

| EDITORIAL Sir Donnell Deeny  
| NEWS

| CASE STUDY 2018, Peasant Girl with Spade  
(August Xaver von Pettenkofen)  
| PRESENTATION OF A COMMITTEE  
Restitutions Committee

## Network Of European Restitution Committees *On Nazi-Looted Art*

### EDITORIAL



I am delighted to be writing the editorial for this the 2nd Newsletter of the Network of European Restitution Committees on Nazi-Looted Art.

As M. Jeannoutot reminds us in his editorial to the March Newsletter,

the idea of a Network of restitution committees was first introduced at the 2012 Symposium in the Hague and rose to prominence once again at the 2017 London Spoliation Conference where it featured as a key recommendation in the Conference Action Plan.

I wish the Network well as it begins its important work. The Newsletter is an excellent means of sharing information about the Network and its responsibilities and, as M. Jeannoutot suggests, it will serve as a model of good practice for countries who are still developing their strategies in relation to Nazi-looted art.

The Network has already held its inaugural meeting and it is entirely fitting that the Commission pour l'indemnisation des victimes de spoliations has agreed to lead the Network in 2019 in what is also its 20th anniversary year. The setting up of the new task force by the French Government to proactively search for and return works of art that were looted or sold under duress during the Nazi occupation has also been widely welcomed.

We look forward to the next spoliation conference in Paris on 15 November, details of which are included in this month's Newsletter. It is important that we maintain

the momentum, begun in the Hague and continued in London. The establishment of the Network and the November Conference will demonstrate to the international community that we remain determined in our shared aim to increase efforts to identify and return Nazi-looted art.

November is also a month of some significance for the UK as the powers in the Holocaust (Return of Cultural Objects) Act 2009, which allow UK institutions to return Nazi-looted art where this follows a recommendation by the Spoliation Advisory Panel and the Secretary of State agrees, are due to end on the 11th of that month. The March Newsletter reported on the good progress that is being made to prevent that from happening and we continue to hope that the new Bill that has been introduced to remove the end date from the 2009 Act, will become law.

This month's Newsletter includes a fascinating tale of how, thanks to the diligent work of the team of provenance researchers at the Albertina Museum in Vienna, a painting by August von Pettenkofen which was destined for Hitler's art museum in Linz, was restituted to the heirs of Louis Rothschild. It is clear from reading their story that networking and the sharing of information is key to the successful resolution of such cases which is a reminder once again of the value of our Network, Newsletter and public debate.

**Rt Hon. Sir Donnell Deeny**

Chair

Spoliation Advisory Panel

# NEWS

## KOMMISSION FÜR PROVENIENZFORSCHUNG

The first international Day of Provenance Research took place on 10 April 2019. The Commission for Provenance Research participated with a concentrated programme.

Apart from a visit to a provenance research workshop investigating a graphic art collection in the Albertina Museum and a discussion with a specialist from the University of Vienna library on book provenance, there were also guided tours and talks at the Kunsthistorisches Museum, the Belvedere Museum, the Vienna Technical Museum and the Austrian Museum of Folk Live and Folk Art. The presentations dealt with methodology, research issues and the provenance research expertise by the members of the Commission. This month's "Lunchtime Discussion" took place on the Day of Provenance Research: Christoph Zuschlag from the University of Bonn spoke of the "provenancial turn", as he calls it, and the future of provenance research.

One focus in the Commission's work over the last few years has been the digitisation of historical sources and the development of digital methods for extended research. On this day reference was made in this regard to the forthcoming additions to the Austrian provenance research online lexicon (<http://www.lexikon-provenienzforschung.org/>) and the online edition of the Central Depot cards (<https://www.zdk-online.org/>). Other digital initiatives included a Twitter story on a restitution case in the MAK – Museum of Applied Arts, and a workshop report on Facebook (Academy of Fine Arts, <https://www.facebook.com/akbild.ac.at/>).

The event is an initiative by the Arbeitskreis Provenienzforschung. Apart from Austria, over sixty cultural institutions from Germany, the UK, the Netherlands and Switzerland took part, providing information through guided tours, presentations, exhibitions and diverse digital projects about the latest research into the provenance of public collections (<https://www.arbeitskreis-provenienzforschung.org/index.php?id=tag-der-provenienzforschung>).

