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CULTURAL HERITAGE, PROPERTY RIGHTS, AND CROSS-BORDER DISPUTES: THE INFLUENCE OF *J. PAUL GETTY TRUST AND OTHERS V. ITALY* ON NATIONAL LEGISLATION AND PRIVATE INTERNATIONAL LAW

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ABSTRACT

The European Court of Human Rights (ECtHR) case J. Paul Getty Trust and Others v. Italy can be viewed as a landmark decision in cultural heritage law influencing vast number of legal disciplines such as property law, international commercial law and private international law among others. In essence, this article examines the implication of the ECtHR decision that will have for national legislation, focusing on the balance of the right to peaceful enjoyment of possession under Article 1 of Protocol No.1 of the European Convention on Human Rights (ECHR) and the owner's rights against a state's sovereign interest in preserving cultural identity by weighing factors like the artifact's archaeological significance, the circumstances of its removal, and the acquirer's conduct. The article, is not just regarding the restitution of the famous sculpture "Victorious Youth" but it's about the legal battles that lasted for almost 50 years and the position of the ECtHR to safeguard the interest of the real owners despite the amount of time when the illicit export occurred.

In depicting the legal story behind this case, private international law becomes very important, since the lack of PIL provisions in this legal field, provide for serious problems of forum shopping and title laundering. This article also addresses the problems and challenges that the most important international agreements as the 1970 UNESCO Convention and the 1995 UNIDROIT Convention face.

Finally, the article discusses the consequences of the case J. Paul Getty Trust and Others v. Italy on all of these legal fields and how the countries can improve the legal surroundings and deter the illicit trade of cultural heritage.

Keywords: *Article 1 of Protocol No.1 of ECHR, Cultural Heritage Law, ECHR, Private International Law, 1970 UNESCO Convention, 1995 UNIDROIT Convention*

1. CULTURAL HERITAGE PROTECTION VS. PROPERTY RIGHTS

Few cases before the European Court of Human Rights (ECtHR) have captured the intersection of art, law, and history as dramatically as *J. Paul Getty Trust and Others v. Italy*[1]—a dispute centering on the Victorious Youth, a 2,300-year-old Greek bronze statue attributed to Lysippus. Beyond its artistic significance, the legal saga of this masterpiece, discovered by Italian fishermen in 1964 off the Adriatic coast, has reshaped cultural heritage law by clarifying states' rights to reclaim looted artifacts and defining due diligence obligations for collectors.

The Getty Case highlights the tension between private property rights (protected under Article 1 of Protocol no.1 to the ECHR) and the public interest in preserving cultural heritage. The ECtHR ruling in favor of Italy, underscores the principle that states have a legitimate interest in reclaiming cultural artefacts that are part of their national heritage, even if those are held by private entities abroad. However, to properly understand the consequences of this case in context of cultural heritage law, property law and cross border disputes the factual situation has to be given because the statue's history, from discovery to international litigation, highlights key legal issues regarding cultural heritage and property rights.

The legal history of the statue begins with its discovery in 1964 in the Adriatic Sea by Italian Fisherman in waters of the coast of Pedaso.[2] After its discovery, the statue was brought ashore to the port of Fano.[3] It was subsequently transported to Carrara, a suburb of Fano, and passed through several private hands before disappearing from Italy in 1965.[4] These actions have been the reason for initiation of the first set of criminal proceedings in the period 1966-1970 for theft of a protected archaeological object belonging to the State, pursuant to section 67 of Law no. 1089 of 1 June 1939 and under Article 624 of the Criminal Code.[5] Nevertheless, these persons were acquitted by the Perugia District Court based on the lack of proof where the statue was found: Italian waters, Yugoslavian waters or International waters.[6] The higher court proceedings lasted until 1970 when these person were finally acquitted based on the fact that there was no direct and convincing evidence of the origin and location of the discovery of the Statue in

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1 *J Paul Getty Trust and Others v Italy*, Application No. 35271/19 [ECtHR, 18 January 2024.

2 *Ibid.,* para. 6.

3 *Ibid.*, para. 7.

4 *Ibid.*, paras. 7-9.

5 *Ibid.*, para. 10.

6 *Ibid.*, para. 11.

