

DOCTORAL DISSERTATION SUMMARY

„Expiration of author's economic rights. Its rationale, assessment and critique”

The subject matter of this dissertation is to analyze and critically assess the rationales behind the *ex lege* expiration of author's economic rights after prescribed period of time, which is principle accepted in all copyright acts in force.

This dissertation covers four basic objectives.

The first objective was to gather and recount, on the basis of scholarly literature and judicial decisions, the arguments which are most frequently raised for the *ex lege* expiration of author's economic rights. The second objective was to verify said arguments in the light of the results coming from the examination of empirical data gathered. The third objective was to compare the status of author's economic rights in the aspect of their *ex lege* expiration with the statuses of other *erga omnes* economic rights in Polish legal order. Finally, the fourth objective I set myself was to answer the question whether generally accepted view on the necessity of limiting in time author's economic rights is indeed based on such sound fundamentals, as they appear to be.

This dissertation consists of introduction, three chapters and the summary.

In the first chapter I have presented the concepts of copyright developed throughout the years and still dominating the legal discourse nowadays. Said concepts have been considered in terms of the arguments they deliver to justify the copyright as well as in terms of the functions ascribed to it. Also, in that part of the dissertation I have described two models of copyright: monistic and dualistic and discussed the proprietary model of copyright. I have come to the conclusions that despite the obvious and indisputable differences between the property rights and so called author's property it is possible to draw cautious analogies between the position of proprietor and the position of author. The discussed concept also allows to understand better the nature of copyright.

In the second chapter I have recreated the historical process which resulted in the expiration of author's economic right becoming the principle ruling the copyright. Due to the differences coming from the previously adopted concepts of copyright, the consolidation of said rule has been presented from the perspective of civil law countries, including Poland, as

well as common law countries. Moreover, I have presented the argumentation that accompanied the successive lengthening of author's economic rights duration and in a few cases led to granting them perpetuity.

The third chapter have been devoted to critical assessment of *ratio legis* behind the construct of author's economic rights as limited in time. In this chapter I have recounted the most common arguments for their *ex lege* expiration, appearing in scholarly literature. Then, I have presented them with counterarguments, which in my opinion undermine the justification of such solution.

At first I have taken into consideration statements brought up with regard to this question by *Law & Economics* representatives, focusing on the economic effectiveness of such regulation. Having examined these statements I have concluded that there are no convincing evidence for such expiration being as effective as it is suggested by its proponents. I have also called into question the other common argument, discussed on the grounds of economic analysis of law and revolving around prohibitive cost for tracing the persons entitled to permit the exploitation of work. I have claimed that the essence of this problem is not the high cost itself but rather failure to apply the solutions which could lower it.

Next, I have attempted to verify the statement on author's economic rights expiration as a measure necessary to grant the society the possibility of free using the intellectual heritage and the access to cultural goods as well as to create new works. I have concluded that expiration of author's economic rights is not a *sine qua non* condition of such using the work. Despite hat fact that said work falls into public domain, the access to it and the use of it remain limited, this time however by using different measures. The argument that limiting author's economic rights in time is necessary to create new works loses on its power when confronted with the conclusions coming from the analysis of provisions pertaining to using someone else's works or the unprotected elements embedded in them and their practical functioning.

Basing on the examination of author's personal rights I have claimed that they may pose a more serious impediment to using the works and developing cultural heritage than perpetual economic rights.

Following the consideration regarding *ratio legis* of limiting the duration of author's economic rights I have also addressed the concept of paid public domain (*domaine public payant*) recently eliminated from Polish legal order. I have assumed that it reflects the belief that such rights should not expire "for nothing", especially if the "work made free" is still exploited for profits by the persons other than author.

Finally, I have confronted the provision on expiring author's economic rights with the constitutional principle on protecting the ownership, provided for in article 21 sec. 1 of Polish constitution, according to which no one shall be deprived of his possessions without fair compensation. In conclusion I claimed that although for various legal dogmatic reasons it would be difficult to qualify said expiration as expropriation in a large constitutional sense, it is an expropriation in fact – with a reservation that in the case of author's economic rights the loss of the person making sacrifice for common good remains uncompensated, which is unprecedented.

I have questioned the rationales behind limiting duration of author's economic rights also in the context of expiration of other *erga omnes* economic rights. The analysis conducted has led me to the conclusion that author's economic rights are the only ones that can be lost regardless of any activity or inactivity from the side of the person entitled, by the mere fact of the time lapse.

In the summary I have summarized previous deliberations and presented my own views on the issues considered. I have asserted that the claim on the need for author's economic rights to expire by the mere fact of the time lapse is not as obviously justified as it may appear in the light of arguments quoted in the favor of it and their strength comes from their suggestiveness. In reality, said expiration allows to meet the functions ascribed to it only to a very limited extent.

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