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## **Case Manuscript of the Marquis de Sade - Nordmann heir and de Noailles heir and Gérard Lhéritier**

*Post 1970 restitution claims/Demandes de restitution post 1970 –  
Artwork/œuvres d’art – Criminal offence/infraction pénale – Due  
diligence – Illicit exportation/exportation illicite – Judicial  
claim/action en justice – Judicial decision/décision judiciaire –  
Negotiation/Négociations – Settlement agreement/accord  
transactionnel – Financial compensation/indemnisation – Sale/vente*

*The manuscript of the Marquis de Sade’s “Cent Vingt Journées de  
Sodome” was stolen from the de Nouailles family and then acquired  
by a Swiss collector - Gérard Nordmann - who has always refused to  
return it. Parallel proceedings in Switzerland and France did not  
allow its return, and it was finally thanks to an agreement between the  
de Nouailles heir and the Nordmann heir that the manuscript was able  
to return to France, where it was classified as a national treasure in  
2017.*

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

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## I. Chronology

### Post 1970 restitution claims

- In **1929**, the manuscript of “Cent Ving Journées de Sodome” (hereafter the Manuscript), written by **Donatien De Sade** in 1785 during his imprisonment in the Bastille,<sup>1</sup> is sold by Iwan Bloch to Viscount **Charles de Noailles** and his wife **Marie-Laure**.<sup>2</sup>
- In **1982**, **Nathalie de Noailles**, the daughter of the Viscount de Noailles and his wife who had inherited the “Cent Ving Journées de Sodome”, entrusted the Manuscript to her friend, the publisher **Jean Grouet**, who deceived her trust and returned only an empty case.<sup>3</sup>
- On **17 November 1982**, **Jean Grouet**, through the intermediary of a world-renowned Parisian bookseller,<sup>4</sup> **sold the Manuscript** to a major Swiss collector of *curiosa*,<sup>5</sup> **Gérard Nordmann**.<sup>6</sup>
- The grandson of the de Noailles, **Carlo Perrone**, after discovering the theft by Jean Grouet, contacted Gérard Nordmann to recover the Manuscript.<sup>7</sup> He was rejected and his family then initiated **legal proceedings** in Switzerland and France.<sup>8</sup>
- On **11 June 1990**, the French Supreme Court (*Cour de cassation*) ruled that the work had been **stolen and illegally exported** from the French territory.<sup>9</sup>
- On **28 May 1998**, the Swiss Federal Court (*Tribunal fédéral suisse*) considered Gérard Nordmann to be in **good faith** and **dismissed the claim**.<sup>10</sup>
- In **2004**, after Gérard Nordmann’s death, his collection was exhibited at the Fondation Bodmer (Geneva).<sup>11</sup>
- In **2011**, part of Gérard Nordmann’s library was auctioned off in Paris, but the Manuscript was not among the lots offered for sale. Serge Nordmann, son of Gérard Nordmann, made known his intention to **sell** the scroll and Carlo Perrone, the grandson of the Viscount of Noailles, offered to **buy it back** in order to offer it to France, but in vain.<sup>12</sup>

<sup>1</sup> The Marquis de Sade wrote this book between 22 October and 28 November 1785. The text is written in a tight, tiny handwriting on 11.5 cm wide sheets used on both sides and which, glued end to end, form a roll of 12.10 meters long. On the night of 3 to 4 July 1789, because he was haranguing the sans-culottes gathered in front of the fortress, the governor of the prison ordered Sade’s transfer to a psychiatric hospital in Charenton. The prisoner was forced to leave behind his manuscript, which he hid between the stones of his cell wall. See NOCE, “Caché, volé, racheté, le manuscrit de Sade revient en France”.

<sup>2</sup> Marie-Laure de Noailles was a descendant of Sade. The purchasers entrusted the publication of the manuscript to Maurice Heine who sold it between 1931 and 1935 by subscription to avoid censorship. NOCE, “Caché, volé, racheté, le manuscrit de Sade revient en France”, L. 19.

<sup>3</sup> NOCE, “Caché, volé, racheté, le manuscrit de Sade revient en France”, L. 23-25, 58.

