



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Legal summary

May 2024

The J. Paul Getty Trust and Others v. Italy - 35271/19

Judgment 2.5.2024 [Section I]

Article 1 of Protocol No. 1

Article 1 para. 1 of Protocol No. 1

Peaceful enjoyment of possessions

Confiscation order issued by Italian authorities aimed at recovering from the Getty Museum in the US a bronze statue from the classical Greek period: *no violation*

Facts – The case concerns a confiscation order issued by the Italian authorities in respect of the “Victorious Youth” (also referred to as the “Athlete of Fano” or the “Lysippus of Fano”), a bronze statue dating back to the classical Greek period which is in the possession of the J. Paul Getty Trust (“the Trust”), a non-profit legal entity registered in the United States (US). The statue is being housed at the Getty Villa Museum in the US. In 1964 the statue was discovered by fishermen in the Adriatic Sea, off the Italian coast. It was eventually sold to unknown parties and its whereabouts became unknown until it reappeared in Munich where, in 1977, it was bought by the Trust.

The Italian authorities made several attempts to recover the statue to no avail. In 2007 enforcement proceedings were initiated and resulted in the adoption of a confiscation order by the District Court. The applicant unsuccessfully appealed up to the Court of Cassation. In upholding the recovery order, the Court of Cassation held that the statue, which was protected by Italian cultural heritage and customs law, had been unlawfully exported from Italy and then negligently purchased by the Trust.

The Italian Ministry of Justice has sent an international letter of request to the US authorities for recognition and enforcement of the confiscation measure. The procedure is still pending in its first phase.

The applicants, namely the Trust and fourteen members of its board of trustees (“the trustees”), complain that the adoption of the confiscation order constituted a violation of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1. They further complain of the risk of being deprived of that right if the Italian authorities succeeded in obtaining recognition and enforcement of the confiscation in the US.

Law – Article 1 of Protocol No. 1:

(1) *Admissibility* –

(a) *Victim status of the trustees* – The Trust, as a separate legal entity, had bought and was in possession of the statue and had been the addressee of the contested domestic measure. Furthermore, all the decisions of the Italian courts concerned only the Trust. It was also clear from the evidence before the Court that the trustees did not have a

separate legal interest. The Court thus inferred that the confiscation order only affected the interests of the Trust and as such the trustees were not "victims" within the meaning of Article 34 of the Convention.

Conclusion: preliminary objection upheld; incompatible *ratione personae* in relation to the applicant trustees.

(b) *Victim status of the Trust* – The Court addressed the two issues raised by the Government in this respect.

(i) *Whether the applicant has been sufficiently affected by the contested measure* – The Court found that this had indeed been the case although the order had not yet been enforced. Firstly, as to the effects of the measure even before its enforcement, the Court noted that the Trust had demonstrated that the measure had impeded it from displaying the statue during an exhibition in Italy due to the risk of it being seized. Secondly, as regards the potential consequences of enforcement of the measure in the US, in conformity with international agreements in force between that country and Italy, the Italian authorities had lodged a request with the US authorities aimed at obtaining recognition and enforcement of the confiscation order. The Court was not persuaded by the Government's argument that enforcement was unlikely to happen as cooperation in the enforcement of similar measures was provided for by precise international obligations which were binding on the US authorities. Moreover, the Italian authorities were neither legally obliged nor willing to desist from enforcement of the measure; on the contrary they had taken steps to that effect. The Trust therefore could claim to be a victim of the alleged violation within the meaning of Article 34.

(ii) *Whether Italy may be held responsible under the Convention for the enforcement of the measure* – In the event of enforcement of the order, physical removal of the statue would be carried out by the US authorities. However, the principle that could be drawn from the Court's case-law under Article 1 of Protocol No. 1 for measures taken in the context of international judicial cooperation requests but also concerning extradition cases in which it had examined similar issues, was that an act initiated by a requesting country on the basis of its own domestic law and followed up by the requested country in response to its treaty obligations could be attributed to the requesting country even if the act had been executed by the requested country.

By setting in motion a request for enforcement of the confiscation order, Italy had been under an obligation to ensure that the order was compatible with the Convention. Therefore, the impugned measure could engage the responsibility of Italy for the purposes of Article 1 of the Convention.

Conclusion: preliminary objection in relation to the Trust dismissed (victim status).

