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Case 200 Paintings – Goudstikker Heirs and the Netherlands

Jacques Goudstikker – Netherlands/Pays-Bas – Artwork/œuvre d'art – Nazi-looted art/spoliations nazies – Conciliation – Institutional facilitator/facilitateur institutionnel – Judicial claim/action en justice – Negotiation/négociation – Settlement agreement/accord transactionnel – Ownership/propriété – Repurchase/rachat – Request denied/rejet de la demande – Unconditional restitution/restitution sans condition

The art collection of Jacques Goudstikker was acquired by the Nazi commander Hermann Göring under suspicious circumstances during the Second World War. A large part of the collection was recovered by the Allied Forces after the war and it was subsequently returned to the Netherlands where it was labelled “Dutch national property”. The first part of these items was bought back by Goudstikker’s wife under a settlement agreement of 1952. The Dutch Government returned the second part – 200 paintings – to Marei Von Saher (the only surviving heir of Jacques Goudstikker) in 2006 based on a recommendation of the Dutch Restitution Committee.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

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I. Chronology

Nazi looted art

- **Jacques Goudstikker** was one of the wealthiest art dealers in Europe in the early 1900s specialized in Dutch and Flemish Master paintings.¹ He was married to a Viennese Opera singer, **Désirée von Halban-Kurz**. On **14 May 1940**, the Germans invaded the Eastern parts of the Netherlands. The Goudstikker family fled to England, however, Jacques Goudstikker died during the trip at sea. Immediately after the invasion, the Germans tried to get a hold of Goudstikker's artworks as **Hermann Göring**, Commander-in-Chief of the German Luftwaffe, was very interested in the collection.
- The trustee appointed by Jacques Goudstikker to take care of his business and collection died the day after his own death. His employees, A.A. Ten Broek and J. Dik, asked German banker and businessman **Alois Miedl** to take over the management of the Gallery. By a sale agreement dated **1 July 1940**, Miedl purchased all of Goudstikker's assets, together with the trading name of the company. Shortly afterwards, Miedl's purchase agreement was overruled by Hermann Göring. Ultimately, **two sale agreements** were concluded on **13 July 1940: the first between Goudstikker** (represented by his employee Ten Broek) **and Miedl**, regarding Goudstikker's real estate, company name and co-ownership of the meta-paintings,² for NLG 550,000; **the second between Miedl and Göring**, on all art objects belonging to Goudstikker's collection located in the Netherlands on 26 June 1940, for NLG 2,000,000. They agreed to split up the collection into two parts, providing further for a right of first refusal on the meta-paintings in favour of Göring. He subsequently acquired 13 of these meta-paintings, and took most of the collection to his mansion near Berlin.
- Goudstikker's employees received NLG 400,000 and Goudstikker's Jewish mother, Mrs Goudstikker-Sellisberger, received the protection of Miedl from anti-Semitic persecution.³
- After the war, the Allied Forces assembled hundreds of art objects formerly owned by Göring. They faced the difficult task of returning these items to their owners. They set up collecting points to reassemble and identify the objects.
- The process of restitution for looted items was organized according to the "**policy of external restitution**": looted art objects were not returned directly to the dispossessed owners, but to their country of nationality. In the Netherlands, the return was administrated by the Dutch Art Property Foundation ("*Stichting Nederlands Kunstbezit*"). Of all the paintings returned to the Netherlands, 300 were from the Goudstikker collection.

¹ This section is based on a presentation by Bert Dermasin, Postdoctoral Researcher at K.U. Leuven Law School hold at the Conference "Art and Cultural Heritage Law: Developments and Challenges in Past and Presents" in Maastricht, March 27 and 28, 2011.

² The paintings referred by Jacques Goudstikker in his papers as "meta-paintings" were those (21 in number) which he co-owned with others at the time he had to flee (see Dutch Restitution Commission, Recommendation Regarding the Application by Amsterdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection (Case number RC 1.15), n. 14).

³ Alois Miedl kept his word: the mother of J. Goudstikker remained in her home and was not persecuted. Some of the family's money invested in stocks remained untouched and was returned to Désirée when she got back to the Netherlands in 1946.

- Désirée Goudstikker still possessed the **black notebook** of her husband, listing all the items that he possessed: “J. Goudstikker Business stock – 1113 paintings in stock”. This document facilitated the research of the lost paintings and the voluntary restitution of paintings from museums and private collectors in Europe, Israel and the United States.
- In **early 1946**, Désirée Goudstikker asked the Dutch government for the restitution of the collection.
- On **1 August 1952**, after a 7-year long legal battle, Désirée Goudstikker entered into a **settlement agreement** with the Dutch Government on the restitution of a part of the Goudstikker collection. The remaining objects, qualified as “National property of the Netherlands”, were divided amongst Dutch State museums.
- In **January 1998**, **Marei Von Saher**, the only surviving heir of Jacques Goudstikker (Désirée Goudstikker died in 1996), **submitted** to the Court in The Hague **an application for the restitution** of all artworks that were part of the transaction between Miedl and Göring in 1940. The Dutch Minister turned down the request in a decision in **March 1998** considering that the agreement of 1952 was final.
- The Court in The Hague upheld the Government’s decision on **16 December 1999**.
- In **January 2002**, the Dutch Government established a Restitution Committee with the task of investigating restitution claims arising out of the Holocaust. The Goudstikker heirs addressed their claim regarding 267 art objects to this Committee in **2004**.
- In **December 2005**, the Restitution Committee recommended the **restitution of 202 out of 267 paintings** taken by Göring to the heirs. The Committee assessed that 40 could not be related to Jacques Goudstikker; 21 were Miedl’s paintings which were covered by the 1952 accord; and 4 paintings were either lost or missing.⁴ However, arguing that the 1952 settlement agreement only referred to Miedl’s share of the 1940 transaction with Göring, the Committee recommended returning the 202 paintings.
- On **6 February 2006**, based on the advice of the Restitution Committee, the Dutch government decided to return **200 paintings** to the Goudstikker heirs.⁵ As a sign of their gratitude, the heirs donated one returned painting, Bartholomeus Van der Helst’s 1645 *Child on Deathbed*, to the Dutch state.⁶

