

The Koenigs Case in Focus and the Dutch Restitution Policy in General

Evaluation of the proceedings at the Restitution Commission

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On 19 December 2019, Minister Ingrid Engelshoven, requested the Council of State to install a commission to evaluate the Restitution Committee's functioning between 2015 – 2020. On 11 March 2020, *"The Commission Evaluation Restitution Policy Looted Art Second World War"* was born. Chaired by Jacob Kohnstamm and presented by the Members; Lennart Booij, Hagar Heijmans, Nina Polak, Rob Polak, Emile Schrijver and Henny Troostwijk, supported by the secretariat Pieter Bots and Nadine Youhat, (for short the Kohnstamm commission). Due to the virus Covid 19, the Kohnstamm commission, organized Zoom sessions to hear the experts in the field.

My Zoom hearing took place on, dd. 27 May 13.30 hrs., after which I was left with the feeling of not having been able to fully explain the issues involved, striving for completeness, I added the following:

First, in relation to the Museum Interest I will focus on the Koenigs case, which differs from all other cases, to continue with the Dutch implications of the Restitution Policy in general. It relates to "Ethics in Policy" which was written on May 6, 2020, relating to the factual procedural changes within the Dutch Restitution policy.¹ This essay relates to the moral implications of those changes.

THE KOENIGS CASE

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¹ http://www.koenigs.nl/franz/images/documenten/2020/ETHICS_IN_POLICY.pdf

THE GENERAL POLICY

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1. The Koenigs Case

In 1992, the Ambassador to the Netherlands, Joris Vos, stationed in Moscow, was brought blindfolded to the Koenigs drawings in Moscow. A few months later, a delegation from the Netherlands (Foreign Affairs, the BBKB (Office of Fine Arts Abroad) and Museum Boijmans staff) was shown the Koenigs drawings. On that occasion Director Irina Antonova, Director of the Pushkin Museum of Art and Manager of the Koenigs drawings, handed the Dutch delegation the historical documents establishing the fact that D.G. van Beuningen's sale of the Koenigs drawings, via Hans Posse, to Hitler, was entirely voluntary. Marshal Zhukov in 1945, not only took the Koenigs drawings but also the Linz archive from Dresden to Moscow, hence the proof from the Linzer archive, came from Moscow. Irina Antonova invited the Koenigs family, to the opening of the exhibition, exhibiting the 309 Koenigs drawings at the Pushkin Museum taking place on 2 October 1995. The next day, a scathing article appeared in the Pravda about Franz Koenigs, *an alleged Nazi spy*, by Vladimir Teteriatnikov. That same day, in an undisclosed location Teteriatnikov handed me the documents on the voluntary sale of D.G. van Beuningen. A Wob procedure (the Dutch Freedom of information Act) in 1996, yielded in 1997 the historical documents, which had been handed over to the Dutch delegation in 1992. At the end of 2003, in Kiev, Ukraine, when the 139 Koenigs drawings (139 of the 528 drawings sold *voluntary* by Van Beuningen to Hitler ended up in Kiev, Ukraine) were being restituted to the Netherlands. MP Balkenende at a press conference in Kiev, in front of President Kuchma, exclaimed: *"now we can see with our own eyes these wonderful drawings which we believed to be lost. They are more beautiful than we expected" [...]* *"The Koenigs Collection is very valuable for Dutch people and it means more to us than the tens of millions euro it is worth²"*, at the same time he accused the Gestapo of having unlawfully taken the drawings, while Van Beuningen's son-in-law insisted on delivering the Koenigs drawings in person to Hans Posse in Dresden. A lie, to accommodate the Interest of the State of the Netherlands.

² <http://news.bbc.co.uk/2/hi/entertainment/3640951.stm>

In the Zoom conversation the Draft Report made in the Koenigs case (RC 1.6) was mentioned. Although it was not explained in so many words, the remark seemed to suggest that a draft report offers the opportunity to correct errors or alleged prejudice.

Koenigs was not Catholic, but a Protestant, is just an added fact, but that does not contribute any bias, or tone, that the Restitution Committee will take to come to their overall conclusion later. He was not a Jew, is what was meant. In the Koenigs case, the draft reporting and the final recommendation entirely depended on the specific procedure followed, which is unique and not comparable to any other case:

My father's youngest brother, W.O. Koenigs (1926-2009), turned out to be standing on the other side of the restitution spectrum. In everything, in terms of acceptance of history, in terms of collecting facts and in sense of law. My father, F.F.R. Koenigs (1918-2000), had started investigating the loss of the collection in 1986, an investigation that I took over in 1994. After my father's death, the correspondence with his younger brother showed that he had kept an eye out and had frustrated his research. W.O. Koenigs represented the establishment and was part of the established order, he defended the Public Interest and his own carefully constructed position in the art world, and as it turned out, he was vehemently opposed to Restitution.

By profession, W. O. Koenigs was a Banker at the Bank Albert de Bary & Co³, a subsidiary of Deutsche Bank. As a secondary function, he held successive positions at the Rembrandt Society, in full, *"the Society for the Preservation of Art Treasures in the Netherlands Rembrandt"*; in 1971 he was a Board Member, from 1973 he was given the position of Secretary and from the end of 1984 to 1996 he held the position of Director of the Executive Board. As a Board Member, Secretary and Director of the Rembrandt Society, he represented the Public Interest of the movable cultural heritage in the Netherlands for 25 years. The Rembrandt Society defines its objective as follows:

"The objective of the Rembrandt Society is to preserve art treasures for the Netherlands, to enrich and support Dutch public art property, to increase Public Interest in and knowledge of the movable cultural heritage, especially in Dutch public collections"

This objective leaves no room for Looted Art, support *for Dutch Public Art Property*, is diametrically opposed to Restitution. There in, Restitution to the original owner, is generally perceived as a massive hemorrhage of the Dutch public collections. The question of how Looted Art ended up in the public collections, is not posited. The establishment imagines itself as the sunny side of the art market and experiences it as uplifting to "stand for the beautiful", positioning themselves in the noble spheres of the patron who, as benefactors, donate art to the "people", feeding the public collections, while the dark side remains unexposed or, is ignored in its entirety. As Director of the Rembrandt Society, W.O. Koenigs spending 23 years funding the arts was highly respected, with his approval, important purchases were made and the tagline "purchased with the assistance of the Rembrandt Society" was regularly achieved. The Rembrandt Society, at the request of a museum, is able to contribute between 40 to 60% of the purchase price of an artwork desired by a museum, extend a loan or contribute to the realization of an exhibition and it can even guarantee a potential purchase. The funds available, come from donations, legacies, and contributions from, among others, the Prince Bernhard Fund, and various lotteries. In short, W.O. Koenigs was particularly appreciated in the museum world, he was an important link for the museums in their realization of art purchases. His merits are described as follows: In 1996, Mr. W.O. Koenigs (1926) was nominated for the Silver Carnation because of his strong commitment to the Rembrandt Society, National Fund for Art Preservation. The nomination: "Koenigs has been Secretary and Director of this Society and has dealt with approximately a thousand

³ During the war, Albert de Bary & co was one of the Conto-Quattro- Banks that funneled the confiscated Jewish wealth to the Golddisconto Bank in Germany. In 1989 W.O. Koenigs retired.

applications, often very complex and time-consuming requests." On June 27, 1996, he received the Silver Carnation from Prince Bernhard in person. The Carnation Fund writes:

*"In addition to his demanding profession as a banker, Mr. Koenigs has worked tirelessly to enrich Dutch museum collections. This is done in the first place through the directorship of the Rembrandt Society, from which he will soon retire after 23 years. But also, beyond the society, he is committed to our art property with all his heart and soul, mobilizing the attention and support of the public."*⁴

Provided he did not mention his father's Collection.

His role as the representative of the Public Interest blocked any questions he might have had as to the loss of the Collection and the mysterious death of his father.

However, the Rembrandt Society has not been opposed to the Restitution of Looted Art from the outset. In fact, in 1956, the Society formed a commission for Binding Advice in the Hirschland/Stedelijk Museum case about a drawing by Van Gogh. Mr. Jhr. D.C. Roëll had purchased the drawing with the help of the Rembrandt Society during the war. Roëll, representing the society, was asked whether he could make it plausible under Article 31 of Decision E 100, which deduces the right of a Legal Predecessor who had obtained the case in good faith for consideration.

"Such an investigation was required the more urgently, since it was known that the seller was an unknown 25-year-old mechanic, for at the end of 1943, irregularities in the acquisition of works of art as the present were frequent."

It was decided that the loss would not have occurred without WWII, and the drawing was restituted to Mrs. Hirschland. An interesting case.⁵ Roëll also played a similarly dubious role in the current Lewenstein/Stedelijk Museum case⁶, but today, the Rules for Restitution having become so complex, that it is not enough to just establish that the loss would not have occurred without the war.

Nor would the loss of the Koenigs Collection certainly, have occurred without the war. But for W.O. Koenigs this was different, as Secretary next to Director Jhr. J.P.R. Beelaerts van Blokland and later as Director with Vice Chairman H.J.E. van Beuningen at his side, he also dealt with the necessary requests from the Foundation Museum Boijmans van Beuningen, like *"An exhibition of only Rembrandt drawings within our museum"*. Everyone is aware of the fact *"he is the son of"* and with regard to the Rembrandt drawings *within our museum*, the 135 drawings by Rembrandt and his School from the Koenigs Collection are meant; of these, 35 of the Rembrandt drawings are recognized as by Rembrandt's hand and 100 are of his pupils.⁷ But Museum Boijmans van Beuningen does not mention the Collection Koenigs in its application. Is W.O. Koenigs ignorant of the Koenigs drawings in Museum Boijmans? The family no longer owns the lists of the drawings, which formed the catalogue of the *"Zeichnungssammlung F. Koenigs"*. W.O. Koenigs cannot ascertain what does, or does not, belong to the Collection and apparently, he does not want to reveal his ignorance of his father's collection.

In 1985, the Museum Boijmans van Beuningen Foundation confirmed by letter to the Rembrandt Society that it was pleased to have taken note of the board's decision to appoint Mr. W.O. Koenigs as a Member of the General Board of the Foundation on behalf of the Rembrandt Society. This was the Foundation which had accepted during the occupation, the donation of the remainder of the Collection Koenigs by D.G. van Beuningen, after D.G. van Beuningen sold a quarter of the drawings to

⁴ Source ZA 2 p. 24 www.cultuurfonds.nl

⁵ <https://archieff.amsterdam/inventarissen/scans/330/3.7.2/start/0/limit/10/highlight/6>

⁶ Currently the case is reviewed by the Amsterdam Court of law.

⁷ http://www.koenigs.nl/collectie/catalogus_teekeningen1/09%20Rembrandt-School%20Tekeningen.pdf

Hitler.⁸ Against all expectations, without ever mentioning his father's collection, without even pointing a finger at it, as a Member of the Board of the Museum Boijmans van Beuningen Foundation, he became co-owner of the three quarters of the Collection of Drawings and the eight paintings which remained of his father's collection. Accordingly, as a Member of the Foundation of Museum Boijmans van Beuningen, he was able to contribute to the decisions about the property of the Foundation of Museum Boijmans van Beuningen, to which his father's Collection contributed 80 to 90%. At the same time, he is compromised by his ignorance.

