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A MISSING PERSON AS A COPYRIGHT HOLDER

The disappearance of people is a phenomenon that requires in-depth multi-faceted analysis. The law does not regulate the situation of a missing person between their disappearance and being declared dead. During this time, in the understanding of the law, a missing person remains an entity that can dispose of their property rights and personal rights, but because of the disappearance people are unable to do that, so his/her rights are exposed to be lost or unlawfully used by other persons. As a result, many doubts must be faced by people close to the missing person.

This work discusses the copyrights of the missing person, its execution and protection in the time between the disappearance and declaring the person dead. As an introduction, the subject of copyright (work) is discussed and the division of copyright into moral rights and property rights is indicated. Next, the paper presents the possible ways of proceeding in the event of a disappearance, including a minor, spouse, and co-creator. The possibility of appointing a custodian and submitting a request to a prosecutor is indicated, and an analogous application of provisions in the event of death is proposed. Moreover, a situation where an action to protect moral/economic copyrights has been brought before a person missing (the proceedings are pending) is noted. Finally, the consequences of declaring a missing person to be dead are discussed.

Based on the considerations carried out, it can be concluded that there is no single appropriate legal solution in a situation where there is a need to exercise and protect the personal/economic copyrights of a missing person. The proposed solutions of proceeding in the missing person case are not specifically designed in the event of a disappearance, and their application is not established in practice. It seems that the court should recognize the need to protect the interests of the missing person and allow the proceedings to be conducted when referring to one of the proposed solutions. Adaptation of the indicated solutions, in the face of the forced inactivity of the missing person, should guarantee the protection of his/her rights. De lege ferenda, it is worth considering the general regulation of a person's situation from the moment of his/her disappearance until he/she is declared dead. This could be done by introducing a provision providing for the possibility of appointing a custodian to handle the missing person's affairs.

Keywords: missing person; declared dead; work; copyrights.

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Зникла особа як власник авторських прав

Зникнення людей – це явище, яке потребує глибокого багатогранного аналізу. Закон не регулює становище зниклої людини між її зникненням та оголошенням померлим. Протягом цього часу, за законом, зниклий безвісти залишається суб'єктом господарювання, який може розпоряджатися своїми правами власності та особистими правами, але ж фактично зникла людина не може цього зробити, тому його/її права втрачаються або незаконно використовуються іншими особами.

Досліджено авторські права зниклої особи, їх виконання та захист у період між зникненням та оголошенням особи померлою; предмет авторського права (твору) та поділ авторського права на моральні права та майнові права. Запропоновано можливі шляхи поводження у разі зникнення, включаючи неповнолітніх, подружжя та співавтора; розглянуто можливість призначення опікуна та подання клопотання прокурору, а також запропоновано аналогічне застосування положень у разі смерті. Проаналізовано ситуацію, коли до захисту особи, яка пропала безвісти (розгляд справи триває), було подано позов про захист моральних/економічних авторських прав. Вивчено наслідки оголошення пропалої безвісти мертвою.

Зроблено висновок, що немає єдиного відповідного правового рішення у ситуації, коли є необхідність реалізувати та захистити особисті/економічні авторські права зниклої особи. Запропоновані рішення у справі про зниклу особу спеціально не розроблені, а їх застосування не встановлено на практиці. Очевидно, що суд повинен визнати необхідність захисту інтересів зниклої особи та дозволити провадження у справі, посилаючись на одне із запропонованих рішень. Адаптація таких рішень з огляду на вимушену бездіяльність зниклої особи повинна гарантувати захист її/його прав. *De lege ferenda*, варто розглянути загальне регулювання становища особи з моменту її зникнення до моменту оголошення її померлою. Це можна було б зробити, запровадивши положення, яке передбачає можливість призначення опікуна для розгляду справ зниклої особи.

Ключові слова: зниклий безвісти; оголошений померлим; авторські права.

1. Introduction

Problem setting. The problem of the death of an individual is the subject of interest in many fields of science, including being widely discussed in law. The main issue is identifying an appropriate definition of death, especially because of its correlation with medical treatment and organ donation. In world literature it is discussed in terms of historical and current standards of the moment of death, but most of all regarding proposed alternative standards¹. Those considerations are very important, because its results are statutory regulations of the moment of death, which influences *inter alia* the rules of succession.

