



UNIVERSITÉ
DE GENÈVE

FACULTÉ DE DROIT
Centre du droit de l'art



United Nations
Educational, Scientific and
Cultural Organization

In partnership with
UNESCO

Nare G. Aleksanyan, Morgan Drake, Marc-André Renold

October 2016.

Canon Tables – Western Prelacy of the Armenian Apostolic Church of America and J. Paul Getty Museum

Western Prelacy of the Armenian Apostolic Church of America – J. Paul Getty Museum – Artwork/oeuvre d'art – Pre 1970 restitution claims/demandes de restitution pre 1970 – Ownership/propriété – Statute of limitation/prescription – Judicial claim/action en justice – Mediation/médiation – Settlement agreement/accord transactionnel – Donation – Symbolic gesture/geste symbolique – Ex gratia payment/versement à titre gracieux

The Canon Tables of the Zeyt'un Gospels were presumably illegally separated from the manuscript sometime between 1915-1923. Having discovered that the Tables had been stolen and were held at the J. Paul Getty Museum in California, the Western Prelacy of the Armenian Apostolic Church of America engaged in a legal battle with the Getty regarding the restitution of the Tables. After five years of court proceedings and mediation, the two sides reached a settlement in 2015.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

ART-LAW CENTER – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

art-adr@unige.ch – <https://unige.ch/art-adr>

This material is copyright protected.

I. Chronology

Pre 1970 restitution claims

- **Late 1800s:** The Zeyt'un Gospels were in the joint possession of the Sourenian family and the Church of the Holy Mother of God, in the city of Zeyt'un in modern-day Turkey.¹ The manuscript had been copied and illustrated by T'oros Roslin, a celebrated thirteenth-century Armenian artist, in the scriptorium at Hromkla, Cilicia for Catholicos Constantine I. The Gospels are Roslin's earliest signed work.²
- **Late 1915:** The manuscript ended up in Marash, a town near Zeyt'un, where the Turks deported Prince Asadur Agha Sourenian, then in possession of the manuscript.
- **Spring 1916:** Dr. H. Der Ghazarian, a family friend of the Sourenians, requested to borrow the manuscript when the Sourenian family was exiled from Marash to Der Zor in the Syrian desert.
- **Spring 1920:** Dr. Der Ghazarian fled Marash with his sister, who was forced to leave the manuscript she was carrying as they fled. A Turk found the manuscript and took it to Melkon Atamian in Marash for him to sell. Atamian, before refusing to handle the sale and returning the manuscript, invisibly cut away from it the eight folios (or sixteen pages) illuminated by Roslin bearing the Canon Tables.³
- **1969 – early 1980s:** The manuscript, sans the Canon Tables, changed hands several times, until it was presented to Mesrob Mashtots Matenadaran in Yerevan, Armenia, where it continues to be housed to this day.⁴
- **1994:** The J. Paul Getty Museum purchased the Canon Tables for value from Gil Atamian, Melkon Atamian's heir, following its exhibition at the Walters Gallery and Pierpont Morgan Library in New York at a show entitled "Treasures from Heaven".⁵
- **July 2006:** The Church discovered that the Canon Tables had been stolen and were held at the Getty Museum.⁶
- **1 June 2010:** The Western Prelacy of the Armenian Apostolic Church of America, under the jurisdiction of the Armenian Catholicosate of the Great House of Cilicia, the Armenian Orthodox Church, filed a Complaint against the Getty Museum in the Superior Court of California, County of Los Angeles.⁷
- **Fall 2011:** The Court ordered the two sides to work with a mediator.⁸

¹ Second Amended Complaint, para. 18.

² For a full description of the folios as per the Getty Museum, see The J. Paul Getty Museum Collection, "Canon Tables from the Zeyt'un Gospels," at: <http://www.getty.edu/art/collection/objects/5253/t'oros-roslin-t'oros-roslin-canon-tables-from-the-zeyt'un-gospels-armenian-1256/>.

³ For a more in depth description of the early chronology of the Zeyt'un Gospels presented here, see Second Amended Complaint, paras. 19-30.

⁴ Answer, para. 17.

⁵ Ibid., paras. 15-16.

⁶ Second Amended Complaint, para. 35.

⁷ Complaint, Docket Entry No. 1.

⁸ Author's personal archives (electronic communication with Stephen Clark, General Counsel of the Getty Museum, 2 September 2016). See also Docket Entry No. 31.