On 5 October 1996, the Rembrandt Society organized a public debate, for its departing Chairman, Mr. W.O. Koenigs, at the Rijksmuseum in Amsterdam, led by Mr. Drs. L.C. Brinkman, former Minister of Culture, and Member of the Rembrandt Society's Board of Advisors. *"The Importance of Museum Art Property for the Identity of the Netherlands"* will be explained. The speakers taking part in the debate are Prof. J. Bank (from 2001, a Member of the Restitution Committee) Dr. W.A. Beeren (Director of Museum Boijmans van Beuningen until 1985) and Mr. Drs. F. Bolkestein. Mr. W.O. Koenigs will conclude with a final word."⁹

1.1 The claim

Almost a year later, ignorant of the *"Silver Carnation"* and unaware of the public debate *"The Importance of Museum Art Property for the Identity of the Netherlands"*, on 5 July 1997, we made a claim to the Collection Koenigs as our father and grandfather had lent it to the Museum Boijmans in 1935. The same day, the claim was heading the front page of the NRC newspaper. Charlotte van Rappard-Boon, who worked at the National Visual Arts Bureau, called in dismay, with the newspaper in her hand, W.O. Koenigs, whom she knew well.¹⁰ It turned out he wasn't involved in the claim. I had claimed on behalf of the heirs, but I had not been authorized on their behalf. 14 days later (17 July 1997), W.O. Koenigs, also on behalf of his sister, A.K.M. Boerlage-Koenigs, opposed the claim (while retaining their rights to the Koenigs collection)¹¹. He had made this public (without his sister) on 15 July 1997 in the frontispiece of the *Rembrandt Society's Bulletin*, next to a set of floating cups and saucers (an illustration that is of no concern) he wrote 'Dear Members of the Society' disassociating himself from the claim of his niece, Christine Koenigs, stating his unabated support for the Public Interest without prejudice. Although he was no longer Director of the Rembrandt Society, he wanted to retroactively take the position as advocate for the Rembrandt society and the distance himself from this affront.

⁸ Amsterdam City Archives Society Rembrandt 330 Inv. 57 by letter of 14.3.1985

⁹ Amsterdam City Archives Society Rembrandt File 330 Inv. 137 scanned.
<https://archieff.amsterdam/inventarissen/details/330/path/2.1.5.2.8/withscans/0/findingaid/330/file/137/start/0/limit/10/flimit/5>

¹⁰ Charlotte van Rappard-Boon informs State Secretary Aad Nuis, of the fact that three heirs distanced themselves from the claim even a daughter of the director of the Rembrandt Foundation (obviously the daughter is no heir), this would, so is her conclusion, invalidate the claim. Her main purpose was to invalidate the claim, but never looked at the validity of the claim.
http://www.koenigs.nl/franz/images/documenten/ethiek/19_970616_OCWs_reaction_to_the_claim_Charlotte_van_Rappard_Boon.pdf

¹¹ In their letter of July 1997, W.O. Koenigs and A.K.M. Boerlage-Koenigs to the State of the Netherlands wrote that they had not empowered me, and that they distanced themselves from the claim, but at the same time they stated not to waive any (claim) right which they may have against the State of the Netherlands.

1.2 The Ekkart Policy – The Closure of the Expanded Policy

A few years later, during the symposium 'Cultural Goods and the Statute of limitations', held at Christie's Amsterdam on 7 May 2003, in response to the Restitution to Fritz and Louise Gutmann, W.O. Koenigs took the floor and, despite the fact that Fritz and Louise had been close friends of his parents, and Bernhard, their son, had stayed with his mother after WWII to find his family's Looted Artworks and their daughter, Lili, was best friend with his sister Nela, he pleaded that there should be an end to the Restitution Policy. A policy which had just started in the beginning of 2002, and only a first recommendation had been given, resulting in the Restitution of the Gutmann collection (RC 1.2). For which the symposium was held, and on 13 May 2003, at Christie's Amsterdam, the artworks of the Gutmann's collection would be sold at a single sale auction.

Against all odds, his words were given effect: Dr. R.E.O. Ekkart¹² presented the Minister with his final recommendations on Restitution Policy in December 2004 which among others was to close the Expanded Restitution Policy. The Minister¹³ accepted the recommendation and announced on 5 April 2005 that the Expanded Policy would be concluded on 4 April 2007. This meant that the harsh, cold, bureaucratic, and often illegal policy of before 2000 would be reinstated. The policy for which after the publication of the investigation "Second World War Revenue 2000" (Tweede Wereld Oorlog Tegoeden) MP Balkenende had apologized.

The return to a policy that was widely regarded as "unjust" while the Expanded Policy was supported by the feelings of the entire Cabinet and Parliament, is incomprehensible. Moreover, Rudy Ekkart had taken on the entire question of Restitution since 1997, he initiated and designed the Expanded Policy, which had been a hard fight with the Minister. His entire policy recommendation on Restitution was adopted by the Minister, which is quite an achievement, and now he was erasing his own policy. In so doing, he reduced Restitution to an impossibility.

In 2003, a year before his final recommendation closing the Expanded Policy, Ekkart published the Partial Report nr. V. In this report, the Looted Drawings and Prints are registered. Also, the Koenigs drawings are registered. The registration is incorrect. Ekkart omitted in the register provenance, the sale of a quarter of the Koenigs drawings, 528 drawings in number, which were acquisitioned for Hitler's future museum in Linz. That is why these drawings need to be repatriated.

- In 1987, 34 drawings were repatriated from the National Gemälde Galerie in Dresden, DDR.
- In 2004, 139 drawings were repatriated from the Bohdan and Varvara Khanenko National Museum of Arts in Kiev, Ukraine.
- Today, 309 drawings, are still held at the Pushkin Museum in Moscow.

All the drawings have been previously described in detail¹⁴. Our lawyer contacted Ekkart, in seeking to have the official promise in writing to correct the inaccurate provenance. However, even after a reminder, he never did. This story, "the provenance" omits the role of collaborators. Why in a factfinding mission, regarding history of ownership, is one too ashamed to mention a collaborator

¹² Rudi Ekkart (The Hague 23.12.1947) Art Historian, director RKD (State's Visual Documentation). In 1997 he received the assignment to inventory the World War II looted Works of Art and to devise a policy. Under his leadership from 1998 on, under the title 'Office of Origins Unknown', various reports of his findings and progress were published, accordingly he advised the Minister on the policy and rules for restitution.

¹³ Secretary of State of the Ministry of Culture, mr. M.C. van der Laan, in the period 2003-2006 oversaw the Looted Art portfolio.

¹⁴ <http://www.koenigs.nl/franz/de-collectie/catalogus-boijmans.html>

selling to Hitler? When one does not admit that Van Beuningen, assisted by Museum Boijmans, sold expressly to Hitler, then the story “*The Gestapo took them*” can be maintained. This fallacy negates the Koenigs claim. At the same time, the repatriated drawings fall into the State’s ownership who, in turn, places them on long-term loan to Museum Boijmans, in so doing, they are enriching the State Collections.

1.3 The Museum Interest

Perhaps, the fact that Mr. Ekkart¹⁵ was also Board Member of the Rembrandt Society might be the explanation. In a meeting of 9 October 1993 chaired by W.O. Koenigs, Rudy Ekkart was appointed for the first time as Board Member of the Rembrandt Society. While in 1997, Mr. Ekkart was commissioned to investigate the provenance of the NK Collection.¹⁶ In 1998 the first report 'Origins unknown' was released, followed by another six reports. Initially Ekkart wanted to keep the Goudstikker, Gutmann, Koenigs, Lanz and Mannheimer collections from research, because these collections were well-known. But it was precisely that “*other works of art*” were added to these well-known collections. I discussed with Rudy Ekkart his description of the history of the SNK. He omitted revealing the make-up of the Management Board, (Raad van Beheer van de SNK, Stichting Nederlands Kunstbezit, Foundation Dutch Art Property), which consisted of:

- Chairman Mr. Jhr. Dr. D.C. Roëll¹⁷;
- Mr. J.K. van der Haagen¹⁸;
- Kol. L.W. Otte;
- Dr. A. Treep;
- Dr. A.B. de Vries¹⁹;

¹⁵ Prof. R.E.O. Ekkart was a Member of the general board and board Member of the Rembrandt Society until 2012, when he retired, the Ekkart Fund was established. Since 2019 he is on the Rembrandt’ s advisory board, in 2020 he chairs applications for research grants.

¹⁶ Amsterdam City Archives Rembrandt entry number 330 inventory No. 16, meeting October 1993

¹⁷ Restitution commission report 2003. Opinion in The Koenigs RC 1.6 decision of 10 December 2003.

¹⁸ Jhr. D.C. Roëll (1894-1961) was from 1922-1936 curator at the Rijksmuseum under director F. Schmidt-Degener, from 1936-1946 he was Director of the Musea van Amsterdam, het Stedelijk Museum, the historical Museum and the Willet Holthuysen. In the war he formed with J.K. van der Haagen and Dirk Hannema, “the committee of three”, they were evaluating the works of art of the Royal Palaces, for Reichs Governor Seyss-Inquart; from 1945 he was Chairman of the Board of Directors of the SNK (Foundation for Dutch Art Property) , he was also director of the Rijksmuseum from 1945 -1959 and director of the paintings department from 1946-1950.

¹⁹ Mr. J.K. van der Haagen held various positions at OKW (Ministry of Culture) before in and after the war. Before the war he was head of KW at OKW, in the war Chief division DOWC, after the war Deputy Director General under Mr. H.J. Reinink. See Fransje van Kuyvenhoven 'The State buys Art, 2007':

<https://www.cultureelerfgoed.nl/publicaties/publicaties/2007/01/01/de-staat-koopt-kunst-p.105>:

"He (J.K. van der Haagen) also apparently wanted to keep an eye on the contents of the National Collection because he had already developed plans for a 'Mobielier National' before the war. This French-based national art depot should serve to 'decorate' government buildings, Dutch embassies abroad and workspaces of dignitaries. He wanted to fill the depot with modern art that had been bought since 1932, donations and legacies of family portraits that had been part of the national collection since 1935 and with artifacts that were not allowed to leave the country. He also hoped to retrieve the works of art that the Germans had taken away from the Netherlands and give them a place in this depot. He would elaborate

- Mr. W. van Elden;
- Prof. J. van Gelder²⁰;
- Drs. de Roo van Alderwerelt;
- D.G. van Beuningen;
- Jhr. J.A.G. Sandberg²¹;
- E.J.M. Douwes²²

Ekkart, however, stated that it did not matter! Mr. Roëll, Mr. De Vries, and Mr. Van Gelder were *the* Museum directors after the war. Some of them were provided a rank in the Dutch army and functioned as monuments men. A.B. de Vries was promoted to Captain, Mr. Vorenkamp (director Museum Boijmans) to Colonel to determine the art looted from the Netherlands so the art could be brought home. Roëll made several controversial purchases during the war, enabled after the war to be the Chairman of the Management Board of the SNK, while van der Haagen held senior position of State Secretary at the Ministry of Culture, before, during and after the WWII, and the industrialist D.G. van Beuningen, who sold voluntarily to Hitler, interfered after the war with the politics of Looted Art, as part of the Management Board of the SNK. Ekkart, however, felt their activities during the war did not matter, I did not, and do not agree with him. The Management Board of the SNK at the time consisted of the same sort of distinguished gentlemen as the members of the Rembrandt Society. Mr. E. Heldring, who had been for years Chairman of the Rembrandt Society, was now the Chairman of the Advisory Commission to the SNK. The SNK did not only have a board of management, but it also had an Advisory Board, the latter was headed by E. Heldring²³. The Members of the Management Board as well as the advisory board to the SNK, had fulfilled their duties as Museum Directors and Industrialists during the war occupied by the Nazi regime, they had interfered with its policy and had

this during the war in the report *Our movable treasures of science and art during the war years (April 1945)*. See also

https://www.dbnl.org/tekst/dupa004eeuw01_01/dupa004eeuw01_01_0005.php

A century of struggle for Dutch cultural heritage, 1975 F.J. Duparc.

²⁰ Ary Bob de Vries (1905-1983) stayed during war in Basel, Switzerland, from 1945 he was captain in the Dutch Army, to locate the Dutch Art in the Collecting Points; he was Director of the SNK, from 1946 Director of the RKD and Director of the Mauritshuis. On 1951, 7 June, A.B. de Vries, director of the SNK was excluded from prosecutions in criminal proceedings against him.

²¹ Jan Gerrit van Gelder (1903-1980) 1924 assistant and curator at Museum Boijmans, until December 1940, from December on, he was interim Director of the RKD. In 1945 he was appointed Director of the RKD and Director of the Mauritshuis. In 1946 he resigned from both positions to devote himself to his academic studies.

