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## Cultural heritage and cultural access rights: Leonardo da Vinci and trials concerning authenticity, prizing, international loan and export of his works after 2010<sup>1</sup>

### 1. Introduction

2019 was a jubilee year in which the entire art world celebrated the 500<sup>th</sup> death anniversary of Leonardo da Vinci – master of the Italian Renaissance, who, according to many rankings, has no competitor as a pretender to the title of “the most famous artist of all time”. Regardless of whether someone belongs to the group of admirers of his work or not, one cannot but admit that the master’s work electrifies the world public opinion, simultaneously in at least 3 aspects – scientific (the artist’s biographies are rewritten over and over again), financial (so far an auction record of all times belongs to the work attributed to Leonardo – “Salvator Mundi” sold in 2017) and popular (spectacular success of Dan Brown’s “The Da Vinci Code” thanks to the title’s reference to the artist). Therefore, it is hard to deny that the contemporary Renaissance artist and inventor has become a “brand” in itself, and everything that “wears this brand” arouses wide public interest.

The unwavering interest in the master, despite passing time, manifests itself also in the number of court cases involving artworks created by Leonardo da Vinci or attributed to him. Some of those – such as the famous case of Hahn’s against Joseph Duveen, a prominent art dealer on the authenticity of a painting being a copy of Leonardo da Vinci’s “La Belle Ferroniere”, which took place in the United States in 1920–1929 –

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became legal landmarks where history, law and art meet, significantly contributing to changes in the field of art market expertise. Others, although they turned out to be less spectacular, also influenced the history of the reception of the master's works. Trials related to Leonardo da Vinci's works are not only the domain of the past, however. They are also limited not only to the question of authenticity. Due to the fact that they differ significantly in subject matter, they can together serve as an exemplification of contemporary problems related to the ownership of works of old master's art, both in the public and private dimension, as well as at the interface between these two spheres.

This article outlines lawsuits related to works attributed to Leonardo da Vinci. The review covers matters relating the ownership of valuable objects – mainly works of art – but also issues related to access to cultural goods. The selection of the presented proceedings was made on the basis of the aforementioned subject criterion (attributive relationship with the master) and covers the last 10 years (2010–2020). The purpose of this report is to supplement the analyses carried out in relation to the works of Leonardo da Vinci in connection with the 500<sup>th</sup> anniversary of his death. These cases show, as in the lens, the problems related to the evaluation of works of art classified as cultural heritage. Many of the questions posed in them can be described as the most vital dilemmas of the law of cultural heritage.

## 2. “Salvator Mundi”

On 12 January 2015 a Russian oligarch, Dmitri Rybolovlev, filed a criminal complaint in Monaco against a dealer and an owner of the so-called free ports,<sup>2</sup> Yves Bouvier, in which he alleged fraud and money laundering.<sup>3</sup> The case was the result of the complainant's discovery that his Swiss business partner, hired as an intermediary in the purchase of the old masters' artworks, significantly inflated their price by breaking the terms of the signed contract – the agent was buying them on his behalf cheaper than he resold them later.<sup>4</sup> One of the “overpaid” works of art was Leonardo da Vinci's “Saviour of the

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<sup>2</sup> On free ports see: N.M. Neuhaus, “Customs Warehouses in Switzerland: An Introduction”, Institute of Art & Law, 4 May 2015, <https://ial.uk.com/customs-warehouses-in-switzerland-an-introduction/> (accessed: 20.04.2019).

<sup>3</sup> Ch. Michaels, “Case Review: *Rybolovlev v. Bouvier*”, 6 April 2015, <https://itsartlaw.org/2015/04/06/case-review-rybolovlev-bouvier/> (accessed: 22.11.2020).

<sup>4</sup> A. Fontevecchia, “Steve Cohen's Modigliani In The Middle Of An Art Market War: *Billionaire Rybolovlev vs Yves Bouvier*”, <https://www.forbes.com/sites/afontevecchia/2015/03/12/steve-cohens-modigliani-in-the-middle-of-an-art-market-war-billionaire-rybolovlev-vs-yves-bouvier/#18cef6115bd2> (accessed: 20.04.2019).

World”. Bouvier purchased the painting from an American art dealer Robert Simon and his associates for a sum of 80 million USD. Ryborovlev paid Bouvier for the same painting 47.5 million USD more (selling price was 127.5 million USD). The accusation of fraud alleged combined losses estimated at over 1 trillion USD in overpayment for the purchase of 38 works over a 10-year period.<sup>5</sup> The court battle was not limited to Monaco; the oligarch sued the merchant in other countries where his company was based – in Switzerland, Singapore,<sup>6</sup> Hong Kong and New York.<sup>7</sup> Ryborovlev sought to ban Bouvier from pursuing his economic activity and to broadly secure his claim against the entire property of the former contractor, although unsuccessfully.<sup>8</sup> The described matter was called in the media as the “Bouvier Affair”.<sup>9</sup> In October 2017, Yves Bouvier – probably in response to his legal troubles – decided to sell his company *Natural Le Coultre*, which included free ports.<sup>10</sup>

Meanwhile, the Russian oligarch also sued the auction house Sotheby’s, accusing them of colluding with Bouvier. The auction house consistently denied its involvement. Image losses were also suffered by a company named Simon Group, from which the Swiss agent purchased a painting attributed to Leonardo da Vinci.<sup>11</sup> Bouvier and Sotheby’s jointly countersued the Russian in Geneva to prevent him from filing another lawsuit against them in Britain. Pursuant to the provisions of the Geneva Convention, it is not possible to conduct several separate proceedings simultaneously in more than one state that is signatory to this international agreement.<sup>12</sup>

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<sup>5</sup> A. Shaw, “Swiss freeport king Yves Bouvier sells art storage company Natural Le Coultre”, *The Art Newspaper*, 26 October 2016, <https://www.theartnewspaper.com/news/swiss-freeport-king-yves-bouvier-sells-art-storage-company-natural-le-coultre> (accessed: 22.04.2019).

