

Articles 34 and 35. Therefore, under Article 36, states can prohibit the export of cultural properties of national interest based on artistic, historic or archaeological value.

Article 36

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

This provision tends to regulate the relationship between private ownership of cultural goods and the public interest of a state to protect its national heritage. Obviously this provision can lead to a conflict of rights: the right of the private owner to use his goods versus the right of the state to define and ensure the protection of national cultural heritage. So, Mr Beyeler introduces a claim and asks the European Court of Human Rights for an answer on this particular conflict of rights.

The European Court decides “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. The Court points out in this respect that the national authorities enjoy a certain margin of appreciation in determining what is in the general interest of the community” (ECHR, 2000, p. 27).

Thus, the European Court does not agree with Mr Beyeler’s arguments based on a free global market.

However, Mr Beyeler develops another argument: the painting he acquired by auction sale is a painting by Vincent Van Gogh. This painter is not Italian, never travelled to Italy and there is no artistic link between Van Gogh and Italy. Thus, Mr Beyeler considers that this painting does not belong to Italian national culture and that the Italian Minister of Culture cannot prevent the export of this painting. From this point of view, he is hopeful of a positive outcome. He will be disappointed, because the Court “recognises 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” (ECHR, 2000, p. 27).

In this matter, one of the consequences of globalization (to produce a global art market) is the free circulation of goods, likewise the privatization of an important proportion of art works. To face this challenge and to preserve the right of a public authority to protect and conserve cultural heritage, the Court develops a new concept: the general interest of universal culture. This allows public access to the cultural heritage of all nations.