

Right to the Image/Photos/Posters

Photos publications

Civil Code protection art. 23-24

- Right to the image
- Right to privacy
- Right to name

Art.23 CC Personal human rights, such as, in particular, health, freedom, honor, freedom of conscience, name or pseudonym, image, correspondence secret, inviolability of the home, scientific, artistic, inventive and rationalizing creativity, remain under the protection of civil law, regardless of the protection provided for in other provisions.

Art. 81 Copyright Act PL

- The dissemination of an image shall require the permission of the person shown in the image. In the absence of an explicit reservation, such permission shall not be required if the person has received the agreed payment for posing.
- 2. The permission shall not be required for dissemination of the image:
 - 1) of a commonly known person, if such image has been made in connection with his/her performance of public functions and, in particular, political, social or professional functions;
 - 2) of a person constituting only a detail of a whole, such as a meeting, a landscape, or a public event.

- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version)
- Article 6

Protection of photographs

- Photographs which are **original** in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection. Member States may provide for the protection of **other photographs.**

Directive 2001/29

- Member States may provide for exceptions or limitations to the copyrights provided for in Articles 2 and 3 in the following cases:

(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;

- [Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society](#)

Case 1

- Ms Painer has for many years worked as a freelance photographer, photographing, in particular, children in nurseries and day homes. In the course of that work, she took several photographs of Natascha K. designing the background, deciding the position and facial expression, and producing and developing them
- She sold the photographs to parents , but without conferring on third parties any rights over them and without consenting to their publication.

Kidnapping

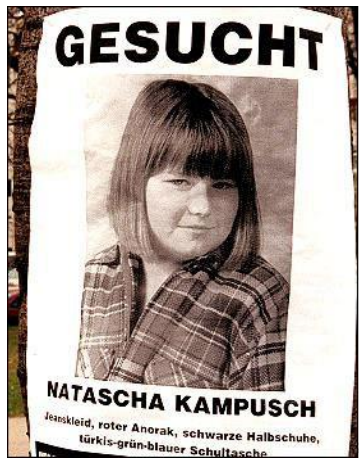
- After Natascha K., then aged 10, was abducted in 1998, the competent security authorities launched a search appeal in which the contested photographs were used.
- In 2006 Natascha K. managed to escape from her abductor.
- the defendants (publishers) in the main proceedings published the contested photographs in the newspapers, magazines and websites without, however, indicating the name of the photographer, or indicating a name other than Ms Painer's as the photographer.

Photo editing

- Several of those publications also published a portrait, **created by computer** from the contested photographs, which, since there was no recent photograph of Natascha K. until her first public appearance, represented the supposed image of Natascha at the adequate age.

Case held by Austrian Highest Court

- One of the questions referred for a preliminary ruling was whether a portrait photograph taken within the framework of the adopted convention could constitute a work within the meaning of copyright. In response, the European Court of Justice did not rule out such a situation by stating that portrait photography is protected by copyright if it constitutes the personal intellectual creation of the photographer. This, in turn, takes place when the photographer, thanks to the use of the existing possibilities of showing creativity, gives the taken a personal character.



Judgment ETS

- 1 December 2011 r. [\(case 145/10, Eva-Maria Painer v. Standard VerlagsGmbH, Axel Springer AG, Süddeutsche Zeitung GmbH, SPIEGEL-Verlag Rudolf AUGSTEIN GmbH & Co KG, Verlag M. DuMont Schauberg Expedition der Kölnischen Zeitung GmbH & Co KG.](#)

- Article 5(3)(e) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society,
- media, such as newspaper publishers, may not, on their own initiative, use a work protected by copyright by invoking an objective of public security.
- a newspaper publisher might, in specific cases, contribute to the fulfilment of such an objective by publishing a photograph of a **person for whom a search has been launched**.
- first, within the framework of a decision or action taken by the competent national authorities to ensure public security and, second, by agreement and in coordination with those authorities, in order to avoid the risk of running counter to the measures taken by them, but it is not, however, necessary for a specific, current and express appeal to be made by the security authorities for a photograph to be published for the purposes of an investigation.

Citation of photograph

- The Court of Justice also underlined, when considering the case from the point of view of the right of citation, that the citing person is obliged to name the author of the protected photo, except in cases where this is not possible.