<sup>6</sup> New York Court of Appeal judgment of 18 April 2017 in the case of *Estate of Lorette Jolles Shefner v. Galerie Jacques de la Beraudiere*, 2017 NY Slip Op 02949, Appellate Division, First Department Published by New York State Law Reporting Bureau.

<sup>7</sup> M. Carrigan, “Russian billionaire Rybolovlev sues Sotheby’s for \$380m in fraud damages”, *The Art Newspaper*, 3 October 2018, <https://www.theartnewspaper.com/news/russian-billionaire-rybolovlev-sues-sotheby-s-for-usd380m-in-fraud-damages> (accessed: 22.04.2019).

<sup>8</sup> V. Noce, “Yves Bouvier clears legal hurdle in Singapore”, *The Art Newspaper*, 19 April 2017, <https://www.theartnewspaper.com/news/yves-bouvier-clears-legal-hurdle-in-singapore> (accessed: 22.04.2019).

<sup>9</sup> T. Baumgartner, “The Bouvier affair and the problem of secret commissions”, *Institute of Art & Law*, 6 April 2016, <https://ial.uk.com/the-bouvier-affair-and-the-problem-of-secret-commissions/> (accessed: 22.04.2019).

<sup>10</sup> A. Shaw, “Swiss Freeport...”

<sup>11</sup> K. Geiger, “Sotheby’s, a Prized Art Client and His \$47.5 Million da Vinci Markup”, *Bloomberg*, 30 November 2016, <https://www.bloomberg.com/news/articles/2016-11-30/sotheby-s-a-prized-client-and-his-47-5-million-leonardo-markup> (accessed: 22.04.2019).

<sup>12</sup> E. Kinsella, “Sotheby’s and Yves Bouvier Hit Back Against ‘Salvator Mundi’ Seller Rybolovlev in Ongoing International Feud”, *Artnet News*, 21 November 2017, <https://news.artnet.com/>

In 2016, Ryborovlev filed a complaint to the US prosecutor's office about the possible fraud by Bouvier in the sale of works of art.<sup>13</sup> The Swiss agent stated in New York that he had never acted for or on behalf of Rybolevlov, but had always remained a private entrepreneur specialising in art trade. As a consequence – as he tried to convince the prosecutor's office – he was free to sell the works of art he bought to whomever he wanted and for as much as he wanted.<sup>14</sup> It turned out, however, that the agent, according to the contract signed with the oligarch, was to officially collect only 2% of the price paid for the works delivered to his Russian client, and he first resold them to offshore companies controlled by him in order to hide the inconsistent profit.<sup>15</sup> In June 2018, however, an investigation by the U.S. prosecutor's office was discontinued after a Russian profitably sold Leonardo da Vinci's painting at an auction in Christie's in 2017.<sup>16</sup> At the same time, also in June 2018, the Russian billionaire was accused of corruption in Monaco and arrested for questioning.<sup>17</sup>

On 2 October 2018, Ryborovlev filed a lawsuit in federal court in New York against Sotheby's, demanding a total of 380 million USD in damages for complicity in "the greatest fraud in history", as the Russian called Bouvier's "swindle".<sup>18</sup> According to the statement of facts presented in the documents submitted to the court, the fault of specific persons representing Sotheby's was in deliberate participation in the price increase procedure through the intermediation of fictitious sales.<sup>19</sup>

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art-world/sothebys-and-yves-bouvier-sue-rybolovlev-in-ongoing-international-feud-1156712 (accessed: 22.04.2019).

<sup>13</sup> K. Geiger, H. Miller, "The Da Vinci Markup? Europe's Art Scandal Comes to America", *Bloomberg*, 9 March 2016, <https://www.bloomberg.com/news/articles/2016-03-09/the-da-vinci-markup-europe-s-art-scandal-comes-to-america> (accessed: 22.04.2019).

<sup>14</sup> A. Au-Yeung, "The Legal Fight Surrounding The Most Expensive Painting In The World", *Forbes*, <https://www.forbes.com/sites/angelauyeung/2017/12/05/the-legal-fight-surrounding-the-most-expensive-painting-in-the-world-salvator-mundi-dmitry-rybolovlev-yves-bouvier-affair/#4a9949b27fc6> (accessed: 22.04.2019).

<sup>15</sup> C. Miliard, "€10 Million Bail for Yves Bouvier, Indicted for Defrauding Dmitry Rybolovlev", *Artnet News*, 2 March 2015, <https://news.artnet.com/art-world/yves-bouvier-indicted-for-defrauding-dmitry-rybolovlev-held-on-eur10-million-bail-272265> (accessed: 22.04.2019).

<sup>16</sup> V. Noce, "Russian tycoon accuses Yves Bouvier of 'campaign of disinformation' as US calls off investigation into Swiss entrepreneur", *The Art Newspaper*, 1 June 2018, <https://www.theartnewspaper.com/news/russian-tycoon-accuses-yves-bouvier-of-conducting-a-campaign-of-disinformation-as-us-fraud-investigation-called-off> (accessed: 22.04.2019).

