

## *Getty Trust v. Italy: The Getty Museum and Italy’s Ongoing Battle for Cultural Restitution of the “Victorious Youth”*

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### I. OVERVIEW

A beautiful bronze Greek statue of an Olympian athlete has incited a fifty years-long cultural and legal battle between Italy (not Greece) and the J. Paul Getty Museum in Los Angeles, California. In 1964, the statue, entitled “Statue of a Victorious Youth” (Victorious Youth), was discovered in the Adriatic Coast waters by Italian fishermen. It was eventually sold to unknown parties until it ended up in Munich in 1977.<sup>1</sup> The Italian authorities attempted to seize the statue while in Munich, and the Getty Trust (the Trust) became aware of these attempts during its negotiations with a German vendor to buy the statue.<sup>2</sup> After the vendor’s Italian lawyer assured the Trust that Italy had no rights to the statue, the Trust purchased the Victorious Youth for \$3,950,000 and it has remained displayed in the Los Angeles museum ever since.<sup>3</sup>

The Italian authorities have tried to recover the statue from the Trust since its purchase.<sup>4</sup> Two investigations into the statue’s exportation were launched with a request to U.S. Customs to step in, but ultimately the requests were dismissed by U.S. authorities, which asserted that the

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1. *Getty Trust v. Italy*, App.No.3571/19, ¶ 15 (May 2, 2024), <https://hudoc.echr.coe.int/eng?i=002-14317>.

2. *Id.* ¶¶ 29-31.

3. *Id.* ¶¶ 26, 37.

4. *Id.* ¶ 39.

requests were insufficient. Italy was advised to go through U.S. law to move forward.<sup>5</sup> In the 1980s-1990s, the Trust and Italian diplomatic and administrative authorities entered a series of unsuccessful negotiations for the statue.<sup>6</sup> Finally in 2007, the Italian Ministry for Cultural and Environmental Heritage and the Trust negotiated the return to Italy of forty archeological objects, postponing the negotiations concerning the Victorious Youth.<sup>7</sup>

In 2007, local campaigners petitioned the Pesaro Public Prosecutor's office in Italy requesting the bronze be returned.<sup>8</sup> Enforcement proceedings were initiated in the Pesaro District Court, which resulted in the adoption of a confiscation order upon the Trust, mandatory under domestic law.<sup>9</sup> The Trust appealed the order to the Court of Cassation, Italy's highest court, which upheld it on the grounds of the Trust's negligence and Italy's protection of cultural heritage and customs law.<sup>10</sup> Further, the Court found the Trust did not act with the required diligence in purchasing the statue by failing to ask the competent Italian authorities about the circumstances of the statue's exportation and ownership.<sup>11</sup> Concerning the cultural significance of the statue, the exact location was irrelevant, because the statue was found by an Italian-flagged vessel and when it sunk one could infer that "a continuum between Greek civilization, which had expanded into Italian territory, and the subsequent Roman cultural experience" connected the statue to Italy.<sup>12</sup> Therefore, the Victorious Youth belonged to Italy and the confiscation order was valid, as the measure was aimed at regaining "public control" over cultural heritage objects by the least restrictive means.<sup>13</sup> On appeal, The European Court of Human Rights held the confiscation order was not a violation of Article 1.<sup>14</sup> *Getty Trust v. Italy*, App. No.3571/19 (May 2, 2024), <https://hudoc.echr.coe.int/eng?i=002-14317>.

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5. *Id.* ¶ 40.

6. *Id.* ¶¶ 60-65.

7. *Id.* ¶ 65.

8. *Id.* ¶ 67.

9. *Id.* ¶ 93.

10. *Id.* ¶ 94.

11. *Id.* ¶ 97.

12. *Id.* ¶ 100 (quoting Corte di Cassazione, n. 11269, 10 Dec. 2019 (It.)).

13. *Id.* ¶ 99.

