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Case Five Italian Paintings – Gentili di Giuseppe Heirs v. Musée du Louvre and France

Federico Gentili di Giuseppe – Musée du Louvre – France – Artwork/œuvre d'art – Nazi looted art/spoliations nazies – Negotiation/négociation – Judicial claim/action en justice – Judicial decision/décision judiciaire – Ownership/propriété – Statute of limitation/prescription – Unconditional restitution/restitution sans condition

In 1998, the heirs of the renowned Jewish art collector Federico Gentili di Giuseppe sued the Louvre Museum seeking the restitution of five paintings. These paintings, which were part of Federico Gentili di Giuseppe's collection, were bought at auction by Herman Göring in 1941 and transferred to the Musée du Louvre at the end of the Second World War. During litigation, the primary issue was whether the 1941 sale was valid and, consequently, whether the Museum was the legitimate owner of the five paintings. The Court of Appeal of Paris ruled in favor of the heirs and annulled the 1941 sale, allowing for their restitution.

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

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I. Chronology

Nazi looted art

- **21 April 1940: Federico Gentili di Giuseppe**, a Jewish Italian and prominent art collector, died of natural causes in France¹. He left as heirs his two children, **Marcello and Adriana Gentili di Giuseppe**, who fled from Nazi occupied territory in **June 1940**.
- **24 October 1940**: A creditor of Federico Gentili di Giuseppe, Julien Giraud, sued the heirs in the Civil Court of First Instance (*Tribunal civil de la Seine*) in Paris, accusing them of “showing absolutely no interest” in the estate².
- **29 October 1940**: By an order “*in absentia*” (since none of the heirs resided in Paris at that time), the *Tribunal civil de la Seine* appointed a certain Mr. Moulin with the estate’s management including the taking of related measures³. For these purposes, Mr. Moulin created an inventory listing all personal property included in the Gentili di Giuseppe estate.
- **17 March 1941**: The same Court issued another order authorizing Mr. Moulin to liquidate the family estate by auction and use the collected sums for the payment of the estate’s debts⁴.
- **April 1941: Five paintings** of the inventoried estate were sold at auction: “La Visitation” by Moretto da Brescia (1498-1554); “*La Sainte Famille*” by Bernardo Strozzi (1581-1644); “*Alexandre et Campaspe chez Apelle*” by Giambattista Tiepolo (1669-1770); “*Joueurs de cartes devant une cheminée*” by Alessandro Magnasco (1667-1749); and “*Portrait de femme*” by Rosalba Carriera (1675-1757). The paintings were purchased by intermediaries on behalf of Hermann Göring, the second most powerful man during the Second World War under Adolf Hitler⁵. At the end of the Second World War, all works discovered in Göring’s collection were transferred to and stored in the Musée du Louvre in France to await restitution⁶.
- **1950**: Adriana Gentili di Giuseppe first attempted to reclaim the lost paintings after seeing them on display at the Louvre. The Louvre refused her request three times in **1951, 1955** and **1961**. The refusals were motivated by the fact that she failed to prove that the 1941 sale was tantamount to a forced sale and that her claim was time barred⁷.

¹ See Leila Anglade, “Art, Law and the Holocaust: The French Situation,” *Art Antiquity and Law* 4 (December 1999): 309.

² *Christiane Gentili di Giuseppe et al. v. Musée du Louvre*, Court of Appeal of Paris, 1st Division, Section A, June 2, 1999, n. 1998/19209, p. 3 (translated version).

³ *Ibid.*; see also Véronique Parisot, “The Gentili di Giuseppe Case in France,” *International Journal of Cultural Property* 10 (2001): 265.

⁴ See Leila Anglade, “Art, Law and the Holocaust: The French Situation,” *Art Antiquity and Law* 4 (December 1999): 309.

⁵ See Parisot, “The Gentili di Giuseppe Case in France,” 265.

⁶ *Ibid.* On the basis of Decree n. 49-1344, the Musée du Louvre was “precarious holder” of the paintings, which were inventoried in the “Musée Nationaux de Récupération” registry (MNR). Decree n. 49-1344, Paris, dated September 30, 1949, (*Décret relatif à la fin des opérations de la commission de récupération artistique (Journal officiel du 02.10.1949)*), accessed August 20, 2012, <http://www.culture.gouv.fr/documentation/mnr/dec3049.htm>.