<sup>17</sup> M. Duron, "Collector Dmitry Rybolovlev, Seller of \$450.3 M. Leonardo, Questioned in Monaco on Corruption Allegations", *Art News*, 6 November 2018, <http://www.artnews.com/2018/11/06/collector-dmitry-rybolovlev-seller-450-3-m-leonardo-questioned-monaco-corruption-allegations/> (accessed: 22.04.2019).

<sup>18</sup> M. Carrigan, "Russian billionaire..."

<sup>19</sup> E. Kinsella, "Russian Billionaire Dmitry Rybolovlev Accuses Sotheby's of Price Inflation in a \$380 Million Suit", *Artnet News*, 3 October 2018, <https://news.artnet.com/art-world/dmitry-rybolovlev-sothebys-suit-1362958> (accessed: 20.04.2019).

Unfortunately, the content of the court proceedings has not been disclosed. However, the Ryborovlev cases against Bouvier revealed many shortcomings of the international art market, primarily in the field of testing the authenticity of works of art, ethical standards of auction houses and museum institutions taking liberties with interpretation of the ICOM Code of Ethics for Museum Professionals (in particular, with the Code's prohibition of opining about works in the market circulation) and lack of transparency in transactions in the private trade of works of art.

### 3. "La Bella Principessa"

Another dispute over Leonardo's authorship is the case of a female profile portrait entitled "La Bella Principessa". It is a portrait of a young Italian woman in Renaissance clothes, made with a coloured pencil on vellum.<sup>20</sup> In 1998, the artwork was put up for sale at Christie's in New York. Initially, neither the author of the work nor the identity of the person depicted in it was given; it was described as "the work of an anonymous 19<sup>th</sup>-century artist from Germany, imitating the style of Italian Renaissance artists".<sup>21</sup> The owner of the drawing, Jeanne Marchig – the widow of a Florentine artist and art conservator, Gianni Marchig – was convinced it was from the Renaissance, but Christie's expert on drawing, Francois Borne, was of a different opinion. His views became the reason for a later trial. At this stage, the collector did not protest, because – as she claimed in a later interview – she succumbed to the authority of the expert, and she herself needed money.<sup>22</sup>

A Canadian art collector based in Paris, Peter Silverman, attempted to buy the work. In one of the interviews, he strongly advocated changing the dating of the drawing at the moment of his first contact with it.<sup>23</sup> During the 1998 auction of Old Masters' Drawings, Silverman offered 19,000 USD but the work was sold for 21,850 USD. It was purchased by Kate Ganz, a New York art dealer and drawing expert, daughter of famous contemporary art collectors of the same name. She was convinced that the work was a pastiche of several different works by Leonardo.<sup>24</sup>

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<sup>20</sup> W. Isaacson, *Leonardo da Vinci*, Kraków 2019, p. 360.

<sup>21</sup> Christie's, Auction 8812, Item 402, January 30, 1998; cf. *ibid.*, p. 358.

<sup>22</sup> M. Kemp, *Mój Leonardo. Pięćdziesiąt lat rozsądku i szaleństwa w świecie sztuki i poza jego granicami*, Warszawa 2020, p. 160.

<sup>23</sup> *Mystery of a Masterpiece. An Interview with Peter Silverman*, NOVA/National Geographic/PBS, 25 January 2012.

<sup>24</sup> K. Krzyżagórska-Pisarek, "La Bella Principessa" – Arguments against the Attribution to Leonardo", *Atribus et Historiae* 2015, vol. 36, no. 71, p. 62.

The Canadian collector stumbled upon drawing again in 2007, when he visited a gallery run by Ganz in New York. He then became convinced that it must be the work of a Renaissance master. The art dealer accepted his offer to sell the work at the same price for which she had purchased it.<sup>25</sup> Silverman's purchase of the work initiated a re-launch of the debate over its possible authorship.<sup>26</sup> The collector was the first to publicly argue that it could be a work created by Leonardo da Vinci. In order to prove his thesis, the collector enlisted the help of art experts. Initially, he approached Mina Gregori, a French art historian who concluded that the portrait shows two influences – Florentine and Milanese – what could be an argument for Leonardo.<sup>27</sup>

This was just a prelude. Nicholas Turner, former curator of the British Museum in London, who looked at the picture of the drawing and said that Leonardo's authorship was indeed possible. It was mainly indicated by left-handed hatching. However, other experts whom Silverman asked for their opinion stated that it doesn't look like Leonardo's work.<sup>28</sup> Also Kate Ganz, the art dealer who sold the drawing to Silverman, was sceptical.<sup>29</sup> That did not deter Silverman: using the method of radiocarbon dating, he managed to determine the time frame of vellum formation: 1440–1650. This meant that Leonardo could possibly – although still not necessarily – be the author of the drawing in question. Then the Canadian collector turned to the Paris-based company Lumiere Technology, founded by Pascal Cotte, which produces ultra high resolution images of works of art. Thanks to the Several-hundred-times magnification enabled detailed comparative analysis of the drawing and other works by Leonardo and it revealed many similarities between the drawing and other works of the master.<sup>30</sup>

The results of these analyses were presented to Cristina Geddo from the University of Ghent. The researcher drew attention to the fact that the author used pastel crayons in three colours: black, white and red. This corresponded to the well-known practice of Leonardo.<sup>31</sup>

Silverman has gained an ally in Cotte in the fight for Leonard's authorship. Together, they turned to the Oxford professor Martin Kemp, who is considered one of the highest

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<sup>25</sup> M. Kemp, *Mój Leonardo...*, p. 141.