14. *Id.*

## II. BACKGROUND

### A. *International Law*

The European Convention on Human Rights (the Convention) was adopted to ensure the protection of human rights among its member states.<sup>15</sup> However, Article 34 clarifies its safeguards create a cause of action for those who fall “victim” to violations of the Convention’s rights by the member states.<sup>16</sup>

In *Gorraiz Lizarraga v. Spain*, the European Court of Human Rights (ECHR) defined what the term “victim” exactly means. Accordingly, to claim victim status under the Convention, the Court stated: “there must be a sufficiently direct link between the applicant and the harm which they consider they have sustained on account of the alleged violation.”<sup>17</sup>

Moreover, Article 1 of the Convention includes the right of property and the state’s ability to enforce those rights:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.<sup>18</sup>

In sum, Article 1 recognizes an individual’s fundamental right to enjoy his possessions, although this right is not absolute; it is subject to limitations in accordance with a state’s interest. Under this framework, the ECHR has developed a balancing test when assessing a claimed Article 1 violation.

*Sporrong v. Sweden*, the first ECHR case to articulate this balancing test, sets forth that under Article 1, it must be determined “whether the applicants can complain of an interference with this right, and, if so, whether the interference was justified.”<sup>19</sup> In other words, the Article contains three distinct rules, the first providing general protection of the enjoyment of property and the latter two acknowledging this general right

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15. Convention for the Protection of Fundamental Freedoms, Nov.4, 1950, 213 U.N.T.S. 222, at art. 1 [hereinafter ECHR].

16. *Id.* art. 34.

17. *Gorraiz Lizarraga v. Spain*, no. 62543/00, ¶ 35 (E.C.R. 2004).

18. ECHR *supra* note 15.

19. *Sporrong v. Sweden*, no. 7152/75, ¶ 57 (E.C.R. 1982).

is not absolute according to principles of fairness.<sup>20</sup> Therefore, the rules of Article 1 are inextricably interconnected because an interference on the general principle of possessions can be potentially justified according to the court's assessment.<sup>21</sup>

The first step in the balancing test analysis is to determine if Article 1 is applicable, meaning the applicant has a proprietary interest eligible for the protections of the Convention.<sup>22</sup> To accomplish this, as articulated in *Beyeler v. Italy*, the court "must determine whether [the applicant's] legal position as a result of purchasing the painting was such to attract the protection of Article 1."<sup>23</sup> Further, the Court explained that the concept of "possessions" is sweeping, and for the purposes of the Convention, "not limited to ownership of physical goods and is independent from the formal classification in domestic law."<sup>24</sup> Thus, in finding a proprietary interest exists, the court must look to the circumstances as a whole.<sup>25</sup> In other words, the court may look to the applicable domestic property law as well as to other circumstances specific to the case to determine whether a propriety interest triggers the protections of Article 1.<sup>26</sup>

After an interference is found, the Court secondly engages in a three-part analysis to assess whether it was justified under Article 1. The ECHR case, *Parizek v. The Czech Republic*, outlines this inquiry:

[I]n order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest[,],and be proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.<sup>27</sup>

In addition, the Court recognizes the state enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified by the general interest for the purpose of achieving the object of the law in question.<sup>28</sup>

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20. *Id.* ¶ 61.

21. *See id.*

22. *Beyeler v. Italy*, No.3302/96 2000-I, ¶ 99 (E.C.R. 1996).

23. *Id.*

24. *Id.* ¶ 100.

25. *Id.*

26. *Id.* ¶¶ 99-100.

27. *Parizek v. The Czech Republic*, App. No. 76286/14/14, ¶ 42 (Jan. 12, 2023), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-222137%22%7D>.

28. *Id.* ¶ 49.

The first requirement of the second step evaluates the lawfulness of the interference.<sup>29</sup> The second sentence of the Article recognizes the state's ability to control its property if this control follows the applicable laws.<sup>30</sup> Uniformly, "the principle of lawfulness presupposes that the relevant provisions of domestic law are sufficiently accessible, precise and foreseeable in their application."<sup>31</sup> On top of these assumptions, the law must also "provide procedural guarantees against arbitrariness."<sup>32</sup>

The second requirement asks the court to determine whether the state had a "legitimate aim" for interfering with the possession, in accordance with the margin of appreciation afforded to the state and general principles of international law.<sup>33</sup> Finally, the third requirement of proportionality asks the court to find the existence of a "fair balance."<sup>34</sup> A fair balance entails "the need for a reasonable relationship of proportionality between the means employed and the aim sought to be realized."<sup>35</sup> Generally, the court looks to factors including the various interests at issue, the compensation terms, and the conduct of the parties, particularly the means employed by the state to obtain the property.<sup>36</sup> The balance will be disrupted if a person has to bear "an individual and excessive burden" from the attempts.<sup>37</sup>

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970 UNESCO Convention) is international law governing illegal trafficking.<sup>38</sup> Article 4 recognizes cultural property as

- (a) property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory; [or] (b) Cultural property found within the national territory.<sup>39</sup>

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29. *Id.* ¶ 42.

