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Definition of an architectural work in the Polish law – outline of the problem based on selected court judgements

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Rezumat

Definiția operei de arhitectură în dreptul polonez. Reflexia unei probleme în bază de hotărâri judecătorești selectate.

Scopul acestui articol este de a prezenta problema definirii conceptului de operă de arhitectură în dreptul polonez. Legea din 4 februarie 1994 privind dreptul de autor și drepturile conexe nu conține o definiție legală a unei opere de arhitectură, ceea ce cauzează mari dificultăți. Opiniile prezentate în literatura de specialitate de către comunitatea științifică par a fi utile în rezolvarea acestei probleme de definire. Cu toate acestea, interpretarea legii de către instanțele judecătorești este importantă. Jurisprudența are un impact direct asupra dezvoltării drepturilor specifice ale creatorilor (arhitecților). Investigarea cazurilor de încălcare a drepturilor de autor începe adesea cu determinarea dacă o anumită operă sau elementele sale sunt opere de arhitectură. Textul prezintă hotărârile instanțelor districtuale poloneze, ale curților de apel, dar și ale Curții Supreme.

Cuvinte cheie: operă de arhitectură, dreptul polonez, operă creativă, drept de autor, precedent judiciar.

Summary

Definition of an architectural work in the Polish law as outline of the problem based on selected court judgements

The aim of this article is to present the problem of defining the concept of architectural work in Polish law. The Act of 4 February 1994 referring to copyright and related rights does not contain a statutory definition of an architectural work, which causes great difficulties. The views presented in the literature by the scientific community seem to be helpful in solving this definitional problem. However, the interpretation of the law by the courts is important. The jurisprudence has a direct impact on the development of specific rights of creators (architects). The investigation of copyright infringement cases often begins with determining whether a given work or its elements are an architectural work. The text presents the judgments of Polish District Courts, Courts of Appeal, but also of the Supreme Court.

Keywords: architectural work, the Polish law, creative work, copyright law, case law.

In the first half of the 1990s, the Copyright Act of 10 July 1952 was in force in Poland, which was amended twice (in 1975 and 1989). However, these amendments were not of fundamental importance, as they were unable to adapt the legal act from the period of the Polish People's Republic to the requirements of the then copyright trade. The 1952 Act largely repeated the provisions of the legal act of the Second Polish Republic of 1926 (the latter was considered very modern in the interwar period, but the economic realities changed over the course of several decades). The copyright law of the 1950s introduced a number of provisions that aimed to adapt the law to the conditions after the Second World War in the countries under the control of the USSR. In general, the provisions introduced by the regime, which wanted to implement solutions similar to Soviet ones in Poland, turned out to be imprecise, fragmentary or based on assumptions that were erroneous or harmful to the national culture. The shape of copyright circulation in the 1990s required a profound reconstruction of the rules regulating the issues of works. In the 1952 law, many areas were regulated marginally. Moreover, the act from the 1950s provided for a number of preferences for units of a socialized economy, which was contrary to the principle of equality of the sectors of the economy [1].

The Act of 4 February 1994 on copyright and related rights (date of entry into force on 23 May 1994) does not contain a statutory definition of

an architectural work, which results largely from the concept of a broad approach to the subject of copyright adopted by the legislator [2, p. 201]. Therefore, it is necessary to familiarize yourself with the views of representatives of legal science expressed in scientific publications and professional literature. In the opinion of Andrzej Kopff (Polish lawyer, professor of legal sciences, specialist in civil law), an architectural work is „a spatial arrangement composed of various building materials". [3, p. 230 – transl. from the Polish by W. A. Święch]. Unfortunately, this definition is very laconic and eliminates any unsettled intellectual creations [3, p. 230]. On the other hand, Justyna Goździewicz-Biechońska from Adam Mickiewicz University in Poznań defines an architectural work as follows: „an intangible good constituting a creatively shaped, established in any form, spatial concept, where this concept means a spatial arrangement of elements of objective reality" [4, p. 639 – transl. from the Polish by W. A. Święch]. This approach to an architectural work undoubtedly takes into account various fields (landscape architecture, urban planning) and forms of space shaping. According to Kacper Jan Piórecki, an architectural work (as an immaterial vision of the organization of space) may take the form of a design (conceptual, architectural-construction, executive) or a building object realized on the basis of the above-mentioned. project [5, pp. 40-41]. However, scientific literature does not dispel doubts related to the definition of an architectural work. Considering the above, it may be helpful to analyze court decisions, which are a source of strong, reliable arguments and legal considerations. Law is not only the result of general law-making decisions, but also the result of decisions resolving individual cases in common courts.

