

the user of the object or property and the superior interests of the community in order to ensure its conservation.

The following case illustrates the gap (or the conflict) between the state's power to ensure the protection of cultural heritage and the will of a private owner to use a cultural asset as he wants, without limits.

### The Beyeler case

An art dealer, Mr Beyeler, who is also an art collector and who has founded an institution dedicated to the exhibition and research of art works (The Beyeler Foundation in Basel) buys a painting at an auction in Rome in 1977.

Mr Beyeler comes from Switzerland and he wants to go home with this painting. But in Italy, the public authority which is responsible for controlling the exportation of art pieces refuses to issue an export authorization. This authority considers that this painting must remain in Italy because of its importance for Italian national cultural heritage. Mr Beyeler protests and claims that, considering the market is global, and that it is organized in Europe by the treaties of the European Union, it can (indeed, must) allow free circulation of cultural assets around the world.

### The arguments and their issues

Article 28 of the Treaty on the Functioning of the European Union (EU, 2012) develops this global market as an internal market within the framework of a customs union. This Article appears in Title 2 of Part 3 of this Treaty. This Title is: Free movement of goods.

#### Article 28

1. The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

To carry out this political objective, Articles 34 and 35 of the Treaty prohibit restrictions on imports and exports.

#### Article 34

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

#### Article 35

Quantitative restrictions on exports and all measures having equivalent effect shall be prohibited between Member States.

However, Mr Beyeler knows that, at the European level, there is a legal concept – the concept of national treasure, which states can use to retain cultural properties. This concept is covered by a specific provision of the European Treaty. This provision allows states to not apply the prohibition on the restriction of imports and exports enacted by