(c) *The Government's objection concerning the existence of a proprietary interest protected by Article 1 of Protocol No. 1* –

Although it was not disputed that the Trust had purchased the statue, the Government contested the validity, under both Italian and US law, of that title, on account of a violation of Italian heritage law, given that cultural objects belonging to the State were inalienable and imprescriptible.

The Court noted that the existence of some proprietary interest of the Trust in respect of the statue had been established under Italian law: the Italian authorities had invited the Trust, as its current possessor, to participate in the domestic proceedings in which the confiscation order had been adopted and the Trust had been in possession of the statue without any interruption, except for those resulting from lawful loan agreements, since 1977. The length of time that had passed had had the effect of conferring on the Trust a

proprietary interest in peaceful enjoyment of the statue that had been sufficiently established and weighty to amount to a “possession” within the meaning of the rule expressed in the first sentence of Article 1 of Protocol No. 1.

Conclusion: preliminary objection dismissed (compatibility *ratione materiae*); Article 1 of Protocol No. 1 applicable.

(2) *Merits* –

(a) *Existence of an interference and the applicable rule of Article 1 of Protocol No. 1* – The issuance of the confiscation order had amounted to an interference with the applicant’s proprietary interests protected by Article 1 of Protocol No. 1. As to the nature of the interference, the complexity of the legal situation in the instant case prevented it from being classified in a precise category.

The Court thus decided to leave open the issue of the applicable rule under Article 1 of Protocol No. 1, and to examine the situation complained of under the general rule of that provision. Irrespective of the applicable rule, the present case concerned a very particular issue, namely the protection of cultural heritage and the recovery of an unlawfully exported cultural object through a measure that, although adopted within criminal proceedings, had civil effects. The specificity of the subject matter was further demonstrated by the fact that similar measures aimed at recovering unlawfully exported cultural objects had been progressively regulated under international law. Accordingly, the justification for the interference at issue had to be assessed by taking into account that, due to the unique and irreplaceable nature of cultural objects, States enjoyed a wide margin of appreciation where cultural heritage issues were concerned.

(b) *Whether the measure complied with the principle of lawfulness* – The confiscation order had a basis in domestic law, namely Article 174 § 3 of Legislative Decree no. 42/2004. That basis had been sufficiently clear, foreseeable and compatible with the rule of law, and had therefore been compliant with the principle of lawfulness within the meaning of Article 1 of Protocol No. 1. In that connection, and in so far as the Trust had complained of the absence of a time-limit for adopting the impugned measure, the Court observed that the absence of such a limit for actions aimed at recovering stolen or unlawfully exported cultural objects appeared to be a distinctive feature of several countries, including within the Council of Europe and that the authorities had to be given considerable latitude in that area. The lack of a time-limit was not a factor that, on its own, could automatically lead to the conclusion that the interference in question was unforeseeable or arbitrary and therefore incompatible with the principle of lawfulness within the meaning of Article 1 of Protocol No. 1.

(c) *Whether the measure was adopted in the public or general interest* –

(i) *The protection of cultural heritage as a legitimate interest in general* – The Court reiterated that the protection of a country’s cultural and artistic heritage was a legitimate aim for the purposes of the Convention. The legitimacy of that purpose was further demonstrated by the subsequent developments in the international and European law: several international instruments stressed the importance of protecting cultural goods from unlawful exportation, such as the [1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property](#), the [1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects](#), and, within the EU Framework, [Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State](#), and [Regulation 116/2009/EC on the export of cultural goods](#). As for the protection afforded by the Convention, the Court considered that the legitimacy under it of State measures aimed at protecting cultural heritage against unlawful exportation from the country of origin, or at ensuring its recovery and return therein if the unlawful act had nonetheless taken

place - in both cases with a view to facilitate in the most effective way wide public access to works of art - could not be called into question.