<sup>4</sup> ATF 28 June 1998, N. de N. v N. et al.

<sup>5</sup> The *curiosa* are erotic objects or manuscripts.

<sup>6</sup> HERZBERG, “Caché, volé, racheté : l’histoire folle d’un manuscrit de Sade”, L. 72.

<sup>7</sup> HERZBERG, “Caché, volé, racheté : l’histoire folle d’un manuscrit de Sade”, L. 80.

<sup>8</sup> NOCE, “Caché, volé, racheté, le manuscrit de Sade revient en France”, L. 28-29.

<sup>9</sup> French Supreme Court, criminal section, 11 June 1990, No. 89-80.467.

<sup>10</sup> ATF 28 June 1998, N. de N. v N. et al.

<sup>11</sup> HERZBERG, “Caché, volé, racheté : l’histoire folle d’un manuscrit de Sade”, L. 79-8.

<sup>12</sup> NOCE, “Caché, volé, racheté, le manuscrit de Sade revient en France”, L. 37-39.

- In **July 2012**, Bruno Racine, the president of the Bibliothèque Nationale de France (BNF), had the Commission for National Treasures wishing the return of the manuscript to France with a view to its future inclusion in the national heritage.<sup>13</sup>
- In **2012**, the Sade Manuscript was registered in the stolen property database of the l'Office central de lutte contre le trafic des biens culturels and **Interpol**.<sup>14</sup>
- In **2014**, **Gérard Lhéritier**, founding president of Aristophil and the Musée des Lettres et Manuscrits de Paris, **bought the Sade Manuscript for 7 million euros** after three years of **negotiations**. Part of the sum was paid to Serge Nordmann, the other part to Carlo Perrone.
- In **September 2014**, the Manuscript was on display at the Musée des Lettres et Manuscrits, Paris.<sup>15</sup>
- In **March 2015**, Aristophil was put into judicial **liquidation** by Gérard Lhéritier. He was himself indicted for organized fraud and deceptive business practices.<sup>16</sup>
- On **14 December 2017**, the French Minister of Culture, Françoise Nyssen, signed an order refusing any export certificate to the Manuscript, which equaled to classification as a **national treasure**. The Manuscript was withdrawn from the auction at which it was to be offered on the following 20 December.
- In **July 2021**, France acquired the manuscript to the collection of the BNF.<sup>17</sup>

## II. Dispute Resolution Process

### Judicial action - Judicial decision - Negotiations - Settlement agreement

- In 1982, the Manuscript was stolen from Nathalie de Noailles. Once the object was located in Gérard Nordmann's collection, Carlo Peronne, Nathalie de Noailles' son, tried to negotiate with the collector for many years to buy it back. The latter refused to return the object and rejected all offers to buy it back.<sup>18</sup>
- Faced with this state of affairs, the de Noailles family initiated legal proceedings in France and Switzerland. The French Supreme Court, in a 1990 decision, ruled that the Manuscript had been stolen from Nathalie de Noailles and illegally exported to Switzerland. However, in 1998, the Swiss Federal Court refused to grant the Noailles family's claim on the grounds that Gérard Nordmann had acquired the Sade scroll in good faith.
- A few years after Gérard Nordmann's death, his heirs decided to sell the Manuscript. Gérard Lhéritier obtained the contract and made an agreement with Carlo Perrone to repatriate the object to France without it being seized by the authorities.

<sup>13</sup> HERZBERG, "Caché, volé, racheté : l'histoire folle d'un manuscrit de Sade", L. 117-119.

<sup>14</sup> NOCE, "Caché, volé, racheté, le manuscrit de Sade revient en France"

<sup>15</sup> MARTIN, "L'épilogue français des 'Cent Vingt Journées de Sodome'", L. 6 and 9, 13, 15-18.

<sup>16</sup> REROLLE, "Les espoirs envolés des victimes d'Aristophil".

<sup>17</sup> MINISTÈRE DE LA CULTURE, "The Ministry of Culture announces the acquisition by the State of major literary manuscripts that enter the collections of the BnF following their classification National Treasures".

