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## Case Madonna and Child with Wild Roses – Gross-Eisenstadt Heirs and Utrecht City Council

*Gross-Eisenstadt Heirs – Utrecht City Council – Centraal Museum – Richard Semmel – Artwork/oeuvre d'art – Nazi looted art/spoliations nazies – Institutional facilitator/facilitateur institutionnel – Ownership/propriété – Request denied/rejet de la demande – Symbolic gesture/geste symbolique*

*German-Jewish businessman Richard Semmel had an extensive art collection which he was forced to sell after fleeing Jewish persecution in Germany. Among this collection was the painting “Madonna and Child with Wild Roses” by Jan van Scorel. He sold the painting at auction in the Netherlands, which was later purchased by the Utrecht City Council for the Centraal Museum. The question concerning the ownership of the painting was referred to the Dutch Restitutions Committee in 2011. The Committee rejected the restitution claim of Semmel’s heirs by stating that their interests carried less weight than the Museum’s interests.*

*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

- **1926:** German-Jewish businessman Richard Semmel purchased *Madonna and Child with Wild Roses* by the Dutch painter Jan van Scorel from the P. de Boer Gallery in Amsterdam.
- **1933:** The Nazis assumed power in Germany. As a result of the severe anti-Jewish climate and his involvement in the German Democratic Party, Semmel fled to the Netherlands and later to New York. Semmel sold part of his art collection at auction in Amsterdam at Frederik Muller & Cie., including the painting *Madonna and Child with Wild Roses*. After having paid a considerable Reich Flight Tax in order to leave Germany, he used the proceeds from the sale to survive and to continue to fulfill commitments in Germany pre-dating the Nazi regime.
- **1950:** Semmel died in New York “in reduced circumstances” and without children. In his will he appointed his good friend Grete Gross-Eisenstadt as his heir.
- **1958:** Utrecht City Council purchased the painting *Madonna and Child with Wild Roses* from the P. de Boer Gallery for 72,000 guilders (plus exchange of the painting *Portrait of a Woman with Her Son and Daughter* by Thomas de Keyser) and hanged it at the Centraal Museum.
- **2011:** The Dutch Secretary of State, Utrecht City Council and the grandchildren of Grete Gross-Eisenstadt requested an opinion from the Dutch Restitutions Committee concerning the ownership of the painting *Madonna and Child with Wild Roses*.
- **2013:** The Restitutions Committee rejected the claim of the Gross-Eisenstadt heirs.<sup>1</sup>

## II. Dispute Resolution Process

### Institutional facilitator (Dutch Restitutions Committee, binding opinion)

- The Dutch Restitutions Committee was set up in 2001 by the State Secretary for Education, Culture and Science.<sup>2</sup> Its task is to advise the State Secretary on applications concerning the return of art objects that were lost during the Second World War and that are now owned by the State of the Netherlands (national art collection), provincial/local government institutions, foundations or private individuals. The parties to the dispute must submit a joint application to the State Secretary<sup>3</sup> and must formally agree to accept the final recommendation of the Committee as binding.<sup>4</sup> The Dutch government decided that an independent advisory

<sup>1</sup> Restitutions Committee, “Binding opinion regarding the dispute about the return of the painting Madonna and Child with Wild Roses by Jan van Scorel from the collection of Richard Semmel, currently in the possession of Utrecht City Council,” RC 3.131, April 25, 2013, accessed June 12, 2015,

[http://www.restitutiecommissie.nl/en/recommendations/recommendation\\_rc\\_3131.html](http://www.restitutiecommissie.nl/en/recommendations/recommendation_rc_3131.html).

<sup>2</sup> Decree establishing the Advisory Committee on the Assessment of Restitution Applications of 16 November 2001, accessed June 12, 2015, <http://www.lootedart.com/MFEU4J93254>.

<sup>3</sup> “Netherlands-Government Bodies: The Restitutions Committee,” *Lootedart.com*, accessed June 12, 2015, <http://www.lootedart.com/MFEU4J93254>.

