

# Interview with Toon van Mierlo, Chair, and Dick Oostinga, Vice Chair, of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in the Netherlands (Restitutions Committee)

Toon van Mierlo / Dick Oostinga / Florian Schönfuß 

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*Florian Schönfuß (FS): Mr. Van Mierlo, Mr. Oostinga, before we start, would you like to briefly introduce yourselves?*

**Toon van Mierlo (TvM):** Many thanks for giving us the opportunity to tell you a little more about the work of the Restitutions Committee in the Netherlands. I am Toon van Mierlo, chair of the Restitutions Committee since 15th August 2023 and in daily life a lawyer and professor of civil law at the Erasmus University Rotterdam and the University of Groningen.

**Dick Oostinga (DO):** I am Dick Oostinga, vice-chair of the Restitutions Committee, a committee member since 2018 and a former (civil law) notary.

*FS: Mr. Van Mierlo and Mr. Oostinga, since its installation in 2001, the Dutch Restitutions Committee (Restitutiecommissie) advises on restitution applications concerning art and cultural objects held in the Netherlands, be it from the Dutch National Art Collection (Rijkscollectie) or from public cultural institutions on the provincial and local level. It also provides advice on restitution claims concerning objects in private collections within the Netherlands, albeit solely by means of issuing binding opinions. In case of artworks owned by the Dutch State, decisions on restitutions, or alternative forms of ‘just and fair solutions’, are then taken by*



Figure 1: Toon van Mierlo (right) and Dick Oostinga (left), photo: Restitutiecommissie, 2024.

*the Minister of Education, Culture and Science based on the committee’s advice. Could you grossly outline for our readers why it was necessary to establish such an advisory committee and which considerations led to its creation? Was it a direct consequence of the*

*Washington Principles' articulation in 1998? Have there been prominent cases of looted art raising public attention via the media, international pressure, or a critical domestic debate in the Netherlands? Did the example of other European countries establishing restitution commissions stimulate the decision to set up an equivalent?*

TvM: After the Second World War, the situation regarding cultural goods, in other words art, looted by the Nazis through confiscation or forced sale and subsequently recovered by Allied forces and returned to the Netherlands was as follows. The original rightful applicants or their surviving relatives could initiate restitution proceedings with the Dutch State, more specifically with the Netherlands Art Property Foundation (Stichting Nederlandsch Kunstbezit, or SNK) until 1950, and later with the Bureau for Restoration Payments and the Restoration of Property (Herstelbetalingen- en Recuperatiegoederen, or Hergo), by submitting a restitution application. This was not a straightforward procedure. For example, applicants had to prove that an artwork had been their property at the time of the looting, it had to be beyond doubt that there had been involuntary loss of possession, the Dutch State demanded payment of part of the management costs and, in the case of a forced sale, even repayment of the proceeds of the sale that the seller had received. Unsurprisingly, in many cases Holocaust survivors could not meet one or more of these requirements. As a result, much of the looted art did not return to the robbed family and remained part of the Netherlands Art Property Collection (NK Collection) and stayed in the hands of the Dutch State. From the second half of the 1950s, there were still occasional restitution applications, but the expertise of how to deal with them became increasingly scarce, with the adverse consequence that the outcome of a restoration of rights procedure became rather unpredictable. In the 1990s, the subject of Nazi-looted art and the restoration of rights returned to the international and Dutch political agenda. Post-war policy had fallen short. At the Washington Conference in 1998, more than 40 countries agreed to take another look at looted art issues and develop policies that would allow non-restituted looted art to be returned to its original owners or their descendants.

In the Netherlands, this led to the establishment of the Restitutions Committee in 2001, whose advice is aimed at achieving a 'just and fair solution' as referred to in Principle 8 of the Washington Principles. The Committee advises the Minister of Education, Culture and Science on applications for the restitution of items of cultural value in the Dutch National Art Collection and the NK Collection. If an application for restitution concerns an object owned by a party other than the Dutch State, i.e. from provincial or municipal cultural institutions or private individuals, the Restitutions Committee issues a binding opinion to the applicant and the other party. A binding opinion is a form of a settlement agreement. Its regulation is part of the Dutch Civil Code (Burgerlijk Wetboek).