According to article 1 of the Act of 4 February 1994 on copyright and related rights, the subject matter of copyright is any manifestation of creative activity of an individual nature, established in any form, regardless of its value, purpose and means of expression (work). The subject of copyright, as indicated in article 1 section 2 point 6 above act, there are architectural works, architectural-urban planning works and urban planning works. As indicated in article 1 section 3 of the said legal act, a work is subject to copyright from the moment it is established, even if it has an unfinished form [6]. The establishing comes at the moment when the work can also be seen by people other than the author. The establishing of the work means that it takes on any form, even if it is impermanent. However, the form must be stable enough for the features and content of the work to have an artistic effect [7].

A manifestation of creative activity of an individual nature is a creative, subjectively new, original product of the intellect, caused by the unique personality of the creator, which – if made by someone else – would look different. It is considered that an „architectural work" within the meaning of artcle 1 section 1 of copyright law may be regarded as a work in the field of construction which is the result of the creative work of an architect [8, p. 26; 9].

Projects in the field of architecture must have at least a minimum level of creativity, resulting from a compilation of known works. This means that template designs may not have the status of a work. The fact that architectural works are explicitly mentioned in the 1994 Act creates a kind of „presumption" that such works have the status of work. It should also be stressed that the fact that a large proportion of architectural designs are made to order or are implemented for the purpose of a competition, where fairly detailed guidelines are included, does not preclude the existence of the individual character of such a project [9]. The case law indicates that creative elements in this type of projects may be manifested in architectural details, e.g. colors, selection of materials or lighting – despite the limitations resulting from the adopted assumptions [10, p. 54]. An architectural work, as an intangible good, may manifest itself in many forms. It can be realized both in drawings, plans, models, as well as in the final implementation, i.e. in the erected buildings or decorated interiors. In this context, an architectural conceptual design or an architectural executive design may be taken into account. In addition, the subject of protection may be the so-called industry projects that constitute a technical complement to the architectural design, such as structural wiring of the building, design of sanitary and electrical installations [11].

However, as a general rule, only aesthetic, not functional elements in the structure of an architectural work are protected under copyright law [12]. Not all works that require the skills and qualifications of an architect are design works. Also, not every professional activity of an architect is creative [13]. Intellectual work of a creative na-

ture is the opposite of work of a technical nature. Technical work involves performing activities that require only specific knowledge and skills as well as the use of appropriate tools, materials and technologies. Taking into account the above, a feature of technical work is the predictability and repeatability of the achieved result. However, the process of creation, unlike technical work, means that the result of the action taken is a projection of the imagination of the person from whom it comes. Creative work aims to fulfill those elements of the task performed that are not only the result of the use of specific knowledge, skills, raw materials, devices or Technologies [14]. In this approach, creativity, as it engages the creator's imagination, is subjective. Therefore, „a work within the meaning of copyright that constitutes only the application of technical knowledge, even highly specialized, if its content is predetermined by objective technical conditions and requirements and the nature of the technical problem (task) being implemented (solved)" [14 – transl. from the Polish by W. A. Święch].

However, as the Supreme Court pointed out in 2006, the requirement of novelty is not a necessary feature of creativity as a manifestation of human intellectual activity. A work can be a compilation using publicly available data, provided that its selection, segregation, manner of presentation has a mark of originality [15]. To sum up, creative activity coincides with subjective novelty resulting from the creator's independent choices and his subjective belief that these are individual choices coming from him. The architect, by making choices of specific technical, formal and aesthetic solutions, often uses elements that are in the public domain. The architect by sorting these components, selecting them according to his tastes and acting in a manner undetermined (fully or partially) by objective (external) factors, excluding free choice, gives his work an individual character [16]. In these conditions, the requirement of novelty in the objective sense (objective novelty) is not a necessary feature of creativity [I 16; 17; 18].

Recognizing that a given work result is protected by copyright does not mean that all its elements (components) are covered by this protection. The feature of creativity that determines the protection of the entire work is also a criterion for „independent protection" of its individual elements. A given work is protected only with respect to these types of elements. The remaining components of the work that do not exhibit any creative features, even though they appear in the protected work, are not themselves subject to copyright. Works are protected only to the extent that they are creative [14].