Italian territorial waters and, accordingly, of the crimes with which the defendants had been charged.[7]

The bronze statue resurfaced in Munich, Germany, in the possession of a German art dealer.[8] What is important from perspective of cultural heritage law in regards to this decision is that the Italian authorities are persistent in the intention to recover the statue. In the period of 1973-74, on several occasions they sought legal assistance from the German authorities but the cooperation was limited and the investigation was closed in 1974 by the German authorities and in 1976 by the Italian authorities.[9]

Following this, J. Paul Getty shows interest to purchase the Statue.[10] During the negotiations, on couple of occasions the lawyers of the vendor which was a company based in Liechtenstein, assured Mr. Getty that:

"…under Italian law, Italy could not claim any rights to the Statue. He argued, in particular, that it could not be proved that the statue under negotiation was the same as that which had been the subject of the above-mentioned criminal proceedings. In any event, he further observed that the criminal proceedings had concluded that it could not be proved that the statue had been found in Italian territorial waters, that the Italian government had failed to claim ownership of the statue in those criminal proceedings and that it was therefore an ordinary object belonging to his clients in a private capacity."[11]

Also, the purchaser was subsequently in several occasions reassured by representatives of the vendor that the Italian government doesn't have rights of ownership of the Statue and that the purchase can continue.[12] In meantime J. Paul Getty Sr. has died[13], but the Trust continued with the purchase and in 1977 they have reached an agreement for 3.95m $.[14] From that period, the Statue is in possession of the Getty Trust and exhibited since at the Getty Museum in Malibu, California.[15]

For decades, the Italian authorities made attempts to recovery of the Statue. There several were diplomatic and legal efforts made by the Italian government in the

7 *Ibid.*, para. 14.
8 *Ibid.*, para. 15.
9 *Ibid.*, paras. 16-22.
10 *Ibid.,* paras. 23-25.
11 *Ibid.,* para. 26.
12 *Ibid.,* paras. 30. and 31.
13 *Ibid.,* para. 33.
14 *Ibid.,* para. 37.
15 *Ibid.,* para. 38.

1980s and 1990s that culminated with the renewed action in 2007.[16] On 12 April 2007 the Pesaro public prosecutor's office brought charges against the captains of the two fishing boats and other persons involved. They were charged with exporting the Bronze without the required license, failing to report the Statue to the competent authorities after its discovery and violating border controls in importing it to Italy.[17] The criminal proceedings and other procedural aspects have been lasting for more than a decade,[18] until the Pesaro District Court issued a confiscation order on the grounds that the statue had been unlawfully exported without requisite customs duties or an export license. The Italian Court of Cassation upheld this order in 2019.[19] What is interesting from point of view of cultural heritage law is the observation and the reasoning of the preliminary investigations judge that concluded:

"…irrespective of that issue, the Italian State had acquired ownership of the Bronze as it had been discovered by an Italian-flagged vessel and therefore within Italian territory, in accordance with Article 4 of the Italian Navigation Code (see paragraph 116 below). Moreover, although antiquities experts had put forward several hypotheses (that the Bronze was an original, a Roman copy, a travelling exhibit or part of an imperial collection), the Bronze was most probably the work of the Greek artist Lysippus and its connection with Italy had to be considered "certainly not marginal", as at the time the Statue had been created the artist had most probably visited Rome and Taranto. At the relevant time, Greece and Rome had enjoyed good relations and, thereafter, Roman civilisation developed as a continuation of Hellenic civilisation. This was sufficient, according to the GIP, to establish a significant connection between the cultural object and Italy."[20]

This position was upheld by the Court of Cassation and event went to claim that:

"…a continuum between Greek civilisation, which had expanded onto Italian territory, and the subsequent Roman cultural experience; a continuum confirmed by the presence off the coast of Pedaso, in what is now the Marche Region, of the Statue of the 'Victorious Youth'".[21]

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16 *Ibid.,* paras. 62. and 68.

17 *Ibid.,* para. 68.

18 *Ibid.,* paras. 69-85.

19 *Ibid.,* para. 94

20 *Ibid.,* para. 89.

21 The Court of Cassation held as follows: "there is no doubt that the Statue of the 'Victorious Youth' … is part of the State's artistic heritage. This conclusion is based … on its belonging to that cultural continuum that has, since its inception, linked Italic and Roman civilisation to Greek culture, of which the Roman culture can well be regarded as carrying the torch. As Mr [S.C.]'s defence expertly reminds [us] … substantial military incursions into Greece on the part of the Romans only began in 146 B.C.

" ... it may be reasonably inferred that, whether the Statue was carried by a ship that in turn had sailed from Italian territory – the presence of Lysippus of Sicyon in what used to be Taranto has been indeed documented – or whether it was transported by a ship that had set sail from the Ionian coast of the Greek peninsula, the final destination was one of the Adriatic ports of the Italian peninsula, in further support of the artefact's place within our country cultural orbit from as far back as that time."[22]

For these reasons, the J. Paul Getty Trust contested the confiscation, alleging a breach of property rights under Article 1 of Protocol No. 1 of the European Convention on Human Rights (ECHR). In details, they claimed that under Article 1 of Protocol No. 1 to the Convention of an allegedly unjustified interference with their right to the peaceful enjoyment of their possessions. They argued that the confiscation measure had been unlawful, within the meaning of this provision, on account of the lack of foreseeability of the legal basis; that it had not pursued any legitimate aim as, in their view, the Statue was not part of Italy's cultural heritage; and that it had placed an excessive burden on them.[23] In 2024, the ECtHR found that the confiscation order complied with international consensus on protecting cultural heritage and the obligations under the ECHR, thus upholding the position of Italy.