<sup>26</sup> S. Hewitt, "Life with Leonardo" – buyer Peter Silverman talks to ATG, *Antiques Trade Gazette* 2009, no. 1913, p. 4, on-line interview: <http://content.yudu.com/Library/A1hrhz/AntiquesTradeGazette/resources/4.html> (accessed: 20.04.2019).

<sup>27</sup> P. Silverman, *Leonardo's Lost Princess: One Man's Quest to Authenticate an Unknown Portrait by Leonardo da Vinci*, New Jersey 2012, p. 16.

<sup>28</sup> W. Isaacson, *Leonardo da Vinci...*, pp. 362–363.

<sup>29</sup> E. Povoledo, "Dealer Who Sold Portrait Joins Leonardo Debate", *New York Times*, 29 August 2008.

<sup>30</sup> W. Isaacson, *Leonardo da Vinci...*, p. 364.

<sup>31</sup> C. Geddo, "The Pastel Found: A New Portrait by Leonardo da Vinci?", *Artes* 2009, no. 14, p. 63.

authorities in the field of Leonardo da Vinci's work.<sup>32</sup> Kemp responded with interest to the material sent to him in 2008.<sup>33</sup> The Oxford professor agreed to see the drawing in person and delivered his affirmative opinion about the Leonardo's authorship. Information about this discovery was disseminated by Martin Kemp in a book co-written with Pascal Cotte and published for the first time in 2010.<sup>34</sup> Two years later, Silverman himself published a book on the long process of examining the authenticity of a work.<sup>35</sup>

A publication by Kemp and Cotte provided Jeanne Marchig, the former owner of a drawing of "good ammunition", to bring legal action against the auction house: "on 3 May 2010 attorney for Jeanne Marchig filed a lawsuit against Christie's, citing as grounds 'a deliberate refusal and failure to investigate the claimant's fiduciary duty, negligence, breach of guarantee of correct drawing attribution, and false statements during the auction and sale'".<sup>36</sup>

The auction house raised a defence arguing that the claim was time-barred. The plaintiff, however, indicated that it was only in 2009 that experts were ready to confirm Leonard's authorship. In the first instance, the trial was discontinued for procedural reasons.<sup>37</sup> However, the appeal was upheld and the case was returned to the court of first instance. Eventually, the parties settled out-of-court and the auction house donated an undisclosed amount to a charity organisation controlled by Marchig. One of the reasons for agreeing to such an arrangement was the fact that the auction house lost the original frame in which the drawing was delivered to them by the claimant. However, this point is highlighted by Christie's line of defence, according to which "most advocates of new attribution derive significant financial benefits from this and not another resolution".<sup>38</sup>

Although Kemp and Cotte's thesis about the work's authenticity has been supported by many reputable experts,<sup>39</sup> other equally respected experts on the subject raised their doubts.<sup>40</sup> The difference of opinion corresponds to geographical divisions: while most

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<sup>32</sup> M. Kemp, *Mój Leonardo...*, p. 136.

<sup>33</sup> D. Grann, "The Mark of the Masterpiece", *The New Yorker*, 5 July 2010, <https://www.newyorker.com/magazine/2010/07/12/the-mark-of-a-masterpiece> (accessed: 18.07.2019).

<sup>34</sup> Zob. M. Kemp, P. Cotte, *The Story of the New Masterpiece by Leonardo da Vinci: La Bella Principessa*, London 2010.

<sup>35</sup> Zob. P. Silverman, *Leonardo's Lost Princess...*

<sup>36</sup> M. Kemp, *Mój Leonardo...*, p. 161.

<sup>37</sup> Por. *Marchig v. Christie's Inc.*, 762 F. Supp. 2d 667 (S.D.N.Y. 2011).

<sup>38</sup> M. Kemp, *Mój Leonardo...*, p. 161.

<sup>39</sup> Kemp's opinion was shared by Dr. Nicholas Turner, prof. Alessandro Vezzosi, Mina Gregori, Professor Emeritus of the University of Florence, Dr. Cristina Geddo, prof. Claudio Strinati, prof. Carlo Pederetti.

<sup>40</sup> Objections to Leonardo's authorship were raised by: Pietro C. Marani, Everett Fahy, Carmen C. Bambach, Martin Clayton, Klaus Schroeder, Nicholas Penny, David Ekserdjian.

of Leonardo's supporters come from continental Europe, most opponents come from Britain and the United States.<sup>41</sup> There were even voices that Giannino Marchig, Jeanne's husband, who died some time earlier, had faked the drawing – this hypothesis was put forward on the ArtWatch portal.<sup>42</sup>

Perhaps the greatest controversy arose around a fingerprint discovered at the edge of the drawing; this issue cast a shadow on credibility of the expertise presented by Kemp and Cotte. Initially, Christophe Champond from the Institute of Criminology and Criminal Law in Lausanne was examining this trace, however, he found that its condition is insufficient to make a positive identification.<sup>43</sup> A different opinion was expressed by Peter Paul Biro, a Montreal court expert who responded to Silverman's announcement: he presented his discovery to *The New Yorker* journalist David Grann,<sup>44</sup> then described in an author's chapter published in the first edition of Kemp and Cotte's book.