⁷ See Jérôme Passa, “Condamnation du musée du Louvre à restituer des tableaux aux héritiers des propriétaires spoliés durant l’Occupation,” *Le Dalloz* N. 37 Vol. 1 (1999), 537.

- **19 March 1998:** The sole heir of Marcello Gentili di Giuseppe, Christiane, and the heirs of Adriana Gentili di Giuseppe, Emmanuelle Maupas, Daniel and Lionel Salem, filed a lawsuit against the Musée du Louvre and the State of France. Essentially, the heirs asked the Court to declare the 1941 sale void and order the five paintings' restitution plus damages.
- **10 July 1998:** The Court of First Instance dismissed all the plaintiffs' claims, but ruled in their favour on the issue of time limitation⁸.
- **30 July 1998:** The claimants filed an appeal to this decision.
- **2 June 1999:** The Court of Appeal of Paris ruled in favour of the heirs, which led to the restitution of the five Italian paintings⁹.

II. Dispute Resolution Process

Negotiation – Judicial claim – Judicial decision

- The heirs directly approached the Musée du Louvre with their claim on two occasions. First, Adriana Gentili di Giuseppe asked the restitution of the paintings in 1950 after visiting the Museum. The Museum denied her requests, arguing that she needed to have the 1941 sale annulled by Court order¹⁰.
- Around the end of the 20th century, the political climate seemed to have changed in France. Museums were increasingly being asked to search for looted artworks in their collections and had to respond to restitution requests¹¹. Domestic political pressure led to the establishment of a commission – the Mattéoli Commission – assigned with the task of investigating on the fate and the whereabouts of confiscated items and drawing up an inventory of seized assets¹². Given the ostensibly greater social awareness, the Gentili di Giuseppe heirs decided to make another attempt and revived their restitution claim. They demanded all five paintings held by the Musée du Louvre¹³.
- The heirs filed suit only after the Musée du Louvre rejected their demands.. The heirs petitioned the court to: (1) lift the limitation held in article 21 of the order dated 21 April

⁸ *Christiane Gentili di Giuseppe et al. v. Musée du Louvre*, County Court of Paris, July 10, 1998, General Roll n. 1998/54616.

⁹ *Christiane Gentili di Giuseppe et al. v. Musée du Louvre*, Court of Appeal of Paris, 1st Division, Section A, June 2, 1999, n. 1998/19209.

¹⁰ See Parisot, "The Gentili di Giuseppe Case in France," 265. The Musée du Louvre contested the Heir's claim to be legitimate considering it to be time barred and the 1941 sale to be valid (see Passa, "Condamnation du musée du Louvre," 537.

¹¹ See Gunnar Schnabel and Monika Tatzkow, *Nazi Looted Art – Handbuch Kunstrestitution weltweit* (Berlin: proprietas-verlag, 2007), 141.

¹² See the Report of the Mattéoli Commission, which was published in April 2000, Study Mission on the Spoliation of Jews in France: Mattéoli Commission Final Report (*Mission d'étude sur la spoliation des Juifs de France: Rapport Général*), Paris: *La Documentation Française*, April 2000, accessed August 15, 2012, <http://www.ladocfrancaise.gouv.fr>.

¹³ See Parisot, "The Gentili di Giuseppe Case in France," 265.