The *J. Paul Getty Trust and Others v. Italy* decision represents a focal point for the future development of cultural heritage law and private international law. The incentive that it gives, that even after 50 years still the rightful owner can have a claim for restitution opens the door that cultural property removed illegally from

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with the fall of Corinth and the defeat of the Achaean League (although the conquest of Macedonia occurred before then, which is not a coincidence when one considers that the sculptor Lysippus owes part of his fame to his bronze statue depicting, with astounding realism, the features of Alexander the Great, who favoured him as the master of the craft; see the Anthology of Planudes, epigram no. 119), so much so that only in the proto-imperial era Horace, in his Epistle to Augustus, mentioned, in the famous couplet, Graecia capta, ferum victorem cepit/et artes intulit agresti Latio ("Greece, the captive, made her savage victor captive, and brought the arts into rustic Latium", from Horace's Epistles, 1, 2, v. 156 et seq.), the Greek influence on Italian territory goes back much further; many of the most important Greek historical figures were born in what were then the Greek colonies on Italic territory (Gorgias was born in Leontinoi, Archimedes in Syracuse, to name but a few of the major figures), other lived there to the point of claiming a sense of belonging (notably, Herodotus, born in Halicarnassus in Asia Minor, was called 'Herodotus of Thurium', due to his lengthy stay in the Greek colony of Thurium, today's Apulia); the first literary and artistic expressions referring to Latin culture can easily be attributed to figures educated in a Greek environment (one for all, Livius Andronicus, who arrived in Rome – following Livius Salinator, whose family name he took – from his native Taranto, the city where Lysippus of Sicyon had stayed and worked.", *Ibid.,* para. 100.

22 *Ibid.,* para. 101.

23 *Ibid.,* para. 190.

its country of origin must be returned, thereby rejecting traditional defenses like good-faith acquisition or statutes of limitations that have historically impeded recovery efforts. With other words, the ECtHR ruling, provides impetus to the 1970 UNESCO Convention and the 1995 UNIDROIT Convention and shifts the burden to the purchaser to properly inspect not just the legal papers, but to provide for a more thorough due diligence when acquiring cultural property. This means systematic investigation of documented ownership history, expert consultations, and scrutiny of export permits, effectively shifting the burden of proof onto purchaser and creating a deterrent against the illicit market. For the national legal systems, this decision provides a normative framework by mandating more specific export controls through centralized registries of protected cultural assets, standardized certification procedures, and customs coordination. These measures have to be taken very cautiously, because this case goes to the core of the balance of an owner's rights against a state's sovereign interest in preserving cultural identity by weighing factors like the artifact's archaeological significance, the circumstances of its removal, and the acquirer's conduct. Furthermore, the decision operationalizes transnational cooperation by institutionalizing mechanisms for information-sharing between INTERPOL, UNESCO's Database of National Cultural Heritage Laws, and domestic enforcement agencies, thereby creating an interconnected system for tracing looted artifacts and streamlining restitution claims across jurisdictions, ultimately setting a harmonized approach that reduces forum-shopping and conflicting judgments in cross-border cultural property disputes.

In essence, Victorious Youth's legal odyssey—from Adriatic depths to courtroom battles—has crystallized a new era where cultural justice transcends borders, and the past's rightful guardianship prevails over possessory interests. It will have significant output towards illegal trafficking since it will destabilize the market for unprovenanced antiquities. In the same time, it gives a transparency push towards museums and action houses that now have to prioritize documented provenance over aesthetic or financial value. Lastly, it needs to be seen how this decision will affect the long-contested artifacts (e.g., Parthenon Marbles, Benin Bronzes) and should it create a global restitution momentum guided through legal and diplomatic channels.

2. PRIVATE INTERNATIONAL LAW AND CROSS-BORDER DISPUTES OF CULTURAL PROPERTY

Private International Law as a legal discipline is not intended to hold direct creative prerogatives- to designed and shape certain social aspects, rather it tends to harmonize or make it easier for the legal systems to cooperate and coordinate among themselves. Such particular aspects are the reason, why PIL comes after a

certain social or economic problem persist and different approaches of its solution are provided. It comes at a stage when the discoordination of the legal orders has produced additional legal problems and insecurities.

The development of cultural heritage law and private international law on international level shows disproportional growth. While regarding the cultural heritage, there are several international agreements that tackle the problems of cultural heritage law[24] (such as illicit trafficking) there is exponential growth in private international law sources both in international and regional context.[25] However, the intersection of these two legal aspects is very vague with very few specific private international law provisions regarding cultural property.[26]

Such parallel disproportionate development fuels a tension in the relation between these two legal disciplines and creates several problematic points. Firstly, one of the main concerns is that private international law provisions, which are often designed for general commercial transactions, tend to frustrate the resolution of restitution claims for misappropriated cultural property[27] and may not adequately address the unique cultural, historical ethical and often-noneconomic value of inherent cultural heritage.[28] Secondly, very problematic aspect is the application of the *lex situs* principle, that means that the place where the object is located determines the applicable law for the acquisition of the property by which the protective laws of the country of origin can be undermined (inalienability rules or export controls) that can hinder the restitution claims and fuel the title laundering.[29] Also in this context the differing statutes of limitations play important role in the

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[24] UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) 34 ILM 1322; UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) 823 UNTS 231; Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) 1037 UNTS 151.

