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## Case Portrait of a Young Peasant – Beyeler v. Italy

*Ernst Beyeler – Italy/Italie – Artwork/œuvre d'art – Judicial claim/action en justice – Judicial decision/décision judiciaire – Ownership/propriété – Expropriation – Financial compensation/indemnisation*

*In its judgment of 5 January 2000, the European Court of Human Rights held that the Italian State violated Mr. Beyeler's right to peaceful enjoyment of his possessions while using its pre-emption right over the Van Gogh painting "Portrait of a Young Peasant".*

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

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## I. Chronology

- **1954:** A Vincent van Gogh painting called “**Portrait of a Young Peasant**” was declared a work of historical and artistic interest within the meaning of Law no. 1089 of 1939<sup>1</sup> (hereinafter the Law) by the Italian State. The owner was Mr. Verusio, an art collector<sup>2</sup>.
- **28 July 1977:** Ernst Beyeler, a well-known art collector of Swiss nationality, bought the painting from Mr. Verusio for a price of 600 million Italian Lira (ITL) or nearly 310,000 €. Mr. Beyeler made the purchase through an agent, Mr. Pierangeli, acting on behalf of Mr. Beyeler.
- **1 August 1977:** Mr. Verusio informed the Italian Ministry of Cultural Heritage (the Ministry) of the sale, as required by the Law. In the declaration, Mr. Pierangeli’s name was mentioned as the other party to the contract. There was no mention of Mr. Beyeler’s name.
- **Late 1983:** The Peggy Guggenheim Collection in Venice (hereinafter PGC) showed interest in buying the painting.
- **1 December 1983:** Mr. Pierangeli made a declaration to the Ministry stating that he had purchased the painting on behalf of Mr. Beyeler.
- **2 December 1983:** Mr. Pierangeli and Mr. Beyeler made a second declaration to the Ministry stating that PGC wished to buy the painting for 2,1 million USD.
- **9 April 1985:** The Ministry gave permission for the painting to be moved to Venice for inspection.
- **23 April 1986:** The Ministry ordered that the painting be sent to Rome for temporary custody in the Modern and Contemporary Art Gallery because of the uncertainty as to who was the real owner. PGC had meanwhile renounced the purchase.
- **January 1988:** The Ministry sought clarification from Mr. Beyeler’s attorney about Mr. Beyeler’s alleged ownership of the painting.
- **February 1988:** The Ministry showed interest in acquiring the painting. However, it had a limited budget for this purpose.
- **26 February 1988:** Mr. Beyeler informed the Ministry through a letter that he was willing to sale the painting to the Italian State for 11 million USD. The Ministry did not respond.
- **2 May 1988:** Mr. Beyeler sold the painting to PGC for 8,5 million USD. The following day, he served a notice to the Ministry as required by the Law.
- **1 July 1988:** The Ministry replied to the parties that the notice could not fulfill the requirements under the Law because Mr. Beyeler did not have valid title to the painting.
- **16 September 1988:** Mr. Beyeler sent to the Ministry the bank statements showing that Mr. Pierangeli bought the painting on behalf of Mr. Beyeler.
- **20 November 1988:** The Ministry **exercised its right of pre-emption** in respect of the 1977 sale. The late exercise of the right of pre-emption was justified on the grounds that the true identity of the contracting parties had been uncertain. The amount indicated in the declaration of 1977, 600 million ITL was paid to Mr. Beyeler.

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<sup>1</sup> Law of 1 June 1939, No. 1089, concerning the Protection of Objects of Artistic and Historic Interest.

<sup>2</sup> In the absence of any specification, the facts in the chronology are retrieved from the judgment *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 5 January 2000.