<sup>18</sup> NOCE, "Je continuerai à me battre pour ce manuscrit entre à la BN", L. 10-11.

### III. Legal issues

#### Due diligence - Criminal offence - Illicit exportation

- The first issue in this case was to qualify the criminal offence committed by Jean Grouet in 1982 when Nathalie de Noailles lent him the Manuscript and the publisher resold it instead of returning it. Nathalie de Noailles had filed a complaint for theft, but the examining magistrate, considering that fraudulent misappropriation had not been characterized, referred the defendant to the criminal court on the charge of abuse of trust for having misappropriated or dissipated the manuscripts.<sup>19</sup> French criminal law considers that fraudulent misappropriation is an essential element to characterize theft (Art. 379 French Criminal Code). However, the Court of Appeal<sup>20</sup> reclassified the facts on the grounds that although Nathalie de Noailles had effectively divested herself of the manuscript, she had at no time intended to pass on to Jean Grouet any possession or title whatsoever to the objects handed over, and all the less so since the manuscript of “Cent Vingt Journées de Sodome”, which is of inestimable value, was an integral part of the family estate.<sup>21</sup> The French Supreme Court therefore considered that Jean Grouet was indeed guilty of theft. As a consequence of this qualification, if the Manuscript were to return to the French territory, it could have been seized by the authorities and returned to the de Noailles family, its owner.
- The Criminal Chamber of the French Supreme Court also had to determine whether or not Grouet’s export of the Manuscript to Switzerland was illegal. The publisher claimed the contrary, alleging that the object in question did not fall within the scope of article 1 of the French law of 23 June 1941, which makes the export of objects of national art or historical interest subject to the authorization of the State and grants the latter a right of retention in customs without time limit and without compensation to the owners. The Court of Appeal, whose decision was approved by the Court of Cassation, considered, on the contrary, that the application of this law is not limited to the objects listed in Article 1, paragraph 2, but applies to all those of national historical or artistic interest. Since the Manuscript falls into this category, it is indeed an illicit exportation.<sup>22</sup>
- This case also raises the question of the good faith of the purchaser, Gérard Nordmann, who acquired the Manuscript for the sum of 3 million francs.<sup>23</sup> Under Swiss law, as under French law, good faith is an essential condition for the implementation of the mechanism of acquisitive prescription (Art. 728 of the Swiss Civil Code, Art. 2276 para. 2 of the French Civil Code). The Swiss Federal Court, in its decision of 28 May 1998, recalls firstly that good faith is presumed (Art. 3 of the Swiss Civil Code) and assesses the circumstances of the case in order to determine whether they are sufficient to rebut the presumption. It concludes in the negative, relying on the following criteria: the participation as intermediary of a reputable

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<sup>19</sup> French Supreme Court, criminal section, 11 June 1990, No. 89-80.467.

<sup>20</sup> Paris Court of Appeals, 8 December 1998

<sup>21</sup> French Supreme Court, criminal section, 11 June 1990, No. 89-80.467.

<sup>22</sup> French Supreme Court, criminal section, 11 June 1990, No. 89-80.467.

<sup>23</sup> That is, approximately 115,000 euros. NOCE, “Caché, volé, racheté, le manuscrit de Sade revient en France”, L. 25-28.

bookseller, the personal link between the seller and the family owning the property, the price paid which corresponds to the real value of the Manuscript and the payment made by cheque against receipt. Further, the Court considers that the fact that the property was illegally exported from France does not constitute an indication of the buyer's bad faith.<sup>24</sup> According to the judges, the only element likely to arouse suspicion in Gérard Nordmann was the absence of a bookcase when the Manuscript was delivered, but the Cantonal court (*Cour cantonale*) did not consider this element sufficient.

