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Some Aspects of the Resale Right

Abstract. The article underlines the issues related to the resale right occurrence. Main points of legal regulation of copyrights in certain international legal acts as well as social and economic grounds contributing to establishment of this right as a special authority are under analysis.

Key words: copyright, resale right, author property rights, copyrights for works of art, harmonization of legislation and right of the European Union

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Mantošanas tiesību daži aspekti

Anotācija. Rakstā tiek izskatīti jautājumi, kas saistīti ar mantošanas tiesībām. Tiek analizēti dažu starptautisku tiesību aktu autortiesību likumdošanas svarīgākie aspekti, kā arī sociālekonomiski nosacījumi, kas ir veicinājuši autortiesību ieviešanu kā īpašu autora pilnvaru.

Atslēgvārdi: autortiesības, mantošanas tiesības, autora īpašuma tiesības, autora tiesības uz mākslas darbu, likumdošanas harmonizācija, Eiropas Savienības tiesības.

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Некоторые аспекты права следования авторских прав

Аннотация. В статье рассматриваются вопросы, связанные с возникновением права следования. Анализируются основные моменты законодательного регулирования авторских прав в некоторых международных правовых актах, а также социально-экономические предпосылки, способствовавшие внедрению указанного права как особого авторского полномочия.

Ключевые слова: авторское право, право следования, имущественные права автора, авторское право на произведения изобразительного искусства, гармонизация законодательства, право Европейского союза

The resale right is a relatively young copyright institution. Its establishment at the beginning of XX century was initiated due to low living level of authors who sold own works for minimal prices and after some time these works became extremely popular, so their cost significantly increased, but the author received nothing from that success. That is why it has become necessary to establish a new law

mechanism which would provide the authors of works of art (artists, sculptors, writers) with participation in success of their own works and firstly in economic success.

Today the resale right is applied in majority of the European countries however due to a lack of this law awareness among the lawyers and artists, the resale right is not implemented in full.

In the historical perspective the resale right is a relatively new copyright institution. Firstly, legal regulation of the resale right appeared in France as a law as from May 20, 1920. Later the resale right was implemented in the legislation of Belgium in 1921 and Czech Republic in 1926 [5, 12-13 p.]

In 1948 the Berne Convention for the Protection of Literary and Artistic Works recognized the resale right in Article 14, according to which: "The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work."

The Convention makes an exception for the resale right protection. Particularly, protection may be obtained in any country of the Union if the legislation of a country to which the author belongs, allows it and scope, permitted by the legislation of a country where this protection, is obtained [1]. It is one among few exceptions in the Berne Convention. Such exception was made because of rebellions in some countries. Denmark and Finland refused to establish national legislation of the resale right. The Great Britain did not deny establishing the resale right, but notified that national legislation was not ready for such changes. Denmark was in complete denial about the resale right existence in legal regulation of the Berne Convention.

The resale right (French for "Droit de suite") is an inalienable right of an author for partial participation in every sale of originally his work of art.

In EU legislation, the Directives 2001/84 / EU regulate the resale right. Member countries shall ensure availability for implementation of the resale right by the authors of the original works of art as an inalienable right, gain benefit from the amount received as a result of any resale, the object of which is a work after the first sale by the author.

According to the Article 1 of the Directive, the resale right is applied for all sales made between a seller and a buyer and also intermediary, who professionally sells the works of art at the auctions including. They can act as legal

entities and individuals (art shops, galleries, antique shops, private entrepreneurs, whose activities are related to the sale of works of art). Therefore, if the persons involved in the sale do not sell works of art professionally, they will be exempt from paying remuneration to the author.

The Directive recognizes the seller's obligation to pay remuneration to the author gained from the sale of a work of art. However, the Directive provides freedom to member countries for determination of the person responsible for paying remuneration. EU member countries in their own national legislation may establish the buyer as a person responsible for paying remuneration to the author or define joint obligation of the seller and the buyer for payment of remuneration. The Court of Justice of EU in its decision C 41/14 made clear that the agreement between the parties may provide for the obligation to pay remuneration to the author both for the seller of work of art and the buyer [4].

The abovementioned Directive established exception stating the following: Member countries may provide legal regulations in the national legislation, according to which the resale right should not be applied in relation to agreements on resale, if the seller has bought the work of art directly from the author less than 3 years from the moment of purchase and resale price does not exceed 10,000 euro.

The resale right is only applied in relation to original works of art. According to the Directive "original works of art" means works of fine art and sculpture, such as paintings, collages, drawings, engravings, prints, lithographs, sculptures, wallpapers, ceramics, glassware, pictures if they are original works of the author or copies considered as original works of art. Copies, counterparts of works of art covered by the Directive, made in limited numbers by the author himself or on his behalf shall be considered original works of art. Such copies shall be numbered, signed or duly authorized in other way by the author [6, 81-91 p.].

Member countries set their own minimum selling price of a work of art which initiates acting of the following regulations of the resale right. In turn, the Directive establishes minimum threshold sales price for works of art that cannot exceed 3000 euro.

Article 4 of the Directive defines the following remunerations:

- 4% if the selling price is up to 50000 euro;
- 3% if the selling price is from 50000,01 to 200000 euro;
- 1% if the selling price is from 200000,01 to 350000 euro;
- 0, 5% if the selling price is from 350000,01 to 500000 euro;
- 0, 25% if the selling price exceeds 500000 euro.

The maximum amount that can be paid to the author is 12,500 euro.

The term of duration of this right protection in general is equal to the term of copyright protection, namely the term of the resale right protection should be the lifespan of the author and continuing during 70 years after his death.