DO: In principle, all Restitutions Committee recommendations and binding opinions are published in anonymized form. The procedure takes no regard of the value of the artwork that is the subject of a restitution application. As a rule, the recommendations or opinions do not give rise to media attention or public debate. One exception was a binding opinion in 2018 where a restitution application for a valuable artwork was rejected by the Restitutions Committee, based on weighing up the interests of both parties and public art holdings. The assessment framework used by the Restitutions Committee at the time (until April 2021) allowed for such a weighing up of interests. Although this was only part of the Committee's reasoning, it became subject to criticism, which gave the Committee food for thought. During an evaluation of Dutch restitution policy conducted in 2020, the so-called Kohnstamm report, our Committee advocated for a removal of the possibility of weighing up interests from the assessment framework.

TvM: Of the 42 countries that endorsed the Washington Principles, only five, including the Netherlands, acted on the recommendation to form an independent committee with broad expertise to advise on restitution cases. France, Austria, Germany and the UK also have such committees. The five committees are linked together in the Network of European Restitution Committees on Nazi Looted Art.

Within this network, the committees share their experience and knowhow and regularly report on their work in periodic newsletters.<sup>1</sup>

*FS: That's very interesting indeed. Further reflecting on the Netherlands' collective experience and national history as a formerly occupied country, above all a country with a once large Jewish population suffering disproportionately during the Holocaust, a Nazi-German occupation regime lasting for its Northern part and in a very brute form right until the Second World War's end in May 1945, yet also a country with an extremely rich art scene forming a core part of its cultural heritage, an internationally renowned museums landscape and a constantly vibrant art market, one can easily imagine all the difficulties in weighing arguments for ensuring public acceptance while taking on legal responsibility. Austria already in 1998 passed a dedicated Art Restitution Law (Kunstrückgabegesetz) providing enhanced legal certainty for any kind of restitutions and enabling a proactive, systematic provenance research within its federal collections. In Germany there is ongoing debate on this. Do the Netherlands on their part have an Art Restitution Law, or any equivalent regulations? If not, are there recent plans for developing such a law? In how far do the already existing legal frameworks and policy guidelines specified by the Dutch government provide a substitute?*

**DO:** The Netherlands has no legislation regarding restitution of looted cultural goods. As far as we know, there are currently no plans in this area either. However, I would note that the restitution process in the Netherlands was evaluated in 2020 by the Kohnstamm report. As a result, in April 2021, the aforementioned weighing up of the interests of the restitution applicant on the one hand and the interests of the current holder and public art holdings on the other hand was dropped. The current assessment framework, which you can find on our bilingual website,<sup>2</sup> is clear and transparent. With the introduction of this new framework, the Restitutions Committee has also adjusted its regulations. These regulations show that the Restitutions Committee wants to personally involve all

applicants as much as possible during the procedure. The Committee sends copies of all documents to all applicants even if the applicants should have appointed a third party as their representative. This happens unless an applicant informs the Committee that he or she no longer wishes to receive documents, or there are multiple applicants who prefer documents to be sent to only one or some of them. Previously, applicants could request a hearing. Now the Committee works on the principle that it will organize a hearing (and preferably meet the applicants personally) and, if desired, more than once. The Committee will abstain from organizing a hearing if both sides see no need for it. In this way, the Committee aims at an open and engaged approach. Another new feature is that the Committee sends a draft recommendation or binding opinion to the parties. They are then given the opportunity to respond before the Committee adopts its recommendation or binding opinion.

