MORAL RIGHTS IN ROMANIAN AND IN FOREIGN CASE LAW

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Abstract

Moral rights have always been a rather controversial subject in the field of copyright. Imposed in most countries around the world through the Berne Convention, recognized in most jurisdictions to certain degrees, but also partially rejected in others (most importantly, the US), moral rights have often been seen as the `black sheep` of intellectual property. But how did this concerning status affect the national and foreign jurisprudence on moral rights? In order to find out, we will analyse a few main court decisions, both from Romania and from other jurisdictions around the world and we will also make a couple of predictions about the potential future of moral rights in copyright law.

Keywords: *jurisprudence, moral rights, copyright, intellectual property, case law.*

1. Introduction

Actor and filmmaker Stephen Chow famously remarked: „A creation needs not only subjectivity, but also objectivity". While this applies clearly to film production, it is even more applicable to the field of law. The author of a work will begin their creative process out of subjective reasons, like wanting to express their ideas, make their vision seen or heard by the public, obtain recognition. But later their work will be subject to the rule of law and its boundaries, but also its benefits. That being said, the author's moral rights are some of the most important (and potentially controversial) benefits offered by the Romanian law to its authors.

According to art. 10 of the Romanian Law no. 8/1996 regarding copyright and related rights, any author has the following five moral rights[1]: the right to disclose their work, the right to paternity (attribution), the right to their name, integrity of the work and, finally, the right to withdraw their work. Romania has arguably one of the most protective legal systems around the world, when it comes to the author's moral rights.

This could be the result of the influence that French legislation had over Romanian law, given that France was the actual place where moral rights were born far back, in the 19th century[2]. But this could be also the result of Romania's status, as a post-communist country, with a sad history of much censorship and persecution of creative voices[3]. And what was the result of such constriction and silencing authors for so many years? A highly protective legal regime, maybe too protective to some extent and the highest number of moral rights that we see in any other national legislation.

However, while Romania's history of silencing authors in the communist era might have encouraged the legislators to later protect the author's voice in a more extreme way, enforcement of moral rights around the world were the product of a rather modern act: the Berne Convention, adopted in 1886. In its initial form, the Convention did not contain any mention of moral rights. Such rights were introduced later, in art. 6bis, by its revision made at Rome in 1928[4]. In this year, two moral rights were introduced in the Berne convention[5]: the right to attribution and the right to integrity of the work.

As we can see, Romania more than doubled the number of moral rights that were mandatory according to

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[1] Some authors consider Romanian rights in the field of copyright to rather be „patrimonial" or „non-patrimonial", the concept of „moral" rights being actually of French inspiration. See A.P. Seucan, *Drepturi morale și drepturile patrimoniale de autor*, Universul Juridic Publishing House, Bucharest, 2015, p. 22

[2] We could also argue that moral rights were even present from antiquity times, especially when it comes to plagiarism and protection against such acts. But moral rights were first expressly included in Parisian jurisprudence in the 19th century, with lawyer Andre Morillot having a great contribution to their very existence. For more details see V. Roș, *The right of intellectual property. Vol. I Copyright*, related rights and sui generis rights, C.H. Beck Publishing House, Bucharest, 2016, p. 284.

[3] "As mentioned in the doctrine on moral rights, post-socialist countries offer a unique window onto moral rights. Their experience shows an interesting link between the moral rights of authors and the struggle to overcome political repression. The reason for this connection lies in ideology. By a bitter irony, the ideological aspect of socialism imbued all human expression with powerful political connotations. When superimposed upon societies with instinctive respect for culture, the combination of politics and creative expression proved to be a deadly cocktail. As Russian poet, Osip Mandelstam, commented: *"Only in this country is poetry respected - people are killed for it."* M.T. Sundara Rajan, *Moral rights*, Oxford University Press, 2011, p. 187.

[4] For more details see N.R. Dominte, *Dreptul proprietății intelectuale. Protecție juridică*, Solomon Publishing House, 2021, p. 251.

