



Lauren Bursey
Ece Velioglu Yildizci
Marc-André Renold

July 2015

Citation: Lauren Bursey, Ece Velioglu Yildizci, Marc-André Renold, “Case Christ Carrying the Cross Dragged by a Rascal – Gentili di Giuseppe Heirs v. Italy,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

Case Christ Carrying the Cross Dragged by a Rascal – Gentili di Giuseppe Heirs v. Italy

Federico Gentili di Giuseppe – Italy/Italie – Brera Art Gallery – United States/Etats Unis – Artwork/oeuvre d’art – Nazi-looted art/spoliations nazies – Ad Hoc Facilitator/facilitateur ad hoc – Diplomatic Channel/voie diplomatique – Judicial claim – Judicial decision – Expropriation – Ownership/propriété – State Immunity/immunité des Etats – Unconditional restitution/restitution sans condition

In 1941, the painting “Christ Carrying the Cross Dragged by a Rascal” by Girolamo Romanino was confiscated by Nazi-controlled French authorities from Federico Gentili di Giuseppe – an Italian of Jewish descent living in Paris – and then sold at auction. In 1998, the Italian government bought this painting and hung it in the famed Brera Art Gallery (Pinacoteca di Brera), a government-run museum in Milan. In 2011, the Gallery sent the Romanino painting to the Mary Brogan Museum of Tallahassee in the United States for an exhibition. The Gentili di Giuseppe family’s lawyer notified the United States authorities, who then seized the painting, after which it was restituted to the family.

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

ART-LAW CENTRE – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

art-adr@unige.ch - <http://unige.ch/art-adr>

This material is copyright protected.

I. Chronology

Nazi looted art

- **1914:** Federico Gentili di Giuseppe – an Italian art collector of Jewish descent living in Paris – purchased the 16th century **painting “Christ Carrying the Cross Dragged by a Rascal”** by the artist Girolamo Romanino from the Crespi family collection.
- **1940:** Federico Gentili di Giuseppe died and left his estate to his son Marcello and daughter Adriana. In the same year, Marcello and Adriana fled Paris without their possessions because of the **Nazi invasion of France**.
- **1941:** The French **Vichy Government** ordered the liquidation of the entire Gentili di Giuseppe estate. The Romanino painting, along with dozens of other artworks belonging to the family, was **auctioned**, to be bought by “Lemar” of Paris, his full name not known.¹
- **1997:** Descendants of Federico Gentili di Giuseppe **sued the Louvre** for the return of five paintings sold during the 1941 auction.
- **1998:** The **Italian government bought the painting “Christ Carrying the Cross Dragged by a Rascal”** from a private owner and hung it in the government-run **Brera Art Gallery (Pinacoteca di Brera)**, Milan.²
- **1999:** The **Court of Appeal of Paris** ruled that the 1941 auction was **illegitimate** and awarded the heirs of Federico Gentili di Giuseppe five paintings which were in possession of the Louvre.³ The Art Institute of Chicago, the Boston Museum of Fine Arts, the Art Museum of Princeton, and institutions in Berlin, Cologne, and Lyons also returned artworks that had belonged to the family.⁴
- **2000:** The Brera Art Gallery was contacted twice by the family’s lawyer, which chose not to respond.
- **2002:** The **Commission for Art Recovery of the World Jewish Congress**⁵ wrote to the then Italian Prime Minister after the Italian Ministry of Culture had rejected the Gentili di Giuseppe family’s claims. The Commission’s aim was to get the Italian Prime Minister to intervene on behalf of the family.⁶
- **2003:** The Italian Ministry of Culture responded to the Commission for Art Recovery by saying that it could not accommodate the restitution request.

¹ Ricardo St. Hilaire, “Part II of II: U.S. Attorney Reveals Legal and Factual Claims in Forfeiture Lawsuit Against Cristo Portacroce – Case Reveals Italy’s Refusal to Turn Painting Over to Gentili di Giuseppe Family,” *Cultural Heritage Lawyer*, November 10, 2011, accessed June 8, 2015, <http://culturalheritagelawyer.blogspot.ch/2011/11/part-ii-of-ii-us-attorney-reveals-legal.html>.