A special regulation regards provisions for the presumption of death, which indirectly relate to the definition of death, because they apply when a person goes missing, but it is not known whether the person is still alive or has already died (the so-called surrogate establishing the fact of death², death in absentia, also known as “legal death”³). The purpose of the presumption of death is therefore to declare the

¹ Among these, a lot of space is devoted to brain death, see: Sarby, B. (2016). Definitions of Death: Brain Death and What Matters in a Person. *Journal of Law and the Biosciences* 3, no. 3, 2016, p. 743–752; Lewis, A., Cahn-Fuller, K. Caplan, A. (2017). Shouldn't Dead Be Dead: The Search for a Uniform Definition of Death. *Journal of Law, Medicine and Ethics* 45, no. 1, 2017, p. 112–128; Lombard, J. (2012). The Definition of Death. *Hibernian Law Journal* 11, 2012, p. 63–84; Marquis, D. (2014). Death as a Legal Fiction. *American Journal of Bioethics* 14, no. 8, 2014, p. 28–29.

² Pilich, M. (2021). Commentary to art. 29. In: *Kodeks cywilny. Komentarz. Tom I. Część ogólna*, cz. 1 (art. 1–55(4)), J. Gudowski (ed.), Warsaw: Wolters Kluwer Polska, 2021, available in lex database.

³ Burch, R.A. (2017). Presumed Dead: Why Arizona Should Shorten the Required Time for Beloved Missing Persons to Be Declared Legally Dead. *Arizona Summit Law Review* 10, no. 1, 2017, p. 60.

death of a person and thus remove a state of uncertainty. As it turns out, globally every year thousands of people are reported missing¹. Therefore, there is no doubt that unresolved disappearances are a phenomenon that requires in-depth multifaceted analysis.

Analysis of recent research and publications. Legal regulations about presumption of death are constructed in countries depending on the circumstances of the missing person's disappearance, and the length of waiting time required depends solely on the age of the person at the time of his or her disappearance². Based on the literature review, it can be concluded that authors focus on the analysis of specific cases of the disappearances of natural persons (e.g., their hypothetical causes), the interpretation of the content of the applicable regulations and legal consequences of the presumption of death³. Meanwhile, it seems that in the case of the missing person, too little space is devoted to the legal situation of the missing but not yet declared dead person, including, *inter alia*, implementation and protection of its rights.

The legal status of disappeared persons is unique in law. From a legal point of view, a missing person, until an order declaring death is issued, is treated as a live person, and therefore, for example, participates in established civil relations. Disappearance is not the same institution as death. A missing person may be a husband or a parent; is an employee/employer or runs his/her own business; and/or he/she is the owner of things (e.g., a car, a flat), and may also be entitled to intangible goods such as intellectual property rights, e.g., a work (in the meaning of copyrights), computer programs, inventions, or utility models. The law does not regulate situations that relate to a missing person who is not yet declared dead (there are many more of these⁴). Meanwhile, against this background, a number of doubts can arise that need to be dealt with by those closest to the missing person.

Statement of article objective. The considerations in this study are intended to discuss the copyrights of a missing person, their exercise and protection in the time between disappearance and declaring a person dead. As an introduction and systematization of the main matter, the subject of copyright is discussed (as a concept necessary to determine the copyright of a missing person) and the division

¹ Schoeman-Malan, L. (2018). Missing Persons – Current Tendencies. *Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law)* 81, no. 2, 2018, p. 219.

² For example, see art. 29–32 of the of the Act of April 23, 1964, The Civil Code (consolidated text, *Journal of Law of 2019*, item 1145, as amended), hereinafter: the Civil Code.

³ For more especially see: Burch, R. A. (2017). *op.cit.* p. 63–67, and also Lisnicha, T.V. (2011). The Law Consequences of Appearance of a Person Who Was Declared Dead: Detection and Solutions to Related Problems. *Law and Safety* no. 4, 2011, p. 196–200; Stewart, R.J. (1988). Presumption of Death. *Advocate (Vancouver Bar Association)* 46, no. 4, 1988, p. 595–602; Ramghani H.M., Roshan, M., Khah M.N. (2017). The Effect of Death on Dissolution of Marriage Contract with Emphasis on Presumed Death. *Journal of Politics and Law* 10, no. 1, 2017, p. 219–227; Citroni, G. (2014). The Pitfalls of Regulating the Legal Status of Disappeared Persons through Declaration of Death. *Journal of International Criminal Justice* 12, no. 4, 2014, p. 787–804.