- 1945¹⁴; (2) annul the 1941 auction sale; (3) order the Musée du Louvre to return the five paintings to them; and (4) require the museum to pay damages. The Court of First Instance in Paris ruled in favour of the plaintiffs regarding their first claim and dismissed all others.
- The plaintiffs appealed the court's decision. Overall, the plaintiffs asked the Court of Appeals to: (1) declare the nullity of the 1945 auction sale of the litigious paintings; (2) order the Musée du Louvre to return them the litigious paintings and any other artwork that might be in the Museum's possession; and (3) require the Musée du Louvre to pay 100.000 francs pursuant to Article 700 New York Code of Civil Procedure. The appeal was founded on the following arguments: (1) the French government failed to prove any legitimate interest in contesting the plaintiffs' property title on the paintings; (2) the plaintiffs were the sole legitimate owners of the litigious paintings as these were sold at auction not on the heirs' account, but on that of Hermann Göring; (3) the 1941 auction sale was void based on Article 1 of the order dated 21 April 1945 and Article 1 of the order dated 9 June 1945, given the coercive measures adopted against the plaintiffs at that time, and the fact that the plaintiffs neither had consented to the sale nor had the capacity to enter into a contract; and (4) the sale contract was established under violent circumstances as presumably laid down by Article 11, paragraph 1 of the order dated 21 April 1945.
 - The Louvre petitioned the court to dismiss the plaintiffs' claims. It based its argument on the assertion that the 1941 auction sale had not been forced since it was conducted in the heirs' interest to settle the estate's liabilities, with the remaining balance paid to the heirs. The Museum also argued that the heirs themselves had selected the representatives in charge of the sale. Moreover, the artworks chosen for sale were selected by the heirs with the help of Mr. Moulin, and did not include any of the major works forming Federico Gentili di Giuseppe's collection¹⁵. Consequently, the Louvre asserted : (1) the auction sale did not qualify as a sale in terms of Article 1 of the order dated 21 April 1945 given that "acts of sale of litigious paintings are not acts of disposal within the meaning of this text, that the measures were not 'taken out of hand' and finally, they do not constitute exorbitant common law measures inspired by the enemy"¹⁶; (2) the sale contract was not concluded under violent circumstances according to Article 11 of the same order and instead fell under the exception of a sale at a "fair price" provided by Article 11, paragraph 2; (3) Article 9 of the order dated 9 June 1945 did not apply due to the plaintiffs' failure to prove an "act of despoilment" and the constraints imposed on the victim of such an act; and (4) that the auction sale could not be challenged by any alleged vitiated consent given that it had been ordered by a court and was time-barred.
 - The Court of Appeal accepted the plaintiff's claim in all counts, except for their claim to paintings other than the litigious paintings.

¹⁴ Interim Government of the French Republic, order n. 45-770, Paris, April 21, 1945 (*Ordonnance portant deuxième application de l'ordonnance du 12 novembre 1943 sur la nullité des actes de spoliation accomplis par l'ennemi ou sous son contrôle et édictant la restitution aux victimes de ces actes de leurs biens qui ont fait l'objet d'actes de disposition*), accessed August 20, 2012, <http://www.culture.gouv.fr/documentation/mnr/or2104.htm>.

¹⁵ *Ibid.*, 8.

¹⁶ *Christiane Gentili di Giuseppe et al. v. Musée du Louvre*, Court of Appeal of Paris, 1st Division, Section A, June 2, 1999, n. 1998/19209, p. 6 (translated version).

III. Legal Issues

Ownership – Statute of limitation

- The two main legal issues in this case pertained to the legality of the 1941 auction sale and the limitation period set forth in Article 21 of the order dated 21 April 1945.
- The Court of First Instance ruled that the auction sale was subject to ordinary law based on four observations: (1) in the settlement of the heirs' estate, concerned the debt owed to Mr. Giraud, and also the estate's other liabilities; (2) the work of Mr. Moulin, the testamentary administrator, had been supervised by the family's notary and the heirs' representative as designated by Marcello Gentili di Giuseppe; (3) the works offered for sale had been selected and chosen under precise instructions and were not part of the finest works of Federico Gentili di Giuseppe's collection; and (4) the relationship between the administrator of the estate and the heirs had been "non-confrontational"¹⁷.
- The Court of Appeal reversed the Court of First Instance's judgment, holding the 1941 auction sale equal to a confiscation within the meaning of Article 1 of the order dated 21 April 1945. In particular, the Court of Appeal analysed whether the plaintiffs had given their consent to the sale or, conversely, whether the sale had been carried out under the "exorbitant common law measures in force on 16 June 1940" (art. 1 of the order dated 21 April 1945)¹⁸. Such measures taken by the enemy or the Vichy government constituted decisions and acts based on racial or political discrimination¹⁹. On this matter, the court held that the nomination of the representatives and the authorisation to sell the litigious paintings "do not, in themselves, set up the exorbitant common law measures in force"²⁰ at that time. However, they were of the same nature due to the factual and legal circumstances under which they were granted. Besides, the Court of Appeal held that it had been absolutely impossible for Adriana and Marcello Gentili di Giuseppe to return to Paris at the time to carry out the required acts for the management of the estate, including those involving the litigious paintings. The Court also acknowledged that they were unable to appear before court to explain their circumstances because of the "exorbitant common law measures in force at that time"²¹.
- While the court acknowledged the looting, it was still necessary to establish the claim had been filed within the limitation period set in Article 21, paragraph 1 of the order dated 21 April 1945. This order required a claimant to act within six months of the end of hostilities, which had been later extended until the end of 1949²².
- The Court of First Instance decided this issue by relying on the exception of Article 21, paragraph 2 of the order dated 21 April 1945. According to the rule, the limitation period could be lifted if the claimants proved they were physically unable to file their demand

¹⁷ See Parisot, "The Gentili di Giuseppe Case in France," 270.

