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LEGAL COMMENTARIES

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The *Getty Trust* Case: Human Rights, Property Issues, and Cultural Heritage Protection

Abstract: This article examines the 2024 judgment of the European Court of Human Rights (ECtHR) in *J. Paul Getty Trust and Others v. Italy*, concerning the ownership and cultural heritage status of the ancient bronze statue *Atleta di Fano* (*Victorious Youth*). It analyses how the ECtHR addresses questions of cultural property and its inclusion in a nation's cultural heritage. The judgment demonstrates that, when evaluating the cultural heritage value of a work of art for a particular country, the Court considers the issue of possible state ownership to be of little importance, and instead takes a range of other, even relatively unconventional factors into account, provided that the national authorities have done so as well. This approach reveals the ECtHR's willingness to grant States Parties to the European Convention on Human Rights a wide margin of appreciation in determining both the relevant facts and their legal interpretation. Moreover, the judgment in *J. Paul Getty Trust and Others v. Italy* shows a degree of deference even towards domestic findings that may appear less persuasive. Such reasoning ultimately benefits states that have long maintained robust legal frameworks for the appropriation

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of discovered cultural property, reinforcing their capacity to protect and retain objects of archaeological heritage.

Keywords: cultural heritage, European Court of Human Rights, acquisition of cultural property, Getty Trust

Introduction

The May 2024 judgment of the European Court of Human Rights (ECtHR) in *J. Paul Getty Trust and Others v. Italy* (hereafter "*Getty Trust*")[1] is the latest episode in the years-long legal battle between Italy and an American museum over the statue called *Atleta di Fano*, also known as *Victorious Youth*. Ultimately, the ruling turns out to be a complex one that combines issues of human rights law, international law, administrative law, penal law, and civil law.[2] At the same time, it has been assessed in a wide variety of ways, such as "ground-breaking, progressive and utterly surprising – but also rather problematic",[3] "a confirmation of the growing sensitivity towards the protection of cultural heritage",[4] or as offering "an interesting insight into the evolution" of "cultural heritage disputes".[5]

While it covers many topics worthy of discussion, the most interesting aspect from the perspective of research on art, culture, and law is its approach to the questions of ownership of works of art and their inclusion in national cultural heritage.[6] This text analyses how the ECtHR interpreted the protection of cultural heritage as a legitimate interest of the country in the *Getty Trust* case, how it approached the issue of state and private ownership of works of art when determining whether they belong to a country's cultural heritage and what other factors it considered. The main argument is that the Court engaged in superficial factual analysis, while ultimately deferring to the assessment made by the national courts.

1 ECtHR, *J. Paul Getty Trust and Others v. Italy*, Application no. 35271/19, Judgment of 2 May 2024.

2 R.P. Walsh, *The 1995 UNIDROIT Convention's Influence on the Development of Customary International Law for the Return of Cultural Property: The European Court of Human Rights 2024 Judgment in the Case of The J. Paul Getty Trust v. Italy*, p. 1, https://1995unidroitcap.org/wp-content/uploads/2024/08/FINAL_Extended-Note_European-Court-of-HR-CASE-OF-THE-J.-PAUL-GETTY-TRUST-AND-OTHERS-v.-ITALY.pdf [accessed: 15.02.2025].

3 A. Herman, *The "Getty Bronze" at the European Court of Human Rights*, 21 May 2024, https://ial.uk.com/getty-bronze/ [accessed: 15.02.2025].

4 E. Scudeler, *The Legality of Confiscation Orders of Stolen Cultural Property: The Fano Athlete Case before the European Court of Human Rights*, "Italian Journal of Public Law" 2025, Vol. 17(1), p. 385.

5 L. Solaro, *Case Review: Getty v. Italy (2024)*, 24 July 2024, https://itsartlaw.org/2024/07/24/case-review-getty-v-italy-2024/ [accessed: 15.07.2025].

6 P. Valentin, *The Victorious Youth: A Statue's Odyssey and the Battle for Cultural Heritage*, 26 June 2024, https://www.artlawyersassociation.com/post/the-victorious-youth-a-statue-s-odyssey-and-the-battle-for-cultural-heritage [accessed: 15.02.2025].

Brief Characteristics of the Case

The case involved a bronze statue of a young man found in 1964 by Italian fishermen in their nets while fishing in an undetermined location in the Adriatic Sea[7] between Italy and what was then Yugoslavia.[8] After finding it, the fishermen took it to the town of Fano (hence the frequent reference to it as *Atleta di Fano*), where it was sold and then passed through various hands in Italy, after which it disappeared.[9] In 1965, the people involved in the purchase and handling of the statue were prosecuted for trafficking in stolen goods in connection with the theft of a protected archaeological object belonging to the state. The case ended in acquittal in 1970 following a series of rulings by Italian courts;[10] these rulings were in the accused's favour because there was not enough evidence to determine whether the find had been discovered in Italian waters. According to the courts, this factor affected both Italy's title to the object under national law and the liability of the individuals for the alleged crime. At the same time, it was concluded that it was impossible to prove that the buyers of the statue were aware of its origin and nationality, since they had been informed by the seller that the *Atleta di Fano* had been found in Yugoslav waters. As observed by the ECtHR, the statue had reappeared on the premises of a German art dealer, Mr Herzer.[11] The Italian authorities took action in that country