²² Jhr. J.A.G. Sandberg, Vice Chairman, representing the Minister of Finance. In the war he was Banker at Heldring & Pierson bank, Director and Chairman of the Board of KLM. See Lou de Jong: "The Royal Kingdom of the Netherlands in the Second World War": Book 4: p. 419-430 Book 6; 211, 219, 220; Book 7: 22, 25; Book 13:57. "Disputed Possessions" (Betwist Bezit) p. 35, by Eelke Muller and Helen Schretlen published by Waanders Zwolle, 2002. Mr. Sandberg had his own collection, which he was partially forced to sell during WWII.

²³ E.J.M. Douwes (1928-2019), representing the Art Dealers of Amsterdam, who was then 17 years of age.

²⁴ Ernst Heldring (1871-1954) Director of the KNSM, Koninklijke Nederlandsche Stoomboot-Maatschappij, "Royal Dutch shipping Company" from 1888-1937, after which he was Commissioner till 1953. Heldring was Director of the Rembrandt Society before, in, and after WWII. E. Heldring like W.O. Koenigs later, also represented the Rembrandt Society on the board of the Foundation Museum Boijmans in Rotterdam established on 19 July 1939.

made their purchases, the museum directors were thus anything but objective in their task to determine the Legal Status of the Repatriated Looted Art. As representatives of the Museum Interest they determined the Legal Status of the Repatriated Looted Art, which led to the expropriation as well as the formation of the NK Collection and the distribution of the art works on long term loan to the museums. The “Preservation of Cultural Heritage” is a euphemism for annexing Looted Art which had been exclusively privately owned. Mr. Ekkart choose to disregard the Management Board and the Advisory Board of the SNK, whereas this piece of history precisely explains the Museum Interest and its commitment against Restitution. Ekkart’s involvement with the Rembrandt Society, is perhaps the cause of his dual actions: loyalty to his assigned mission and faithful to the objective of the Rembrandt Society. These two objectives are difficult to reconcile.

1.4 The Restitution request of the Koenigs Collection was charged with a Request for Rejection. A Conflicting Situation.

The day after the symposium, by letter dated 8 May 2003, the Secretary of State C.H.J. van Leeuwen asked the Restitution Committee to give a recommendation on the request from Mr. W.O. Koenigs received on 24 March 2003. A request to reject my request for Restitution of the Koenigs Collection RC 1.6. Which request we received from the Minister on May 8, 2003 as well.²⁴

This sheds a very different light on his public admonition to put an end to the Restitution Policy, because when W.O. Koenigs, was speaking at the symposium on 7 May 2003, he had already submitted *his request to reject my request* for Restitution by the Minister. It is therefore unclear whether W.O. Koenigs represented the Public Interest by demanding an end to the Restitution Policy, or whether, he followed his personal interest and made his first move to win his case to reject Restitution. Although the rejection of Restitution of the Koenigs Collection also serves the Public Interest, there is a personal side to his case. He chose to give up his personal interest in the Koenigs Collection, which no one was asking of him; nor do I believe that there is anyone among the officials, or among the Members of the Rembrandt Society, who has such an interest like the Collection Koenigs, and who would sacrifice their Personal Interest for the Public Interest. Ekkart must have been particularly impressed by the proposal of W.O. Koenigs, which, by the way, received a great deal of support at the symposium, in order to arrive at the opinion to close the Expanded Policy, especially now that it revealing that W.O. Koenigs served not only “the Public Interest” - the objective of the Rembrandt Society - but also a personal purpose, namely, the rejection of the request for the Restitution of the Koenigs Collection, preserving his position of influence.

In any case, W.O. Koenigs has caused harm with great consequences, beyond question to his family, but especially to Restitution policy in general. The Expanded Policy was closed, and the Claimants Interest reverted to the harsh policy of pré-2000.

While the general feeling predominated that Restitution was over, the Restitution Committee modified Article 2:2 of the installment decision in a Binding Advisory procedure, for the first time including the Public Interest as an interested party in the regulations. On 10 July 2009, Minister Plasterk once again reinstalled the Expanded Policy and agreed that the previous policy change did not meet the Principles of Equality. It could not be explained why Claimants should be treated differently who submitted their claim after 5 April 2007 from the Claimants who had made a claim prior to that date.²⁵ He revised this after the National Ombudsman inquiry researching the Collection

²⁵ https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi758epos1zf_25839_No.40.

Koenigs, asking the Minister to clarify his decision to temporarily expand the General Government Policy on Restitution from 2000 to 4 April 2007.²⁶

Back to W.O. Koenigs, who on 24 March 2003, submitted a Request to Reject our Request for Restitution. A year earlier, the Secretary of State, Rick van der Ploeg on 3 May 2002, had submitted²⁷ our Request for Restitution to the Restitution Committee. Our request was already being considered when the application to reject our case by W.O. Koenigs was suddenly added. Without any comment the Restitution Committee accepted the request of the collector's youngest son, without any input from the other heirs from the Koenigs family. A principle which does not exist in law and does not exist in the Installment Decision of the Restitution Committee. A conflicting situation. Moreover, by opposing Restitution, W.O. Koenigs interest became equal to the interest of the State of the Netherlands. The National Ombudsman noted in his opinion on the Koenigs case: *"The Minister can also be considered an interested party in the proceedings before the Restitution Committee. After all, it is advising on the return of cultural goods of which the Dutch State is considered to be the Owner."* With the cultural goods,²⁸ the National Ombudsman refers the NK Collection, which cultural goods the Dutch State appropriated in 1947 - by national law.²⁹ By rejecting our request for Restitution W.O. Koenigs request became equal to that of the State of the Netherlands or, in other words, the efforts of the State of the Netherlands to influence the relationships within the family Koenigs, were finally rewarded by finding in W.O. Koenigs, its ally.

The last is in hindsight, for the following information was revealed only in 2019. As is shown, already in 1995, the State of the Netherlands tried to sow discord within the Family Koenigs, by approaching, Mr. W.O. Koenigs (chairman of the Rembrandt Foundation):

13 of April 1995, the State Secretary, Aad Nuis³⁰, to the Director General of Culture and Labor Conditions, Mr. Jan Riezenkamp³¹:

"Separate I informed you already of my concern in this delicate affair over the possible reckless performance by Christine Koenigs, a granddaughter of Franz Koenigs. The current family has nothing to do with the case, but helps the State now and then, when asked. I have informed the head of the Family, Mr. W. Koenigs (Chairman of the Rembrandt Foundation) of my concern. He shares this, but he does not know exactly how to control his niece. Tact and fatherly admonition seem to be for now the only means."

The incentive is belittling, the arrogance is extreme in the sentence *"The current family has nothing to do with the case, but helps the State now and then when asked"* failing to acknowledge that the heirs have everything *"to do with this case."* Furthermore, the sale by Van Beuningen to Hitler, has been annulled by the Dutch Government. The foregoing legal situation applies to the sale of the Bank Lisser & Rosenkranz to van Beuningen. The sale of this Bank took place under duress, by ultimatum, during the threat of an acute invasion of the Nazi regime, for half of the price, which had been asked four days before the sale. This duress, and the not agreed upon price, annuls the sale of the Bank Lisser & Rosenkranz. Applying the foregoing situation is the transfer of Franz Koenigs to the Bank Lisser &

²⁶ Opinion National Ombudsman 2010-315 p. 5

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

²⁷ Outgoing because of the fall of Srebrenica.

²⁸ Idem footnote 10 https://www.koenigs.nl/documenten/nieuws/ombudsman_rapport_2010_315.pdf.

²⁹ The Ratification Act of 14 February 1947 Stscr.

³⁰ Secretary of State Culture and Media Aad Nuis 1933-2007

³¹ Archive 2938 / DDOC 1402 of the Cultural Ministry, of the Netherlands

http://www.koenigs.nl/franz/images/documenten/2020/Aad_Nuis_maant_WO_Koenigs_over_Christine_Koenigs.pdf

Rosenkranz. The transaction is by law Article 1200 BW (old) null and void. Every stage of this three-step action is null and void, 1.) starting with Franz Koenigs transferring his collections (his Old Master Drawing and his Old Master Paintings) as collateral to the Bank Lisser & Rosenkranz, 2.) Van Beuningen pressuring the Bank Lisser & Rosenkranz into a sale of the Collections, 3.) Van Beuningen selling to Hitler, the invalidity of these sales reinstates Franz Koenigs as owner of his Collections, in its original complete state, including his debt to Lisser & Rosenkranz. Hence, the current family “does have everything to do” with the current case. Furthermore, the State Secretary’s remark, “*the head of the Family, Mr. W. Koenigs (Chairman of the Rembrandt Foundation)*”, is his own invention, having no knowledge of Mr. W.O. Koenigs authority or the lack thereof in this matter, regarding the Koenigs family.

As we recall, W.O. Koenigs had been approached by the State Secretary, somewhere before April 1995, paving the way for W.O. Koenigs to distance himself from our claim in July 1997, and to add his claim in 2003, to reject our claim for restitution.

Since Museum Boijmans had previously held the loan of the Koenigs Collection from Franz Koenigs from 1935 to 1940, the museum was eager to possess the art from the Koenigs Collection repatriated from Germany after WWII. The Koenigs paintings were among the first to be repatriated, arriving in a plane which General Eisenhower had made available. The drawings followed much later, a group of 34 drawings was repatriated from Dresden in 1987 and 139 drawings were repatriated from Ukraine in 2004. The State of the Netherlands claims the art as enemy property, for itself, as soon as it crossed the border. The art is then added to the NK Collection and then loaned on long term to various museum. All Koenigs art ended up, in Museum Boijmans. Even those works sold to Hitler by Museum Boijmans own doing. In its summary of the case RC 1.6, the Restitution Committee describes this as follows: “*These works belong to the National Collection and are for the most part on long-term loan to the Rotterdam Museum Boijmans Van Beuningen.*” The policy of the Dutch State to enrich the museums with the works of art from the NK Collection by extending them on long-term loans ensures the museums complicity and responsibility, acting as both Thief and the Receiver, in the Expropriation Policy of the Dutch State.

With the Public Interest as his weapon, W.O. Koenigs watched not only over the assets of the State of the Netherlands, but especially about those pieces the State of the Netherlands loaned from the NK Collection to museum Boijmans. The conflict of interest is evident here, since W.O. Koenigs sat on the Board of the Foundation of Boijmans van Beuningen. It is clear from the Ministry of Culture’s commentary, that they claim the drawings from the Koenigs Collection located in Russia on behalf of the Museum Boijmans, challenging Rotterdam that they should financially contribute to the recuperation of the drawings.³² The Ministry of Culture has clearly entered into a pact with the Municipality of Rotterdam. Jan Riezenkamp writing to the Alderman of Culture, Mr. J.C. Kombrink, on 17 February 1995, that any success of recovery of the Koenigs drawings will benefit the Boijmans van Beuningen Collection, that they have already spent NLG 490,000. - from 1991 to 1994, in return Jan Riezenkamp wants the Municipality of Rotterdam to contribute NLG 90,000. – for the preservation equipment for the Pushkin Museum. This seems a done deal, the Dutch State claiming for Museum Boijmans van Beuningen. The State of the Netherlands seems to assume that Museum Boijmans van Beuningen had been the owner of the Koenigs Collection before the war. They only held the Koenigs Collection for Franz Koenigs on loan, then the museum collaborated with the enemy, and sold through Van Beuningen a quarter of the drawings to Hitler, through deception the museum got hold of the Koenigs Collection. The position that the State of the Netherlands takes is incomprehensible.

³²http://www.koenigs.nl/franz/images/documenten/2020/OCW_aan_Kombrink_de_recuperatie_komt_ten_guede_aan_Museum_Boijmans.pdf

It had been years since W.O. Koenigs made his choice for the establishment, the elite he was now a part of. He knew that claiming the Collection would make him a pariah, even more so as Director of the Rembrandt Society and a proponent of the Public Interest. By claiming his father's Collection, he would lose the position he had built for himself, the authority it gave him, it would undermine the choices he had made in his life and he would lose the friends acquired in those circles. The judgment would be hard as nails, he would be known as the man who had only used his position to claim his father's Collection. But the Collection would have been restituted to the Koenigs family! However, he preferred his chosen life to the life of his father, which he experienced as a letdown. If he still wanted to look at himself in the mirror, he could not deny the choices he had made and still claim. Moreover, he had been hunting for years with the van Beuningen family and for years he had been director of the Rembrandt Society.