From now on the Day of Provenance Research will take place every year on the second Wednesday in April. It is intended to heighten public awareness of the diverse activities conducted internationally by provenance researchers.

A detailed programme of other events by the Commission for Provenance Research can be found at <http://www.provenienzforschung.gv.at/>

In its 92nd session on 12 April 2019 the Art Restitution Advisory Board passed three resolutions. Accordingly the Museum of Military History should restitute a painting by Franz Adam to the heirs of Viktor Ehprussi. Two paintings by Ferdinand Georg Waldmüller from the Belvedere Museum are to be returned to the heirs of Gertrude Felsövary. In the case of five folkloristic objects in the

Austrian Museum of Folk Live and Folk Art the Board did not recommend a restitution to the Wittgenstein heirs.

All recommendations can be found at <http://www.provenienzforschung.gv.at/de/empfehlungen-des-beirats/beschluesse/beschluesse-1998-2019/>

## CIVS

### In France a new organisation starts its work

On April 17, the Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945 was created within the Ministry of Culture. Three weeks later, on May 7, the Prime Minister nominated four qualified personalities (in the fields of art history, the art trade, history of the Second World War and cultural heritage) who will join the CIVS' deliberative panel to examine the files of looted cultural property.

These actions will enable the implementation of the decree of 1 October 2018, whose measures adopted will give a new impetus to the restitution of Nazi-looted art. The Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945 will work closely with the CIVS. The files will now be examined by the Mission before being transmitted to the CIVS who will put forward a proposal to the Prime Minister.

In particular, the Mission will be responsible for shedding light on cultural property of dubious provenance held by public institutions: works known as « Musées nationaux récupération » (MNR), looted books but also works which have made their way into permanent collections. Directed by David Zivie, author of a report on looted cultural property submitted to the Minister of Culture in 2018, the Mission is both a coordination and steering service, and a research and investigation service for case-by-case files, whether submitted by the CIVS, the families of looted owners or initiated by the Mission itself. The Mission is responsible for coordinating the actions required to identify the looted works and their owners; to better understand their itineraries; to present them to the public and to return them. It must become a central place in the cultural and scientific landscape in collaboration with its natural partners - the Ministry of Foreign Affairs, museums, libraries, archives (whether national or territorial) and research institutions - in France and abroad.

The Mission is composed of experts in the field of provenance research, and has a budget that will allow it to finance complementary research.

The qualified personalities nominated on May 7 by the Prime Minister are: Mrs Inès ROTERMUND-REYNARD (art historian), Mr Dominique RIBEYRE (auctioneer), Mrs Claire ANDRIEU (professor at the Institut d'études politiques in Paris), Mr Xavier PERROT (professor at the Faculty of Law of Economic Sciences in Limoges).

# NEWS

To find out more about the presentation of the new French law on the restitution of looted cultural property go to: [http://www.civs.gouv.fr/images/pdf/documents/utiles/autres\\_documents/UK-FLYER-pageApage.pdf](http://www.civs.gouv.fr/images/pdf/documents/utiles/autres_documents/UK-FLYER-pageApage.pdf)

Conference on 15 November 2019 in Paris: "Twenty years of reparation for anti-semitic spoliation during the Occupation: between compensation and restitution"



Conference in Paris - 20, avenue de Ségur © Maelle Caron (DSAF)

On Friday 15 November, a conference will be held in Paris to review twenty years of French policy to repair spoliation through the action of the CIVS and to outline the new prospects for this mission. In particular, it will be an opportunity to promote the new French organization for the restitution of looted cultural property, to examine practices in Europe, to present the latest progress in provenance research and to make the Network of European Restitution Committees known.

The conference will be held in French and English (simultaneous translation). Registration is open from the month of July to 31 October.

For further information, please contact Ms Isabelle Rixte ([isabelle.rixte@civs.gouv.fr](mailto:isabelle.rixte@civs.gouv.fr)) or Ms Emilie Boulanger ([emilie.boulanger@civs.gouv.fr](mailto:emilie.boulanger@civs.gouv.fr)).

## ADVISORY COMMISSION

**Recommendation of Germany's Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property in the case of Dr. Max James Emden vs. The Federal Republic of Germany**

On April, 23<sup>rd</sup>, 2019, Germany's Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, gave the reasons for its recommendation dating March 26<sup>th</sup>, 2019 to restitute the paintings "The Zwinger Moat in Dresden" and "The Karlskirche in Vienna", both by Bernardo Bellotto, also called Canaletto, currently owned by the German government, to the heirs of Dr. Max James Emden.

