[FR] The Moral Right of Victor Hugo before the Court of Cassation

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On 30 January, the court of cassation delivered a judgment, one that was both anticipated and noteworthy, concerning the conditions under which a sequel to a work may or may not be produced. In the case at issue, the dispute was between an heir of Victor Hugo and the author of two novels presented as “sequels” to Victor Hugo’s work Les Misérables. In France, the moral right - unlike pecuniary rights which lapse 70 years after the death of the author - is “perpetual, inalienable and not subject to limitation in terms of time. On the author’s death it is transmitted to the author’s heirs” (Art. L. 121-1 of the French Intellectual Property Code). However, very few heirs ever uphold the moral right of their ancestors more than a century later, by which time the work has fallen into the public domain.

In the case at issue, the two novels concerned in the dispute brought back to life the legendary characters of Cosette, Thénardier, and even Inspector Javert, to the great displeasure of the writer’s great-great-grandson, who claimed EUR 675,000 from the author in damages and called for his books to be banned, on the grounds that he had infringed the respect due to his ancestor’s work. The court of appeal upheld the claim in 2004 (but only awarded damages amounting to a symbolic EUR 1), holding that “there could be no sequel to a work such as Les Misérables, which was definitively complete”. The court of cassation, on the basis of Article 10 of the European Convention on Human Rights and Articles L. 121-1 and L. 123-1 of the Intellectual Property Code, found that, in principle, a sequel of this kind, which was related to the right to make an adaptation, could not be forbidden. The court stated that a sequel involved the freedom of creation, which, on condition that there was no disregard toward the title of the work and its integrity, could be exercised on expiry of the period during which the work’s author, or the latter’s heirs, held a monopoly on its use. It therefore overturned the judgment of the court of appeal in Paris which had decided that editing and publishing the disputed works had infringed the moral right of Victor Hugo; the judges had based their decision with reference to the genre and the merit of the work, and its complete nature, without examining the novels at issue or deciding whether they altered Victor Hugo’s work or whether there was any confusion as to who had written them. The case was referred to a different configuration of the court of appeal in Paris, which this time had to determine whether the author’s moral right had been infringed, within the restrictive limits laid down by the court of cassation. This decision does, however, have the merit of defining for the first

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time the framework within which a sequel to a work, whether it is literary or audiovisual, may be produced.

Cour de cassation (1re chambre civile), 30 janvier 2007, Société Plon et autre c/ P. Hugo et Société des gens de lettres

Court of cassation (1st civil chamber), 30 January 2007, Société Plon and another v. P. Hugo and the Société des Gens de Lettres

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