid van Engelshoven on 17 December 2019¹ to the Council of Culture to install a committee - charged with a twofold task: to evaluate current policy on looted art WWII and to advise on possible improvements - the following:

In advance, the Minister gives a too brief description of a particularly sensitive and complex dossier which does not cover the content at all. Following the establishment decision of 16 November 2001, the Restitutions Committee has been subject to a succession of structural changes with the result that today's policy is not inferior to post-war policy. A policy on which the government concluded in 2000 that it was cold, formalistic, bureaucratic, and even unlawful². A policy that in 2020 resulted in the establishment of a committee that was given the task of evaluating the restitution commission and its restitution policy. I can be brief, the government does not want to give back, not after the war and not now. Again and again obstacles are raised to prevent restitution. The claimants have always lodged substantiated

1 <https://www.raadvoorcultuur.nl/documenten/adviezen/2019/12/17/adviesaanvraag-voor-beleidsevaluatie-restitutie-roofkunst-tweede-wereldoorlog> en <https://www.raadvoorcultuur.nl/actueel/nieuws/2020/03/11/evaluatiecommissie-restitutiebeleid-naziroofkunst-tweede-wereldoorlog-ingesteld>

2 <https://zoek.officielebekendmakingen.nl/kst-25839-13.html> see point 3.5 *Ekkart*

objections, both with the Minister and with the Commission OCW of the House of Representatives, against the structural changes that are decimating the restitution process step by step. These objections have not been heard.

THE MINISTER ASKS THE COMMITTEE TO INVESTIGATE THE CURRENT POLICY

The procedure before the Restitutions Committee, instituted on 16 November 2001³, is *ex parte*; it is a procedure without an opponent. In order to protect his position (of owner), the government has set up a restitutions committee to which the claimant can submit his claim: how and under what circumstances he lost his property under pressure from the Nazi regime. Although the works of art are in the NK collection, the process has been arranged in such a way that the claimant has no opponent; the State and his acquisition play no role. Because such a process is unnatural, it feels as if the Restitutions Committee is taking on the role of opponent, all the more so because it determines - albeit in an opinion capacity - whether or not the works will be returned.

The government's starting point (in its capacity as the Minister of Culture⁴ who is the owner, keeper, lender and caretaker of the NK collection) to establish a Restitutions Committee is intended to increase the independence of decision-making, thereby creating a greater distance to the Government in the hope that this will add to greater acceptance of the policy in this area.⁵ Removing the semblance of enrichment is at the basis of the expanded government policy and the decision to establish a restitution committee.

UNACCEPTABLE POLICY CHANGES

Important are the following points, which have led to unacceptable changes:

CLOSURE OF THE EXTENDED POLICY:

1. In its final recommendations of December 2004,⁶ the Ekkart Committee⁷ recommended closing the extended restitution policy on 4 April 2007. The government adopted most of the final recommendations⁸:

3 <https://zoek.officielebekendmakingen.nl/stcrt-2001-248-p24-SC32398.html>

4 According to Royal Decree 233 of 20 April 1988, the Minister of Culture is officially charged with the restitution and recovery file, arts World War II.

5 Zoetermeer, 29 June 2001 Lower House, session year 2000-2001, 25 839, no. 26

6 <https://www.restitutiecommissie.nl/sites/default/files/Verslag%202007.pdf> see 4.3
<https://zoek.officielebekendmakingen.nl/kst-25839-36.html> 25 839 room piece no. 36

7 Ekkart's recommendation to close the expanded policy was prompted by the symposium 'Cultural Goods and Limitations' at Christie's Amsterdam that took place on 7 May prior to the auction of objects restituted to the Gutmann/Goodman family on 13 May 2003. During the symposium, objections were raised by, among others, the former director of the Rembrandt Association (VR members are generally in favour of public art property); he advocated an end date for the restitution policy. Sabine Gimbrère, OCW civil servant and Jan Riezenkamp employee, chaired the symposium.

8 The advice to make an inventory of the NK collection and to find a solution for the NK works whose original owners cannot (or can no longer be) found has not been acted upon.

- On 4 April 2007, Minister Plasterk closed the extended restitution policy and reintroduced the pre-2000 policy. The policy the government had concluded was formalistic, bureaucratic, harsh, cold and at times unlawful.

AMENDMENT TO ARTICLE 2 PARAGRAPH 2 INSTITUTION DECISION 16 NOVEMBER 2001

2. While the cold policy was in effect, during the advice of the Flersheim /Eberstadt case "Gebed voor de Maaltijd" (Prayer for a Meal) and "Godsvertrouwen" (Trust in God) by Jan Toorop, Article 2 paragraph 2 was changed into a binding opinion procedure.
 - This amendment to the Institutional Decision is extremely far-reaching. In the case of a binding opinion procedure, the current owner and the claimant are in advance bound by the decision of the restitution committee. Although the decision can be reviewed by the ordinary court, it is in principle irrevocable and no appeal is possible. The original article, on the other hand, kept the way to the civil courts open.

THE BINDING OPINION PROCEDURE

3. The draft binding opinion procedure came about at a time when the cold post-war policy of enrichment was in force.
 - Vide the rules that are based on interests, instead of restoration of rights.

PLASTERK REINSTATES THE EXPANDED POLICY

4. As if the Restitutions Committee were a yo-yo, the extended policy was reinstated⁹ on 10 July 2009.

THE ABSENCE OF THE EXPANDED POLICY HAS LED TO TWO CONTROVERSIAL POLICY CHANGES

5. The regulations of the Binding Opinion Procedure were instituted on 3 December 2007; the Restitutions Committee acted in the mindset of the chilly post-war policy prior to 2000. The regulations are for the benefit of the museums, and to the detriment of the claimants; this leads to the direct enrichment of Dutch cultural heritage¹⁰.