It follows a shortened version of the Commission's recommendation; for the full version please see

[https://www.kulturgutverluste.de/Content/06\\_Kommission/EN/Empfehlungen/19-03-26-Recommendation-Advisory-Commission-Emden-Germany.pdf?blob=publicationFile&v=5](https://www.kulturgutverluste.de/Content/06_Kommission/EN/Empfehlungen/19-03-26-Recommendation-Advisory-Commission-Emden-Germany.pdf?blob=publicationFile&v=5)

The paintings come from a collection owned by Dr. Max Emden, who acquired them between 1928 and 1930. In June 1938, art dealer Anna Caspari arranged the sale of the works to Karl Haberstock, who was a buyer of artworks for Adolf Hitler and his planned "Führermuseum" in Linz. The purchase price for three Bellotto paintings - among them "The Zwinger Moat in Dresden" and "The Karlskirche in Vienna" - was SFr. 60,000 in total, which - as handwritten on Caspari's shipping notification to Haberstock dated June 13, 1938 and also noted in Haberstock's cash book entry - corresponded to an equivalent value at the time of RM 34,250 or £2,777. In Haberstock's inventory books, both the receipt and the resale of the paintings to the Reichskanzlei on June 30, 1938 are recorded, which confirms that Haberstock was working officially on behalf of Hitler on this occasion. Finally, the paintings became the property of the Federal Republic and were "held in trust".

The descendants of Max Emden, as the claimants, are collectively of the opinion that particularly the forced sales carried out under the rule of National Socialism and the expropriation of his assets located in Germany led to the financial ruin of Max Emden. They maintain that the purchase price was also unreasonably low and was a result of Max Emden's economic plight, which was entirely caused by the racial persecution to which he was subjected. They say it is incorrect that the sale was carried out "from a safe foreign country", as there was no restriction on where persecuted citizens could "dispose of" their property during the National Socialist regime.



# NEWS

The Federal Republic of Germany (claimant) takes the position that sales from safe foreign countries did not constitute forced sales as defined by the Allied Restitution Law. It states that this case also fails to provide sufficient evidence that would make compensation for a case of hardship appropriate. It says that the sale did not take place under tight time constraints associated, for example, with emigration or flight, nor was it undertaken as a result of financial hardship, because at the point the two disputed paintings were sold in June 1938, Max Emden had already been living in Switzerland for 10 years and had not found himself in serious financial distress that threatened his existence during this period.

Max James Emden was born in Hamburg in 1874 as the son of an eminent Jewish family of merchants and rabbis (on his mother's side). He acquired the two Brissago Islands on Lake Maggiore in 1927 and began redeveloping them as his permanent residence in 1929. The municipality of Porto Ronco granted Emden citizenship rights in 1934, which meant he was also a Swiss citizen from this date onwards. The confiscation and forced sale of Emden's remaining real estate holdings and assets began in 1937. For Max Emden, the apparent blessing of Swiss citizenship practically led to his economic downfall; while he could still have managed his arrangements and made provisions relatively unhindered until 1935, as a Swiss citizen he has already prevented from doing so prior to 1935 solely on account of the Third Reich's restrictive foreign exchange policy. The systematic destruction of people's economic livelihoods by the Third Reich as a tool of National Socialist racial policy (and precursor to the Final Solution) thus also applied in the case of Max Emden. The growing financial difficulties were already noticeable everywhere by 1937. At the end of the 1930s, Emden was thus no longer able to pay his domestic staff and meet his tax obligations in Switzerland, while the properties on the Brissago Islands became more and more of an unmanageable burden. The policy of persecution pursued by the National Socialists therefore caused the financial ruin of Max Emden, who died in Porto Ronco on November 26, 1940. Consequently, there is also no doubt that the sale of the paintings to Karl Haberstock in early summer 1937 was not undertaken voluntarily but was entirely due to worsening economic hardship ("loss of assets as a result of persecution"), confirmed not least by the fact that Emden was forced to sell other valuable items from his household at the same time. Finally, it remains to be clarified whether the purchase price of SFr. 60,000 (i.e. SFr. 20,000 or rounded up to RM 11,500 for each of the three paintings) corresponded to the market value that could be achieved at that time, i.e. can be considered reasonable. Irrespective of the fact that offers and counteroffers are part of day-to-day business (not only) in the art trade, Anna Caspari's note (letter of November 25, 1937 to Haberstock) that we "(have) just caught the right psychological moment, he has probably lost a lot on the stock exchange and would therefore

