

SUPREME TRIBUNAL OF JUSTICE RULING ORDERS TO RESPECT UNIVERSIDAD CENTRAL DE VENEZUELA'S PROPERTY RIGHT OVER THE TANGIBLE OBJECT WHICH CONTAINS THE SCULPTURE KNOWN UNDER THE NAME OF MARIA LIONZA.”

In a ruling that wasted the opportunity of analyzing highly important aspects related to Copyright, the Constitutional Chamber of the Supreme Tribunal of Justice, on June 8, 2004 ordered the “Foundation for the Protection and Defense of the Cultural Patrimony of Caracas” (“FUNDAPATRIMONIO”) to refrain from moving the sculpture work known as “Maria Lionza”, without prior authorization of the Universidad Central de Venezuela (UCV), owner of the tangible object of the work.

The work object of legal dispute, created by the well known local sculptor “Alejandro Colina” in 1951 upon request of the Universidad Central de Venezuela, placed since its termination in a specially designed space in the major highway of the city of Caracas, where it became a referential icon of the city, was in very bad condition and there was a consensus in the cultural community for its prompt restoration.

In that sense, UCV and FUNDAPATRIMONIO celebrated meetings in order to discuss about the conditions of the transportation of the work for its restoration and its eventual relocation in a place different than its historic space, for preservation purposes.

Given the impossibility of reaching a consensus, the UCV ordered to transportation the sculpture to its restoration workshops, notifying that decision to Fundapatrimonio, which, in answer, unilaterally ordered the transportation for restoration to other place, and even decided its relocation to other zone of the city in the same unconsulted way.

UCV submitted a constitutional action for legal protection against this administrative decision, based on its property right over the tangible object which contains the sculpture. Third Superior Civil and Contentious Administrative Tribunal, on February 5th, 2004, rendered a favorable ruling to UCV, granting the later the exclusive right to decide over the work's destiny.

“Fundapatrimonio” appealed from that decision before the Supreme Tribunal of Justice, and the Constitutional Chamber confirmed the contents of the appealed ruling, based on considering sufficiently proved the capacity of owner of the UCV over the tangible object of the sculpture, and ordering the parties:

- a) Fundapatrimonio: to refrain from disturbing the property right of UCV, and to comply with the decisions of the later related to restoration and relocation of the work.
- b) UCV: provide the guidelines to the immediate restoration of the work.

Although “justice was done”, in restoring the UCV property rights disturbed, the ruling completely ignores fundamental principles related to copyright (the ruling does not even take into account copyright law as an applicable law), which, properly applied, allowed to reach the same conclusion and further recognize the interests of the creator of the work or his heirs, which were completely ignored in the process, and given that Venezuela recognize moral rights as a complement of patrimonial rights, they should have voice, even vote in any

initiative which involves the modification and eventual relocation of the sculpture object of the conflict reported herein.

In this sense, in accordance with current Copyright Law, article 20, the creator has a moral right over the work, by which the creator may object any modification which jeopardize the integrity of the work and his/her reputation, **even against the owner of the tangible object.**

Even assuming that in this case the collective interest for the work would not had allowed alterations in the spirit of the work, it is also true that the process that caused such a ruling, specially coming from the highest tribunal of the Republic, should at least consider some fundamental aspects of copyright, instead of merely analyzing documental issues of the property over the tangible object which contains the work.

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