

THE LAW OF SUCCESSION AND THE EUROPEAN NORMS

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Abstract

We are witnessing an era of unprecedented flow of information that seems to take a life of its own once it is set free to roam within a network. Among the benefits that this phenomenon offers us, there are also some shortcomings. In this regard, an important problem is raised: how best to protect the intellectual property rights in a world which experiences an extraordinary access to information? Once again, globalization brings forth an answer to the very problems that it generates and comes up with a viable answer to that question. Entities like the European Union strive to bring inter-state cooperation to a new level, never seen before and the optimization of the legislation referring to the reselling royalty rights does its part in making such an ambitious goal come true.

Key words: *copyright legislation, optimization, inter-state cooperation*

The Romanian legislation of copyright, consolidated after 1989, is based on Law no. 8 adopted on March 14 1996, regarding copyright and a couple of related rights it had been modified for several times before, in order to correspond to European norms, the last attempt being August 3 2006.

The initial form stated (in Article 21) that: “(1) For every reselling of a work of art at a public auction or through a broker or by a merchant, the author is entitled to 5 % of the sale’s-price, as well as the right to be informed about the location of his work”. According to Article 21, paragraph 2, the sale’s agents “must inform the maker about the content of paragraph 1 of the same article in a 2-months time from the day it was sold”. “They shall be held to answer about the selling-price retention and for the payment of a 5 % quota for the author”. The resale right was the summation of the rights pointed out in the next article

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for which the prohibition of any kind of disclaimer or alienation was also mentioned. From the moment this law appeared, it was for the very first time when this right (having a French denomination) was acknowledged and protected in the Romanian legislation¹. A mixed character of these provisions can be seen, both patrimonial and morally, since the same point states the aspects regarding the pecuniary character plus the non-patrimonial right of informing the maker².

In the modified form of Article 21, which today is in force, we are dealing with a more elaborated structure.

The “resale rights” definition has a detailed judicial articulation, affirming that: “the right to receive a quota of the net selling price achieved at any of the work’s reselling, after the maker has alienated it, as well as the right to be informed about the place where the work is”.

Thereby, first of all, it is underlined that the percentage quotas, related to the net sale price the maker is receiving will be assessed, aspect which hasn’t been shown as such in the old legislation.

Clearly, the initial form was more restrictive, in terms of procedure, but especially in terms of the quotas cashed in by the author of the original creation which was about to be resold.

Likewise, it is much more detailed in the new Article 21, paragraph 2 and, at the same time, the range of possible advisers whom emerge on the art market has been widened: “drawing-rooms, art galleries, as well as any art merchant”, a detailed presentation which allows the integration in this commercial connection of artworks for as many intermediates.

The greatest legislative amendment is, of course, that regarding the eligible quota to the creative artists of the original work of the article. If the first form of the law established a stable 5 % quota, at present, it is gradually applied a quota from 5 % to 0,25 %, depending on that work’s value, not to mention the net selling price, admitting a ceiling value of 12.500 Euros or its equivalent value in Lei, the maximum sum endorsed by the law.

To make sure that the artist’s existence is not threatened, the content of paragraph 5 speaks of some measures related to the means of notifying and of depositing procedures all falling into the salesman’s responsibility, a two-month

¹ V. Ursa, *Drepturile de autor și protecția lor juridică în România*, Argonaut, Cluj-Napoca, 1999, p. 122.

² *Ibidem*, p. 122.

legal obligation for which he must accomplish it. The salesman's obligation consists in the retention of these sums (quotas or rates coming from the selling price) without adding other taxes.

The newly-inserted paragraph 6 of Article 21 – so that there will not be any useless debates – expressly sets up a general limitation period of 3 years for claiming these sums, this period starting from the day the selling took place.

Also, the idea is focused on that this right cannot be a topic of disclaimer or alienation. Simultaneously, these sums of money are considered to be sources of income regulated by the Tax Code.