[5] Full text of the Berne convention is available on WIPO website: *https://www.wipo.int/wipolex/en/text/283698*, accessed on 26.02.2024.

international legislation – the Berne Convention. We have not two, but five moral rights in Law no. 8/1996 regarding copyright and related rights. Not to mention that their legal regime is also very protective: these rights are very closely linked to the authors, cannot be waived or assigned under any circumstances and can potentially exist forever, being exercised by the author's heirs for an unlimited period of time. Therefore, if a painter creates a picture today, their children can exercise moral rights of attribution over the picture 50 years from now and their children's children, 100 years from now, without limitations.

But are these very protective and highly inflexible rights really enforced by the courts of law? Is the Romanian and international jurisprudence actually reflecting this protective regime or do moral rights remain a product of law and doctrine, but subject to practical implementation, not so much?

The answer lies somewhere in the middle, as we will explain below.

2. Romanian jurisprudence on moral rights

The moral rights of authors are far less frequently subject of litigation, compared to the economic rights of the author. There are multiple reasons for this, mostly because individuals and legal entities are more likely to have a dispute over money, rather than intangible values. When it comes to Romania, although the law and doctrine are fairly consistent, there seems to be a reluctance to seek protection for moral rights or to mention them in contracts precisely because they have an absolute and comprehensive nature.

Although Romanian courts do not have nearly as many cases concerning non-economic rights of authors, as they do with regarding economic rights, there is nevertheless a substantial body of jurisprudence when it comes to moral rights in various domains: successions, rights transmission, moral damages for their infringement, recognition of the violation.

2.1. Plagiarism - crime and punishment

In 2011, the Bucharest Tribunal ruled on a case[6] of intellectual property law concerning the appropriation of authorship rights of a work without entitlement. Specifically, an individual who copied the translation of a work and presented it as an original piece was sentenced to one year of imprisonment with suspension, for committing the offense of usurping authorship rights.

The claimant, I.E. Cultural Foundation, showed that translation from Russian to Romanian of the work „Memorii" written by L.T., translated by G.S., is not an original work, but rather a plagiarised one. The Foundation accuses G.S. of illicitly appropriating a previous translation, referred to as „Jurnal".

In 2008, a representative of A.H. Publishing House (which published G.S.'s work), contacted the Foundation to propose the assignment of authorship rights for the translation. The Foundation declined, but a few months later, A.H. Publishing House released the work „Memorii" by L.T., translated by G.S.

According to an expertise report from ORDA[7], the difference between the two works, „Memorii" and „Jurnal", were minimal, so no significant intellectual contribution was brought to „Memorii". The later constituted a complete reproduction of the Jurnal's translation, which lacked the personal imprint of the author-translator. During the criminal investigation, it was also shown that „Jurnal", translated from Russian to Romanian, was published in three editions by U Publishing House (in 1975 and 1976, and subsequently in 2000 and 2005). To create a faithful translation of this work, volumes from the original edition were sent from Russia and translators took multiple years to prepare the translated work, after which the original Russian volumes were returned to the library.

The accused G.S. pled guilty to committing the act of plagiarism (unauthorised appropriation of authorship rights of a work). He showed that the director of A.H. Publishing House asked him to create this plagiarised work, by suggesting text modifications and synonymous in certain places. G.S. was assured that the publishing house would acquire the rights over the work and if he refused to make the modifications in question, his collaboration with the publishing house would cease. So S.G. agreed to modify the original translation, but refused to have his name on the cover, opting instead for his literary pseudonym G.S.

G.S. was sentenced to one year of imprisonment for committing the offense of unauthorised appropriation of authorship rights of a work, with suspension.

In the current form of Romanian law no. 8/1996 on copyright, art. 197 states that a person who unlawfully appropriates another's work is punished with imprisonment from 6 months to 3 years. While this might seem as

[6] *https://www.juridice.ro/303830/hotararea-tribunalului-bucuresti-cu-privire-la-insusirea-fara-drept-a-calitatii-de-autor-al-unei-opere.html*, accessed on 26.02.2024.