- **2012:** The two sides held a productive mediation session with retired federal judge Dickran Tevrizian but were unable to resolve the matter.⁹
- **24 October 2012:** The Superior Court of California ordered all proceedings in the action to be stayed pending the final resolution of all appeals, including the United States Supreme Court (if applicable) in the case *Cassirer et al. v. Thyssen-Bornemisza Collection Foundation*.¹⁰
- **9 December 2013:** The Ninth Circuit Court of Appeals reversed the District Court's finding in *Cassirer* that the extended California statute of limitations for claims to recover art held by museums or art dealers was preempted by federal law.
- **16 April 2014:** The Superior Court of California denied the Prelacy's Renewed Motion to Lift Stay and Restore to Active Civil Status.¹¹
- **11 March 2015:** The Prelacy and the Getty Museum jointly submitted Case Management Statement requesting a jury trial set for **3 November 2015**.¹²
- **21 September 2015:** The Getty and the Western Prelacy announced they had resolved the dispute over the Canon Tables with a settlement.¹³
- **30 October 2015:** The Superior Court of California entered Dismissal of the entire action as per Request for Dismissal, filed on the same day.¹⁴

II. Dispute Resolution Process

Judicial claim – Mediation – Settlement agreement

- Upon discovery of the stolen Canon Tables at the Getty Museum in 2006, the Western Prelacy had requested that they be returned, but the Getty refused to do so. In 2010, following an amendment to California Code of Civil Procedure § 338(c)(3), which extended the statute of limitations on claims for the recovery of fine art against a museum, gallery, auctioneer, or dealer from three years to six years of “actual discovery”, the Western Prelacy initiated an action against the Getty in the Superior Court of California.
- While the two sides were battling it out, another case turned on the constitutionality of the new California statute of limitations in the Ninth Circuit: *Cassirer et al. v. Thyssen-Bornemisza Collection Foundation*.¹⁵ Thus, the Superior Court stayed the case of the Canon Tables, pending the final resolution of *Cassirer*.

⁹ Ibid.

¹⁰ 737 F.3d 613, 621 (9th Cir., 12-56159). Docket Entry No. 37.

¹¹ Docket Entry No. 50.

¹² Docket Entry No. 62.

¹³ The J. Paul Getty Museum Press Release, “J. Paul Getty Museum and the Western Prelacy of the Armenian Apostolic Church of America Announce Agreement in Armenian Art Restitution Case”, September, 21 2015, accessed October 12, 2016, available at: <http://news.getty.edu/press-materials/press-releases/canon-table-2015.htm>.

¹⁴ Docket Entry No. 65.

¹⁵ See supra n. 10.

- Though the Western Prelacy and the Getty Museum had a fruitful but ultimately unsuccessful mediation session in 2012, with less than a month left until the jury trial set in 2015, the two sides announced they had resolved the dispute and reached a mutually amicable settlement.

III. Legal Issues

Ownership – Statute of limitation

- The case essentially revolved around the Western Prelacy challenging the Getty's title to the Canon Tables and the Getty arguing the claim was time barred as the location of the Canon Tables had been publically known for decades and had even been mentioned in articles written in Armenian.¹⁶
- The Getty argued that the Western Prelacy would have known about the Canon Tables location not later than the early 1990s when Gil Atamian offered to donate them to a small Armenian church in Watertown, Massachusetts. Thus, the Getty argued that when purchasing the Canon Tables, it acted in reliance of the Western Prelacy's actions and with the belief that the Atamian family had good title. The Getty claimed that title had been acquired via adverse possession by the Atamian family and that the Getty was a successor in interest to the title that arose out of the adverse possession. The Getty also argued that the Western Prelacy's claim on the Canon Tables should be barred since it sat on its rights to the detriment of the Getty. If the Western Prelacy had made a claim when they first became aware of the location of the Canon Tables, the Getty would not have expended its resources restoring and caring for the Canon Tables since 1994, when they purchased the folios, to 2010, when the Western Prelacy brought suit.¹⁷
- The Western Prelacy claimed that the Canon Tables were stolen out of the Zeyt'un Bible and then illegally purchased by the Getty.¹⁸ In 2013, the Court of Appeals upheld a California law that extended the statute of limitations for stolen works held by museums, which took away one of the Museum's defenses.¹⁹

¹⁶ Answer, paras. 16-17.

¹⁷ Ibid., paras. 14, 24-25, 33-34.

¹⁸ Second Am. Compl., para. 2. See also Albertson, "Details on the Getty and Armenian Church Agreement over Stolen Bible Pages," *art-crime.blogspot*, September 23, 2015, accessed October 12, 2016, <http://art-crime.blogspot.ch/2015/09/details-on-getty-and-armenian-church.html>.

¹⁹ Boehm, "Legal Settlement with Armenian Church Lets Getty Museum Keep Prized Medieval Bible Pages," *Los Angeles Times*, September 21, 2015, accessed October 12, 2016, <http://www.latimes.com/entertainment/arts/culture/la-et-cm-armenian-church-settles-with-getty-museum-20150918-story.html>.