The revelation hit the headlines around the world; “the new Sherlock-Holmes”, “the discovery of the real Da Vinci Code” euphoria was extinguished only by David Grann's article in *The New Yorker*. The article undermined the expert's credibility and cast a shadow on the evidence presented by him.<sup>45</sup> Biro brought a lawsuit against Grann accusing him of defamation, but courts of first and second instance ruled in favour of the journalist. This further undermined the credibility of the self-proclaimed expert. Consequently, Kemp and Cotte removed the chapter Biro wrote from the Italian edition of their book. This put a big question mark on other experts' findings as well.<sup>46</sup> Soon the two authors went on the counteroffensive and announced new revelations. Cotte noticed that the vellum on which the drawing was made had cut marks on the left edge, suggesting that it might have been originally made as an illustration for a book.<sup>47</sup>

The search for a matching volume led researchers to David Wright, retired professor of art history at the University of South Florida. He pointed to a tome of the history of the Sforza family in the collection of the National Library of Warsaw, published on the occasion of the wedding of Blanka Sforza. It was made in 1496 and initially belonged to the king of France, and then in 1518 it was given as a gift to the king of Poland on the occasion of his wedding with Bona Sforza.<sup>48</sup> Both researchers, accompanied by cameras

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<sup>41</sup> M. Kemp, *Mój Leonardo...*, p. 176.

<sup>42</sup> *Ibid.*, p. 162.

<sup>43</sup> W. Isaacson, *Leonardo da Vinci...*, p. 367.

<sup>44</sup> D. Grann, “The Mark of a Masterpiece...”

<sup>45</sup> M. Kemp, *Mój Leonardo...*, p. 154.

<sup>46</sup> W. Isaacson, *Leonardo da Vinci...*, p. 371.

<sup>47</sup> *Ibid.*, p. 371.

<sup>48</sup> P. Cotte, M. Kemp, *La Bella Principessa and the Warsaw Sforziad*, <https://www.bbk.ac.uk/hosted/leonardo/KempCotteLBP.pdf> (accessed: 30.06.2019).



from two TV stations – PBS and the National Geographic channel – went to Warsaw to examine the book. They presented many arguments for their conception.<sup>49</sup>

Only apologetic voices appeared in scientific studies, while criticism was initially revealed very “timidly” in press statements. However, Jonathan Jones tried to challenge Kemp’s claims in *The Guardian* in 2015. He could not understand how Martin Kemp – an Oxford professor and art lover who knew quite a lot about Leonardo – could have made such a mistake. Soon, Katarzyna Krzyżagórska-Pisarek, a specialist in the attribution of works of early Renaissance art, followed in the footsteps of the journalist. In a published scientific article the author systematically compiled the arguments “for” and “against” Leonardo’s authorship.<sup>50</sup> First, attention should be given – after Maroni<sup>51</sup> – to the fact that the drawing shows many corrections, which is unusual for Leonardo. In addition, these changes were made using several techniques simultaneously. Secondly, one cannot overlook the fact that Kemp and Cotte indicated Leonardo’s authorship so unequivocally, hardly considering arguments against such a thesis.<sup>52</sup> Moreover, the lack of comparable drawings made by the artist from Vinci also appears to repudiate his authorship. Leonardo just did not draw that way.

The most important objection however is the drawing’s unclear provenance. There is no information about the work before the beginning of the 20<sup>th</sup> century, when it was included in the collection of Giannino Marchig. The collector never revealed how he came into possession of it.<sup>53</sup> According to Kemp and Cotte, this is due to the fact that it is not a stand-alone work, but a page cut with a knife from a codex prepared for Bianca Giovanna Sforza on the occasion of her wedding to Galeazzo Sanseverino (1458–1525). Their hypothesis was repeated by David Wright.<sup>54</sup> Krzyżagórska-Pisarek, however strongly disputed the arguments of Kemp and Cotte. First of all, she emphasised that the first known owner of the described drawing, Giannino Marchig (1897–1983), was an expert copyist and imitator of Leonardo, and a skilled restorer of works of art.<sup>55</sup> In the 1920s he exhibited in Warsaw, where he may have approached the “Warsaw Sforziad”.<sup>56</sup> In the 1930s, Marchig found himself in the circle of Bernard Berenson, who at that time was considered an outstanding expert in Italian Renaissance art. Krzyżagórska-Pisarek

<sup>49</sup> W. Isaacson, *Leonardo da Vinci...*, p. 372.

<sup>50</sup> K. Krzyżagórska-Pisarek, “La Bella Principessa’...”, p. 64.

<sup>51</sup> P.C. Marani, “Deux nouveaux Leonardo?”, *Dossier de l’art* 2012, no. 195, pp. 58–63.

<sup>52</sup> D. Ekserdjian, “Leonardo da Vinci. ‘La Bella Principessa’ – The Profile Portrait of a Milanese Woman”, *Burlington Magazine* 2010, vol. 152, no. 1287, pp. 420–421.

<sup>53</sup> P. Cotte, M. Kemp, *La Bella Principessa...*

<sup>54</sup> D.R.E. Wright, *Ludovico il Moro, Duke of Milan, and the Sforziada by Giovanni Simonetta in Warsaw*, [http://www.bbk.ac.uk/hosted/leonardo/Wright\\_Sforziad.pdf](http://www.bbk.ac.uk/hosted/leonardo/Wright_Sforziad.pdf) (accessed: 30.04.2019).

<sup>55</sup> See: *Giannino Marchig, 1897–1983: paintings and drawings*, exhibition catalog, London 1988.