² Boehm, Mike. “Italy in Unfamiliar Role in Seizure of ‘Christ Carrying the Cross,’” *Los Angeles Times*, April 24, 2012, accessed June 9, 2015, <http://articles.latimes.com/2012/apr/24/entertainment/la-et-italian-painting-20120424>.

³ *Christiane Gentili di Giuseppe et al. v. Musée du Louvre*, Court of Appeal of Paris, 1st Division, Section A, 2 June 1999, No. 1998/19209. See also Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, ‘Case Five Italian Paintings – Gentili di Giuseppe Heirs v. Musée du Louvre and France’, Platform ArThemis (<http://unige.ch/art-adr>).

⁴ Hilaire, “Part II of II: U.S. Attorney Reveals Legal and Factual Claims in Forfeiture Lawsuit.” See also Laetitia Nicolazzi, Alessandro Chechi, Marc-André Renold, ‘Affaire Buste d’un jeune garçon – Héritiers Gentili di Giuseppe et Art Institute de Chicago’, Plateforme ArThemis (<http://unige.ch/art-adr>).

⁵ The Commission for Art Recovery is a New York based private group that seeks to reconstitute art objects taken from Holocaust victims. See at: <http://www.commartrecovery.org/>.

⁶ Hilaire, “Part II of II: U.S. Attorney Reveals Legal and Factual Claims in Forfeiture Lawsuit.”

- **2006:** The **Commission on Looted Art in Europe**⁷ contacted the Italian government on the family's behalf, attempting to negotiate for the painting's return.
- **2011:** The Romanino painting was **loaned** to the **Mary Brogan Museum** of Tallahassee (Florida) in the United States for a show entitled "Baroque Painting in Lombardy from the Pinacoteca di Brera". Shortly before being returned to Italy, **US Immigration and Customs Enforcement (ICE)**, notified by Interpol, seized the painting to prevent its return. The US Attorney filed an *in rem* action against the painting for its **forfeiture**.⁸
- **2012:** The painting was returned to the Gentili di Giuseppe heirs.

II. Dispute Resolution Process

Ad hoc facilitator – Diplomatic channel – Judicial claim – Judicial decision

- While the Romanino painting was hanging in Florida, Corinne Hershkovitch, attorney for the Gentili di Giuseppe heirs, and a staff member of Christie's, visited the Brera Art Gallery, noted that it was not in its place, and notified Interpol.⁹ Interpol then notified the US government, which prompted investigators from ICE to look into the case and ultimately seize the painting. ICE held the painting in an "undisclosed location" until its ownership was legally resolved in favour of the Gentili di Giuseppe heirs.¹⁰
- It appears that the intervention of private actors, such as the Commission for Art Recovery and the Commission on Looted Art in Europe, was irrelevant for the ultimate return of the painting.

III. Legal Issues

Expropriation (by illegitimate Vichy government) – Ownership – State immunity

- The Court of Appeal of Paris determined that the auction of the painting in 1941 was a form of illegal expropriation by an assessment of the following facts. In 1940, a creditor of Federico Gentili di Giuseppe, Julien Giraud, sued his heirs for showing no interest in the estate. In reality, as said, Marcello and Adriana Gentili di Giuseppe had fled Paris in 1940 to escape Nazi persecution. Later that year, the Court of Appeal appointed a certain Mr. Moulin to manage the estate. This was authorized to liquidate the family estate by auction to settle the estate's debts. Many of the paintings were purchased by Hermann Goering, the right-hand man to Adolf Hitler.
- The Court of Appeals in Paris also discussed whether the 1941 sale took place with the consent of the Gentili di Giuseppe heirs, or "whether the sale had been carried out under the

⁷ The Commission for Looted Art in Europe is an international, expert and non-profit representative body which researches, identifies and recovers looted property on behalf of families, communities, institutions and governments worldwide. See at: <http://www.lootedartcommission.com/Services>.

⁸ Boehm, "Italy in Unfamiliar Role in Seizure of 'Christ Carrying the Cross.'"

⁹ Boehm, "Italy in Unfamiliar Role in Seizure of 'Christ Carrying the Cross.'"

