

Legal Aspects of Copyright in Albania

PhD (C.) Elona Hoxha
Albanian University Tirana

Abstract

Copyright should be seen as a complex, inseparable right, closely linked to the creative, intellectual and authoritative ability of the author. Copyright protection is seemingly a new field, but it carries many issues in itself. At the center of the legal activity for the protection of the author lies precisely the shield that the lawmaker decides on the author's productive rights related to literary, artistic and scientific creativity. The copyright in addition to the intellectual component includes such property, expressed otherwise any productive activity for the purpose of exploitation of the copyright work shall not be permitted without the proprietary authorization of the right of publication or exploitation by the respective author. If we were to analyze copyright as a legal action, it is in itself a legal arrangement in the form of a bilateral contract which provides that publication of the work is carried out by the publisher, the performance of intellectual activity by the author according to the agreement with the publisher. If we overlook the author's work, its purpose is not as important as the quality of the work associated with the scientific and professional values of the author of the work. The copyright in Albania is beginning to enjoy a special legal protection, which in these cases is aided by the implementation of European Directives, which have brought a new legal sphere on the promotion and further development of intellectual creative activity.

Keywords: Author, Intellectual Property, publishing, exploitation, originality, production skills, creativity, publication.

Introduction

Every time we analyze from a juridical point of view a right, it deals with the treatment that in its genesis, in spite of the legal form, with the historical-social evolution also differ legal norms. In such a way I started my research on the legal aspects of copyright in Albania. The legal regulatory spectrum dates back to the 1929 Civil Code, known as Ahmet Zog's Code, which the copyright is defined as "Possession". The legal analysis on the historical developments in our country goes further with the Communist period, in which I have considered the legal acts of the Council of Ministers of the People's Socialist Republic of Albania, and analyzed two Civil Codes 1981, 1988 on legal remedies that express them beyond the narrow political space which in this period leads to every legal act. This historic picture will be analyzed to this day following the great historical changes of political pluralism, the Stabilization and Association Agreements, ending up with the status of candidate country in the European Union. The period that has led to legal acts implemented by the EU in the field of copyright law, the most typical case is the specific law no. 35/2016 "Copyright and Related Rights", this law is fully aligned with the Directives of the European Parliament and the Council of Europe. The purpose of the treatment is the importance of the author's right in Albania by giving away forever and ever from duplicates or

unauthorized copying of intellectual authors' productions.

Historical development of Copyright in Albania

1. "Possession", the first legal act of Copyright¹

A legal act that brought about legal changes in Albania in the 20th century was the Civil Code of 1929, otherwise called the Code of Ahmet Zogu. This legal act envisaged any area of legal relations, whether of a mandatory, property or non-property character. The specialty of this Code was the Western spirit envisaged in every chapter. We define it as Western-style code because it was an original model of French, Italian, Swiss and German codes. Perhaps it would seem unbelievable that in the 1929s, this legal act would legally regulate a right, as was the copyright. In Title II, Chapter I, "Possession" in Article 795 provided "*Intellectual Products possession, of authors regulated by Special Laws*". In spite of the scarcity law, but available today for law scholars, it is the origin of the creation of the copyright act or legal provision in Albania that was born at a time when our country still lacked genuine legal acts and no longer was talking about implementation of European acts. The importance of the historical development of a right informs us and makes us proud that despite considering Albania as a target only for invasion, we find such acts that have brought us to the present democratic and European legislation.

2. The legal framework of the copyright law during the communist period²

The legal acts of this period are in the face of confrontation, as are the legal facts (de facto) and the normative acts (de jure). The distinctive characteristic of the Communist era is the totalitarian state, which has influenced every rule or legal act, where in every preamble or article it was led by the principles of Marxism-Leninism, highlighting the term "Party". As in any historical-social development, the historical development of copyright in Albania has undergone changes in geo-political phases. If we were to analyze copyright in communist Albania, they would first address it in executive terms (Council of Ministers' Decisions), decisions which provide for a legal treatment of the personal and material rights of authors depending on their artistic, literary or scientific disciplines that are related to the narrower fields of creative activity such as authors' rights³, writer and author's rewards⁴, good conditions that would help the creative activity of writers and authors⁵, as well as legal specifications for remuneration of authors depending on the works⁶. To get into the legal analysis

¹ Civil Code 1929, Papyrus Papers, (2010).

² General Summary of Legislation in Force of the People's Socialist Republic of Albania from 1945-1988, Volume II, Tirana, 1986.

³ Decision of the Council of Ministers No.185, dt.16.02.1969, "On the free profession of writers and artists.

⁴ Decision of the Council of Ministers No.198, dated 13.06.1983, "On the Award of Writers and Artists during Creative Permission and Creative Services.