[7] From the beginning of the case, the question of where the statue was found – an important consideration in assessing the applicable law – was highly controversial. The ECtHR noted that Italian courts hearing the criminal case related to the *Victorious Youth* had trouble determining the location of its discovery at sea (ECtHR, *J. Paul Getty Trust*..., para. 346). This was because various pieces of evidence pointed to three possibilities: Italian waters, then Yugoslav (and now Croatian) waters, or the high seas. Italian courts considered this issue between 1966 and 1970, as well as in the 2000s. The last Italian court to address the case concluded in 2019 that it was most likely found in international waters (see Corte di Cassazione Penale, Judgment no. 22 of 2 January 2019; A. Chechi, R. Contel, M.-A. Renold, *Case Victorious Youth – Italy v. J. Paul Getty Museum*, p. 8, https://plone.unige.ch/art-adr/cases-affaires/victorious-youth-2013-italy-v-j-paul-getty-museum [accessed: 15.07.2025]), but ultimately stated that establishing this was not necessary for the proceedings (ECtHR, *J. Paul Getty Trust*..., paras 11, 78, 87–89 and 100). That is why the ECtHR correctly observed that the national proceedings "did not lead to a definitive conclusion" in this regard (ibidem, para. 346). The controversies over the statue's location are discussed further in this article.

[8] See e.g. A. Lanciotti, *Claiming Restitution of Underwater Cultural Heritage: The Getty Bronze Case*, "Gdańskie Studia Prawnicze" 2021, Vol. 25(2), p. 68.

[9] Such a conclusion can be drawn from ECtHR, *J. Paul Getty Trust*..., paras 9 and 15. Cf. A. Lanciotti, op. cit., p. 73, who argues that it was "smuggled into Germany, then exported from Germany to England, perhaps passing through Brazil, then back to Germany until it ended up in the United States". A similar fate for the statue was also indicated by D. Fincham, *Transnational Forfeiture of the Getty Bronze*, "Cardozo Arts & Entertainment Law Journal" 2014, Vol. 32, pp. 471 and 478.

[10] See the judgments of the Tribunale di Perugia, no. 181, 2 of 18 May 1966; Corte d'Appello di Perugia, no. 15, 10 of 27 January 1967; Corte Suprema di Cassazione, no. 1291 of 22 May 1968; Corte d'Appello di Roma, no. 2089 of 18 November 1970.

[11] ECtHR, *J. Paul Getty Trust*..., paras 15 and 18. The dealer himself did not buy the statue, but held it on behalf of the owner, Artemis, a company registered and based in Liechtenstein – ibidem. See also L. Li, A.L.B. Sargent, *The Getty Bronze and the Limits of Restitution*, "Chapman Law Review" 2017, Vol. 20(1), p. 30; D. Fincham, op. cit., p. 478.

to recover it, but in vain. An investigation was also launched in Italy into the illegal export of the cultural object abroad, but it was dropped in 1976 because the perpetrators could not be found.[12]

Meanwhile, around 1972, the Getty Trust, an art institution founded by business tycoon J. Paul Getty, entered into negotiations with Mr Herzer to purchase the statue. The negotiations dragged on for several years. Some believe the only point of contention was the price.[13] Others, including the ECtHR, point out that Mr Getty was also reluctant to reach an agreement due to the statue's unclear legal status and sought to clarify it.[14] In 1977, after Mr Getty's death, the Trust decided to purchase the statue, relying on assurances from the seller's lawyers that there were no legal issues surrounding it, and brought it to the United States, where it has been on display since 1978.[15] The Italian authorities again took action, including through Interpol, to determine the circumstances of the purchase, including the legality of bringing it to the USA, but these were finally terminated without much success in 1984. The same was true of a second Italian investigation, begun in the late 1970s and closed in 1980.[16] In addition, Italy has been engaged in diplomatic efforts of varying intensity since 1982, including corresponding with the Getty Trust itself regarding the return of the statue.[17] A new investigation into its illegal export, the failure to report it when it was found, and the violation of border controls was launched in 2007, resulting in a 2010 order for the statue to be confiscated due to its illegal export and the Getty Trust's lack of due diligence in determining its legal status.[18] This was a novel approach because it did not address whether the statue belonged to Italy (which was controversial), but rather whether its export from the country was legal. The order was revoked due to irregularities regarding the constitutionality of part of its legal basis, but in 2018 an Italian court issued another one, this time upheld by the court of last instance in 2019.[19] Italian prosecutors then took steps to have it enforced in the USA under the 1982 Italian–American bilateral treaty on mutual legal assistance in criminal matters. The Getty Trust, meanwhile, challenged the legality of the order before the ECtHR on the grounds that it violated its right to peaceful enjoyment of its property, as guaranteed by Article 1 of Protocol

12 ECtHR, *J. Paul Getty Trust*..., paras 16-22. A. Lanciotti (op. cit., pp. 68-69) indicates that both trials (the 1965 and the 1973 one) ended with acquittals for lack of evidence against the accused.

