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World War II is history. For more than 75 years. But not for everyone.

As an international art lawyer, I regularly deal with the consequences of the horrific actions of the Nazis and their accomplices. I cannot make up for the worst suffering of my clients. However, I can help with the restitution of stolen property to which precious memories are attached.

Restitution of looted art is, however a difficult process. In many common law countries, including the Netherlands, the looting is long barred. Clients are thus legally empty-handed. Yet, there are still possibilities. In this article, I want to talk about three cases in which I was able to make a difference for my clients. These cases demonstrate that, at present, amends can still be made for at least some injustice from the past.

The fate of the Flersheims

The first two cases came from the grandchildren of Ernst and Gertrude Flersheim-von Maijer, a German Jewish couple that was murdered in the Bergen-Belsen concentration camp in 1944, where Anne Frank also died. Ernst was a merchant in Frankfurt and an art collector and fled from Nazi Germany to the Netherlands in 1937. He had often been here on holiday and had also bought many artworks. Not until a year later, Gertrude also managed to escape. In the end, so in vain.

In the late 1990s their only two grandchildren contacted us. They had discovered that there were works of art hanging in Dutch museums that had been owned by their grandparents. It involved artworks by the Dutch artist Jan Toorop, a good friend of their grandparents who, around 1900, was one of the most important Dutch artists. Only Van Gogh and Piet Mondrian are better known from that time.

The two most significant cases involved valuable paintings. In the case of *Thames at London*, the Rotterdam Boijmans van Beuningen Museum refused restitution because it would not be looted art. The painting had been sold by Flersheim himself in the Netherlands in 1937. In the case of *Prayer Before the Meal*, it was not possible to reach a proper arrangement, partly because the Zeeuws Museum invoked good faith purchase. In 1980, long after World War II, the painting had been bought from a famous Dutch art dealer. The clients were thus empty-handed, because legally the claims were barred.

Washington Principles and Restitutions Committee

Internationally, however, the realization was already dawning that the postwar restitutions could not simply be put to an end, also because, in common law countries, these kind of claims are not time-barred. In 1998, this resulted in the Washington Principles with respect to Nazi-Confiscated Art.

The Netherlands adopted these principles and the state promised not to plead the statute of limitations for looted art any longer. Claims are being handled by a special body, the Restitutions Committee, which was established in 2001. Initially, it only handled claims against the state, but as from 2006, it was also given the authority to give a binding opinion in claims against private parties, including museums and lower authorities. They did have to indicate in advance, however, that they would accept the decision and not invoke that statute of limitations on the claim.

Finally, justice

The binding opinion procedure provided our clients with the chance they had been waiting for. They were therefore the first to take advantage of it. The two museums where the paintings hung agreed, partly under pressure from negative publicity about their first refusal. How did it end?

Paul W.L. Russell

Paul W.L. Russell, LL.M., is senior partner at the Dutch law firm Russell Advocaten B.V. in Amsterdam. He assists entrepreneurs in national and international disputes on corporate governance, contracts, and corporate litigation. Paul also advises and litigates in art related cases for art dealers, museums and collectors. He is a seasoned litigator, combining tenacity and creativity with profound legal knowledge. Paul was a member of the Dutch Senate for many years.

Russell Advocaten B.V.
Antonio Vivaldistraat 6
1083 HP Amsterdam
Netherlands

Tel: +31 20 301 55 55

paul.russell@russell.nl

russell.law

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The main question in both cases was: Was the possession of the artworks involuntarily lost as a result of the Nazi regime? That was the case. *Prayer Before the Meal* had certainly been the property of the Flersheim family. It can even be seen in the wedding pictures of our clients' parents. It also was on the list of stolen property for which they had received Wiedergutmachung (reparations) from the German government. Moreover, a glance at the back of the painting revealed that it had been owned by a collaborator, who had been appointed as a Supreme Court judge during World War II. The museum might have made a good faith purchase, but research into the provenance had been particularly careless.

The situation in the case of *Thames at London* was more difficult. The painting had after all been sold in 1937, before the German occupation of the Netherlands in 1940. Nevertheless, the Restitutions Committee decided that this too was involuntary loss of possession. The painting had been smuggled to finance the departure of Flersheim's wife from Germany. And that is what the money was used for.

Interest of museums and public art collections

In 2007, the restitution policy was changed. Now, in binding opinions, the interests of museums and those of the public art stock were taken into account in deciding whether to return a looted artwork. I had objected to this right away because it was not in line with the Washington Principles. They indeed require to take the interests of the current owner into account. However, this is about the method of compensation, not about the question whether or not there should be restitution. And the interest of the public art stock can certainly not be found in the Principles. Unfortunately, this had no effect.

The policy change was a disaster for my clients in the third case. It concerned the heirs of the German Jewish industrialist and

art collector Richard Semmel. They claimed four paintings from four different museums. Only one of the four paintings was returned and that was because the museum did not attach importance to the artwork. However, the other three museums did and the decision was therefore in their favor. This included one painting from the private collection of Dirk Hannema, a museum director who had been a notorious Nazi collaborator.

In two of the cases, we went to the ordinary court because the Restitutions Committee had not done its job properly. One court proved us right, but that did not help the clients. In fact, the decision meant that the case had to be redone by the same Committee that had rejected the application. That, of course, did not stan a chance.

Back to the Washington Principles

Did this mean the end of the case? No.

In 2021, the restitution policy was changed again. Indeed, some of the Restitutions Committee's decisions had resulted in many negative reactions. Artworks had not been restituted, because the interest of the museum would outweigh restitution. In fact, museums were rewarded for having been able to acquire important artworks in a dubious manner. This, of course, was in direct contradiction to the Washington Principles. The weighing of the interests therefore rightly disappeared from the Restitutions Committee's policy.

This policy change allows all cases in which the claim had been denied based on the weighing of interests to be resubmitted. Often this even was not necessary. The heirs of Semmel were restituted the painting from the Hannema collection without the need for proceedings. And new claims a more likely to be successful.

Lessons for practice

These cases demonstrate how important it is to get a lawyer who is well informed about the latest legal developments and can respond to them. Without this knowledge, I could have never achieved that for my clients. And to art collectors this makes it clear once again that really thorough research into the provenance of the works must be done when purchasing. This does not only concern World War II, but also, for example, looted art from former colonies. And it also concerns terrorists who use the sale of antiquities as a means to get money.

Russell Advocaten B.V.

For more than 75 years, Russell Advocaten B.V. in Amsterdam has been an internationally oriented corporate and commercial law firm that assists mainly entrepreneurs, company owners, employers and works councils. Russell Advocaten is located in the Netherlands, the “gateway to Europe.” For foreign clients, we are easily accessible both digitally and physically.

Russell Advocaten provides legal assistance in all issues that shareholders or boards of directors face. We specialize in guiding international entrepreneurs. From establishment to expansion of the company, we take care of all aspects of your business: corporate, commercial, personnel, real estate, corporate immigration, and litigation. We pay special attention to the differences between Anglo-Saxon law and Dutch and European law. This way, you can avoid the issues you thought you had dealt with in a contract which turn out not to have been dealt with according to Dutch law.

In addition to our general practice, we have some special niches, such as art and law, charities, and embassies and consulates. The quality of our services has been approved by the European Legal 500 since 2005.