⁵ Decision of the Council of Ministers No.380, dated 08.09.1956 Amended by Decisions No.338, dated 08.10.1977 and No.44, dated 03.04.1979 "On the creation of the best conditions for the creative work of writers and artists

⁶ Regulation approved with the Decision of the Council of Ministers No.180, dated 09.06.1977, amended by the Decision No.228, dated 30.08.1982 "On the remuneration of authors of literary, artistic, scientific and academic works as well as of various performers.

of author's right in the communist period of 1860-1980, we will outline a bit of one of the then government's⁷ decisions on how to predict the activity of authors: *"Writers and artists coming to the free profession are better known and closer to the momentum of life, the revolutionary work force of the working class and the cooperative peasantry, so that their creativity is more effective for the communist education of the working masses"*. Always considering the historical time we are analyzing, the conditions and the protection attributed to the authors of the state were closely related not only to the single party principles but normative acts were ideally based on the factual basis of the working class and the realistic state of the socialist people. After the 1980s, the copyright in Albania no longer appeared as a right regulated by the normative acts of the communist executive, but now with the entry into force of the Civil Code of the People's Socialist Republic of Albania⁸ in the special section, it was foreseen in one Special chapter (Chapter VII), Author's right.

What does this code foresee regarding the subject of copyright and did it differ from previous legal acts in relation to this right?⁹

If we were to analyze the copyright object under this code, we would not conclude that the time to improve the legislation by turning it politically had arrived in Albania, not yet. The 1981 Civil Code provided for copyright as a right serving the construction of socialism and communist education of the masses.

However, beyond the political space which was the emblem of the period, copyright in this code was foreseen in 21 articles that governed specific areas, copyright holders, content, co-authorship, invention rights and rationalization. In order not to disconnect from the legal analysis of the Civil Code 1981, it is necessary to outline three of their provisions to remove them from the period when they were created by offering us more democratic spirit, on the first foundations of the fundamental rights and freedoms of creativity of authors. *"Copyright on a work created by two or more authors is inherently inseparable to all co-authors, such as when a joint work constitutes an inseparable whole and when it consists of pieces of literary value, artistic or scientific on its own. Each of the co-owners maintains copyright over its part, in case this part has a separate value and unless there is an agreement between them. Co-authors are not called the persons who gave the technical assistance to the author of the work, the executor, the director and the editors of the work". "The author does not recognize the right to publish the work by his name, his nickname or unnamed (anonymous), so as not to allow the work to be changed or its use unfairly to publish, display or to execute or to submit to the public, to disseminate, to use in any other way by all means permitted and the right to be rewarded". "Publishing, displaying*

⁷ General Summary of Legislation in Force of the People's Socialist Republic of Albania from 1945-1988, Volume II, Tirana 1986, p. 1340, Council of Ministers Decision No.185, dt.16.02.1969, "On the Free Exercise of Writers and artists.

⁸ Codes of the People's Socialist Republic of Albania, Tirana 1982.

⁹ Article 315 "The object of author's right is all works of creativity in the field of production and science, literary or artistic works that serve the construction of socialism and communist education of the masses whatever their mode and form of presentation and their destination. The subject matter of copyright is also the adaptation, insertion, screening, orchestration and any transformation of literary, musical or literary works, as well as translation of literary or scientific works into another language".

or executing an unpublished work as well as republishing, spreading, reproducing, exposing, or otherwise using another's work is permitted only with the consent of the author".

So in these articles are reflected the author's own rights closely related to his work, giving great importance to the non-permissions for duplication without the author's authorship, this is a point of reference today for many legal and judicial problems.

More or less the same legal similarities are analyzed in the Civil Code of 1988¹⁰, where it should be noted that after 1981 the copyright was already regulated in the special part of the right of obligations by providing for and regulating it legally in a contract form.

The Copyright in 1988¹¹ of civil law was analyzed in two meanings; 1. the author's right in an objective sense was defined as the entirety of the legal norms that the socialist state brought forth, through which the relations that arisen in the field of literary, scientific, artistic, and other fields of intellectual creativity were regulated. While in the subjective sense it should be understood as a personal right, the content of which consisted of personal rights first and foremost of the property rights. Author's right as a set of legal norms (objective meaning) was governed by Chapter VII of the Civil Code of the People's Socialist Republic of Albania, while the subjective right of the author as a personal right closely related to the person who created the work was sanctioned by the law because the author was interested in securing his creative individuality, recognizing membership on the created work, and not being punished or affected by other persons, thus ensuring the protection of his right as an author¹².