[25] On the development of PIL in recent years in context of property see Pertegás Sender M., *International property law and territoriality,* in: Fogt M. (Ed.), Private International Law in an Era of Change Edwards Elgar Publishing, 2024, pp. 221-237.; Carruthers J.; Weller M.; Property, in: Beaumont P.; Holliday J., (eds.) A Guide to Global Private International Law, Hart Publishing, 2022, pp. 295-309.

[26] There are some provisions on special jurisdiction regarding stollen cultural object in the egulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1. and some conflict of law provisions in national legislation (Art. 67 of the PILA of N. Macedonia, Art. 69 of the PILA of Kosovo, Art.33 of the PILA of Montenegro etc.).

[27] Chechi, A., *When Private International Law Meets Cultural Heritage Law - Problems and Prospects*, Yearbook of Private International Law Vol. XIX - 2017/2018, p. 282.

[28] Roodt C., *Private International Law, Art and Cultural Heritage*, Edward Elgar Publishing, 2015.; Chechi A., *The Settlement of International Cultural Heritage Disputes*, Oxford University Press, 2014, p. 2.

[29] *Ibid.,* pp. 94-95.

shaping of the private international law landscapes regarding cultural property because the cultural object often tend to pass through several jurisdictions and this could help those involved in the illicit activities to benefit from passage of time and could lead to potential injustices.[30] The alternative for the *lex situs* principle is the *lex originis*, i.e the law of the country of origin. Although on first glimpse it gives some certainty, that the law of the country of origin should determine the applicable law regarding the cultural property, it also has some protentional drawbacks that fuels the discussion in context of the most appropriate law. Firstly, it is very hard to determine which country represents the country of origin, since some cultural properties were traded or changed jurisdictions since the antiquity (for example as it is the case regarding the sculpture "Victorious Youth" commissioned by Romans, produced by Greek Sculptor). Secondly, lex origins may have even weaker protection than the lex situs. Thirdly, it would be very detrimental for the protection of cultural objects, to take the stand that only the lex origins provides for effective protection.[31]

Such ambivalent position creates a perfect opportunity for forum shopping.[32] Claimants can choose jurisdictions with laws more favorable to their case, which poses a risk to the consistent and just resolution of cultural heritage disputes that can undermine the protective measures of country of origin and disregard the special nature of cultural heritage.[33] Moreover, the UNIDROIT Convention in Article 8 does not resolve the problem of forum shopping, because it provides for very broad jurisdictional provisions allowing the court or other competent authority in the Contracting State where the object is located or other courts that have jurisdiction under the provisions in force in the Contracting State to hear the case regarding stolen cultural objects. Additionally, this provision allows the parties to choose the appropriate court or to submit the case to arbitration.[34] Such broad jurisdictional provision, not only does not resolve the forum shopping, but it actually facilitates it. This is one of the reasons why arbitration becomes a dominant dispute resolution modality for these highly complex cases.[35]

Another problematic aspect concerns the application of the foreign law. Although it is widely accepted that law is applicable still there are certain ambiguities regarding the type of provisions that can be applied in foreign country. Such aspect is

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30 Chechi, *op. cit.*, note 27, p. 274.

31 Chechi A., The Settlement of International Cultural Heritage Disputes (OUP 2014), pp.97-98.

32 Roodt, *op. cit.*,note, 28, p. 80.

33 *Ibid*., p. 345

34 Article 8(2) of the UNIDROIT Convention, *op. cit*., note 24.

35 Roodt, *op. cit.*,note, 28, p. 160.

very important regarding cultural property law were for example foreign public law (such as patrimony law) or export restrictions are not applied or recognized in a foreign country.[36] This principle of inapplicability of foreign public law directly impacts the ability of countries of origin to reclaim cultural objects that were illegally removed.[37] Moreover, this principle inapplicability of foreign law is made even more complex by the huge importance that public policy plays in these cases.[38] Nevertheless, there is growing trend in jurisprudence where domestic courts are taking into account the foreign patrimony law regarding cultural object, bust still these countries are more reluctant regarding export restrictions.[39]

Now the Case *J. Paul Getty Trust and Other v. Italy* contains several points that could influence private international law in context of cultural heritage. These influences could be seen how national courts interpret and apply their private international law provisions in similar cases involving cultural objects that are subject to ownership disputes and cross-border recovery efforts.