On 10 December 2003, State Secretary Medy van der Laan announced her decision to follow the recommendation of the Restitution Committee in case RC 1.6 and to reject Restitution. She wrote to Mr W.O. Koenigs: *"The committee advised me to reject Mrs. Koenigs request for Restitution, in so far as it is part of the National collection. This is in accordance with your request."*

After her decision, we discovered that an Appeal possibility was not part of the instalment decision of the Restitution Committee. After my objection, Medy van der Laan replied:

"my decision not to retribute is not a decision in the administrative judicial sense, but a decision of private law nature, taken in my capacity as Representative of the Dutch State which owns this collection. This decision shall not be governed by administrative legal protection procedures. If you wish, you could of course turn to the Civil court."

My advisors, including Professors H.C.F. Schoordijk and Arnold Heertje, doubted this. They considered that the whole Restitution issue, since the whole policy was being determined by the government, was of administrative nature and suggested that it should be appealed. The Amsterdam Administrative Court agreed with us and judged on 7 June 2006 in case No. AWB 04/4576 accordingly. If the Restitution Issue were to be administrative in nature, this would favor the Statute of Limitations for the Claimants. The knives were sharpened, and the Secretary of State of Culture objected the same day, and again, on 20 July 2006. The hearing at the Raad van State (Council of State) was scheduled for Thursday, 2 November 2006.

October 27, 2006 the Friday before the hearing the NRC newspaper posted a two page interview by journalist F. Kuitenbrouwer and W.O. Koenigs, it headlined in bold: *"My Father Gambled and Lost"* with the subtitle, *"my father's good name is in question"*³³ His good name was overshadowed by the bold: *"gambling and losing"*. I, of course, contacted the NRC, Sjoerd de Jong³⁴, why did they interview my uncle and not me, after all, I was the one who had filed the lawsuit! In any case, the interview was of substantive nature, and the Appeal at the Council of State had nothing to do with the content of the Koenigs case, except that it was also the Koenigs family, that had raised the question. First, the Objections Committee of the Ministry of Culture had dismissed the objection, after which we submitted the case to the Administrative Court in Amsterdam. The case concerned the legal system; which legal system is applicable after the Minister decides not to retribute? Is it of a civil or administrative nature?

³³ <https://www.nrc.nl/nieuws/2006/10/27/mijn-vader-heeft-gegokt-en-verloren-11218113-a989130>

³⁴ Sjoerd de Jong deputy editor-in-chief of the NRC 2006-2012. Currently Ombudsman of the NRC newspaper.

Prof. H.C.F. Schoordijk tried to repair the impact of the interview and wrote a comment about the W.O. Koenigs' interview, which was published in the NRC the day after the hearing on 3 November 2006.³⁵

During the hearing, the ownership position of the State and the ratification of the KB A6 of 14 February 1947 was revealed by the State's Attorney. When the art is repatriated and is crossing the border, it is transferred into the ownership of the Dutch State. The art is seized as "enemy property". That Civil Law should prevail is based on the Ownership of the Dutch State, it was that simple.

On 31 January 2007, the Council of State ruled, and agreed with the Secretary of State and ruled that the government's policy on Looted Art and Restitution is of a civil judicial nature. In the WPNR, (Weekly for Private Law, Notarial Law and Registration) Professor W. Snijder³⁶ gave his spicy criticism on the ruling of the Council of State.³⁷ Since this dispute was about the nature of law, it is laughable to think that W.O. Koenigs' interview about his father's good name would have influenced the ruling of the Council of State. Though the interview did indicate that there would be little resistance if the Council of State accepted government's wishes.

1.5 The Minister of Culture tries to influence the Legal proceedings at the Council of State.

After the National Ombudsman had dealt with our complaint in October 2010³⁸, we requested all correspondence between the Ministry and Mr. W.O. Koenigs. To our surprise, the correspondence showed that W.O. Koenigs had written a letter to the Minister of Culture, Mrs. M.J.A. van der Hoeven³⁹. This letter turned out to be 98 % identical to the interview Mr. F. Kuitenbrouwer had published in the cultural pages of the NRC on 27 October 2006. Apparently, the Minister had approached W.O. Koenigs to formulate a Rebuttal that could be used for the proceedings at the Council of State. The Amsterdam Court had, after all, in case No. AWB 04/4576 found that the Minister's interference with Looted Art was of administrative nature. The Looted Art was restituted to the Dutch State "On Behalf of the Rightful Owner"; but all acts including the National Legislation, appropriating the Looted Art and distributing it among museums, is determined by the Dutch State. The Rightful Owner is in this political chess game only the direct object. Without doubt, it was a sensitive issue to the Minister which legal system would be the victor, because of the State's unjust ownership of the NK Collection, she wanted this to be Civil Law. The Minister will have approached journalist, Frank Kuitenbrouwer, to give the letter of W.O. Koenigs the allure of an interview. The publication of the alleged interview was the Minister's personal responsibility and most likely the Ministry paid for the publication. W.O. Koenigs wrote on 26 September 2006, to Minister Maria van der Hoeven:

"Do see this as an action on my behalf to preserve the art treasures collected by my father for the Museum Boijmans van Beuningen and to support the efforts of the Dutch State to complement the collection as much as possible".

³⁵ <https://www.nrc.nl/nieuws/2006/11/03/de-koenigs-collectie-11223207-a422588>

³⁶ RvSte, in the case of No 200605289/1, 31 January 2007, the judgment shall be 31. AWB 04/4576 of the Amsterdam Court

http://www.koenigs.nl/franz/images/documenten/ethiek/07_RvSte_Uitspraak_31_januari_2007.pdf

³⁷ WPNR Unjustified enrichment: administrative law, community law and restoration of justice by Prof. W. Snijder 26 Jan. 2008/6739. According to Professor Snijder, restoration of rights was of administrative nature. http://www.koenigs.nl/franz/images/documenten/ethiek/08_WPNR_WSnijders.pdf

³⁸ https://www.koenigs.nl/documenten/nieuws/ombudsman_rapport_2010_315.pdf.

³⁹ First Female Minister of OCW from 22 July 2002 to 22 February 2007 under Cabinet Balkenende I, II and III.

"To complement" relates to the museum Boijmans selling of a quarter of the Koenigs drawings to Hitler in 1940, which the State of the Netherlands is still retroactively trying to claim from Russia. Since the downing of the plane Malaysian Airlines, flight MH17, on 17 July 2014, killing 298 passengers and crew of which 189 were of Dutch origin; while the Netherlands are taking the Russians to Court, there is no prospect of the recovery of the Koenigs drawings from the Russian Federation.

At the end of the letter, he adds:

"Of course, I give my consent for further disclosure of this letter".⁴⁰

Clearly it was written for the Minister to publish to influence the Appeal. The letter addressed to Minister Maria van der Hoeven was sent in cc: *"Ministry of General Affairs; Ministry of Education Culture and Science for Ms. Drs. S.M. Gimbrère, Ministry of Foreign Affairs with Mr. A. van Woudenberg, Ministry of Justice and Museum Boijmans van Beuningen/Drs. K.M.T. Ex."*

November 16, 2006, after the hearing had passed, Minister Maria van der Hoeven answered W.O. Koenigs in personal style:

"It can't be easy for you to be confronted with your family's history for so many years after the Second World War and your father's death. Especially if the stories that are circulating about it are not in your view consistent with the truth. I therefore greatly appreciate that you have taken the trouble to give me, and some of my colleagues in the Administration, an insight into your position on a number of issues. [...] Nor does that mean that normal business risks such as those taken by your father, in your understanding, in your words "he gambled, and partially lost", can lead to the restoration of justice. [...] At the time, you were able to inform the Restitution Committee of your views, something which the Committee also mentioned in the summary of its opinion published on 3 November 2003. You will understand that now that your niece's claim is before the Courts, I cannot comment further on the case. Moreover, as far as the facts and circumstances of a request for Restitution are concerned, I am guided by the opinion of the Restitution Committee. Nevertheless, I would like to thank you very much for the effort you have made to share your views with me."⁴¹

Minister Maria van der Hoeven, mistakenly believes that 'our claim' is in court, informing W.O. Koenigs incorrectly, hence his substantive response. The Minister used W.O. Koenigs, to influence the Council of State, underlining his view as a fait accompli:

"That does not mean that normal business risks such as those taken in your opinion by your father, in your words 'he gambled, and partially lost', can lead to redress."

The Minister weaves "the business risk" into her answer, thereby assessing the content herself, adding 'in your opinion', only to say a little later that she supports the decision of the Restitution Committee. A normal business risk is her euphemism for a Bank whose Jewish Board of Directors were in an extremely precarious situation at the time and feared for their lives. This was not a business risk at all but the bitter reality of the Nazi regime that enforced the Endlösung or Final Solution. It is shameful to see how gladly use is made of the incorrect perception by W.O. Koenigs, who rejects Restitution.

⁴⁰ http://www.koenigs.nl/franz/images/documenten/ethiek/10_WOK_aan_OCW_26-09-06.pdf

⁴¹ http://www.koenigs.nl/franz/images/documenten/ethiek/10_OCW_correspondentie_met_WO_Koenigs-2.pdf

1.6 The Minister of Culture influences the Advisory Procedure at the Spoliation Advisory Panel.

As if we were outlaws, the Minister also intervened in our claim on the Three Rubens Oil Sketches that were considered by The Spoliation Advisory Committee (the English Restitution Committee) at the beginning of 2007. Our case concerned the Samuel Courtauld Institute, which was bequeathed by Count Antoine Seilern und Aspang in 1978, the three Rubens oil painting sketches from the Koenigs collection.⁴² We were hoping for an independent research from this foreign advisory board, who did not have a personal interest in the Collection Koenigs as the Dutch government does. Instead, I was confronted with the Courtauld institute's personal interest in the important legacy of Count Antoine Seilern und Aspang. Like D.G. van Beuningen is untouchable in the Netherlands, Count Antoine Seilern und Aspang is untouchable in the United Kingdom. Both Koenigs, and Seilern, were émigrés, the first from Germany, the second from Austria. Both obtained citizenship in 1939, changing the status of their collections to that of their country of refuge. The Koenigs Collection became Dutch, Seilern's British. This is as far as the comparison between the two collectors goes. As a collector Koenigs is despised in the Netherlands, whereas Count Seilern und Aspang is celebrated. Most intriguingly, he is even considered a hero, for draping the British Flag over his balcony, when the Nazi regime marched into Vienna on 15 March 1938. Over the years, the British Museum received numerous donations from Count Seilern.⁴³ With these donations he insured his immortality.

Another comparison can be made between Van Beuningen and Count Seilern, they shared a love for raising pigs. After van Beuningen was fired at his company SHV, in April 1941, he took off to his country estate at "Vierhouten" in Gelderland. He had hidden one of his most famous trophies "The Three Mary's" by Jan van Eyck in the gate post of his estate. The purchase of the painting had been his most euphoric. By outsmarting the British, he had managed to get "The Three Mary's" from the Cook collection for the vast sum of 2.5 million Dutch guilders, a bid which could not be refused nor topped. Flying "The Three Mary's" home from England on 8 May 1940, Count Seilern entered into a transaction to buy the Koenigs Rubens paintings the very same day. The Three Mary's arrived just two days before all hell broke loose above Rotterdam. Seilern, engaged Prof. Jan van Gelder to store the three Rubens paintings as neutral Swedish property in a bank vault at the Amsterdamsche Bank in Amsterdam. Encased in a lead box, "The Three Mary's" were lowered in a slit created between the gate posts at Vierhouten. Keeping the painting hidden during the Nazi occupation, van Beuningen had his little chuckle when the Nazi's drove through the gate, while minding his wild pigs. Similarly Count Seilern, purchased Hog Lane Farm close to Chesham, where he would keep his pigs. He had allegedly been seen driving his sportscar with his pet pig, beside him.