<sup>56</sup> K. Krzyżagórska-Pisarek, “La Bella Principessa’...”, p. 65.

rightly noticed that if he would have had in his possession the work of Leonardo, Benson and other experts would have certainly talked about it, and he would have asked them for their opinion. The fact that he himself considered the drawing to be the work of one of the master's students seems to be extremely important to the matter.<sup>57</sup>

In the discussed article, which opposes the attribution of the drawing work "La Bella Principessa" to Leonardo da Vinci, attention was also drawn to the weak foundations of the thesis about the origin of the vellum card from the Warsaw Codex. Although Polish art historian Bogdan Horodyński, who was the first researcher to compare all 3 codes known as the "Sforziad", gave the number of 208 folios that make up the Warsaw version, while it in fact consists of 202, a detailed comparison of the description of the content of today's code with the description of this author from 1954 indicates that it has been kept unchanged.<sup>58</sup> Kemp and Cotte's conclusion, which is based solely on a numerical comparison, is therefore incorrect. Horodyński, stating the total number of pages, must have made a mistake in his calculations, and the experts, encouraged by this fact, were deceived by appearances, without making their own findings in this regard.

The situation was complicated by one more alleged author of the drawing – this time self-proclaimed. It was a famous forger, Shaun Greenhalgh: in his book published in 2015 called "The Forger's Tale" he admitted to drawing "La Bella Principessa". He claimed to have done it as part of his arm training in 1978. He was only 17 at the time. According to Kemp, the author of the "autobiographical" story, however, only intended to increase the sales figures by adding this colourful episode to the end of his book in the form of an incompatible supplement. Kemp continued: "In an extremely witty way, the Greenhalgh-forger falsified his story about the forgery".<sup>59</sup>

It seems, however, that the fundamental problem is not whether Greenhalgh is telling the truth or not, but rather that Kemp's version is also not entirely credible. As the prominent art critic and journalist Jonathan Jones vividly put it in the pages of *The Guardian*: "I have no idea if Greenhalgh – in prison since 2007 for counterfeiting other works of art – really created this ugly pastiche. However, I am absolutely sure that it has nothing to do with Leonardo da Vinci".<sup>60</sup> Also, Alessandro Vezzosi – another renowned Leonardo specialist – who initially, relying solely on photographic reproduction, reacted enthusiastically to the appearance of a "new Leonardo",<sup>61</sup> cooled his enthusiasm

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<sup>57</sup> Ibid., p. 65.

<sup>58</sup> Cf. B. Horodyński, "Miniaturzysta Sforzów", *Biuletyn Historii Sztuki* 1954, no. 16, pp. 195–213.

<sup>59</sup> M. Kemp, *Mój Leonardo...*, p. 180.

<sup>60</sup> J. Jones, "This is a Leonardo da Vinci? The gullible experts have been duped again", *The Guardian*, 30 November 2015, <https://www.theguardian.com/commentisfree/2015/nov/30/leonardo-da-vinci-experts-painting-la-bella-principessa> (accessed: 2.03.2020).

<sup>61</sup> A. Vezzosi, *Leonardo infinito*, Reggio Emilia 2008, pp. 138–142.

after coming into direct contact with the work.<sup>62</sup> The mere existence of different opinions based on factual arguments does not allow any position to be considered final and indisputable.<sup>63</sup>

#### 4. Portrait of Isabella d'Este

In 2013 a story appeared in the media about a long-sought painting portrait of Princess Isabella d'Este, which Leonardo da Vinci was said to have done during his stay in Mantua in 1499. If this image turned out to be authentic, it would be a real breakthrough in the study of the master's work. Carlo Pedretti was said to have opted for the authorship of the artist from Vinci in *Corriere della Sera*.<sup>64</sup> However, it seems that the Italian scientist was not serious. According to Carmen Bambach, Pedretti was ironic because it is obvious that this painting did not come from the master's hand.<sup>65</sup> Martin Kemp also raised many objections, provoked by a press article, which stated that since he did not explicitly reject Leonardo's authorship, he did not exclude it or even support it. The scientist also drew attention to many circumstances of the work's creation, unusual for the artist from Vinci, including the fact that the picture in question was painted on canvas, while all the other paintings of the master were made on a wooden board.<sup>66</sup>

The history of this work is not entirely clear. According to specialised tests, it comes from the time of Leonardo. It was supposed to disappear in Italy in the 16<sup>th</sup> century. Its fate was not known until 2013; the painting surfaced when a lawyer from the Italian town of Pesaro, acting on behalf of his anonymous clients, tried to sell them in Switzerland, claiming that the author was Leonardo da Vinci. The expected price for the work was 93 million pounds sterling. The Italian prosecutor's office called on the Swiss police to block the transaction. Prosecutor Manfredi Palumbo in a comment sent to the press confirmed that the painting was under investigation in a tax fraud case.<sup>67</sup> The work was secured in a bank deposit in one of the banks in Lugano,<sup>68</sup> in connection with court

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<sup>62</sup> A. Vezzosi, *Leonardo da Vinci. Malarstwo: nowe spojrzenie*, Kielce 2019, p. 50.

<sup>63</sup> W. Isaacson, *Leonardo da Vinci...*, p. 373.

<sup>64</sup> H.M. Sheets, "The Latest Leonardo Debate", *Art News*, 5 December 2013, <https://www.art-news.com/art-news/news/the-latest-leonardo-debate-2339/> (accessed: 18.03.2020).