Firstly, regarding the good faith acquisition of property, this case puts additional aspect on the purchaser which must take into consideration the specific circumstances surrounding the purchase, providing for thorough due diligence. The traditional private international law principles, such as protection of bona fide purchasers, may need to be reconsidered in cases involving cultural property to prevent the trafficking of looted artifacts. However, a certain problem arises, i.e upon which standards the due diligence should be considered. The logical aspect is that this should be done according to the lex originis (Italian law in the Case), however, the problem of categorization of lex origins plays significant role. This leads to the second problem, i.e the determination of lex originis. This case accepts the Italian Government standpoint on the determination of lex originis and that is providing for continuation from one historical epoch to another. This understanding could potentially lead to very broad understanding of historical issues and create very liberal notion of what represents lex originis. Thirdly, regarding the recognition and enforcement of foreign decisions and application of foreign law, this case opens the possibility of application of traditional decisions of public law, such as export restrictions to be applied in foreign country. The clear division of public and private law decisions in these cases is very rigid and goes against the protection that is attributed with other multilateral agreements. With the division of these instruments, the benefit goes only to the smugglers and traffickers of these

[36] *Ibid.,* p. 40.

[37] Chechi, *When Private International…, op. cit.,* note 27, p. 280.

[38] *Ibid.,* p. 290; Roodt C., *op. cit.*, note 28, p. 42.

[39] *Ibid.*

objects and is against the protection of the cultural heritage because they use the forum shopping in obtaining a more favorable place for title laundering.

3. INTERNATIONAL COOPERATION AND LEGAL FRAMEWORKS

The two main instruments that protect the cultural property regarding the restitution of illegally stolen objects are the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995). Both of these instruments have significant impact on the protection of stolen cultural object; however, they are limited concerning the restitution. In such circumstances, the *J. Paul Getty Trust and Other v. Italy* case gives impetus to the return of the cultural property and upholds both instruments.

The UNESCO Convention is designed to be legal framework based upon which the parties to the convention recognize each other's rights to retrieve stolen or illegally exported cultural property.[40] Such legal framework is built upon the intergovernmental collaboration regarding the prevention of illicit trafficking of cultural property trough administrative procedures and State action.[41] In the same time, the UNESCO Convention highlights the public interest that there should be a legal interexchange of cultural property for scientific, cultural and educational reasons, the value of provenance information and the necessity of both national and international cooperation for the effective protection of cultural property.[42] With such position, the UNESCO Convention has external and internal effect in each of its parties. Externally, it raises international recognition that States should assist one another to prevent the unlawful removal of cultural objects[43] and internally, it acts as a catalyst for the adoption of numerous subsequent national laws aimed at regulating illicit trade of cultural property.[44] However, this internal aspect of the UNESCO Convention serves as its drawback, since this convention is not self-executing and thereof requires state parties to pass the necessary implementing regulation.[45] Such approach diminishes the uniform application of this convention

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40 Blake J., *International Cultural Heritage Law,* Cultural Heritage Law and Policy, (OUP 2015), p. 38.

41 Prott L., *Commentary on the UNIDROITE Convention*, on Stolen and Illegally Exported Cultural Objects 1995, Institute of Art and Law, 1997, p. 15.

42 Blake*, op. cit.,* note 40, p. 38.

43 *Government of the Islamic Republic of Iran v. The Barakat Galleries Ltd.* [2007] EWCA Civ. 1374, paras. 154-155.

44 Roodt, *op. cit.,* note 28, p. 160.

45 Chechi, *The Settlement of International…*, *op. cit.,* note 31, p. 101.

because it leads to variations in the application across different countries.[46] This leads to the second drawback of the UNESCO Conventions and that is the lack of uniform definition and application of its terms such as "cultural property"[47], "cultural objects"[48] or "illicit export, import or transfer of ownership".[49] The third drawback of the Convention is that has nor retroactive application, meaning it does not address the historic cases of removal of cultural treasures that occurred before its entry into force for the involved states.[50] The fourth drawback for this convention is that it admits no private actions for restitution which means that individuals and businesses are entitled to claim restitution only where the law of the state party in question permits such action and makes no reference to limitation periods, and does not deal with the question of the impact of its rules on domestic laws concerning the treatment of bona fide purchasers.[51]

The UNIDROIT Convention is intended to fill the gaps and remedy the weaknesses of the UNESCO Convention[52] such as lack of private action, restricted restitution procedures and absence of rules on limitation periods and bona fide purchasers.[53] However the intention of the UNIDROIT Convention is not to substitute the UNESCO Convention, but rather it is designed to complement each other or as it is sometimes stated, the UNIDROIT Convention can be seen as Protocol to the UNESCO Convention.[54] The UNIDROIT Convention provides for direct access to the courts of one State by the owner of a stolen cultural object or by a State from which it has been illicitly exported.[55] This means that recovery under the UNIDROIT Convention does not depend on government intervention or state designation of property.[56] However, as it was stated before,[57] Article 8 of the UNIDROIT Convention generally refers the jurisdiction to the courts of *res situ* (where the object is located) alongside with jurisdiction designated by national and regional jurisdiction rules.[58] This means that national provision (US

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46 Roodt, *op. cit.,* note 28, p. 124.