30. ECHR art. 1 *supra* note 15.

31. *See Beyeler*, No.3302/96 2000-I, ¶ 104.

32. *Vistiņš v. Latvia*, no. 71243/01, ¶ 96 (E.C.R. 2012).

33. *See Beyeler*, No.3302/96 2000-I, ¶¶ 111-13.

34. *Id.* ¶ 114.

35. *Id.*

36. *Id.*

37. *See id.* ¶ 122.

38. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter 1970 UNESCO Convention].

39. *Id.* art.4.

Finally, Article 13 recognizes a member state's right under the Convention to "facilitate recovery of such property by the state concerned in cases where it has been exported."<sup>40</sup>

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995 UNIDROIT Convention) is another instrument controlling international trade. Article 5 provides important protections under the Convention: "a contracting State may request the court of another contracting State to order the return of a cultural object illegally exported by establishing cultural significance."<sup>41</sup> Additionally, it proscribes a time limit of three years in between the request and the date the state became aware of the location and identity of the possessor.<sup>42</sup> Article 6 provides further guidelines on acquiring exported cultural property, including compensation to the possessor if they acted in good faith.<sup>43</sup> To find good faith, Article 6 continues: "regard shall be had to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State."<sup>44</sup>

### B. *Italian Law*

Contracting states to international conventions have their own systems of domestic laws for illegal exportation.<sup>45</sup> Applicable Italian laws governing illegal exportation include, for example, include Section 66(3) of Law No. 1089/1939. This law imposes confiscation measures of illegally exported cultural objects on third parties in possession, regardless of participation in the exportation.<sup>46</sup>

Moreover, Italian courts have weighed in on the scope of liability regarding illegal exportation. For instance, the Italian Constitutional Court, in judgment no. 229 of July 17, 1974, ruled that confiscation of cultural objects may extend to those uninvolved in the exportation only if a "lack of vigilance could be ascertained."<sup>47</sup>

## III. THE COURT'S DECISION

In the noted case, the ECHR relied on the Court's and Italy's case law as well as on general principles of international law, specifically the

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40. *Id.* art. 13.

41. *Id.* art. 5.

42. *Id.*

43. *See generally id.* art. 6.

44. *Id.* art. 6.

45. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, art. 5 [hereinafter 1995 UNIDROIT Convention].

46. Section 66(3) of Law no. 1089/1939 (It.) [hereinafter Law No. 1089/39].

47. Corte Costituzionale, No. 229, 17 July 1974 (It.). [hereinafter No. 229].

1970 UNESCO and 1995 UNIDROIT Conventions.<sup>48</sup> In its decision, the ECHR found the Getty Trust's claims were admissible and therefore it could claim victim status under Article 1 as it uninterruptedly possessed the Victorious Youth for a considerable amount of time.<sup>49</sup> However, the ECHR ultimately held there was no violation of Article 1 because the Trust did not act with the requisite diligence in purchasing the statue.<sup>50</sup> Additionally, the applicable law dictates that Italy's campaign to reclaim the statue did not burden the Trust, because of the state's general interest in protecting cultural objects from unlawful exportation.<sup>51</sup>

After the Court of Cassation's 2019 decision, the Trust, the applicants in the noted case, demonstrated no intention of giving up the statue and challenged the ruling before the ECHR.<sup>52</sup> The Getty trustees complained the confiscation order violated their "peaceful enjoyment of possessions" under Article 1 of the European Convention on Human Rights.<sup>53</sup>

Before considering the merits of the Trust's claims, the ECHR considered whether the Trust could claim "victim status" under Article 34 of the Convention.<sup>54</sup> The Trust argued they could, reasoning they had been directly affected by the order due to their being the sole holders of the Trust's assets.<sup>55</sup> Additionally, there existed a direct relationship with the harm sustained on their reputation and mission and Italy's repeated attempts to confiscate the statue.<sup>56</sup> Italy argued no victim status existed because the trustees are not owners of the statue and so did not enjoy the property; they only administered the Trust's property.<sup>57</sup> The Court ultimately rejected Italy's objection of the applicability of Article 1 reasoning that the Trust sufficiently established possession of the statue.<sup>58</sup> The Court stated the Trust had uninterrupted possession of the statue since 1997; this length of time warrants a proprietary interest for the purposes of Article 1's "possession," and therefore the applicability of Article 1 is valid.<sup>59</sup>

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48. *Getty Trust*, App. No.3571/19, ¶¶ 408.