Copyright Act PL

- **Article 29.** Works constituting an independent whole may quote fragments of distributed works and entire distributed graphic works, photographic works, and minor works, to the extent that it is justified by the purpose of the quotation, such as explanation, polemics, critical or scientific analysis or teaching, or by the rights of an artistic genre.

Poland Press Law Act 13/3

- 13/3 The competent public prosecutor or court may allow, due to important social interest, the disclosure of the image and other personal data of persons against whom preparatory or court proceedings are pending.
- 13/4. A complaint may be lodged against the decision to disclose the image and other personal data of persons against whom preparatory or court proceedings are pending.

212 or 216 Penal Code – private prosecution crimes (private indictment)

- In order to distinguish insult (216 Penal Code) from defamation (212 of the Penal Code), it is reasonable to talk about **the subject** of offender's violation when using abusive words or insulting
- 216 – inner dignity of the victim is violated
- 212 – so-called the external part of the dignity and good name - the social perception of a person's good name in society and objectively degrading attacks towards it (f.ex. in social media)

Art. 191a. Penal code

violation of sexual intimacy

- § 1.
- Who perpetuates the image of a naked person or person during sexual activity, using violence, unlawful threats or deceit for this purpose,
- or the **image of a naked person** or person during sexual activity, without their consent, disseminates,
-
- shall be punishable by imprisonment from 3 months to 5 years.
-
- § 2.
- Prosecution takes place at the request of the injured party.

Włodzimierz Zakrzewski (+1992)

Poster Steersman (the Party)

IV convent of PZPR party in 1956 r.

trend - socrealizm

PARTIA



IV ZJAZD POLSKIEJ ZJEDNOCZONEJ PARTII ROBOTNICZEJ
WARSZAWA · STYCIEŃ 1964

Włodzimierz Zakrzewski – Partia
(Party)

Izabella Rybicka –
z Partią (with the Party)



Instytut Pamięci Narodowej Oddział w Katowicach



Konferencja naukowa

Więcej niż partia

**PZPR a polityka, gospodarka i społeczeństwo
1948–1990**

„Przystanek Historia” Centrum Edukacyjne IPN im. Henryka Sławika w Katowicach.
ul. Świętego Jana 10, III p.

15–16 października 2015 r.

more than
the party



INSTYTUT
PAMIĘCI
NARODOWEJ



Partner medialny:
CZASYPISMO

PZPR

PIZZA

NO
DWU



ZAWSZE
NA 200%
NORMY

telepizza

012 415 56 02

KOMPONENCI SMACZNEJ PIZZY DWU

Peperoni i pepperoni

Hawajska czyn

Capricciosa czynka, pe

Powiększamy

Civil court dispute

- Włodzimierz Zakrzewski's son sued Telepizza Sp. z o.o. Lawsuit - 192,000 as remuneration for proprietary copyrights (x 3) 75,000 as compensation for infringement of moral rights - art. 78 sec. 2 of the copyright law

Art. 33(2) Copyright PL

- Works may be used for administrative, judicial or legislative proceedings and for reporting on these proceedings
- Without the consent of the author

TK June 23, 2015

No triple remuneration

- Art. 79 sec. 1 point 3 lit. b of the Act of February 4, 1994 on copyright and related rights, to the extent that the copyright holder, whose copyrights have been infringed, may request the person who violated these rights to redress the damage caused by paying a sum of money in the amount of corresponding, where the breach is culpable, three times the relevant remuneration that at the time of its investigation, it would be due as the consent granted by the rightholder to use the work, is inconsistent with Art. 64 sec. 1 and 2 in connection with Art. 31 sec. 3 in connection with Art. 2 of the Constitution of the Republic of Poland – hence is no longer valid

TK Judgment of 26 January 2017.

Double remuneration OK

- The entitled person whose intellectual property right has been infringed may request from the person who infringed this right, compensation for the damage suffered by him, taking into account all relevant aspects of a given case, or, without the right holder showing actual damage, demand payment of a sum of money. in the amount corresponding to twice the appropriate remuneration that would be due for the consent to use the work

Code of Civil Proceedings 1964 PL

- Art. 479-93. [Awarding the appropriate amount] – section of Copyright protection procedure
- If, in the infringement case, the court finds that the exact amount of the claim is impossible, very difficult or obviously pointless to prove the exact amount, it may award an appropriate sum in its judgment based on its assessment based on considering all the circumstances of the case.
- Strict evidences as to the amount of damages are not required.