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February 2012

Reference: Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, “Case Lydian Hoard – Turkey and Metropolitan Museum of Art,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

Case Lydian Hoard – Turkey and Metropolitan Museum of Art

Turkey/Turquie – Metropolitan Museum of Art – Pre 1970 restitution claims/demandes de restitution pre 1970 – Archaeological object/objet archéologique – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Judicial claim/action en justice – Negotiation/négociation – Settlement agreement/accord transactionnel – Ownership/propriété – Due diligence – Statute of limitation/prescription – Cultural Cooperation/coopération culturelle – Unconditional restitution/restitution sans condition

The Lydian Hoard is a sixth-century B.C. collection of gold and silver objects which was clandestinely excavated in Turkey in the 1960s. It was purchased by the Metropolitan Museum of Art (MET) of New York. A formal demand for its return was made by Turkey in 1986. The request was rejected; hence Turkey commenced legal proceedings against the Museum. However, in 1993, the MET agreed to settle the dispute out-of-court and to return the collection to Turkey.

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

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I. Chronology

Pre 1970 restitution claims

- **1960s: Treasure hunters excavated** a sixth-century B.C. **collection** from burial tumuli (tombs) in the village of Güre, in the Uşak region of western Turkey, the area of ancient Lydia. The **Lydian Hoard**, as the collection came to be called (or Croesus Gold, after the legendary King of Lydia), consists of a pair of marble sphinxes, tomb paintings, jewellery and gold and silver objects. Shortly after the find, the looters sold many of the pieces to Ali Bayırlar, a dealer from Izmir. Other objects were recovered by the police. It was later discovered that Ali Bayırlar sold the collection to a New York art dealer, John Klejman.¹
- **1966-1970:** The collection was **acquired** in three batches by the **Metropolitan Museum of Art (MET)** of New York.²
- **1984:** The MET put some of the pieces of the Lydian Hoard on permanent **display**, but their true provenance was **misrepresented**. Nevertheless, Turkish authorities were able to conclude that the pieces originated from the Uşak region as they closely resembled the items recovered by the police.
- **1986:** A formal **demand** for return was made by Turkey. The request was rejected.³
- **1987:** Turkey **filed a lawsuit** for the Hoard's return against the MET. The latter filed a motion to dismiss the claim on the basis that the limitation period had expired.
- **1990:** The motion was **denied**.⁴
- **1993:** The MET agreed to **settle** the dispute and to **return** the Hoard to Turkey.⁵

II. Dispute Resolution Process

Judicial claim – Negotiation – Settlement agreement

- Turkish authorities were determined to recover the Lydian Hoard as it is “an integral and invaluable part of the artistic and cultural patrimony of the Republic of Turkey”.⁶ In early 1970s, rumours of the MET's acquisition began to circulate⁷ and so Turkish authorities were on the lookout. Moreover, in 1985, Turkish officials were alerted by

¹ Jeannette Greenfield, *The Return of Cultural Treasures* (Cambridge: Cambridge University Press, 2007), 420.

² Lawrence M. Kaye and Carla T. Main, “The Saga of the Lydian Hoard Antiquities: From Uşak to New York and Back again,” in *Antiquities, Trade or Betrayed. Legal, Ethical and Conservation Issues*, ed. Kathryn W. Tubb (London: Archetype, 1995), 150.

³ Greenfield, *The Return of Cultural Treasures*, 420.

⁴ *Republic of Turkey v. The Metropolitan Museum of Art*, 762 F. Supp. 44, 1990 U.S. Dist. LEXIS 18771 (S.D.N.Y. 1990).

⁵ Greenfield, *The Return of Cultural Treasures*, 422.

⁶ Grace Glueck, “Met Files Motion to Retain Artifacts,” *The New York Times*, July 21, 1987, accessed January 31, 2012, <http://www.nytimes.com/1987/07/21/arts/met-files-motion-to-retain-artifacts.html>.

⁷ Robert Taylor, a Boston Globe journalist, alleged that 219 Lydian artifacts had been purchased by the MET between 1966 and 1968. Gamze Gül, “Curse of Croesus Treasure Continues,” *Today's Zaman*, September 25, 2011, accessed January 31, 2001, http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=257844.