49. *Id.* ¶ 265.

50. *Id.* ¶ 409.

51. *Id.* ¶ 408.

52. *Id.* ¶ 190.

53. *Id.*

54. *Id.* ¶ 189.

55. *Id.* ¶ 197.

56. *Id.* ¶¶ 196-202.

57. *Id.* ¶¶ 191, 193.

58. *Id.* ¶ 265.

59. *Id.* ¶¶ 265-67.

After finding Article 1 applicable, the Court then engaged in the first part of the balancing test to evaluate whether Italy's confiscation order violated the Article's protections.<sup>60</sup> The Court acknowledged the Trust had a proprietary interest, but still had to determine whether Italy's confiscation order was an interference to the enjoyment of the statue.<sup>61</sup> Using the same reasoning in acknowledging the Trust's "victim status," the ECHR held that the confiscation order amounted to an interference.<sup>62</sup> Although valid ownership was at issue, under the general rule of Article 1, the order restricted the Trust's ability to use its "possession."<sup>63</sup>

Moreover, further analysis of the latter part of Article 1 required the Court to legitimize Italy's confiscation order.<sup>64</sup> Accordingly, the Court engaged in the second part of the Article 1 test, or the three-step analysis, to determine whether the confiscation measure complied with the Convention.<sup>65</sup>

#### A. *Prong 1: Lawfulness*

The Court deemed the first Article 1 requirement of lawfulness as the most important one.<sup>66</sup> Under this prong, the parties disputed the legality of the interference in relation to due diligence, whether the measure was time-barred, and whether the order could be enforced in the United States.<sup>67</sup> Under this prong, the Trust argued it lacked foreseeability of the confiscation order as Italian authorities were attempting to enforce the order thirty years after the Getty's acquisition and domestic and case law were unclear about the correct standard of due diligence on third parties.<sup>68</sup> International law, specifically the 1995 UNIDROIT Convention, sets a three-year limit for instituting actions for the recovery of unlawfully exported cultural objects.<sup>69</sup>

The Court ultimately found for Italy on lawfulness, noting the "legal basis for the contested measure was sufficiently clear, foreseeable and compatible with the rule of law."<sup>70</sup> The Court drew on applicable Italian domestic and case law, namely section 66(3) of Law no. 1089/1939 as

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60. *Id.* ¶ 272.

61. *Id.*

62. *Id.* ¶ 273.

63. *Id.* ¶ 275.

64. *Id.* at ¶ 281.

65. *Id.* ¶ 293.

66. *Id.*

67. *Id.* ¶ 300.

68. *Id.* ¶ 284-85.

69. *Id.* ¶ 293 (quoting the 1995 UNIDROIT Convention).

70. *Id.* ¶ 317.

well as judgment no. 229 of July 17, 1974.<sup>71</sup> Consequently, this set of laws made reasonably foreseeable to the Trust the correct standard of diligence. Additionally, it made clear a confiscation order could be imposed on third parties not involved in a criminal offense if they did not meet that standard.<sup>72</sup>

*B. Prong 2: Whether the Measure Was Adopted in the Public or General Interest*

Under this prong, Italy argued the Victorious Youth was undoubtedly part of their cultural heritage under national and international legal frameworks, including the 1970 UNESCO Convention.<sup>73</sup> In opposition, the Trust argued the statue was not part of Italy's cultural heritage, making the confiscation order unjustified by general interest and therefore making the 1970 UNESCO Convention inapplicable.<sup>74</sup> Additionally, the Trust argued in the alternative that Italy failed to show how it could effectively provide public access to the statue, which the Trust had been doing for decades.<sup>75</sup> The Court ruled in favor of Italy, holding the confiscation order was adopted in the general interest within the meaning of Article 1, protecting Italy's cultural heritage.<sup>76</sup> The Court grounded this decision, considering the wide margin of appreciation given to states for protecting cultural heritage and the developments in international law which stress the importance of protecting cultural objects from unlawful exportation.<sup>77</sup>