3. *Law No. 7564, dated 19.05.1992 "On Copyright"*¹³

After the collapse of communism, Albania faced not only the transition policy but also in the law. The New Law " On Copyright", which entered into force on 19 May 1992, abolished articles 315-328 of the Civil Code¹⁴, marking another legal form, creating specific legislation under "On Copyright". The law provides for the protection of the right to the copyright, the enjoyment of the protection of the authors' rights and their duration, the limitations of economic rights, the transfer of rights and obligations, and the measures and sanctions in cases of violations of the rights set in the law. After the 1990s, bring about a new era of legal changes, foreseeing equality between the parties and giving more importance to the protection of individuals' fundamental rights and freedoms. Analytically, with this legal analysis, the changes introduced on the legal and regulatory side, bringing about a different treatment, namely article 50 of the law provides *"the author, or persons who, in the ways provided by this law have in gaining their right to an offense when exercising these rights is impeded or found that someone else has unjustly benefited from the right of access to the court. The court examines the case on the basis of the norms set out in this law and concludes on the moral and economic rights of the offense. "The importance consists in not permitting the perpetration of the offenses illegally, where for the first time the punishment is sanctioned Penalty "After the denunciation of the author, the authorship of the authors or any of their associations, to*

¹⁰ University of Tirana "Enver Hoxha", Faculty of Political and Juridical Sciences, Law on Obligations of the People's Socialist Republic of Albania (Particular), II, Tirana, 1988.

¹¹ There Page 91.

¹² There page 93.

¹³ Official Journal of the Republic of Albania No.3, July 1992, page 109.

¹⁴ Articles 53.

the person who has obeyed the moral ethical rights on a crime according to the legal definition, the criminal prosecution begins according to the provisions of the Criminal Code." This act also provides that the right to terminate the criminal prosecution trial is only the creative author of the offense. In addition to the measures and sanctions, in the area of its implementation, this law brought about a novelty for dealing with foreign affairs by providing for an arrangement under the conventions, *"Works that have been published in Albania, regardless of their nationality or residence, will be protected by our country based on and in accordance with the International Conventions where Albania has adhered"*. I submitted a brief analysis because the importance of my work is to bring in any normative act, law or decision a legal characteristic for each, regardless of the time and the period of creation.

4. *Law no. 9380, dated 28.4.2005 on the author's right and other related rights*¹⁵
If we were to analyze Law no.9380, dated.28.04.2005, "On Copyright and Other Rights Involved with it", in its object was defined, *"The object of copyright in the field of literature, art or science, the product of creative work of the human mind, regardless of the way of creation, the means or forms of expression practiced and regardless of their values or destination, are:*

- a. *literary and publicist writings, lectures, religious preaching, any other oral or written creation, and computer programs;*
- b. *scientific creations, written or oral, such as: scientific lessons, studies, university lectures, textbooks, computer programs, projects and scientific documentation*
- c. *musical compositions, written or oral;*
- d. *dramatic, dramatic-musical creations, choreographic creations and pantomimes*
- e. *cinematographic creations and other visual creations;*
- f. *photographic creations and any other creation, expressed in similar ways to photography;*
- g. *beautiful art creations;*
- h. *works of art applied, without prejudice to such works as industrial designs, which are protected by the law "On industrial property";*
- i. *architectural creations that include drawings, plans, sketches of reduced scale and graphic creations in architectural projects;*
- j. *three-dimensional creations, maps and drawings in the field of topography, geography and science in general;*
- k. *unregistered designs and textiles.*

So as the field of his object is seen is wider. Within this law was regulated a structured body on the legal framework of the copyright in Albania. If we conducted a general analysis this act envisioned, the property rights of the authors who enjoyed this right in any form and manner, the duration of the copyright on the eternal work, the limitations on the exercise of the right to the copyright, any unauthorized violation and remuneration, as well as the transfer of property rights, exclusive rights of the copyright holder, as the bearer of these rights. The 2005 legal act also foresaw an organizational institution, which was established to exercise its copyright protection activity. The Albanian Author's Right Office¹⁶, a permanent institution, a public juridical person under the Ministry of Culture, Youth and Sports. This law

¹⁵ Official Journal of the Republic of Albania, No.42, dt.13 June 2005, page 1493.

¹⁶ Article 117 of the Law.

had its relevance, due to the ongoing improvement of the copyright domain. In his interpretation, he prioritizes the protection of his or her personal and non-property rights by not letting the violation of the entirety of an act for the purpose of alienation by losing the author's exclusive intellectual property rights.