On February 2, 1996, I had visited the Courtauld, and spoken to Helen Braham, the curator of the Seilern Collection. She gave me the telegrams between Goudstikker and Count Seilern, in which Seilern buys, the three oil sketches by Rubens from the Koenigs Collection from Goudstikker on 8 May 1940. Seilern paid the full amount in Dollars to the Chase Manhattan Bank into the account of his wife, Desi Goudstikker, though Goudstikker was only entitled to his 20% commission. Goudstikker intended to flee with his family, and this sale provided the means to live when in New York.⁴⁴ Illustrating the ubiquitous duress, 2 days before the Nazi invasion. What curator Helen Braham, curiously enough, did

⁴² Count Antoine Anatole Eduard Seilern und Aspang (1901-1978) in 1910 arrives from Britain to Vienna. In 1919 he loses due to the Abolition of Nobility, his noble title. In 1933 he studies Art history and in 1939 he finishes his PhD on Rubens and emigrates with his collection to London. In WWII he serves in the British Army. In 1978 he legated his "Princes Gate Collection" to the Courtauld Institute.

⁴³ The British Museum received donations from A. Seilern:
<https://www.koenigs.nl/franz/actueel/59-museum-sponsoring-by-count-antoine-seilern-von-anspang.html>

⁴⁴ Pieter den Hollander, confirms the amount of dollars in Desi's account at the Chase Manhattan Bank in his book "Roofkunst, de Zaak Goudstikker", J.M. Meulenhoff 2007.

not tell me, is that my father previously had contacted her upon having recognized the paintings from home, in their collection.

Next, the Curator of Paintings Ernst Vegelin, of the Courtauld Institute, approached on 25 July 2001, Director Chris Dercon of Museum Boijmans van Beuningen, for possible information on the Collection Koenigs. This was before I had filed a claim with the Courtauld, and before the Dutch Restitution Committee had been installed, later that year on 16 November 2001. It was also long before the Spoliation Advisory Panel invited me to bring my claim forward on the three paintings, on 3 July 2006. The Letter from Ernst Vegelin to Chris Dercon⁴⁵:

“Certain details of what happened to the Koenigs collection (particularly in our case the paintings) still seem somewhat unclear. I imagine that experts at the Museum Boijmans-Van Beuningen have a more complete understanding of the facts and a greater level of access to historical records than is possible in London. We would be very grateful for any information which you might be able to share. John Murdoch, the director of the gallery, could easily fly over to Rotterdam if you felt that an informal conversation would be suitable. Might I also ask whether there are any members of the Dutch government or the academic community who might usefully be approached in the spirit of open enquiry?”

Firstly, Ernst Vegelin admits, in 2001, that details are “*somewhat unclear*” regarding the three Rubens oil sketches from Koenigs, bequeathed by Seilern in 1978. The Courtauld shows a belated urge to research the provenance of the Antoine Seilern legacy. As is well-known, the Count just days before the Nazi Invasion, had bought for himself, various paintings in the Netherlands, and France from neutral Sweden, while in the service of the British army.

In the Koenigs case, Seilern’s purchase took place literally two days before the Nazi invasion. The last possible chance for the owners, or in this case the commissioner, to cash in, before a possible confiscation. Thus, Seilern was taking the greatest art days before the arrival of the Nazi-regime. Having done his PhD on Rubens, “*Die venezianischen Voraussetzungen der Deckenmalerei des Peter Paul Rubens*”, the Count was familiar with the Rubens’ paintings from Koenigs, which he had tried to acquire earlier, to no avail. One of the three paintings is indeed a study for the ceiling of the Banketing House at Whitehall, London.

Secondly, Ernst Vegelin approaches Museum Boijmans which seems a logically place to start, for Museum Boijmans, is still holding three quarters of the Koenigs drawings and eight of the paintings as well as the Koenigs paintings and drawings when they are repatriated. Above all, the name van Beuningen, was added to the museums name in 1958, and in so doing, it approves of van Beuningen’s actions in WWII, selling to Hitler. Furthermore, it glosses over the fact that Museum Boijmans is engaged in a continuous practice of deception by hiding their own involvement in each of these three transactions and the fact that these transactions are null and void. Would they reveal having acted in bad faith to the Courtauld Institute, by this continuous policy of deception? That van Beuningen was helped by the Museum in selling to Hitler to obtain the rest of Koenigs Collection for free? Forcing the Jewish Bank Owners of Lissers & Rosenkranz to hand over the Collection because arrangements with Hitler’s agent Posse had already been made; *If they would not sell, Hitler would be standing on their doorstep?* Do they admit the deception now, with all the documents before them?⁴⁶ But is it not the

⁴⁵ Transcription of Ernst Vegelin’s letter to Chris Dercon; first letter:

http://www.koenigs.nl/franz/images/documenten/ethiek/19_OCW_DCMS_Courtauld_breach_of_trust.pdf

⁴⁶ This deception is continuing from the outset in 1940, and is still maintained today, disregarding the evidence unfolded. Recently the heirs of Mondriaan discovered, four paintings “the Mondriaan Four” in the Kunst Museum Krefeld. Over the years the museum entangled itself in a complete twist of facts, deceiving the heirs, to keep the Mondriaans. The researcher Monica Tatzkow, and Gunnar Schnabel unraveled its

Courtauld's aim to keep these three Rubens paintings? On Government level, the following correspondence shows they combine their network and unite in their aim, to keep each their part of the Collection Koenigs, scattered during WWII. Vegelin's request to Chris Dercon, was passed on to the Ministry of Culture of the Netherlands.

Taking Vegelin's letter, to a higher level, in fact to the highest level, Chairman Gerry McQuillan from the Cultural Property Unit of the DCMS, (Department for Culture, Media and Sport) on 12 September 2001, approached the Director-General of Cultural Affairs & Labor Relations of the Ministry of Culture, Drs. Jan Riezenkamp of the Netherlands, asking for a contact in the Netherlands who could be able to act as a liaison point in the Netherlands. Also, McQuillan refers to Jan Riezenkamp's visit that summer to the DCMS where he was informed that a claim from the Koenigs family was presented:⁴⁷

"During that meeting, I mentioned that we had been advised that a claim was likely to be made by the Koenigs family regarding three paintings in the Courtauld Institute Gallery of the University of London. We have now heard that this claim has been formally presented to the gallery.

Formally, this Department has no role to play until a claim reaches the stage of being referred to the Spoliation Advisory Panel. At the moment it is a matter for the Trustees of the Courtauld Institute Galleries. (In fact, the matter is more complicated in that the ownership of the paintings is vested in a separate group of trustees who loan the paintings to the Courtauld Galleries.)

However, we wish to ensure that with a claim that has such an international dimension as the Koenigs collection, no actions are taken without a full appreciation of the repercussions that might follow for institutions elsewhere who have been served notice of a claim from the Koenigs family. [...]

Therefore, I would be most grateful if you could give me the name and address of a contact in The Netherlands who would be able to act as a liaison point with us on this issue[...]."

The appointed liaison apparently was Charlotte van Rappard-Boon. April 18, 2002, John Murdoch, Director of the Courtauld Institute, writes her, on behalf of the Samuel Courtauld Trustees to investigate the basis of Miss Koenigs' claim, and in particular to seek information from the Boijmans Museum:⁴⁸

"It is my understanding that your Department advised the United State authorities in the issue of a Declaration of Immunity from seizure to cover the Boymans loans, and that your advice was based on extensive investigations into the circumstances of the acquisition of the objects by the Museum 1939-40. Clearly if there were anything like a formal statement by your Department on the issue of the van Beuningen purchases, it would be of the greatest assistance to my Trustees."

On 22 July 2002, Director John Murdoch of the Courtauld Institute, is thanking Charlotte van Rappard-Boon's replacement, Dr. van Hengstum, for the letter sent on 28 June 2002: *"with the extremely interesting papers which you enclosed"*⁴⁹:

deception. The big difference with the Koenigs Case is the State of the Netherlands support for the Museum Boijmans deception, as it was involved in the deception at the time.

⁴⁷ Dr. Gerry McQuillan, Chairman Cultural Property Unit, to Director general Jan Riezenkamp; second letter: http://www.koenigs.nl/franz/images/documenten/ethiek/19_OCW_DCMS_Courtauld_breach_of_trust.pdf

⁴⁸ John Murdoch, writing the Dutch Ministry, Charlotte van Rappard-Boon on 18 April 2002; the third letter: http://www.koenigs.nl/franz/images/documenten/ethiek/19_OCW_DCMS_Courtauld_breach_of_trust.pdf

⁴⁹ John Murdoch, thanking Dr. van Hengstum; the fourth letter: http://www.koenigs.nl/franz/images/documenten/ethiek/19_OCW_DCMS_Courtauld_breach_of_trust.pdf

"I think our position must be closely modelled on yours. We have as you know had the privilege of consultations with the scholarly staff and Director of the Museum Boymans-van Beuningen. We can be confident that the Committee Polak will take all their evidence as to circumstances of the sale and dispersal of the Koenigs Collection into account, and we shall await the outcome of their consideration of Mrs. Koenigs' claim."

Strangely enough, according to the report RC 1.6⁵⁰ of the Polak committee, in contrast to this sentence: *"We can be confident that the Committee Polak will take all their [is the scholarly staff and director of Museum Boijmans van Beuningen] evidence as to circumstances of the sale and dispersal of the Koenigs Collection into account"*, the Restitution Committee never consulted the scholarly staff and Director of the Museum Boijmans-van Beuningen. Evidence of such consultation is lacking in their reporting, it is even one of our complaints! Though John Murdoch seems adamant about it. But then the Restitution Committee had consulted Harry van Wijnen⁵¹ as well, Harry was writing a book about D.G. van Beuningen and the Restitution Committee had consulted him, but failed to acknowledge this in their reporting, so it could very well be that the Museum played an important part in informing the Restitution Committee without the commission being transparent about it, to us, the claimants. Further we have no knowledge about Dr. van Hengstum⁵², nor do we know anything about *"the extremely interesting papers"*, he provided on behalf of our government, across national borders, to a foreign power, apparently to defeat our claim.

The "our position closely modeled on yours" of the Courtauld, is coming to the forefront in the Report of the Spoliation Advisory Panel in Respect of Three Rubens Paintings now in the Possession of the Courtauld Institute of Art, London:

The conclusion of the Spoliation Advisory Panel is cemented on the Courtauld's idea to model the findings on the report of the Dutch Restitution Committee⁵³. Even the "public benefit" takes form in the Panel's Conclusion, see no. 36:

"While this is a conclusive answer to the moral claim, the Panel is fortified in its conclusion by a further consideration. Even if it were the case that Count Seilern acted in breach of Dutch law, the facts remain that he brought the paintings to England, he conserved them, he wrote about them and without seeking any payment he passed them on by way of legacy to the Courtauld for the benefit of the public and scholars. The Panel does not consider that the grandchildren of Koenigs, who himself pledged the paintings initially as security, and who intended them ultimately to remain at the Museum, could ever have had a superior moral claim to the paintings than that of the Courtauld, who hold them for the public benefit and received them from a man who paid a fair value for them."

Equally diffuse, the Dutch Government ordered their State's lawyer to defend the Courtauld Institute against us. We learned this at a hearing of the Board of Discipline on 15 June 2015. The appointed State's Lawyer, Mr. G.J.H. Houtzagers testified to reveal it was the Minister who had ordered the

⁵⁰ <https://www.restitutiecommissie.nl/sites/default/files/Advice%20Koenigs%20collection.pdf>

⁵¹ Prof. Dr. H.A. van Wijnen (1937-) journalist and professor by special appointment since 1996, author of the book D.G. van Beuningen "Grootvorst aan de Maas 1877-1955" publisher Balans, Amsterdam 2004. The discovery of the Restitution Committee having visited Harry van Wijnen was due to Sebastiaan Gottlieb, a journalist from the NWR Radio Nederland Wereld Omroep, who was making a radio documentary on the Collection Koenigs.

