

JUSTICE

La plainte contre Philippe Koutouzi définitivement écartée

PAR ALEXIS FOURNOL (AVOCAT À LA COUR) · LEJOURNALDESARTS.FR

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La Cour de cassation a confirmé le non-lieu dont a bénéficié Philippe Koutouzi l'expert et ayant droit de l'artiste T'ang Haywen.



T'ang Haywen (1927-1991) dans son atelier à Paris
Photo Yonfan, 1991

Le contentieux entre **Enrico Navarra**, sa galerie, et le spécialiste de l'œuvre de T'ang Haywen a pris au cours de ces dernières années une dimension quasi-tentaculaire, les procédures se multipliant tant en France qu'aux Etats-Unis. L'une d'entre elles vient toutefois de s'achever après la décision de la chambre criminelle de la Cour de cassation du 28 février dernier. Les sept années d'investigations et de procédures n'auront pas permis de donner suite à la plainte déposée par le galeriste en 2011.

Celle-ci concernait la manière dont Philippe Koutouzi était devenu l'ayant droit de l'artiste d'origine chinoise et ce, au détriment de l'administration des douanes selon Enrico Navarra. T'ang Haywen est décédé en 1991 en France. Faute d'héritier connu, l'ensemble de sa succession aurait dû être dévolue à l'administration des douanes. Mais un coup de théâtre bienheureux change la donne : en 1994, Philippe Koutouzi parvient à retrouver en Chine le frère de l'artiste défunt. Ce dernier donne alors tout pouvoir pour le représenter auprès de l'administration française afin de récupérer l'ensemble des biens du défunt. En septembre 1995, la qualité d'héritier du frère était établie par acte notarié, trois jours avant la cession des droits patrimoniaux de l'artiste pour un franc symbolique au spécialiste.

Quinze ans plus tard, Enrico Navarra sollicitait l'Adagp afin de pouvoir réaliser une monographie sur l'œuvre de T'ang Haywen. Face au refus qui lui fut opposé, le galeriste se renseigna sur l'identité du titulaire des droits patrimoniaux de l'artiste avant de se convaincre de l'existence d'une escroquerie en bande organisée à laquelle auraient concouru le spécialiste, le frère du défunt et le notaire ayant dressé les actes authentiques. Mais un non-lieu fut retenu, puis confirmé par la chambre de l'instruction le 17 novembre 2016. Cette décision vient donc d'être à son tour confortée par la chambre criminelle, aucune charge suffisante concernant un potentiel recel n'existant et les faits d'escroquerie, à supposer qu'ils soient avérés, étaient en tout état de cause prescrits au jour du dépôt de plainte.

THÉMATIQUESJustice

(English translation, with notes added by T'ang Haywen Archives)

The lawsuit against Philippe Koutouzi definitively dismissed

The Court of Cassation (Supreme Court in France) ([see Note 1](#)) confirmed the dismissal of the lawsuit against Philippe Koutouzi, the expert and the beneficiary of the copyright of the artist T'ang Haywen.

The litigation between [Enrico Navarra](#), his gallery, and the specialist of T'ang Haywen's work has taken on an almost sprawling dimension in recent years, with proceedings multiplying in both France and the United States. However, one of them has just been concluded after the decision of the Criminal Division of the Court of Cassation on 28 February. The seven years of investigations and procedures will not have made it possible to follow up on the lawsuit filed by Enrico Navarra in 2011. ([see Note 2](#))

This concerned the way in which Philippe Koutouzi had become the beneficiary of the copyright of the artist of Chinese origin, and this, to the detriment of the customs administration according to Enrico Navarra. T'ang Haywen died in 1991 in France. In the absence of a known heir, his entire estate should have been devolved to the customs administration. ([see Note 3](#))

But a happy turn of events changes the situation: in 1994, Philippe Koutouzi manages to find the brother of the deceased artist in China. The latter then gives all powers to represent him before the French administration in order to recover all the deceased's property. In September 1995, the brother's heir status was established by notarial deed, three days before the transfer of the artist's property rights for a symbolic franc to the specialist.

Fifteen years later, Enrico Navarra approached the ADAGP ([see Note 4](#)) in order to produce a monograph on T'ang Haywen's work. Faced with the refusal, the gallery owner questioned the identity of the artist's copyright owner before being convinced of the existence of an organized gang scam to which the specialist, the deceased's brother and the notary who drafted the authentic acts allegedly contributed. ([see Note 5](#)) Yet a dismissal was upheld and confirmed by the investigating chamber on 17 November 2016.

This decision has thus in turn just been confirmed by the Criminal Division, no sufficient charge existing concerning a potential concealment and the facts of fraud, if proven, were in any event time-barred on the day the complaint was lodged. ([see Note 6](#))

Note 1

The Court of Cassation (La Cour de Cassation) is the highest court in the French judicial system.

Reference: [https://en.wikipedia.org/wiki/Court_of_Cassation_\(France\)](https://en.wikipedia.org/wiki/Court_of_Cassation_(France))

Note 2

Starting in 2010, Enrico Navarra sued Marlborough Gallery (New York) and Philippe Koutouzi regarding the painter Chu Teh-Chun for "tortious interference" in his relationship with the artist. His complaint was rejected by a New York Judge. Then Enrico Navarra filed a second complaint, and after several years of proceedings marked by the slowness imposed by

Enrico Navarra, his complaint was again firmly rejected but he appealed the decision of the judge. One month later, in July 2017, he withdrew his appeal against Philippe Koutouzis but maintained it against Marlborough Gallery and its director Pierre Levai.