accept this price" not only confirms Emden's financial predicament during the period of the sales negotiations. It also clearly indicates how much this predicament was deliberately exploited by potential buyers and also how every effort was made in the following seven and a half months to lower the price further until Emden finally rejected any further reduction with the remark that "the price has already been brought down by more than 20 percent" (Caspari to Haberstock on June 16, 1938). Notwithstanding the questions as to the reasonableness of the purchase price and the missing proof of transfer, the core facts of the case are Max Emden's economic plight, which was directly caused by National Socialist persecution, and the associated loss of assets as a result of persecution.

The Commission therefore arrived at the majority decision to recommend the return of the two paintings currently owned by the German government to the rightful heirs of Hans Erich Emden, as the former sole heir of Dr. Max Emden.

## RESTITUTIECOMMISSIE

### Two Paintings in the Netherlands Art Property Collection Back to Heirs of Jewish Owner

The Dutch Restitutions Committee has advised the Minister of Education, Culture and Science to reconstitute two paintings in the Netherlands Art Property Collection to the heirs of the original Jewish owner Jacob Lierens. The Minister has accepted this advice.

The Netherlands Art Property Collection (NK collection) comprises artworks that were returned after the Second World War and were taken into the custody of the Dutch State with the express instruction to return them – if possible – to the rightful claimants or their heirs.

In 2017 heirs of Jacob Lierens asked the Minister of Education, Culture and Science to reconstitute two paintings from the NK collection. They are *Banquet Scene with Musicians and Shuffle Board Players in an Interior* by Dirck Franchoisz Hals and *Still Life with Glass, Glass Stand and Musical Instruments* by Jan Davidsz de Heem (on loan to the Centraal Museum, Utrecht). The Minister asked the Restitutions Committee to advise her with regard to this application.

The Restitutions Committee concluded on the basis of the investigation conducted in this case that both paintings were the property of Jacob Lierens, who put them up for sale by auction in October 1941. The sale of artworks by a private Jewish individual during the German occupation is considered to be a forced sale, unless the facts expressly show otherwise. The Committee concluded that no such facts emerged in this case.

# NEWS

In accordance with current government policy, the Committee advised about this restitution application on the basis of the yardsticks of reasonableness and fairness. This includes the option of involving all relevant interests in the assessment of the case. If, as in this case, a claim concerns paintings in the NK collection, however, it is reasonable and fair not to conduct further weighing up of interests. On the grounds of the demonstrated ownership rights and the involuntary nature of the sale, the Committee advised the Minister to restitute both paintings to Lierens's heirs.

## Max Liebermann Drawing Back to Rightful Owners

In a binding opinion issued on 16 April 2019 the Dutch Restitutions Committee decided that Amsterdam City

Archives should restitute the drawing Jewish Quarter in Amsterdam by Max Liebermann to the heirs of the original owners.

The drawing belonged to the Jewish couple Dr Gustav and Clara Kirstein, who during the nineteen-thirties became victims of anti-Jewish measures taken by the Nazi regime in Germany. In the Committee's opinion it has emerged sufficiently clearly that possession of the drawing was lost as a result of circumstances directly linked to the Nazi regime.

After the binding opinion was issued, the City Archives and the heirs of Dr Gustav and Clara Kirstein agreed that the City Archives would repurchase the drawing from the heirs.

# CASE STUDY

## 2018, PEASANT GIRL WITH SPADE (AUGUST XAVER VON PETTENKOFEN)

By Julia Eßl, Commission for Provenance Research / Albertina, Vienna

Researchers are still working today to establish the provenance of artworks selected for inclusion in Adolf Hitler's planned – but never realised – art museum in Linz, often referred to in the literature as the Führer Museum.