*FS: Our readers would like to learn more about the Restitutions Committee's composition and its internal working procedures. How many members does the Restitutions Committee regularly have? Are members being elected or do they get appointed? For how long are they designated and who is entitled to nominate new members? And what are their professional backgrounds? Moreover, are all restitution claims brought before the Restitutions Committee voted upon individually, as ordinary resolutions with simple majority?*

**TvM:** The Restitutions Committee consists of seven members. All of them are independent of the Dutch Ministry of Education, Culture and Science and its institutions. The chair and vice chair should be qualified lawyers. At least one of the members should have significant expertise on matters concerning the Second World War and at least one of the members should have significant expertise in the fields of art history and museums. The members are appointed by the Minister of Education, Culture and Science for a period of four years and can be reappointed once for another period of four years. Vacancies are advertised in newspapers and other media. An independent Advisory Appointment Committee appointed by the Minister evaluates candidates and proposes an individual for each vacancy. Until recently, the Committee

1 E. g. the newsletter of the Dutch Restitution Committee, <https://www.restitutiecommissie.nl/en/newsletter-network-european-committees/>, <27.09.2024>.

2 [www.restitutiecommissie.nl/en](https://www.restitutiecommissie.nl/en), <28.06.2024>.



consisted mostly of lawyers. When it came to filling vacancies, the Committee urged a more balanced composition. It currently consists of three lawyers, three historians and one art historian, with a broad range of specialist knowledge. The lawyers are specialists in dispute resolution, mediation and have extensive knowledge about the judiciary after the Second World War and in the context of restoration of rights and succession law. The change in composition has led to a better balance between the various disciplines represented in the Committee when considering cases and to a more critical and substantive relationship with the independent researchers of Expert Centre Restitution (ECR). The Restitutions Committee is supported by an office in which six people assist in carrying out the Committee's tasks. The decision-making process is simple. In theory, it is done by a simple majority of votes cast by members. Each member has one vote. Consensus is sought and, in practice, issued recommendations and opinions are supported unanimously.

*FS: Regarding the current procedure based on the aforementioned policy guidelines, do the art holding museums, cultural institutions, or private collectors first need to consent with a restitution application to be brought before the Restitutions Committee before the latter may act? Are public museums and art holding institutions in the Netherlands, other than the Dutch National Art Collection, obliged to cooperate with the Restitutions Committee? Are they, in the first place, even expected to conduct provenance research aimed at locating unlawfully acquired art and cultural objects within their collections? I suppose there must be some differences between public and private collectors also in this respect, right?*

**DO:** In terms of procedure, a distinction must be made between a restitution application regarding an object that is in the Dutch National Art Collection, which also includes the NK Collection, which contains art works recovered by Allied forces, and an application that relates to an object that is part of another Dutch collection, for instance that of a provincial or municipal institution, a foundation or a private individual. If the restitution application regards an object that is part of the Dutch National Art Collection, the Restitutions Committee

advises the Minister of Education, Culture and Science, after which the Minister decides whether or not to grant the application. If the artwork is not part of the Dutch National Art Collection, the Restitutions Committee issues a binding opinion. This requires the parties involved (the applicant and the current holder) to agree to jointly submit their dispute to the Restitutions Committee. Unless the parties commit to accepting the binding opinion to be issued by the Restitutions Committee, it has no authority to consider the case.

**TvM:** In the Dutch museum world, it is normal and also expected for a museum to conduct extensive and thorough provenance research before purchasing an artwork. Museums that are unable to do so, due to their size or limited financial resources, can appeal to the Cultural Heritage Agency (Rijksdienst voor het Cultureel Erfgoed) and the Expert Centre Restitution ('ECR').

*FS: It seems that the handling of restitution claims concerning the Dutch National Art Collection, which of course also includes the famous Nederlands Kunstbezit Collection, provides something of a role model here. In these cases, comprehensive investigation is conducted before any advice by the Restitutions Committee is issued. Since 2018, relevant research, which needs to be independent and impartial, is assigned to the already mentioned 'Expert Centre Restitution' at the 'NIOD Institute for War, Holocaust and Genocide Studies' in Amsterdam. Maybe you could provide some detail regarding the kind, methods and outline of scientific research undertaken by the ECR? Does the ECR's task mostly lie in conducting provenance research, or also in undertaking investigation of legal positions? Who are the researchers involved, what qualifies them to form part of ECR, and how is their impartiality assured?*