47 *Ibid.,* p. 131.

48 *Ibid.,* p. 134.

49 *Ibid.,* p. 131.

50 Chechi, *The Settlement of International…*, *loc.cit.*

51 Roodt, *op. cit.,* note 28, p. 123.

52 *Ibid.*

53 Chechi, *The Settlement of International…*, *op. cit.,* note 31, p. 106.

54 *Ibid.*

55 Prott, *op. cit.,* note 41, p. 15; Blake, *op. cit.,* note 40, p. 42; Roodt, *op. cit.,* note 28, p. 168.

56 Roodt, *op. cit.,* note 28, p. 125.

57 Text to note 32.

58 Roodt, *op. cit.,* note 28, p. 168.

jurisdictional provision) and regional (EU Brussels regime) are still in play.[59] Such jurisdictional structure gives more space to the owners to ascertain jurisdiction in places which is most effective to address the issue of stollen property however it does not resolve the problem with forum shopping.[60] This Convention in Article 3 is based upon the common law presumption *nemo dat quod non habet,* providing duty for return of the stollen object. Such presumption plays significant role to the good faith acquisition weighing the balance towards the original owner.[61] The most significant gain from the UNIDROIT Convention can be seen in the elaboration of the terms, specifically giving certain explanation to the term "stolen". Article 3(2) of the Convention provides that

"…a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place."

The limitation periods for the restitution of the cultural objects differ depending on the discovery of the stolen property. The general limitation period is 50 years, but is reduced to 3 years if knowledge of the location or the identity of the possessor of the cultural object is gained.[62] Moreover, one big difference from the UNESCO Conventions is that according to Articles 4(1) and 6(1) of the UNIDROIT Convention a good-faith purchaser who is able to show due diligence in the compensation stage is entitled to reasonable compensation.[63]

These modalities present in the UNIDROIT Convention however are not without certain drawbacks. The first problem encountered in the UNIDROIT Convention is that it tends to refer to private law disputes, however it does not in details cover cross border judicial cooperation issues such as choice of law, application of foreign public law, sale and transfer of ownership and international legal assistance.[64] Secondly, the lack definitions of certain terms used in the Convention provide for lack of uniform interpretation.[65] "Due diligence", "Fair and reasonable compensation", "stolen/theft", "possessor", "illegal export" all of these terms are subject to interpretation by national courts.[66] Thirdly, the UNESCO Convention

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59 *Ibid.*

60 Roodt, *op. cit.,* note 28, p. 169.

61 Because the Convention assumes that the current possessor of the object will have no legal right thereto, it does not take account of due diligence on the part of a good faith purchaser. Roodt, *op. cit.,* note 28, p. 126.

62 *Ibid.*

63 Articles 4(1) and 6(1) of the UNIDROIT Convention, *op. cit.*, note 24.

64 *Ibid.*

65 Roodt, *op. cit.,* note 28, p. 128.

66 *Ibid.*

in Article 8 provides that states may impose penalties or administrative sanctions on any person responsible for infringing the prohibitions provided in the Convention, however, the UNIDROIT Convention tackles these issues from point of civil and commercial aspect, depriving this instrument from sanctions.[67]

The *J. Paul Getty Trust and Other v. Italy* case underscores the importance of international cooperation in protection of cultural heritage. Instruments like 1970 UNESCO Convention and 1995 UNIDROIT Convention provide foundation for addressing the illegal trafficking of cultural property, but their implementation varies among the countries. The duties imposed by the ECtHR could serve as a very important impetus for national legislation alignment: States now will need to sling their domestic laws with international conventions and the ECHR to ensure effective enforcement. This will refer to two points: first regarding the improvement of the national mechanisms for the implementation of these international agreements and secondly regarding the intensification of the cross-border cooperation between the contracting parties in order to provide for more uniform application.

The timing of the *J. Paul Getty Trust v. Italy* decision cannot be better, because we are witnessing increased interest in cultural property while the countries even after 50 years have not established uniform application of these conventions. This provides for impetus to these conventions to build a more comprehensive and uniform understanding of the legal terms and use modern digital tools at their disposal for building a more serious network of databases for the stollen property.

The focus of the European Court of Human Rights' (ECtHR) on these issues will provide for a greater harmonization. Member states are now compelled to align their domestic legislation with both international conventions and the European Convention on Human Rights, creating a more cohesive legal landscape for cultural heritage protection. This alignment requires:

1. Developing a more comprehensive restitution mechanism at national level to facilitate the unlawfully removed cultural objects;
2. Enhancing cross border judicial cooperation to combat trafficking networks operating across jurisdictions;
3. Establish more uniform interpretation of key legal concepts to reduce forum shopping and ensure consistent application of the measures for the protection of the cultural heritage.

