

M. M. Kosmiy

PhD in Law, Associate Professor

Ivano-Frankivsk King Danylo Galytskiy University of Law,

Town-Planning Development Department

Konovalets E. st., 35, Ivano-Frankivsk, 76018, Ukraine

LEVELS OF JURIDICAL REGULATION OF COPYRIGHT ON OBJECTS OF TOWN-PLANNING AND ARCHITECTURAL ACTIVITY

The author explores the problematic issues of juridical regulation of intellectual property and copyright in town-planning and architectural activity. According to the study, he concludes that the juridical regulation and protection of copyright in the field of town-planning and architectural activities are provided on the basis of a comprehensive approach that includes a combination of different levels of juridical norms, in particular: constitutional law norms; civil law norms; law of intellectual property; norms of architectural activity law institute. Only if they can be integrated we can talk about the guaranties of effective implementation process and copyright protection in this sphere.

Keywords: intellectual property rights, copyright, town-planning activity, architectural activity, copyright in town-planning activity, copyright in architectural activity.

Problem statement. The legal regulation and protection of intellectual authorship of creative activity is important in any sphere of public activity for which it is peculiar intellectual creativity and its external expression in the form of certain results. One of such spheres of public activity is an architectural activity, which falls under action of standards of copyright on the objects of architectural activity.

Analysis of recent research and publications. Regulatory issue of town-planning and architectural activity, which includes the right of intellectual activity in this sphere, is partially subject of publications of scientists such as: D. Bell [1], M. M. Gabrel [2], M. M. Dyomin [4 executed; 5], T. N. Exiled [6], E. E. Klyushnichenko [7], V. V. Knysh [8], M. M. Kushnirenko [10], E. M. Markov [3], V. I. Nudelman [11], A. P. Ositnyanko [12], B. S. Posatsky [13], V. Rokhchin [16], and others.

At the same time, questions of intellectual property in general and the perspective of copyright in particular in the sphere of town-planning and architectural activity demands additional scientific research.

Paper purpose. So, the aim of this scientific article is to study the issues of legal regulation of intellectual property and copyright in town-planning and architectural activity.

Paper main body. The legal regulation and protection of the subjective copyright on objects of architectural activity is carried out at the following levels of legal regulation: 1) general legal (constitutional) level which is being provided by means of Art. 54 of the Constitution of Ukraine; 2) branch level – is being provided with the help of Book IV of the Civil Code of Ukraine, i.e. it is being provided at the level of branch of civil law; 3) subdiscipline level – is being provided at the level of the Law of Ukraine "On Copyright and Related Rights" (at the level of such subdiscipline of civil law as intellectual property rights); 4) institutional level – is being provided at the level of institute of legal regulation of town-planning and architectural activity.

In our opinion, the legal analysis of each of these levels of legal regulation of authorship in this sphere is expedient.

Under Para.1 of Art. 54 of the Fundamental Law of Ukraine, freedom of literary, artistic, scientific and technical creation, defence of intellectual property, their copyrights, moral and material interests which arise up in connection with different types of intellectual activity, is guaranteed to the citizens. Under Para. 2 of Art. 54 of the Fundamental Law of Ukraine, every citizen has a right to the results of the intellectual, creative activity; nobody can use or diffuse them without his consent, after the exceptions set by a law. Under Para. 3 of Art. 54 of the Fundamental Law of Ukraine, the state assists the development of science, establishment of scientific communications of Ukraine with the world community. Under Para.4 of Art. 54 of the Fundamental Law of Ukraine, the cultural legacy is guarded by the law, and under Para.5 of Art. 54 of the Fundamental Law of Ukraine, the state ensures the preservation of historical monuments and other objects of cultural value, and takes measures to return to Ukraine the cultural treasures of the nation, that are located beyond its borders [9].

Definition of the intellectual property right is given in Para.4 of Art. 418 of the Civil Code of Ukraine, according to which intellectual property rights shall be the rights of an entity to the results of intellectual, creative activity or to another object of intellectual property right established by this code and by the other law. Under Para.2 of Art. 418 of the Civil Code of Ukraine, intellectual property right shall consist of personal non-property intellectual rights and/or property intellectual rights [17].

So, there are 2 groups of rights on the base of intellectual property right: 1) personal non-property intellectual rights; 2) property intellectual rights.

List of objects of intellectual property rights can be found in Art. 420 of the Civil Code of Ukraine, and it also involves works of literature and art [17].