13 L. Li, A.L.B. Sargent, op. cit., pp. 30-31.

14 ECtHR, *J. Paul Getty Trust*..., paras 24–33. See also D. Fincham, op. cit., pp. 471 and 478-480; J.M. Cryan, *The Battle of the Bronze: International Law and the Restitution of Cultural Property*, "Syracuse Journal of International Law & Commerce" 2019, Vol. 47(1), pp. 181-182.

15 ECtHR, *J. Paul Getty Trust*..., paras 34-38.

16 Ibidem, paras 39-61.

17 Ibidem, paras 60-65.

18 See Tribunale ordinario di Pesaro, Order no. 2042/07 of 10 February 2010.

19 ECtHR, *J. Paul Getty Trust*..., paras 67-103. See also Corte di Cassazione Penale, Judgment no. 22 of 2 January 2019.

No. 1[20] to the European Convention on Human Rights.[21] They also complained of the risk of being deprived of that right if the Italian authorities succeeded in obtaining recognition and enforcement of the confiscation order in the United States, where the statue is still kept and exhibited at the Getty Villa in Malibu, California.[22]

ECtHR's Judgment

The ECtHR dismissed the Getty Trust's application, finding that Article 1 of Protocol No. 1 had not been violated. This provision states that everyone has the right to peacefully enjoy their possessions and cannot be deprived of them except in the public interest. The enjoyment of this right is not unrestricted and shall not impair the right of states to enact and enforce laws they deem necessary to control the use of property in accordance with the general interest and to collect taxes, contributions, and fees. The reasoning of the judgment runs to dozens of pages, so for obvious reasons it is impossible to summarize it in full; thus, only the basic issues are discussed below, with the emphasis on those that are more important for the further course of analysis.

The Court began by stating that the case was unique because it involved the protection of cultural heritage and the recovery of an illegally exported object by means of a measure with civil effects, even though it was issued in the context of criminal proceedings.[23] According to the Court, in order for state interference in this type of case to be in accordance with Article 1 of Protocol No. 1, it must be lawful, in the public interest, and proportionate,[24] i.e. appropriate to the value that the protected good represents for society. These are standard criteria adopted by the ECtHR in assessing restrictions on various rights and freedoms.[25] The Court also emphasized – as it has done many times in other cases – that the European Convention on Human Rights is a "living instrument"[26] and must be interpreted

[20] Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS no. 009.

[21] Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS no. 005.

[22] ECtHR, *J. Paul Getty Trust*..., paras 104-105 and 1-2.

[23] Ibidem, para. 278.

[24] Ibidem, paras 280-281 and 322.

[25] As a rule, the ECtHR indicates that restrictions of Convention rights should be in accordance with the law, pursue a legitimate aim (in this case, the protection of cultural heritage), and be necessary in a democratic society, which usually implies that the measure must be proportionate to the expected objective. Cf. e.g. Council of Europe, *Articles 8–11*, https://www.coe.int/en/web/echr-toolkit/les-articles-8-a-11 [accessed: 15.02.2025].

[26] It means that the Convention must be interpreted according to present-day conditions. This concept has been present in Strasbourg's case law for many years. In the 1978 judgment in *Tyrer v. United Kingdom*, the Court held that the corporal punishment of juveniles amounted to degrading punishment within the meaning of Article 3 of the Convention; not much later, in the 1979 judgment in *Marckx v. Belgium*, the ECtHR

in the light of current conditions, taking into account changing norms of national and international law.[27]

In analysing the issue of legality, the Court stressed that Italy's intervention was not arbitrary and therefore not contrary to the rule of law. The fact that the confiscation order was issued many years after the events that gave rise to it did not fail to meet this condition, as it concerned items that were "unique and irreplaceable" and also related to cultural heritage, in respect of which states enjoy a wide margin of appreciation.[28] The ECtHR also noted that the absence of a statute of limitations in the Italian legislation was permissible, as it is now common among the Council of Europe states with regard to the recovery of stolen or illegally exported cultural objects.

As for the legitimate public interest, the Getty Trust tried to deny its existence by pointing out that the *Atleta di Fano* was not part of Italy's cultural heritage, e.g. by raising doubts as to where the object had been found or arguing that it was a "Greek statue" that had been created in Greece. The ECtHR acknowledged that national investigations had been inconclusive as to whether the statue had been discovered in Italian territorial waters or on the high seas, and whether it was state property. However, in its view this was of little importance given that the Italian Court of Cassation had recognized the *Atleta di Fano* as part of Italy's cultural heritage and that the statue had been found by an Italian-flagged ship, which had brought it to Italy without complying with the legal obligation to report the find. According to the ECtHR, regardless of the ownership issue, the statue had been exported without the proper licence required by law, despite being of cultural interest to Italy. The basis for the confiscation order was to recover an object that either belonged to the state as part of its cultural heritage or was privately owned, but illegally exported anyway.[29]

