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The Greek Bronze's Journey Home to Italy: The European Court of Human Rights' Decision in *Getty v Italy*

Abstract

In the spring of 2024, the European Court of Human Rights (ECHR) rendered a significant judgment concerning the restitution of cultural property in the case of Getty v Italy.[1] This case highlights the complex interplay between state sovereignty and international cultural heritage obligations. The decision represents a landmark in the ECHR's jurisprudence on cultural property since it affirms that states have discretion in protecting cultural heritage. At the same time, one must consider whether the Court has perhaps left the door for states' restitution claims too widely ajar.

This study aims to elucidate the significance of this decision in the context of international trends concerning legal disputes over cultural property. To achieve this, we will first outline the emergence of cultural heritage law within human rights instruments. Our analysis will then highlight critical issues addressed by the Court in Getty v. Italy, including the assessment of export regulations, the enforceability of national provisions aimed at protecting cultural heritage and the temporal scope of such regulations. Finally, we will underscore the broader significance of the decision.

Keywords: Getty v Italy, European Court of Human Rights, right to property, cultural property, cultural heritage, restitution

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[1] *The J Paul Getty Trust and Others v Italy*, no. 35271/19, ECHR 2024-V.

I Introduction

Italy's fifty-five-year effort to reclaim the ancient Greek bronze statue known as the *Victorious Youth* reflects a longstanding commitment to recovering cultural heritage artefacts.[2] Attributed to the Greek sculptor Lysippus, this remarkable relic dates back to the fourth century BC. Italian fishermen discovered it in the international waters between Italy and Yugoslavia in 1964. Soon afterwards, the bronze left Italy and passed through several hands before being acquired by the J. Paul Getty Trust in 1977, despite lingering questions over its legal status.[3] At that time, the criminal proceedings against the purchasers had concluded without establishing that they had been involved in any illegal export, as there was 'no direct and convincing evidence of the origin and location of the discovery of the Statue […]'.[4]

In 1989, Italy requested the return of the sculpture on ethical grounds, arguing that it had become Italian when it was captured in the fishermen's net and had been illegally exported. The Italian authorities made multiple attempts to recover it, and it became a symbol of the ongoing restitution disputes between museums and countries of origin. Ultimately, in 2019, the Court of Cassation of Italy issued a confiscation order.

Following decades of out-of-court negotiations and the court proceedings in Italy, the case was eventually submitted to the ECHR. The Getty Trust showed no willingness to negotiate with the Italian authorities, and the enforcement of the National Stolen Property Act concerning the statue was approaching an uncertain outcome.[5]

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[2] For the background to the negotiations, and the challenges to the enforcement of foreign decisions, see: Derek Fincham, 'Transnational Forfeiture of the Getty Bronze' [2014] Cardozo Arts and Entertainment Law Journal 471, DOI: https://doi.org/10.1163/9789004280540_017

[3] Given that Italian court rulings had concluded that Italian ownership could not be established, as the statue had been caught in the net of Italian fishermen in international waters rather than within Italian territorial waters, the Getty Trust did not perceive that there were any issues with the acquisition. Jeanine M. Cryan, 'The Battle of the Bronze: International Law and the Restitution of Cultural Property' (2019) 47 (1) Syracuse Journal of International Law and Commerce 173, 178–179.

[4] See (n 1) § 14. The claim was based on a 1939 law asserting that the Italian state possesses ownership of all cultural property found within its territory. Proceedings were brought against the purchasers for receiving and handling stolen goods in connection with the theft of a protected archaeological object belonging to the State. This charge presupposed that the object had been unlawfully taken from Italian territory.