Özgen Acar (a Turkish journalist) that the pieces exhibited at the MET closely matched the description of the Lydian Hoard.⁸ When Turkish authorities ascertained that the objects in the MET's collection had probably been taken illegally from Turkey, they demanded its return. Wishing to avoid a long and expensive court dispute, Turkey attempted to work out an amicable settlement with the museum, but the offer was rejected. Accordingly, Turkey commenced legal proceedings against the MET in New York courts. Turkey asserted that the artefacts were illicitly excavated from burial mounds and exported to the United States in contravention of Turkish law. It claimed that Turkish law vested ownership in the State of all artefacts found in Turkey. It also contended that the MET concealed the illicit origin of the objects through misrepresentations.⁹ Six years later, however, Turkey accepted to drop the lawsuit when the MET agreed to resolve the dispute out-of-court.

- The MET acquired the Lydian Hoard at the end of the 1960s. However, the acquisition was not heralded. On the contrary, the collection was relegated in the museum's storerooms for more than a decade. As said, some of the objects composing the collection were put on display in 1984 but under the misleading label "East Greek Treasure". Clearly, museum officials attempted to obscure the illicit provenance of the pieces in order to avoid restitution claims. This is demonstrated by the fact that a number of documents were later discovered proving that some staff members were aware of the true provenance of the Hoard.¹⁰ Nevertheless, the Museum filed a motion to dismiss the Turkish claim on the basis that the time period in the statute of limitations had expired. The MET also argued that an owner of stolen property has a duty of reasonable diligence to make the requisite demand within reasonable time after the current possessor is identified.¹¹ In 1990, the motion was denied and the court turned to the merits of the case. It was only at this point that the MET agreed to resolve the dispute out-of-court.
- However, it is unlikely that the MET decided to settle the case amicably because of the perspective of a time-consuming and expensive lawsuit. Rather, it can be argued that the settlement was prompted by the prospect of Turkey's likely success at trial due to existing incriminating evidence and the upcoming testimony of present and former museum officials.¹²

III. Legal Issues

Illicit excavation – Illicit exportation – Due diligence – Ownership – Statute of limitation

- The case under consideration involves three main legal problems: (A) whether the action filed by Turkey was timely; (B) whether the claimed objects could be identified as belonging to the national patrimony of Turkey; and (C) whether the MET had exercised due diligence at the moment of the acquisition of the Lydian Hoard.

⁸ Ibid.

⁹ *Republic of Turkey v. The Metropolitan Museum of Art*.

¹⁰ Ibid.

¹¹ Ibid.

¹² Kaye and Main, "The Saga of the Lydian Hoard Antiquities," 151.

- A. When Turkey filed the lawsuit seeking the restitution of the Lydian Hoard in 1987, the MET applied for the court to reject the Turkish claim on grounds that the applicable three-year limitation period had expired and hence Turkey was barred from bringing suit. The MET also argued that Turkey failed to make the requisite demand within a reasonable time.¹³

Obviously, the MET filed the motion in order to obtain an enforceable court ruling that sanctioned the acquisition of the **ownership** title.

The Court applied the “**demand and refusal**” rule. According to this rule, the cause of action accrues against a good faith purchaser of stolen property until the true owner had made a demand for its return and the possessor had refused the demand.¹⁴ As a result, the Court dismissed the motion filed by the MET. The Court decided that the legal action of the Republic of Turkey was not barred because it began in 1987, within the three-year limitation period from the accrual of the cause of action (in 1986). Moreover, the Court affirmed that the Turkish claim had been made within the appropriate time period also in the light of the fact that the MET concealed the collection in its storerooms until 1984.¹⁵

- B. As the MET’s motion to dismiss was denied, the pre-trial discovery process went ahead. During this process, each party was able to examine documents held by the opposing party and to take testimony from witnesses. The MET was obliged to submit copies of documents suggesting that its officials were aware that the Hoard had been illicitly excavated and exported from Turkey. In particular, these documents included the minutes of the meeting of the acquisition committee of the Board of Trustees at which the acquisition of the Lydian Hoard was approved. Yet, in pre-trial testimony given during the course of the legal action, the curator who purchased the collection declared that no effort had been made to determine the true provenance of the treasure. Moreover, lawyers and archaeologists acting on behalf of Turkey were allowed to conduct an enquiry on the collection. In particular, archaeologists from Turkey had the opportunity to compare the objects in the MET with the relics recovered by the police from the treasure hunters in Uşak. They discovered that some of the pieces of wall painting in the MET’s possession could be matched to what remained in the tombs.¹⁶ In addition, Turkish authorities proved the illicit provenance of the Hoard thanks to the statements of the treasure hunters.¹⁷ In sum, the pre-trial discovery process allowed the plaintiff to demonstrate that the Lydian Hoard originated from Turkey.¹⁸

¹³ *Republic of Turkey v. The Metropolitan Museum of Art*.

