CONSEIL DE L'EUROPE

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COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

CASE OF BEYELER v. ITALY

(Application no. 33202/96)

JUDGMENT
(Just satisfaction)

STRASBOURG

28 May 2002

This judgment may be subject to editorial revision.

In the case of Beyeler v. Italy,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mr J.-P. COSTA,
Mr A. PASTOR RIDRUEJO,
Mr L. FERRARI BRAVO,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mrs V. STRÁŽNICKÁ,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mr J. HEDIGAN,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mrs E. STEINER, *judges,*

and also of Mr P.J. MAHONEY, *Registrar*,

Having deliberated in private on 14 February 2001, 20 February 2002 and 17 April 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 2 November 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 33202/96) against the Italian Republic lodged with the Commission under former Article 25 by a Swiss national, Mr Ernst Beyeler, on 5 September 1996.

2. In a judgment of 5 January 2000 ("the principal judgment") the Court held that there had been a violation of Article 1 of Protocol No. 1 (by sixteen votes to one); that there was no need to give a separate ruling on the question whether the applicant had suffered discriminatory treatment contrary to Article 14 of the Convention (unanimously); and that no separate issue arose under Article 18 of the Convention (unanimously) (see *Beyeler v. Italy* [GC], no. 33202/96, ECHR 2000-1, §§ 120-22, 126 and 129

respectively, and points 2, 3 and 4 of the operative provisions). More specifically, with regard to Article 1 of Protocol No. 1, the Court found that the applicant had had to bear a disproportionate and excessive burden (ibid., § 122).

3. Relying on Article 41 of the Convention, the applicant had claimed just satisfaction of 1,000,000 US dollars (USD) for non-pecuniary damage and, under the head of pecuniary damage, restitution of the painting or, failing that, compensation in the amount of its value at the time of the alleged expropriation – that is, USD 8,500,000 – less compensation of 600,000,000 Italian lire (ITL) paid previously pursuant to an expropriation order of 24 November 1988, plus interest accrued from that date in the sum of USD 3,934,142.90. Lastly, he had claimed 912,025.60 Swiss francs (CHF) for the costs incurred before the domestic courts, the Commission and the Court.

4. As the question of the application of Article 41 was not ready for decision, the Court reserved it and invited the Government and the applicant to submit to it, within six months, their written observations on the matter and, in particular, to notify the Court of any agreement they might reach (ibid., § 134, and point 5 of the operative provisions).

5. On 17 November 2000 both the applicant and the Government filed supplementary observations. At the Court's request, the Government submitted on 9 March 2001 their comments on the supplementary observations of the applicant, who, in turn, submitted his comments on 16 March 2001.

6. Despite various attempts made by the Court Registry, in particular between February and September 2000 and between September and November 2001, no basis was found on which a friendly settlement could be secured.

7. The composition of the Grand Chamber was determined according to the provisions of Rules 24 and 75 § 2 of the Rules of Court. As Mr G. Bonello, Mrs F. Tulkens, Mr R. Maruste and Mrs S. Boutoucharova, who had taken part in the adoption of the principal judgment, were prevented from sitting, they were replaced by Mr J. Makarczyk and Mr K. Jungwiert, substitute judges (Rule 24 § 3), and by Mr J. Hedigan and Mrs E. Steiner, appointed by drawing lots (Rule 75 § 2).

THE LAW

8. Article 41 of the Convention provides :

> "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. The parties' submissions

1. The applicant

9. The applicant's primary claim was for restitution of the painting, which he believed to be perfectly possible. In addition to restitution, he claimed compensation for the damage sustained as a result of the length of time for which he had been deprived of the painting and the consequent loss of use of the amount he would have received had it been possible to perform the contract signed with the Guggenheim Foundation in 1988 (USD 8,500,000), less the amount paid him by the ministry on pre-emption of the sale (ITL 600,000,000), that is, USD 7,811,522.05, plus interest on that amount from January 1989 to today's date (amounting to USD 5,632,836.47 at the average annual LIBOR[1] of 5.21%).

10. In the alternative, the applicant claimed full compensation by way of payment of the value of the painting at the time of the "expropriation" in the same sum as indicated above (price stipulated in the contract signed in 1988, less the ITL 600,000,000 paid by the ministry, the whole sum to bear interest at the aforementioned rate).