[5] The Italian government could have requested that the US courts enforce the Italian cultural patrimony laws on American territory in accordance with the National Stolen Property Act. In order to establish the illegal export or trafficking of stolen goods, which carries a minimum sentence of ten years in prison, the Italian government would have needed to prove in the proceedings that the statue was considered stolen under US law and that ownership belonged to the Italian state. See Alessandro Chechi, Raphael Contel, Marc-André Renold, 'Case Victorious Youth – Italy v. J. Paul Getty Museum' Platform ArThemis, unige.ch/art-adr, Art-Law Centre, University of Geneva. One objection to enforcement under the National Stolen Property Act was that the contested statue had never been in in the actual possession of the Italian state, and no evidence confirmed its discovery within Italy's borders. Furthermore, there had been no convictions for theft or unlawful export. US courts are generally hesitant about applying foreign nations' export laws that grant exclusive ownership

The Trust contended that the confiscation order issued by the Italian courts infringed its right to the possession and peaceful enjoyment of its property, as guaranteed by Art. 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention'). Additionally, it claimed that the confiscation measure was unlawful according to this provision because of the lack of foreseeability regarding its legal basis. Furthermore, the Trust argued that the confiscation order did not serve a legitimate purpose, as the Victorious Youth was not part of Italy's cultural heritage.

The legal battle concluded on 2 May 2024, when the ECHR unanimously ruled that there had been no violation of Art. 1 of Protocol No. 1 to the Convention. This study aims to elucidate the significance of this decision in the context of international trends concerning legal disputes over cultural property. To achieve this, we will first outline the emergence of cultural heritage law within human rights instruments and then provide an analysis of the ECHR's ruling in *Getty v Italy*. Our analysis will highlight critical issues addressed by the Court, which have also been contentious points in prior case law related to the restitution of cultural property, including the assessment of export regulations, the enforceability of national provisions aimed at protecting cultural heritage and the temporal scope of such regulations. Finally, we will underscore the broader significance of the decision.

II The Right to Cultural Heritage as a Human Right

The field of the law on cultural goods is undeniably linked to human rights law. The right to cultural heritage encompasses the enjoyment of the intangible value of cultural heritage possessed by individuals, communities, nations and the public.[6] Since the first international human rights conventions in the post-war period, cultural heritage has been framed within the context of human rights. The Universal Declaration of Human Rights (1948) states that 'everyone has the right freely to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits'.[7] Moreover, the engagement of the United Nations in this area is crucial. The establishment of the International Covenant on Economic, Social and Cultural Rights in 1966 recognised, with binding effect, the right of everyone to participate in cultural life.[8] The 1948 Declaration was supplemented by the 1966 International Covenant on Civil and Political Rights, the International Covenant on

of archaeological troves to states. The enforcement of other states' export regulations is most assured when these provisions are also reflected in American import laws. Alessandra Lanciotti, 'Claiming Restitution of Underwater Cultural Heritage: The Getty Bronze Case' (2021) 50 (2) Gdanskie Studie Prawnice 68, 75–78.

[6] Ding Guangyu, 'Cultural Heritage Rights and Rights Related to Cultural Heritage: A Review of the Cultural Heritage Rights System' (2023) 9 (2) Santander Art and Culture Law Review 167, 187, DOI: https://doi.org/10.4467/2450050XSNR.23.027.18647

[7] Universal Declaration of Human Rights, UN Doc A/RES/217(III) (10 Dec 1948) Art. 27(1).

[8] International Covenant on Economic, Social and Cultural Rights, UN Doc A/RES/2200A(XXI) (16 Dec 1966) Art. 15(1)(a).

Economic, Social and Cultural Rights and a series of other multilateral treaties with legally binding force.[9] The UN Special Rapporteur in the Field of Cultural Rights, initially appointed as an Independent Expert in 2009 and later granted the status of Special Rapporteur, works to enhance the visibility of cultural rights within the human rights framework, with support from UNESCO. The UN General Assembly has also acknowledged the protection of cultural property as a human rights issue; a sentiment echoed in the resolutions of the Human Rights Council.[10] It is important to note that the terminology used in international documents is multifaceted, encompassing various specific rights, including the right to access, protect and enjoy cultural heritage.[11]

Parallel to the UN human rights treaty system, a series of regional human rights agreements has emerged, the most significant of which is the Convention. Although the right to culture is not explicitly stated in the Convention,[12] a substantial body of case law has developed in this area. These cases vary in nature, as they address the conflict between state measures aimed at protecting cultural goods and the property interests of owners.[13]