[7] ORDA or Oficiul Român pentru Drepturile de Autor (Romanian Copyright Office) is a Romanian institution that protects the rights of authors. Find out more at *https://orda.ro*.

a relatively short duration of imprisonment and can also be replaced with a fine, we consider this to still be a very harsh measure for an offense in the field of intellectual property. We find similar durations of imprisonment in the Romanian Criminal Code for an offense of assault in its most serious form (prison between 6 months and 5 years)[8] or for bodily harm due to negligence (prison between 6 months and 2 or three 3 years)[9]. So the legislator has chosen similar penalties for offenses with quite serious consequences, where a person's health is significantly affected. We do not believe that violating the moral right to paternity can be equal to such major offences.

In recent years, the legislative trend in intellectual property has rather leaned towards decriminalising acts in this field, not harshening the penalties. We will see if plagiarism will remain a crime in future changes of Law no. 8/1996, as well. As a proposal *de lege ferenda*, we see many reasons why such an act should be decriminalised and could remain just a civil offence, not a criminal one.

2.2. Rosia Montana - Romanian gold and French research

In another case regarding the right to attribution, from 2005, the Bucharest Court of Appeals issued a decision regarding the lawful authors of a scientific study regarding Rosia Montana and the Romanian Dacian gold. The court rejected the claim of authorship made by a couple of French institutions that were involved in the project. It was decided that these entities cannot hold moral rights over the work, because a series of individual persons were the true legal authors of the study.

In May 2004, the French University Toulouse II-Le Mirail, EPSCT, and the National Center for Scientific Research, EPST from France, sued the Alburnus Maior Miners' Association, alleging copyright infringement regarding the study „Ancient Gold Mines of Dacia". The claimant requested the removal of the study from the website www.rosiamontana.org, symbolic moral damages of 1 Romanian leu, and the publication of a press release with public apologies from the defendant.

The claimants argued that the study was a scientific work, created by representatives of the French institutions and the Romanian History Museum. So publishing the study online without their consent violated their moral rights to disclose of the work and the patrimonial right regarding use of the work, as stipulated by Romanian copyright law. The study was commissioned by the Ministry of Culture and was for private use, not for the general public. So publishing the work can damage their reputation in the academic sphere, but also their relationship with the Romanian authorities.

The court rejected the claims of the French entities, because they failed to establish their status as authors of the study. The study was published online, on www.rosiamontana.org stating a few individuals as authors, not the French claimants. Under Romanian law, these individuals are presumed to be the true authors, until proven otherwise. Also, the contract between the French institutions and the Romanian Ministry of Culture did not specify the authors of the study, reinforcing the presumption of authorship in favour of the individuals mentioned on the website.

In its decision, the court emphasised the distinction between legal entities and natural persons concerning authorship rights. While legal entities may exercise certain copyright-related rights, they cannot be considered authors of a work under Romanian law. This included moral rights, which cannot be held by legal entities, only individuals.

Roșia Montană has been the subject of one of the most significant and highly publicised arbitrations ever to involve Romania. So it is not surprising that it was involved even in other legal disputes, this time regarding intellectual property. However, compared to the Rosia Montana arbitration case, where the opposing parties were also foreign entities, in this case the Romanian counterpart won.

Moral rights are extremely personal in their nature, being more closely linked to the author than any other right. And precisely for this reason, the presumption of authorship provided by art. 4 of Law no. 8/1996 on copyright and related rights was so important in the litigation, the very reason why the defendants won the case. Based on this presumption, those who were mentioned as authors at the first publication of a work are presumed to be authors with full rights, unless someone else can prove otherwise. And in the case of Roșia Montană, the French legal entities failed to rebut this presumption.

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[8] Art. 193 CP: „Assault or other acts of violence (1) Assault or any acts of violence causing physical suffering are punishable by imprisonment from 3 months to 2 years or by a fine. (2) The act that results in traumatic injuries or affects the health of a person, the severity of which is assessed by days of medical care of up to 90 days, is punishable by imprisonment from 6 months to 5 years or by a fine (...)".

