



UNIVERSITÉ
DE GENÈVE

FACULTÉ DE DROIT
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July 2016

Madame Cézanne in the Conservatory – Konowaloff v. Metropolitan Museum of Art

Pierre Konowaloff – Metropolitan Museum of Art – Ivan Morozov – Artwork/oeuvre d'art – Pre 1970 restitution claims/demandes de restitution pre 1970 – Expropriation – Judicial claim/action en justice – Judicial decision/décision judiciaire – Act of State – Ownership/propriété – Request denied/rejet de la demande

Ivan Morozov's extensive art collection, which included the painting by Cézanne called Madame Cézanne in the Conservatory, was confiscated by the Bolsheviks and declared property of the state. Stephen Clark purchased Madame Cézanne in the Conservatory from the Second Museum of Western Art in 1933. Upon his death, he bequeathed the painting to the Metropolitan Museum of Art. Pierre Konowaloff, Morozov's heir, brought an action for restitution of the painting in the United States federal courts. His claim was unsuccessful and the Metropolitan Museum of Art retained the painting.

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

- **29 April 1911:** Ivan Morozov, a wealthy Moscow textile merchant, acquired *Madame Cézanne in the Conservatory* by Paul Cézanne.
- **1917:** Lenin and the Bolsheviks seized power in Russia.
- **19 December 1918:** The Russian Socialist Federated Soviet Republic issued a decree stating that Morozov's art collection was state property.
- **11 April 1919:** Morozov's former home is declared the "Second Museum of Western Art" and acted as a viewing gallery for foreign buyers and as a storage space for confiscated art.
- **9 May 1933:** Stephen Clark purchased *Madame Cézanne in the Conservatory* through an agent from the Soviets.
- **1960:** Clark died and bequeathed the painting to the **Metropolitan Museum of Art (MET)** in New York City, New York where it immediately went on display.
- **January 2002:** **Pierre Konowaloff** (Konowaloff) became the official heir of the Morozov collection, which he then began to organize and inventory.
- **2008:** Konowaloff learned that Morozov had owned *Madame Cézanne in the Conservatory*.
- **May 2010:** Konowaloff filed suit for the return of the painting with the United States District Court for the Southern District of New York (District Court).
- **22 September 2011:** The District Court rejected Konowaloff's claim, ruling that it was barred by the act of state doctrine.¹
- **20 April 2012:** The United States Court of Appeals for the Second District (Court of Appeals) **affirmed** the District Court's decision.²
- **17 June 2013:** The Supreme Court of the United States denied a writ of certiorari.³

II. Dispute Resolution Process

Judicial claim – Judicial decision

- In 2010, after Konowaloff discovered that his great-grandfather had owned *Madame Cézanne in the Conservatory*, he contacted the MET where the painting had been on display since 1960 and demanded that it be returned to him. When the museum refused, he filed suit in the District Court for the return of the painting as Morozov's sole heir and the painting's rightful owner. Court record seems to indicate that no other avenues were discussed. The MET moved to dismiss the suit under the Federal Rules of Civil Procedure Rule 12(b)(6) on the grounds that the act of state doctrine barred Konowaloff's claim.⁴

¹ For case chronology see: *Konowaloff v. Metro. Museum of Art*, 2011 U.S. Dist. LEXIS 107262, 1-10 (S.D.N.Y. Sep. 22, 2011).

² *Konowaloff v. Metro. Museum of Art*, 702 F.3d 140, 30 (2nd Cir. 2012).

³ *Konowaloff v. Metro. Museum of Art*, 133 S.Ct. 2837.

⁴ *Konowaloff*, 2011 U.S. Dist. LEXIS 107262, 2.