The content of Articles 22-23, both of which are linked to the resale rights, has a similar substance to the one before its reviews, now slightly modified, the only interventions being those more related to grammar structure rather than the judicial content of these norm provisions. To summarize all this, Article 22 states that “the owner or possessor of a work is indebted to allow the author's access and to provide it to him, if this case is necessary for the exercise of the author's own right and as long as through this no damage shall affect the owner or possessor's legitimate interest”. In compensation, the latter can claim from the author “a sufficient guarantee for the work's safety, ensuring the work at an amount representing the market-value of the original, as well as an adequate payment”. Next, Article 23 determines the rules to be followed in case the owner of an original work wishes its destruction, a right that he doesn't have “before offering it to the maker at the cost price of the material used” or “offering a copy of the work in question in an appropriate manner”, if it is not possible to return the original.

What is left to talk about is that the current regulation is a result of the Romanian State's necessities and obligations to conform itself to the present European norms, in the joint effort of unifying the Union's judicial practices. Therefore, Romania's task of legislative adjustment with the rest of the European states created the foundation of these changes.

The legal basis is the Directive 2001/84/EC, elaborated by both the European Parliament and the Council (also know as the Council of the European Union), in September 27 2001, considering the resale rights in favor of the author of an original work of Article

Generally, the relationship with the legislation implemented by Romania illustrates some distinctions or a sample of flexibility which is permitted in the domestic legislations, the European directive having only a guidance trait,

various derogations being tolerated for the states compelled to have their legislation in line in this area and by which they may benefit from.

The European norm sanctions the ability of not alienating and of not transferring the right, the norm referring to original works of fine art or graphic Article The rule of remuneration for consecutive sales is sanctioned; the same goes for the rule known as “maker’s standard protection”, to benefit from the economic success of his work being its purpose.

In the context where, in some states, the right mentioned earlier was missing, was inadequately regulated, in other states it had a voluntary attribute and its different legal regime created an unequal competition on the art market, sometimes highlighting strong discrepancies, led to the need of implementing this directive.

Certain aspects were left to the states’ judgment (e.g.: the intermediaries-vendors, depending on the law maker’s intention and by applying this judicial norm, they can take up the status from unprofessional natural persons to non-profit museums, art galleries who buy directly from the authors etc.). The Romanian state chose to enforce these rules for both the natural and artificial persons whose endeavor and goal is art marketing through: drawing-rooms, art galleries or tradesmen.

The idea emphasized here won’t be the author’s payment of an increasing share of the work’s value, but a percentage of the selling price. The quotas or rates are about to be unified across the entire Union and periodically modified.

Another norm from which it can be derogated is the payment obligation which will usually be ascribed only for the vendor.

No matter what the case, the state’s privilege in monitoring this market’s transactions that functions on specific rules, that is the “art market is underlined”.

Aspects of copyright, as well as financial aspects for which a unitary regulation is required, forms the object of these rulings.

The European norm also includes certain aspects ruled distinctly in the Romanian legislation – e.g.: a minimum price of 3.000 Euros for which this right is implemented, different applicable percentages. Beneficiaries are the maker and those-entitled-under, the rule being applied even to other co-nationals, on mutual terms.

The right to be informed and the duration of the protection are regulated in the same way.

The European Commission has also assessed that, once every 4 years, a periodical recheck of threshold and rates, covered by these rights by means of periodical adjustment of this directive. In the European Union, January 1 2006 is the starting point of the directive's validity.

For member states, the directive became mandatory.

The Romanian state prior to the accession, in order to understand the legal framework that was to come, decided to change the old legislation.

The European necessities are important and their final goal is to implement a uniform legislative and judicial system, to ensure a balance within the Union without neglecting the value of real security of the human's fundamental rights.

To sum it all up, the Romanian state made these changes so that there'd a legislative connection, beneficial revisions to the people for which this legal protection is intended. From this point of view, their need was obvious when the Romanian legislation was outdated. The methods used for implementing the legislation exist and are functional – the Romanian Office for Copyright and the management collective institutions.

Certain problems persist and it remains to be seen what solution shall be approved and whether if for some problematic situations, proper solutions will be found. The truth is that rarely in the artist's contract such clauses appear, international transactions being frequently missed out by state control. Likewise, the question is to what extent one can speak about the existence of a genuine domestic art market and about the art galleries' involvement in such transactions.

It is clear that the gradual maturation of such a market makes the permanent ensuring of the legislative structure a necessary task for such transactions, from this point of view the Romanian state having to prepare itself for this kind of development.

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