(ii) *Whether the measure was aimed at protecting cultural heritage in the specific circumstances of the present case* – The disputed issues had been discussed at length in the domestic proceedings, during which the Trust’s arguments had been duly considered. Noting the Court of Cassation’s reasoning, the Court considered that the domestic authorities had reasonably demonstrated that the statue formed part of Italy’s cultural heritage and had been owned by the State when the confiscation order had been issued. Those conclusions had neither been manifestly erroneous or arbitrary. Moreover, the domestic authorities had reasonably argued that in any event the measure had pursued the aim of reobtaining control over an object of cultural interest which had been taken to the mainland without the relevant reporting obligations being complied with, and which had been subsequently exported without the necessary licence and payment of the relevant customs duties, irrespective of whether it have been owned by the State. The Court also noted that the principles applied by the Court of Cassation in relation to the imposition of confiscation in case of unlawful exportation were confirmed by the developments in the international legal framework.

In view of the above and the State’s wide margin of discretion in this area, the Court found that impugned order had been adopted “in the public or general interest”, within the meaning of Article 1 of Protocol No. 1, with a view to protecting Italy’s cultural heritage.

(d) *Whether the measure was proportionate to the aim pursued* – The Court considered that the nature of the transaction – the purchase of a cultural object – had justified a high standard of diligence on the part of the Trust. In particular, the Court had held in *Belova v. Russia* that an acquirer of property should carefully investigate its origin in order to avoid possible confiscation claims

In the present case, the domestic courts after examining the available evidence and considering the Trusts’ arguments, had concluded that, by purchasing the statue in the absence of any proof of its legitimate provenance, despite being aware of the existence of at least some doubts in that respect, and with full knowledge of the Italian authorities’ claims over it, the Trust had disregarded the requirements of the law, at the very least, negligently, if not in bad faith. The domestic courts’ assessment had not been arbitrary or manifestly unreasonable.

In the circumstances of the case, due to the nature of the transaction, the Trust’s representatives had had a clear duty to take all the steps that could reasonably be expected of them to investigate the statue’s legitimate provenance before purchasing it. However, they had not done so. Moreover, since the Trust had been aware of the absence, under the relevant domestic law, of a time-limit for adopting the confiscation measure aimed at recovering unlawfully exported cultural objects, it could not be said to have developed a legitimate expectation that it would retain the statue, given that several State authorities had been working continuously with the aim of recovering it. Nor could any legitimate expectation be said to have arisen on the part of the Trust as to the possibility of obtaining compensation.

In conclusion, the Trust had not acted with the requisite diligence when purchasing the Statue.

As to the conduct of the domestic authorities, it could not be said that it had raised doubts as to their intention to recover the statue as part of Italy’s cultural heritage and on account of the non-payment of customs export duties. Although they had taken several steps aimed at recovering the statue, they had not always diligently followed the relevant procedure and thus some negligence had also been attributable to them.

However, unlike the *Beyeler v. Italy* [GC], case, in which the relevant cultural object had been legitimately owned by a private individual, the domestic authorities' negligence in the present case had not resulted in any unjust enrichment on their part, as they had reasonably demonstrated that the statue was part of Italy's cultural heritage. Moreover, in the present case the occasional mistakes committed by the domestic authorities had not occurred in a situation in which no fault or negligence could be attributed to an applicant acting in good faith but had rather been committed as part of a response to the applicant's conduct, which had been considered by the domestic judicial authorities to be at least negligent, if not amounting to bad faith.

Furthermore, the fact that the Italian authorities had not succeeded in their attempts to recover the statue could not be attributed to them. Indeed, they had operated in a legal vacuum, as there had been no binding international legal instruments in force at the time when the statue had been exported and purchased by the Trust which would have allowed them to recover it or, at the very least, to obtain the full cooperation of the foreign domestic authorities. By contrast, the Court stressed that nowadays, in a similar scenario, the domestic authorities would be under a duty to strictly comply with the time-limits and procedures laid down in the 1995 UNIDROIT Convention and with the domestic provisions which implemented Directive 2014/60/EU, in cases in which they were applicable.

Overall, and noting the State's wide margin of discretion as to what was "in accordance with the general interest", particularly where cultural heritage issues were concerned, the strong consensus in international and European law with regard to the need to protect cultural objects from unlawful exportation and to return them to their country of origin, the Trust's negligent conduct, as well as the very exceptional legal vacuum in which the domestic authorities had found themselves in the present case, the Court concluded that they had not overstepped their margin of appreciation.

Conclusion: no violation (unanimously).

(See also *Beyeler v. Italy* [GC], 33202/96, 5 January 2000, [Legal Summary](#); *Belova v. Russia*, [33955/08](#), 15 September 2020)

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