*C. Prong 3: Proportionality*

Finally, to achieve a fair balance between demands of general interest and requirements of an individual's fundamental rights under the third prong, there needs to exist a "reasonable relationship between the means employed and the aim sought to be achieved."<sup>78</sup> In addition, this balance will be upset if the individual must bear an excessive burden.<sup>79</sup> The Trust argued it suffered this burden because of the absence of a time limit for when the confiscation could be imposed, because it received no compensation for the confiscation, and because it practiced good faith by

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71. *Id.* ¶ 304-07 (citing No.1089/1939; No.229).

72. *Id.* ¶ 325.

73. *Id.* ¶ 332 (citing 1970 UNESCO Convention, art.4).

74. *Id.* ¶ 327 (citing 1970 UNESCO Convention).

75. *Id.* ¶ 328.

76. *Id.* ¶ 360.

77. *Id.* ¶ 341.

78. *Id.* ¶ 374.

79. *Id.*

relying on assurances of Italian lawyers.<sup>80</sup> In return, Italy argued the confiscation measure was proportionate to the aim pursued given the many complications faced by Italian authorities and the little information available to them.<sup>81</sup> The Court agreed with Italy on proportionality, reasoning the Trust was negligent by failing its clear duty to investigate before purchasing, and by negligently purchasing the statue, the Trust consequently accepted the risk that it might be confiscated without compensation.<sup>82</sup> Therefore, the Trust suffered no excessive burden.<sup>83</sup> The Court, however, accepted the Italian government's excuses for the delay, finding that their repeated failure in attempts were not its fault and that "they operated in a legal vacuum, as there was no binding international legal instruments in force at the time when the statue had been exported and purchased by the applicant . . . ."<sup>84</sup> Consequently, the Italian authorities acted promptly and diligently.<sup>85</sup>

#### IV. ANALYSIS

The noted case's final decision is not satisfying because its impact leaves many uncertainties in defining cultural ownership. Considering the Victorious Youth was found incidentally by Italian fishermen and Greece, the country with the strongest cultural tie to the work's making, is uninvolved in the case, the best outcome would be for the statue to remain at the Getty Museum as it would serve a greater public interest than leaving it in the hands of Italy.

For the positive implications, the noted case addresses both the Trust and Italy almost evenhandedly, acknowledging each party's stake in the dispute and their interests in possession of the statue.<sup>86</sup> Additionally, the case note emphasizes the importance of cultural heritage and the dangers of the illegal trafficking of goods.<sup>87</sup> It goes into depth about the international frameworks of cultural heritage laws and exportation laws, highlighting their emphasis on the standards for the protection of cultural property and preventing illegal exportation.<sup>88</sup> In this regard, the noted case has an impact on the standards for good faith in purchasing cultural objects and harmonizing the principles of international law.

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80. *Id.* ¶¶ 362-65.

81. *Id.* ¶¶ 370-373.

82. *Id.* ¶¶ 403-04.

83. *Id.*

84. *Id.* ¶ 400.

85. *Id.* ¶ 394.

86. *See id.* ¶¶ 265, 360.

87. *Id.* ¶¶ 408.

88. *Id.*

However, the Court's reasoning was filled with inconsistencies, as it did not resolve the disputes surrounding time-barred claims, what constitutes cultural heritage, Italy's ownership of the statue regarding the discovery of the statue, and how its final decision is going to play out in the United States.

The ECHR did not follow domestic or international law regarding time limits on actions of illegal exportation. For instance, the ECHR case *Beyeler v. Italy* ruled four years was too long for Italy to wait to intervene, which created an excessive burden on the applicant under Law No. 1089/1939.<sup>89</sup> Moreover, under the 1970 UNIDRIOT Convention, there is a three-year time limit for requesting an order of confiscation.<sup>90</sup> The Court gave considerable leeway to Italy and justified the delay, noting the Italian authorities "operated in a legal vacuum."<sup>91</sup> This language was never expanded upon, and the Court rationalized the delay by the multiple obstacles Italy faced in its campaign, without enforcing the available time limits on illegal exportation actions.<sup>92</sup> In addition, the Court afforded Italy this flexibility, yet inflicted a high burden on the Trust relating to the foreseeability of the order, reasoning the existing law should have been clear enough to the Trust to accept the risk of Italy's intrusion.<sup>93</sup> By stating that the Trust should have foreseen the confiscation of a statue it has owned for over thirty years, this sets a blurry precedent.