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> S. Garcia, "Lost Leonardo da Vinci masterpiece worth £90 million recovered from Swiss vault", *Independent*, 11 February 2015, <https://www.independent.co.uk/arts-entertainment/art/news/lost-leonardo-da-vinci-masterpiece-worth-90-million-recovered-from-swiss-vault-10039155.html> (accessed: 23.03.2020).

<sup>68</sup> *Ibid.*

proceedings against Edmidia Cecchini, an Italian citizen from Pesaro, on the charge of participating in the illegal trade in works of art.<sup>69</sup> In 2015, everything indicated that the painting would return to its homeland. The verdict was issued against her. The defendant appealed. She disputed the allegation of illegal export of the work by claiming that it had been in the family deposit in Switzerland for centuries. The judgment of the Italian Supreme Court became the basis for the official application for the return of the work.<sup>70</sup> In March 2018, the Federal Criminal Court in Ticino, Switzerland, ordered the return of the painting.<sup>71</sup> Ms. Cecchini appealed again. In September 2018, the Swiss Federal Administrative Court granted the request of its Italian counterpart, but on 13 May 2019, the Swiss Supreme Court dismissed this restitution request stating that the work had not been illegally removed from Italy. The latter decision contains a great deal of information on the circumstances in which the mutual legal assistance principle will apply, points to discrepancies between national legal frameworks regulating the export of cultural goods, and may also be seen as a warning to collectors when who are about to move their own collections abroad.

## 5. The “Vitruvian Man”

In 2019, the Louvre Museum in Paris organised a monographic exhibition dedicated to Leonardo da Vinci to celebrate the 500<sup>th</sup> anniversary of his death. Preparations for this exhibition had started much earlier and involved difficult negotiations with many prominent museum institutions in order to bring as many of the master’s works as possible to this exhibition.

Much effort has been made to bring the famous drawing known as the “Vitruvian Man” to Paris. This work is a part of the collection of the Venetian Academy and is presented only once every 6 years due to its poor condition.<sup>72</sup> An Italian museum has expressed initial readiness to borrow a drawing for the Paris exhibition. When the information about a possible loan reached the media, a group of activists from an association

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<sup>69</sup> C. del Frate, “Italy asks Switzerland to return work allegedly by Leonardo”, [https://www.corriere.it/english/18\\_aprile\\_20/italy-asks-switzerland-to-return-work-allegedly-by-leonardo-073767a2-44a7-11e8-af14-a4fb6fce65d2.shtml?refresh\\_ce-cp](https://www.corriere.it/english/18_aprile_20/italy-asks-switzerland-to-return-work-allegedly-by-leonardo-073767a2-44a7-11e8-af14-a4fb6fce65d2.shtml?refresh_ce-cp) (accessed: 23.03.2020).

<sup>70</sup> La Corte Suprema di Cassazione, Sent. 314, UP 30/1/2018, R.G.N. 54833/17.

<sup>71</sup> See: Tribunale Penale Federale, Sentenza del 4 settembre 2018, Corte dei reclaim penali, case number RR.2018.182.

<sup>72</sup> A. Christafis, “Biggest ever Leonardo da Vinci exhibition to open in Paris”, *The Guardian*, 19 October 2019, <https://www.theguardian.com/artanddesign/2019/oct/19/biggest-ever-leonardo-da-vinci-exhibition-to-open-in-paris-louvre> (accessed: 17.03.2020).

called “Italia Nostra” protested, pointing to the fact that the work was already presented in 2019 during the Venice Biennale.<sup>73</sup> The group successfully blocked the loan in domestic courts: the Regional Administrative Court in Venice (Tribunale Amministrativo Regionale di Venezia) prohibited the export of the work by its decision of 9 October 2019. The decision found the “Vitruvian Man” too fragile despite the positive opinion of the director of Gallerie dell’Accademia and the consent of the Italian Minister of Culture, Dario Franceschini.<sup>74</sup> However, the appellate court changed this decision and agreed to the export by a decision of 20 October 2019. According to the reasons, the exceptional importance of the Paris exhibition on a global scale justifies the loan.<sup>75</sup> The loan was therefore secured 4 days before the opening of the Paris exhibition.

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<sup>73</sup> A. Greenberger, “A Guide to the Louvre’s Gargantuan Leonardo da Vinci Retrospective”, *Art News*, 23 October 2019, <https://www.artnews.com/art-news/news/leonardo-da-vinci-louvre-guide-13452/> (accessed: 17.03.2020).

<sup>74</sup> A. Greenberger, “Leonardo da Vinci’s Prized ‘Vitruvian Man’ May Not Travel to Paris for Louvre Retrospective After All”, *Art News*, 9 October 2019, <https://www.artnews.com/art-news/news/vitruvia77n-man-leonardo-louvre-loan-blocked-13354/> (accessed: 17.03.2020).

<sup>75</sup> C. Ruiz, “Green light for Leonardo’s Vitruvian Man to go to Louvre”, *The Art Newspaper*, 17 October 2019, <https://www.theartnewspaper.com/news/green-light-for-leonardo-s-vitruvian-man-to-go-to-louvre/> (accessed: 18.03.2020).

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## Summary

### **Cultural heritage and cultural access rights: Leonardo da Vinci and trials concerning authenticity, prizing, international loan and export of his works after 2010**

The legal battle between a Russian oligarch Dymirty Ryborovlev and a Swiss free port owner Yves Bouvier turned public attention to the practices of art market and the scope of its transparency. The case of Jeanne Marchig v. Christie’s showed how fragile is the process of professional art authentication. Example of alleged and unexpected finding of a portrait of Isabella d’Este pointed to the existence of shady areas of trade in works of art in private circulation, which makes the whole art market even less transparent. Finally, the “Vitruvian Man” case was raising the question of accessibility of old art belonging to the public collections.