It is essential to emphasise the interdependent nature of cultural heritage law as a human right: its implementation typically occurs in conjunction with other rights. In this context, the ECHR has recognised several substantive rights, which can be categorised as rights with a cultural dimension or related to cultural heritage. However, state measures aimed at protecting cultural goods often infringe upon private parties' rights to peacefully enjoy their possessions and must therefore adhere to the provisions of Art. 1 of Protocol No. 1 to the Convention.[14] This article reads as follows:

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[9] Mark Hirschboeck, 'Conceptualizing the Relationship between International Human Rights Law and Private International Law' (2019) 60 (1) Harvard International Law Journal 181, 185.

[10] For details, see Evelien Campfens and others, 'Protecting Cultural Heritage from Armed Conflicts in Ukraine and Beyond' European Union, Policy Department for Structural and Cohesion Policies Directorate-General for Internal Policies, PE 733.120, March 2023, 27–29. Additionally, the UNESCO World Conference on Cultural Policies and Sustainable Development (MONDIACULT 2022) and Art. 15 of the Committee on Economic, Social and Cultural Rights, General Comment No. 21, can also be noted.

[11] The scope of this right is therefore closely shaped by the specific context of each case in which an individual seeks legal protection of their interests. Mateusz Bieczyński, 'The "Right to Cultural Heritage" in the European Union: A Tale of Two Courts' in Andrzej Jakubowski, Kristin Hausler, Francesca Fiorentini (eds), *Cultural Heritage in the European Union. A Critical Inquiry into Law and Policy* (Brill NV 2019, Leiden) 114, DOI: https://doi.org/10.1163/9789004365346

[12] Andrzej Jakubowski, 'Cultural Heritage and the Collective Dimension of Cultural Rights in the Jurisprudence of the European Court of Human Rights' in Andreas Joh. Wiesand and others (eds), *Culture and Human Rights: The Wroclaw Commentaries* (De Gruyter 2016, Berlin) 156, DOI: https://doi.org/10.1515/9783110432251

[13] Fabian Michl, 'The Protection of Cultural Goods and the Right to Property Under the ECHR' in Evelyne Lagrange, Stefan Oeter and Robert Uerpmann-Wittzack (eds), *Cultural Heritage and International Law. Objects, Means and Ends of International Protection* (Springer 2018) 110, DOI: https://doi.org/10.1007/978-3-319-78789-3

[14] Tamás Szabados, 'Right to Property and Cultural Heritage Protection in the Light of the Practice of the European Court of Human Rights' (2022) 3 (2) Central European Journal of Comparative Law 159, DOI: https://doi.org/10.47078/2022.2.159-181

> 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.'

In several rulings, the Court has elaborated on the specific requirements associated with the right to property. Art. 1 of Protocol No. 1 establishes two fundamental conditions that must be met if a person is to be deprived of property: the existence of a public interest and compliance with the substantive and procedural requirements of the law.[15] These requirements have three components. The first establishes the protection of property, as outlined in the first sentence of Art. 1 of Protocol 1. Any limitation imposed on property rights must be assessed considering this initial principle, which serves as the cornerstone of property protection. The second component addresses the deprivation of property. It is worth noting that the ECHR has long maintained that this provision is merely a particular instance of a general rule. Consequently, the Court did not delve into this aspect in the case under review. The third component pertains to the regulation of property use.[16] This requirement ultimately leads to a proportionality test, which the Court has applied with varying degrees of rigour, allowing for the margin of appreciation that a state may exercise in an individual case.[17]

Although the ECHR has asserted that Art. 1 of Protocol 1 covers the three aforementioned rules, it has also clarified that these rules should not be considered in isolation; rather, they collectively constitute a unified concept of property protection.[18]

III Key Elements of the Reasoning

In addressing the issue, the Court assessed whether the Italian regulation was in alignment with the general principles outlined in Art. 1 of Protocol No. 1 of the Convention, focusing on three criteria: lawfulness, alignment with the public interest and proportionality.

