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## Case Orpheus Mosaic – Turkey and Dallas Museum of Art

*Turkey/Turquie – Dallas Museum of Art – Archaeological object/objet archéologique – Post 1970 restitution claims/demandes en restitution post 1970 – Unconstrained initiative/initiative spontanée – Negotiation/négociation – Settlement agreement/accord transactionnel – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Ownership/propriété – Conditional restitution/restitution sous condition – Cultural cooperation/coopération culturelle*

*In December 2012, the Dallas Museum of Art returned to Turkey a fragment of a Roman mosaic. In addition, the parties concluded a comprehensive art exchange program.*

*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

- **1999:** The Dallas Museum of Art acquired a fragment of a Roman marble mosaic depicting Orpheus taming wild animals (**the Orpheus mosaic**, as the mosaic came to be called) at an auction at Christie's in New York for US\$ 85,000<sup>1</sup>. Turkey tried to block the sale on the grounds that the mosaic had been illicitly excavated from the ancient city of Edessa (today's Şanlıurfa), in south east Turkey<sup>2</sup>. This attempt failed because Christie's refused to reveal the buyer's identity and Turkey lost track of the mosaic.
- **2008:** A Turkish archaeologist, Barış Salman, published a study on Edessa mosaics, which also mentioned the one in the Dallas Museum's collection<sup>3</sup>.
- **2009:** Barış Salman wrote an article on the plundering of the Edessa mosaics in the magazine *Aktüel Arkeoloji*, which caught the attention of Turkish authorities<sup>4</sup>.
- **Early 2012:** The new director of the Dallas Museum decided to identify the objects in the Museum's collection which might have a questionable provenance. The Orpheus mosaic lacked documented provenance and according to Museum's research, it has not been cited in publications before its inclusion in Christie's catalog<sup>5</sup>. On the **same year**, the prosecutor's office of the city of Şanlıurfa started a criminal investigation on the possible illicit export of the mosaic<sup>6</sup>. Subsequently, the Dallas Museum and Turkey got in contact about the Orpheus mosaic. Turkish authorities provided the Museum with "compelling evidence" that the mosaic originated from Şanlıurfa and that it was illegally removed in 1998. In particular, the Şanlıurfa prosecutor's office presented photographs of the mosaic *in situ*, presumably taken by the looters<sup>7</sup>.
- **3 December 2012:** Turkey and the Dallas Museum of Art signed a Memorandum of Understanding on the return of the mosaic and on the establishment of an exchange program<sup>8</sup>.

<sup>1</sup> See Randy Kennedy, "Dallas Museum Volunteers to Return Mosaic to Turkey," *New York Times*, December 3, 2012, accessed March 27, 2013, <http://artsbeat.blogs.nytimes.com/2012/12/03/dallas-museum-volunteers-to-return-mosaic-to-turkey/>.

<sup>2</sup> See Kültür ve Turizm Bakanlığı Tanıtma Genel Müdürlüğü, "Roma Dönemine Ait "Orpheus Mozaığı" Türkiye'de," December 18, 2012, accessed March 27, 2013, <http://www.tanitma.gov.tr/TR,47986/roma-donemine-ait-orpheus-mozaigi-turkiyede.html>.

<sup>3</sup> Barış Salman, "Adıyaman Müzesi Mozaikleri ve İstanbul Müzelerinde Bulunan Edessa Mozaikleri," in *25. Araştırma Sonuçları Toplantısı 2. Cilt*, ed. Fahriye Bayram et al. (Ankara: Kültür ve Turizm Bakanlığı DÖSİMM Basımevi, 2008), 19-38, accessed March 27, 2013, [http://www.kulturvarliklari.gov.tr/sempozyum\\_pdf/arastirmalar/25\\_arastirma\\_2.pdf](http://www.kulturvarliklari.gov.tr/sempozyum_pdf/arastirmalar/25_arastirma_2.pdf)

<sup>4</sup> See "Urfa'nın Kaçırılan Mozaikleri," *Aktüel Arkeoloji Dergisi*, accessed March 27, 2013, <http://www.aktuelarkeoloji.com.tr/index.php?/=836>.

<sup>5</sup> See Kennedy, "Dallas Museum Volunteers to Return Mosaic to Turkey," Kültür ve Turizm Bakanlığı Tanıtma Genel Müdürlüğü, "Roma Dönemine Ait "Orpheus Mozaığı" Türkiye'de."