NB. The decision to change the institution's Article 2(2) decision into a binding opinion procedure regulation was not registered in the Netherlands Government Gazette as is the case below for the extension of the members. According to its 2008 report, the Restitutions Committee changed its policy based on Article 4, second paragraph, of the Decree establishing the installation policy: *'the Committee may adopt regulations concerning the further working method'*.

This far-reaching amendment of the decree of the Institutional Decision extends beyond the establishment of a further working method regarding regulations. The

⁹ <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi758epos1zf> 25839 No. 40

¹⁰ The binding opinion procedure was amended again on 19 September 2011, 27 January 2014, 12 November 2018 and after the installation of the centre of expertise on 28 January 2019.

Restitutions Committee is replacing the court and has adopted regulations that are no longer based on the restoration of rights but on interests.

During the cold policy, Minister Plasterk¹¹ stated that *"with a view to optimum progress and continuity in the provision of advice, it would be desirable to keep the current members for the Restitutions Committee with effect from 23 December 2007"*. This was a shock for the claimants, for according to Article 3, paragraph 5 of the Decree establishing the Committee of 16 November 2001, the members were appointed for three years, while according to Article 3, paragraph 6, the chairman, the vice-chairman and the members could only be reappointed once. According to Article 3(6) of the Decree of 23 December 2007, the members of the Committee were therefore to be replaced on 23 December 2007, but on 19 November Plasterk placed its decision that they were to stay on in the Netherlands Government Gazette.

- This was tough, there was no appeal procedure, and no desire to install it, so our hope was based on fresh and new committee members now that they had completed their second term. The longer members stay on, the stronger their role of replacing the Dutch State grows, and unnoticed, an article "preservation of cultural heritage" is born. With this decision we saw our expectations and hopes for new committee members go up in smoke, no new vice-chairman no new members, no new secretary rapporteur. For us, preservation of knowledge meant the continuation of bias and partiality.

AS FROM 2011, THE GOVERNMENT DETERMINES THE RESTITUTION POLICY

6. Since 2011, the Minister's policy has shown a structural pattern. The pattern consists of installing a committee to advise the Minister on the substantiated objections of the claimants regarding the policy and functioning of the Restitution Committee. Once the advice has been issued, the Minister then responds with a plan of his own that deviates from the advice given, yet the Minister writes to the House of Representatives that the advice will be followed. What is wrong here?
 - The ministers, succeeding van der Hoeven, van Leeuwen, Plasterk, Halbe Zijlstra, Jet Bussemaker, do not follow the advice given by the committees installed by them. The problem is that the politicians do not compare the advice with the policy they then implement.
 - Nobody seems to mind that the advices are not followed, especially the committees themselves and the Council of Culture which facilitates the committees. The Berenschot report¹² has not been followed either, which means that from 2011 the government implements its own policy on the restitution dossier.

11 Government Gazette 19 November 2007, no. 224/pag.9. The amendment to the Decree establishing the Opinion Committee has also been included in the 2008 RC report, Annex 2, p.1 - Amendment to the Decree establishing the Opinion Committee on restitution.

12 <https://zoek.officielebekendmakingen.nl/dossier/25839> zie Rapport Berenschot 25839, nr. 42

- It is possible to think, oh, this happens so often, the minister asks for advice, but then decides not to follow it, the minister is free to do so.
- UNJUST! In the case of looted art, "the restitution policy" this is different. The Minister has opted for an ex-parte procedure (a procedure without an opponent) by installing a restitution committee that advises the Minister on the claims of the claimants. Following the claimants' objections, the Minister appoints an opinion committee to investigate the objections and to report and advise the Minister on its findings. This advice is ignored and replaced by the Minister's own policy. Based on the recurring awareness that the government is the owner, holder, lender and guardian of the NK collection and out of this conflict of interests the government is deprived of any objectivity, the (pretence of) enrichment to be avoided by installing the Restitutions Committee is blatantly applied by means of this detour.
- Obtaining the advice of a committee thus becomes an exercise in keeping up appearances that the minister's policy was established independently. These committees thus become the tools in the hands of the government to continue its own policy. Appearances of enrichment are parked and since the government does not really want to give back, the enrichment is a golden opportunity to preserve the looted art for cultural heritage.
- By implementing his/her own policy, the Minister is acting against the so-called ex-parte procedure for which the Restitutions Committee was instituted, which is based on the Second World War Acclaim Committee and the recommendations of the Ekkart Committee, as formulated in 2001 by State Secretary for Education, Culture and Science, Rik van der Ploeg.¹³
- Question is whether the ex-parte procedure is still fair if the minister determines its own policy.
- The Minister thus reduces the possibility of restitution to the original owners.

THE OPINION COMMITTEES CALLED UPON BY THE GOVERNMENT

7. Invoking committees to advise/evaluate the restitution committee has the same intention: to create a distance to the government, who has different roles regarding the NK collection, the Binding Opinion Procedure, and the Centre of Expertise¹⁴.
 - The Committee's advice therefore has a profound interest in guaranteeing the independence of the authorities in this matter. The Minister is not at liberty to disregard the advice to pursue his own policy. But that is what the Minister has been doing for the past nine years.

WHO IS THE GOVERNMENT?