Along the years Enrico Navarra has also initiated a number of other legal actions against several other persons and in relation with Chu Teh-Chun and Zao Wou-Ki. Amongst them: Mrs. Françoise Marquet, wife of the late painter Zao Wou-Ki; Mr. David Caméo, former Director of the porcelain Manufacture de Sèvres; Guimet Museum in Paris and the members of its staff and so on... In 2011, Enrico Navarra denounced Philippe Koutouzis to the French Criminal Justice, which provoked a long investigation with all the related consequences. Then dissatisfied with the progress of the criminal investigation, he initiated a complaint before the French Civil Justice on the same grounds as those raised before the Criminal Justice: That is illegal in France and was recognized as such by the Judge who suspended the procedure.

Only one action is still pending. It is related to a so-called corruption of Mr. Jean-Paul Desroches, former curator at Guimet Museum in Paris, by Yvon Chu, Ching-Chao Chu, widow of Chu Teh-Chun and mother of Yvon, Marlborough Gallery & Pierre Levai, and Philippe Koutouzis. This action is still pending and is to be heard by the Paris Court on 9, 10 and 11 of January 2019.

The decisions of rejecting the claims of Mr. Enrico Navarra, expressed sometimes in very clear terms his attempts to manipulate procedural rules and thus his obvious bad faith.

Mr. Enrico Navarra also did not hesitate to use his contacts in the media to publish manipulated articles only taking into account his version of the facts. It is regrettable, for example, that a publication such as Beaux-Arts Magazine, in France, lent itself to this manipulation and failed, at the various stages of judicial conclusions, to make a correction to the falsified version they had reported of the facts.

Note 3

Error in the Journal des Arts: not to the "*detriment of the customs administration*" but, according to the terms used by Mr. Enrico Navarra himself "*to the detriment of the French State*" because according to him, the succession should have benefited the French State.

Note 4

ADAGP – with the full name: Société des Auteurs dans les Arts graphiques et plastiques, it is an organization manages the reproduction and public communication rights of artists, based in Paris, France.

Note 5

This information is factually and chronologically false and is based on the declarations of Mr. Enrico Navarra.

Indeed, and based on documentary evidence in the hands of Philippe Koutouzis and ADAGP:

- On 23 March 2011, by e-mail received from ADAGP, Philippe Koutouzis learned that Mr. Navarra requested permission to publish a "*Catalogue of works acquired by the Enrico Navarra Gallery*" and which would include 250 reproductions of works by T'ang Haywen.

- On 29 March 2011, Philippe Koutouzis gave his answer by e-mail in the following terms:
"It is always with pleasure that I welcome initiatives to promote T'ang, whose oeuvre I have been working on for many years. My response to this request is therefore a priori positive and I am waiting for the following elements in order to be able to give my final agreement:

- High definition images - minimum 300dpi, 5mb - of the front and back of each of the works to be reproduced OR an ektachrome of each of them, a digital file of the back (300 dpi, 5mb) being sufficient in this case.

- The complete and definitive lay-out of the book to be published, from the first cover to the back cover and its dimensions; a highlight of all the passages concerning T'ang Haywen or reproducing his work.

- Moreover, since I have been preparing the catalogue raisonné for many years, regardless of my copyright on the work, I am also prepared to collaborate in the projected publication as the expert of the oeuvre and on a voluntary basis, in ways that may be discussed later."

Philippe Koutouzis' requests were legitimate as since 1997, he is the beneficiary of the copyright to the work of T'ang Haywen. In this particular case, it was all the more justified. Effectively the well named *Blast Magazine* had just published an interview of Mr. Enrico Navarra where he reported his setbacks concerning the painter Chu Teh-Chun, according to him caused by Marlborough Gallery and Philippe Koutouzis, and his discovery of a swindle, organized by Philippe Koutouzis and concerning the succession of T'ang Haywen.

On 4 May 2011, Mr. Enrico Navarra informed ADAGP that he was going to "seek compensation for the damages he had suffered for a year!"

Since 2010, Mr. Enrico Navarra had "conducted his investigation" in France and China, and also met Mrs. Marcelle (Lotus) Mahé, who in 1998 had already questioned the existence of T'ang's brother (Reference: https://www.tanghaywenarchives.com/content/6-legal-information/2-lawsuits/thwa_legal-proceedings-and-criminal-procedures_english.pdf). Therefore, it is unlikely that his complaint against Philippe Koutouzis was motivated by a refusal to publish a book. He was just looking for a reason to start one more procedure.

Finally, we are entitled to ask ourselves what were the real reasons for this procedural addiction. We leave it to objective or qualified observers to determine the underlying reasons.

Note 6

The last paragraph of the Court's judgment reads as follows:

*"Whereas the statements in the contested judgment put the Court of Cassation in a position to ensure that, in order to confirm the order of dismissal, the investigating chamber, after having analyzed all the facts denounced in the complaint and replied to the essential articulations of the brief produced by the appellant civil parties, has stated, on grounds free from insufficiency as well as contradiction, **that the information was complete and that there were not sufficient charges against anyone for having committed the alleged offences, nor any other offence**"*