11. The applicant also sought compensation for non-pecuniary damage (in the sum of USD 1,000,000) on the ground that the impugned measures had damaged his reputation as an internationally renowned art dealer.

12. Lastly, the applicant claimed CHF 1,125,230.06 in ancillary costs and costs incurred before the domestic courts to put a stop to the violation of Protocol No. 1, and reimbursement of the costs incurred before the Convention institutions. The applicant observed that the fact that an applicant had lost in the domestic courts had never led the Court to reduce the amounts to be awarded in reimbursement of costs and expenses incurred in the domestic proceedings. Furthermore, with regard to the costs of the proceedings in Strasbourg, he stressed that the Court had concluded, in its principal judgment, that no separate issue arose in respect of the complaints based on Articles 14 and 18 of the Convention.

2. The Government

13. The Government submitted that the applicant could not claim to be entitled to restitution of the painting because the Court had not called into question the right of pre-emption as such, but had stated that the Italian authorities could have paid the applicant ITL 600,000,000 in 1983, that being the amount he had paid for the purchase of the painting. In that connection the Government stressed that a distinction had to be drawn between a violation arising from a radically illegal interference and the violation found in the instant case, which arose from the manner in which the interference – which was in itself legitimate – had been effected.

[1] London interbank offered rate.

Article 41 of the Convention could justify *restitutio in integrum* only in the first situation, whereas in the second situation it would give rise to an unfair benefit to the applicant.

14. For the same reasons, the Government considered that the applicant could not claim the difference between the value of the painting in 1983 and its value in 1988. Accordingly, all the applicant could claim was compensation for the depreciation of the amount invested in the purchase of the painting, calculated from January 1984, when, according to the Court, the pre-emption could validly have been exercised, up until the Court's final decision on the application of Article 41. In other words, just satisfaction should be awarded exclusively to compensate for the adverse consequences flowing from the particular form of interference which the Court had held to be contrary to Article 1 of Protocol No. 1. The Court had established that there had been a legal basis to the interference, that it had pursued a legitimate aim and that it had not therefore, as such, been contrary to the Convention. The violation found by the Court in fact related to the excessive delay before the interference took place. Consequently, if the Italian authorities had exercised their right of pre-emption at the beginning of 1984 the interference would have been perfectly compatible with Article 1 and the applicant would have lost, in return for ITL 600,000,000, any right or legitimate expectation in respect of the painting, and his application to Strasbourg would have been dismissed.

15. Restitution of the painting was, moreover, legally impossible under Article 41 of the Convention. Under Italian law the right of pre-emption had been lawfully exercised and the Italian State was henceforth the legal owner of the painting.

16. The Government therefore acknowledged only the loss caused by the delay and accepted that it could be calculated by adding to the ITL 600,000,000 interest at the rate proposed by the applicant.

17. The Government also disputed the existence of any non-pecuniary loss and stressed that the applicant's attempts to circumvent Italian law between 1977 and 1983 were in themselves liable to harm his reputation, at the very least on the Italian art market.

18. With regard to the costs incurred before the domestic courts, the Government submitted that all the applicant's claims had been dismissed by the Italian courts and that he had in any event failed to establish that they had been actually or necessarily incurred or that they had been reasonable.

19. Lastly, with regard to the costs incurred before the Convention institutions, the Government stressed that the majority of the applicant's claims (including the one based on Article 1 of Protocol No. 1 concerning the period from 1977 to 1983) had not been upheld by the Court. They observed that the applicant had not proved that the costs had been actually or necessarily incurred or that they had been reasonable or proportionate.