¹³ Zoetermeer, 29 June 2001 Lower House, session year 2000-2001, 25 839, no. 26

¹⁴ Report of the National Ombudsman 2010/315 of 8 November 2010 regarding the position of the Dutch State opposite the Collection Koenigs.

http://www.koenigs.nl/documenten/nieuws/ombudsman_rapport_2010_315.pdf

8. It is difficult to gauge who and what the Government is and who oversees the policy. At the time, the House of Representatives was a convinced supporter of the establishment of the Restitution Committee. So was Anne Webber who had co-founded with David Lewis, the Commission for Looted Art in Europe (1999), in 2000 her film “Making a Killing” on the Friedrich and Louise Gutmann case, was released. As co-chair for the Commission of Looted art she supported the Gutmann case and was committed to realizing a policy for restitution in the Netherlands¹⁵. State Secretary Rik van der Ploeg was ultimately forced to be committed to the restitution policy through MP Wim Kok, van der Ploeg was urged to answer the letters from the claimants. All of which ultimately led to the establishment of the Restitutions Committee. The establishment of the restitution committee was seen by everyone as the solution; however, in the heat of the moment, the absence of an appeals committee was overlooked, people were so pleased with this first step. It appeared that several members had already been approached by the State Secretary. Later the rapporteur administrator was added. The government installed Mr. Evelien Campfens; she was put forward by the Ministry of Education, Culture and Science, the ICN (Institute Collection Netherlands, which at the time controlled the NK Collection) working under the Director of the ICN Charlotte van Rappard-Boon. The department which, according to the policy prior to 2000, rejected all claims with a heavy hand. In this way, the Ministry of OCW had direct contact with the restitution committee and, vice versa, Evelien Campfens was familiar with the inside out at the ministry. From the beginning neutrality, *keeping away from the government*, was compromised. The policy is ambiguous, on one side there is the policy that says it wants to remedy these wrongs, while the underbelly wants to keep and do not give up anything and defends to the extent possible.
- From 1997 to 2004, the Ekkart Committee 'Origins Unknown' was established. It wanted to investigate the former restitution policy of the SNK, “Stichting Nederlands Kunstbezit” (Foundation Netherlands Art Property). While the Ekkart Committee had been set up, the cases of Koenigs, Gutmann and Goudstikker under Aad Nuis were not given a foothold. Via Jan Riezenkamp, Secretary-General for Culture and Working Conditions, while members of the Lower House such as Valk and Middel (both PvdA), Boris Dittrich and Bert Bakker asked questions, we, Koenigs, Goudstikker and Goodman (Gutmann) formed a tri-partite¹⁶ to jointly create a platform to make our voice heard.¹⁷

WASHINGTON PRINCIPLES

15 If it was not for Anne Webber we would not have a Restitution Committee.

16 See the letters from the tri-partite: <http://www.koenigs.nl/franz/actueel/55-tri-partite-koenigs-gutmann-goodman-goudstikker-von-saher-2000.html>

17 <http://retro.nrc.nl/W2/Nieuws/2000/10/31/Vp/08.html>
<https://www.nrc.nl/nieuws/2001/03/16/roofkunst-wordt-bezit-7534236-a231580>
<https://retro.nrc.nl/W2/Nieuws/2000/10/31/Vp/kort.html>

9. In December 1998, the Washington Principles were formulated and signed by the Netherlands and 38 other countries. Journalist Lucette Terborg, Volkskrant 4 March 1999¹⁸ discovered that Secretary-General Riezenkamp hired Frank Mankiewicz¹⁹ to take action against Koenigs, Goudstikker and Gutmann to undermine the restitution of Looted Art. Politically speaking, State Secretary Aad Nuis was in charge of the restitution file, but the civil servant Jan Riezenkamp was in control. The letter rejecting the Koenigs case of 15 September 1997 was not signed by Aad Nuis but by Jan Riezenkamp. Riezenkamp paid a lot of money for the Mankiewicz campaign. CNN was in discussion with the Goudstikker heir about making a documentary about the Goudstikker case; Judith H. Dobrzynski²⁰ wanted to write an article about the Collection Koenigs, Riezenkamp had lunch with the director of the New York Times, both were cancelled.
- Although the restitution issue received general political attention at the time, this was not accepted internally. As described, OCW's highest official, Riezenkamp, was a dyed-in-the-wool opponent of restitution. Whether Riezenkamp did this on his own or was politically driven is unknown. It is important to know that the opposition is strong, authoritative, and powerful.

POLITICS AND CIVIL SERVANTS ARE NOT ON THE SAME WAVELENGTH

10. Riezenkamp 's role has partly been taken over by his successor, Judith van Kranendonk, Director-General of Culture and Media, but it seems that it did not end up with the Secretary-General, Marjan Hammersma, but was transferred to Sander Bersee (Mr. A.P.M. Bersee), Director of the National Cultural Heritage Agency, the current Cultural Heritage & Arts Agency. Since July 2019 he is advisor at the Ministry OCW. Strategic advisor on movable heritage & The NK collection, senior policy officer, Directorate for Heritage & the Arts, Iris Looman now seems to fulfil this role.
- The NK collection is part of the Heritage & Arts department. The NK Collection is considered part of the Cultural Heritage of the Netherlands²¹. The Pechthold Committee considers the protection of cultural heritage, but the NK collection is not designated as such, which makes it unclear whether the NK collection is included in the cultural heritage.²²

SINCE 2011 THE GOVERNMENT HAS BEEN IGNORING THE ADVICE OF THE COMMITTEES

16 <https://www.volkskrant.nl/nieuws-achtergrond/evenwichtigheid-bestaat-niet-bij-oorlogsclaims~b3595db3/>

19 Frank Mankiewicz (May 16, 1924- October 23, 2014) Press secretary to Robert Kennedy, president of the National Public Radio and rainmaker at the public relations firm Hill & Knowlton from 1977-1983.)

