



European Court upholds order issued by Italian authorities aimed at the recovery of bronze statue dating back to the classical Greek period from Getty Museum in the US

In today's **Chamber judgment**¹ in the case of [The J. Paul Getty Trust and Others v. Italy](#) (application no. 35271/19) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned a confiscation order, issued by the Italian authorities, aimed at the recovery of a cultural heritage object, specifically the "Victorious Youth", a bronze statue dating from the classical Greek period (300-100 BC) attributed to Lysippus. The statue, which had been allegedly illegally purchased by the J. Paul Getty Trust, is currently housed at the Getty Villa Museum in Malibu (California, United States of America). The Italian authorities acted with the purpose of recovering an unlawfully exported piece of cultural heritage.

The Court reiterated that the protection of a country's cultural and artistic heritage was a legitimate aim for the purposes of the Convention. It furthermore noted that 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, 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 to the protection afforded by the Convention, the Court considered that that the legitimacy under of State measures aimed at protecting cultural heritage against unlawful exportation from the country of origin, or at ensuring its recovery and return therein in cases where the unlawful act had nonetheless taken place, in both cases with a view to facilitating in the most effective way wide public access to works of art, could not be called into question.

The Court further held that owing, in particular, to the Getty Trust's negligence or bad faith in purchasing the statue despite being aware of the claims of the Italian State and their efforts to recover it, the confiscation order had been proportionate to the aim of ensuring the return of an object that was part of Italy's cultural heritage.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants are the J. Paul Getty Trust, a non-profit trust registered in the United States, and 14 US nationals who all live in Los Angeles. The 14 US nationals are the board of trustees of the J. Paul Getty Trust.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In 1964 the “Victorious Youth” bronze statue (also known as the “Athlete of Fano” or the “Lysippus of Fano”) was discovered by fishermen in the Adriatic Sea, off the coast of Pedaso (Marche, Italy). It was sold in 1965 to an unknown party. Two investigations were opened on receiving and handling a stolen archaeological object belonging to the State (no final conviction at trial) and unlawful export, following the statue’s being put up for auction in Munich (Germany) by a Liechtenstein-based company (the investigation was discontinued).

In July 1977 the Getty Trust bought the statue in Munich through a contract concluded in the United Kingdom for 3.95 million United States dollars (USD). This followed legal advice, including the judgments and decisions of the Italian authorities in that connection.

The Statue entered the United States through the port of Boston on 15 August 1977 and arrived at the Getty Villa in Malibu (California, United States of America) in March 1978.

The Italian authorities made several attempts to recover the statue, via, among other institutions and methods, Interpol, several domestic criminal investigations, a letter of request to the Government of the United Kingdom (through which the statue was transiting), and a letter of request to the US authorities, to no avail.

Attempts to recover the statue were then taken up by the Italian Ministry for Cultural and Environmental Heritage, which made diplomatic entreaties to the US Government, with reference to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, to which both the US and Italy were signatories, which failed, despite the agreed return of other archaeological treasures. The Getty Museum refused to return the piece on grounds that the alleged offences had become time-barred and that the Getty Trust had acted in good faith when purchasing the Statue.

Enforcement proceedings were initiated and in 2010 the Pesaro District Court adopted an order (confiscation), aimed at the recovery of the statue, “wherever located”, dismissing an objection by the Getty Trust. In particular it stated that as the statue had been found by an Italian-flagged vessel in international waters, Italy had acquired ownership of it. An appeal by the applicants was dismissed. In 2018 the confiscation order was upheld.

The Getty Trust lodged two appeals on points of law. In upholding the recovery order, the Court of Cassation held on 2 January 2019 that confiscation was not a penalty, as it was primarily for recovery, and that the Getty Trust had purchased the statute without adequately ascertaining its provenance, despite Mr Getty Sr’s stated qualms. The Court of Cassation held that the bronze was Italian for several reasons including the fishing boat’s ensign, but added that there had been “a continuum between Greek civilisation, which had expanded onto Italian territory, and the subsequent Roman cultural experience; a continuum confirmed by ... the statue of the ‘Victorious Youth’”.