B. The Court's assessment

1. Damage, ancillary costs and costs incurred before the domestic courts

20. The Court considers first of all that the nature of the breach found in the principal judgment does not allow of *restitutio in integrum* (see, *a contrario*, *Brumărescu v. Romania* [GC], no. 28342/95 (Article 41), §§ 20-22, and the Papamichalopoulos and Others v. Greece (Article 50) judgment of 31 October 1995, Series A no. 330-B, p. 59, § 34). Indeed, in the instant case the Court did not conclude that the pre-emption had been unlawful as such, but considered that the uncertainties in the law, particularly as regards exceeding the two-month time-limit provided for in section 32(1) of Law no. 1089 of 1939, should be taken into account in determining whether the impugned measure was compatible with the requirements of a fair balance (see paragraphs 109-110 and 119 of the principal judgment). However, the Court does not subscribe to the Government's view that the only aspect of the interference criticised by the Court was the delay in exercising the right of pre-emption or that the only loss sustained by the applicant was the prolonged inability to dispose of the tied-up capital.

21. Although it is true that the judgment does not call into question the right of pre-emption as such and that the exercise of that right, in the instant case, would not have raised any problems if it had been exercised at the beginning of 1984, which would have been within the statutory two-month time-limit from the declaration of December 1983, the fact nonetheless remains that the pre-emption was not exercised within that time-limit but, on the contrary, five years after the ministry became aware of the irregularities of which the applicant was accused (see paragraph 120 of the principal judgment). In actual fact the prejudice suffered by the applicant, arising from the uncertainty that prevailed throughout that period – a state of affairs which allowed the Ministry of Cultural Heritage to acquire the painting in 1988, as indicated in paragraph 121 of the principal judgment – is an element of the finding of a violation.

22. In these circumstances, since the authorities did not exercise their right of pre-emption until 1988 the applicant was burdened with five years of uncertainty and precariousness resulting in loss for which he must be compensated at least to some extent.

23. The Court considers next that the applicant should also be compensated for the loss he suffered as a result of being paid the same price in 1988 as he had paid in 1977, it being observed that the depreciation in value between 1977 and 1983 must be borne by the applicant on account of his failure to act openly and honestly during that period, as noted by the Court (see paragraphs 115 and 116 of the principal judgment). The just satisfaction must therefore also take account of the failure to adjust the

purchase price paid in 1977 in respect of the period 1984-88. In turn, compound interest must be added to the amount so adjusted for the period from 1988 to the date of the present judgment. To that end, the Court has based its calculation, year by year, either on the statutory interest rate or the inflation rate[2], depending on which was more favourable to the applicant.

24. In calculating the damage the Court considers that account must also be taken of the ancillary costs incurred by the applicant between 1984 and 1988 in determining the legal position with regard to the painting.

25. As regards the costs incurred before the domestic courts, although the proceedings brought by the applicant after the Government had exercised their right of pre-emption in 1988 were intended, firstly, to dispute the exercise of the right of pre-emption as such (an aspect which the Court did not uphold in its finding of a violation), the fact remains that the domestic remedies used by the applicant also challenged the terms on which the right of pre-emption had been exercised, including the lack of any adjustment of the sum paid in 1988 (see paragraph 40 of the principal judgment, *in fine*), which was the pivotal element of the Court's finding of a violation. When seen from that perspective, the domestic remedies were also partly aimed at remedying the violation of Protocol No. 1 found by the Court. That approach therefore justifies an order for reimbursement of part of the costs incurred before the domestic courts after the right of pre-emption was exercised. The Court adjudges it equitable to award under this head approximately one-third of the costs incurred in instructing Italian lawyers.

26. In conclusion, having regard to the diversity of factors to be taken into consideration for the purposes of calculating the damage and to the nature of the case, the Court deems it appropriate to fix, on an equitable basis, an aggregate sum which takes account of the various considerations referred to above. Accordingly, the Court decides to award the applicant 1,300,000 euros (EUR) in compensation for the damage sustained, including ancillary costs and costs incurred before the domestic courts.

2. Costs incurred before the Convention institutions

27. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* [GC] (just satisfaction), no. 31107/96, ECHR 2000-XI, § 54). Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, § 66).

[2] 1989: 6.40%; 1990: 6.50%; 1991: 10%; 1992: 10%; 1993: 10%; 1994: 10%; 1995: 10%; 1996: 10%; 1997: 5%; 1998: 5%; 1999: 2.50%; 2000: 2.70%; 2001: 3.50%; January-February 2002: 0.5% (1/6 of 3%).

