

September 14, 2021

Republic of Turkey v. Christie's, Inc.— Federal Court Dismisses Turkey's Claim for Ownership of Allegedly Looted Antiquity

Court Finds That Turkey Failed to Prove the Object's Provenance, and That Claim Was Barred by Laches Due to Delay in Turkey's Assertion of Its Ownership Right

SUMMARY

On September 7, 2021, the United States District Court for the Southern District of New York, applying New York state law, dismissed a case brought by the Republic of Turkey against Christie's and a New York art collector for the recovery of an ancient Anatolian marble idol known as the "Guennol Stargazer."¹ The Turkish government claimed ownership over the idol pursuant to a 1906 Ottoman-era decree which declared government ownership over all antiquities then situated in Turkey. The court found, however, that, given the unknown provenance of the idol prior to its appearance in New York in 1961, the Turkish government had not met its burden of establishing an ownership right based on the idol having been present in Turkey while the decree was in force. The court further held that, due to its delay in bringing its claim despite being on notice, Turkey was in any event barred from recovery under the doctrine of laches.

The decision will provide significant support for defendants in civil claims in New York for recovery of antiquities where the claimant has delayed in asserting its claim or is unable to provide sufficient evidence of its ownership of the subject property at a relevant time, both of which are common issues in disputes concerning the ownership of antiquities.

RECOVERY OF CULTURAL PROPERTY

Since the beginning of the twentieth century, in connection with efforts to maintain and preserve their cultural heritage and culturally significant arts and antiquities, numerous countries have passed cultural

heritage laws which provide for government ownership of local cultural property and prohibit its removal. Governments have also leveraged these laws and international agreements to assert ownership claims in U.S. or European courts over cultural property allegedly improperly acquired by Western museums or private collectors. In the United States, such claims may be prosecuted criminally, including under the National Stolen Property Act,² through civil forfeiture actions under the Customs laws,³ or may be brought as civil claims based on torts such as conversion or replevin.

In 1906, the Ottoman Empire enacted its Decree on Antiquities, which declared as government property all antiquities then situated in the Empire (whether on public or private land, and including undiscovered objects). Turkey, the successor state to the Ottoman Empire, has used this law to assert ownership claims over numerous high-profile antiquities, including most famously the “Lydian Hoard,” a collection of 363 artifacts illegally excavated and smuggled out of Turkey in the 1960s and eventually acquired by the Metropolitan Museum of Art, then ultimately repatriated in 1993 in settlement of a legal action brought by Turkey against the Museum.

THE GUENNOL STARGAZER

The Guennol Stargazer is among the few remaining and best-preserved examples of figurine tradition that was distinctive to a particular marble-working site in Kulaksizlar, situated in modern-day Turkey. Believed to have been manufactured between 4800 and 4100 B.C.E., the history of the idol in the millennia since then is unknown until it emerged in the possession of an art dealer in New York in 1961. The idol was then acquired and owned by a series of New York art collectors, and was periodically displayed at the Metropolitan Museum of Art. The current owner consigned the idol to Christie’s for auction and sale in 2017, at which point Turkey raised an objection and asserted a claim to the idol.

Following the idol’s sale (which has not been consummated), Turkey brought an action *in rem* against Christie’s and the current owner seeking a declaratory judgment of its rightful ownership of the idol, and asserting claims of conversion and replevin under New York state law.

TURKEY’S OWNERSHIP CLAIM

To prevail on its claims for conversion and replevin, Turkey bore the burden of establishing its ownership right over the idol. In a prior ruling in this matter, the court confirmed that, pursuant to the Decree, Turkey has an ownership right over all moveable and immovable antiquities situated in Turkey while the Decree was in force from 1906 onwards.⁴ Thus, the Turkish government needed to prove, based on the preponderance of the evidence, that the idol was removed from Turkey after the enactment of the Decree in 1906.

