

Ministerie van Onderwijs, Cultuur en
Wetenschap

>Return address P.O. Box 16375 2500 BJ The Hague

The President of the House of Representatives of the States-General
P.O. Box 20018
2500 EA THE HAGUE

Erfgoed en Kunsten

Rijnstraat 50
The Hague
P.O. Box 16375
2500 BJ The Hague
www.rijksoverheid.nl

Our reference

916962

Date October 4th, 2016

Re Policy on Restitution of Items of Cultural Value and the Second World
War

During the Second World War a great deal of art was stolen or destroyed by the Nazis. In the Netherlands, too, owners were forced to surrender their works of art. Many of these owners did not survive the war, but some of their art did. This art was housed in the Netherlands Art Property Collection (*Nederlands Kunstbezit-collectie*), part of the National Art Collection (*Rijkscollectie*). Until 1952 the Netherlands Art Property Foundation (*Stichting Nederlands Kunstbezit*) dealt with restitution. After that, things went quiet until the 1990s, when there was renewed national and international interest in stolen art and its restitution. There was growing awareness that more could be done, and this led to a new policy.

Under this policy, works of art that were certainly – or very probably – stolen, confiscated or forcibly sold between 1933 and 1945 can be restituted to the heirs of the original owner. In legal terms the limitation period has expired for Dutch restitution cases under the statute of limitations. However, a policy has been formulated in the Netherlands under which current owners can proceed with restitution on a voluntary basis, on moral and ethical grounds. This usually happens on the advice of an independent committee, the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War, referred to in brief as the Restitutions Committee. The Dutch policy with respect to restitution aims to achieve a “fair and just solution” in accordance with the Washington Principles.¹ This policy is highly regarded and internationally renowned, among other things due to the way in which the Restitutions Committee has implemented the policy.² I support the principles and feel committed to this policy.

¹ These principles call for the identification and publication of art stolen by the Nazis, open and accessible archives for the use of investigators, the creation of a fair and reasonable restitution policy, and the appointment of an alternative arbitrator.

² Wesley A. Fisher and Ruth Weinberger, *Holocaust-Era Looted Art: A Current World-Wide Overview* (Saint Petersburg 2014).

The Dutch restitution policy in its current form has now existed for 15 years. During this time the context of the restitution policy has changed. This letter is to inform you about this development and about the steps that I intend to take with respect to implementing the policy for restituting art works that were looted by the Nazis and that are in Dutch possession. With this letter I am meeting my commitment to inform the House of Representatives about the future of the policy on returning art stolen by the Nazis.³

Fout! Onbekende naam voor documenteigenschap.

Assessment of the implementation of the current restitution policy

I asked the Berenschot consultancy to examine and make recommendations regarding the combination of activities involved in the restitution of art stolen in the Second World War. I can now present this report to you.⁴ Berenschot concludes that the Dutch policy on restitution is successful, but that there are “duplications, blank spots and imbalances” in the way the current policy is implemented.⁵ Below, I will elaborate on the most important points where Berenschot has found that there is room for improvement.

Berenschot points to fragmentation of the knowledge, skills and activities relating to the restitution of art stolen by the Nazis that is in Dutch possession. The consulting firm also reports that in practice, investigations by Restitutions Committee investigators are not aligned with advisory opinions given by the Restitutions Committee.⁶ Berenschot indicates further that tasks and roles belonging to bodies involved in the restitution process could be described more clearly. Rules relating to the appointment and reappointment of Restitutions Committee members are based on the original assumption that the restitution policy was of a temporary nature. Furthermore, Berenschot noted that there are a number of different restitution procedures, depending on whether an object from the National Art Collection is involved or an object from another collection.⁷ Berenschot also questions the procedure for obtaining a new advisory opinion and notes finally that it is not always equally clear to applicants and current owners which procedure should be used in which case and what conditions are attached to that procedure. A “one-stop-shop” for applicants and other stakeholders is lacking.

Separately from the above investigation, I have observed that the tone, content and complexity of the applications for restitution are changing. There are fewer and fewer first and second-generation applicants, and we regularly see other types of heirs as applicants. In some cases, such applicants are only distantly related or completely unrelated to the original owner. Increasingly, applicants are seeking assistance from agencies that work on a “no cure no pay” basis and that have a major financial interest in the outcome of a case. Procedures that are intended to be easily accessible have become subject to increasing juridification over the years as a result of these external developments. Meanwhile, the number of cases is slowly but steadily decreasing, apart from a few fluctuations.