In 1963, art objects stored in a depot administered by the Austrian monuments authority were transferred to four federal museums in Vienna (Kunsthistorisches Museum, Österreichische Galerie Belvedere, Albertina and MAK – Austrian Museum of Applied Art). This collection, known as the "1960s Transfer", consisted of 266 objects that had been confiscated from private collections or purchased through the Linz Special Order (Sonderauftrag Linz) for Hitler's planned art museum during the Nazi era. After the war, by order of the public prosecutor's office in Vienna, Adolf Hitler's assets in Austria were seized and in September 1952 designated as forfeited assets (Verfallsvermögen). All of the objects in the 1960s Transfer came under this order, with title to them being transferred to the Republic of Austria. In 1963 the items were administered by the Federal Ministry of Education and held in trust by the Federal Monuments Authority in Vienna. By order of the Ministry, the artworks were handed over in trust to the federal museums to be inventoried at a later date. Among the twenty-seven items transferred to the Albertina was the watercolour *Schaukelndes Bauernmädchen* (Peasant Girl with Spade), described in the transfer list as "Young Peasant Woman", by August Xaver von Pettenkofen.

The provenance research team at the Albertina was requested to establish the provenance of the watercolour, which was listed as being "of unknown ownership". The



1916 catalogue résumé of Pettenkofen's works by Arpad Weixlgärtner contained a work entitled *Junge Bäuerin bei der Feldarbeit* (Young Peasant Girl in the Field), but without any indication of its owner. The information provided there about an auction by the Vienna auction house C. J. Wawra, where the drawing had been offered at the end of October 1913, also provided no indications regarding a previous owner or purchaser.

# CASE STUDY

The former owner was finally identified when some archive material was digitised only in December 2017.

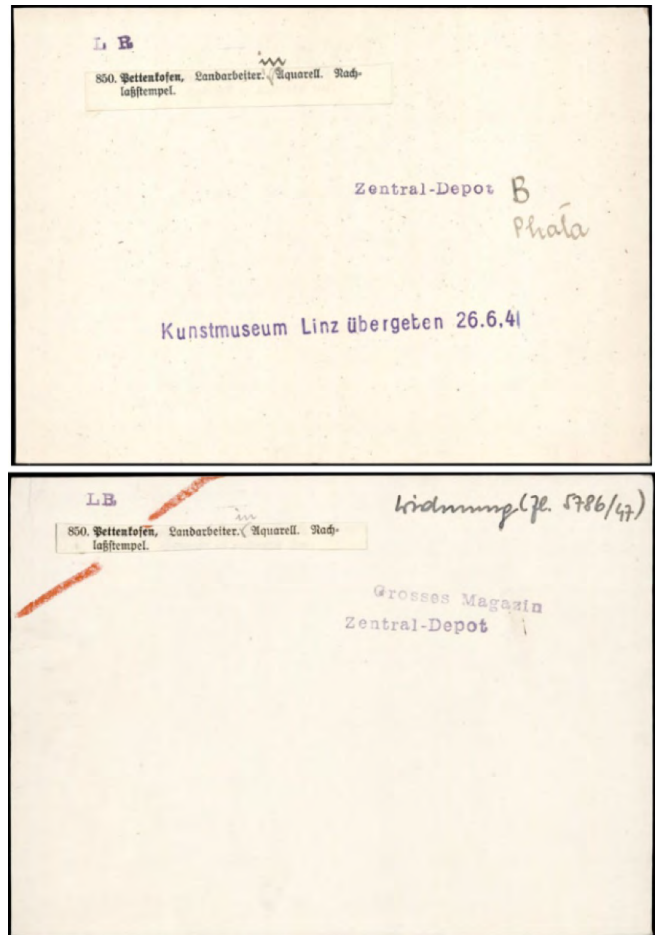
## Online card index of the Central Depot for Confiscated Collections in Vienna

The online card index of the Central Depot for Confiscated Collections in Vienna ([www.zdk-online.org](http://www.zdk-online.org)), a joint project by the Commission for Provenance Research and the Kunsthistorisches Museum, identified the watercolour as having belonged to the former collection of Louis Rothschild. The index cards provide valuable information for provenance research and are available for full-text search. The information on the cards is continuously updated with the assistance of the provenance research community and published to supplement the historical data. While processing some information, Albertina provenance researcher Julia Eßl came across the watercolour by Pettenkofen among the objects attributed to Louis Rothschild's collection. An accompanying illustration helped to identify it indisputably as the drawing held by the Albertina since 1963 with unknown origins.