- **1989-1995:** Mr. Beyeler challenged the pre-emption order before the Lazio Regional Administrative Tribunal (hereinafter RAT), the Council of State, the Court of Cassation and the Constitutional Court, to which the case was referred by the Court of Cassation. All domestic jurisdictions dismissed Mr. Beyeler's claims.
- **1996:** Mr. Beyeler applied to the European Court of Human Rights (hereinafter the Court) arguing that there had been a violation of Article 1 of Protocol No. 1<sup>3</sup> of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>4</sup> (hereinafter the European Convention) which guarantees the peaceful enjoyment of ownership rights .
- **5 January 2000:** The Court held that there was a violation of Article 1 of Protocol No. 1.
- **28 May 2002:** The Court sentenced the Italian State to pay to Mr. Beyeler an amount of 1,355,000 €<sup>5</sup>.

## II. Dispute Resolution Process

### Judicial claim – Judicial decision

- The Ministry and Mr. Beyeler communicated in many occasions after 1983, when Mr. Beyeler revealed to Italian authorities that he was the owner of the painting “Portrait of a Young Peasant”. The intentions of the parties were however difficult to interpret. It can be observed that the Ministry treated Mr. Beyeler as the legitimate owner in some circumstances while continuing to ask clarifications on his ownership title. In early 1988, the parties came close to a settlement when Mr. Beyeler made an offer to the Ministry. However, the price offered by Mr. Beyeler was probably too high for the Ministry's limited budget. The forced sale imposed on the painting in late 1988 started a long period of legal proceedings which lasted for thirteen years.
- In its judgment of 2000, the Court accorded a period of six months to the parties to come to an agreement on the compensation claimed by Mr. Beyeler. As the parties failed to reach such an agreement, the Court decided the amount of compensation to be paid by the Italian State with a second judgment in 2002<sup>6</sup>.

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<sup>3</sup> Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9.

<sup>4</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

<sup>5</sup> *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 28 May 2002 (just satisfaction).

<sup>6</sup> *Ibid.*

### III. Legal Issues

#### Ownership – Expropriation (pre-emption right)

- In Italy, works of art of cultural and artistic interest are subject to a special regime under Law no. 1089 of 1939 (the Law). According to the Law, the transfer of artworks must be declared to the Ministry. Within two months from the declaration, the Ministry may exercise a right of pre-emption over the work at the price indicated in the contract. Transfers made in breach of the Law are considered null and void, and the Ministry may still exercise its right. The content of the above mentioned declaration is defined by the Royal Decree no. 363 of 30 January 1913, which specifies, among others, the identity of the contracting parties. Declarations which lack such information are considered null and void as well<sup>7</sup>.
- In the present case, the Ministry exercised its right of pre-emption as provided in the Law with regard the Van Gogh painting owned by Mr. Beyeler. However, several legal issues were raised concerning the way in which this right was exercised and the conducts of the parties.
  - Mr. Beyeler's failure to reveal his identity as the real owner in the declaration of 1977. The Italian administrative courts (the Lazio RAT and the Council of State) considered the declaration of 1977 void because it did not contain the identity of the real owner. They then argued that the declaration being void, the two month time-limit would not apply in the case. This justified the Ministry's use of its right of pre-emption in 1988, eleven years after the actual sale<sup>8</sup>.
  - The Ministry's failure to exercise its right of pre-emption between 1983 and 1988. The Court points out that the Ministry could have used its right of pre-emption when it first became aware of Mr. Beyeler's identity in late 1983. Instead, it waited for five years. The Law was not precise enough about the exercise the right of pre-emption in case of an incomplete declaration. In Court's opinion, assuming that Ministry's right of pre-emption could be exercised at any time created a legal insecurity with regard to the status of the work<sup>9</sup>. This issue was also stressed in the first decision of the Court of Cassation<sup>10</sup>.
- The exercise of a right of pre-emption amounted to an interference with Mr. Beyeler's right to the peaceful enjoyment of his possessions<sup>11</sup>. Pursuant to the first paragraph of Article 1, such interference was justified only if an aim of public interest was pursued. In the present case, the Court confirmed that "the control by the State of the market in works of art is a legitimate aim for the purposes of protecting a country's cultural and artistic heritage"<sup>12</sup>. However according to Court's case-law, a fair balance has to be achieved between the legitimate public aim and the interference<sup>13</sup>. Having analyzed the conditions in which the pre-emption was exercised (as summarized above), the Court held that the Italian State,

<sup>7</sup> *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 5 January 2000, § 65-72.

