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## Etruscan Black-Figured Kalpis – Italy and Toledo Museum of Art

*Italy/Italie – Toledo Museum of Art – Unites States/Etats-Unis – U.S. Immigration and Customs Enforcement – Gianfranco and Ursula Becchina – Archaeological object/objet archéologique – Post 1970 restitution claims/Demandes de restitution post 1970 – Judicial claim/action en justice – Negotiation/négociation – Illicit exportation/exportation illicite – Illicit importation/importation illicite – Criminal offence/infraction pénale – Unconditional restitution/restitution sans condition*

*After an extensive investigation by U.S. Immigration and Customs Enforcement (ICE) and Homeland Security Investigations, the Toledo Museum of Art returned in 2013 an Etruscan black-figure kalpis to Italy. The kalpis was found to be smuggled out of Italy after an illegal excavation prior to 1981, then sold to the Toledo Museum of Art in 1982 by Gianfranco and Ursula Becchina, who had earlier purchased it from the art smuggler Giacomo Medici. ICE and the carabinieri uncovered incontrovertible evidence that the Becchinas had provided the museum with falsified documentation of the provenance of the vase.*

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

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## I. Chronology

### Post 1970 restitution claims

- **1981:** An Etruscan black-figure kalpis (circa 510-500 B.C.) appears on market.<sup>1</sup>
- **August 26, 1982:** Toledo Art Museum purchases kalpis for \$90,000 from Ursula and Gianfranco Becchina, who provide forged provenance papers stating the kalpis was purchased in 1980 from a Mr. K. Haug, manager of the Swiss Hotel Helvetia, who had allegedly inherited this piece from his father, who in turn had allegedly purchased it in 1935.<sup>2</sup>
- **1995:** The first raid on Giacomo Medici's warehouse in Freeport, Switzerland occurred. Polaroids of the kalpis still covered in dirt from its recent excavation discovered.<sup>3</sup>
- **1997:** Giacomo Medici was arrested in Italy.<sup>4</sup>
- **2001:** Assistant U.S. attorney in Toledo issues subpoena for kalpis's documentation. Kalpis is flown back from Venice, where it is on loan for exhibition on Etruscans.<sup>5</sup>
- **2002:** Gianfranco Becchina's warehouse was seized by Swiss police. Thousands of artifacts were found, a second polaroid image of the dirt-covered kalpis (the polaroid itself also covered in dirt), and stacks of pre-fabricated documents on Hotel Helvetia letterhead with blanks to insert an object and its description.<sup>6</sup>
- **2004:** Becchina was convicted on multiple accounts of receiving stolen archaeological artifacts illegally removed from Italy (the kalpis explicitly mentioned).<sup>7</sup>
- **January 2010:** U.S. Immigration and Customs Enforcement (ICE) and Homeland Security Investigations (HSI) Attaché Office in Rome, Italy, initiates a cultural property investigation into the kalpis.<sup>8</sup>
- **November 2010-January 2012:** ICE threatens seizure three separate times, while Toledo Museum of Art requests further documentation to prove that the kalpis had been looted and smuggled out of Italy, and attempts to arrange a cultural exchange with Italy.<sup>9</sup>
- **June 20, 2012:** ICE files case for 690 forfeiture.<sup>10</sup>

<sup>1</sup> *United States of America v. One Etruscan Black-Figured Kalpis, Circa 510-500 B.C.*, June 20, 2012.

<sup>2</sup> *Ibid.*

<sup>3</sup> Neil Brodie, "Toledo Museum of Art Return to Italy (2013)," *Trafficking Culture*, June 5, 2014, accessed June 8, 2017, <http://traffickingculture.org/encyclopedia/case-studies/toledo-museum-of-art-return-to-italy-2013/>. According to *Wikipedia*, Polaroid's first camera was issued in 1948 – 13 years after alleged purchase in 1935.

<sup>4</sup> Neil Brodie, "Gianfranco Becchina," *Trafficking Culture*, August 20, 2012, accessed June 8, 2017, <http://traffickingculture.org/encyclopedia/case-studies/gianfranco-becchina/>.

<sup>5</sup> Lane, Tahree, "Toledo Art Museum to Give Back Rare Jug," *The Blade*, June 20, 2012, <http://www.toledoblade.com/Art/2012/06/20/Toledo-art-museum-to-give-back-rare-jug.html>

<sup>6</sup> Brodie, "Toledo Museum of Art Return to Italy (2013)."

<sup>7</sup> *United States of America v. One Etruscan Black-Figured Kalpis, Circa 510-500 B.C.*, June 20, 2012.