⁵² Dr. R.J.M. van Hengstum (06.1.1952 – 19.08.2007), director Cultural Heritage, ministry of Culture, of the Netherlands until 2003, Director Naturalis until his death.

⁵³ Advise of the Spoliation Advisory Commission regarding three Oil Paintings by P.P. Rubens of 28 November 2007:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/250407/0063.pdf

State's Lawyer to take on the case for the Courtauld Institute against us.⁵⁴⁵⁵ The correspondence here above between the Courtauld, the Cultural property Unit, and the Dutch State, was released in 2019 by the Ministry of Culture. This correspondence justifies the question about the independent position of the Spoliation Advisory Board, for these described interactions seemed to have solved the claim without the necessity of a Spoliation Advisory Board. Prof. Norman Palmer, who had been a Member of the Spoliation Advisory Panel, at the time of our recommendation, said he was concerned that *"a Foreign Power intervened in the Advisory Procedure of another Country."*

At the time when I talked to Norman Palmer⁵⁶, we had no knowledge about the inter-Governmental involvement only the interference of the State's Lawyer on behalf of the Minister was known to me. The above shows the involvement on a governmental level, vice versa, the DCMS likewise, interfering with Dutch Restitution Policy. It also, reveals that our claim with the Metropolitan Museum, had been part of the discussion between the Courtauld, the DCMS, Museum Boijmans van Beuningen and the Dutch State. The Metropolitan wanted to exhibit the Bruegel Drawings from the Koenigs Collection. Our claim enforced the Museum Boijmans van Beuningen, to apply for *"Immunity from Judicial Seizure"* from the U.S. Department of State. If Immunity from Judicial seizure is granted it prevents the heirs to seize the Koenigs drawings when they are exhibited in the USA: *"At the Metropolitan Museum in New York, the Getty Museum in Los Angeles, or the National Gallery in Washington, D.C., or any other museum in the USA any date or time in the future"*. The Immunity from Judicial Seizure granted in 2001, is based on a statement of Museum Boijmans van Beuningen: *"the son of the collector has spoken out against the claim"*. A form of *Sippenhaft*, the Third Reich Policy making the whole family suffer for the transgression of one person. In order to approve the application for Bruegel's exhibition of old master drawings and etchings at the Metropolitan Museum, the Metropolitan submitted on 17 September 2001 a statement for approval to the Netherland's desk, and to the State Department of Holocaust issues. Marc Norman⁵⁷ and ambassador J.D. Bindenagel⁵⁸ replied with a memorandum *"expressing no objection to extending immunity to the 12 drawings, is notwithstanding Ms. Koenigs' assertions"*.

My assertions were simply dismissed by the fact that one family Member had spoken out against Restitution. *"Also the son of her grandfather and the blood relative with a more direct claim than she"* sounds prejudicial. This declaration is kept in a file at the U.S. State Department and serves to influence each time an application is made for Immunity to exhibit the Koenigs drawings. This information came to our knowledge only in 2019 and was provided by the Ministry of Culture. If Immunity from Judicial Seizure would not be summarily granted, then Seizure and Trial in the United States would be possible.

W.O. Koenigs presented himself as the Representative of the Rembrandt Society, who advocates the Public Interest against the Right of Redress. His involvement in the Koenigs Case, is illustrative for the Museum Interest that is firmly opposed to Restitution within the Netherlands. Theirs is a simplistic point of view which lacks knowledge of the historical background, in general of the *Museums* holding Looted Art. The confusion originates from lending the Looted Art to museums, instead of restituting it to the Original Owners, which would have been the right thing to do. Being against Restitution is

⁵⁴ <https://www.restitutiecommissie.nl/sites/default/files/Advice%20Koenigs%20collection.pdf>

⁵⁵ Advise of the Spoliation Advisory Commission regarding three Oil Paintings by P.P. Rubens: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/250407/0063.pdf

⁵⁶ Prof. Dr. Norman Palmer (16 August 1948- 3 October 2016), Law professor and barrister who helped many foreign clients to win back important cultural relics from Britain.

⁵⁷ Marc Norman, US Department of State, Director for Europe, Africa, and the Americas.

⁵⁸ J.D. Bindenagel is a former U.S. Ambassador and special Envoy for Holocaust Issues; he is currently the Henry Kissinger Professor for Governance and International Security of Bonn.

often based on a simple observation: the museum staff see the works of art disappear from the public collections, which are offered on the art market a little later, ignoring the possible poverty of the rightful heirs. Reading the sales catalogue, they discover that they are not financially able to purchase the works of art at auction which did cover their walls for 75 years without remuneration. It turns out the works of art are of exceptional value and far beyond their budget. This indignation is enough to resent Restitution. It is forgotten that they unjustly kept the artworks in their museums for 75 years, all the while deceiving the rightful heirs who are still moving heaven and earth to seek Restitution. The Museum Position of blaming the Inheritors, is seeking the easy way out, while the government's and the museums' misleading policy created this situation. It is necessary to acknowledge that there is a strong interest against Restitution, but also to realize that this resentment is based on misinformation and bias.

After the Council of State had reached its ruling on 31 January 2007, W.O. Koenigs approached the Minister, two days later, on 2 February 2007: he sent the Minister a number of documents, including the Loan Agreements between Franz Koenigs and Lisser & Rosenkranz from 1935 and 1940, at the same time he indicated that he wanted to be heard in connection with the documents.

The National Ombudsman:

"The Minister has decided to comply with this request and on 15 August 2007 forwarded the son's letter to the Restitution Committee requesting that the letter and its information be included in the cases RC 1.35 (the Koenigs drawings from Kiev) and RC 1.85 (art in the Bank Rhodius Koenigs) so that the Restitution Committee can give its opinion on this."

We received a copy of this letter on 15 August 2007. What was not in the letter and what the Minister did not pass on to us, nor to the Restitution Committee was the fact that W.O. Koenigs had sent all the documents in attachment with his letter to the Minister and that they had been sitting on his desk since 2 February 2007. Because the Minister had instructed the documents to be inserted in the RC 1.35 case, it took until 8 February 2008 for W.O. Koenigs to be heard. He provided the documents again, this time to the Restitution Committee. Unfortunately, the set of documents provided to the Minister and the Restitution Committee vary in number.

"Notwithstanding, the National Ombudsman considered that the Minister of Culture should try to forward the information received to the Restitution Committee as soon as possible. A period of six months after receipt does not meet this requirement."

What the Ombudsman, then did not know, is that it took more than a year before the documents were provided to us. They were part of a *Fait Accompli* Draft Report which was sent to us on 13 March 2008. Their procedure did not provide the opportunity to add our insight into the contracts between Franz Koenigs and Lisser & Rosenkranz, in contrast to the Minister who kept the documents on his desk for over a year. The National Ombudsman added:

"Of course, it is important that the new information is examined and assessed. This is now done by inserting the Nova into the current procedure RC 1.35. All things considered; the National Ombudsman is of judgment that the Minister should have submitted the 'Nova' to the Restitution Committee without giving procedural instructions. The Restitution Committee could then have made their own judgement in which advisory procedure, closed or ongoing, the new information should be included. This is in line with the independence of the Restitution Committee. At the same time, the applicant's procedural interests are sufficiently safeguarded since the Minister then has no influence whatsoever on the way in which the Restitution Committee deals with the 'Nova' made by the applicant. As a result, the Minister and the applicant remain equal parties in the proceedings before the Restitution Committee. However, now that the Minister has indicated that the Restitution Committee should assess the 'Nova'

in the case of RC 1.35, he has not been sufficiently neutral in the opinion of the National Ombudsman and therefore has not handled the applicant's procedural options with due care. In doing so, he acted contrary to the principle of Fair Play."

The following comment from the National Ombudsman ensured that due to "Nova" the Revision of the case RC 1.6 was submitted to the Restitution Committee:

"The Minister maintains that he does not sufficiently distance himself from the Restitution Committee if he instructs the Restitution Committee to reopen the Case RC 1.6 as he then implicitly gives an opinion on the Nova made. In the opinion of the National Ombudsman, this reasoning does not hold up. By instructing the Restitution Committee to reopen the case because of Nova, the Minister does not in any way give a substantive opinion on its value but only informs the Restitution Committee thereof. The Restitution Committee will then independently and substantively assess whether the earlier opinion will be amended based on this Nova."

Thus, the National Ombudsman revealed that the Minister had no intention to provide the opportunity, like he had provided for other Claimants, to have our case re-examined due to 'Nova'. Due to the Principle of Equality, for there were two other cases being reviewed, we got our right to a Review. The Review of RC 1.6 was given the new case number RC 4.123.⁵⁹ The archives of Museum Boijmans van Beuningen, and of the Museum Boijmans van Beuningen Foundation,⁶⁰ were added as Nova, as well as the documents submitted by W.O. Koenigs. At least, that is what we thought. The Restitution Committee rejected the Agreements and the Considerations between Franz Koenigs and Lisser & Rosenkranz. The Legal opinions of Professors Peter A. Stein, Arthur F. Salomons, H.C.F. Schoordijk, Jan Vranken and the economist, Dr. H.B. Junz, were disregarded as being of Legal Nature. Based on Article 2 of the explanatory memorandum of the Installment Decision of the Restitution Committee, they refused to take the Agreements in consideration. The Regulations that ensure that the Restitution Committee does not judge purely legally, which they had done in the past, but that they take a moral and ethical approach into account, was applied in reverse. The agreements between Franz Koenigs and Lisser & Rosenkranz from 1935 and 1940 were excluded because they were Legal in Nature, according to the Restitution Committee. In fact, the Agreements demonstrated that Franz Koenigs and Lisser & Rosenkranz acted under duress from the approaching Nazi regime. We tried to make it clear that the Restitution Committee was not asked to give a legal opinion, but to consider the contracts within the context of their time, a month before the invasion of the Nazi regime, which we believe the Restitution Committee was obliged to do. But, as it turned out, it was an exercise in futility. Notwithstanding, the Director-General for Cultural Affairs & Labor Relations Drs. Jan Riezenkamp, at the time, on 15 September 1997, had rejected our claim; based on the Agreements between Franz Koenigs and Lisser & Rosenkranz, which were not available then and not known. Jan Riezenkamp at that time gave the following opinion without any knowledge of the Agreements:

"Mr. F.W. Koenigs then transferred ownership of these drawings and paintings to Lisser & Rosenkranz on 2 April 1940, to complete the credit transaction. Accordingly, the drawings and paintings were transferred to the aforementioned bank in full and free ownership. At that time, Mr. F.W. Koenigs was therefore no longer the owner."

This radical point of view by the government, was established in 1997 without knowledge of the content of the Agreements, for they were only relinquished by W.O. Koenigs in 2008. Now that they were finally available the Restitution Committee refused to look at them, and refused the opinions by

⁵⁹ https://www.restitutiecommissie.nl/adviezen/advies_rc_4123.html

⁶⁰ In 1996 the Chairman of the foundation Boijmans van Beuningen, Joop N.A. van Caldenborgh refused excess to the archives. The archives were finally opened the summer of 2010, since December 2010 they are online of the Museum Boijmans van Beuningen's website.

the aforementioned experts, excluding the “Nova” from their final advice. The case was dismissed on 9 December 2013. Though of little comfort, in this case we are not alone, all reviewed cases were rejected by the Restitution Committee.⁶¹ That is why we consider it necessary to initiate an Appeal Procedure.

Moreover, W.O. Koenigs' loyalty to the establishment and his commitment to preserving the Koenigs Collection for the Public Interest did not pay. After repeated insistence, Museum Boijmans van Beuningen finally wrote us on 25 January 2010, that they had decided to release the archives of the Museum Boijmans Foundation, they did so exactly one month after W.O. Koenigs' death⁶², on Christmas Eve, 24 December 2009. W.O. Koenigs, nor any of his generation, (his brothers and sisters) were ever given the opportunity to set eyes on the archives of Museum Boijmans- and the Foundation Museum Boijmans van Beuningen.