## Louis Rothschild collection – Central Depot for Confiscated Collections

Louis Rothschild (1882–1955), the younger brother of Alphonse Rothschild (1878–1942), became director of the Vienna bank house S. M. v. Rothschild in 1911 after the death of his father Albert Mayer Rothschild and lived thereafter in his father's residence on Prinz-Eugen-Straße, where parts of the family's outstanding art collection were housed. As a Jew persecuted by the Nazis, Louis Rothschild was arrested by the SS on 13 March 1938, the day of the "Anschluss", Austria's annexation to the German Reich. In return for his release and the granting of an exit visa, he was forced to transfer all of the Rothschild assets to the German Reich. He then escaped via Switzerland and Argentina to the USA and never returned to Austria. The former Rothschild residence became the headquarters of the Zentralstelle für jüdische Auswanderung (Central Office for Jewish Emigration), the euphemistic designation for the persecution and deportation of Austrian Jews which was later to acquire notoriety under Adolf Eichmann.

The art collections belonging to Alphonse and Louis were confiscated by the Gestapo in March 1938. Fritz Dworschak, provisional director of the Kunsthistorisches Museum and designated Unterbevollmächtigter für die Bewachung der Sammlung beider Rothschilds (deputy custodian of the two Rothschild collections) set about establishing a central collection point for the confiscated art objects. It was ultimately set up by mid-August 1938 in the Neue Burg (the extension to the Hofburg on Heldenplatz) as the Central Depot for Confiscated Collections. Adolf Hitler himself had the power of disposal of the confiscated collections. Apart from the two Rothschild collections, there were also those of Otto Pick, Albert Pollak, Rudolf Gutmann, Alfons Thorsch, David Goldmann and Felix Haas and other Jewish collectors. In this way, around 10,000 works were



transferred to the Neue Burg. Their provenance was clearly indicated during storage and inventoring by means of initials (AR and LR referred to objects from Alphonse and Louis Rothschild's collections, OP to Pick, Gu to Gutmann, etc.).

Louis Rothschild's collection was transferred to the Central Depot in mid-August 1938 and inventorised there. The catalogue of confiscated objects contained almost 1,000 items marked LR with indication of their location. A card file of the objects was also established. The drawing Peasant Girl with Spade, found by the Nazis at the Rothschild hunting lodge in Steinbach bei Göstling in Lower Austria, had the number 850 and the entry "Pettenkofen, Farmworker, watercolour". The file card had an accompanying illustration, which permitted its conclusive identification as the drawing in the Albertina ([https://www.zdk-online.org/k/LR\\_850/](https://www.zdk-online.org/k/LR_850/)). On the back of the photo was a note "Requested for the Albertina", indicating that during the Nazi regime the Albertina had asked to have it. After Hans Posse, who had been authorised to establish the art museum in Linz, had made a selection from among the confiscated objects, the remaining objects were dispersed among interested museums in accordance with specific requests.

Until July 1940, the Central Depot was managed by the Kunsthistorisches Museum (KHM). Thereafter, until the depot's closure in 1941, the Institute for Monument Protection, the present-day Austrian Federal Monuments



# CASE STUDY

Authority (BDA) was in charge. Both of these institutions had their own card files. Whereas the details on KHM cards in most cases stop in 1942, the BDA archive contains further entries from after the war. They show where the objects were stored, whether they had been photographed, where they were put in safekeeping to prevent damage during the war, and to which institution they were assigned.

From autumn 1946, Louis Rothschild's lawyers sought restitution of the collection. Among the restituted objects for which an export licence was requested were artworks claimed by the head of the Portrait Gallery for the KHM as "compensation" for other restituted works exported to Jewish collectors who had been forced to flee and were living abroad. The Albertina was also able to take advantage of this arrangement. Pettenkofen's drawing was no longer listed, although it had been originally requested by the Albertina. The Rothschild provenance had somehow got lost during the transfer of the objects from Vienna to Kremsmünster Abbey and ultimately to the Altaussee salt mine, where they were kept in safekeeping to protect them from the ravages of the war. In 1948, the

watercolour was mentioned in a report by the Federal Ministry for Property Control and Economic Planning as being of unknown provenance.