<sup>4</sup> Restitutions Committee, “Recommendations: Step-by-Step: Other Collections,” accessed June 12, 2015, [http://www.restitutiecommissie.nl/en/step\\_by\\_step\\_other\\_collections.html](http://www.restitutiecommissie.nl/en/step_by_step_other_collections.html).

committee better suited a more “policy-related approach” to the issue of restitution than “a strictly judicial one”. Within the Netherlands, the Restitutions Committee is today the only avenue through which heirs of Nazi-looted art can seek restitution of stolen art.

- The decision to establish the Restitutions Committee was in keeping with the Washington Principles on Nazi Confiscated Art (1998), and the resolution of the Parliamentary Assembly of the Council of Europe on Looted Jewish Cultural Property (1999).<sup>5</sup>
- The case concerning the ownership of the painting *Madonna and Child with Wild Roses* fell within the scope of the Committee as the artwork was owned by the Utrecht City Council and displayed in the state-run Centraal Museum. More importantly, the parties declared in writing that they would submit to the recommendation of the Committee.<sup>6</sup>

### III. Legal Issues

#### Ownership

- The ownership of a work of art is the most important question in Nazi-looted art disputes. In the case under consideration, the Gross-Eisenstadt heirs claimed that “there was involuntary loss of possession as a result of circumstances associated with the Nazi regime”.<sup>7</sup> Moreover, the Gross-Eisenstadt heirs asserted that all paintings in the catalogue of the 1933 sale at Frederik Muller & Cie came from the Semmel collection, even if the catalogue of that sale did not list Semmel as the owner of every item that was auctioned. The Gross-Eisenstadt heirs argued that the name of the other seller was fictional and that Richard Semmel used this trick because he had taken the paintings from Germany without an export license.
- After extensive research into auction catalogues, the archives of Semmel’s lawyer and the Amsterdam City archives,<sup>8</sup> the Restitutions Committee considered the 1933 auction in Amsterdam to be invalid because Richard Semmel did not intend to sell his collection. The Committee highlighted that the sale was the result of “circumstances directly associated with the Nazi regime”, namely the “increasing [financial] pressure applied by the Nazi regime” against Semmel. However, the Committee rejected the claim that all paintings in the catalogue of the 1933 sale had belonged to the Semmel collection.
- Furthermore, the Committee decided to reject the restitution claim of the Gross-Eisenstadt heirs and hence decided that the painting *Madonna and Child with Wild Roses* should remain at the Centraal Museum. The Restitutions Committee found that the painting should not be given to the claimants for the following reasons.
- First, no efforts were undertaken either by Semmel or the people entitled to his inheritance who were alive at the same time as him to reclaim possession of the art or to obtain compensation for the loss of its possession.

<sup>5</sup> Restitutions Committee, “The Restitutions Committee’s History in Brief,” accessed July 2, 2015, [http://www.restitutiecommissie.nl/en/the\\_restitutions\\_committees\\_history\\_in\\_brief.html](http://www.restitutiecommissie.nl/en/the_restitutions_committees_history_in_brief.html).

<sup>6</sup> Restitutions Committee, “Binding opinion”, cit. note 1.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

- Second, the Committee considered that the interest put forward by the Gross-Eisenstadt heirs for the painting, which they characterized as “getting family back”, “[did] not carry sufficient weight to brush aside the Museum’s property rights to the work”. In this respect, the Committee, citing the Washington Principles’ requirement of “justice and fairness”, affirmed that the fact that the ownership of the work was important to Semmel had no bearing on the interest of the Gross-Eisenstadt heirs. The Committee affirmed that the Gross-Eisenstadt heirs “are not relatives of Richard Semmel, they never knew him, and they have no recollections of the painting”. It also separated the interests of the Gross-Eisenstadt heirs and the special friendship between Richard Semmel and his first heir Grete Gross-Eisenstadt, which was “not embodied in Semmel’s art collection”.
- Third, the Museum convincingly demonstrated that retention of the painting was of great importance to the Museum’s collection and museum-going members of the public, notably because the painting was created by Jan van Scorel, one of the most important Dutch artists who contributed to the development of the so-called “Utrecht school”. Also, the painting *Madonna and Child with Wild Roses* was considered to be one of the Museum’s masterpieces.<sup>9</sup>