³ House of Representatives 2015-2016, 34 300 VIII, no. 127, pp. 35, 66 and 77.

⁴ Berenschot, *Een toekomstgericht restitutiebeleid. Over een duurzame, transparante en onomstreden organisatie rondom restituties* (A future-oriented restitution policy. Regarding a sustainable, transparent and undisputed organisation for restitution) (The Hague 2015).

⁵ Berenschot, *Een toekomstgericht restitutiebeleid*, 40.

⁶ Ditto, 42.

⁷ Ditto, 40-42.

The vast majority of cases (more than ninety per cent) concern works of art that are in the possession of the State. At the same time, it is noticeable that the cases are increasing in complexity.

Although the existing restitution policy is still of a temporary nature in principle, it is clear, given international views on the issue, that the end of the policy is not yet in sight.

Fout! Onbekende naam voor documenteigenschap.

After reading the Berenschot report and considering the various points highlighted there, I have concluded that there is no reason to make changes to the restitution policy, but that some measures should be taken to improve its implementation. These measures will be introduced at the latest in the course of 2017 and they are covered by the available multiannual budget.

Unchanged policy, adjusted implementation

The basic premise of the Dutch policy is and remains that it should be an easily accessible and temporary policy for restituting art stolen by the Nazis that is in Dutch possession – a policy based on moral and ethical principles and upholding the interests of all those involved.

There are two elements at the heart of the changes that I propose. Firstly, I want to make it possible for an investigation to be carried out at the joint request of the applicant and the current owner. This is currently only possible following a request from the Restitutions Committee to one of the investigators associated with it. This change will enable the applicant and the current owner, if they wish, to arrive at a mutually agreed settlement, based in part on an independent investigation and without intervention and advice from the Restitutions Committee. This expands the possibilities for people to reach a solution together. Secondly, I will bring together the knowledge and skills that have been acquired and that are now spread among the researchers of the Origins Unknown Agency, the Restitutions Committee and the Dutch Association of Museums, and ensure that they are embedded for the long term. This means that the investigative tasks will be brought together in the "Expertisecentrum Oorlogskunst Tweede Wereldoorlog" (*Centre of Expertise for Looted Art from the Second World War*), which has yet to be established. The advisory function is and remains the task of the Restitutions Committee.

A future-proof environment for restitution of looted art in the Netherlands

A procedure for applicant and current owner

The applicant and the current owner will be given a more central role in the procedure for restituting art stolen by the Nazis than they had previously. They are primarily responsible for finding a mutually satisfactory solution. The parties can decide jointly to submit their case to the Restitutions Committee. However, they can also decide first to commission a factual report from the Centre of Expertise, which they can use to decide whether they can arrive at a solution that is satisfactory to both of them. The factual report gives them initial guidance for making a decision. If they cannot find a mutually satisfactory solution, they can still submit their case to the Restitutions Committee.

Centre of Expertise for Looted Art from the Second World War

In order to bring together and firmly embed the knowledge and skills that have been acquired over the last 15 years by the Origins Unknown Agency, the investigators from the Restitutions Committee and the Dutch Association of Museums, I will set up the Centre of Expertise for Looted Art from the Second World War. With this centre I will create a recognisable national contact point for applicants, current owners and holders of artworks, museums, the media, researchers and other interested parties.

Fout! Onbekende naam voor documenteigenschap.

The Centre of Expertise will first of all have an informative function. Among other things, it will provide general information to stakeholders and interested parties, refer people on to archives, provide factual information about the restitution procedures, and assist with research questions from third parties, such as journalists and students.

In addition, the Centre of Expertise will have an investigative function. This research is important to applicants, current owners and museums in the context of applications for restitution. The Centre of Expertise will only undertake an investigation at the request of the Restitutions Committee or at the joint request of the applicant and the current owner. As part of my political responsibility, I will also be able to ask the Centre of Expertise to investigate. The research will be independent and of high quality.