[67] *Ibid.,* p. 129.

In essence, this case demonstrates that effective cultural heritage preservation demands not just international legal frameworks, but their meaningful implementation through coordinated national action and intergovernmental collaboration.

4. IMPLICATIONS OF THE CASE *J. PAUL GETTY TRUST AND OTHER V. ITALY* ON NATIONAL LEGISLATION IN THE WESTERN BALKANS AND CROATIA

The *J. Paul Getty Trust v. Italy* Case serves as a very important warning for museums, collectors and art dealers, emphasizing the need for thorough due diligence when acquiring cultural artefacts. In the same time, it also highlights the growing trend of restitution claims and the potential legal and reputational risks for institutions holding disputed items. National legislation may increasingly require institutions to conduct thorough provenance research to ensure that artifacts were not illegally acquired or exported. In essence, the national legislation should consider the balance between the rights of private owners with the public interest in preserving cultural heritage, particularly in cases involving historical injustices.

A comparative examination of cultural heritage legislation in Albania,[68] Croatia,[69] North Macedonia[70] and Serbia,[71] reveals significant divergences in addressing illicit trafficking. First, regarding the terminological aspects, there are differences in regard to the understanding of what compose "stolen" objects or theft, since there are no specific definitions in the legislation on what represents stolen objects or theft, rather more implicit descriptions of these measures in context of their preservation and restitution. For example, the Albanian law provides for obligations of individuals who "discover or find, accidentally, objects of cultural heritage" to notify the relevant authorities[72] implicitly providing that cultural heritage should be acquired through legal means, and accidental finds require reporting rather than appropriation. The Macedonian Cultural Heritage Law, provides for ban for import of stollen cultural heritage, but limits it only for cultural heritage stollen from

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68 LIGJ Nr.9048, date 07.04.2003 "PËR TRASHËGIMINË KULTURORE" (Ligjin nr.9592, datë 27.07.2006 • Ligjin nr.9882, datë 28.02.2008 • Ligjin nr.10 137, datë 11.5.2009).

69 Zakon o zaštiti i očuvanju kulturnih dobara, Official Gazette, No. 145/24.

70 ЗАКОН ЗА ЗАШТИТА НА КУЛТУРНОТО НАСЛЕДСТВО Сл.Весник на РМ бр.20/04, бр.71/04, бр.115/07, бр.18/11, бр.148/11, бр.23/13, бр.137/13, бр.164/13, бр.38/14, бр.44/14, бр.199/14, бр.18/15, бр.104/15, бр.154/15, бр.192/15.

71 ЗАКОН О КУЛТУРНОМ НАСЛЕЂУ („Службени гласник РС", број 129/21, ЗАКОН о културним добрима
"Службени гласник РС", бр. 71 од 22. децембра 1994, 52 од 15. јула 2011 - др. закони, 99 од 27. децембра 2011 - др. Закон.

72 Article 43 of the Albanian Law.

museums, religious buildings and other public institutions.[73] In context of restitution it also mentions stollen or illegally exported cultural heritage, but in context of administrative cooperation between the relevant authorities.[74] The Croatian and the Serbian Cultural heritage Laws are influenced by the Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods[75] provide for more detailed elaboration of "cultural objects unlawfully removed from the territory of a Member State".[76] Both of these laws, contain specific provisions regarding the restitution of cultural objects between the Member States of the EU and mechanisms based on international agreements.

In terms of due diligence, the laws differ in the standard which should be considered during sale or purchase of cultural object. The Serbian Law contains more detailed aspects, providing that it requires due diligence obligation to the seller to inform the authorities about the transaction so in the case of a sale of a cultural good, or a good presumed to possess cultural values, or a good under preliminary protection, the intention, place, time of sale, and price must be reported to the heritage protection institution.[77] The Macedonian law, in Article 92 provides only general consideration that the protection institutions and other holders of public and private collections are obliged to check the origin of the object.[78] They are obliged to inform the relevant authorities and the Ministry of Internal Affairs of any suspicious offer for purchase.[79]

However, the main problems that arise from the national legislation is that most of these countries do not provide for provisions regarding the determination of the applicable law and international jurisdiction regarding cultural property. If we exempt Croatia, because it is a Member State to the EU, only the Macedonian PIL Act contains provision on cultural property, providing for *lex origins* as a connecting factor or *lex rei sitae* if the state of origin chooses that law.[80] This law contains provision safeguarding the owner that obtained the object in good faith, that if the law of the state that has proclaimed an item as being its cultural heritage does

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73 Article 53 of the Macedonian Cultural Heritage Law.

74 Article 101 of the Macedonian Cultural Heritage Law.

75 Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, OJ L 39, 10.2.2009, pp. 1–7.

76 In this context the Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast) is relevant since together with the Regulation (EC) No.116/2009 introduces the Union system for the protection of Member States' cultural objects.