It should be noted that it is difficult to implement the resale right without a system of group management of copyrights. An important factor is the information on the sale of works of art, which is necessary for performing control over implementation of the obligation to pay appropriate interest to the author for a work of art from the resale price of a work of art. Unavailability of group management of copyrights or its imperfect operation makes impossible to implement the resale right properly and at the appropriate level.

In many European Union countries, the unions exercise control by this right that unite authors of works of art, such as VEGAP in Spain, BILD-KUNST in Germany, DASC in the UK.

The abovementioned Directive defines the scope of people who are entitled to obtain remuneration arising from the resale right. According to a common rule, remuneration belongs to the author of the work of art. During his lifespan this right cannot be transferred to other people. After the author's death, the right to receive remuneration (reward) goes to the successors and shall be valid during 70 years after his death [3]. In practice, the implementation of the provisions of the Directive has unequal application by the member countries of EU.

A famous case C - 508/08 Foundation Gala Salvador Dalí, Visual Entidad de Gestión de Artistas Plásticos (VEGAP) vs. Société des

auteurs dans les arts graphiques et plastiques (ADAGP) is an example of a different mechanism of implementation of this provision.

Salvador Dali died in 1989. In his will he, as a widower and without children, bequeathed all his copyrights to Spain. In 1983 he founded the Foundation Gala Salvador Dalí, which aimed to popularize, distribute, protect and defend artistic, cultural and intellectual heritage of the artist, as well as the author's property and non-property rights arising from copyright in Spain and in other countries.

In 1997, the Foundation Gala Salvador Dalí empowered Visual Entidad de Gestión de Artistas Plásticos (VEGAP), organization of group management of copyrights, to create an effective system for controlling over arrangements of financial payment mechanism made with regard to the worldwide use of Salvador Dali works, including the collection of fees based on the resale right regulations. In France, such organization is Société des auteurs dans les arts graphiques et plastiques (ADAGP). The Spanish organization of group management of copyrights (hereinafter – VEGAP) collaborated with the French organization of group management of copyrights (hereinafter – ADAGP). ADAGP transferred all profits gained from the use of Salvador Dali works in France to VEGAP, except for charges relating to the resale right. ADAGP transferred these charges to the successors of Salvador Dali according to legislation. It is interesting that the successors were relatives from distant kinship lines. In accordance with the above mentioned, Foundation Gala Salvador Dali and organization of group management of copyrights (VEGAP) filed a lawsuit because of the Salvador Dali's bequest where Spain is a successor of all material and non-material rights of the artist.

In the legislation of France beneficiaries of the resale rights can be only legal successors. Therefore, Foundation Gala Salvador Dali that is the successor under cannot receive charges from the resale of Salvador Dali's works in France. Due to the above specified, the court in Paris (Tribunal de grande instance de Paris) sent prejudicial question to the Court of the European Union. The Court of the EU made a decision according to which the Article 6 of the Directive 2001/84 did not preclude availability

of the right regulations in national legislation of the member countries, which provided that only the successors may be beneficiaries of the resale right [2].

The resale right may comprise authors and their successors, who are not the citizens of the European Union, if their national legislation includes the resale right. The citizens of the states members – non-members of the EU who have permanent residence in an EU country have the same rights for the resale right as the citizens of this country.

Article 11 of the Directive specifies the obligation of the EU Commission to report to the Parliament and the EU Council about implementation and its consequences of the Directive 2001/84 every four years. The reports specifically focus on the competitiveness of modern art in the art market on the territory of the EU, and impact of this Directive on the internal and external markets of art, the effect of establishment of the resale right in such member countries, where this right has not been used in national legislation prior to entrance into force of this Directive [3].

In spite of relatively long history, the resale right plays a significant role in protection of the copyrights for works of art. This right provides the author with proper participation in the fur-

ther success of his works, which will be also accompanied by the growth of their value. A growing number of countries in the world establish this right in their national legislation because they realize its importance and necessity in the development and promotion of the proper functioning of the art market in the world market.

A long period of formation of copyright in national legislations, including property rights of the author, preceded the establishment of the resale right. A significant step was the conceptual changes in French legislation when the author's property rights became independent from the right to a material object, in which of the work was embodied. The establishment of the resale right in the legislation of particular countries is characterized by duration - since 1920 of the last century to the beginning of the XXI century. Mostly, this is related to the fact that Berne Convention for the Protection of Literary and Artistic Works actually has left a question on inclusion of the resale right into the national legislation to the discretion of member countries of the Berne Union. Today the resale right is recognized by the overwhelming majority of countries belonging to the Romano-Germanic legal system. In European countries a high level of harmonization of legislation in this filed was reached.

References:

1. <http://zakon3.rada.gov.ua/> Berne Convention for the Protection of Literary and Artistic Works as of July 24, 1971.
2. <http://curia.europa.eu/> Judgment of the Court (Third Chamber) 15 April 2010 Case C-518/08.
3. <http://eur-lex.europa.eu/> Dyrektywa 2001/84/WE Parlamentu Europejskiego i Rady z dnia 27 września 2001 r. w sprawie prawa autora do wynagrodzenia z tytułu odsprzedaży oryginalnego egzemplarza dzieła sztuki
4. curia.europa.eu/juris/.../document_print.jsf; Judgment of the Court (Fourth Chamber) 26 February 2015 Case C-41/14
5. Brzechwa Jan Droit de suite w prawie autorskim, Warszawa 1933
6. Teresa Grzeszak Droi de suite w prawie autorskim, Warszawa 1991