
Advice: Hamburger (II)

Number: RC 1.130

Date: 9-12-2013



Recommendation regarding Hamburger II

(Case number RC 1.130)

On 6 October 2013 the Minister of Education, Culture and Science (hereinafter referred to as the Minister) asked the Restitutions Committee (hereinafter referred to as the Committee) for advice about the application of 20 March 2013 from XX of YY, Switzerland (hereinafter referred to as applicant) for the restitution of a painting that is claimed to have formerly belonged to Gustaaf Hamburger. It concerns *Landscape with Beggars and Two Horsemen by a Ruin* by the artist J.J. van Goyen (former attributions E. van de Velde; S.J. van Ruysdael), which is currently a part of the Netherlands Art Property Collection (hereinafter referred to as the NK collection) in the custody of the State under inventory number NK 2782. The painting is presently on loan to the Limburgs Museum in Venlo.

The procedure

The Committee investigated the facts in the context of the request for advice from the Minister. The results of the investigation are recorded in a draft investigation report dated 11 November 2013. The Committee sent this draft report, together with a letter dated 15 November 2013, to the applicant for comment. She responded on 27 November 2013. The Committee also sent the draft report, together with a letter dated 15 November 2013, to

the Minister for additional information. The Minister informed the Committee on 21 November 2013 that she did not wish to bring any additional information to the Committee's attention. The investigation report was subsequently adopted on 9 December 2013. The Committee refers to the investigation report for the facts in this case. The following summary is sufficient here.

The applicant appointed the lawyer Nancy Parke-Taylor of Canada to represent her during the procedure before the Committee.

On 4 March 2013 in case RC 1.137 the Committee recommended the return to the applicant of three pottery dishes in the NK collection that had formerly belonged to Gustaaf Hamburger (NK 223, NK 444 and NK 575).

Considerations

1. The applicant requests the restitution of a painting that formerly belonged to her father Gustaaf Hamburger (1887-1977). She also declared that she is her father's sole heir. The committee has taken note of a certificate of inheritance, executed on 19 August 2013 before M.R. Meijer, notary of Amsterdam, in which it is declared that the applicant is the sole heir of Gustaaf Hamburger.
The Committee considers this to demonstrate the position of the applicant as the person entitled to her father's assets.
2. Gustaaf Hamburger (hereinafter also referred to as Hamburger) was born in Utrecht in 1887. In 1920, together with others, he founded the bank Hamburger & Co's Bankierskantoor N.V. in Amsterdam. Hamburger lived in Laren and collected art. In 1940 Hamburger escaped to the United States with his wife, leaving a large proportion of his possessions in the Netherlands. During the occupation, his home in Laren—which contained some of his art—was confiscated by the *Wehrmacht*. Other parts of his art collection, which Hamburger had given to others for safekeeping, were designated by the Nazi authorities during the occupation as enemy property, and were confiscated and sold. During its investigation the Committee found lists referring, among others, to the German looting organization *Dienststelle Mühlmann* and auctioneers Dorotheum of Vienna as purchasers of items belonging to Hamburger and others that were sold during the war.
3. Based on documentation from the files of the Netherlands Art Property Foundation (SNK), the Committee considers it highly probable that the painting currently being claimed (NK 2782) belonged to Gustaaf Hamburger's collection and was his property. The Committee deduces this from, among other things, a 1935 list of valuations of items in

Hamburger's collection that includes the description 'J. van Goyen / Horsemen and peasants by a ruin'. A further source on which the Committee bases its view is an SNK registration form that Gustaaf Hamburger filled in on 31 October 1945. The form related to a painting by or attributed to J. van Goyen, entitled *Horsemen and Peasants by a Ruin near Water* (panel, 36.1 x 33.8 cm), and on the form Hamburger declared that he was the owner of this work. Together with the registration form he submitted a photograph, which was found in a different SNK file during the Committee's investigation and which concerns the current NK 2782.

4. Hamburger declared on the SNK registration form that the painting came into the possession of Dorotheum in Vienna as a result of a forced sale. It is stated in other SNK documentation that Hamburger's painting was seized by *Dienststelle Mühlmann* and sold to Dorotheum in Vienna. The committee concludes that in all probability the current NK 2782 was confiscated when Hamburger and his wife fled the Netherlands, and that he stopped having it in his possession involuntarily as a result of circumstances directly related to the Nazi regime.
5. The painting currently being claimed was not recovered from Vienna and returned to the Netherlands until 1951, which was relatively late. Hamburger had several items from his collection returned to him, but not the current NK 2782. Apparently he was not aware that the painting had been returned. In all likelihood the reason for this was that the SNK kept the item that had been returned to the Netherlands, together with a painting by the artist E. van de Velde, which according to its information had been sold involuntarily by the De Boer gallery in Amsterdam. In 1949, however, De Boer stated that it could not find any records about it. The SNK assumed that Hamburger's missing painting by or attributed to Van Goyen had not been returned to the Netherlands. Yet it emerges from the documentation referred to in consideration 3, in particular the registration form filled in by Hamburger and its accompanying photograph, that the returned work had indeed originally been Hamburger's property. The Committee deems the application to be admissible.
6. Finally there needs to be an answer to the question of whether a payment obligation should be imposed in exchange for restitution of the claimed painting in connection with any consideration that was received. Under the present restitution policy, a repayment obligation is only addressed if and in so far as the former vendor or his or her heirs actually had free control of the proceeds. In this regard the Committee finds that it is not known whether any purchase price was paid for the painting. It can be deduced from post-war correspondence that the *Dienststelle Mühlmann* only paid a part of the overall value of the artworks obtained from Hamburger. The Committee believes that in these circumstances a payment obligation can be omitted in this case.

Conclusion

The Restitutions Committee advises the Minister of Education, Culture and Science to retribute NK 2782 to the applicant.

Adopted at the meeting of 9 December 2013 by W.J.M. Davids (chairman), J.T.M. Bank, R. Herrmann, P.J.N. van Os, E.J. van Straaten and H.M. Verrijn Stuart and signed by the chairman and the director.

(W.J.M. Davids, chairman) (E. Campfens, director)

Relevant press release:

[Nazi looted art returned to daughter of jewish owner \(II\)](#)