In *Getty v. Italy*, questions arose that are typical of those that are encountered in matters relating to cultural heritage within the ECHR's case law. These included the temporal scope of relevant international conventions and protective legislation, the determination of

[15] Michl (n 13) 109.
[16] See (n 1) § 277.
[17] Michl (n 13) 113.
[18] Michael Rikon, 'Property Rights as Defined and Protected by International Courts' (2017) 6 Brigham-Kanner Property Rights Conference Journal 329, 333–334.

whether a particular artefact constitutes part of a country's cultural heritage, and the degree of diligence required from the parties involved. Building on this perspective, the following section will examine the key cornerstones of the Court's reasoning.

1 Lawfulness: Export Provisions

The assessment of whether an intervention by a public authority in the peaceful enjoyment of possessions is lawful is primarily concerned with compliance with the requirements of Art. 1 of Protocol No. 1. To comply with the principle of lawfulness, states must not only respect and apply their enacted laws in a foreseeable and consistent manner but must also ensure the necessary legal and practical conditions for their implementation. The legal basis must, therefore, be sufficiently accessible, precisely applicable, and aligned with the rule of law while also ensuring adequate procedural safeguards against arbitrariness.[19]

When the Court evaluated lawfulness in this case, it examined the Italian decision to issue a confiscation order. This confiscation order was grounded in the following provisions of Italian law: the regulation prohibiting illegal exports, the rule mandating notification to the relevant authorities upon discovery, and the import regulations stemming from the circumstances surrounding the finding.[20]

The Getty Trust argued that the Italian regulation underlying the confiscation decision lacked clarity and foreseeability. The ECHR, in this regard, examined whether confiscation can be applied even if there has been no judicial finding of an underlying criminal offence – the offence of the unlawful export of cultural property – and whether its statute of limitations can be established. In this context, it emphasised that 'these types of confiscation, whether or not meted out by courts of criminal jurisdiction, [… are] restorative in nature'.[21] Since the aim of the measure in question is the recovery of the object in the public interest, confiscation can be applied even if the third party possessing the object has not participated in criminal proceedings.

In the Court's case law, a crucial aspect is often whether the party defending their right to the peaceful enjoyment of property can be considered its lawful possessor.[22] In this instance, however, the Court found it unnecessary to examine this question, focusing instead on national legislation prohibiting the export of items considered to be cultural heritage. In the context of this case, it was sufficient for the application of the measure that the fact of the unlawfully acquired possession had been objectively established.[23] Since the

[19] See (n 1) § 294.

[20] See (n 1) § 116.

[21] See (n 1) § 312.

[22] The concept of possessions in Art. 1 of Protocol No. 1 has an autonomous meaning. For an overview of the Court's case law, see: ECtHR Research Division, 'Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights – Protection of Property' (2022) 7–10.

[23] See (n 1) § 313.

aim of the confiscation order was to regain control over objects that were owned by the state, the Court considered that the measure was 'consistent with the essence of the provision and could therefore have been reasonably foreseen'.[24]

This very approach can be considered novel, as there are no cases in the Court's jurisprudence that challenge the legality of restrictions imposed on the export of cultural goods. However, as Jakubowski points out, such controls may represent a significant interference with an individual's right to use and enjoy their property.[25] On the other hand, this pertains to the primary issue discussed in the academic literature on the legal aspects of cultural property.[26] Restrictions imposed on the transfer of cultural materials, and particularly on their export abroad, represent a critical area in which national and international frameworks for the protection and preservation of cultural heritage are frequently in conflict.[27]

Regarding the applicant's complaint concerning the absence of a time limit for enforcing the measure, the Court referred to its previous ruling, stating that a domestic legal provision may fail to satisfy the requirement of foreseeability if it does not establish a time limit for the exercise of certain powers or actions by the authorities.[28] As for the statute of limitations, the Court noted that states have a wide margin of appreciation in cultural heritage matters and that the absence of a statute of limitations is a distinctive characteristic of many countries' regulations for cultural heritage protection. The lack of a time limit did not automatically imply that the interference was unforeseeable or arbitrary.[29]

2 Public Interest: The Protection of Cultural Heritage as a Legitimate Interest

Any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public interest, as the principle of fair balance – fundamental to Art. 1 of Protocol No. 1 – implicitly requires a broader community interest.