The processes and working methods of the Centre of Expertise will be designed in such a way that investigators will be able to do their work without pressure from the parties involved and no situations will arise in which there is a conflict between providing information relating to potential applications on the one hand and the independent investigation for the purpose of an application for restitution on the other hand.

Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War

Without prejudice to the new possibility created by me for the applicant and the current owner to arrange for an investigation without the involvement of the Restitutions Committee, and on the basis of the investigation results to arrive at a settlement, the Restitutions Committee remains the ideal instrument for alternative arbitration as referred to in the Washington Principles. The Restitutions Committee is an independent committee and, as is now the case, it will only give advice at the joint request of the applicant and the current owner. A factual investigation by the Centre of Expertise will precede and will be a precondition for the Restitutions Committee providing an advisory opinion. In order to reach a decision, the Restitutions Committee will be able to ask the Centre of Expertise for additional investigative work and to ask specific questions.

Advice will continue to be given on the basis of the Washington Principles, the advice of the Origins Unknown Committee and the Dutch government's policy framework.⁸ In giving its advisory opinions, the Restitutions Committee will, moreover, comply with general legal principles. An advisory opinion from the

⁸ House of Representatives 2000-2001, 25 839, no. 26; House of Representatives 2001-2002, 25 839, no. 27; House of Representatives 2003-2004, 25 839, no. 34; House of Representatives 2004-2005, 25 839, no. 36 and appendix; and: House of Representatives 2011-2012, 25 839, no. 41 and appendix.

Restitutions Committee is independent, is carefully prepared and is of high quality. The procedures involved in the provision of advice by the Restitutions Committee will be carried out as far as is possible in the same way, regardless of whether an application concerns an object in the National Art Collection or an object in another collection. For the restitution of objects from the National Art Collection I shall always ask for the opinion of the Restitutions Committee, following investigation by the Centre of Expertise, unless it is clear that an application does not come under the policy.

Fout! Onbekende naam voor documenteigenschap.

In view of the fact that the policy on restitution is lasting longer than originally estimated, I am introducing a maximum three-year term of appointment for members of the Restitutions Committee, with the possibility of one reappointment. From the start of 2017 I will introduce phased appointments. In this way I can achieve a balance between renewal and a balanced composition on the one hand, and safeguarding and transferring knowledge and skills on the other hand.

Furthermore, I will abolish the procedure for obtaining a new advisory opinion. If new facts emerge, the applicant and the current owner will be able to request a new advisory opinion from the Restitutions Committee, with the Centre of Expertise first being asked to investigate the new facts presented. In the case of alleged or proven formal errors in advisory opinions from the Restitutions Committee, for example if an opinion is arrived at in a way that is considered unacceptable according to standards of reasonableness and fairness, recourse to the civil courts would be more appropriate than a request to the same committee for a new opinion.

In my opinion it would not be appropriate to introduce an appeals procedure for the restitution policy. According to Dutch law, the limitation period has expired for restitution cases and it is the responsibility of the current owner, in consultation with the applicant, to consider carefully the matter of restitution and arrive at a solution. That is why in 2001 the choice was explicitly for a non-legal approach to requests for restitution of art stolen by the Nazis that is in Dutch possession. For this reason, it is not appropriate to introduce an appeals procedure that will only lead to increased juridification and is not in line with the basic principle of Dutch restitution policy. It is therefore my opinion that the possibilities given above are sufficient.

Conclusion

With these improvements I am bringing implementation of the restitution policy up to date, with this policy being based on the Washington Principles, the advisory opinions of the Origins Unknown Committee and the Dutch government's policy framework. In doing this I also make sure that the Netherlands will continue to have a high-quality restitution policy for the future. A restitution policy that has support in Dutch society and maintains its international good name and renown.

In 2020 the policy and the organisational structure will be evaluated. This evaluation will look in more detail at the number of applications for restitution and the possibility of making a transition from the existing form of the Restitutions

Committee to an ad hoc Restitutions Committee, as recommended by the Origins Unknown Committee in 2012.⁹

Fout! Onbekende naam voor documenteigenschap.

The Minister of Education, Culture and Science,

Dr Jet Bussemaker

⁹ House of Representatives 2011-2012, appendix to 25 839, no. 41, p. 5.