In 1963, the drawing was transferred to the Albertina. When the initial restitutions were made pursuant to the Art Restitution Act of 1998, it was not immediately attributed to Louis Rothschild or his successors, no doubt because the information about the provenance had been lost in the past and not taken into account in the subsequent inventory and modification of title.

When the Central Depot card file was published, the provenance, which had been lost in the confusion of the immediate post-war period, came to light and the case handed over for consideration by the Austrian Art Restitution Advisory Board. At its 89th session on 15 June 2018 it recommended that the watercolour be restituted to the legal successors of Louis Rothschild

([http://www.provenienzforschung.gv.at/beiratsbeschluesse/Rothschild\\_Louis\\_2009-06-24.pdf](http://www.provenienzforschung.gv.at/beiratsbeschluesse/Rothschild_Louis_2009-06-24.pdf))

# PRESENTATION OF A COMMITTEE: RESTITUTIECOMMISSIE

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

Restitutions Committee

## A BRIEF HISTORY

Between 1933 and 1945 the Nazis seized, stole or purchased artworks, antiques, jewellery and other objects from private individuals and art galleries on a large scale throughout Europe. After the Second World War, the allies found many of these items of cultural value, particularly in Germany, after which they were brought back to their country of origin. This recovery was accompanied by the instruction to national governments to manage the art being returned and to ensure it was returned (restituted) to the rightful owners or their heirs. In the Netherlands, the Netherlands Art Property Foundation (SNK) was tasked with the recovery and restitution activities. Some of the items of cultural value that were not restituted after the war were auctioned off by the Dutch State during the nineteen-fifties. The remainder was incorporated in the Netherlands Art Property Collection (NK collection), as part of the Dutch National Art Collection.

Starting at the end of nineteen-nineties, renewed interest arose in the Netherlands and other countries in the return of art treasures that had been looted during the Second World War. There were calls for a flexible restitutions policy, for example in such international instruments as the Washington Principles on Nazi Confiscated Art (1998) and in a resolution on Looted Jewish Cultural Property (1999)

adopted by the Parliamentary Assembly of the Council of Europe. Recommendations were made to opt for a form of alternative dispute settlement outside the standard judicial process. The actions taken in the Netherlands in response to these principles included establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (Restitutions Committee) in a decree dated 16 November 2001.

## COMPOSITION OF THE RESTITUTIONS COMMITTEE

The Restitutions Committee is an independent committee and was established by the Minister of Education, Culture and Science (OCW). The Restitutions Committee has seven members, including the chair and vice-chair. The chair and vice-chair must have a law degree. The current chair is Dr A. Hammerstein, former extraordinary state councillor of the Council of State. When the committee was established, the Minister of OCW stipulated that at least one committee member must have sufficient expertise in the history of the Second World War that a substantial contribution can be made to the committee's work. In addition at least one committee member must have sufficient expertise in art history or museology that a

# PRESENTATION OF A COMMITTEE: RESTITUTIECOMMISSIE

substantial contribution can be made to the committee's work.

The Restitutions Committee has had a permanent advisor, Dr J.F. Cohen, since May 2019. The committee is supported in its work by a secretary and an office manager. In individual cases the committee can furthermore have research, including provenance research, conducted by the history and art history researchers of the Restitution of Items of Cultural Value and the Second World War Expertise Centre, which was established on 1 September 2018 and is part of the NIOD Institute for War, Holocaust and Genocide Studies in Amsterdam.

## Tasks and Powers

The Minister of OCW gave the Restitutions Committee two tasks. The first is to issue advice to the Minister of OCW about claims to items of cultural value in the Dutch National Art Collection, which contains all items of cultural value owned by the Dutch State, including the NK collection. In these cases the committee issues advice to the Minister of OCW at his or her request. The minister takes the final decision about the restitution application. The committee's advice in this type of case is not legally binding on the minister, but in practice the minister has almost always accepted the committee's advice.

The second task the Minister of OCW gave the committee was to advise about claims to items of cultural value held by others. These can, for example, be provincial and local authorities, institutions and private individuals. In this type of case the claimant and the current owner ask the committee to make a ruling about a restitution application. Beforehand they state they will accept committee's opinion as binding. The committee then issues a binding opinion within the meaning of article 7:900 of the Dutch Civil Code. If necessary this binding opinion can be enforced by a court. The Dutch State is not a party in this procedure. The committee has drawn up regulations for this procedure.

