

Moral rights vs public interest - Blog posted on 23 June 2014 by José Antonio Suárez and Helena Suárez (Suárez de la Dehesa Abogados)

Judgment of the Provincial Court of Vizcaya, Spain 10 March 2009

Moral rights – Integrity – Material additions – Modification of the work’s spirit – Authorship – bridge – architectural designs

In Spain a few relevant sentences have addressed the issue of architectural and engineering works. And in the only case ruled by the Supreme Court (January 28th, 1995), the matter dealt with plagiarism.

In 1990 the Bilbao City Council hired a famous architect called Santiago Calatrava to design and build a bridge that united both sides of the river. It was open in 1997 and in 2006, local authorities hired a Japanese architect, Arata Isozaki, to build the enlargement of the main walkway of the bridge for utility and general interest reasons, including the substitution of a walkway which turned dangerously slippery under rain conditions (128 days per year).

Calatrava thought it was an infringement of his moral right because it was an infringement of the integrity of his work and sued Bilbao city Council.

The Court of First Instance (Commercial Court no. 1 Bilbao, Vizcaya in its judgment no. 543/2007 of November 23rd) considered that there were two conflicting interests. On the one hand, the moral rights of the author and on the other hand, an interest of public nature: to allow citizens to cross the bridge. Despite the Court recognized the violation of moral rights, it concluded that the public interest must prevail over private.

Calatrava, appealed this judgment in front of the Provincial Court of Vizcaya.

Both rulings declared that the bridge is an intellectual creation (Article 10.1.f of the Spanish Copyright Act grants the creator of architectural designs, intellectual property rights) and that there is an infringement of moral rights because it has been physically altered. However, they do not agree on which of the two aforementioned interests must prevail. The Provincial Court of Vizcaya considered that the moral rights of the architect is overridden by the public interest that the work helps to satisfy.

The ruling is most probably right, as architectural works, as long as they are commissioned works, cannot lose sight of its utilitarian purpose. In that sense the architect (and the work builders) disregarded such an important factor as the objective risk that the walkway had to be safe under rainy conditions, which is about a third of the days of each year in the city.

Copyright related issues are not often analyzed by the Spanish courts (public performance of works excluded), and in the architectural field there is still an unresolved issue. The Copyright Act, as it is common in many other jurisdictions, protects the drawings, plans, mockups and designs of architectural and engineering ; which excludes the works built following those elements. Nevertheless, section 2.1 of the Bern Convention is clear to that extent, as it considers under the scope of its protection the works of architecture. According to section 96.1 of the Spanish Constitution, the Convention is placed in a higher rank in the Spanish legal sources system, which therefore overrides the Copyright Act. Which could have open the field to discussing if Arata Isozaki work was a derivative work and, therefore, subject to Santiago Calatrava’s consent. Without entering into the moral rights issue, whose regulation allows the courts a wider scope of decision.