[9] Art. 196 CP: „Negligent Bodily Harm (1) The act provided for in art. 193 para. (2), committed negligently by a person under the influence of alcoholic beverages or a psychoactive substance, or in the course of an activity constituting an offense in itself, is punishable by imprisonment from 3 months to one year or by a fine. (2) The act provided for in art. 194 para. (1), committed negligently, is punishable by imprisonment from 6 months to 2 years or by a fine. (3) When the act provided for in para. (2) was committed as a result of non-compliance with legal provisions or precautionary measures for the exercise of a profession or trade, or for the performance of a certain activity, the penalty is imprisonment from 6 months to 3 years or a fine (...)".

The Roșia Montană case is also important because it clearly marks the difference between natural persons and legal entities when it comes to authorship under Romanian law. A legal entity may sometimes exercise copyright, as is the case of collective works, *opere colective,* where the initiator of the work can be a legal entity (art. 6 of Law no. 8/1996) or with collective management organisations, *organisme de gestiune colectiva*, upon the death of the author (art. 11 of Law no. 8/1996). But a legal entity can never be considered the author of a work, in accordance with art. 3 of Law no. 8/1996 and, most importantly, cannot hold moral rights over a work.

2.3. The wall mosaic from Suceava - work integrity or lack thereof

Another very interesting court decision[10] in the field of Romanian moral rights was issued in 2013 by the Romanian High Court of Cassation and Justice (HCCJ). In short, the municipality of Suceava had to pay a significant sum in moral damages to a mural artist, because it issued a demolition permit for a building. One of the walls of this building had a mosaic made by the artist and the work was considered a public monument, protected by the law. Therefore, the right of integrity of the artist was also affected.

In 2008, artist BT sued the municipality of Suceava and Suceava DJCCP (County Directorate for Culture, Cults, and Heritage), seeking over 10 million lei in moral damages for the violation of the moral right to integrity. Initially, Trib. Suceava dismissed the claim, considering that neither of the defendants had passive procedural capacity. Suceava CA rejected the appeal as unfounded, but HCCJ granted the appeal and sent the case for retrial.

The work, spanning over 400 square meters, was created by a plastic artist in collaboration with a painter, using glazed brick mosaic technique. It was located on the wall of a hall belonging to the Suceava Machinery and Spare Parts Enterprise (IUPS), now ROMUPS Suceava. The claimant invoked art. 10 letter d) of Romanian Law no. 8/1996 on copyright regarding the respect for the integrity of the work. This legal provision does not specify how damages for the author's suffered prejudice are determined, so it must be supplemented with general civil law.

The trial took many years and it was sent for retrial by the superior court. Upon retrial, the Tribunal ordered the defendants to pay 100,000 lei in moral damages to the artist for the destruction of the mosaic. The file was taken to appeal even in front of HCCJ which decided in favour of the artist. The inferior courts had already agreed upon the destruction of the mosaic and the moral prejudice inflicted on the artist. So the only thing left to be decided was whether the defendants committed a wrongful act, if there was a culpability element in the form of intent, negligence, or recklessness.

According to art. 2 of Romanian Law no. 182/2000 on the protection of the national movable cultural heritage, the Romanian state must guarantee ownership and ensure the protection of heritage assets. The municipality of Suceava did not register the mosaic in its heritage records as a public monument, but is the result of its own negligence. DJCCP mentioned the mosaic on its website, along with the authors, structure, surface, and year of its creation. And prior to its destruction, there was extensive media coverage against the demolition, precisely due to its artistic value.

To issue the demolition permit, the municipality had to verify whether the work was protected under copyright law, according to letter b) point 2.1 of Annex to Law no. 50/1996 regarding the authorization for construction works. Thus, the technical documentation had to include general information, such as the description of the construction, a brief history, and whether there were heritage or decorative elements.

The Court considered that DJCCP should have taken effective action to conserve the heritage, including judicially, to suspend or annul the demolition permit. Regarding the amount of damages, HCCJ confirmed the amount offered by the lower court to the artist.

[10] HCCJ, 1st civ. s., dec. no. 4502/2013, available on Lege5 website.