20 Judith Dobrzynski is a reporter for the NYTimes.

21 In her letter to the Council of Culture, the Minister referred to the advisory report of the Pechthold Committee. Pechthold erroneously does not consider the NK Collection to be Dutch heritage. Pechthold does not comment on the looted art (NK) collection and the looted art within urban and private museums, which can be of great value to cultural heritage.

22 <https://www.raadvoorcultuur.nl/documenten/adviezen/2019/09/30/advies-bescherming-cultuurgoederen>

11. Halbe Zijlstra did not adopt the advice of 2011 but opted for his own policy.²³ This policy came into effect on 30 June 2015.

Jet Bussemaker²⁴, after our substantiated objections (these were sent to the House of Representatives), hired the research bureau Berenschot²⁵. She did not adopt Berenschot 's various suggestions but formulated her own answer with the establishment of an Expertise Centre²⁶. The Expertise centre is not the answer to the objections of the claimants. The objections lodged with the Restitutions Committee, the Minister and the House of Representatives are ignored and not answered yet.

EXAMPLES OF DECISIONS THAT ARE AT ODDS WITH THE EXPANDED RESTITUTION POLICY

OBJECTION 1

APPEAL

The Institutional Decree of 2001 was not so bad, what was lacking was an appeal procedure; this is the most important and biggest objection regarding the restitution policy. The Restitutions Committee therefore considers itself uncontrolled and arbitrary.

- In 2010, after lengthy discussions, the Minister made it possible to revise previously rejected applications for restitution. The revision is intended to replace the possibility of appeal. The revision, according to the Restitutions Committee, does not mean that the case will be re-examined, but only that it will be reviewed.
- The same chairman, the same committee members²⁷ the same administrator rapporteur examines again the case they rejected earlier. The butcher inspecting his own meat.
- N.B. None of the revision cases has been honoured!
- An appeal procedure would be applicable to Article 2 paragraph 1, the Rijks/NK collection and the binding opinion procedure. If the court dissolves the binding opinion issued, it could be submitted to the Appeals Committee. Now, if the advice is dissolved by the court, it will be returned to the Restitutions Committee, which previously arrived at this advice, which is unacceptable.
- A committee should have an appeal procedure, this is mandatory according to European law and human rights. The government refuses!

23 The State Secretary for Education, Culture and Science by letter of 22 June 2012 to the Lower House of Parliament 25 839-41 Adaptation of restitution policy for cultural goods and the Second World War.

<http://www.cultuur.nl/upload/documents/adviezen/advies-restitutiebeleid.pdf>

24 Jet Bussemaker was Minister of OCW from 5 November 2012 - 26 Oktober 2017

25 Organisation Advisory Bureau Berenschot.nl

26 Lower House, session year 2016-2017, 25 839, no. 42

<https://zoek.officielebekendmakingen.nl/dossier/25839>

27 The Minister, see Netherlands Government Gazette 19 November 2007, stipulated that the chairman, vice-chairman, and members of the Board of Trustees should stay on after their second term. See footnote 10.

Moreover, it is not complicated to set up an appeal committee of wise men and women that operates on an ad hoc basis. This committee can be called upon when a case qualifies for appeal. The appeal committee accordingly can re-examine the case and the advice. The obstinacy with which this request is refused characterises the unwillingness to fair play.

OBJECTION 2

BALANCE OF INTERESTS

Objection was raised over the regulations of the Binding Opinion Procedure, Article 3(e), (f) and (g) should be removed.

The Restitutions Committee made an amendment to Article 2, second paragraph, during the cold policy (the policy prior to 2000) pursuant to Article 4, second paragraph, of the Decree establishing the Restitutions Committee. The contents of Article 4, second paragraph, do not allow for an amendment of an institutional Decree establishing the Committee. The binding opinion procedure is more far-reaching than the further adaptation of regulations. It has led to a procedure that has been installed to the detriment of the claimant. The binding opinion procedure is no longer about restoration of rights, but about balancing interests.

- A balance between the interests of the claimant, the possessor, and the public art collection. The anaphora 'interest' used in Article 3 e, f, and g suggests that the interest is the connecting factor that suggests that these are equals and therefore can be compared.
- It is important to note that the binding opinion procedure was established in the period when the cold post-war policy was in force²⁸. Avoiding the appearance of self-enrichment was not in effect at that time. As the post-war settlements show, the policy at the time was based on self-enrichment; the binding opinion procedure does not fall short of that; the consideration of an interest for public art possession flows directly to the national treasury.
- It is about the interest of the current owner, mostly a municipal museum, against the claim of the original owner. The dominant position of a museum institution is generally regarded as more important but the regulations of the binding opinion procedure adds to the importance of museums opposing the position of the claimant, who is standing alone with their claim opposing the museum. It is as if the number of museum visitors passing by the looted works of art is of added value to the rightful owner from whom that work of art was stolen.
- A museum visitor, who for a moment enjoys a work of art ²⁹ (looted by the Nazis), can in no way be compared to (the heir of) the original owner, who demands for his rights for restoration.