<sup>6</sup> See Kültür Varlıkları ve Müzeler Genel Müdürlüğü, "Dallas Sanat Müzesi'nden İadesi Sağlanan Orpheus Mozaığı (2012 A.B.D.)," accessed March 27, 2013, <http://www.kulturvarliklari.gov.tr/TR,50937/dallas-sanat-muzesinden-iadesi-saglanan-orpheus-mozaigi-.html>.

<sup>7</sup> Ibid.; "Orpheus Taming Wild Animals," The Dallas Museum of Art, accessed March 27, 2013, [http://www.dallasmuseumofart.org/View/Deaccessions/deacc\\_6/index.htm](http://www.dallasmuseumofart.org/View/Deaccessions/deacc_6/index.htm).

<sup>8</sup> See Kültür Varlıkları ve Müzeler Genel Müdürlüğü, "Dallas Sanat Müzesi'nden İadesi Sağlanan Orpheus Mozaığı (2012 A.B.D.)."

- **6 December 2012:** The Orpheus mosaic was returned to Turkey<sup>9</sup>.

## II. Dispute Resolution Process

### Unconstrained initiative – Negotiation – Settlement agreement

- It is not clear which party contacted the other in the first place to address the issue of the restitution of Orpheus Mosaic. However, it seems that the proposal for an amicable settlement firstly came from the Dallas Museum<sup>10</sup>. Likewise, it appears that the restitution is the result of a voluntary initiative undertaken by the Museum.
- The final settlement agreement was reached through negotiation. It was possible thanks to the detailed information on the provenance of the mosaic, especially the evidence emerging in the ongoing criminal investigations.

## III. Legal Issues

### Illicit excavation – Illicit exportation – Ownership

- Orpheus mosaic was removed from the ground in the city of Şanlıurfa during clandestine excavations and taken out of the country. Both the removal and the exportation violate Turkey's cultural property legislation in force according to which archaeological objects situated under the soil are State property<sup>11</sup> and their exportation is prohibited<sup>12</sup>.
- The Convention on Cultural Property Implementation Act (CPIA),<sup>13</sup> which was adopted by the United States in 1983 to implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,<sup>14</sup> does not allow United States authorities to enforce cultural property laws of source countries<sup>15</sup>. On the contrary, the CPIA provides that the return of illicitly exported cultural objects is subject to the conclusion of a bilateral agreement between the United States and the requesting country. These agreements allow the United States to impose restrictions on

<sup>9</sup> See Kültür ve Turizm Bakanlığı Tanıtma Genel Müdürlüğü, "Roma Dönemine Ait "Orpheus Mozaği" Türkiye'de."

<sup>10</sup> The positive attitude of the Museum in the process of return is stressed by the Ministry of Culture in Turkey. "Dallas Sanat Müzesi'nden İadesi Sağlanan Orpheus Mozaği (2012 A.B.D.)." Furthermore, within the same period, the Museum proceeded to the deaccessioning of five other objects from its collection which were proven to be looted and illegally exported from Italy. "Deaccessioned Artworks," The Dallas Museum of Art, accessed March 27, 2013, <http://www.dallasmuseumofart.org/View/Deaccessions/index.htm>.

<sup>11</sup> See Article 5 of the Law on the protection of cultural and natural heritage of 1983 (Law no. 2863).

<sup>12</sup> See Article 32 of the Law on the protection of cultural and natural heritage of 1983 (Law no. 2863).

<sup>13</sup> 19 United States Code § 2601 et.sq.

<sup>14</sup> 14 November 1970, in force 24 April 1972, 823 UNTS 231.

<sup>15</sup> Barbara T. Hoffman, "International Art Transactions and the Resolution of Art and Cultural Property Disputes," in *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara T. Hoffman (New York: Cambridge University Press), 160.

designated cultural materials<sup>16</sup>. Since Turkey has not signed any agreement to this date with the United States in this respect, the CPIA is not applicable to the present case.

- However, the ratification of the UNESCO Convention and the adoption of the CPIA had an indirect effect on museum ethics in the United States. The Association of Art Museum Directors (AAMD) adopted the “Guidelines on the Acquisition of Archaeological Material and Ancient Art” in 2004 and revised them in 2008 and January 2013<sup>17</sup>. According to paragraph E “museums normally should not acquire a work unless provenance research substantiates that the work was outside its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970”. The Guidelines provide certain exceptions for this rule. However, if a museum acquires an object under one of these exceptions, it has to publish the information on the acquisition (paragraph G) and to explain how the acquisition fits in the exception (paragraph H). If a museum, through research, comes to know another party’s ownership right on a work, it should share this information with this party and take the necessary measures, including the return of the work (paragraph I). In the present case, the Dallas Museum of Art, a member of the AAMD, followed these voluntary guidelines and undertook negotiations with Turkey concerning the ownership of the Orpheus mosaic because of the lack of clear provenance records.