Mosaic before demolition

Source: www.monitorulsv.ro

Mosaic after demolition

Source: www.monitorulsv.ro

The above decision is highly valuable in the field of moral rights and their legal regime. In most moral rights cases in Romania, their violation is rather invoked as an accessory to the infringement of patrimonial rights. In other words, the claimant has solid arguments for damages in cases of violation of usage rights (reproduction, distribution of the work, etc.), but also mentions the violation of moral rights alongside these, hoping to strengthen their claim before the court.

However, in the case of the public monument mosaic in Suceava, the claimant's sole request is for moral damages for the violation of a moral right. Moreover, there would have been no other patrimonial rights to violate. The work was created for the municipality, the hall or the materials used were not his, so his right of ownership over a material object was not affected. The work was not illegally copied, distributed on radio or TV without rights, reproduced in violation of copyright, nor was the author's right to use the work affected. The only consequence of the mosaic's destruction was the artist's emotional distress - his feelings were hurt because his prolonged work ultimately amounted to nothing.

The case of the mosaic in Suceava is very similar to the famous Case *Amar Nath Sehgal v. Union of India*, probably the most important case in India regarding moral rights, which we will analyse further.

3. International jurisprudence on moral rights

3.1. The Indian wall mosaic - between art and cultural heritage

In the Case *Amar Nath Sehgal v. Union of India*, the Indian Supreme Court ruled in favour of an artist whose

mural work was destroyed, deciding that his right to the integrity of the work was violated and awarded him moral damages. It was the first time in the history of the Indian judicial system that courts were seized with the question of how moral rights can contribute to defining cultural heritage. Until then, there was no clear understanding of the purpose of moral rights.

In 1959, the Ministry of India commissioned a renowned sculptor, Amar Nath Sehgal, to create a large-scale work, approximately 12x42m, to adorn the central arch walls of the government building Vigyan Bhawan. The mural was approved by the Prime Minister and completed in 1962.

The public was very excited about the work, which depicted life in India, traditions, customs, landscapes, in a unique combination of modern and rural composition. It even became a national symbol, part of the cultural heritage. But in 1979, when the Vigyan Bhawan center underwent renovation, the bronze pieces were disassembled from the walls and stored without the artist's consent. After contacting the authorities' multiple times, with no result, the artist filed a lawsuit against the Indian government, seeking to redress the damage caused by violation of his moral rights.

The author argued that dismantling his complex work into small bronze pieces constituted an act of mutilation. He also showed that the ministry's action damaged his honour and reputation as an artist. And by erasing his name from the work, he was denied the right to claim paternity.

The case reached the court too late for the mural itself to be saved. However, the judge issued a temporary restraining order. The defendants were prohibited from approaching the remaining bronze pieces and causing further harm.

In its final appeal, the case reached the Delhi High Court, which openly expressed its determination to protect individual rights and to correct the power imbalance between individuals and the government. The judge decided that all copyright belongs to Amar Nath Sehgal, who will receive the remaining bronze pieces and approximately 12,000 USD as compensation.

However, the defendant did not permit the enforcement of the court's decision, so Amar Nath Sehgal filed a new action for enforcement. Finally, after no less than 13 years in total, the situation was resolved amicably. The artist waived the monetary damages, in exchange for receiving all surviving bronze pieces.

The mosaic during the visit of the Indian prime-minister

Source: amarnathsehgal.com

We were pleased to discover such an important case on moral rights from Asia, given that most of the jurisprudence mentioned in the legal doctrine is from Europe or the American continent.

Sehgal was able to receive a favourable solution in court because his work had not been completely destroyed. The court understood the value of the remaining bronze pieces, although the artist was just commissioned for the work, he was not the owner of the said building or resulting materials. The case was complicated by the fact that the defendant was the government itself, which had the obligation to protect, conserve, and respect Indian artistic-cultural heritage and the rights deriving from it.

The Case *Amar Nath Sehgal v. Union of India* is similar to the HCCJ dec. regarding a public monument, mosaic mural art from Suceava, which we also addressed above. In both cases, the works were mural art - in Suceava, a mosaic, and in New Delhi, bronze pieces. Also, in both cases on a wall. And in both cases public authorities decided to destroy the works, without asking the author for consent or offering them the remaining

pieces.