The ECHR, in its examination, considered the general principles of international law and the Convention's 'living' nature, which allows the Court to account for evolving national and international legal developments.[30]

The Court considers the protection of cultural and artistic heritage a legitimate aim under the Convention, acknowledging the national authorities' margin of appreciation in defining the community's general interest.[31] This protection ensures not only the

[24] See (n 1) § 316.
[25] Jakubowski (n 12) 167.
[26] Szabados (n 14) 324.
[27] Jakubowski (n 12) 164.
[28] See (n 1) § 321.
[29] See (n 1) § 324.
[30] See (n 1) § 338.
[31] See (n 1) § 340.

preservation of historical, cultural and artistic roots but also promotes public access to cultural works, underscoring the essential role of public authorities in safeguarding heritage against unlawful export and facilitating its recovery when necessary.[32]

This point is illustrated by the case of *Beyeler v Italy*, in which the European Court examined Art. 1 of Protocol No. 1 in relation to state-imposed restrictions on transferring movable cultural property.[33] In this case, the applicant, a private Swiss individual, had purchased a van Gogh painting in 1977 from an Italian collector. The Italian state held a right of pre-emption over the painting under national heritage legislation that was intended to protect cultural and artistic assets. The facts were that the owner had not fully complied with the notification obligations to the Italian authorities, and nor had the authorities exercised their rights in a reasonable timeframe. The central issue was whether Italy's restriction on the transfer was proportionate.[34] Despite concluding that Italy's interference, based on the right of pre-emption, was disproportionate to the applicant's right to peaceful enjoyment of possession, the Court recognised that national controls over transfers of cultural objects serve the legitimate purpose of preserving the state's cultural heritage, consistent with Art. 1 of Protocol No. 1.[35]

In *Beyeler*, the ECHR acknowledged that state regulation of the art market served the legitimate aim of preserving national cultural heritage. Although van Gogh's painting had been created in France, the Court recognised the legitimacy of Italy's efforts to facilitate public access to artworks lawfully located within its borders as part of the shared cultural heritage.[36]

When considering in *Getty v. Italy* whether the measure served the public interest in protecting cultural heritage, the Court noted that national authorities generally have a broad margin of discretion in assessing the general interest, especially in cultural heritage matters.[37] The Court defers to domestic authorities' judgments unless it finds such assessments to be manifestly unreasonable.[38] The Court found that the domestic authorities

[32] Ibid.

[33] *Case of Beyeler v Italy*, no. 33202/96, ECHR 2000-I.

[34] Michl (n 13) 113–114.

[35] Szabados (n 14) 168.

[36] See (n 33) § 113.

[37] As for the location of discovery of the statue, its relevance lay in whether the statue belonged to Italy. The Court held that the vague circumstances of the statue's discovery were not decisive. The Italian court clarified that the statue was considered part of Italy's cultural heritage and, as such, belonged to the state. The court emphasized that the statue had been discovered by a vessel flying the Italian flag and was later brought into Italy without the required reporting. Consequently, the legitimacy of the measures taken in response to these circumstances could not be called into question. Under Italian regulations, unlawful export measures can also apply to privately owned objects, which, despite their cultural significance, are exported without compliance with the relevant customs procedures. See (n 1) § 357.

[38] See (n 1) § 347.

had reasonably demonstrated that the aim of the measure was to protect cultural heritage, with no indication of manifest error or arbitrariness in its application.[39]

3 Proportionality: Temporal Evolution of Legal Expectations

In the ECHR's practice, the principle of proportionality requires public authorities to balance competing public and private interests in cases involving cultural property.[40] In *Getty v Italy*, the Court assessed the applicant's due diligence, whether the response of the domestic authorities was timely and consistent, and whether the lack of compensation imposed an excessive burden on the applicant.