Prior to the Decree, and continuing after its enactment, large numbers of antiquities were excavated and removed from modern-day Turkey without government permission. Turkey alleged that the idol was most likely looted from its territory after 1906, pointing to the idol's manufacture in Kulaksizlar and sudden appearance in 1961 in the possession of an art dealer who was involved in the importation of the Lydian Hoard around the same period, and who Turkey alleged was a "primary conduit into the United States for material looted from Turkey and the Middle East."

THE COURT'S DECISION

Following an eight-day bench trial, including expert testimony regarding the idol's likely trajectory, the court found that the lack of direct evidence presented by the Turkish government and the weakness of its circumstantial evidence prevented it from establishing that the idol was present in Turkey after 1906. Archaeological evidence presented by the Defendants supported the existence of trade networks between Kulaksizlar and regions in modern-day Greece millennia before the production of the idol, and at least two other similar idols were known to have been excavated and taken outside of Turkey prior to 1906. Based on those facts, and the absence of any direct evidence regarding the idol's location prior to 1961, the court declined to adopt the Turkish government's inference that the idol remained in modern-day Turkey from the time of its manufacture.

The court further held that, in any event, even if Turkey could establish an ownership claim over the idol, Turkey's claim was barred by the doctrine of laches under New York law, because Turkey "should have known" of the circumstances giving rise to its claim but "inexcusably slept on its rights so as to make a decree against the defendant unfair." The court found that, for decades going back to the 1960s, the idol was widely discussed in academic literature and was on "near-constant" display at the Metropolitan Museum of Art, and that the Turkish Ministry of Culture had been on notice of the idol's existence and whereabouts as far back as the 1990s. However, Turkey took no steps to inquire into the idol's origins or assert its claim until 2017. The court further found that Turkey's delay resulted in prejudice to Defendants because, due to the passage of time and resulting death of key witnesses and loss of documentary evidence, by the time Turkey initiated its claim, Defendants were hampered in their ability to marshal evidence regarding the idol's provenance. The court noted that, had Turkey timely asserted its claim, the current owner may not have purchased the idol in the first place.

IMPLICATIONS FOR RECOVERY OF ANTIQUITIES

This decision will provide significant support for defendants, including museums, art dealers, auction houses and private owners, in civil claims for recovery of antiquities by foreign states in New York courts. Given the passage of time, it is common in such cases for there to be gaps in the historical record of an object's ownership or location history. The case illustrates how the passage of time and unavailability of

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complete evidence can be doubly troublesome for antiquities claimants, creating not only a significant evidentiary hurdle, but also potentially providing a basis for current owners to assert unfair prejudice when faced with an ownership claim.

The decision adds to a growing body of authority under New York law barring long-delayed claims for recovery of lost arts and antiquities due to laches. The court's reasoning on this issue closely followed the Second Circuit's analysis in *Zuckerman v. Metropolitan Museum of Art*, a case arising out of a Jewish family's forced sale of a Picasso painting in 1937 to fund their flight from Nazi Germany.⁵ The Second Circuit in *Zuckerman* held that a claim by the family's heirs to the painting based on replevin was barred by laches, because no claim was brought until 2010 notwithstanding that the family was aware of the history of the painting, which was also displayed at the Metropolitan Museum of Art. In light of this body of law, claimants who delay in asserting their rights will face difficulty in pursuing ownership of lost cultural property under New York law—particularly where the property is publicly exhibited and its provenance is widely known.

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ENDNOTES

¹ *Republic of Turkey v. Christie's Inc.*, Case No. 1:17-cv-03086 (AJN), ECF No. 472 (S.D.N.Y. Sep. 7, 2021).

² See, e.g., *United States v. Schultz*, 333 F.3d 393, 395 (2d Cir. 2003).

³ See, e.g., *United States v. A 10th Century Cambodian Sandstone Sculpture*, 2013 WL 1290515 (S.D.N.Y. Mar. 28, 2013).

⁴ *Republic of Turkey v. Christie's Inc.*, 425 F. Supp. 3d 204, 215 (S.D.N.Y. 2019).

⁵ 928 F.3d 186 (2d Cir. 2019).

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