III. Legal Issues

Act of State – Ownership – Expropriation

- United States courts will not question the validity of the 1918 nationalization decree that removed *Madame Cézanne in the Conservatory* from Morozov's ownership due to the act of state doctrine.
 - Konowaloff claimed that the seizure of his great-grandfather's art collection had been an action taken by the Bolshevik "party" rather than government. However, the United States recognized the Soviet government as the de jure government in Russia in 1933. This recognition retroactively validated all of the revolutionary government's actions, such as the 1918 nationalization decree, as conduct of a recognized government for the purpose of American courts and thus valid for invoking the act of state doctrine.⁵
 - Konowaloff claimed that since the 1918 nationalization decree was focused towards two families rather than a group or class of people and had been done without a legitimate governmental purpose, that the 1918 decree should not be considered an official act. What he failed to realize is that the legitimacy of an expropriation act does not rely on whether or not the government had legitimate reasons for the expropriation.⁶
 - The act of state doctrine still applied to the Soviet government even after its collapse in 1991, as the present existence of a government is not dispositive when deciding whether or not to invoke the act of state doctrine.⁷ Furthermore, unlike the Nazi party, the community of nations has not rejected the USSR. The Russian Federation, the largest of the 15 commonwealth post-Soviet states and Independent States to now occupy what was once the USSR, has not repudiated the decree that resulted in the seizure of Morozov's collection in 1918.⁸ If either of these events had occurred, Konowaloff may have had a claim on the painting that was not barred by the act of state doctrine.
 - As the District Court reiterates, when deciding whether or not to apply the act of state doctrine, courts must look at the relationship between past governments and current governments, and whether ruling a past government's act illegal may hurt United States relations with any country involved. The District Court found that if it were to rule on the legality of the Soviet 1918 nationalization decree, that it would call into question previously decided property rights as well as risk upsetting the Russian Federation.⁹
 - Konowaloff also claimed that the 1918 nationalization decree was in violation of international law and thus should not be protected by the act of state doctrine. As the Supreme Court of the United States laid out in *Sabbatino*, "[c]onfiscations by a state of the property of its own nationals, no matter how flagrant and regardless of whether compensation has been provided, do not constitute violations of international law,"¹⁰

⁵ *Konowaloff*, 2011 U.S. Dist. LEXIS 107262, 17-18.

⁶ *Ibid.*, 22.

⁷ *Konowaloff*, 702 F.3d 140, 143-45.

⁸ *Konowaloff*, 2011 U.S. Dist. LEXIS 107262, 22-23.

⁹ *Ibid.*, 26-27.

¹⁰ *Banco Nacional De Cuba v. Sabbatino*, 376 U.S. 398, 401.

furthermore, “the act of state doctrine applies even if international law has been violated.”¹¹

- The possibility that the painting was sold in violation of Soviet law is irrelevant to Konowaloff’s claim of ownership over that painting. The 1918 nationalization decree removed the painting from Morozov’s ownership, the validity of which will not be questioned by United States courts due to the act of state doctrine. Therefore, title to *Madame Cézanne in the Conservatory* had already passed from Morozov to the Soviet government by the time alleged violation of Soviet laws occurred. Whether or not the sale of the painting was legal is irrelevant as Konowaloff lacks any ownership over the painting due to the 1918 decree that took the painting from his great-grandfather.¹²

IV. Adopted Solution

Request denied

- The Court of Appeals affirmed the decision of the judgment of the District Court and dismissed Konowaloff’s claim as barred by the act of state doctrine. Title and possession of *Madame Cézanne in the Conservatory* thus remained with the MET.

V. Comment

- Estimates of the value of *Madame Cézanne in the Conservatory* have ranged between \$60 Million and \$100 Million.¹³
- This was not the only law suit Konowaloff filed for the return of a painting from Morozov’s collection. He also sued Yale University in an attempt to have Van Gogh’s *The Night Café* returned. That suit was stayed until the decision in this case was announced. Ultimately, it was dismissed under the same doctrine.¹⁴
- It is interesting to compare American courts’ analysis of the art taking in the times of Bolshevik and Nazi regimes. American courts seem to have found two applicable ways to deal with Nazi-looted art that is not found when the courts address Bolshevik art takings. The first is mentioned in *Konowaloff v. Metropolitan Museum*, that the Nazi regime, unlike the Bolshevik regime, was rejected by the community of nations. This rejection makes the act of state doctrine inapplicable.¹⁵ The other way that American courts have created an exception for Nazi-looted art arose out of the case *Menzel v. List*. In that case, the court found that the

¹¹ Ibid., 431.