The owner's behaviour was deemed an important issue in the Court's evaluation within the overall context. The Court ascertained whether the domestic authorities had investigated the available evidence regarding the applicant's negligence and whether the applicant had access to remedies to defend their position. The Court decided both questions in the affirmative, concluding that the Getty Trust representatives had compelling grounds to question the statue's legitimate provenance.[41]

The Court found that the Getty Trust representatives had not conducted a thorough and objective assessment of the statue's provenance. Moreover, they had not requested, and nor did the suppliers provide, evidence of the lawful export of the statue from Italy, despite their awareness of relevant domestic regulations requiring an export permit. Legal scholars question the fairness of applying today's due diligence standards to acquisitions made decades ago.[42]

The market for cultural objects is a unique one. There is no established rule or custom that defines the exact elements of provenance or sets a standard for how museums, traders, or buyers should conduct provenance research. Without concrete guidelines, opinions vary widely regarding addressing gaps in ownership records and the historical depth needed for clear title.[43] Since the provenance of many items remains uncertain,[44] there is a continual risk of restitution claims. Consequently, the standards of due diligence in this field are shaped by

[39] See (n 1) § 359.

[40] For more on this consideration, see Kristina Trykhlib, 'The Principle of Proportionality in the Jurisprudence of the European Court of Human Rights' (2020) 4 EU and Comparative Law Issues and Challenges Series 129, DOI: https://doi.org/10.25234/eclic/11899

[41] See (n 1) § 390.

[42] Evelien Campfens, 'The Restitution of Cultural Heritage', presentation at 'International Cultural Heritage Law' training provided by the British Institute of International and Comparative Law, 21 October 2024.

[43] For the same argument, see Carrie Betts, 'Enforcement of Foreign Cultural Patrimony Laws in U.S. Courts: Lessons for Museums from the Getty Trial and Cultural Partnership Agreements of 2006' (2007) 4 (1) South Carolina Journal of International Law and Business 73, 74–75.

[44] As Gerstenblith notes, it is estimated that approximately 80 to 90 per cent of the antiquities on the market lack sufficient provenance: Patty Gerstenblith, 'Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past' (2007–2008) 8 (1) Chicago Journal of International Law 169, 178.

specific circumstances, and despite the increasing adoption of soft law recommendations in the area,[45] court reasoning on these matters still appears unpredictable.

In terms of the second aspect of the proportionality assessment, the Court determined that the conduct of the Italian authorities could not raise any doubts within the Getty Trust regarding Italy's intention to recover the statue or the accusation of failing to pay customs export duties.[46] The Court noted that, unlike in the *Beyeler* case, there was no clear determination of the possessor's ownership status; there were occasional errors by the domestic authorities in responding to the applicant's actions. The Court noted that the Italian authorities were acting in the absence of a clear legal framework, as no international legal instruments were in force at the time to support their efforts in reclaiming unlawfully exported cultural property.[47]

As for the third aspect of the proportionality test, even assuming that the Getty Trust had acquired valid ownership, which was strongly disputed, the Court held that the applicant must have been aware that no compensation is granted for enforcement measures against owners deemed to have acted in bad faith or negligently. The applicant's careless purchase of the statue, without evidence of its lawful provenance and despite being aware of the Italian authorities' claims, demonstrated a disregard for legal requirements. Consequently, the Court believed that the applicant tacitly accepted the risk of confiscation without compensation, and thus, the Court considered the lack of compensation to be not disproportionate considering the public interest at stake.[48]

IV The Significance of the Decision

The approach to the origins of cultural property is today shifting, and the change is resonating through the entire international legal landscape. The role of museums is also evolving; restitution gestures covered in the press and soft law due diligence recommendations bear witness to this transformation. However, certain longstanding legal disputes over specific artefacts remain unresolved. This is the case with the Parthenon Marbles and the Victorious Youth statue. For many decades, a dialogue – alternately tense and constructive – unfolded

[45] International Council of Museums (ICOM), 'Standards on Accessioning of the International Council of Museums' 2019. CAMD, CAAMD, ICOM Australia, Museums Australia, 'Ethics and Provenance in Collections Acquisitions' 2014. Nancy Yeide, Konstantin Akinsha, Amy Walsh, 'American Alliance of Museums: Guide to Provenance Research' (American Alliance of Museums 2001, Washington D.C.).