¹⁰ Paul Jeromack, "Looted by the Nazis, a Romanino is Returned," *Artnet*, accessed June 9, 2015, <http://www.artnet.com/magazineus/news/artmarketwatch/looted-by-the-nazis-a-romanino-returned-1-26-12.asp>.

exorbitant common law measures in force on 16 June 1940” undertaken by the Vichy government, which constituted acts based on racial or political discrimination. The Court established that the measures in place made it impossible for the Gentili di Giuseppe heirs to return to Paris to look after the estate or to explain the situation to the courts.¹¹ As a result, the Court of Appeals acknowledged the looting and invalidated the sale of the Gentili di Giuseppe art collection, which included the painting “Christ Carrying the Cross Dragged by a Rascal”.

- With the London Declaration of 1943,¹² the Allies warned the enemy States and neutral nations that they intended “to do their utmost to defeat the methods of dispossession practiced by the” Nazis, regardless of “whether such transfers of dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected”. The principle was established that subsequent purchasers of illicitly taken property would not be considered to be in good faith after the relevant date. The circumstances which led to the sale of the collection and prevented the Gentili di Giuseppe heirs from intervening were determined by the French court as equivalent to confiscation.¹³
- The US Immunity from Judicial Seizure Act (1963)¹⁴ allows for foreign museums and governments to apply for immunity from seizure while their art is on loan for non-profit exhibitions in the US. However, in this case the Brera Art Gallery did not make such an application.¹⁵ Had the Brera filed the appropriate paperwork, the US government – and ultimately the Gentili di Giuseppe heirs – would not have been able to seize the painting.¹⁶

IV. Adopted Solution

Unconditional Restitution

- Following the order of 6 February 2012 of the US District Court of the Northern District of Florida, the painting “Christ Carrying the Cross Dragged by a Rascal” was returned to the Gentili di Giuseppe heirs on April 2012. The painting was subsequently sold at auction by Christie’s for \$4,562,500.¹⁷

¹¹ Bandle, Chechi, Renold, “Case Five Italian Paintings – Gentili di Giuseppe Heirs v. Musée du Louvre and France.”

¹² Declaration of the Allied Nations against Acts of Dispossession Committed in Territories under Enemy Occupation or Control, London, 5 January 1943 (1943, 8, Department of State Bulletin 21), implemented by the French Interim Government with an order on 12 November 1943.

¹³ Bandle, Chechi, Renold, “Case Five Italian Paintings – Gentili di Giuseppe Heirs v. Musée du Louvre and France.”

¹⁴ 19 C.F.R. § 12.104h (1963).

¹⁵ Boehm, “Italy in Unfamiliar Role in Seizure of ‘Christ Carrying the Cross.’”

¹⁶ Seizure allows the US government to take possession of the painting, effectively placing a hold on its legal status, while a forfeiture order issued by a court allows the government to gain title to the painting. Ricardo St. Hilaire, “Part I of II: US Attorney Reveals Legal and Factual Claims in Forfeiture Lawsuit Against Cristo Portacroce – Argues that Painting Loaned to the Brogan by The Brera Was Stolen, Smuggled, and War Material.” *Cultural Heritage Lawyer Rick St. Hilaire*, November 9, 2011, accessed June 8, 2015, <http://culturalheritagelawyer.blogspot.ch/2011/11/part-i-of-ii-us-attorney-reveals-legal.html>.

¹⁷ “Auction Results: Sale 2564, Lot 99, Girolamo Romanino (Brescia 1484/7-1560), Christ Carrying the Cross,” *Christie’s*, July 2012.

V. Comment

- It is very rare for this sequence of events to happen today given that the application for immunity from seizure under existing statutes has become “practically mandatory” among foreign lenders since 1998, when Egon Schiele’s unprotected painting “Portrait of Wally” was seized from a show at the Museum of Modern Art in New York.¹⁸
- It is notable that the Italian government and the Brera Art Gallery did not follow, nor appear to feel pressure from other museums, including the Art Institute of Chicago, the Boston Museum of Fine Arts, and institutions in Berlin and Lyon, which returned artworks to the Gentili di Giuseppe heirs after the 1999 ruling of the Court of Appeal of Paris.¹⁹ It can be argued that Italian authorities had assumed that its strong law shielding government collections would protect it from seizure elsewhere.²⁰
- In 2003, the Italian Ministry of Culture cited the 1998 Washington Principles on Nazi-Confiscated Art²¹ as a ground to refuse the restitution of the painting. However, there is nothing in the Principles that would have empowered the Ministry to take this decision. Rather, the Washington Principles urge the identification of art that had been confiscated by the Nazis, establishing a complete record of provenance, publicizing this art, and finding a fair and just solution to the issue of ownership.²² At the very least then, Italy, according to the Principles, would have had to at least try to reach a fair solution with the family, even if it was decided not to return the painting.