28. In its principal judgment, the Court found that the applicant was partly responsible for the loss he had sustained, that being loss of appreciation in the value of the painting between 1977 and 1984 and the depreciation of the capital tied up in it, that is, the price paid in 1977, over the same period (see paragraphs 115 and 116 of the principal judgment). Furthermore, it did not accept the applicant's submission calling into question the exercise of the right of pre-emption as such (see, *inter alia*, paragraphs 112, 113 and 117 of the principal judgment). The Court also agrees with the Government that the total costs claimed under that head appear excessive.

29. In these circumstances the Court considers that the costs incurred by the applicant before the Convention institutions should be reimbursed to him only in part. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards him EUR 55,000.

3. Default interest

30. The applicant claimed interest at the rate of 6% from the date of the present judgment.

31. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 3% per annum. The Court shall accordingly apply that rate.

FOR THESE REASONS, THE COURT

1. *Holds* by sixteen votes to one

(a) that the respondent State is to pay the applicant, within three months, the following amounts (together with any value-added tax that may be chargeable):

i. EUR 1,300,000 (one million three hundred thousand euros) in compensation for the damage, including ancillary costs and costs incurred before the domestic courts;

ii. EUR 55,000 (fifty-five thousand euros) for costs and expenses incurred before the Convention institutions;

(b) that simple interest at an annual rate of 3% shall be payable from the expiry of the above-mentioned three months until settlement;

2. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in French and in English, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 May 2002.

Luzius WILDHABER
President

Paul MAHONEY
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mrs Greve is annexed to this judgment.

L.W.
P.J.M.

DISSENTING OPINION OF JUDGE GREVE

In the present case I do not share the views of my colleagues concerning the amount of compensation to be awarded to the applicant under Article 41 of the Convention. I find the equitable amount of EUR 1,300,000 in "compensation for the damage, including ancillary costs and costs incurred before the domestic courts" (point 1. (a) i. of the operative part of the judgment) to exceed by far what seems reasonable.

In reaching this finding I lay emphasis both on the particularities of the case and on the Court's case-law in relation to Article 41 of the Convention.

I shall limit my following remarks to elaborating on the main points on which I take a different view from that of my colleagues.

Introductory remark

Article 41 reads:

> "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

The Court will normally distinguish between pecuniary and non-pecuniary damages, and address costs and expenses separately. In the present case the compensation of EUR 1,300,000 is comprised of

(a) non-pecuniary damage (paragraph 22);
(b) pecuniary damage
    (i) appreciation in the value of the painting between 1984 and 1988;
    (ii) compound interest; and
    (iii) "the ancillary costs incurred by the applicant between 1984 and 1988 in determining the legal position with regard to the painting" (paragraphs 23-24); and
(c) approximately one-third of the costs incurred in instructing Italian lawyers, which is part of the costs incurred before the domestic courts after the right of pre-emption was exercised (paragraph 25).

There is no guidance in the judgment as to how the aggregate sum of EUR 1,300,000 reflects each of the elements listed under (a) to (c). The Court has in this respect opted to formulate its findings in a manner distinct from that normally used by the Court, and with less transparency.

The facts of the case in brief

The painting, "Portrait of a Young Peasant", by Vincent Van Gogh was bought by the Swiss applicant – a well-known art collector – in 1977 for ITL 600,000,000. Unadjusted for inflation, ITL 600,000,000 equals almost EUR 310,000. For the sake of easier comparisons, I shall therefore henceforth use "EUR 310,000" for the price paid for the painting in 1977. The applicant bought the painting through an intermediary, a Rome antiques dealer, who also applied for an export licence for the painting. The Italian authorities refused to issue an export licence on the ground that it would be seriously detrimental to the national cultural heritage for the painting to be exported. Italian legislation contains provisions along the lines of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970.