<sup>8</sup> *Ibid.*, § 38-53.

<sup>9</sup> *Ibid.*, § 119.

<sup>10</sup> *Ibid.*, § 56.

<sup>11</sup> *Ibid.*, § 107.

<sup>12</sup> *Ibid.*, § 112.

<sup>13</sup> *Ibid.*, § 107 and 114.

representing the Ministry, did not respect the principle of fair balance and therefore violated Article 1.

- In calculating the compensation claimed by Mr. Beyeler under Article 41 of European Convention, the Court took into account various items. The Court held that Mr. Beyeler should be compensated for: (i) the non-pecuniary damage (the prejudice arising from the uncertainty that prevailed after the declaration of December 1983); (ii) the difference in the value of the painting for the period between 1984 and the expropriation (1998); (iii) the compound interest for the period from 1988 to the date of the judgment (2002); (iv) the ancillary costs incurred by Mr. Beyeler between 1984 and 1988 in determining the legal status of the painting; and (v) a part of the costs incurred before domestic courts (where also the terms of the exercise of the right of pre-emption were challenged)<sup>14</sup>.

#### IV. Adopted Solution

##### Financial compensation

- The Court ruled that an amount of 1,3 million € should be paid by the Italian State to Mr. Beyeler in compensation for the damage (pecuniary and non-pecuniary) suffered.
- An additional amount of 55,000 € should also be paid for the compensation in part of the costs incurred before the Convention institutions.

#### V. Comment

- It is important to underline that the Court did not find the pre-emption unlawful as such. In the Court's view, the protection of cultural heritage had to be considered a general public interest. Accordingly, States were allowed to interfere with the art market provided that the measures in question were legal and compensation was accorded to the victims. Nevertheless, the Court put into question the conditions in which the pre-emption was exercised.
- The increasing prices in the art market continue to be problematic for many States like Italy which control strictly the circulation of artworks of artistic and cultural importance. State courts tend to use the market value as the measure for calculating the damage caused by States' interference<sup>15</sup>. It should however be noted that in the Beyeler case, the Court did not award a full compensation which would equal to the difference in the market values because Mr. Beyeler had failed to "act openly and honestly" vis-à-vis Italian authorities<sup>16</sup>. On the other hand, the Court was criticized of not being transparent in its evaluation of the compensation,

<sup>14</sup> *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 28 May 2002 (just satisfaction), § 20-31.

<sup>15</sup> See for instance the judgment *Agent judiciaire du Trésor v. Walter* of the Court of Cassation in France regarding another Van Gogh painting: Ece Velioglu, Anne Laure Bandle, Marc-André Renold, « Affaire Jardin à Auvers – Agent judiciaire du Trésor c. Walter », Plateforme ArThemis (<http://unige.ch/art-adr>), Centre du droit de l'art, Université de Genève.

<sup>16</sup> *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 28 May 2002 (just satisfaction), § 23.

particularly by failing to explain in a clear way and distinctly how it reached to the different sums under the first package of 1,3 million €<sup>17</sup>.

- Moreover, the Beyeler case raised the interesting question of whether the Italian State had a legitimate public interest in acquiring a painting created by a Dutch artist in Saint-Rémy-de-Provence (France), which did not have any particular link with Italian culture. The Court recognized in this respect that “in relation to works of art lawfully on its territory and belonging to the cultural heritage of all nations, it is legitimate for a State to take measures designed to facilitate in the most effective way wide public access to them, in the general interest of universal culture”<sup>18</sup>.

## VI. Sources

### a. Bibliography

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### b. Court decisions

- *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 5 January 2000.
- *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 28 May 2002 (just satisfaction).

### c. Legislation

- Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.
- Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9.
- Law of 1 June 1939, No. 1089, concerning the Protection of Objects of Artistic and Historic Interest.

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<sup>17</sup> *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 28 May 2002 (just satisfaction), Dissenting opinion of Judge Greve.

<sup>18</sup> *Beyeler v. Italy*, European Court of Human Rights, Application No. 33202/96, 5 January 2000, § 113.