An analysis of the Italian confiscation order's compliance with the proportionality requirement also revealed no serious deficiencies. According to the ECtHR, the complainant had not acted with due diligence in purchasing the statue, despite the fact that the Italian rules clearly set out the standard in this respect, and may even have acted in bad faith. As to the actions of the national authorities, the Court found that they were generally commensurate with the complexity of the case, in-

found a breach of Article 8 with regard to a child born out of wedlock who was denied maternal affiliation with its biological mother. These decisions were based on the argument that the evolution of human rights standards in the domestic laws of the parties to the Convention, as well as the relevant international instruments, affected how the Court approached cases. See ECtHR, *Tyrer v. the United Kingdom*, Application no. 5856/72, Judgment of 25 April 1978; ECtHR, *Marckx v. Belgium*, Application no. 6833/74, Judgment of 13 June 1979. For more information, see e.g. G. Letsas, *The ECHR as a Living Instrument: Its Meaning and its Legitimacy*, in: A. Føllesdal, B. Peters, G. Ulfstein (eds.), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context*, Cambridge University Press, Cambridge 2013, pp. 106-141.

[27] ECtHR, *J. Paul Getty Trust*..., para. 338.

[28] Ibidem, paras 321-322; see also para. 340. The ECtHR has previously indicated this margin as a "certain margin of appreciation", e.g. in *Beyeler v. Italy*, Application no. 33202/96, Judgment of 5 January 2000. Cf. P. Valentin, op. cit.

[29] ECtHR, *J. Paul Getty Trust*..., para. 346.

cluding the factual and legal obstacles they faced in trying to recover the statue (although it recognized their occasional errors). Thus, in its view, they left no doubt as to their intention to recover the work in question as part of Italy's cultural heritage and in connection with the non-payment of export duties.[30]

Role of Intertemporal Issues

One of the points considered controversial in the literature was the ECtHR's extensive reference to cultural heritage protection instruments as evidence of the existence of an international and European consensus on the return of illegally exported cultural objects.[31] For example, the ECtHR sought to demonstrate that the obligation to report a discovery of underwater cultural heritage to the competent maritime authorities, set out in Article 50 of the Italian Navigation Code,[32] was compatible with the provisions of the UNESCO Convention on the Protection of the Underwater Cultural Heritage ("2001 UNESCO Convention").[33] It also referred to Article 1 of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ("1995 UNIDROIT Convention")[34] to show that a confiscation order could be applied not only to state property, but also to private property of cultural interest that had been exported without complying with the relevant customs formalities.[35]

It must be noted that in 1964-1965, when the disputed statue was exported from Italy, none of the international instruments on the protection of cultural heritage to which the Court referred were in force. These include the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("1970 UNESCO Convention"),[36] the 1995 UNIDROIT Convention, the 2001 UNESCO Convention, and the Council of Europe Conventions, as well as EU law standards on the subject.[37] Moreover, Italy and the United States (where the Getty Trust has its seat) are still bound by only one of them: the 1970 UNESCO Convention, which was ratified by Italy in 1978 and by the USA in 1983, with the latter issuing a declaration excluding its retroactive application.[38]

30 Ibidem, paras 391-392, 407-408.

31 Several experts point to a number of these references, including A. Herman, op. cit., and M.-S. de Clippele, *Who Owns Art over Time? The Judicial Saga of the Statue of Victorious Youth in Getty Trust v. Italy*, "Strasbourg Observers", 16 August 2024, https://strasbourgobservers.com/2024/08/16/who-owns-art-over-time-the-judicial-saga-of-the-statue-of-victorious-youth-in-getty-trust-v-italy/ [accessed: 15.02.2025].

32 Codice della Navigazione, Gazzetta Ufficiale no. 93, 18 April 1942.

33 2 November 2001, 2562 UNTS 3.

34 24 June 1995, 2421 UNTS 457.

35 ECtHR, *J. Paul Getty Trust*..., paras 355-359.

36 14 November 1970, 823 UNTS 231.

37 Mentioned in ECtHR, *J. Paul Getty Trust*..., paras 170-186.

38 Ibidem, paras 151-153.

Nevertheless, the ECtHR's references to the above-mentioned instruments should be considered acceptable and understandable, as they serve primarily to confirm the existence of a legitimate public interest as a basis for the Italian authorities' actions at the time the confiscation order was issued, i.e. in 2018, and not when the illegal export of the disputed statue took place. It stands to reason that the existence of such a legitimate interest should be assessed based on the moment when the contested measure (the order) was adopted, and not when the object in question was exported – which is all the more important when there is a significant span between these dates, as the *Victorious Youth* case has shown. The rationale for such an approach is the concept of the European Convention on Human Rights as a "living instrument", to which the Court referred, and which it commonly applies to Convention rights.[39] According to it, the ECtHR seeks to interpret the challenged state measures in the light of the circumstances at the time they were taken, rather than at the time the Convention entered into force. The reference to instruments that have been binding since 1978 on Italy and a number of other States Parties to the Convention helped prove that protecting cultural heritage could justify Italy's actions in the late 2000s. The evaluation of substantive laws in the light of present conditions and the current state of the relevant international norms allowed the ECtHR to not depart from the findings of fact reached by the domestic courts, as they were not arbitrary or manifestly unreasonable.[40]

Arguments Regarding the Cultural Heritage Status

As mentioned above, one of the main points of contention between the Getty Trust and Italy was whether the *Atleta di Fano* was part of Italy's cultural heritage. This issue was important because the disputed confiscation order aimed to recover a work of art deemed to have been unlawfully exported from Italy. Therefore, challenging the status of the sculpture as part of Italy's cultural heritage would undermine the legal grounds for the order as required by the ECtHR's case law, calling into question the existence of a legitimate public interest, and likely also the proportionality of the measure.