¹⁸ On 16 June 1940 the Vichy government was established as a consequence of the occupation of France by the Nazis.

¹⁹ See Passa, "Condamnation du musée du Louvre," 537.

²⁰ *Christiane Gentili di Giuseppe et al. v. Musée du Louvre*, Court of Appeal of Paris, 1st Division, Section A, June 2, 1999, n. 1998/19209, p. 8 (translated version).

²¹ The same factual reasoning was adopted by the Court of First Instance regarding the second legal issue.

²² See Passa, "Condamnation du musée du Louvre," 540.

before its expiration. The Court concluded that the heirs were practically prevented from acting in a timely manner, given that they had to escape from Paris, and were thus unable to locate the paintings before 1950²³. Besides, from that period until the heirs filed their claim in 1998, the Court held that the heirs' efforts to obtain restitution had been hampered by the Museum's repeated negative responses. The Museum's responses hoped to extend the lapse of time, hence preventing a positive outcome if sued at court²⁴. This argument was not contested on appeal. Thus, the Court lifted the time bar and held that the Musée du Louvre was obligated to return the paintings to the plaintiffs.

IV. Adopted Solution

Unconditional restitution

- The Court of Appeal ordered the restitution of the 5 requested paintings to the heirs of Federico Gentili di Giuseppe.
- Moreover, Court of Appeal ordered the Musée du Louvre and the French State to pay damages in the amount of 40.000 francs and provide for the heirs' attorney fees and court costs.

V. Comment

- The London Declaration of the Allied Powers of 1943²⁵ provided all signatory States with the right to declare any transfers of property invalid that had been executed in occupied territories, 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 Declaration was implemented by the French Interim Government with the order dated 12 November 1943²⁶. Subsequently, the French Government passed another order dated 21 April 1945. The 1945 order formalized the 1943 order's commitments. Even though extensive legal framework was in place allowing the return of Nazi looted goods, in practice, its application proved to be difficult mainly due to interpretation issues²⁷. In the present case, the difficulty resided in establishing the 1941 auction sale's status as an act of "despoilment" under Article 1 of the 1945 order. The Gentili di Giuseppe collection was neither directly looted by Nazi officials nor sold because

²³ See Parisot, "The Gentili di Giuseppe Case in France," 268.

²⁴ See Passa, "Condamnation du musée du Louvre," 540.

²⁵ Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation and Control, London, January 9, 1943. The text of the Declaration may be found on the Website of the Looted Art Commission, accessed August 20, 2012, <http://www.lootedartcommission.com/inter-allied-declaration>.

²⁶ Interim Government of the French Republic, order dated November 12, 1943, Alger (*ordonnance relative à la nullité des actes de spoliations accomplis par l'ennemi ou sous son contrôle*), accessed August 20, 2012, <http://www.culture.gouv.fr/documentation/mnr/or1211.htm>.

²⁷ See Passa, "Condamnation du musée du Louvre," 536.

of an extraordinary financial pressure. However, the circumstances which led to the sale of the paintings, and which precluded the heirs from intervening, were considered by the Court as tantamount to confiscation pursuant to the 1945 order. The court's flexible interpretation of the rule enabled an equitable judgment pursuant to the law's original intentions²⁸.

- The case is one of the very few examples of court decisions providing for the restitution of Nazi-looted art. In most jurisdictions, Nazi-looted art claims are barred by time limitation or prevented under rules regarding good faith acquisition.
- The Gentili di Giuseppe heirs used the order as a basis for their subsequent negotiations with other museums that also held art objects of the Gentili di Giuseppe collection sold during the 1941 auction²⁹.

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c. Legislation

- Interim Government of the French Republic, order dated November 12, 1943, Alger (*ordonnance relative à la nullité des actes de spoliations accomplis par l'ennemi ou sous*

²⁸ Ibid, 537.

²⁹ See for instance two case notes concerning the Boston Museum of Fine Arts, respectively the Art Institute Chicago, Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, "Case Adoration of the Magi – Gentili di Giuseppe Heirs and Museum of Fine Arts Boston," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva; Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, "Case Bust of a Youth – Gentili di Giuseppe Heirs and Art Institute Chicago," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

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