As to the conduct of the applicant, the Court has found (paragraphs 115-116 of the principal judgment) that:

> "The Court notes that at the time of the 1977 sale the applicant did not disclose to the vendor that the painting had been purchased on his behalf; he was thus able to buy the painting at a lower price than he would in all certainty have had to pay if his identity had been disclosed to the vendor. In the applicant's submission, sales through an agent are common practice in the art market. However, after the sale the applicant failed to declare to the authorities that he was the end purchaser – that is, the real terms on which title to or possession of the property had been transferred – for the purposes of the 1939 Law. On 21 November 1977 Mr Pierangeli, who had already been fully reimbursed by the applicant and had confirmed to him that he had purchased the painting on his behalf, requested in his own name a licence to export the painting, without informing the authorities of the identity of the real owner (see paragraphs 11 and 14 above).
>
> The applicant then waited six years (from 1977 to 1983) before declaring his purchase, contrary to the relevant provisions of Italian law of which he was deemed to be aware. He did not approach the authorities until December 1983 when he was intending to sell the painting to the Peggy Guggenheim Collection in Venice for USD 2,100,000 (see paragraph 17 above). Throughout that entire period the applicant deliberately avoided any risk of a pre-emption order being made by omitting to comply with the requirements of Italian law. The Court therefore considers that the Government's submission that the applicant had not acted openly and honestly carries some weight, especially as there was nothing to prevent him from informing the authorities of the true position before 2 December 1983 in order to comply with the statutory requirements."

The statutory time-limit for pre-emption is two months. In these circumstances the Court has ruled that the exercise of the right of pre-emption by the appropriate Italian authorities in the beginning of 1984 would not have raised any problems in relation to the Convention (paragraph. 21). At that time the Italian authorities would have been able to

settle the case by paying the applicant what he himself had paid for the painting, that is "EUR 310,000".

In an order of 24 November 1988 the Ministry exercised its right of pre-emption in respect of the 1977 sale; the order was served on the applicant on 22 December that year. The issue in the present case is the period of almost five years which passed before the right of pre-emption was exercised and the applicant was informed of the decision and advised that he would be paid "EUR 310,000".

The Court's case-law

The case-law of the Court spans a wide diversity of issues and varies with respect to the seriousness of the violations found. Among the most serious cases over recent years is the Oğur v. Turkey judgment (20 May 1999, *Reports of Judgments and Decisions 1999*-III) where the Court found a double violation of the fundamental right to life. The Court's approach to non-pecuniary and pecuniary damages in this case illustrates the Court's general attitude in such serious cases, and reads (paragraph 95 and the last three sub-paragraphs of paragraph 98, pp. 553-54):

> "In respect of the damage she had sustained, the applicant claimed 500,000 French francs (FRF), of which FRF 400,000 was for pecuniary damage and FRF 100,000 for non-pecuniary damage. She pointed out that she had had no means of support since the death of her son, who had maintained the family by working as a night-watchman [this was not contested].
>
> Having regard to its conclusions as to compliance with Article 2 and to the fact that the events complained of took place more than eight years ago, the Court considers that it is required to rule on the applicant's claim for just satisfaction.
>
> As regards pecuniary damage, the file contains no information on the applicant's son's income from his work as a night-watchman, the amount of financial assistance he gave the applicant, the composition of her family or any other relevant circumstances. That being so, the Court cannot allow the compensation claim submitted under this head (Rule 60 § 2) [the rule in question lays down that in default of proper documentation in support of the claim, the Court 'may reject the claim in whole or in part'].
>
> As to non-pecuniary damage, the Court considers that the applicant undoubtedly suffered considerably from the consequences of the double violation of Article 2. She not only lost her son but also had to witness helplessly a flagrant lack of diligence on the part of the authorities in their conduct of the investigation. On an equitable basis, the Court assesses that non-pecuniary damage at FRF 100,000."

The total compensation in this case was thus FRF 100,000, or almost EUR 15,245.

Non-pecuniary damage

I do not find that the applicant in the present case ought to be paid any non-pecuniary damage.

The case concerns a financial investment in a work of art by a distinguished and well-known art dealer of international repute. When buying the painting he can be expected to have been fully aware that it was at best an open question whether the Italian authorities would exercise their right of pre-emption.

The applicant himself opted to leave the issue of pre-emption unresolved from when he bought the painting in late 1977 until his intermediary advised the Italian authorities of the facts of the case in late 1983 – that is, for more than six years. That subsequently the applicant had to wait almost five years before the decision to pre-empt was made is to be regretted, but I do not share the view that "the applicant was burdened with five years of uncertainty and precariousness resulting in loss for which he must be compensated at least to some extent". The applicant's concerns were predominantly pecuniary and I therefore conclude that the finding of a violation represents sufficient just satisfaction where the applicant is awarded compensation for his direct financial losses.