The Getty Trust identified and raised a few potential factors affecting the status of the statue. The first was its country of origin, which raised doubts among experts even before the case was decided. Some (including the applicant)[41] maintained that the statue had been created in Greece and lost in the Adriatic Sea, along with the ship that carried it from the Greek mainland to the Italian peninsula in

[39] See e.g. E. Bjorge, *The Convention as a Living Instrument: Rooted in the Past, Looking to the Future*, "Human Rights Law Journal" 2017, Vol. 36(7–12), passim. See also footnote 26 above.

[40] See ECtHR, *J. Paul Getty Trust*..., para. 356.

[41] This was also the Getty Trust's view – ibidem, para. 327; see also R. Chen, *Healing the Past: Recovery of Chinese Cultural Objects Lost During the Colonial Era*, "Santander Art and Culture Law Review" 2022, Vol. 8(2), p. 216.

Roman times.[42] Others, including the Italian government, pointed out that it could have been made in Italy by a Greek artist temporarily residing there[43] and lost during transport from Italy.[44] Secondly, the applicant pointed out that the sculptor was most likely Lysippus of Sicyon, of Greek and not Italian origin, and who did not belong to Italian culture. Indeed, art experts generally confirmed that the sculpture was made in the Greek style in antiquity[45] and it was possible that its sculptor could have been Lysippus, who stayed in Italy for part of his career.[46] Thus, depending on the emphasis placed on its particular aspects, this factor could have been interpreted by the Court in favour of either the Getty Trust or Italy.

Finally, the Getty Trust argued that Italy could not have acquired ownership of the discovered artwork under the country's found property laws,[47] that the Trust had bought the *Atleta di Fano* in good faith from its owner,[48] and, consequently, that the statue was the property of the Getty Trust. By challenging Italy's ownership, the applicant sought to cast doubt on whether the disputed object was state property and was of cultural interest to Italy. It should be noted that Italy's ability to acquire ownership would depend on where the sculpture was found and on the applicable legal norms, which were much less developed when the statue was discovered than they are now. Regarding the location where the *Atleta di Fano* was discovered, the Trust took the position that the find occurred in international waters,[49] whereas the Italian government insisted from the beginning that it had happened in Italian waters, or, alternatively, that Italy's title stemmed from the fact that the statue was found by a ship flying the Italian flag.[50] This difference in positions was due to the profound legal consequences of each view. If the statue had been found in Italian

42 See e.g. C. Deconinck, *Prized Greek Bronze Sculpture Can Be Retrieved by Italians from US Getty Museum, ECHR Rules*, "Brussels Signal", 3 May 2024, https://brusselssignal.eu/2024/05/prized-greek-bronze-sculpture-can-be-retrieved-by-italians-from-us-getty-museum-echr-rules/ [accessed: 15.02.2025].

43 See ECtHR, *J. Paul Getty Trust*..., para. 334. The Getty Trust contested that suggestion, arguing that there was no proof that the statue had been created on Italian territory – ibidem, para. 327.

44 P. Valentin, op. cit.

45 Ibidem.

46 Ibidem. Still, some believe that the statue was not made by Lysippus, but rather by an artist from the 2nd or 3rd century BC – see e.g. J.M. Cryan, op. cit., p. 180.

47 The government argued that it was possible – see ECtHR, *J. Paul Getty Trust*..., para. 245. According to M.-S. de Clippele (op. cit.), resolving the ownership issue was "the core of the entire case", but as will be shown below, this does not seem to be a correct assessment.

48 See ECtHR, *J. Paul Getty Trust*..., paras 251-254 and 258. The government, on the other hand, argued that the owner was illegitimate and that the purchaser was not acting in good faith – see ibidem, paras 245 and 367.

49 *European Court Upholds Italy's Right to Claim Ancient Greek Statue from Getty Museum*, "Wanted in Rome", 2 May 2024, https://www.wantedinrome.com/news/italy-getty-museum-victorious-youth-statue.html [accessed: 15.02.2025].

50 Cf. e.g. R. Sapienza, *L'"Atleta di Fano" torna in Italia?*, "Diritti Umani e Diritto Internazionale" 2024, Vol. 18(3), p. 735; P. Valentin, op. cit.; *European Court*..., op. cit.

territorial waters, there would have been no doubt that its status would have been determined by Italian law,[51] which would have favoured Italy.[52] The same would be true if the ECtHR accepted the argument that, since the *Atleta di Fano* was found by an Italian ship, its status should have been subject to Italy's regulations.[53] Conversely, if the Court determined that the statue was found in international waters and focused particularly on this aspect, the fishermen who discovered the *Atleta di Fano* could have become its owners and would have been able to legally transfer the ownership.