28 The final recommendations of the Ekkart Committee recommended the conclusion of the expanded policy in 2007. On 4 April 2007, Minister Plasterk closed the extended policy to fall back on the cold post-war policy, after which he reinstated the extended policy on 10 July 2009. Lower House of the Staten Generaal 25 839 No. 40: <https://zoek.officielebekendmakingen.nl/dossier/25839>

29 How long does a museum visitor look at a work of art on average? This turns out to be 10 to 25 seconds and that 10 to 25 seconds attention is objected to the entitled party. The interest of a museum

- Apart from the fact that a visitor of a museum does not claim the works of art.
- The importance of the public art collection is dangerously close to Hitler's interest in building up a large Germanic collection for which he robbed in his own country and in the occupied territories, in comparison; the public art collection wants to increase its collection with works of art robbed by Hitler c.s. Works that were returned - without knowledge of the original owner - to the Netherlands and which were found, as a result of the second museum research "museum acquisitions from 1933 to the present day", in 2013. The importance for public art property associates itself with a regime with which it would rather not be associated in its sanity, while the original owner wants to be restored to his possessions that were robbed. It is ethically and morally unacceptable that the interest for the public art collection is considered. The regulations are aimed at pure enrichment of the National Cultural Heritage.
- Article 3: e 'the applicant's interest', the applicant has no interest, but is entitled to restoration of rights. The applicant is the owner (according to inheritance law, the successor of the original owner) before Hitler c.s. intervention. He asks to be reinstated in his honour and rights. His wish to be restored to his rights is translated into an interest in the regulations. A balancing of interests has nothing to do with the right to be restored in once right. Morally ethical, it is nonsensical to express the restoration of rights in an interest and then compare it with the interests of institutions that have interests (the general grazing culture) but no rights.
- The binding opinion procedure is not about restoration of rights, but about balancing interests. The interests of the current owner, often a museum institution, and the interests of the public art collection are wrongly considered. The right to restoration of rights is the foundation of the original owner; this right cannot be exchanged for an interest.

OBJECTION 3

NO EQUAL TREATMENT

With the amendment of Article 2, second paragraph, to a binding opinion procedure in 2007, the Restitutions Committee has appropriated the role of judge as to which of the two is more entitled the current possessor or the original owner. Until then, the Restitutions Committee only ruled on the ownership of the State (the NK collection). Since the binding opinion procedure, the Restitutions Committee switches between the two different procedures, as judge between both parties and as representative for the art works belonging to the State of the Netherlands. It is striking that the difference between the two procedures is becoming smaller and smaller, with the ownership of the current possessor and the ownership of the State taking precedence over the ownership of the original owner. The restitution criterion seems to have been pushed into the background.

visitor would be more important?

After 29 October 2013, the completion of the museum acquisitions was announced, it was expected that a considerable number of claims would follow. On 28 November 2013, the Restitutions Committee unilaterally informed the museums about the procedure and gave away a free lunch. The claimants were denied any explanation about the procedure nor were they given lunch.³⁰ The museums were warned as follows: "It is not inconceivable that claims may arise from this investigation that museums, municipalities or provinces may have to deal with".

- The restitution committee should have left the debriefing to museums to third parties, e.g. the Dutch Museum Association. By informing only one of the parties, it adopted a biased stance and failed to observe its role as an impartial judge, which colours the entire policy and regulations.

OBJECTION 4

ERFRECHT

During the symposium "Looted, but from whom", March 13, 2007 (the cold policy was in force) in the auditorium of the Trippenhuis of the KNAW (at the time of Judith van Kranendonk), the vice-chairman of the restitution committee Inge van der Vlies and Rudy Ekkart, suggested that the law of succession should be amended and restitution should be limited to the second generation. Also, no blood related heirs, with no DNA match, would not be entitled to restitution either. Wesley Fischer³¹ jumped up and asked if they had completely gone mad to the extent that any manipulation of inheritance law then and there died an early death. Nevertheless, this remains dormant, and the restitution committee considers a claimant who is not a blood relative, but who is the entitled heir to the estate, to be of less importance. This is incorrect according to inheritance law. The current possessor thus gains in importance. See the Semmel case.

OBJECTION 5

ETHICS IN POLICY

The decision-making rules of institutional policy of 16 November 2001 is the ethical response to post-war policy that was cold, formalistic, bureaucratic, and even illegitimate. Prior to the ethical question there is the moral, normative question: What are we going to do to heal this? We are going to set up a committee that not only looks at the purely legal, but morally ethical according to the concepts of reasonableness and fairness. The restitution committee uses the decision-making rules to the contrary:

During the revision of the Koenigs case RC 4.123, Jan Leijten noted the committee's lack of authority to establish the nullity of the in-payment notifications - of course the committee is not authorised to pronounce the nullity, but it is authorised (and even obliged) to establish the nullity of the legal acts where it is evident and refers to the pressure of the Nazi regime, which is the case according to Coen Drion and professors

³⁰https://www.restitutiecommissie.nl/nieuws/voorlichtingsbijeenkomst_voor_musea_gemeenten_en_provincies.html

³¹ Wesley Fischer is Director Research Claims Conference since 2003 New York, NY.

Stein, Schoordijk, Vranken and Salomons. The Restitutions Committee uses the decision-making rules to the contrary for which they have been included and, on the basis of the explanation of Article 2 of the Decree establishing the Committee, rejects the arguments of Drion, Stein, Schoordijk, Vranken and Salomons on the grounds that they are of a legal nature, but in spite of this they nevertheless ruled and gave their negative opinion.

- In his recommendations, Ekkart stated - and these were adopted by the government - that it may automatically be assumed that Jews from Germany from 1933-1945, Austrian Jews from 1938 and Dutch Jews from 10 May 1940 were considered to act under duress, unless explicitly stated otherwise. In both Kandinsky cases, Amsterdam and Eindhoven, a desperate search for proof of the contrary was conducted. It is not the intention that the policy rules that were made for claimants will be contradictory used against claimants. It seems to be the restitution committee's intention to arrive at a negative purpose reasoning.

