

FOCUS IP

MAY 2025

COPYRIGHT: JURISDICTION OF THE ADMINISTRATIVE COURT IN PLACE OF THE JUDICIAL COURT TO ORDER REPAIR ON AN ARTWORK IN THE PUBLIC DOMAIN



Pierre Trusson,
Counsel - JP Karsenty & Associés



Justin Ramet,
Trainee lawyer - JP Karsenty & Associés

Paris Court of appeal, 5th pole, 1st chamber, April 9th, 2025, no. 24/18170

IMPACT: In this ruling, the Paris Court of Appeal endorses a precedent established by the French Court of conflicts ("Tribunal des conflits"), stating that when an infringement of copyright is claimed as a result of alterations made to a public artwork, the Judicial Court has jurisdiction only to rule on the existence of a violation of moral rights and any potential damages.

However, the Administrative Court has jurisdiction to order work to be carried out on the artwork (repair, moving...).

➤ The facts

As part of an agreement with a local municipality, an artist created an artwork of art consisting of three columns ten metres high and one metre in diameter, entitled "Les Piliers de la République" ("The Pillars of the Republic").

In June 2023, the artist's right holders discovered that the artwork had been dismantled for restoration and moved to a neighbouring town.

After unsuccessful formal notices and the inauguration of the artwork in its new location, the rights holders brought proceedings against the city before the Paris

Judicial Court to seek damages, as well as the reinstallation of the artwork in its original location.

As the pre-trial judge of the Paris Judicial Court declared that he had no jurisdiction to rule on the request for the work to be reinstalled, in favour of the administrative court, an appeal was lodged.

➤ Copyright versus principle of the intangibility of public works

On appeal, the rights holders argued in particular that:

- (i) their claims are based on the artist's moral rights, which fall exclusively within the jurisdiction of the Judicial Court;
- (ii) the monument is an artwork protected by copyright, and not merely a public work;
- (iii) their request does not seek to alter the public work but to restore it to its original state.

On its side, the municipality considered that the artwork also falls within the the public domain property, as it is the owner thereof. It invokes the principle of the intangibility of public works, which prohibits the judicial court from ordering any measure likely to affect them.

➤ ***The Judicial Court's principle jurisdiction in matter of infringement of moral rights by public entities versus public entities***

First, the Court, relying on a case law of the Court of conflicts¹, points out that, because of the Judicial Court's exclusive jurisdiction in matters of literary and artistic property (art. L.331-1 of the French Code of intellectual property), the Judicial Court has jurisdiction to hear contractual or tort liability claims brought against a public entity where an infringement of literary and artistic property, particularly of moral rights, is alleged.

The Court concludes that the Judicial Court has jurisdiction to rule on the existence of the alleged infringement and damages.

In the present case, it thus finds that the Judicial Court must rule on the rights holders' claim for damages based on a violation of the artist's moral rights.

➤ ***The exclusive jurisdiction of the Administrative Court over requests to alter a public work based on moral rights***

Secondly, the Court reiterated the reasoning of another ruling handed down by the Court of conflicts², which stated that the Intellectual Property Code does not "*grant to the judicial court the authority to order any measure likely, in any way whatsoever, to affect the integrity of a public work*".

In this case, "Les Piliers de la République" is a public work, meaning that the rights holders who are requesting the relocation of the artwork as well as

modifications must refer the matter to the Administrative Court.

The Court held that the limited jurisdiction of the Judicial Court "*implies, solely, [if the claimant] intends to obtain, in addition to compensation for his loss, measures likely to affect the integrity of a public work, to refer precisely this point to the administrative courts*".

The Court of Appeal thus upholds the lower court's ruling in its entirety.

Accordingly, jurisdiction is allocated as follows:

- **The Judicial Court rules on the existence of an infringement of moral rights and any alleged damages but cannot order any modifications or relocation of the public work.**
- **If the Administrative Court is directly seized of a request to modify the public work based on an alleged infringement of moral rights, it may only rule once the Judicial Court has determined the existence of the infringement and the damages claimed.**

JP KARSENTY & ASSOCIES
6, Place de la République Dominicaine - 75017 Paris
Phone: +33 (0) 1 47 63 74 75
Fax: +33 (0) 1 46 22 33 27
E-mail: ptrusson@jpkarsenty.com

¹ Court of conflicts, July 7th, 2014, n°C3954

² Court of conflicts, Sept. 5th, 2016, n°4069, M. [N]. N. v. Association philharmonique de Paris