In hindsight, I had been warned. I recall a meeting in 1995; an innocent excursion, contained a packaged threat. Marguerite, his youngest daughter, and I had agreed to see the film Schindler's List. After the movie we went for a drink at café de Pels, a pub in Amsterdam. Around the corner from the pub, in the alley, while Oskar Schindler (Liam Neeson) takes the water hose, hosing the wagons, the Nazis laugh, and Amon says “that's cruel you give them hope”, Marguerite tells me I should stop my research. Totally baffled, I look at her and she repeats, “if you don't stop your research you will break-up the family”, or words to the same effect. To paraphrase, it would destroy the family and then we cannot see each other anymore. You must stop. After a short silence, and my understanding that it was my uncle talking here; I said “*that is impossible, I cannot stop my research. I want to know what happened.*” “*But I am warning you.*” I understood that she will be on her father's side and that 'we' will be somewhere else. But the why - why I should stop my investigation - was not discussed.

The revelation by the Secretary of State, Mr. Aad Nuis in which he informed the Director General Jan Riezenkamp in April 1995, that he had approached W.O. Koenigs, made the puzzle complete for me. The Secretary used W.O. Koenigs to create dissension to sow discord among the Koenigs family heirs. As you can imagine this was the only time Marguerite and I went to the movies.

In all fairness, I did expect the facts to be considered, with or without W.O. Koenigs, but that did not happen.

CONCLUSION

“It is desirable to keep the Koenigs Collection for the State of the Netherlands”

The Restitution Committee has taken this for granted, in fact concerning the Koenigs Case, all procedures were superfluous. The Restitution Committee, the State Lawyer, W.O. Koenigs, Rob Polak and Evelien Campfens were the coordinates, a lubricant to allow this process to run smoothly. Covered by the independent status of the Restitution Committee, the State of The Netherlands guarantees its alleged ownership. W.O. Koenigs regarding, the State of the Netherlands played a dirty game, to prove its right by sowing discord within a family. This was highly unnecessary.

⁶¹ https://www.restitutiecommissie.nl/adviezen/advies_rc_4123.html

⁶² In 1996, Chairman of the Boijmans van Beuningen Foundation, Joop N.A. van Caldenborgh refused us access to the archives of the Foundation.

2. The Regulation of the Binding Advisory procedure does not respect the Principle of Equality; the Regulations favor the museums.

The Regulations of the Binding Advisory procedure is the victim of Ekkart's termination of the Expanded Policy. These revisionist regulations, which consider the Museum interest, and Public Interest as interested parties, was designed by the Restitution Committee during the period that Restitution had been dismissed, and the harsh policy triumphed. In 2014, the Restitution Committee adapted the regulations of the Binding Recommendations procedure but failed to adjust the Regulations to the Expanded Regulations which Minister Plasterk reinstalled in July 2009. From 16 November 2001 until 20 September 2018, the Restitution Committee had not only adjudicated but also done its own research, after which it was transferred to the NIOD Expertise Centre. Procedurally, this is an improvement, but whether this is the case in terms of content is questionable, in regard to the Kandinsky cases, in Amsterdam and Eindhoven. The Public Interest that is considered as an Interested Party, is a typical example of the harsh pre-2000 policy. It is like the National Policy regarding the NK Collection, which is motivated by self-enrichment. The inclusion of the Public Interest serves the self-enrichment of the Museums concerned, and ultimately, the enrichment of the Cultural Heritage of the Dutch State.

However, as of 20 September 2018, the policy has changed and the research that was first carried out by the Restitution Committee itself, has been placed outside the Restitution Committee. According to Article 1 A, an Expertise Centre, World War II and Restitution Requests from the NIOD Institute for War, Holocaust and Genocide Studies, was added to the Restitution Committee.⁶³ Parties can request the Expertise Centre for a fact-finding research. Their findings are transferred to Restitution Committee, who will send it to both parties, who can comment on the fact-finding. After both parties are satisfied, the Restitution Committee will consider who has the best case for Restitution. However, Article 3(e) and (g) is included in the rules of the Binding Recommendation procedure. It compares an interest to the Right of Restoration, which is essentially an incorrect comparison and forfeits "*Fair Play*". In addition, the Principle of Equality is not observed, and the parties' equivalence is at stake. According to Article 3: f, and g, interests are weighed to favor museums, while the museums are no more no less than the Thief or the Receiver even when they are able to prove they acted in Good Faith. However, "*Good Faith*" is not even a stipulated requirement, but the interest for the Museum and Public are. "*Good Faith*" is usually followed by the proof of thorough research, which, has proven not to have been thorough enough. The interest of e, f, and g are compared with each other while they are not equivalent. The original owner has no interest, but a right to restoration; f en g both favor the museums. After all, the Public Interest, which is weighed in Article 3: g, is no other than the artwork being publicly viewed in a museum. In addition, Article 3 (f) takes the museum's interest already into account. This brings into question the equivalence of the parties. Moreover, it is absurd that the museum who is the Thief or the Receiver, is assigned an interest, according to this regulation. The Museum/Municipality is already a power body vis a vis the Claimant and, in addition, the binding advise procedure offers more rules for the benefit of the museum. The Secretary, Administrator and Reporter of the Restitution Committee, Evelien Campfens, who was involved in the policy change in 2007- 2014; adding the Museum and the Public interest to the regulation, wrote an article defending its policy. Regarding her involvement in the policy change, her objectivity in defending this policy is questionable. This policy change is neither Fair nor Just.⁶⁴

⁶³ Government gazette (Staatscourant) 20 September 2018, no 1381345 *amending the Decision Advisory Committee on Restitution Requests for Cultural Goods and Second World War*
<https://zoek.officielebekendmakingen.nl/stcrt-2018-54468.html>

⁶⁴ Evelien Campfens was employed under Charlotte van Rappard-Boon at the Institute Collection Netherlands and, after the installment of the Restitution Commission she was the Secretary

2.1 The modification of Article 2:2 of the establishment policy into a Binding Advisory procedure, the Policy, the Regulations as well as the Implementation is handled by the Restitution Committee, this is not in line with the Separation of Powers.

According to the Separation of Powers, the Restitution Committee installed by the government, in accordance with the government's institutional decision, recommends the Minister on Restitution requests, however, the Restitution Committee changed - the government's installed Regulation of the Institutional Decision of 21 November 2001 - Article 2:2 into a Binding Advisory procedure, for which it also designed and installed the regulations. The committee then takes the role of the Independent Judge and puts its own regulations into practice. A possible argument may be that these works of art are not owned by the central government; that there is no obligation by the museum or the municipality or private person to settle the dispute over the artworks together with the Claimant, by the regulation of the Binding Advise procedure of the Restitution Committee. The Restitution Committee is not its own legal entity. Its institution is initiated and funded and maintained by the government, this also continues when the Restitution Committee implements its own designed rules and decides its Binding Opinion. It should not be the case that the regulatory power, in this case the Restitution Committee's⁶⁵ change of Article 2:2 and the legal jurisdiction lie within the same body. Moreover, this raises the question whether the Binding Advise Procedures issued can be considered legally valid.

2.2 Creating a Draft Report is not a guarantee of a Fair and Just Solution

The suggestion that a draft report for the Claimants would be an adequate means of managing the investigation and the findings of the Restitution Committee is inaccurate. According to the State's Lawyer - during her defense of the Restitution Committee in a lawsuit where we contested the decision of the Restitution Committee not to hear us in the revision case RC 4.123, the Draft Report is first sent to the Minister. The State Lawyer sat next to the (former) Chairman W. Davids, who nodded in the affirmative. The Minister checks the draft report after which he returns it to the Restitution Committee, after which possible adjustments are made, after which it is presented to the Claimants. The Agreement is that the Minister does not use his discretion. However, by seeing the draft report before the Claimant, the Minister interferes in the research process, and is given a controlling role in which he violates the desired independence of the government in relation to the Restitution Committee. The communication on the Draft Report between the Minister and the Restitution Committee and vis à vis is not disclosed. Recently, the current Chairman of the Restitution Committee convinced me that this cannot be the case. In his view, such a situation would be untenable as far as he is concerned.

If the current Chairman of the Restitution Committee is correct, the following is irrelevant, but since this concerns the procedure before September 2018, it may still be important. Moreover, this State Lawyer is not easily mistaken. The Claimants do not know to what extent the Minister has a hand in the research process and how decisive his view is on the concept of reporting, nor is his influence known in the final opinion to the Minister. The National Ombudsman states in its 2010 report 315⁶⁶ p. 4 and 5:

Administrator Reporter for the Restitution Committee from 2001- 2017: [Evelien Campfens Dutch Framework for Nazi Looted Art \[pdf-document\]](#)

⁶⁵ The Binding Advisory procedure see annual report 2008 Annex 5 p.1: page 113 of the annual report: <https://www.restitutiecommissie.nl/sites/default/files/Verslag%202008.pdf>

⁶⁶ https://www.koenigs.nl/documenten/nieuws/ombudsman_rapport_2010_315.pdf idem footnote 10

"At the same time, the Minister can also be considered as an interested party in the proceedings before the Restitution Committee. After all, it is advised on the return of cultural goods of which the Dutch State considers to be the owner."

The Minister who is the first to read the draft report may agree, but he can also suggest changes. The Minister's involvement as an interested party in the investigation process is undesirable. He is in fact the Claimant's rival and represents his own interests. The Restitution Committee is aware of the Minister's point of view; the role and influence of the Minister on the Restitution Process is at odds with the principle of creating a Restitution Committee. But apparently, the power and influence of the Minister is so great, that it is difficult for the Restitution Committee to comply with or enforce, the desired independence from the Minister. This undermines the Restitution Process.

The National Ombudsman continues:

"Investigations show that a procedure is perceived as fair if the persons concerned are actually heard and can tell their own story, they have an influence on the procedure, have received sufficient information to play their role in the procedure and they are treated with respect."

The internal secret correspondence - with the Minister about the draft reports is not covered by the qualities listed above.

2.3 FUTURE POLICY

1. An Appeal is necessary to ensure proper handling of cases, not only to audit the Restitution Committee but also to ensure the desired independence to the government. It is desirable when there is new information that sheds a different light on the case, that the so-called "Nova" is not being dealt with by the same committee. Also if the procedure for a Binding Opinion was not dealt with in accordance with the Equality of Parties, and the Court annulled the opinion on "Procedural Errors", the Court has no choice but to refer the case back to the Restitution Committee, which previously rejected the case. This is unfair. It is necessary to add a separate Appeal Procedure to the Restitution Committee.
2. The Separation of Powers: The regulatory and judicial competence is handled by the same body, it is required to have the rules of the Binding Advisory procedure reviewed by a separate body; additionally the interests in Article 3 (f) and (g) of the Museum and the Public Interest should be reviewed. The Public Interest was installed to bolster the museums. Moreover, the Binding Opinion Procedure has not been subject to the re-established Expanded Policy. In addition, the idea is (see my next point) to neutralize the work of art at the start of a Binding Advisory procedure.
3. After it has been established that the artwork was looted, it is important to set the artwork into a neutral position. In the expectation, that the Restitution Committee in its assessment is more independent regarding the museum and the Claimant. This gives a fair hearing to the Claimant and ensures equality of Parties. From its position as current owner, the museum will be proportionately compelled to prove its good faith in obtaining the possession of the work of art. Its position: "I've got it and try and get it", has at least been suspended during the proceedings. The Kohnstamm committee shared the idea that the physical neutrality of the artwork is in fact unnecessary, because when the Binding Opinion dictates that the Claimant is the rightful owner, the museum is bound to hand over the work to the Claimant. However, it is a matter of equality

between the parties and the procedural process way forward is equivalent and transparent to ultimately provide a Binding Opinion. By placing the artwork on neutral ground, the Restitution Committee shows, we recognize the claim, it is on neutral ground and both parties can put forward their arguments about ownership. In this way, the Restitution Committee makes the parties equivalent in advance. If the work - as is now the rule - remains in the museum during the procedure, it is as if your bike has been stolen and that the thief or the fence can continue formally to ride its bike. The Claimant is forced to watch the thief ride his bike in circles, until the binding opinion allows him to do so permanently or until the binding opinion stipulates that the bike belongs to the Claimant. Such a situation is difficult to describe as fair or equivalent. This disregards the dominant position of the institute, "the museum", which in most cases manages the works of art, over which the Municipality has the alleged ownership. The Claimant is placed in opposition to the Museum and the associated municipality, a power factor that cannot be underestimated. Hence a change in procedure to redress the power differential between the Claimant and the museum is desired.