#### IV. Adopted Solution

##### Conditional restitution – Cultural cooperation

- As a result of the negotiation procedure outlined above, the Orpheus mosaic was deaccessioned from the Museum’s collection and returned to Turkey. In return, Turkey signed a Memorandum of Understanding (MOU)<sup>18</sup> with the Museum marking the first initiative of the Dallas Museum of Art Exchange Program (DMX)<sup>19</sup>.
- Under the MOU, Turkey agreed to provide the Museum with “significant loans from important museums” in Turkey<sup>20</sup>. Although the MOU is very general in scope, it reflects certain particularities of Turkish legislation. For instance, the loans cannot exceed a year due to the time limitation specified in the law<sup>21</sup>. Furthermore, the Museum agreed to provide

<sup>16</sup> 19 United States Code § 2606.

<sup>17</sup> Guidelines on the Acquisition of Archaeological Material and Ancient Art, revised by the Association of Art Museum Directors on January 29, 2013, accessed March 27, 2013, <https://aamd.org/standards-and-practices>.

<sup>18</sup> Memorandum of Understanding between the General Directorate for Cultural Heritage and Museums of the Ministry of Culture and Tourism of the Republic of Turkey and the Dallas Museum of Art, December 3, 2012. We would like to thank Zeynep Bayrak from the anti-smuggling department of the Ministry of Culture and Tourism in Turkey for having shared with us the text of the MOU and for all the useful information she provided regarding the negotiation process.

<sup>19</sup> See “DMX,” The Dallas Museum of Art, accessed March 27, 2013, <http://www.dallasmuseumofart.org/View/DMX/index.htm>.

<sup>20</sup> Memorandum of Understanding between the General Directorate for Cultural Heritage and Museums of the Ministry of Culture and Tourism of the Republic of Turkey and the Dallas Museum of Art, December 3, 2012.

<sup>21</sup> See Article 6 (i) of the regulation on the export and import of cultural and natural properties to be protected, accessed March 27, 2013, <http://teftis.kulturturizm.gov.tr/TR,14435/korunmasi-gerekli-tasinir-kultur-ve-tabiat-varliklarini-.html>.

expertise in museological education, conservation, exhibitions, symposia, and responsible collecting.

## V. Comment

- Museums and source countries have learned a lot from past disputes over cultural objects, which usually caused the parties years of judicial proceedings, an important amount of funds, political tension and/or very bad publicity. This case is interesting in that it shows the methods used by the parties to avoid litigation and to settle the issue in an amicable way. For instance, the Museum chose to conduct further research on the provenance of certain objects in order to anticipate eventual claims from source countries, in this case Turkey. In addition, the Turkish Ministry of Culture and Tourism preferred not to request immediately the return of the mosaic once they have determined its location but instead, collaborated with criminal authorities to obtain solid evidence on the mosaic's origin. Besides, the use of an alternative resolution method brought further advantages, including the fact that the Dallas Museum could negotiate a loan program with Turkey.
- In the recent past, several museums have concluded cooperation agreements with source countries providing for the loan of artworks in exchange for technical and curatorial assistance<sup>22</sup>. However, the Dallas Museum has taken one step further in that it institutionalizes this practice within the framework of a structured program. It is very interesting to observe how the problems regarding the illicit trade can urge museums to consider “new models of cooperation among institutions” (such as the DMX) and also new policies on collection management. For instance, thanks to the MOU signed with Turkey, the Dallas Museum will have the opportunity to offer exhibitions on Anatolian art with objects lent from Turkey.
- The attitude of museums is surely changing today in the face of the development of ethical standards on one side and the increasing restitution claims from the source countries on the other. However, one may ask whether the restitution, in the case of the Orpheus mosaic, would have occurred if the evidence was not convincing. Turkish criminal authorities were very lucky to find photographs showing the mosaic *in situ*. Usually, looted objects leave a country without being seen by anybody but the looters. Obviously, this impedes the establishment of a connection between such objects and the requesting country<sup>23</sup>.

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<sup>22</sup> See, for instance, Raphael Contel, Giulia Soldan, Alessandro Chechi, “Case Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

<sup>23</sup> See, for instance, Ece Velioglu, Anne Laure Bandle, Marc-André Renold, “Case Troy Gold – Turkey and the University of Pennsylvania Museum of Archaeology and Anthropology,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

## VI. Sources

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