OBJECTION 6

THE LEGAL STATUS OF THE NETHERLANDS WITH RESPECT TO THE NK COLLECTION HAS MORAL IMPLICATIONS

The Netherlands' legal position with respect to the NK collection is unclear and varies between having ownership of the works of art in the NK collection and only having the works of art in custody for the rightful owners. Transparency in this respect is desirable.

The French government, also represented by their Minister of Culture, indicates on its website of the MNR Musées Nationaux Récupération, (equivalent of the NK Collection) on the first page, in the third paragraph, the legal status of the works of art that have not yet been restituted³²:

"Legally speaking, as defined by the decree of 30 September 1949, these works do not belong to the State, who is only the temporary custodian. They are therefore not part of the public collections of the museums of France and these works are not listed in the Joconde database of national collections."

The French State is clear; it does not own, but according to international law, keeps in custody, for the original-rightful owner.

Contrary to France, the Netherlands leaves the legal status of the NK Collection in the middle. The fact that the procedure of the restitution committee is ex-parte, without an opponent, indicates that the government protects its position as owner.

If the Minister decides to follow the negative advice of the Restitutions Committee, he or she must indicate which legal avenues are still open to the claimant. The minister does not do this.

- The holder's position, as held by France, is not time-barred.

³² <https://www.culture.gouv.fr/Espace-documentation/Base-de-donnees-Culture/Joconde-consultable-depuis-le-moteur-Collections>

- In a lawsuit, that is important. A holder cannot invoke prescription. If necessary, he can invoke the statute of limitations, but in view of his efforts to set up a restitution committee to deal with cases from WW II only now, an invocation of the statute of limitations seems unsuccessful.
- The Netherlands, on the other hand, as owner of the Rijks/NK collection, can invoke prescription³³. The Netherlands bases its position as owner of the Rijks/NK Collection on national legislation. According to articles 10 and 6 of the Royal Decree A 6, the reasoning of ownership of the Dutch State would have been healed with retroactive effect by the ratification decree of 14 February 1947. As a result, according to the State, Hitler is obviously the rightful owner, although the State could assert its property rights by virtue of article 3 of RD E 133. The ratification order only takes effect from the moment that these works cross the national borders.
 - A dispute arose³⁴ between claimants during the defence of their respective cases regarding the ownership of the State versus the custody of the State. Internationally, the various 'Collecting Points' in Germany returned the works of art originating from the Netherlands to the Dutch State *on behalf of the rightful owner*. This implies the position of custodian to which no rights, including financial rights, can be haggled over. International legislation takes³⁵ precedence over national legislation.
 - From this it may be concluded that the Dutch State is only the custodian.
 - In principle, that is correct, but that is not what the Netherlands invokes, as soon as the artworks cross national borders, the ratification decree of 14 February 1947 comes into effect retroactively, after which the Netherlands asserts its ownership rights pursuant to Article 3 of RD E 133.
 - This decision is contrary to the Constitution: with these decisions the government expropriates its own citizens and others without any form of compensation.
 - The claimant who, according to the KB A6 and The Inter Allied Declaration Against Acts of Dispossession of January 5, 1943, expected to be reinstated into his property is now forced by national law to file a claim with the Dutch State that has claimed ownership.³⁶

33 Although MP Balkenende publicly promised in 2001 not to invoke the statute of limitations, this relates only to his position as owner of the NK Collection. Such a political statement has no effect on the rules of law.

34 It concerns Goudstikker's case at the Norton Simon museum; Prof. Wouter Veraart and Prof. Arthur Hartkamp, defended the position of the Norton Simon museum against Goudstikker, claiming that the Dutch State owned the Cranach diptych (NK collection) when he sold it to Stroganoff. A.F. Salomons defended for Goudstikker the position that the State of the Netherlands on international legislation can only be the holder of the diptych. Professors H.C.F. Schoordijk, Peter A. Stein, A. Vranken and C.E. Drion assume the appeal of the Netherlands on national legislation, which makes him the owner of the NK collection. https://cdn2.hubspot.net/hubfs/878449/Von_Saher_Order_on_MSJ.pdf see from p. 11 and 13 second paragraph.

35 The Inter Allied Declaration Against Acts of Dispossession 5 January 1943
<https://www.lootedartcommission.com/inter-allied-declaration>

36 <http://yated.com/dutch-government-apologizes-for-wartime-complicity-with-nazis/>

- By amending national legislation, the government has taken ownership of the returned looted art.
- This is what Secretary of State van der Ploeg at the instalment of the restitution committee on 16 November 2001 refers to when he says he wants to "remove *the appearance of self-enrichment*".
- During the colloquium held on 17 May 2019 in honour of Heikelien Verrijn Stuart's departure as a member of the Committee, she said in her farewell speech that in the 17 years she had worked for the Restitutions Committee, she still did not know what the legal position of the State was with regard to the NK collection.
- Announcing the restitution of 205 works of art to Goudstikker in 2005, Medy van der Laan said during the press conference: *"The Committee gives us its advice, and as the owner of the State of the Netherlands, we decide that we would like to follow that advice; we are not a governing body in this matter."*

AN OPEN SECRET

IT'S AN OPEN SECRET THAT MUSEUMS AND PRIVATE COLLECTIONS HOLD LOOTED ART.