These four court cases presented in this article – all involving artworks created by Leonardo da Vinci or attributed to him – show the entire spectrum of legal problems related to works of art made by old masters, which are of particular importance to private owners, states, regions and the cultural heritage of mankind. The outlined examples illustrate the extent to which the artworks can be objects of market speculation when they turn into the target of human’s desire being perceived as an ordinary commodity – a thing one “must have” or “must see”.

The first two cases exemplify problems of private possession of works of art which are possibly of greater cultural value. The works’ circulation outside any public scrutiny makes the final

verification of their authenticity impossible. Unequivocal decisions in this regard may be contrary to the interests of investors managing finances entrusted to them. As a consequence, there are no effective tools to protect the interests of collectors who have lost money as a result of market speculation. Dymitry Ryborovlev, who did not receive legal compensation for the suffered losses, learned it the hard way; the role of Jeanne Marchig in the history of Leonardo's alleged drawing remains ambiguous to this day.

Two last cases focused on the relations between the state and the individual with respect to cultural property. The cases illustrate whether or not cultural property should be excluded from the market as *res extra commercium*, and whether their private possession can be compatible with public interest, especially with collective rights of access. On the other hand, as the example of "Vitruvian Man" shows, public ownership is not a universal solution to all questions relating to the preservation of exceptional artworks.

All of mentioned cases seem to confirm the lack of transparency of the contemporary art market and the insufficient coverage of works of art of particular historical and artistic value by legal regulations.

**Keywords:** cultural heritage, access to culture, authenticity of works of art, valuation of works of art, international loan of works of art

## Streszczenie

### Dziedzictwo kultury i prawo dostępu do kultury:

#### Leonardo da Vinci i procesy sądowe dotyczące autentyczności, wyceny, międzynarodowych wypożyczeń oraz eksportu jego prac po roku 2010

Sądowa batalia między rosyjskim oligarchą Dmitrijem Rybołowlewem a szwajcarskim właścicielem „wolnych portów” Yvesem Bouvierem zwróciła uwagę opinii publicznej na praktyki na rynku sztuki i na ich przejrzystość. Sprawa *Jeanne Marchig przeciwko Christie's* pokazała, jak kruchy jest proces profesjonalnego uwierzytelniania dzieł sztuki. Przykład rzekomego i nieoczekiwanego odnalezienia portretu Isabelli d'Este wskazywał na istnienie szarej strefy handlu dziełami sztuki w prywatnym obiegu, co czyni cały rynek sztuki jeszcze mniej przejrzystym. Wreszcie sprawa „Człowieka witruwiańskiego” dotyczyła kwestii dostępności sztuki dawnej znajdującej się w zbiorach publicznych.

Cztery sprawy sądowe przedstawione w niniejszym artykule – wszystkie dotyczące dzieł stworzonych przez Leonarda da Vinci lub jemu przypisywanych – ukazują całe spektrum problemów prawnych związanych z dziełami sztuki wykonanymi przez dawnych mistrzów, które mają szczególne znaczenie dla prywatnych właścicieli, państw, regionów i dziedzictwa kultury ludzkości. Przedstawione przykłady ilustrują, w jakim stopniu dzieła sztuki mogą być przedmiotem spekulacji rynkowych, gdy stają się obiektem zaspokajania ludzkich pragnień jako zwykły towar – rzecz, którą „trzeba mieć” lub „trzeba zobaczyć”.

Pierwsze dwa przypadki są przykładem problemów związanych z prywatną własnością dzieł sztuki o znacznej wartości historycznej i kulturowej. Uzmysławiają, że obieg dzieł poza wszelką kontrolą publiczną uniemożliwia ostateczną weryfikację ich autentyczności. Jednoznaczne ustalenia co do ich prawdziwości często są sprzeczne z interesami inwestorów zarządzających powierzonymi im finansami. W konsekwencji brak jest skutecznych narzędzi ochrony interesów kolekcjonerów,



którzy stracili pieniądze w wyniku spekulacji rynkowych. Przekonał się o tym na własnej skórze Dmitrij Rybołowlew, który nie otrzymał odszkodowania za poniesione straty, a rola Jeanne Marchig w historii rzekomego rysunku Leonarda do dziś pozostaje niejednoznaczna.

Dwie ostatnie sprawy dotyczyły relacji między państwem a jednostką w odniesieniu do dóbr kultury. Przypadki te wiążą się z pytaniem o to, czy dobra kultury powinny być wykluczone z rynku jako *res extra commercium* oraz czy ich prywatne posiadanie jest zgodne z interesem publicznym, zwłaszcza czy jest do pogodzenia ze zbiorowym prawem dostępu do dóbr kultury. Jak pokazuje jednak przykład „Człowieka witruińskiego”, własność publiczna nie jest uniwersalnym rozwiązaniem wszystkich kwestii związanych z zachowaniem wyjątkowych dzieł sztuki.

Wszystkie wymienione przypadki zdają się potwierdzać brak przejrzystości rynku sztuki współczesnej oraz niedostateczne objęcie przepisami prawa dzieł sztuki o szczególnej wartości historycznej i artystycznej.

**Słowa kluczowe:** dziedzictwo kultury, dostęp do dóbr kultury, autentyczność dzieł sztuki, wycena dzieł sztuki, międzynarodowe wypożyczenia dzieł sztuki