In both types of cases the rightful claimants can request restitution of items of cultural interest that the original owner lost possession of involuntarily due to circumstances directly related to the Nazi regime. The rightful claimants are, for instance, those who are entitled to the claimed work of art on the grounds of inheritance. A requirement for restitution is that the involuntary loss of possession must have taken place during the period of the Nazi regime and must be due to circumstances directly related to the Nazi regime. Examples are theft, confiscation and forced sale. It is not a requirement that the original owner belonged to a population group persecuted by the Nazis. There is furthermore no geographical limit to the loss of possession. It can have taken place in Germany, the Netherlands or in other occupied countries. In certain situations, loss of possession in neutral or safe countries may also be designated as involuntary due to circumstances directly related to the Nazi regime.

In 2001 the Minister of OCW selected a policy-based approach to the restitution issue. There is no Restitution Act in the Netherlands. Among other things this means that the restitution of items of cultural value in the Netherlands takes place on a voluntary basis. The present owner of an item of cultural value, possession of which was lost by the original owner due to circumstances directly related to the Nazi regime, cannot be forced to submit a case to the Restitutions Committee. As far as the Dutch National Art Collection is concerned, the Minister of OCW promised the Lower House of the Dutch Parliament that restitution applications would always be brought before the Restitutions Committee for advice.

The Restitutions Committee issues advice about restitution applications on the basis of the yardsticks of reasonableness and fairness, in accordance with the Washington Principles, which prescribe that efforts must be made to find a just and fair solution, recognizing that this may vary according to the facts and circumstances surrounding a specific case. If a claim is granted, the committee can recommend that the claimed artwork is returned to the original owner's heirs, but it can also recommend other solutions.

## Brief Description of the Procedures

A restitution application for an item of cultural value in the Dutch National Art Collection can be submitted to the Netherlands Cultural Heritage Agency (RCE), a part of the Ministry of OCW. The RCE then lays the application before the Restitutions Committee for advice. The committee may ask the expertise centre to conduct an investigation and prepare an overview of the facts. After the parties have had an opportunity to respond, and possibly after a hearing, the committee issues its advice to the Minister of OCW. If the Minister of OCW decides to retribute, the RCE takes care of the further handling. This includes calling in a notary to establish the entire circle of entitled individuals (this can take quite a long time, particularly if the circle is large and not fully known or is in a foreign country ), arranging transport from any museum involved to the RCE's depot, preparing a condition report, and organizing transport from the depot to a location selected by the heirs.

The committee has adopted regulations that describe the binding opinion procedure. The current owner and the heirs of the original owner may jointly decide to ask the Restitutions Committee for binding advice. To do this they must declare beforehand that they accept the regulations and will consider the ruling to be binding. Applicants for restitution must demonstrate that they are rightful claimants to the assets of the asserted former owner. The committee applies this requirement because, unlike cases involving the Dutch National Art Collection, no notary is called in to establish the entire circle of entitled individuals. After the Committee has received the joint request from the parties, it asks the Minister of OCW for consent to issue a binding opinion. The committee may ask the expertise centre to conduct an investigation and



# PRESENTATION OF A COMMITTEE: RESTITUTIECOMMISSIE

prepare an overview of the facts. After the parties have had an opportunity to respond, and possibly after a hearing, the committee issues a binding opinion to the parties. The parties are responsible for the further handling and elaboration of the binding opinion.

If, after advice or an opinion has been issued, new facts come to light on the grounds of which the result of the case might have been different, the committee may be asked to reconsider. In the case of a binding opinion, this is only possible if both parties request it.

The Committee's working language is Dutch, and it also corresponds with foreign applicants in English. The committee publishes all its recommendations and opinions in Dutch and English. Overviews of the facts are not published. Since the Restitutions Committee was established in 2001 it has issued 158 recommendations and opinions and has had 180 claims submitted to it. The committee gives account of its activities in its annual report.

There is more information about the Restitutions Committee and its procedures on its website ([www.restitutiecommissie.nl/en](http://www.restitutiecommissie.nl/en))

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## Imprint

- The Newsletter is published by CIVS - 20 avenue de Ségur TSA 20718 75334 PARIS Cedex 07
  - Editorial responsibility : Jérôme BENEZECH, director of the CIVS
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- Graphic design : DSAF / DPSG / Pôle graphique, fabrication, image - June 2019