ECtHR's Focus on the Findings of the Domestic Courts

Interestingly, the Court did not conclusively resolve any of the issues mentioned in the previous section. In fact, it did not pay much attention to the origin or author of the artwork, apparently believing that determining either was not strictly necessary to decide if the *Atleta di Fano* was part of Italian cultural heritage or an object of Italian cultural interest. Instead, the ECtHR simply followed the reasoning of the Italian Court of Cassation, according to which there was "a continuum between Greek civilization, which expanded onto Italian territory, and the subsequent Ro-

[51] Still, the rules in such cases vary widely, partly influenced by solutions for finds in waters not under state jurisdiction. See e.g. L.J. Kahn, *Sunken Treasures: Conflicts between Historic Preservation Law and the Maritime Law of Finds*, "Tulane Environmental Law Journal" 1994, Vol. 7(2), p. 615; B.H. Oxman, *Marine Archaeology and the International Law of the Sea*, "Columbia-VLA Journal of Law and the Arts" 1988, Vol. 12, p. 538; D. Curfman, *Thar Be Treasure Here: Rights to Ancient Shipwrecks in International Waters. A New Policy Regime*, "Washington University Law Review" 2008, Vol. 86(1), p. 183 (citing as an example the US Abandoned Shipwreck Act, passed after 1964, which gives the USA title to all abandoned shipwrecks found in US territorial waters).

[52] The discovery of the statue in Italian waters would have allowed Italy to claim rights to it as the state exercising sovereignty over the area under the national legislation in force at the time, and thus the so-called "vesting laws" already recognized by the ECtHR as permitted under the European Convention on Human Rights. See e.g. ECtHR, *Rauno Koivusaari and Others v. Finland*, Application no. 20690/06, Decision of 23 February 2010, concerning the shipwreck of the *Vrouw Maria*, which sank in Finnish territorial waters. In this case, the finders of the wreck asked the ECtHR to declare that Finland had violated their right to salvage the wreck of the *Vrouw Maria* and to obtain a reward from the Finnish authorities. The Court dismissed the application, finding that Finland had the right to prohibit the salvage of the wreck and that the applicants did not meet the conditions for obtaining an award under Finnish maritime law. See also S. Dromgoole, *Underwater Cultural Heritage and International Law*, Cambridge University Press, Cambridge 2013, pp. 183-184.

[53] Article 9 of the 1947 Italian Constitution, still in force, states that one of the tasks of the state is "to safeguard [...] the historical and artistic heritage of the Nation". The Italian Navigation Code of 1942 (also in force) stipulates in Article 4 that Italian vessels on the high seas should be treated as part of Italian territory, and in Article 510 orders that any find at sea be reported to the nearest maritime authority. Law No. 1089 of 1939 on the Protection of Objects of Artistic or Historical Interest, in turn, stated that found objects of cultural value belonged to the state (Article 44), while at the same time "objects of artistic, historical, archaeological interest" owned by the state were "inalienable and imprescriptible when owned by the state" (Article 23). As a result, the law in 1964 might have given Italy a basis for claiming ownership of the *Atleta di Fano*. For respective passages, see ECtHR, *J. Paul Getty Trust*..., paras 106-109 and 116.

man cultural experience",[54] and concluded that the statue belonged to Italian cultural heritage. One might conclude that it thereby conflated the issues of the country of origin of the statue and its creator into a tenuous and rather unconvincing concept.[55] However, it actually mirrored the Italian courts' approach in this regard.

The ECtHR devoted much more time and effort to the issues surrounding the location and ownership of the *Atleta di Fano*. Ultimately, though, it explicitly stated that determining the exact place where the statue had been discovered was not necessary in order to hear the case.[56] The ECtHR pointed out that Italian courts relied on Article 4 of the Italian Navigation Code, which states that Italian vessels on the high seas should be treated as part of Italian territory. It did not find this solution to be manifestly arbitrary or unreasonable in the light of customary international law, the freedom of the high seas nor the exclusive jurisdiction of the flag state on the high seas,[57] thus leaning towards the alternative argument presented by the Italian government.

Finally, regarding the issue of ownership, the ECtHR downplayed the importance of determining whether the statue was publicly or privately owned in order to include it in Italy's cultural heritage.[58] This view was consistent with the scholarly findings on the international consensus prior to the introduction of the related international instruments.[59] Furthermore, it aligned with the ECtHR's established case law concerning interference with goods "declared to be of cultural interest or classified as historical heritage",[60] in which the Court dealt with this problem in a similar way, declaring that states have a wide margin of appreciation in such cases – because cultural objects are unique and irreplaceable, among other reasons – and may impose restrictions on privately owned works of art, provided that a "fair

54 See ECtHR, *J. Paul Getty Trust*..., paras 346 and 350 in connection with 100. According to this argument, the two cultures (Greek and Roman) had close ties and influenced each other, resulting in "cultural continuity"; see also R. Chen, op. cit., p. 216.