77 Article 103 (6) of the Serbian Law.

78 Article 92(1) of the Macedonian Cultural Heritage Law.

79 *Ibid.,* Article 92(2).

80 Article 67(1) of the Macedonian PIL Act.

not grant any protection to the possessor in good faith, the latter may invoke the protection that is attributed to him by the law of the state on the territory of which the item is located at the time of the revindication claim.[81] There are no other provisions regarding international jurisdiction, or provisions concerning the application off the foreign law and recognition of foreign decisions with specifics to the cultural property.

5. CONCLUSION

The J. Paul Getty Trust v. Italy ruling represents a historic moment in the intersection of cultural heritage law, property rights and private international law. By affirming states' rights to reclaim unlawfully removed cultural artifacts – even decades after their displacement – the ECtHR has redefined the balance between private ownership and public interest under the ECHR. This decision has provided for several critical imperatives for future legal and policy frameworks. Firstly, the case highlights the urgent need to reconcile divergent national approaches to restitution, particularly in defining key concepts such as "stolen" cultural property, or the application of lex originis or lex situs. Current frameworks—whether PIL's lex situs or cultural heritage law's lex originis—force artificial choices between competing legitimate interests. The Getty case reveals the inadequacy of this binary. One potential solution could be a hybrid conflict of law rules, that weigh both objects current location and its cultural significance to the origin state. Moreover, this conceptual aspect needs to extend to other definitions such as due diligence requirements and restitution procedures based on EU provisions and international agreements. Secondly, the ruling, exposes gaps in cross-border judicial cooperation, including the recognition of foreign patrimony laws and the curbing forum shopping. States must enhance mechanisms for information sharing (e.g., via INTERPOL and UNESCO databases) and provide for domestic courts to respect foreign export control. Thirdly, the most important aspect that comes out from this decision is the duty of museums, collectors and dealers to adopt rigorous provenance research as a legal and ethical obligation, moving beyond mere compliance to proactive accountability. National legislation should mandate transparency in acquisition that fail to meet due diligence standards. This would require institutions to asses not just the legal title but to take into account the historical context.

Ultimately, the Getty case signals a paradigm shift: cultural justice can no longer be secondary to market interests. As disputes over artifacts persist, this ruling provides a blueprint for resolving historical injustices through legal clarity, diplo-

[81] *Ibid.,* Article 67(2).

matic engagement, and a renewed commitment to preserving humanity's shared heritage. The path forward demands not only robust laws but their consistent enforcement—a challenge that requires unwavering international collaboration.

REFERENCES

BOOKS AND ARTICLES

1. Blake J, *International Cultural Heritage Law,* Oxford University Press, 2015
2. Carruthers J and Weller M, *Property*, in Beaumont P and Holliday J (eds), *A Guide to Global Private International Law*, Hart Publishing, 2022, pp. 295–309
3. Chechi A, *The Settlement of International Cultural Heritage Disputes*, Oxford University Press, 2014
4. Chechi A, *'When Private International Law Meets Cultural Heritage Law - Problems and Prospects'* (2017/2018) XIX *Yearbook of Private International Law* 274
5. Pertegás Sender M, 'International Property Law and Territoriality', in Fogt M (ed), *Private International Law in an Era of Change*, Edward Elgar Publishing, 2024, pp. 221–237
6. Prott L, *Commentary on the UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects (1995)*, Institute of Art and Law, 1997
7. Roodt C, *Private International Law, Art and Cultural Heritage*, Edward Elgar Publishing, 2015

INTERNATIONAL LAW

1. UNESCO, 'Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property' (adopted 14 November 1970, entered into force 24 April 1972)
2. UNIDROIT, 'Convention on Stolen or Illegally Exported Cultural Objects' (adopted 24 June 1995, entered into force 1 July 1998)

EU LAW

1. Council Regulation (EC) No 116/2009 of 18 December 2008 on the Export of Cultural Goods [2009] OJ L39/1
2. Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State (Recast) [2014] OJ L159/1

CASE LAW

1. *Government of the Islamic Republic of Iran v The Barakat Galleries Ltd* [2007] EWCA Civ 1374
2. *J Paul Getty Trust and Others v Italy,* Application No. 35271/19 (ECtHR)

NATIONAL LEGISLATION

1. Ligj Nr.9048, date 07.04.2003, 'Për Trashëgiminë Kulturore' (and subsequent amendments: Ligjin nr.9592, datë 27.07.2006; Ligjin nr.9882, datë 28.02.2008; Ligjin nr.10 137, datë 11.5.2009)
2. Zakon o zaštiti i očuvanju kulturnih dobara, Official Gazette, No. 145/24
3. Закон за заштита на културното наследство, Сл. Весник на РМ бр.20/04 (and subsequent amendments)
4. Закон о културном наслеђу, Службени гласник РС, број 129/21; Закон о културним добрима, Службени гласник РС, број 71/94 (and subsequent amendments)