#### IV. Adopted Solution

##### Request Denied – Symbolic gesture

- The Restitutions Committee rejected the claim to the painting *Madonna and Child with Wild Roses* by the Gross-Eisenstadt heirs and affirmed that it should remain at the Centraal Museum.
- The Committee recommended that the Museum should acknowledge the history of the former owner and the fate of his art collection by means, for example, of “a caption alongside the painting, a publication or an exhibition”.<sup>10</sup>

#### V. Comment

- The decision of the Restitutions Committee runs counter to existing inheritance law,<sup>11</sup> especially since the Committee felt that the interests of the Gross-Eisenstadt heirs were of minor importance merely because they did not know Richard Semmel directly. This personal connection, however, has no bearing on the legal status of ownership and title to a work of art, which is what really was at issue when the Gross-Eisenstadt heirs made their claim by

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Catherine Hickey, “Heirs Outraged as Dutch Panel Rejects Nazi-Era Art Claim,” *Bloomberg*, May 8, 2013, accessed June 12, 2015, <http://www.bloomberg.com/news/articles/2013-05-08/heirs-outraged-as-dutch-panel-rejects-nazi-era-art-claim>.

right of succession.<sup>12</sup> The reasoning of the Restitutions Committee here is identical to their contemporaneous ruling involving another painting, *Christ and the Samaritan Woman*, also from the Semmel collection, which was claimed by the Gross-Eisenstadt heirs.<sup>13</sup> Their lawyer claimed that these decisions “give museums support for rejecting restitution claims [...] [and] demonstrate the evidential difficulties in restitution claims when proving provenance and interest”.<sup>14</sup>

- It is unusual that the Committee placed such a large emphasis on the fact that Semmel and the Gross-Eisenstadt heirs did not try to recover the paintings in the 1950s. The Gross-Eisenstadt heirs stated that Semmel had no information after the war regarding his painting and he was also very sick, which made his search attempt impossible.<sup>15</sup> The Committee’s importance in these cases is to act as a non-judicial body when usual justiciability rules like the statute of limitations would preclude a claim.<sup>16</sup> Here, however, rather than citing a statute of limitations requirement as an impediment to hearing the case at all, the Committee used the inaction on the part of Semmel and the Gross-Eisenstadt heirs as part of a balancing test to minimize their interest against the Museum.
- The Museum’s arguments that it has always included Semmel in the painting’s provenance and that the painting is an important work in the Museum’s collection were considered to be sufficient reasons for rejecting the claim in the eyes of the Committee. Whether the painting legally belonged to the Museum in light of the involuntary nature of the 1933 auction was never considered, and overall any interests that the grandchildren of Semmel’s heir might have were dismissed as insignificant.

## VI. Sources

### a. Bibliography

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<sup>12</sup> Restitutions Committee, “Binding opinion”, cit. note 1.

<sup>13</sup> Madeleine Frith, Ece Velioglu Yildizci, Marc-André Renold, “Case Christ and the Samaritan Woman – Gross-Eisenstädt Heirs and Museum de Fundatie,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

<sup>14</sup> Hickeley, “Heirs Outraged as Dutch Panel Rejects Nazi-Era Art Claim.”

<sup>15</sup> Restitutions Committee, “Binding opinion”, cit. note 1.

<sup>16</sup> It is to be noted that the statute of limitations is not codified uniformly in the United States or Europe, and often it is up to the judge to determine the time limit for a cause of action. See Leah E. Eisen, “The Missing Piece: A Discussion of Theft, Statutes of limitations, and Title Disputes in the Art World,” *Northwestern Journal of Criminal Law and Criminology*, Vol. 81, Issue 4, 1991, 1073.

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