Although both lawsuits lasted a long time and reached the supreme national courts, in the Indian litigation the parties eventually settled out of court. In Romania, no agreement was reached outside the court, but the solution was still favourable to the Romanian claimant who received 100,000 lei in damages. On the other hand, Amar Nath Sehgal received 12,000 USD in court, which the public authority refused to pay. But the amount for which the parties finally settled was not public.

Moreover, the litigation in Romania lasted only 5 years, between 2008-2013, while the one in India stretched over a period of no less than 13 years, between 1992-2005. Considering the Romanian legal system and its slowness, it is somewhat surprising to see how in other jurisdictions things can go even slower. Not to mention that the Indian artist was quite renowned, to a degree to which the defendant in the Romanian court case was not.

Finally, it is interesting to observe how similar legal and cultural issues can arise in different corners of the world, truly demonstrating the universal essence of moral rights of authors. Another court case concerning artistic works and their value to the public is the Calatrava bridge, which made the Spanish courts decide if the author's rights or the public interest ranks higher.

3.2. The Calatrava case - bridging the gap between the author and the public interest

One of the most important cases in the field of moral rights in Spain is the case of the Bilbao bridge designed by architect Santiago Calatrava. The bridge was modified by a second architect, at the request of the public authorities, affecting the original author's right to integrity. The court considered the bridge to be a work of art under the law, but with a utilitarian purpose. So public interest prevails over private interest.

Santiago Calatrava is a renowned architect, sculptor, and engineer. He was commissioned by the municipal authorities of Bilbao to design and oversee the construction of a bridge over the Nervion River, which runs right through the city center. The construction was completed in 1997 and became a true symbol of the city. The bridge, called Zubi Zuri, meaning the white bridge in Basque, was part of the municipality's plan to connect the two banks of the river.

Several years later, a new building complex was built on the riverbank by architect Arata Isozaki, near Zubi Zuri bridge. Because of this new building, a footbridge supported by two concrete pillars needed to be built, which would be attached to Calatrava's bridge by removing a section of its balustrade.

Unsatisfied with the situation, Calatrava took legal action against the Bilbao city council and the companies who built the footbridge. He invoked violation of his right to integrity over his work, explaining that he was not asked for permission to remove part of the bridge balustrade. The architect requested that the bridge be restored to its original state and that the footbridge be demolished. He also sought 250,000 euros and if the bridge could not be restored, he demanded damages of 3 million euros.

The Spanish courts decided that Calatrava bridge is protected as a work of art, according to Spanish law. The court decided that the bridge had clearly been modified, in a contrasting style with the initial work, including the colour and materials.

But when the problem arose of the conflict between this private and the public interests, the moral rights of the architect were the ones that lost. The court rejected the request of architect Calatrava. The modification of the work clearly violated his right to integrity, and the authorities should have consulted with Calatrava before making the changes or even asked him to make them himself. But the author will have to tolerate the modifications in question because his work is in the service of the general public. Citizens were to benefit from the modification of the bridge and avoid many flights of stairs by using the footbridge built by Arata Isozaki.

Initially, architect Calatrava did not receive any amount as moral damages for the damage suffered. But in the appeal phase, Calatrava was awarded 30,000 euros in moral damages, upholding the lower court's decision that the bridge should not be returned to its original state.

Source: Wikimedia commons

The Calatrava bridge case has multiple resemblance to the case of the wall mosaic from Suceava and the mural work from India, presented above. Specifically, the court had to balance public interest with private interest and could also award moral damages to the author of the public interest work for the damages suffered - here, disregarding his initial vision and not allowing him to complete his work according to his own plans.

But how can we admit that this interest is absolute? Of course not. This opinion was also shared by the Spanish courts, which confirmed that the work will remain in its current form, but ultimately offered monetary compensation to Calatrava for the moral damage he suffered.