VI. Sources

a. Court decisions

- *Christiane Gentili di Giuseppe et al. v. Musée du Louvre*, Court of Appeal of Paris, 1st Division, Section A, 2 June 1999, No. 1998/19209.

b. Legislation

- Immunity from Judicial Seizure Act, 19 C.F.R. § 12.104h (1963).
- Declaration of the Allied Nations against Acts of Dispossession Committed in Territories under Enemy Occupation or Control, London, 5 January 1943 (1943, 8, Department of State Bulletin 21)

¹⁸ Boehm, “Italy in Unfamiliar Role in Seizure of ‘Christ Carrying the Cross.’” See also Raphael Contel, Giulia Soldan, Alessandro Chechi, “Case Portrait of Wally – United States and Estate of Lea Bondi and Leopold Museum,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

¹⁹ Hilaire, “Part II of II: U.S. Attorney Reveals Legal and Factual Claims in Forfeiture Lawsuit.”

²⁰ Boehm, “Italy in Unfamiliar Role in Seizure of ‘Christ Carrying the Cross.’”

²¹ These Principles were adopted on the occasion of the Washington Conference on Holocaust-Era Assets, which was organized by the United States in December 1998 in order to find a general solution to the problem of the cultural assets looted by the Nazis.

²² “Washington Conference Principles on Nazi-Confiscated Art,” Washington Conference on Holocaust-Era Assets, November 30-December 3, 1998, Washington: Government Printing Office 1999.

c. Documents

- Washington Conference Principles on Holocaust-Era Assets (1998), Washington: Government Printing Office 1999.
- “Auction Results: Sale 2564, Lot 99, Girolamo Romanino (Brescia 1484/7-1560), Christ Carrying the Cross,” Christie’s, July 2012.
- Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, “Case Five Italian Paintings – Gentili di Giuseppe Heirs v. Musée du Louvre and France,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.
- Laetitia Nicolazzi, Alessandro Chechi, Marc-André Renold, “Affaire Buste d’un jeune garçon – Héritiers Gentili di Giuseppe et Art Institute de Chicago,” Plateforme ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.
- Raphael Contel, Giulia Soldan, Alessandro Chechi, “Case Portrait of Wally – United States and Estate of Lea Bondi and Leopold Museum,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

d. Media

- Jeromack, Paul. “Looted by the Nazis, a Romanino is Returned,” *Artnet*. Accessed June 9, 2015. <http://www.artnet.com/magazineus/news/artmarketwatch/looted-by-the-nazis-a-romanino-returned-1-26-12.asp>.
- Boehm, Mike. “Italy in Unfamiliar Role in Seizure of ‘Christ Carrying the Cross.’” *Los Angeles Times*, April 24, 2012. Accessed June 9, 2015. <http://articles.latimes.com/2012/apr/24/entertainment/la-et-italian-painting-20120424>.
- St. Hilaire, Ricardo A. “Part II of II : U.S. Attorney Reveals Legal and Factual Claims in Forfeiture Lawsuit Against Cristo Portacroce – Case Reveals Italy’s Refusal to Turn Painting Over to Gentili di Giuseppe Family.” *Cultural Heritage Lawyer Rick St. Hilaire*, November 10, 2011. Accessed June 8, 2015. <http://culturalheritagelawyer.blogspot.ch/2011/11/part-ii-of-ii-us-attorney-reveals-legal.html>.
- St. Hilaire, Ricardo. “Part I of II: US Attorney Reveals Legal and Factual Claims in Forfeiture Lawsuit Against Cristo Portacroce – Argues that Painting Loaned to the Brogan by The Brera Was Stolen, Smuggled, and War Material.” *Cultural Heritage Lawyer Rick St. Hilaire*, November 9, 2011. Accessed June 8, 2015. <http://culturalheritagelawyer.blogspot.ch/2011/11/part-i-of-ii-us-attorney-reveals-legal.html>.