[46] See (n 1) § 392.

[47] The passage of time frequently emerges as a contentious issue in disputes over cultural objects with uncertain provenance. Ownership claims regarding such objects are often deemed inadmissible in the regular courts, making human rights law principles increasingly significant. Evelien Campfens, 'Restitution of Looted Art: What About Access to Justice?' (2018) 4 (2) Santander Art and Culture Law Review 185, 211, DOI: https://doi.org/10.4467/2450050XSNR.18.024.10378

[48] See (n 1) § 401–404.

between the Getty Trust and Italy regarding the fate of unlawfully exported cultural assets.[49] As Fincham stated in 2019, '[i]n the press and in cultural property circles, the Bronze is considered nearly un-repatriatable given this convoluted history'.[50]

In recent decades, there has been a noticeable increase in states' activity regarding the ratification of international agreements aimed at protecting cultural property, as well as other forms of cooperation with other countries. The effectiveness of applicable domestic laws is constrained without the cooperation of other states and the broader international community.[51] This international collaboration has proceeded in parallel with advances in human rights law, inevitably shaping and redefining initiatives aimed at combatting the illicit trafficking of cultural goods.[52]

Discussions on the restitution of cultural property often frame the issue as a conflict between, in Merryman's terms, 'cultural nationalism' and 'cultural internationalism'.[53] These conflicting perspectives raise the question of whether cultural heritage objects should be repatriated to their countries of origin or remain globally dispersed, based on broader guiding principles.[54] This decision highlights the fact that states enjoy substantial discretion in defining measures to safeguard their cultural heritage. Examining the history of an object and the context of its discovery raises a fundamental question: can everything that has ever left a country without a license be rightfully reclaimed? The Bronze, found in international waters, is thought to have first entered Italian territory when it was accidentally caught in a fishing trawler's nets, complicating the traditional ethical and moral foundation typically underpinning restitution claims.[55]

Restitution disputes typically arise from past injustices, which complicate the legal assessment of ownership.[56] If the object was stolen from its original owner – whether

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[49] Cryan (n 3) 174.

[50] Fincham (n 2) 101.

[51] Ana Filipa Vrdoljak, 'Human Rights and Illicit Trade in Cultural Objects' in Silvia Borelli, Federico Lenzerini (eds), *Cultural Heritage, Cultural Rights, Cultural Diversity. New Developments in International Law* (Nijhoff 2012, Leiden) 107, DOI: https://doi.org/10.1163/9789004228382_006

[52] Vrdoljak (n 51) 108.

[53] John Henry Merryman, 'Two Ways of Thinking about Cultural Property' (1986) 80 (4) American Journal of International Law 831, DOI: https://doi.org/10.2307/2202065

[54] Pauno Soirila, 'Indeterminacy in the Cultural Property Restitution Debate' (2022) 28 (1) International Journal of Cultural Policy 1, DOI: https://doi.org/10.1080/10286632.2021.1908275

[55] Luis Li Munger, Amelia L. B. Sargent, 'The Getty Bronze and the Limits of Restitution' (2017) 20 (1) Chapman Law Review 25, 45–46.

[56] The role of morality in restitution proceedings has been widely examined, with arguments both supporting and opposing its use. Nonetheless, it remains evident that moral considerations influence case outcomes and are reflected in various soft law instruments. See: John H. Merryman, 'Thinking About the Elgin Marbles' (1985) 83 (8) Michigan Law Review, DOI: https://doi.org/10.2307/1288954; Lyndel V. Prott, 'Epilogue' in Brigitta Hauser-Schäublin, Lyndel V. Prott (eds), *Cultural Property and Contested Ownership. The trafficking of Artefacts and the Quest for Restitution* (Routledge 2016, Abingdon) 210–212, DOI: https://doi.org/10.4324/9781315642048; Debbie De Girolamo, 'The Conflation of Morality and "the Fair and Just Solution" in the Determination of Restitution Claims Involving Nazi-Looted Art: An Unsatisfactory Premise in Need of Change' (2019) 26