Pecuniary damage

(i) Appreciation in the value of the painting between 1984 and 1988

I do not find that the applicant sustained a loss of appreciation in the value of the painting over the period 1984-1988.

According to the Court's well-established case-law, the core issue is whether the applicant can be said to have had any *legitimate expectation* of any appreciation in value during this period.

The general principles in this respect are laid down in the Fredin v. Sweden judgment No. 1 (18 February 1991, Series A no. 192, § 54), and read:

> "The applicants initiated their investments seven years after the entry into force of the 1973 amendment to section 18 of the 1964 Act which clearly provided for the potential revocation of existing permits after the expiry of the 10-year period that started to run on 1 July 1973 (see paragraphs 35 and 50 above). They must therefore reasonably have been aware of the possibility that they might lose their permit after 1 July 1983. In addition, it is clear that the authorities did not give them any assurances that they would be allowed to continue to extract gravel after this date. Thus, the decision to grant them a permit to build a quay contained an express statement to the effect that that decision did not imply that 'any position [had] been taken as to the possibility of a future reconsideration of the gravel exploitation activities on the property' (see paragraph 16 above).
>
> Accordingly, when embarking on their investments, the applicants could have relied only on the authorities' obligation, when taking decisions relating to nature

> conservation, to take due account of their interests, as prescribed in section 3 of the 1964 Act (see paragraph 34 above). This obligation cannot, at the time the applicants made their investments, reasonably have founded any legitimate expectations on their part of being able to continue exploitation for a long period of time."

Since he was buying the painting to take it out of Italy, the applicant had – in my view – no legitimate expectation of an appreciation in value before he knew whether the Italian authorities wanted to exercise their pre-emption right. It should be appreciated that the applicant is a man who can be expected to be fully versed in the legal provisions regulating his international art deals. When he deals in Italy the applicant can be expected to familiarise himself with the specific Italian legislation. Furthermore, the rules at issue are reflected on a more general basis in the above mentioned UNESCO Convention of 1970.

(ii) Compound interest

I find the applicant entitled to have his actual pecuniary loss relating to the delay of almost five years compensated. This includes compensation for inflation or the lack of statutory interest (whichever is more favourable to the applicant) on the invested capital, "EUR 310,000", for the period from 1984 until he was paid the purchase price, and similar compensation in respect of the amount due after that payment up until payment is made in accordance with this judgment. I note that it has not been made clear to the Court when the Italian State paid the price which the applicant himself paid for the painting in 1977 or if any delay in the payment could be attributed to the applicant.

(iii) Ancillary costs

I do not find any reason to award compensation for "the ancillary costs incurred by the applicant between 1984 and 1988 in determining the legal position with regard to the painting" in addition to and distinct from the costs and expenses which he will have covered under the head "costs incurred before the domestic courts". Under the latter head the applicant is awarded all costs incurred in bringing the issues of relevance to this Court through the Italian legal system. It should not be for this Court to prescribe compensation for the clarification of other legal issues. This is particularly so in the present case where the applicant himself has been a primary source of confusion as to the legal position of the painting. The Italian authorities are blamed for the length of the procedures and that alone.

Costs incurred before the domestic courts

I find the applicant entitled to have reimbursed his actual pecuniary loss relating to the costs and expenses incurred before the Italian courts and of

relevance to the issues handled by this Court. I have no difficulty in accepting the view of my colleagues in this respect.

Conclusion

The applicant bought "Portrait of a Young Peasant" for "EUR 310,000". The compensatory award of EUR 1,300,000 represents almost 420 per cent of the price originally paid for the painting. Even when adjustment is made for the costs incurred in the Italian courts, inflation and compound interest from 1984 on the capital tied up by the applicant's vain purchase, the remaining compensation awarded by the Court for appreciation in the value of the painting and non-pecuniary damage represents an all-time high in the history of the Court. This is so although the case concerns almost exclusively pecuniary questions and no traditional vital human-rights interests. Moreover, the case relates to a financial transaction in respect of which the applicant seeks compensation despite failing to comply with the clean-hands doctrine which is normally decisive in compensation law.