Though, Art. 420 of the Civil Code of Ukraine doesn't qualify work of architecture as objects of intellectual property right, under Art. 1 of the Law of Ukraine "On Copyright and Related Rights" of 23.12.1993, work of architecture is a work of construction or landscape design art (drawings, sketches, models, erected buildings and facilities, parks, residential area layouts, etc.) [14]. Moreover, Art. 14 and Art. 15 of this law establish the general list of personal non-property intellectual rights and property intellectual rights of an author.

Under Para. 1 of Art. 14 of the Law of Ukraine "On Copyright and Related Rights", an author possesses the following rights: 1) to demand recognition of his authorship by properly indicating the author's name on a work and its specimens of a work and during any public use of the work, if practicable; 2) to prohibit the mentioning of his name during a public use of a work if an author wishes to remain anonymous; 3) to choose a pseudonym, and to indicate and to demand indication of a pseudonym instead of his real name on specimens of a work and its specimens and during any public use thereof; 4) demand preservation of the integrity of a work, and to counteract any twisting, distortion or other alteration of a work, or any other encroachment thereon that may prejudice the author's honor and reputation [14].

Under Para.2 of Art. 15 of the Law of Ukraine "On Copyright and Related Rights", the property intellectual rights of an author (or other copyright holder) shall include: a) the exclusive right of exploitation of a work; b) the exclusive right to allow or prohibit the exploitation of a work by other persons [14].

The property intellectual rights of an author (or other copyright holder), unlike personal non-property intellectual rights, can be transferred (alienated) to another person, whereupon this person shall become a subject of copyright.

Under Para. 4 of Art. 15 of this law, exclusive rights of an author to exploit the works of architecture, city construction, garden and park art shall include the right to participate in practical implementation of the relevant work projects [14].

At the institutional level copyright on objects of architectural activity is defined in the section VI (Art. 29 - 31) of the Law of Ukraine "On Architectural Activity" of 20.05.1999.

Under p. 1 Art. 29 of the law of Ukraine "On Architectural Activity" there are next objects of copyright in the field of architecture: 1) creations of architecture, town-planning and landscape architecture: 2) schemes, architectural drawings, sculptural creations, illustrations, maps and sketches which are concern of architecture.

Under Para.2 of Art. 29 of this law, person (persons) who created the objects of architecture as the objects of copyright as the result of own creative work shall be considered to be the author (co-author) of mentioned objects. At the same time, persons rendering to the author of an object of architecture technical, consultative or organizational assistance or those who fulfill the organization of design projecting and building (reconstruction, restoration, capital repair), control over performance of mentioned works can not be considered to be co-authors [15].

Contents of copyright in the field of architecture (the property and personal non-property rights of the author (coauthors) is being defined in Art. 30 and 31 of the Law of Ukraine "On Architectural Activity". Under Art. 30 property rights on the object of architecture as the object of copyright, created pursuant to the concluded labor agreement, belong to the worker who created the object and to the

legal entity or individual for whom he works collectively, unless other is envisaged by the agreement. Property rights on the object of architecture as the object of copyright, created to order belong to the creator of this object and to the ordering party (developer) collectively, unless other is envisaged by the agreement [15].

Author of the design project of creations of architecture, town-planning and landscape architecture shall have the exclusive rights: 1) to participate in subsequent embodiment of the design project, unless other is envisaged by the agreement with the ordering party (developer) or legal entity or individual for whom he works; 2) to amend not accomplished or accomplished creations of architecture, town-planning and landscape architecture in case of change of functional intended use or reconstruction.

The design project of creations of architecture, city development and landscape architecture shall be available for the embodiment only once, unless other is envisaged by the contract, according to which the design project is elaborated. Such project and the working documentation developed on its basis can be reused out only with the agreement of an author with payment to him or his assignee of award.

Author of the design project of creations of architecture as the object of copyright shall have right to receive royalty for creation and operation of it in established by the legislation order [15].

Under Art. 31 of the Law of Ukraine "On Architectural Activity", there are those personal non-property rights of an author (co-authors) on the object of architecture as the object of copyright: 1) right to make photos, perform video filming of the relevant object of architecture as the object of copyright with the exceptions, defined by the law; 2) right to authorship (co-authorship) recognition by means of indicating of name properly on the object of architecture, shall it be practically possible.

Personal non-property rights on the object of architecture as the object of copyright shall belong to the author (co-author) of it notwithstanding the

conditions of the contract concluded between author and the ordering party (developer) or legal entity or individual for whom he works [15].