a private individual or a museum – and ended up with a bona fide purchaser through a chain of transactions, the dispute is essentially between 'two innocent parties'.[57] If the object was removed from a state's territory through illegal excavations or wartime looting or was taken in the course of colonial annexation, the moral grounds for the state of origin's ownership claim tend to be stronger.[58] Legally, the situation is somewhat simpler in such cases if the public-law rules prohibiting export were already in force in the state of origin, and the object's cultural and historical characteristics clearly connect it to that country.[59] In the current case, the statue's connection to Italy emerged when Italy declared it part of its cultural heritage under heritage protection regulations in force at the time of discovery. The mere fact that an Italian-flagged vessel retrieved it from the high seas, thereby subjecting it to Italy's heritage protection rules, was not deemed decisive by the court. Even if public law provisions formally establish such a link, the moral basis that usually underpins restitution claims is less clear-cut in this instance. This gives rise to a potential set of problems: if another claimant emerges at a later stage – for instance, the Greek government, which may have a stronger connection to the artefact – the court could face significant challenges in resolving the matter.[60]

Viewed within this framework, the decision can be aligned with a step towards cultural internationalism. Jakubowski described the ECHR system as a 'living', ever-evolving organism.[61] Although there may be no hierarchy among human rights norms, their articulation in various instruments often provides a pathway for resolving perceived conflicts.[62] The Court's prior decisions reflect a trend that recognises the public interest

(4) International Journal of Cultural Property, DOI: http://10.1017/S0940739119000316; Evelien Campfens, 'The Bangwa Queen: Artifact or Heritage?' (2019) 26 (1) International Journal of Cultural Property, DOI: http://10.1017/S0940739119000043

[57] Derek Fincham, 'How Adopting the Lex Originis Rule Can Impede the Flow of Illicit Cultural Property' (2008–2009) 32 (1) The Columbia Journal of Law & the Arts 32, 150.

[58] Stahn Carsten, *Confronting Colonial Objects: Histories, Legalities, and Access to Culture. Cultural Heritage Law and Policy* (Oxford Academic 2023, Oxford) 414–415, DOI: https://doi.org/10.1093/oso/9780192868121.001.0001

[59] It should be noted that, despite the clarity of ownership regulations and the likelihood of cultural affiliation, the state of origin often fails to substantiate its ownership claim before the court. See the case of the Sevso Treasure: Vanda Vadász, 'Lessons of the Sevso Case – Restitution Challenges of Illegally Exported Cultural Property' in Marcel Szabó, Petra Lea Láncos, Réka Varga (eds), *Hungarian Yearbook of International Law and European Law 2016* (Eleven International Publishing 2017, The Hague) 39–58, DOI: https://doi.org/10.5553/HYIEL/266627012016004001003

[60] A similar issue was encountered in Hungarian practice when the scope of claimants involved in the restitution of cultural objects held in public collections was expanded: claimants were only required to provide a likelihood of ownership, making the verification of numerous 'probable owners' an almost Herculean task. The regulation has since been amended. See: Vanda Vadász, Viktória Verebélyi, 'At the Borderline of Public and Private Law: The Restitution of Cultural Property Held in Public Collections in Hungary' (2024) 10 (2) Santander Art and Culture Law Review 186–193, DOI: https://doi.org/10.4467/2450050XSNR.24.017.20828

[61] Jakubowski (n 12) 158.

[62] Vrdoljak (n 51) 127.

in protecting cultural heritage as a legitimate aim,[63] even when it encroaches on individual property rights.[64] However, it is crucial to recognise that the primary justification for restrictions on the export of cultural objects, along with other limits on property disposal rights, is increasingly associated with upholding collective rights to access and enjoy cultural heritage rather than solely with the state-oriented interest of preserving its cultural wealth.[65]

[63] ECHR case law has traditionally granted states significant discretion in determining how to protect cultural goods. When the Court has found violations of Art. 1 of Protocol No. 1, the reason has not been an illegitimate aim but rather an unsuitable method employed in pursuing this aim. Michl (n 13) 126.

[64] Jakubowski (n 12) 160.

[65] Jakubowski (n 12) 164.