⁴ See Dutch Restitution Commission, Recommendation Regarding the Application by Amsterdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection (Case number RC 1.15), n. 4.

⁵ “*Informatie over het verzoek tot teruggave Goudstikker collectie*,” (Information regarding the Restitution Request of the Goudstikker collection, trans. by the author) Dutch Ministry of Education, Culture and Science, DCE/06/5640, February 6, 2006, accessed March 20, 2012, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2006/02/06/informatie-over-het-verzoek-tot-teruggave-goudstikker-collectie.html>.

⁶ Herrick, Feinstein LLP Press Release, “Five Paintings from the Goudstikker Collection to Stay in the Netherlands,” accessed March 20, 2012, <http://www.herrick.com/siteFiles/News/348BE2B3003D0184D9843D5803C288A0.pdf>.

II. Dispute Resolution Process

Conciliation – Institutional facilitator – Judicial claim – Negotiation – Settlement agreement

- Between Désirée Goudstikker and the Dutch Government: after the end of the war, Désirée Goudstikker negotiated with different Dutch authorities to recover part of her deceased husband's property (Miedl's share in the 1940 transaction). The parties ultimately came to a settlement agreement in 1952. Désirée Goudstikker waived her rights regarding Göring's share (i.e. the works purchased by Göring in 1940).
- Between the Goudstikker heirs and the Dutch Government: the Court of The Hague rejected the heirs' application for restitution. She subsequently addressed her concern to the Dutch Restitution Commission, which issued a recommendation in 2005 following long investigations on the matter. The recommendation was confidential pending a final decision by the Dutch Government.⁷ It ultimately followed the Committee's recommendation for the most part, by ordering the restitution of 200 paintings.

III. Legal Issues

Ownership

- Several aspects complicated the restitution of the Goudstikker paintings. Among them, it is worth considering the following two issues. First, Désirée Goudstikker had waived her restitution rights regarding all objects not included in the 1952 settlement. Second, the restitution claim of the Goudstikker heirs was barred by the Dutch statute of limitations, as found by the Court of The Hague. In fact, the limitation term for post-war restitution rights was set on 1 July 1951. The Court also held that, notwithstanding the concerns of admissibility of her claim, there was no pertinent reason to grant *ex officio* restoration of rights.
- The Dutch Restitution Commission examined whether Jacques Goudstikker's loss of property could be qualified as involuntary. The main concern was the fact that Goudstikker's employees received money in exchange for his property.

⁷ Lawrence M. Kaye, "The Netherlands: The Return of the Goudstikker Collection," *Holocaust Art Restitution Symposium Presented by Christie's and Union Internationale des Avocats (UIA)*, Milan, June 23, 2011, accessed October 20, 2011, <http://www.christies.com/pdf/services/2011/lawrence-m-kaye.pdf>, 13.

IV. Adopted solution

Repurchase – Request denied – Unconditional restitution

- With the settlement agreement of August 1952, Désirée Goudstikker and the Dutch Government determined that she would buy back from the Dutch State 300 artworks, which constituted a part of the Miedl share of the 1940 transaction.⁸ As for the remaining artworks delivered to Miedl during the war, Désirée Goudstikker waived her ownership rights. However, she reserved all rights with respect to the artworks delivered to Göring during the war.⁹
- In 2006, subsequent to the recommendation of the Dutch Restitution Committee, the Dutch Government finally returned 200 paintings from State museums to the Goudstikker heirs.

V. Comment

- This claim encouraged many European museums to investigate their own collections in order to verify whether they were holding paintings formerly part of the Goudstikker stock. As a result, in 2006, the Goudstikker heirs received two paintings from the Museum Wallraf-Richartz of Cologne and a Master painting from the Dresden State Art Collections (*Staatliche Kunstsammlungen Dresden*).¹⁰

VI. Sources

a. Bibliography

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⁸ See Dutch Restitution Commission, Recommendation Regarding the Application by Amsterdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection (Case number RC 1.15).

⁹ Ibid.

¹⁰ See Gunnar Schnabel and Monika Tatzkow, *Nazi Looted Art – Handbuch Kunstrestitution weltweit* (Berlin: Proprietas Verlag, 2007), 149.

b. Documents

- Dutch Restitution Commission – Recommendation Regarding the Application by Amsterdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection (Case number RC 1.15).
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c. Media

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