<sup>8</sup> *Ibid.*

<sup>9</sup> "Kalpis Returns to Italy," Toledo Museum of Art, published January 10, 2013, accessed June 8, 2017, <http://www.toledomuseum.org/2013/01/10/kalpis-returns-to-italy/>

<sup>10</sup> *United States of America v. One Etruscan Black-Figured Kalpis, Circa 510-500 B.C.*, June 20, 2012. "690 forfeiture" is a part of US Civil Procedure for civil forfeiture, under 18 U.S. Code § 981.

- **January 8, 2013:** Before the court order for forfeiture came into effect, the Toledo Museum of Art willingly turned over the kalpis to ICE authorities in a public ceremony.<sup>11</sup>

## II. Dispute Resolution Process

### Judicial claim – Negotiation

- When an assistant U.S. Attorney officer became aware of the 1995 raid on Medici's warehouse and his connections to the Becchinas in 2001, he issued the subpoena to the Toledo Museum of Art for the documentation of the kalpis. The kalpis was on exhibition in Venice at the time, and the Toledo Museum of Art immediately flew a registrar to Italy to bring the kalpis back to Toledo.<sup>12</sup>
- In 2010, HSI Rome initiates a cultural property investigation into the kalpis. Over the next two years, ICE threatens seizure three separate times.<sup>13</sup>
- In June 2012, ICE files their case for forfeiture.<sup>14</sup>
- Seven months later, before the court order for forfeiture comes into effect, the Toledo Museum of Art willingly turns over the kalpis to ICE in a public ceremony, issuing statements celebrating their cooperation with ICE and Italian authorities.<sup>15</sup>

## III. Legal Issues

### Illicit Importation – Illicit Exportation – Criminal Offence

- Under 19 U.S.C. § 1595a(c)(1)(A), merchandise may be seized and forfeited when it is illegally introduced into the United States and was stolen, smuggled, or clandestinely imported. Under 18 U.S.C. § 2314, it is illegal for a person to knowingly transport in interstate or foreign commerce any merchandise which has been stolen, converted or taken by fraud. 9. The kalpis constituted stolen merchandise that was transported in interstate or foreign commerce, in violation of 18 U.S.C. § 2314, and was subject to forfeiture as merchandise illegally introduced into the United States, under 19 U.S.C. § 1595a(c)(1)(A).<sup>16</sup>
- Under Article 33 of the Italian patrimony law of June 20, 1909 (Law Number 364), exportation of an antiquity, as defined under the law, is considered smuggling when the article is not presented to Italian customs or otherwise concealed from Italian customs in order to

<sup>11</sup> There seems to be no further public information on the status of the repatriation and current location of the kalpis.

<sup>12</sup> Lane, "Toledo Art Museum to Give Back Rare Jug."

<sup>13</sup> *Ibid.*

<sup>14</sup> *United States of America v. One Etruscan Black-Figured Kalpis, Circa 510-500 B.C.*, June 20, 2012.

<sup>15</sup> "Transfer Ceremony Clears Way for Illegally Looted Ancient Vessel to be Returned to Italy," U.S. Immigration and Customs Enforcement, last modified January 7, 2013, accessed June 8, 2017,

<https://www.ice.gov/news/releases/transfer-ceremony-clears-way-illegally-looted-ancient-vessel-be-returned-italy>. See

Also "Kalpis Returns to Italy."

<sup>16</sup> *United States of America v. One Etruscan Black-Figured Kalpis, Circa 510-500 B.C.*, June 20, 2012.

avoid licensing requirements and payment of applicable taxes. Under Article 44 of Italian cultural patrimony law of June 1, 1939, all archaeological finds are property of the Italian state, unless the possessor can show private ownership prior to 1902, and the discovery of every archaeological item must be reported to Italy's Ministry of Culture. Further, an export license issued by the Italian Ministry of Culture, and payment of custom duties, are required for the export of any cultural property protected by the above patrimony laws of 1909 and 1939.<sup>17</sup>

- The kalpis was determined to have been smuggled out of Italy to Switzerland and the Becchinas by Giacomo Medici, convicted in 2004 for intent to receive stolen archaeological artifacts illegally removed from Italy's cultural patrimony (including the kalpis), in violation of the Italian patrimony laws of 1909 and 1939.<sup>18</sup>

#### IV. Adopted Solution

##### Unconditional Restitution

- Following the 20 June 2012 filing for forfeiture by the U.S. District Court for the Northern District of Ohio Western Division, the Toledo Museum of Art decided to return the kalpis to Italy. The museum gave the kalpis to ICE in a public ceremony on January 7, 2013, and ICE orchestrated the transport of the kalpis back to Italy.