**TvM:** As a rule, the Restitutions Committee instructs the ECR to investigate – in particular – the facts relating to the former ownership of the cultural property that is the subject of the restitution application and the facts that provide insight into how this property was lost. The ECR sends a questionnaire to interested parties and invites them to provide as much relevant information as possible. The ECR then conducts the investigation and prepares a draft report. The ECR sends this draft to the

parties involved, who are given the opportunity to respond to it. The ECR then sends the draft report to the Restitutions Committee, sometimes after changes based on the responses received from the parties. After studying the report, the Restitutions Committee invites the ECR to a Committee meeting to explain the research they have carried out and answer any questions from committee members. The ECR then finalizes the report and sends it to the Restitutions Committee. The Committee is also free to conduct or commission its own research, but this option is rarely used. The reports issued by ECR are of a high standard, contain highly relevant information about an applicant's family history and the provenance and history of the object the restitution application concerns. Applicants are often positively surprised by facts about their family history that were previously unknown to them. The Restitutions Committee weighs up and interprets the facts presented in the report in order to come to a well-balanced recommendation based on the current assessment framework.

*FS: As its denomination already makes clear, the Dutch Restitutions Committee's main assignment is advising on restitution applications relating to Nazi-looted art, i.e. focusing on the period from 1933/40 to 1945. However, as a former colonial power of great significance and with world-famous collections of Indigenous, especially African and Southeast Asian art, the recent post-colonial discourse centring on the unlawful acquisition of art and cultural property in contexts of colonial rule gets ever more brisk also in the Netherlands. Meanwhile, demands to apply the general concept of the Washington Principles also to colonial contexts of injustice are growing louder. Are there any ideas for a possible future extension of the Restitutions Committee's scope of rendering advice also to colonial contexts? What additional resources, legal authority and expertise would be required to fulfil such demands?*

**DO:** In 2022, the Netherlands created the Colonial Collections Committee, which advises the Minister of Education, Culture and Science on restitution requests for cultural heritage objects that were taken in a colonial context. Restoration of injustice is the starting point here. Cultural goods that were involuntarily lost in former Dutch colonies must be returned unconditionally if the country of origin

requests it. Requests for restitution of cultural heritage objects that were not looted or that originate from countries that were not Dutch colonies can also be considered by the Colonial Committee, for instance, if they have a special cultural, historical or religious significance to the country of origin. For more information, please visit the website of the Colonial Collections Committee.<sup>3</sup>

*FS: Since the beginning of its work in 2001, the Dutch Restitutions Committee rendered advice, formulated recommendations and binding opinions in nearly 200 cases. The individual cases often differed a lot from each other, but the lion's share hitherto is constituted by restitution applications for artworks from the Dutch National Art Collection and the Nederlandsch Kunstbezit Collection, respectively. Do you remember a certain case which impressed you personally the most? All in all, after by now about 23 years of constant engagement, what would you say has the Restitutions Committee achieved so far? Do you see the potential, or even the necessity, for further enhancements of its working procedures?*

**DO:** I find it difficult and, in the context of the objectivity observed by the Committee, also undesirable to name one case that has made the biggest impression on me personally. Behind every restitution application, whether it relates to a work of art of great artistic and financial value or not, there is a family history that makes a lasting impression. Being able to contribute to the recognition of the injustice done to them and, where possible, restoration of that injustice is the main driving force behind my work for the Committee. The recent evaluation of restitution policy in the Netherlands by the Kohnstamm report, the new assessment framework and the Restitutions Committee's approach to it have met with many positive reactions from those involved. With great passion and commitment, our Committee will continue to work on the flow of restitution applications, the end of which, for the time being, is not yet in sight.

*FS: Mr. Van Mierlo and Mr. Oostinga, thank you very much for the interview!*

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3 <https://committee.kolonialecollecties.nl/>, <28.06.2024>.

## ORCID®

Florian Schönfuß 

<https://orcid.org/0000-0003-3953-5216>

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## Reference

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