Before the Second World War, relations were reversed; art and knowledge about art were mainly privately owned. In comparison, the museums did not hold equal collections. In 1935, Goudstikker held a Rubens exhibition at 485 Herengracht for the Rijksmuseum. The art dealers also held their sales exhibitions in the Rijksmuseum. On 29 June 1939, Hitler stipulated at Posse's³⁷ appointment that his collection for Linz would be 'compiled' solely from private collections. The fact that no work of art was robbed from Dutch museums is confirmed by the fact that all the works of art returning from Germany came from private property that had been robbed; this indicates how distressing this file is. These works of art (see objection 6) were accommodated in the NK collection and then freely allocated to the museums on long-term loan.

During the distribution, a real fight broke out among the museum directors as to who would be assigned with what works of art. While in 1947 the government allocated artworks from the NK collection to the museums on long-term loan, with the proviso that these works would always be on display. In 2005 the museums pretended to have no idea about the size of the NK collection. The characteristics of an Open Secret, every museum knows what they have in their possession of certain collections of looted art (according to the AAMD and Icom guidelines this is adamant). Lack of historical awareness, responsibility, and lack of interest of their own museum files, while the NK loan forms are in their museum archive and the Bonnefanten museum is full of Italian works of art from the NK collection, from the looted and returned collections of Otto Lanz, Goudstikker, Gutmann and Koenigs, only to react violently and indignantly (Alexander van Grevenstein van het Bonnefanten museum and other

³⁷ Dr. Hans Posse, (1879-1942) director of the Dresdner Gallery, who was appointed by Hitler on 29 June 1939 as his Beauftragter for the collection for the museum to be built in Linz. Everything Posse wanted to buy was first presented to Hitler, Hitler personally made the final choice.

museum directors ³⁸⁾ when restitution was advised, indicates how government policy corrupts the museum system. The open secret, knowing it, but remaining silent about it has had to wait until a second "Museum Provenance investigation", which was largely completed in 2013.³⁹ The database is still being added to.⁴⁰ The responsibility of the museums with regard to looted art in their museum collections leaves everything to be desired, even the investigation into museum provenance leaves everything to be desired, even after the completion of the investigation many works of art were still found that were not included in the investigation, but what can you expect if the government gives looted art from the NK collection to the same museums on long-term loan? What can you expect if a binding opinion procedure which initiates regulations to favour the interests of the museums?

On 5 January 2009, the Museum Association's director Siebe Weide, when announcing the second museum survey, stated that at the time it was impossible for museums to trace where the works of art came from. "Museums acted in good faith because they did not know where the purchases came from," says Siebe Weide.⁴¹ With this statement, Mr. Weide is protecting the museums, not because they need protection, but to prevent the investigation from ending up in culpable spheres. In its acquisitions, museums are generally aware of the provenance since the provenance is an important factor in determining the price. From a historical point of view, museums are indeed to blame. During the occupation, many museum directors were tempted to switch from the boring care of cultural heritage to the exciting trading of, with success for that matter. Of course, never of their own museum collections (nothing was stolen from the museum) but always of the collections in which they were involved in one way or another. Even after the war with the distribution of the NK collection among the museums, you cannot say that they were in good faith, they knew very well that these works came from stolen private property. They knew the collections from which the works came and expressed their preference for the various works of art. Moreover, it is generally impressive what a museum director knows, it is part of his job as museum director to know where the collections and the collectors are, the special paintings or sculptures are located, when something can be obtained, with whom he should stay in close contact, who he should always approach, who he should keep in touch with, who he can advise and this in competition with other museums, in case there is ever something to donate or buy. This was before, in and after the occupation and still is.

38 Other museum directors; Pieter Biesboer of the Frans Hals Museum, Dorothee Cannegieter, director of the Rijksmuseum Twente in Enschede, Jetteke Bolten-Rempt director of the Lakenhal Museum in Leiden.

39 <https://www.nrc.nl/nieuws/2009/01/06/kunstaankopen-na-1933-onderzocht-11664619-a295619>
<https://www.nrc.nl/nieuws/2009/01/06/groot-onderzoek-van-musea-naar-joedse-herkomst-collecties-11667992-a1059466>

<https://www.parool.nl/kunst-media/musea-onderzoeken-herkomst-collecties~bed986fa/>

40 <https://www.museumacquisitions.nl/en/10/home/>

41 <https://www.parool.nl/kunst-media/musea-onderzoeken-herkomst-collecties~bed986fa/>

After the war, the Dutch State maneuvered itself into a position which it insistently maintains but cannot justify. The opaque situation about its ownership arises from the expropriation without any compensation⁴². At that time, the government was omnipotent, no Wob request (no public access law), the idea that their policy would be read and criticized later was beyond their authoritative thinking. As L.J. van Wachem testified in the SNK A.B. de Vries - B. Katz criminal case⁴³: *"There were 9 interested parties [museums] for the Gutmann collection that was found. When someone came forward for this collection [Bernard Goodman], I was instructed to say that nothing of this collection had been found.* The government acknowledged this cold policy in 2000 and wanted to heal it by installing the restitution committee so that the art could still be restituted. The Restitutions Committee advises on ownership of the State to the claimant, who must clarify that his ownership was lost under duress by the Nazi regime. The position of the Restitutions Committee has become a substitute for the State and has obtained the role of opponent vis-à-vis the claimant. The Restitutions Committee has the role of the deciding authority that gives back or does not give back, since the Minister always accepts the advice and decides in accordance with it. In this knowledge, the power of the Restitutions Committee accumulates.