Conclusions. Therefore, the legal regulation and protection of copyright in the sphere of town-planning and architectural activity is provided on the basis of an integrated approach which provides a combination of various levels of law norms, in particular: constitutional legal norms, civil legal norms, norms of law of intellectual property; norms of institute of architectural activity legal regulation.

Only on condition of their complex use it is possible to talk about effective process of realization and protection of copyright in this sphere.

References

1. Bell D. Hriadushchee postyudustrialnoe obshchestvo: Opit sotsyalnoho prohnozyrovanyia / D. Bell. – M. : Academia, 1999. – 956 c.
2. Habrel M. M. Prostorova orhanizatsiia mistobudivnykh system / M. M. Habrel. – K. : Vydavnychi dim A.S.S., 2004 – 400 s.
3. Hradostroytelnie osnovi razvytyia malikh naseleennykh mest ; pod red. E. M. Markova. — M. : Stroiizdat, 1989. – 416 s.
4. Demyn N. M. Upravlenye razvytyem hradostroytelnykh system / N. M. Demyn. – K. : Budivelnyk, 1991. – 185 s.
5. Demyn N. M. Problemi y perspektyvi rekonstruktsyy raionov massovoi nastroiiky 60-70 hodov v Ukrainy / N. M. Demyn, M. V. Byvalyna // Suchasni problemy arkhitektury ta mistobuduvannia: Nauk.-tekhn. zb. – 2004. – Vyp. 13. – S. 101–107.
6. Zaslanskyi T. M. Suchasni tendentsii zhytlovoho budivnytstva u mistakh Ukrainy / T. M. Zaslanskyi // Perspektyvni napriamky proektuvannia zhytlovykh ta hromadskykh budivel. Zb. nauk. prats. Spets. vypusk: Sotsialni napriamky rozvytku arkhitektury ta budivnytstva. – K.: Kyiv ZNDIEP, 2005 – S. 16-20.
7. Kliushnychenko I. I. Sotsialno-ekonomichni osnovy planuvannia ta zabudovy mist / I. I. Kliushnychenko. – K. : Ukrarkhbuildinform, 1999. – 348 s.
8. Knysh V. V. Avtorske pravo na ob'ekty arkhitekturnoi diialnosti / V. V. Knysh // Kontseptualni napriamy rozvytku arkhitektury: materialy mizhrehionalnoi naukovo-praktychnoi konferentsii (m. Ivano-Frankivsk, 15 hrudnia 2010 roku). – Ivano-Frankivsk : Vyd-vo Ivano-Frankivskoho universytetu prava imeni Korolia Danyla Halytskoho, 2010. – S. 60 – 65.
9. Konstytutsiia Ukrainy vid 28.06.1996 r. zi zminamy i dopovnenniamy, vnesenyi Zakonom Ukrainy № 2222-IV vid 08.12.2004 r.– Kh.: PP «IHVINI», 2009. – 64 s.
10. Kushnirenko M. M. Metody peredproektnoho analizu v mistobuduvanni / M. M. Kushnirenko. – K. : IZMN, 1996. – 164 s.
11. Nudelman V. I. Planovalna orhanizatsiia terytorii / V. I. Nudelman // Mistobuduvannia: Dovidnyk proektualnyka – K. : Ukrarkhbuildinform, 2001. – S. 9–12.
12. Ositnianko A. P. Planuvannia rozvytku mista / A. P. Ositnianko. – K. : KNUBA, 2001 – 460 s.
13. Posatskyi B. S. Osnovy urbanistyky / B. S. Posatskyi. – Lviv : Vyd-vo NU Lvivska politekhnika, 1997. – Ch. 1. – 116 s.

14. Pro avtorske pravo i sumizhni prava: Zakon Ukrainy vid 23.12.1993 r. // Vidomosti Verkhovnoi Rady Ukrainy (VVR). – 1994. – № 13. – St. 64.
15. Pro arkhitekturnu diialnist: Zakon Ukrainy vid 20.05.1999 r. // Vidomosti Verkhovnoi Rady Ukrainy (VVR). – 1999. – № 31. – St. 246.
16. Rokhchyn V. Stratehicheskyi vybor horoda: nauchnyi podkhod / V. Rokhchyn, S. Zhylkyn. – SPb. : YSOP RAN, 1998. – 112 s.
17. Tsyvilnyi kodeks Ukrainy vid 16.01.2003 // Vidomosti Verkhovnoi Rady Ukrainy (VVR). – 2003. – № 40–44. – St. 356.