

stake "it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency".

In the end what seems to have convinced the Court is its suspicion that the Italian authorities were trying to make a good deal and acquire in 1988 an expensive painting "at well below its market value" and that in doing so they "derived an unjust enrichment from the uncertainty that existed during the period and to which they had largely contributed".

COMMENTS

It is not the purpose of this brief report to comment in detail on the decision. Suffice it to say that the Court, in accordance with its case law, is clearly and rightly setting fairly high standards on Governments when they exercise their public power in a way which prejudices the rights of individuals.

What the art law specialists will find interesting in this decision is that the Court leaves States free to intervene in the art market and exercise a right of pre-emp-

tion, provided such a right is clearly stated in the law, that the competent authorities make use of it in the general interest and act in good faith on the one hand and that fair compensation is paid to the individual on the other hand.

One could have hoped that the Court would take position on the definition of "national treasures" (trésors nationaux) – as it appears in European law, notably article 30 (previously 36) of the Treaty establishing the European Community – when it is applied to prevent the export of a work of art which clearly has no link with the culture of the State involved (in casu a painting by Van Gogh created in France with no cultural link with Italy). Apart from the fact that the European Court of Human Rights is not empowered to review the application of that Treaty, it nevertheless interestingly states, in the paragraph quoted above, that the criteria for works of art belonging to the cultural heritage of all nations should be "wide public access to them, in the general interest of universal culture".

This should interest all those who have been reflecting over the years on the relationship between the free circulation of art and the intervention of the State in this process.

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The present note is also published by the Institute of Art and Law in Art Antiquity and Law (2000), Vol.5, Issue 1.

NOUVELLES DU CENTRE

LE 14 JUN 2000

le Centre du droit de l'art organise un séminaire sur le thème: *Patrimoine artistique et successions à Genève.*

LE 20 OCTOBRE 2000

aura lieu la journée d'étude du Centre consacrée à *L'art spolié lors de la seconde guerre mondiale.* Le programme détaillé de cette journée sera communiqué ultérieurement.

PUBLICATIONS DU CENTRE

Les Etudes en droit de l'art (la série d'ouvrages éditée par le Centre) seront prochainement augmentées de deux publications: Andrea F.G. Rascher, *Kulturguterschutz und Globalisierung* (Vol. 12) et Lorenz Ehrler, *Das Folgenrecht/Le droit de suite* (Vol.13).

CENTRE

ART-LAW



BEYELER V. ITALY

A LANDMARK DECISION IN ART LAW BY THE EUROPEAN COURT OF HUMAN RIGHTS

N°4 Juin 2000

On 5th January 2000 the European Court of Human Rights rendered a long awaited decision in a case opposing the well-known Swiss art dealer and collector Ernst Beyeler and the Italian State

(the decision, which will be published in the official reports of the European Court of Human Rights, can presently be found both in French and English on the Court's website at: www.echr.coe.int/). Although the decision puts an end to seventeen years of litigation about the acquisition of the Van Gogh painting 'The Gardener', its financial consequences are yet to be finalised as the parties were given six months by the Court to come to an agreement on the indemnification of Mr Beyeler. If they fail

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CENTRE DU DROIT DE L'ART

NEWS

to do so in the given time, the Court will decide itself on the compensation to be paid to Mr Beyeler by the Italian State.

THE FACTS OF THE CASE

The Gardener (also known as Portrait of a Young Peasant) was painted in 1889 in Provence by Van Gogh and entered the collection of an Italian artist, Gustavo Sforzi, in 1910. In 1954 the Italian State notified its owner at the time, Mr Verusio, an Italian art collector living in Rome, that the painting was of historical and artistic interest according to the 1939 Italian law on the protection of objects of artistic or historic interest. Essentially, this meant that from the date of notification the painting could not be exported from Italy without a special licence.

On 28th July 1977 Mr Verusio sold the painting to Mr Pierangeli, a Rome antique dealer. Pierangeli was in fact purchasing the painting on behalf of Mr Beyeler who had hired him in order to avoid overpricing. The purchase price was 600,000,000 Italian Lira (approximately half a million US\$), excluding commission, and the sale was notified to the Italian Ministry of Cultural Heritage, no mention being made that Mr Beyeler was the actual purchaser. In November of that same year a request for export to London was made: this was, however, rejected by the Ministry.

Six years later, in December 1983, Pierangeli declared that he had purchased the painting on behalf of Beyeler and he informed the Ministry that the Peggy Guggenheim Foundation in Venice wished to acquire the painting. The Ministry refused at first to let the painting be transported to Venice for inspection and had the painting sent in 1986 for temporary custody to the Modern and Contemporary Art Gallery in Rome. In February 1988 the Italian State showed interest in acquiring the painting, but, having received no follow up on this matter, Mr Beyeler sold it to the Peggy Guggenheim Foundation for US\$ 8,500,000. Later that year the Ministry exercised its right of pre-emption under the relevant Italian law but on the basis of the price stipulated in the 1977 agreement.

the authorities in their dealings with Mr Beyeler had considered him as the actual possessor, at least de facto. The exercise of the right of pre-emption was therefore undoubtedly an interference with Mr Beyeler's right to the peaceful enjoyment of his possessions.

(b) Compliance with Article 1 of Protocol No. 1 of the Convention

Having said that, the Court then had to examine whether the interference was compatible with the principles of Article 1 of Protocol No. 1, i.e. mainly whether it struck a "fair

balance" between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights.

Of particular interest is the Court's discussion of the 'aim of the interference', which must be in the public interest. The Court held that:

The control by the State of the market in works of art is a legitimate aim for the purpose of protecting a country's cultural and artistic heritage.

National authorities enjoy a certain margin of appreciation in determining what is the general interest of the community. [...]

The issue in this case does not concern the return of a work of art to its country of origin. That consideration apart, the Court recognises that, in relation to works of art lawfully on its territory and belonging to the cultural heritage of all nations, it is legitimate for a State to take measures designed to

facilitate in the most effective way wide public access to them, in the general interest of universal culture.

Striking a balance between the demands of the general interest and the requirements of the protection of the individual's fundamental rights is not an easy task. It includes among others finding a reasonable relationship between the means employed and the aim sought to be realised, examining the various interests in issue and the conduct of the parties to the dispute. The latter was certainly of importance in the Court's decision.

According to the Court, the Italian Government's submission that Mr Beyeler "had not acted openly and honestly" carried some weight (in not disclosing to the vendor in 1977 that he was the actual purchaser and waiting six years before declaring his purchase to the Italian authorities, contrary to Italian law). On the other hand – and more importantly for the process of fair balance – the attitude of the Italian authorities had been particularly ambivalent and no convincing explanation could be given as to why the Ministry of Culture had waited five years before exercising its right of pre-emption. The Court noted the considerable latitude given to authorities under the Italian legislation and its lack of clarity which was used by them to the detriment of Mr Beyeler. To wait five years before taking punitive action was clearly exaggerated and the Court underlined in this respect that when public interest is at