Architectural works are themselves works of art, although they have a predominantly utilitarian purpose. In Romania, they are recognized in Law no. 8/1996 art. 7 letter h) as objects of copyright. However, this type of work also has a special regime, being excluded from the application of legal provisions regarding rental and loan [art. 19 letter a) of Law no. 8/1996], can only be photographed when it comes to the destruction of the work and possible return to the author [art. 26 para. (3) of Law no. 8/1996], are protected from reproductions based on the same architectural project [art. 85 para. (2) of Law no. 8/1996] etc. The law thus recognizes that although architectural works are works of art, they must be subject to special rules, and the law must be adapted to fit them.

In the case of the Calatrava bridge, adding a footbridge to the original construction arose from a public need and changing urban circumstances: the emergence of a building complex on the riverbank, near the Zubi Zuri bridge. A city is a living organism, it changes constantly to fit the needs of its inhabitants. So clearly and architect cannot expect that their artistic vision will be respected at all costs and over an indefinite period of time. If the Spanish courts had decided that this footbridge should be demolished, just because it did not coincide with the original vision of the author-architect, it would have created a dangerous precedent, giving absolute priority to artistic vision at the expense of the practical needs of the population.

In other words, although the architect's right to the integrity of the work was compromised, it is more important that the public benefits from the modifications in question.

3.3. The Flight Stop case - national symbol v. holiday cheer

Snow v. The Eaton Centre Ltd is the most famous moral rights case in Canada, but also one of the most well-known cases of moral rights at an international level. Artist Michael Snow created a sculpture named Flight Stop, for the Eaton Centre complex in Canada. The artwork underwent modifications during Christmas time, with the addition of red bows to the birds in the sculpture, an action which violated the author’s moral right to integrity of the artwork.

In 1979, Michael Snow, a Canadian artist renowned internationally, was commissioned to create a sculpture. The work was to be installed and visible to the public in a large shopping centre and office building in downtown Toronto, named the Eaton Centre. It was supposed to be a permanent sculpture, visible from all levels of the mall.

The installation of the work was done under the supervision of the author: the sculpture was hung from the ceiling of the shopping centre, and a plaque was to indicate the name of the artist and the title of the work. Snow was a well-known artist, exhibiting his works internationally since 1957, using various methods of work and being appreciated for his innovative use of materials.

The artwork was called Flight Stop and consisted of 60 individual elements, all representing birds of

different sizes and in various flying positions. But these were not just any birds - they were Canadian geese, who seemed to be „frozen" in flight. Hence the name of the work, Flight Stop. The buyer of the work was the sub-tenant of the Eaton Centre building, and the piece was partially funded with money from the local lottery. The artwork quickly became a focal point for the community, considered an important piece of art by critics.

In 1982, the marketing director made plans for the Christmas season at the Eaton Centre, which included tying large red bows to the geese in the complex. Also, the image of the modified artwork was to be used on banners, posters and shopping bags. When Snow discovered this „mutilation" of his work, he filed complaints with the mall management, but his requests were ignored.

The sculptor felt that these modifications disturbed the harmony of his composition, altered its character and ultimately affected his artistic reputation. Although the artist had not been consulted about the red bows being applied to the geese, the Eaton Centre management refused to cancel the project. A lot of money had already been spent on promoting the Christmas modified work. Moreover, they considered that adding the bows did not affect the artwork and that Snow was overly inflexible and sensitive as an artist.

In court, neither party contested that they were dealing with a „work" and an „author" according to Canadian law. Snow believed his work had become ridiculous with the addition of ribbons, comparing this act to adding earrings to the Venus de Milo sculpture. He also brought three art experts to testify that Flight Stop had been transformed into kitsch, also attesting to the major importance of the work itself.

Eventually, the court ruled in favour of Snow, ordering the Christmas ribbons to be removed from the artwork. The reason was that they truly distorted or modified the sculpture. Regarding Snow's honor and reputation, the court stated that these were subjective assessments of the author, as long as his assessment was reasonable. It was evident that Snow believed that his honor and reputation were affected by the defendants' actions, a concern supported by other experts in the field, making his concern reasonable. So a violation of the legal provisions regarding the moral right to integrity had truly taken place, given the subjective assessments of the work's author, corroborated with the testimonies of the public and artistic community.