55 As somewhat exaggerated by P. Valentin (op. cit.), one can conclude from the justification that "any artifact destined for an Adriatic port on the Italian peninsula is, by definition, a piece of Italy's cultural heritage" and that "simply because Italy and Greece traded with each other, and the bronze was found 'off the coast of Italy,' that was enough to make the bronze a piece of Italy's cultural heritage".

56 ECtHR, *J. Paul Getty Trust*..., paras 346 and 357.

57 Ibidem, para. 351.

58 Ibidem, paras 346 and 357. However, it should be noted that later in the judgment the ECtHR was quite explicit in expressing its scepticism that the Getty Trust had obtained ownership of the statue: "Even assuming that the Trust obtained valid ownership, which is, however, highly disputed" (ibidem, para. 402) and it expressed support for the conclusion of the Italian domestic authorities that the statue "was owned by the state", stating that it was not arbitrary or manifestly unreasonable in light of the treaties discussed above in the section on intertemporal issues (ibidem, para. 356).

59 See K. von der Decken, *Article 4 of the 1970 UNESCO Convention: Cultural Property Forming Part of the Cultural Heritage of Each State*, in: A.F. Vrdoljak, A. Jakubowski, A. Chechi (eds.), *The 1970 UNESCO and 1995 UNIDROIT Conventions on Stolen or Illegally Transferred Cultural Property: A Commentary*, Oxford University Press, Oxford 2024, p. 98.

60 ECtHR, *Ruspoli Morenes v. Spain*, Application no. 28979/07, Judgment of 28 June 2011, para. 40.

balance" is maintained.[61] It is then less surprising that ultimately the ECtHR did not question the inclusion of the *Atleta di Fano* in the Italian cultural heritage and shared the Italian Court of Cassation's view that the confiscation order would apply even to a privately owned object of cultural interest to Italy if it had been illegally exported.[62] It must be stressed that the ECtHR's approach relied heavily on violations of Italian law rather than on factors indicating the object's cultural importance to Italy and its people. The Court focussed primarily on the fact that, after being recovered by an Italian vessel and brought into Italian territory, the statue had been exported without ensuring compliance with Italian law,[63] meaning that further acquisitions were concluded in bad faith or at least negligently.[64] One may even argue that from the Court's perspective, *Atleta di Fano* has acquired significance as an object of cultural interest in Italy mostly due to its discovery by an Italian ship and the failure to comply with the formalities requiring an export licence for it to be sold abroad and a relevant customs duty to be paid.[65] This approach is somewhat perplexing since these factors are not among the criteria typically used to determine whether an object is part of a nation's cultural heritage. For instance, it would be difficult to argue that there is a customary international law norm requiring the return of illicitly removed cultural heritage[66] in peacetime, and such a rule definitely was not in place in the 1960s, when the statue was found.

Surprisingly, the Court did not refer to the criterion of the artwork's cultural significance to the country in question. Paradoxically, most national laws still

[61] See ECtHR, *Beyeler*..., paras 111-112; ECtHR, *Ruspoli Morenes*..., paras 34-35 and 40; A. Chechi, *Extraterritorial Jurisdiction and Right to Take Part in Cultural Life at the ECtHR: A Critical Examination of Different Approaches to Recurring Issues*, "Ordine Internazionale e Diritti Umani" 2025, Vol. 2, p. 379 (who, however, rightly notes that these previous cases concerned the state's right of pre-emption in cases of the alienation of cultural property belonging to private owners, not confiscation orders); A. Herman, op. cit.; P. Valentin, op. cit.; M.-S. de Clippele, op. cit.; E. Scudeler, op. cit., pp. 384-385.

[62] ECtHR, *J. Paul Getty Trust*..., para. 357. Still, some scholars remain sceptical of this approach – e.g. R. Sapienza (op. cit., pp. 738-739) argues that the ECtHR's reasoning here is "less tight and, inexplicably for the dispassionate reader, too conditioned by the outcomes of the domestic jurisprudential affair", see also ibidem, pp. 740-741 and A. Herman, op. cit.

[63] According to D. Fincham (op. cit., p. 486), there were four violations of Italian law that served as grounds for forfeiture in the case: 1) the illegal export, 2) the failure to notify maritime authorities of the discovery, 3) the failure to notify the relevant authorities of the discovery of the piece of cultural heritage, and 4) the violation of importation rules when the statue was brought ashore in Fano.

[64] See ECtHR, *J. Paul Getty Trust*..., paras 390 and 402. This approach was also consistent with the Italian court's position that the Getty Trust, as the purchaser, was "willfully blind", as it did not undertake adequate efforts to determine the lawfulness of the origin of the artwork, relying only on the assurances given by the seller's lawyer – see A. Visconti, *La Corte EDU sulla confisca obbligatoria di beni culturali illecitamente esportati: la vicenda dell'"Atleta vittorioso"*, "Diritto Penale Contemporaneo" 2024, Vol. 2, p. 49; A. Lanciotti, op. cit., p. 70. Cf. J.M. Cryan, op. cit., p. 201; L. Li, A.L.B. Sargent, op. cit., p. 50, who even argue that the statue was purchased with due diligence.