IV. Adopted Solution

Ex gratia payment – Donation – Symbolic gesture

- The Western Prelacy and the Getty Museum reached a settlement whereby, as a symbolic gesture, the Getty acknowledged the Western Prelacy's ownership of the Canon Tables, and, as ex gratia payment, agreed to pay undisclosed attorney's fees; thus, in exchange, the Western Prelacy donated the Canon Tables to the Getty.²⁰
- Following the settlement, two of the illuminated pages at issue were put on view in 2016 at the Getty Center in California as part of the exhibition "Traversing the Globe through Illuminated Manuscripts". As a symbolic gesture of future collaboration, the two sides also considered bringing the Canon Tables together with the rest of the Zeyt'un Gospels in exhibitions both in Los Angeles and in Yerevan, which will mark the first reconstitution of the manuscript since these folios were separated from it nearly a century ago.²¹

V. Comment

- Being the first Armenian Genocide-era art restitution case filed in the United States, the lawsuit drew a significant amount of media attention.²²
- Though the two sides made progress in a successful mediation session in 2012, the case would go on for several years until it settled in 2015.
- Settlement talks did not come as a surprise, however, as there was ambiguity about the new California six-year statute of limitations (California Code of Civil Procedure § 338(c)(3)). Procedural hurdles with the uncertainty surrounding the interpretation of actual discovery as well as the whereabouts of the Canon Tables during and immediately after the First World War was a grey area that presented a strong incentive to settle out of court.²³
- There was some criticism from the Armenian community for donating the Canon Tables to the Getty Museum, but the transfer of ownership to the Western Prelacy is certainly a success for the Armenian community. The Getty's acknowledgement and inclusion of the Western Prelacy's ownership of the Canon Tables all along and the fact that the folios were stolen in its official provenance is of legal and historical significance not to be overlooked.²⁴

²⁰ Finkel, "Getty Displays Medieval Illuminated Pages after Legal Battle Finally Ends," *The Art Newspaper*, January 26, 2016, accessed October 12, 2016, <http://theartnewspaper.com/news/getty-displays-medieval-illuminated-pages-after-legal-battle-finally-ends/>.

²¹ Herman, "Legal Settlement Reached between Getty and Armenian Church," *Institute of Art & Law News*, September 22, 2015, accessed October 12, 2016, <http://www.ial.uk.com/legal-settlement-reached-between-getty-and-armenian-church/>.

²² Halperin, "Getty Becomes First Museum to Restitute Armenian Art Removed During Genocide," *The Art Newspaper*, September 22, 2015, accessed October 12, 2016, <http://theartnewspaper.com/news/museums/getty-becomes-first-museum-to-restitute-armenian-art-removed-during-genocide/>

²³ Author's personal archives (telephone communication with Lee Boyd, Lawyer for the Western Prelacy, 1 October 2015).

²⁴ Ibid.

- As the first dispute of its kind, this sets a precedent for Armenian Genocide-era restitution cases. The collaboration between the Getty Museum and the Western Prelacy, whereby the entirety of the Zeyt'un Gospels including the Canon Tables could be reunited in exhibits of the manuscript in its entirety in both Matenadaran in Yerevan and the Getty in Los Angeles, sets a good precedent in ensuring Armenian Genocide-era artworks in museums and/or collections internationally have proper provenance.²⁵

VI. Sources

a. Court decisions

- *Western Prelacy of the Armenian Apostolic Church of America v. The J. Paul Getty Museum*, Docket No. BC438824 (01 June 2010).
- *Cassirer et al. v. Thyssen-Bornemisza Collection Foundation*, 737 F.3d 613 (9th Cir. 2013).

b. Legislation

- California Code of Civil Procedure § 338(c)(3).

c. Documents

- The J. Paul Getty Museum Collection. "Canon Tables from the Zeyt'un Gospels." <http://www.getty.edu/art/collection/objects/5253/t'oros-roslin-t'oros-roslin-canon-tables-from-the-zeyt'un-gospels-armenian-1256/>.
- The J. Paul Getty Museum Press Release. "J. Paul Getty Museum and the Western Prelacy of the Armenian Apostolic Church of America Announce Agreement in Armenian Art Restitution Case." September, 21 2015. Accessed October 12, 2016. <http://news.getty.edu/press-materials/press-releases/canon-table-2015.htm>.

d. Media

- Finkel, Jori. "Getty Displays Medieval Illuminated Pages after Legal Battle Finally Ends." *The Art Newspaper*, January 26, 2016. Accessed October 12, 2016. <http://theartnewspaper.com/news/getty-displays-medieval-illuminated-pages-after-legal-battle-finally-ends/>.
- Albertson, Lynda. "Details on the Getty and Armenian Church Agreement over Stolen Bible Pages." 23 September 2015. <http://art-crime.blogspot.ch/2015/09/details-on-getty-and-armenian-church.html>.
- Halperin, Julia. "Getty Becomes First Museum to Restitute Armenian Art Removed During Genocide." *The Art Newspaper*, September 22, 2015. Accessed October 12, 2016. <http://theartnewspaper.com/news/museums/getty-becomes-first-museum-to-restitute-armenian-art-removed-during-genocide/>.

²⁵ Ibid. See also supra n. 21.

- Herman, Alexander. “Legal Settlement Reached between Getty and Armenian Church.” *Institute of Art & Law News*, September 22, 2015. Accessed October 12, 2016. <http://www.ial.uk.com/legal-settlement-reached-between-getty-and-armenian-church/>.
- Boehm, Mike. “Legal Settlement with Armenian Church Lets Getty Museum Keep Prized Medieval Bible Pages.” *Los Angeles Times*, September 21, 2015. Accessed October 12, 2016. <http://www.latimes.com/entertainment/arts/culture/la-et-cm-armenian-church-settles-with-getty-museum-20150918-story.html>.