Source: www.cipil.law.cam.ac.uk

This Canadian court decision became famous not only because it gives a lot of power to the artist and their moral rights, but also because of its central theme. Recently, the Christmas holiday has completely changed the way we view shopping in the winter season: the emphasis is more on bright decorations, intensive shopping and less on the fundamental meaning of the holiday. So it was expected that this commercialization of Christmas would also manifest itself in the field of copyright, more precisely, for moral rights.

As observed in the Canadian case Snow v. The Eaton Centre Ltd, sometimes less is more. A work is not necessarily improved by adding elements to it, quite the contrary. The artist's vision may suffer, which in turn may affect his or her image. What might the public think if the author allows a distortion of his creation? It can be appreciated that he doesn't care enough about his work, about the message he wanted to convey.

It is interesting to see the Flight Stop case in contrast with the Calatrava case, mentioned above. The Calatrava bridge was considered to be a building of public interest, so its modifications were confirmed by the court, although the architect was compensated for the violation of his right to integrity. But the changes brought to the Canadian geese were not considered necessary, even if the sculpture was in a mall (so a place dedicated to shopping) and even if the public interest might be to uphold the holiday spirit during Christmas, including

using decorations. The public interest was also brought into question in the Suceava mosaic case, mentioned above – the building would for sure not be rebuilt, but the artist whose work was destroyed received compensation. The same happened to Indian artist Amar Nath Sehgal in his litigation versus the Union of India – his work could not be saved, but he received the remaining bronze pieces. Would the court have stopped the art being destroyed, were he to file a claim in time? We will not know.

But what we see, somehow problematic, in the Case *Snow v. The Eaton Centre* is that sculptor Michael Snow did not create a flock of carved geese to spread the Christmas spirit, but to remind Canadians of a noble animal, a symbol of their homeland. Here, the issue arises when it comes to commerce and commercial interests in general, what is too much? Because, ultimately, Snow's sculpture was not presented in a museum or art gallery. But in a mall, a shopping center whose sole objective is to make people buy as much and as quickly as possible.

From this point of view, the court's decision can be criticised. We believe that not only the status of a work as a piece of art will matter when it is presented in a certain manner, but also the place or context of the presentation. It might be exaggerated to adorn the Mona Lisa with garlands or to put lights on Brâncuși's Bird in Space in December. But what about a sculpture in a public square, where a Christmas market is held? Or with a photography exhibition in a mall, exhibited during the holidays?

Therefore, we believe that a possible violation of the artist's right to integrity must be contextualised, it is not an absolute right, especially since national laws and the Berne Convention expressly mention the impairment of the author's honor or reputation in the case of such a violation. And these concepts are extremely subjective and volatile.

4. Conclusions

When it comes to jurisprudence, the moral rights of the author are brought in a difficult position. Which has also happened because the relationship between moral and patrimonial rights in copyright has long been subject to debate[11]. When does protecting the author become too much? Can the public interest remain in focus, while we encourage the individual's artistic expression and we contribute to the enrichment of our cultural heritage?

Protecting moral rights with criminal legislation might be too much, while not enforcing the moral rights provision of Romanian Law no. 8/1996 might be too little. There are so few Romanian court decisions where the moral rights are taken into consideration and the judge truly protects the author in this sense, but we also see it going in the opposite extreme, with harsh decisions for the violation and prison time in a field where we find it excessive – intellectual property and copyright .

Also, we see that courts merge general provisions in the field of copyright with the legal regime of moral rights, like in the case of legal presumption of authorship. But we also observe that violations of the author's right to integrity is not only a national, but also an international problem, from the Suceava mosaic to the Calatrava bridge, Indian wall art and Canadian geese in Eaton Center.

There is no coincidence that moral rights fall under the international protection of the Berne Convention, alongside national legislation: the artists' work and their problems are universal. And we should not fail to learn from other countries' judicial triumphs or, even more, from their mistakes.

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[11] E.G. Olteanu, *Drepturile morale și creația intelectuală*, Didactică și Pedagogică Publishing House, 2006, p. 81.