

**Abstract**

**‘Art Vandalism’ committed by State and  
Its Infringement against Artist’s Personality Right  
- Focusing on the Analysis of the Supreme Court Decision 2012Da204587  
Decided August 27, 2015 -**

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Since author’s personality is intimately bound up with his/her work, it is in the author’s interest that he/she should be able to prevent any distortion, mutilation or derogatory action in relation to it that would be prejudicial to author’s personality. It is called right to the integrity of the work (hereinafter “the integrity right” or “the moral right of integrity”). In relation to the destruction of the mural painting installed at Dorasan station (hereinafter “Dorasan case”), the Supreme Court of Korea affirmed the decision of Seoul High Court, which had ruled that the destruction of the mural painting was found to infringe artist’s personality right that constitute as tort under the State Tort Liability Act, even though the mural was in State’s own possession. Dorasan case is a typical problem on conflicts between author’s moral right of integrity and ownership of works of art. Works of art are often sold to individuals, private companies or state and local authorities. Therefore, there is a potential conflict between two competing rights, which arise in relation to the tangible object and the intellectual creation embedded in it. A right of property exists in relation to the tangible object, but ought to coexist with the author’s integrity right. The integrity right is relevant in relation to the destruction of a work of art, when the author is no longer the owner of the tangible object. The question was much debated in Seoul High Court’s Dorasan case whether the property right of the owner of the work (i.e., the mural painting) should or should not prevail over the breach of the integrity of the

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work which might be arguably committed when the work had been destroyed. It ruled that destruction of mural painting infringed upon artist's personality right, not upon artist's moral right of integrity. Supreme Court decision to the lower court's judgment was to be more specific about artist's personality right by clarifying the content of personality right as social honor, emotional distress. The main point of this decision is that if a tangible object of a work has been destructed under the certain circumstances, the author of the work of art might be protected by artist's personality right, not by the author's moral right of integrity.

### Keywords

Right of ownership, Moral right, Integrity right, General personality right, Social honor, Emotional distress, Destruction of the tangible object of the work

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