¹² *Konowaloff*, 2011 U.S. Dist. LEXIS 107262, 18.

¹³ Boroff, Philip. “Met Museum Sued over Cezanne Taken by Bolsheviks from Collector,” *Bloomberg*, last modified 9 December 2010, accessed 1 June 2016, <http://www.bloomberg.com/news/articles/2010-12-09/met-museum-sued-over-cezanne-taken-by-bolsheviks-from-collector>.

¹⁴ Madeleine Frith, Ece Velioglu Yildizci, Marc-André Renold, “The Night Café Painting – Morozov Heirs v. Yale University,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

¹⁵ *Konowaloff*, 2011 U.S. Dist. LEXIS 107262, 23.

Einsatzstab, the entity within the Nazi regime that was most often responsible for the takings of art, was an “organ” of the Nazi party, and thus its actions were not considered actions of a sovereign state.¹⁶ Since the Einsatzstab’s actions are not viewed by American courts as actions of a sovereign state, the courts have been able to escape applying the act of state doctrine to Nazi-looted art. The Bolshevik decrees which nationalized Morozov and other citizen’s private art collections, however, were done by the government itself and not by an “organ” of the party which means that American courts must apply the act of state doctrine to instances of Bolshevik takings.

- No legal remedies appear to exist in Russia either for Morozov’s heirs. In 1992, Konowaloff became the first Morozov heir to return to Russia after the fall of the USSR.¹⁷ His father had refused to return to Russia and conduct the inventory because he feared retaliation from the Russian government and felt that he would have “no meaningful remedy available [to him] in Russia.”¹⁸
- It seems the case then, that unless the current Russian government repudiates the nationalization laws of the Bolshevik regime or unless the United States’ legislator decides to step in,¹⁹ that victims of Bolshevik confiscations who would have to bring their law suits in the United States have no recourse due to the act of state doctrine. Therefore for the time being, parties involved may want to prioritize alternative methods (for instance negotiation or mediation) to settle ownership issues on such art works.

VI. Sources

a. Court decisions

- *Konowaloff v. Metro. Museum of Art*, 2011 U.S. Dist. LEXIS 107262 (S.D.N.Y. Sep. 22, 2011).
- *Konowaloff v. Metro. Museum of Art*, 702 F.3d 140 (2nd Cir. 2012).
- *Konowaloff v. Metro. Museum of Art*, 133 S.Ct. 2837. (Supreme Court of the United States denial of a writ of certiorari.)

b. Legislation

- United States, 28 USCS § 1605, Act of State Doctrine.

¹⁶ Aaron Rosenthal, “Case Note: The Conundrum of Comity: How the Continues Application of the Act of State Doctrine Creates Tension On Government-Taken Art,” *DePaul Journal of Art Technology, & Intellectual. Property Law*, 22 (2012): 421-23.

¹⁷ *Konowaloff*, 2011 U.S. Dist. LEXIS 107262, 10.

¹⁸ Freeland, Bridget. “Metropolitan Museum Sued for a Cezanne,” *Courthouse News Service*, last modified 9 December 2010, accessed 31 May 2016, <http://www.courthousenews.com/2010/12/09/32453.htm>.

¹⁹ The US Senate recently passed a bill (the Holocaust Expropriated Art Recovery Act, 2016) which will, if adopted, allow US courts to hear restitution claims on Nazi looted-art that are normally bared by statute of limitation.

c. Documents

- Madeleine Frith, Ece Velioglu Yildizci, Marc-André Renold, “The Night Café Painting – Morozov Heirs v. Yale University,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.
- Rosenthal, Aaron. “Case Note: The Conundrum of Comity: How the Continues Application of the Act of State Doctrine Creates Tension On Government-Taken Art.” *DePaul Journal of Art Technology, & Intellectual. Property Law*, 22 (2012): 413.

d. Media

- Boroff, Philip. “Met Museum Sued Over Cezanne Taken by Bolsheviks From Collector.” *Bloomberg*, last modified December 9, 2010. Accessed June 1, 2016. <http://www.bloomberg.com/news/articles/2010-12-09/met-museum-sued-over-cezanne-taken-by-bolsheviks-from-collector>.
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