35. JURISPRUDENCE

INTERNATIONAL LEGAL AND EUROPEAN STANDARDS OF COPYRIGHT PROTECTION FOR LITERARY AND ARTISTIC WORKS

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Abstract. This study envelops the analysis of international legal regulation of copyright for literary works. The main international conventions in the field of copyright protection, in particular the Berne Convention of 1886 and the World Copyright Convention of 1952, have been comprehensively considered. The criteria for providing legal protection to literary works, including the requirements for originality and individual intellectual creation, have been presented and analyzed. Particular attention in the study is paid to the regulation of copyright in the legislation of the European Union, in particular directives on ensuring the observance of intellectual property rights, harmonization of the terms of protection and ensuring the availability of works for persons with disabilities. Separately, the problems of copyright infringement in terms of digitalization and the need to improve the mechanisms of international protection of the rights of authors of literary works are described.

Key words: Copyright, literary work, international law, Berne Convention, World Copyright Convention, European Union law, intellectual property, originality of the work, terms of protection, cross-border exchange.

The aim of the study is to analyze the international legal regulation of copyright for literary works. To achieve the goal, the following tasks are set: to determine the criteria for legal protection of literary works; to investigate the Berne and World Copyright Conventions; analysis of the copyright regulation system in the EU.

Copyright protects a large number of works that were created by man, in particular it can be literary and dramatic works, musical compositions, works of fine art, sound recordings, films, tv and radio broadcasts and graphic design of printed products. The concept of "literary work" has a wide interpretation and may include, in particular, computer programs.

The copyright holder (usually the author or employer as an employer) acquires exclusive rights to dispose of the work.

Alina NG wrote that "the question of how fully literary property protects the author's natural right to his own work can remain the subject of purely theoretical reflection" [1, pp. 532].

A literary work is always a work of art in which the author cares about his characters, thinks through their stories, worlds, events. Not everyone is able to create a work that can touch the soul and mind of a person.

Therefore, copyright infringement on literary works is one of the most acute issues and problems in the modern world. After all, the author made extremely great efforts to create the work, and in the conditions of modern digitalization, anyone can spit on his work and time by stealing a piece of work or spreading the work without the permission of the author to the public.

Important to understand the concept of "work" is the decision in the case of Levola Hengelo [2], where the European Court of Justice determined that in order for an object to be recognized as a work in accordance with Directive 2001/29/EC[3] two mandatory requirements must be met simultaneously. The first requirement is that the object must be original, that is, reflect the author's own intellectual creation. The second requirement, formulated in the case of Infopaq International [4], is that the object must be a form of expression of the individual intellectual creation of the author. Such individual intellectual creation is formed through the free and creative choice of the author.

The main characters of the work usually have a better chance of getting legal protection, as the main storyline revolves around them. However, the key role in the work itself does not provide automatic protection - the decisive remains the observance of the criterion of originality. That is why a character must have clearly defined external characteristics and personal qualities [5, p.37].

Copyright is an important component of intellectual property and is of great importance for the modern world economy. However, due to the lack of a single international law in this area, disagreements between national legal systems regularly lead to conflicts and disputes.

Copyright belongs to the fundamental human rights, it guarantees the protection of human creations from encroachments and theft. People are naturally endowed with the ability to critical thinking, analysis and creative activity, so they can invent and create new technologies, develop designs and projects, create works of art. The right to protection of the results of creative and intellectual activity is called property rights [6, p.70].

The development and application of copyright rules at the international level, as well as ensuring a high level of copyright protection, demonstrate a stable trend toward the growth and expansion of the boundaries of the protection of authors' rights. In this context, it is important to understand the essence of copyright in the context of modern international law. International copyright protection is enshrined in the Berne Convention of 1886 and the Universal Copyright Convention of 1952. These international agreements establish that in the States Parties the works of authors shall be protected for a certain period without the need for registration or special designation of copyright, and that this protection may be extended. Each convention defines a minimum period of protection, while the specific conditions for the protection of foreign authors in a particular country depend on bilateral agreements between the States Parties.

Literary and artistic works in accordance with the provisions of the Berne Convention are all works in the field of literature, science and art, no matter how and in whatever form they are expressed, such as books, brochures and other written works, lectures, appeals, sermons and other similar works; dramatic and musical-dramatic works; choreographic works and pantomimes, musical works with or without text; cinematographic works, to which the works expressed in a way similar to cinematography are equated; drawings, works of painting, architecture, sculpture, graphics and lithography; photographic works, to which the works expressed in a way similar to photography are equated; works of applied art; illustrations, geographical maps, plans, sketches and plastic works relating to geography, topography, architecture or sciences [7].

The Berne Convention for the Protection of Literary and artistic works is the oldest international agreement in the field of copyright. Copyright is a protection granted by law to original literary and artistic works. The Convention is the most important treaty governing the field of copyright. The Convention was signed in 1886 and revised several times. These views usually take place every twenty years, but the last viewing was held in Paris in 1971. The Paris revision of the 1971 Convention was significant as an annex was added to the Convention containing special provisions for developing countries.

The Convention was adopted because of the need to unify numerous bilateral agreements in force in the 19th century. An additional incentive for the development of the Convention was the conclusion of the trips Agreement (Agreement on Trade aspects of Intellectual Property Rights). The States Parties to the trips Agreement shall comply with the basic provisions of the Convention [8].

One of the last important achievements in regulating the field of international copyright was the adoption of a comprehensive multilateral agreement within the framework of the GATT negotiations (General Agreement on tariffs and Trade). This

document included the issue of intellectual property in the GATT system [9]. It effectively establishes an obligation for WTO member countries (the World Trade Organization) to provide a basic level of protection, based mainly on the rules and principles of two major international conventions on copyright protection: the Berne Convention for the Protection of Literary and artistic works and the Universal Copyright Convention, as well as the activities of WIPO (World Intellectual Property Organization), which provides financial and technological support in the field of intellectual property [10, p. 14].