¹⁴ *Menzel v. List*, 267 N.Y.S.2d 804, 809 (Sup. Ct. N.Y. 1966), *rev’d*, 246 N.E.2d 742 (N.Y. 1969); *Solomon R. Guggenheim Foundation v. Lubell* (567 N.Y.S.2d 623, Ct. App. 1991).

¹⁵ *Republic of Turkey v. The Metropolitan Museum of Art*.

¹⁶ Kaye and Main, “The Saga of the Lydian Hoard Antiquities,” 153-154.

¹⁷ The looters were captured by the local police after one of them reported the excavation to police following a quarrel over how to divide the profit. This allowed to identify the smuggler, Ali Bayırlar, but by that time the artifacts had already been sold overseas (*ibid.*).

¹⁸ *Ibid.*

- C. The MET's officials had held since the beginning that the Lydian Hoard had been acquired in **good faith** through a series of purchases and gifts from reputable dealers in late 1960s.¹⁹ In reality, as mentioned above, the documents disclosed at the pre-trial discovery process demonstrated that the MET did not exercise the required **due diligence** at the time of the acquisition. Quite the opposite, the purchase has been defined as a symptomatic example of the "age of piracy"²⁰ whereby museums and collectors used to buy works of art with little or no thought to provenance.

IV. Adopted Solution

Cultural Cooperation – Unconditional restitution

- The settlement agreement reached by the Republic of Turkey and the MET provided for the repatriation of the Lydian Hoard. The agreement also included a clause according to which the parties would work together to promote and develop mutually beneficial cultural projects, including art conservation, reciprocal loans, archaeological excavation in Turkey and the establishment of study fellowships both in Turkey and with the MET.²¹
- The Lydian Hoard was sent to Istanbul, Ankara and other major Turkish cities for exhibition. Only in 1995 it was returned to the Uşak Museum, where it joined other artefacts recovered by the Turkish police in the 1960s.²²

V. Comment

- Engin Özgen, Turkey's Director General of Monuments and Museums, hailed the agreement concluded with the MET as an extraordinary victory for Turkey.²³ Indeed, the restitution of the Lydian Hoard represented a monumental step in the affirmation of the principle that source nations should be entitled to retrieve the cultural assets removed by looters and international traffickers. In this respect, Patrick J. Boylan affirmed that there is a growing recognition in international law that wrongfully taken cultural objects should be returned for the sake of the integrity of the cultural heritage of art rich nations.²⁴

¹⁹ Glueck, "Met Files Motion to Retain Artifacts."

²⁰ Kaye and Main, "The Saga of the Lydian Hoard Antiquities," 151.

²¹ Ibid., 154.

²² Herrick, Feinstein LLP Press Release, "Turkey's Lawsuit Against Metropolitan Museum of Art Ends with the Return of Lydian Hoard Antiquities to Turkey," accessed January 31, 2012, <http://www.herrick.com/siteFiles/News/94F46F571AA38025A4D3343547A8B65F.pdf>.

²³ Ibid.

²⁴ Patrick J. Boylan, "Illicit Trafficking in Antiquities and Museum Ethics," in *Antiquities, Trade or Betrayed. Legal, Ethical and Conservation Issues*, ed. Kathryn W. Tubb (London: Archetype, 1995), 102. As the Chairman of the Ethics Committee of the International Council of Museums (ICOM), Boylan was the principal drafter and editor of ICOM's Code of Professional Ethics adopted in 1986.

- Moreover, it can be argued that, had the case gone to trial, the District Court of New York could have reaffirmed the principle that, in the United States, a thief cannot pass good title to stolen property and hence a foreign State who assert title to cultural property under a patrimony law has good chances of success.²⁵
- However, the warning of Professor Boylan begs the question whether restitution is legitimate when the requesting entity does not have the capacity to protect the requested materials. In this respect, the case of the Lydian Hoard is also symptomatic. In effect, in 2006, one of the most representative pieces of the Hoard, a gold brooch in the shape of a winged sea horse, was stolen and replaced with a fake.²⁶
- In an interview, Özgen Acar, a Turkish journalist, emphasised one of the bizarre consequences of the MET's decision to embark in a six-year lawsuit. He underlined that the MET had paid \$1,7 million for the Lydian Hoard but it spent at least twice as much as this on legal expenses.²⁷

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²⁶ "10 Charged in Missing Brooch Case," *Turkish Daily News*, July 14, 2006, accessed January 31, 2012, <http://arama.hurriyet.com.tr/arsivnews.aspx?id=-583486>.

²⁷ Michel Bessières, "We Have to Change the Buyer's Attitude," *UNESCO Courier*, April 1, 2001, 37.

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