In the case of an architectural design, creators are always limited by specific regulations, in particular construction law, standards, or terrain conditions in the place where the designed building is to be built. However, this does not prevent the work they create from having the stamp of individualism of the respective creator [19]. Therefore, it should be emphasized again that an architectural work is undoubtedly an architectural concept, which contains the individual thought of the creator, as well as a construction design and an executive design created on the basis of the concept.

Even an interior design project, even if it includes commercially available apartment furnishings (such as standard furniture, factory-produced „paintings", single-color smooth curtains, rugs, carpets, etc. items available in supermarkets) may be an architectural work and be subject to regulation by copyright law. In this case, the selection and composition of furnishing items in the room must indicate the creative and original nature of the architect's activities [9].

However, in the opinion of some Polish courts, a work may have the characteristics of both an architectural work (primarily planning and preparation of appropriate design documentation aimed at developing the internal space of e.g. a cinema in accordance with the construction design) and an artistic work (interior arrangement of e.g. a cinema, the so-called design, including the appropriate selection of materials and equipment and their arrangement in space). According to some judges, attention should be paid to both aspects of the work, because focusing only on one of them, i.e. the artistic aspect, ignores important functional elements of the work created by the creator, which cannot be ignored when assessing whether there is an infringement of copyright [20].

According to the Polish Supreme Court, an architectural work also includes unusual products of its creators, such as: a tombstone monument, a design for the development of a city square or the set design of a television entertainment program [21]. The case law points out that the attribution of features to a work (e.g. the design of a

grave monument) is not determined by the way the elements are combined, but by their unique selection (distinguishing them from other objects of the same type), mutual proportions and colors. A tombstone monument built according to a given design must stand out from other objects with the same purpose erected to commemorate the deceased buried in the same religious rite. The features of a work derived from the content of the Copyright Act are its individual (creative) character, originality and fixation in any form. Undoubtedly, the creation of a work can also be done by creating computer graphics. The individual (creative) character (originality) of the design of a tombstone monument is determined not so much by what individual elements make up the whole (how they are connected), but by the visual (aesthetic) effect of combining these elements into a whole, while taking into account their dimensions (mutual proportions) and selection of colors, arrangement of the cross symbol as well as the location and graphic design of the inscription. Only the sum of these features of the tombstone design creates a work (an original design with an individual character) [22].

As shown in this article, an architectural work is a specific product of the intellect, protected by copyright. However, the law does not always specify the scope of this protection in a precise way. Architecture is a rather broad and complex concept. This is undoubtedly due to the fact that architecture is a kind of art that encompasses various areas of creativity or manifestations of human culture. The art and the skills of architects are expressed in real forms. Furthermore, it should be noted that architecture fulfills a variety of tasks depending on the many physical, material and cultural needs of people.

Copyright law is constantly expanding, so there are more and more regulations (over 30 changes have been introduced into Polish law since 1994 and at least 7 EU directives in the field of copyright have been implemented). It has a significant impact on business and relationships between entrepreneurs. It may soon turn out that certain types of works, including architectural ones, will require separate provisions in separate chapters of the act. In countries that were in the Soviet bloc for decades (including Poland), the construction industry is developing dynamically in order to make up for the backlog caused by the earlier failure of economic systems. A huge number of architects, investors and contractors work in the construction sector. For this reason, legal certainty and clarity in the field of architectural works is very desirable, as it may affect the dynamics of investments and their quality (modernity). On the other hand, „legal inflation" may pose a certain threat, as there is no guarantee that it will solve all interpretation problems related to an architectural work. There is no doubt that the reality (including technologies) around us is changing. In this situation, it will be necessary to refer to the judiciary, which will have to dynamically interpret the law and reconcile the norms with the changed interpretative context.

According to the old Roman (Latin) law maxima, attributed to Lucius Javolenus Priscus: „Every definition in civil law is dangerous, for rare are those that cannot be subverted" (in Latin: „Omnis definitio in iure civili periculosa est: parum est enim, ut non subverti posset"). Not only defective statutory definitions, but also the lack of any definitions constitute a threat to legal certainty, security of trade and efficiency of judicial proceedings. As mentioned earlier, architecture is a complex concept, so the issue of an architectural work is perhaps better left to the doctrine and jurisprudence.

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