[65] ECtHR, *J. Paul Getty Trust*..., para. 346. This is the interpretation of e.g. R. Sapienza, op. cit., pp. 740-741, who criticizes it.

[66] See e.g. J.M. Cryan, op. cit., p. 197.

in force today, which were adopted long before the 1970 UNESCO Convention, established this particular factor as the main one for determining cultural property.[67] However, the ECtHR would then have to prove the *Atleta di Fano*'s cultural significance for Italy, which would be difficult because it was unknown to Italians for centuries and only years later did it become important for the local community of Fano and the wider Italian public.[68] Furthermore, the Court would have needed to conduct its own investigation in this regard – despite its stated reluctance to engage in such matters, explained by the need to preserve its subsidiary role vis-à-vis the national courts[69] and to replace the domestic courts' assessments with its own only when it is unavoidable. In the case in question, the ECtHR found the Italian courts' findings to be reasonable in the light of the international law norms[70] discussed above.

Conclusions

According to the information provided by the Court, the judgment became final three months after it was issued, i.e. in August 2024.[71] Therefore, the Getty Trust was of the opinion that there were no good grounds for referring the application to the ECtHR's Grand Chamber under Article 43 of the Convention, which would have allowed the judgment to be modified, because there are no indications that such an application had been rejected. Of course, the consequences of the decision are an entirely different matter. It is not binding on the USA,[72] and its effects will depend on Italy's further legal actions there. Opinions on the prospects are mixed: some expect that any request from Italy would be heavily scrutinized and possibly rejected by the US authorities,[73] while others point to similar cases where such requests have been successful, arguing that it strengthens Italy's position for recovering the statue using legal means in the USA.[74]

In fact, the issue of cultural heritage protection played a secondary role in the *Getty Trust* case, and was primarily important for confirming the existence of a public interest that justified confiscating the artwork in the applicant's possession. Had the ECtHR not declared that the *Atleta di Fano* was part of Italian cultural

67 K. von der Decken, op. cit., p. 105.

68 See e.g. D. Fincham, op. cit., pp. 482-483.

69 ECtHR, *J. Paul Getty Trust*..., para. 344.

70 Ibidem, para. 346.

71 Ibidem, title page.

72 A. Schrader, *A Court Rules the Getty Museum's Prized Ancient Greek Statue Belongs to Italy*, "Artnet", 3 May 2024, https://news.artnet.com/art-world/court-determines-italy-owns-victorious-youth-getty-museum-2481038 [accessed: 15.02.2025].

73 A. Herman, op. cit.; J.M. Cryan, op. cit., p. 199.

74 See the case of a gold phiale dated from the 3rd to 4th century BC, which was ultimately returned to Italy with the help of US federal authorities in 2000, discussed in D. Fincham, op. cit., pp. 490-491.

heritage, the Italian government would have had to rely on Article 1(2) of Protocol No. 1 to the European Convention on Human Rights, which allows the state to "enforce such laws as it deems necessary to control the use of property". It would then perhaps be more difficult for Italy to prove to the Court that it had struck a fair balance between the rights of individual property owners and the rights of the community, i.e. the restitution of a cultural object.

In any case, the ECtHR's justification for declaring the statue part of Italian cultural heritage was quite peculiar. The Court partly agreed with the Italian Court of Cassation's rather tenuous argument of cultural continuity between Greek and Roman civilizations, and partly relied on unusual factors such as the nationality of the ship that discovered the statue and the domestic law regulating the export of a found work of art. This certainly confirms that the ECtHR accords a wide margin of appreciation to the States Parties to the Convention in cases involving cultural heritage.[75] This translates into a broad discretion in assessing the facts and granting the status of "cultural property" to a work of art by national courts – perhaps too broad, as it may be open to abuse by some states. It also certainly favours states that have long had strong appropriation laws for found cultural heritage.[76] The outcome of the case may encourage countries to declare a wider range of artworks located within their borders or on ships and planes registered there as part of their cultural heritage.[77] Even more importantly, it may convince states that are parties to the Convention to be more active in using domestic judicial proceedings combined with mutual legal assistance treaties to recover cultural objects after they have been illegally exported, even to third states that are not parties to the Convention. The widespread execution of domestic confiscation orders would enhance the extraterritorial reach of cultural heritage protection laws.[78]

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[75] A. Chechi, op. cit., p. 383.

[76] M.-S. de Clippele, op. cit.

[77] See the argument of L. Li, A.L.B. Sargent, op. cit., p. 43; see also the evaluation of possible adverse consequences – ibidem, p. 45; A. Chechi, R. Contel, M.-A. Renold, op. cit., p. 8.

[78] A. Chechi, op. cit., p. 385. For a positive assessment of possible consequences, see D. Fincham, op. cit., p. 472.

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