SUMMARY

THE FUTURE RESTITUTION POLICY

The Restitutions Committee lacks historical and social historical insight. Any insight and empathy as to how people lived under the Nazi regime and how it was after the war should determine whether claims should be granted. This is where the Restitutions Committee has failed miserably for years. Moreover, it is a missed opportunity that the restitution reports do not reflect the extreme aspects of the Nazi regime. In fact, the Restitutions Committee treats the cases as if they had taken place in a free society under a democratic legal system, and not during the occupation by a dictatorship of a foreign power that had designed and complied with racist laws. The background, the war, the Nuremberg racist laws, the attitude of the Netherlands after the war, nothing is taken into account, it only benefits from the meticulous and well-prepared plunder and genocide. If there is no one at the restitution committee who has insight into this and can explain it, then the interests of the State takes precedence and the advice is out of balance, and the State keeps the art. Changing the rules of law of the opinion procedure and removing the public interest for the museums and creating an ad hoc appeal committee is not that difficult, I can see that happening.

But to create awareness of how the committee members must adjudicate this period under duress, according to the legislation of the occupying forces and from the occupying forces, is a lot more difficult, the last twenty years this was not successful. Added to this is the question whether the Netherlands took the NK Collection in ownership by expropriating the rightful owners through national legislation, followed

42 This against the constitution of the Netherlands.

43 Archives Ministry of Justice Criminal case SNK contra A.B. de Vries and B. Katz

by the next question whether the Dutch State still wants to maintain this position in the year 2020, or whether the State is able to allow itself to abandon this position and to return to its position of custodian for the rightful/original owner. In any case, the Dutch State must clarify its legal position.

PROPOSALS FOR FUTURE POLICY

1. An appeal procedure. A committee of 12 or more members that can be called upon on an ad hoc basis in the composition of 7 members.
2. Adaptation of the regulation of the binding opinion procedure, deletion of Article 3(e), (f) and (g).
3. Clarity on the part of the Dutch State about its legal status of the NK collection; with an explanation about the legal bases on which it holds or owns.
4. To do real justice, the NK works of art lent to the Museums on long-term loan should be retrieved and kept and cared for in a neutral depot pending a claim. In this way, the museums are no longer involved with restitution. In this way the museums become aware of their own collection and realise what was looted and belonged to the rightful owners which were unjustly lend to their museum all these years.
5. Unless the binding opinion procedure is lifted, this is also the solution for the looted works of art in museums (not belonging to the State), or in private collections. As soon as it is clear that an object has been looted under duress from the Nazi-regime for which a claimant has come forward, the object in question will be removed for the equality of arms, out of all fairness⁴⁴ and fair play. As soon as the work of art is on neutral ground (the same depot as where the NK works are located), the equality of arms is restored. The museum no longer has the work of art in its possession and will have to justify its acquisition, just as the original owner will have to prove the ownership for the robbery by Hitler et al. The adjustment of the rules, see point 2, must then have been implemented.

ADDENDUM

The evaluation committee has the ball, they must clean up the debris that has accumulated over the last 20 years, which was formed since 1945.

First, this evaluation committee is asked to assess the functioning of the Restitutions Committee and whether the claimants have been treated in a justifiable manner.

⁴⁴ Fairness impartial and just treatment or behaviour without favouritism or discrimination.

Secondly, they are asked to adjudicate on the policy established in 2001 and all the changes and legal rules that have changed the policy, in which the government has demonstrably played an increasingly important role. In 2011, Ronny Naftaniel was part of the commission, that prompted Dick H.M.N. Schonis (attorney at law Goudstikker) to comment, what can we do Ronny sat at the table, in other words, the policy was approved. As a result of which we discovered that the committee's advice was adjusted by the government. The government pretends to follow an advice, but it makes his own decision.

It scourges and squeezes everywhere, because don't these evaluators want to be realistic and see that the members of the restitution committee, certainly not the first the best, have done their absolute best? Don't they find themselves in an impossible position to do justice to the claimants because they would have to reject the policy of the restitution committee (steered by the government) in its entirety?

Why should a museum, because it serves the viewing pleasure of museum visitors and thus the public interest, have more rights than the original owner whose art objects were taken by Hitler? Is this not a distorted view that has nothing, but nothing to do with restoration of rights and restitution and the loss of property under pressure from the Nazi regime? How will the museum system react if these legal rules are reversed, if museums are not given any importance in the form of an obscure rule of law, as is currently the case? Subcutaneously they will be furious, and publicly they will be furious, vide the tv programme on March 11, 2020 "Nieuwsuur" which was broadcasted to introduce the evaluation committee⁴⁵; Ralph Keuning director of the Museum de Fundatie, who, in his view, rightly claims the Semmel painting in the Nijenhuis as museum property, while in my view he should not want the paintings and should retribute it to the Semmel heirs. In other words, the museums will not be cooperative. Where does that leave the evaluating warriors? Are they going to settle amicably, are they going to reverse the policy, are they rightly pointing the finger at the Netherlands? Are they going to reopen my grandfather's case? What will they decide about the NK collection? What about the binding opinion procedure? Why were they given only until October 2020 to rectify what has gone wrong in 75 years? Isn't it up to the government, to examine its own legal position and to rectify its policy rules?

The evaluators are facing an inhuman task in a growing anti-Semitic society. The Minister's decision to ask the Council for Culture to install this accordingly is questionable. The government leaves it up to others - where it fails in its policy - to correct this policy. By asking whether the current policy needs to be corrected, he leans on the assumption that his policy may not need to be corrected. Recently the Dutch Government acknowledged its collaboration with the Nazi regime during the Nazi occupation.⁴⁶ After acknowledging it is time for rectifying.

45 https://www.npostart.nl/nieuwsuur/11-03-2020/VPWON_1310734 starts at 30.39 min.

46 <http://yated.com/dutch-government-apologizes-for-wartime-complicity-with-nazis/>