The Universal Copyright Convention was developed as an alternative to the Berne Convention of 1886 to simplify copyright protection requirements, as the Berne Convention set rather strict standards that not all countries were willing to adopt. The main purpose of the Universal Convention was to attract the United States, which at that time were not a member of the Berne Convention due to differences in national legislation, and to create a more accessible system of international copyright protection for a wider range of countries.

The Convention establishes the principle of a national regime, according to which the works of authors who are nationals of one Member State must receive in another Member State the same protection as the works of its own nationals. The Convention establishes a minimum copyright protection term, which is the life of the author plus twenty-five years after his death. Compared to the Berne Convention, the World Convention has set lower standards of protection, making it more acceptable for countries with less developed copyright systems.

In 1971, the Convention was revised in Paris, and major changes included raising minimum standards of protection, introducing special provisions for developing countries, and harmonizing with the provisions of the Berne Convention. The Universal Convention played an important role in the creation of a global system of copyright protection, especially between the 1950s and the 1980s, but its significance declined significantly after the United States acceded to the Berne Convention in 1989.

Today, most countries are parties to the Berne Convention, which provides a higher level of copyright protection, so the World Convention has actually lost its original meaning as an alternative system of international protection, although formally it continues to apply to countries that are parties to it.

Regulation of copyright in the legislation of the European Union is an important and, at the same time, difficult task, since from the very beginning of the formation of the EU, the protection of intellectual property is considered an important component of trade policy. This is reflected in Article 133 of the Treaty establishing the European Community, which extended the general principles of trade policy to the commercial aspects of intellectual property. Thus, legal regulation in this area in the EU focuses mainly on issues related to the functioning of the single market and entrepreneurial activities involving the use of intellectual property.

Intellectual property issues were included in the acquis communautaire immediately after its creation. The Council of the European Economic Community has issued numerous directives on the implementation of a common policy in the field of intellectual property.

Thus, one of the important directives was Directive 2004/48/EC on ensuring the observance of intellectual property rights [11]. Under the Directive, Member States should provide effective remedies and penalties to combat counterfeiting and piracy. This document does not regulate the rights of intellectual property, but the mechanisms of their protection. The Directive does not affect the basic rules of intellectual property, the international treaties of the Member States and the internal provisions on criminal proceedings and the application of criminal law.

The purpose of this Directive is to protect intellectual property, which shall enable inventors or representatives of creative professions to receive appropriate remuneration for their invention or work. It should also create conditions for the widest possible dissemination of new works, ideas and knowledge. At the same time, it should not interfere with freedom of speech, free circulation of information and the protection of personal data, including the Internet [11].

Another important directive is Council Directive 93/98/EEC on the harmonization of the term for the protection of copyright and certain related rights of 29 October 1993.[12]

The adoption of this Directive was due to several key factors. First, the Berne Convention for the Protection of Literary and artistic works and the Rome Convention (International Convention for the Protection of performers, producers of Phonograms and Broadcasting organizations) established only a minimum period of protection, allowing Member States to introduce longer periods. This has led some EU member states to take advantage of this opportunity to establish different security periods. In addition, not all member states have acceded to the Rome Convention, which further complicates the situation.

Secondly, the differences in national legislation on copyright and related rights protection terms created obstacles to the free movement of goods and services and created competition in the common market. Therefore, in order to ensure the proper functioning of the internal market, it became necessary to harmonize the legislation of the Member States with a view to establishing uniform terms of protection throughout the Community.

Thirdly, harmonization should cover not only the terms of protection, but also related aspects, in particular the dates from which the term of protection begins. This and other items were specified in the opinion of the Committee on Economic and Social Affairs, which was added to the text of Council Directive 93/98/EEC [12].

The Directive therefore establishes a single term for copyright protection, which is 70 years after the author's death for all EU Member States. Directive 93/98/EEC eliminated differences in national law and established uniform standards of protection, ensuring the smooth functioning of the common market and equal conditions for all participants in the field of intellectual property [12].

In today's context, as the world is increasingly talking about inclusiveness and equal rights for all, the Council of Europe is demonstrating its readiness to contribute to the development of cross-border exchange between the Union and third countries with copies of works in an accessible format for persons who are blind, visually impaired or have other defects in reading printed texts. This form of cooperation and exchange has been enshrined and highlighted in Regulation (EC) 2017/1563 of the

European Parliament and of the Council of 13 September 2017 [13]. The adoption of this Regulation was caused by the need to ensure access to culture and education for people with disabilities.

First, blind, visually impaired, or others who cannot read the printed text faced considerable difficulties in accessing copyrighted works in formats adapted to their needs (Braille, audiobooks, enlarged-font e-texts, etc.).

Secondly, there were legal and practical obstacles to cross-border exchange of such adapted copies between the EU and third countries, which limited the availability of literature and educational materials for this category of persons. Also, there was a need to implement the provisions of the Marrakesh Agreement on facilitating access to published works for the blind, visually impaired or other persons who cannot read the printed texts adopted in 2013 under the auspices of the World Intellectual Property Organization [14].

The Regulation establishes a legal framework for the export and import of copies of works in accessible formats between the EU and third countries that are parties to the Marrakesh Agreement. The document provided for an exception to copyright, which allowed authorized organizations to exchange such copies across borders without the permission of copyright holders. Regulation 2017/1563 thus removed legal barriers to the international exchange of available formats and ensured the realization of the right of persons with disabilities to access information, education and culture.

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