The Italian Justice Ministry has sent a letter of request to the US authorities mentioning international instruments including the United Nations Convention against Transnational Organised Crime. That letter is being processed currently.

The statue is currently housed at the Getty Villa Museum in Malibu.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants alleged that the confiscation order was unlawful, as it had not been legally foreseeable; that the statue was not part of Italy’s cultural heritage and so the aim of the confiscation order was illegitimate; and that the confiscation order placed an excessive burden on them.

The application was lodged with the European Court of Human Rights on 28 June 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Alena **Poláčková** (Slovakia),
Krzysztof **Wojtyczek** (Poland),
Lətif **Hüseynov** (Azerbaijan),
Ivana **Jelić** (Montenegro),
Gilberto **Felici** (San Marino),
Raffaele **Sabato** (Italy),

and also Ilse **Freiwirth**, *Section Registrar*.

Decision of the Court

The Court was satisfied that there had been a clear legal basis (Article 174 § 3 of Legislative Decree no. 42/2004) for the confiscation order regarding the statue, which the applicants should have foreseen might have been issued and which had been compatible with the rule of law. It noted, *inter alia*, that the lack of a time-limit for actions to recover lost or stolen cultural objects was not unique to Italy and was reflected in the laws of several other European States, and that furthermore the authorities had to be given latitude in this area. This lack of a time-limit alone was insufficient to find a violation.

The Court reiterated that the protection of a country's cultural and artistic heritage was a legitimate aim for the purposes of the Convention. It further noted that 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 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 in case that 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.

Noting the Court of Cassation's reasoning, the Court considered that the Italian authorities had reasonably demonstrated that the statue had been part of Italy's cultural heritage and had also legally belonged to the State when the Italian courts had issued the confiscation order. The Court considered that the Court of Cassation's decision had been neither manifestly erroneous nor arbitrary. The Court was therefore satisfied that the order had been given "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.

The Court considered that the nature of the transaction – the purchase of a cultural object – justified a high standard of diligence in the present case. In this regard, the Court stressed that an acquirer of property had to carefully investigate its origin in order to avoid possible confiscation claims. With specific regard to the purchase of cultural objects, and although not applicable to the facts of the case, the Court took note of the high standard of diligence imposed under Article 4 of the 1995 UNIDROIT Convention and Article 10(2) of Directive 2014/60/EU.

In the specific circumstances of the case, the Court noted that the domestic authorities had concluded that the Getty Trust, by purchasing the Statue in the absence of any proof of its legitimate provenance and with full knowledge of the Italian authorities' claims over it, had disregarded the

requirements of the law, at the very least negligently, or perhaps in bad faith. The Court was satisfied that the domestic courts' assessment had not been arbitrary or manifestly unreasonable.

Moreover, as the Getty Trust had been aware that there had been no time-limit for adopting a confiscation measure aimed at recovering unlawfully exported cultural objects, it could have had no legitimate expectation that it would retain the statue given that several Italian State bodies had been working continuously to recover it, or that compensation would be paid. The Court therefore concluded that the Trust had not acted with the requisite diligence when purchasing the Statue.

The Court also stated that the Italian authorities in the present case had operated in a legal vacuum, as none of the international instruments which could have helped them to recover an unlawfully exported cultural object had been in force at the relevant time (see, for example, the procedures laid down in the 1995 UNIDROIT Convention and Directive 2014/60/EU, where applicable).

Overall, and noting the State's wide discretion ("margin of appreciation") in determining what was in the public interest, the strong consensus in international and European law with regard to the need to protect cultural objects from unlawful export and to return them to their country of origin, and the Getty Trust's negligent conduct, the Court concluded that the confiscation order had been proportionate.

There had been no violation of Article 1 of Protocol No. 1.

Separate opinions

Judge Wojtyczek expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.