Moreover, the noted case emphasizes the importance of cultural heritage and protecting cultural objects for the general interest of the public, yet fails to define what this means.<sup>94</sup> The Victorious Youth is a Greek statue, presumably sculpted by the Greek sculptor Lysippos and likely dating to the Greek Classical period.<sup>95</sup> It was found in the Adriatic Sea, but there was never sufficient evidence that it was in Italian territory.<sup>96</sup> In this regard, the Court deferred to the Court of Cassation's analysis that the Italian flag on the vessel as well as the "continuum" between the ancient Greek civilization and the Roman cultural experience was sufficient to assign the statue as part of Italy's cultural heritage.<sup>97</sup> This classification of cultural heritage is arbitrary and has a strong potential to lead to inconsistent results. The Victorious Youth is thousands of years

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89. *Beyeler*, No.3302/96 2000-I, ¶ 120.

90. 1995 UNIDROIT Convention, art.5.

91. *Getty Trust*, No.3571/19, ¶ 407.

92. *Id.*

93. *Id.* ¶¶ 403-04.

94. *Id.* ¶ 408.

95. *Id.* ¶ 1.

96. *Id.* ¶ 327.

97. *Id.* ¶ 100 (quoting n. 11269).

old. Ownership defined by the location of its discovery and a “continuum” between civilizations is a problematic understanding of cultural ownership, especially in situations as in the noted case where the precise location of discovery is unclear.<sup>98</sup>

Further, the Court reiterated there is a “margin of appreciation enjoyed by the national authorities in determining what is in the general interest of the community.”<sup>99</sup> However, this broad interpretation is troublesome because it produces an unclear standard of what is cultural heritage and therefore what is in the general interest. The Trust made convincing arguments under this issue, stating no legal framework defines cultural heritage as a “continuum” between cultures and that Italy failed to show how it intended to make the statue accessible to the public.<sup>100</sup> Further, the Trust emphasized the statue is one of its main displays, visited by a wide public, and is well-preserved.<sup>101</sup> Yet, the Court did not acknowledge how the Getty has preserved the statue and the benefits it has provided to the public writ large.<sup>102</sup> Additionally, the Court failed to address how the Trust has made efforts to respect cultural heritage and gave Italy forty archeological objects after its many negotiations with the authorities.<sup>103</sup>

Ultimately, the status of the Victorious Youth is unclear. The ECHR in the noted case covered various domestic laws and international frameworks but failed to establish how its final decision would be binding on the United States. The United States is not a party to the UNIDROIT Convention nor is it under the jurisdiction of the ECHR, consequently leaving it up to the U.S. authorities to enforce the confiscation of the statue.<sup>104</sup>

## V. CONCLUSION

The noted case has not only continued the years-long battle between the Trust and Italy but has opened the door to more cultural disputes, especially if the decision will ultimately be enforced in the United States. The Getty Museum has preserved the “Statue of a Victorious Youth” for

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98. See generally, Adam Kuper, *Who Owns the Victorious Youth?*, N.Y. TIMES (June 30, 2024), <https://www.nytimes.com/2024/06/30/opinion/museum-statue-looted-culture.html?searchResultPosition=1>.

99. *Getty Trust*, No.3571/19, ¶ 340.

100. *Id.* ¶ 327.

101. *Id.*

102. *Id.* ¶ 360.

103. *Id.* ¶ 65.

104. *Id.* ¶ 164.

a long time, and millions of individuals get to see it on display.<sup>105</sup> The statue should stay at the Getty, and cultural heritage cannot be simply defined by a flag and a “continuum” between cultures.<sup>106</sup> Although the history of certain artifacts is muddied, the solution is not to award cultural objects on arbitrary standards. Instead, in contexts like that of the noted case, a “fair balance” should be more centered on who best will make historical property, such as the Victorious Youth, accessible to the public to celebrate its cultural significance.

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105. *Id.* ¶ 328.

106. *Id.* ¶ 100.

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