#### V. Comment

- In 2010, HSI launched their investigation into the true provenance of the kalpis following a lead from the investigators of the Becchina case in Rome. HSI were able to establish that the documentation provided to the Toledo Museum of Art was falsified, and this contributed to Becchina's 2011 conviction in Rome. In 2012, ICE filed their case, and seven months later the Toledo Museum of Art forfeited the kalpis to ICE, who have returned it to Italy.
- Over the course of ten years, the Toledo Museum of Art refused to return the kalpis to Italy, insisting on irrefutable evidence that the Kalpis had been stolen. However, at the time of purchase, the museum was content with merely a photocopy of the statement from the Swiss collector Mr. Haug as evidence that the kalpis was legitimate. Toledo Museum of Art issued a statement comparing ICE's threats of seizure to "a drug bust." The museum further requested a "cultural exchange" with Italy to replace the hole in their collection left by the kalpis, which the Italian government did not acknowledge. This is likely due to the museum's refusal to return the kalpis and insistence on dragging out the legal proceedings.<sup>19</sup>

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.* For further information, see Article 34, Law No. 364 of 20 June 1909 (inalienability of antiquities and fine arts) and Article 44, Law No. 1089 of 1 June 1939, as amended 1975 and 1998 (protection of items of artistic and historic interest).

<sup>19</sup> Lane, "Toledo Art Museum to Give Back Rare Jug."

- Upon receiving the subpoena in 1995, the Toledo Museum of Art immediately fly a registrar to Venice to bring the kalpis, then on loan, back to Ohio. It appears as though the museum was acting out of fear that the kalpis would be seized in Italy and never returned to their museum.
- Contemporaneous to these proceedings, the Toledo Museum of Art purchased and then returned another stolen artifact. In 2006, the museum purchased a statute of the god Ganesha from New York art dealer Subhash Kapoor.<sup>20</sup> Kapoor had instructed looters to take the 11<sup>th</sup> century Chola-period bronze Ganesha statue from the Brihadeeswarar temple, located in Tamil Nadu, India, along with seven other bronzes from the same temple. He then sold these bronzes to private collectors and museums around the world. Mr. Kapoor was arrested by INTERPOL in 2011 and extradited to India in 2012 on charges of receiving artifacts that had been stolen from disused temples in southern India<sup>21</sup>. In this instance, the Toledo Museum of Art repatriated the Ganesha to India in 2014 before any legal proceedings began.<sup>22</sup>

## VI. Sources

### a. Court decisions

- *United States of America v. One Etruscan Black-Figured Kalpis, Circa 510-500 B.C.*, No. 3:12-cv-1582, N.D. Ohio, compliant in forfeiture, June 20, 2012.

### b. Legislation

- Fine, Penalty, or Forfeiture 28 U.S. Code § 1355
- Fine, Penalty, or Forfeiture 28 U.S. Code § 1395
- United States as Plaintiff, 28 U.S. Code § 1345
- Regulating the Inalienability of Antiquities and Fine Arts, Article 34, Law No. 364 of 20 June 1909
- Protection of Items of Artistic and Historic Interest, Article 44, Law No. 1089 of 1 June 1939, as amended 1975 and 1998

### c. Media

- Hebbar, Nistula, “Idol Trackers Elated as Ganesha Set to Come Home,” *The Hindu*, June 8, 2016, <http://www.thehindu.com/news/national/Idol-trackers-elated-as-Ganesha-set-to-come-home/article14391765.ece>

<sup>20</sup> “Toledo Museum of Art to Return Ganesha Sculpture to India,” Toledo Museum of Art, last modified October 3, 2014, accessed June 8, 2017, <http://www.toledomuseum.org/2014/10/03/toledo-museum-of-art-to-return-ganesha-sculpture-to-india/>

<sup>21</sup> See Madeleine Frith, Ece Velioglu Yildizci, Marc-André Renold, “Dancing Shiva Statue – India and National Gallery of Australia,” Platform ArThemis (<http://unige.ch/art-adr>).

<sup>22</sup> Hebbar, Nistula “Idol Trackers Elated as Ganesha Set to Come Home,” *The Hindu*, June 8, 2016, accessed June 8, 2017, <http://www.thehindu.com/news/national/Idol-trackers-elated-as-Ganesha-set-to-come-home/article14391765.ece>

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