#### IV. Adopted Solution

##### Indemnification - Sale

- Serge Nordmann, the heir of Gérard Nordmann, sold the Manuscript to Gérard Lhéritier for 7 million euros. Part of this sum went to the seller, while another part was paid to Carlo Perrone, the rightful owner of the Manuscript according to French courts.
- In exchange for this sum, Carlo Perrone made a request to the French judicial authorities to allow the Manuscript to be repatriated to France without being seized.
- In 2014, Gérard Lhéritier announced his intention to have the Manuscript classified as a national treasure<sup>25</sup> in order to prevent it from being exported from France and to one day have it become part of the Bibliothèque Nationale de France.<sup>26</sup> He probably had no idea that his wish would be fulfilled three years later, following the bankruptcy of his company Aristophil. The Manuscript was indeed classified as a national treasure and the French Ministry of Culture expressed its wish to acquire the precious scroll.

#### V. Comment

- The reasoning of the Swiss Federal Court in this case has been the subject of much criticism from commentators. Indeed, the judges, after recalling that Gérard Nordmann's good faith had to be assessed rigorously, since he had extensive knowledge of the 'curiosa' market and that this market could, moreover, be considered to be exposed to the offer of goods of dubious origin,<sup>27</sup> it decided not to consider as indicative of bad faith the fact that the purchaser knew that the Manuscript had been illegally exported from France. This solution raises questions, especially when it applies to a well-informed collector such as Gérard Nordmann, who could not have been unaware of the illegality of the transaction. The absence of an export certificate should be a criterion of the buyer's bad faith, at least as long as he is a professional or a well-informed collector familiar with the rules of the art market. On the other hand,

<sup>24</sup> ATF 28 June 1998, N. de N. v N. et al; and French Supreme Court, criminal section, 11 June 1990, No. 89-80.467.

<sup>25</sup> MARTIN, "L'épilogue français des 'Cent Vingt Journées de Sodome'", L. 67, 15-20

<sup>26</sup> NOCE, "Je continuerai à me battre pour que ce manuscrit entre à la BN", L. 4.

<sup>27</sup> ATF 28 June 1998, N. de N. v N. et al.

the presence of a certificate cannot be sufficient to validate a transaction, as is specified on French export certificates.<sup>28</sup>

- As the Swiss Federal Court's decision was handed down before Switzerland ratified the 1970 UNESCO Convention and adopted stricter standards in the field of the sale of works of art, one might have thought that the Swiss Federal Court would change its position. However, this does not seem to be the case since in a decision dated 18 April 2013 (ATF 139 III 305), concerning the acquisition of a stolen Malevich painting, the Court considers that the illegal export of the painting from the Soviet Union such constitute a cause for suspicion.<sup>29</sup>
- The bankruptcy of Aristophil, in March 2015, and then the classification of the Manuscript as a national treasure, in December 2017, have added two chapters to the already rocky history of the "Cent Vingt Journées de Sodome". On 14 December 2017, the French Minister of Culture, in an order<sup>30</sup>, refused the export certificate requested for the Manuscript (Art. L. 111-2 of the French Heritage Code). This refusal is equivalent to the classification of the scroll as a national treasure (Art. L. 111-4 and 111-1 of the French Heritage Code). As a result (and unless otherwise provided for by law), the Manuscript may not be exported for at least thirty months (Art. L. 111-6 of the French Heritage Code) and the administrative authority may, in the interest of public collections, make an offer to purchase it, taking into account prices on the international market (Art. L. 121-1 of the French Heritage Code).
- In this case, the French Ministry of Culture launched an appeal for corporate sponsorship for 4.55 million euros in February 2021 in order to acquire the manuscript. The Ministry indicated that it was seeking funding in return for a reduction in corporate tax in order to acquire an extraordinary manuscript by the Marquis de Sade.<sup>31</sup> The appeal was successful and, in July 2021, the State acquired the manuscript, which then became part of French public collections.

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<sup>28</sup> CORNU, *Protection de la propriété culturelle et circulation des biens culturels*, p. 29.

<sup>29</sup> See Art Law Foundation, Newsletter No. 27, February 2014, p. 2.

<sup>30</sup> Order of December 14, 2017.

<sup>31</sup> Journal Officiel de la République Française, Avis d'appel au mécénat d'entreprise pour l'acquisition par l'État d'un trésor national dans le cadre de l'article 238 bis-0 A du code général des impôts, n° 0042 du 18 février 2021.



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