The Legal perspective of Copyright in Albania, in the framework of European Policies

After the ratification of the Stabilization and Association Agreement¹⁷, our country became a primary task, approximating the existing Albanian legislation with that of the European Community, trying to move our existing laws gradually towards the norms of the *acquis*. Apart from the entirety of the laws laid down in the SAA, intellectual property was part of the implementation "*Albania must take the necessary measures to guarantee within 4 years after the entry into force of this agreement, a level of protection of intellectual property rights ... similar to that existing in the community, including the effective means of realization these rights*"¹⁸

In implementing the tasks left to the SAA, the Albanian Government drafted the decision of the Council of Ministers "On the Approval of the National Strategy for Intellectual Property 2010-2015"¹⁹. In this decision was defined the meaning of the term "Intellectual Property", an integral part of the terminology were the copyrights and other related rights.²⁰

In the National Strategy, our state clearly defined the points where it felt necessary to intervene in specific legislation. Adoption of the National Strategy was adopted in 2010, at which time the copyright in power was Law no. 9380. Dt.28.04.2005, "On the Copyright and Other Rights Involved with it", therefore, in this decision the Albanian government envisages the compulsory drafting of a new legislation in accordance with the directives of the Parliament and the European Council²¹.

With the entry into force of Law no. 35/2016 "On Copyright and Related Rights", fully reflected the European Directives and Conventions, ratified by our state,

¹⁷ Official Journal of the Republic of Albania, No.87, dated August 14, 2006.

¹⁸ Article 73 of the Law no. 9590, dated 27.07.2006 "On the Ratification of the Stabilization and Association Agreement between the Republic of Albania, the European Community and their member states".

¹⁹ Decision of the Council of Ministers No.760, dated 1.9.2010 "On the Approval of the National Strategy of Intellectual and Industrial Property, 2010-2015" Official Journal No.163, dated 8 December 2010.

²⁰ Citation "In this document," intellectual property "(PI) means not only patents, industrial designs, usage patterns, trademarks, semiconductor topography and geographical indications, but also copyrights and other related rights , although this is often dealt with as a separate category of law. "

²¹ Directive 93/83 / EEC of 27 September 1993 "On the coordination of the author's right and related rights in the field of satellite broadcasting and cable retransmissions" - Celex No.31993L0083 / Official Journal 1993L248 / 15. - Directive 2001/84 / EC of the European Parliament and of the Council of 27 September 2001 "On the right of resale for the benefit of the author of an original work of art" - Celex No.32001L0084 / Official Journal 2001 L 272/32, Directive 2006 / 116 / EC of the European Parliament and of the Council of 12 December 2006 "On the protection of author's right and related rights" (codified version 93/98 / EC) - Celex nr.32006L0116 / Official Gazette 2006 L372 / 12.

serving a well-organized and structured legal framework in 190 Articles. But our state's duties on copyright and related rights were not over yet, but in July 2016, the Albanian Government adopted its next decision "Decision no. 527, dated 20.07.2016 On the Approval of the National Strategy on Intellectual Property, 2016-2020"²², a maximum commitment to the foundation of the legal framework for copyright, aimed at stimulating the growth of cultural and scientific development in the Republic of Albania through promotion and improvement of intellectual property rights. Innovation in scientific and literary research work, such as artists' associations and university auditors, will aim at the development of copyright in the long-term political programs of the Albanian government to bring an encouraging development tool, guaranteeing the success and protection of fundamental rights of intellectual property.

Conclusions

In the general historical-legal analysis, we noted that Copyright in Albania was a delayed right, although the first regulatory act appeared in 1929. The communist period does not constitute an intellectual development of copyright but it relates most to a propagandist creation of the political image of the totalitarian state.

Copyright in Albania contradicts with international laws that preserve this right for more than 200 years, treating it as a right that provides the economic basis and cultural integrity of a country. The major burden of legal developments is that the copyright has taken on the ratification of the Stabilization and Association Agreement, again delayed, despite the existence of a somewhat sufficient legal framework, but which contradicted the normative transition of our country, the urgent need for legislative improvement in the field of copyright.

Copyright in Albania is a Constitutional right and as such it should have a greater legal commitment to ensure the protection of the creators' interests in order to acquaint them with the right to property in their creativity.

If we draw today a final conclusion, analyzed also in the comparative aspect, Albanian legislation has felt radical changes after 2016, with its loyal attitude towards EU legislation, creating a legal background in accordance with the tasks left by SSA. The new legal framework is now based on the three main pillars of further development of copyright in Albania,

Implementing European legislation, Public awareness, Drawing on administrative and institutional barriers.

Albania is continuing to implement its obligations under the Stabilization and Association Agreement. But there is a need to ensure the timely implementation of legal commitments with regard to intellectual property rights. The ongoing efforts of our state will bring new legal norms that will be implemented in our legislation. Fulfilling the obligation to harmonize legislation in the field of copyright is an early task of ours as one of the European challenges for our domestic legislation. By June of this year, Albania was denied the right of a candidate country to the European Union, a decision that should not demoralize us, but we must strengthen the co-operation

²² Official Journal of the Republic of Albania, no.140, dated 28 July 2016.

policy to responsibly coordinate any task left by the European Union in the interest of improving our domestic legislation.

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