In the Zoom interview my points 4 and 5 were not discussed which I briefly highlight here:

4. The Dutch State placed the Looted Cultural Goods in the NK Collection. The Ombudsman describes this as 'the cultural goods of which the Dutch State considers itself to be the owner'. The description "considers to be owner", omits how the Dutch State acquired the cultural goods. The ownership position of the Dutch State is obtained by applying (unlawful) national legislation versus international law. A position the State of the Netherlands still relies on today. The Netherlands still regards Hitler (our enemy) during WWII as the rightful owner of the cultural goods he looted in the occupied territories, the Netherlands. The Netherlands adapted the national legislation the KB A 6 so that it could claim the works of art when they were crossing the border as enemy assets. The rightful owners were expropriated as a result, which is why we state this as an unlawful legislation; expropriating without any form of compensation is anything but lawful.

The rightful owners, were proclaimed as enemies of the Third Reich, leading to deportation, the confiscation of their property, or sale under duress, including more or lesser coercion, by agents or collaborators of the Third Reich. Although the current procedure purports to be concerned with morals and ethics, the entire Restitution process is based on the most amoral view that the Dutch State took the deprived citizen. Worse is not imaginable than to convert the repatriated Looted Art to Hitler's property. As a result, they are forced to file a claim with their own government, a claim in competition with Hitler who even to-day is still recognized as the rightful owner, under this rule. (The law is still in effect.) After the war, the Dutch government appears demonstrably having difficulty in distancing itself from the five years of dictatorial rule. The Third Reich has had a great influence in that short time, enough to pass this legislation. It cannot be ignored that a feeling of anti-Semitism is shared with former Nazi-Germany unless this is just about pure greed. This post-war legislation (14 February 1947) was made in the knowledge that the Nazi regime had entered the Final Solution in June 1941. The deep psychological damage caused by the recognition of Hitler as the Legitimate Owner is for now being parried, with the ruling of the National Ombudsman who in 2010 assessed the actions of the government towards citizens against the requirements of fairness. Applied here, this means that the concept of "Procedural Justice" plays an important role. This is expressed in the equality of the parties and transparency of the procedure. Maintaining the assertion that Hitler is the rightful owner does not satisfy the concept of procedural justice, nor does it pass the test of "propriety".

The maintenance of Hitler as the rightful owner raises the question whether the establishment of the Restitution Committee in respect to Article 2:1 and the amended Article 2:2 (the binding

advise procedure) is sufficient to ensure the return of the expropriated cultural goods. The procedure is *Ex parte*, the Minister in his capacity as owner does not play a role, so the grounds on which he claims ownership are not taken into account. It is with this knowledge that Secretary of State, van der Ploeg, the founder of the Restitution Committee, regarding the policy talks about establishing a Restitution Committee: "removed as far as possible from the government in order to avoid the appearance of self-enrichment of the Dutch State". Van der Ploeg felt that this would circumvent the questionable ownership position of the State of the Netherlands on the NK Collection. Due to the successive changes in policy, it appears that the Minister is struggling to keep the required distance and is always looking for a way to take control of the policy.⁶⁷ As a result of the *Ex parte* procedure, the Minister is dismissive of any criticism that may lead to a fair procedure.

- NB All Looted Art repatriated had been privately owned. The museums, at Hitler's intercession, were left alone. Nothing was stolen from the national or municipal collections in the Netherlands by the Nazi regime. After the war, however, this privately-owned art disappeared into the collections of the Dutch State and its municipalities. After the theft, the government lent the cultural goods from the NK Collection to embassies, provinces, municipalities, and museums. These were the outlets for the expropriated art, which affirms that the representation of the Netherlands and the cultural sector gave its approval and became complicit to the government's policy. Given this involvement, it is not so strange that the museum world turns against the rightful owners who seek the restoration of their property.
5. The appropriated works of art were included in the so-called NK Collection. The expropriation enriched the Netherlands and led to the complicity of these institution through the loans. Not only the government, but also embassies, provincial houses and the museums benefited from the expropriation of cultural goods of the rightful owners. The consequence is that the Claimant is not only confronted by the government, but also by the interests of the entire museum system, the provincial government, the embassies, and the palaces. Lili Gutmann in 2003, was restituted a little bench, which had had been used all those years by the Royal family at the Palace 't Loo. When she wanted to try it out, a representative of the ICN (Institute Collection Netherlands) told her not to sit on it; to which she responded "*If Wilhelmina was sitting on it all those years, so can I*" after, which she took a seat. In short, they are opposed to the Public Interest, the expropriation, the enrichment, and complicity having been forged into one. It is not in the Dutch states favor that they decorate the Government buildings the Institutes, the embassies abroad and fill the museums with Looted Art of people murdered by the Nazi's in the camps. Instead, it is hypothetically argued that the preservation of the treasures in the NK Collection is necessary because otherwise the museum public will miss the works of art from the NK Collection. This is brought as a full-fledged counter argument for expropriation. The museum public that would enjoy the NK Collection is a silly argument. A private's citizens property rights are never taken into consideration. Thus, the innocent citizen who has no knowledge of this complex expropriation is made complicit in the enrichment of the Netherlands because it is supposed to want to continue to enjoy it, when it has no knowledge that it is possibly looking at art from the NK Collection of people persecuted by the Nazi's and murdered in the camps.

⁶⁷ See 'Ethics in Policy' point 5 FROM 2011, the GOVERNMENT DETERMINES THE REFUND POLICY: http://www.koenigs.nl/franz/images/documenten/2020/ETHICS_IN_POLICY.pdf

2.4 The Restitution Committee was installed not to protect the Museums but to finally give the Rightful Owners the chance to be restored in their ownership right and having their property returned to them.

Since 2007, the “Public Interest” has been unfairly considered as a legitimate interest in the Binding Advisory procedure. The question is what this Public Interest stands for. As it now reads, the Public Interest means the preservation of the artwork for the Museum. The Public Interest is a disguised museum interest, once again the museum visitor/the interested art public is put in contention for the improper practice of enriching the museum and thus the Netherlands. In 2009, 5 January, Siebe Weide, Director of the NMV (Netherlands Museum Association), and Rudy Ekkart reported in the press that the second research museum acquisitions had started over the period 1933 to the present day. Siebe Weide added in the same breath, that the Museums were not to blame, they acted out of ignorance, and in good faith. With this statement the museums were immediately protected. The Restitution Committee continued protecting the museums by inviting the museums to a symposium in which was explained what to do if a claim would fall on their doorstep.⁶⁸ The Restitution Committee wants the Museum research, but at the same time they are afraid of the Museums, and they do everything to befriend the museums; or are they in favor of preserving the Looted Cultural Heritage for the Netherlands? On one hand, it is suggested that the museum world is being screened for Looted Art. On the other hand, the museums have already been released from all blame before the investigation even started.⁶⁹ They have been taught by the Restitution Committee how to act when the claim is presented to them⁷⁰. The decision of the Restitution Committee to add the Public Interest as an interested party to the regulation of the Binding Advisory procedure was born from the same idea, apparently the museum institutions, and the cultural heritage need protection from private citizens, inheritors seeking their family property. This is a big mistake; the Restitution Committee was not installed to protect the museums, but to give the rightful heirs the chance to be finally restored in their ownership rights.

None of this complicated way of retaining ownership and repelling the Claimant has to do with Fair Play, or treating with respect, the party’s equality, and transparency of the procedure. By making the opposition and the Regulations for Restitution more and more complicated, the misunderstanding for the Rightful Owner is increasing, instead of the Dutch State explaining its role about the Improper Expropriation and meeting the Claimant. With the regulations, we have completely strayed from the concept of ‘*procedural justice*’. More so, because it is not known that the Dutch State owns the art within the NK Collection. The fact that the Dutch State considers itself the owner, as the National Ombudsman rightly points out, does not reveal the secret that the Dutch State invokes Ownership by Expropriation.

In general, it is assumed that the Dutch - like the French authorities - have assumed the position of Administrator. The Looted Art was restituted by the Allies to all former occupied countries under the same understanding: ‘*in custody of the rightful owner*’. The Dutch State should, just as

⁶⁸ Idem footnote 53

⁶⁹ Zie ‘Ethiek in Beleid’ OPEN SECRET p. 15 voetnoot 38 <https://www.parool.nl/kunst-media/musea-onderzoeken-herkomst-collecties~bed986fa/>

⁷⁰ Zie ‘Ethiek in Beleid’ Bezwaar 3 en voetnoot 27 https://www.restitutiecommissie.nl/nieuws/voorlichtingsbijeenkomst_voor_musea_gemeenten_en_provincies.html

conscientiously and transparently, clearly state its ownership of the Looted Art, or choose to distance itself from its ownership position and assume the role of Administrator.

To accommodate the concept of 'Procedural Justice' and to do real justice, it is necessary to recover the art works on loan from the NK Collection from the borrower, and to store them in a neutral depot. In this way, it becomes clear what the current museum collections consist of and what they were used to have from the NK Collection on loan. With the works on neutral ground, Restitution will be simplified.

If the works are on neutral ground, then the discussion about the works, for which the owners were murdered and of which there are no survivors to be found, can also be facilitated and the decision on them can be hastened. The active search for heirs of the deceased and possible rightsholder is a requirement for a just procedure.

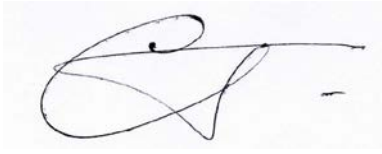
BACK TO 1945

2.5 The returned Looted Art filled the gap in the Dutch Museum Collections - Like Hitler, the Netherlands expropriated the original owners and gave the art on permanent loan to the museums.

After the works of art from the NK Collection are withdrawn from the cultural heritage and temporarily stored in an independent depot, the 75 years of improper enrichment will leave its mark. For 75 years, the government has not invested in art, in the knowledge that it has the NK Collection in its inside pocket. When the art works from private collections were repatriated via Hitler and were received here, one was pleasantly surprised about the quality and intrinsic value that these art treasures represented. Finally, this was the art that Hitler had robbed for his future great Germanic museum in Linz: "the best of the best from the occupied territories, because only the best was good enough for Linz". Hitler was in competition with all museums around the world. This was another important reason for the government to confiscate the repatriated Looted Art. Hitler used the art buyer Hans Posse, director of the Gemälde Sammlung in Dresden, and Göring used his buyer Walter A. Hofer and his Cabinet Chief Erich Gritzbach, they knew where the collections were located and after the art arrived in Germany, another selection was made. The works of art of exceptional quality were marked for Linz. The lesser works were auctioned or exchanged. Hitler had the final say in every work of art purchased. Posse could not buy without his approval. When the Looted Art was repatriated to the Netherlands, it turned out to be of superior quality. A quality of art that the pre-war Dutch museums did not have. The privately-owned collections were kept private and were little known. Imagine the surprise by the Officials of Ministry of Culture first viewing the works. The NK art works added greatly to the Dutch museum collections which theretofore were sorely lacking. Through Hitler, the Dutch privately owned art disappeared into the ownership of the Dutch State and then, in turn, into the museum collections. In the recovery of the NK loans, the government will be confronted with reality, just like Hitler they expropriated the original owners to benefit the museums with expropriated art. It would be practically impossible to purchase equivalent art on the free market to replace the NK Collection today. Moreover, it would require a budget that the Dutch State is not prepared to spend. The recall of the NK Collection will give a shock to the government institutions and the museums; however, it should be done.

Thank you for your attention,

sincerely,

A handwritten signature in black ink, appearing to be 'CK', enclosed in a rectangular box.

Christine Koenigs d.d. 10 November 2020