⁴ For example, see: Schoeman-Malan, L. (2018). *op.cit.* p. 236.

of copyrights into moral rights and economic rights is indicated. Then, possible ways of proceeding in the event of a person missing are presented, including the status of the person (child, spouse, co-creator). Also noted is when an action for the protection of moral/economic copyrights was brought before the person missing (the proceedings are pending). Finally, the consequences of declaring a missing person to be dead are discussed. Due to the specificity of the analyzed issues, the subject of analysis was the legal solutions applicable under Polish law. The considerations may be an initiation for further discussion, especially a comparative one.

Presentation of the main body of the article

2. The work and the copyrights created at the time of its establishment

Legal protection covers not only things (material objects), but also products of the human mind (intellect) in the form of non-material intangible goods belonging to the broad category of intellectual property rights. Part of an intellectual property right is copyright relating to the work. It should be emphasized that the qualification of a “product” of human activity as a work allows for the application of copyright law. To the work are assigned moral and economic copyrights¹. Also, a missing person may be entitled to copyrights. Therefore, in order to discuss the exercise and protection of copyrights of a missing person, first of all it is necessary to define the concept of a work and to describe moral and economic copyrights.

2.1. Work definition

A work is an intangible good, not being a thing². Generalizing (simply speaking) it can be distinguished, for example, a copy of a book, i.e., a material object constituting a collection of sheets of paper on which graphic signs are printed (material object, physical content carrier) and a work, i.e., the content of a book, thoughts expressed in a linguistic message, that are duplicated in multiple copies of books. In this context, copyright protects “content” because it is the product of the author’s intellect, regardless of its physical medium.

The legal definition of a work is broad, probably because it also includes an open catalog of works (Article 1 of the Act of February 4, 1994 on Copyright and Related Rights³), which should meet three premises: it should be the result of creative activity, have an individual character and be determined in any way⁴. Specification of

¹ The Polish Copyright Law establishes a dualistic structure of copyrights, distinguishing moral and economic rights, Traple, E. (2013). In: Prawo autorskie i prawa pokrewne, System Prawa Prywatnego, Tom 13, J. Barta (Ed.), Warsaw: C.H. Beck, 2013, p. 133.

² Compare: Madison, M.J. (2017). IP Things as Boundary Objects: The Case of the Copyright Work. Laws 6, no. 3, 2017, p. 1-44.

³ Act of February 4, 1994 on Copyright and Related Rights (consolidated text, Journal of Law of 2019, item 1231, as amended), hereinafter: the Copyright Law.

⁴ There are extensive jurisprudence as to the interpretation of the premises of the work, for example: judgment of Administrative Court in Lodz of March 22, 2018, case reference No. I AGa 54/18 (lex database, No. 2684129), judgment of the Supreme Administrative Court of January 21, 2021, case reference No. II GSK 954/18 (lex database, No. 3118365), judgment of the Supreme Administrative Court of July 11, 2018, case reference No. II FSK 1845/16 (lex database, No. 2528581), judgment of the Court of Appeal in Katowice of December 16, 2020, case reference V AGa 652/18 (lex database, No. 3112822).

the indicated premises can be made on the basis of a review of the jurisprudence. On this basis it follows that we deal with creative activity when the process of creation is the result of an independent creative effort of a human being, originating in the mind of the creator. It is not a creative activity that is imitative, artisanal, technical or otherwise devoid of elements of imagination, free expression, repetition, or pattern. Creative activity may relate to any area of human activity, including artistic, musical, literary, scientific, etc. In turn, the individual character of a work means that when it is the result of a personal approach to the creator and not the result of certain regularities (e.g., pattern). Therefore, it is statistically unique (original) and different from the works previously functioning in the so-called public domain. At the same time, the law does not define the minimum of originality. In the event of a dispute, the court shall assess the originality of the “product”. Finally, the work should be externalized in such a way that it is possible or at least once perceptible by third parties. The arrangement of the work may take any form, e.g., simply singing a song in front of an audience is an arrangement¹. The premise of a work, and even more than premise – its legal protection condition – are not such features as: value (aesthetic, economic, functional, etc.), purpose (artistic, functional, commercial, and other), manner of expression (drawing, sketch, mockup, etc.), edition and the nature of the creator’s work, as well as the creator’s age, education, mental state (sanity), etc. The work does not have to be finished (protection also applies to, for example, a draft of a work, Article 1 sec.3 of the Copyright Law).

It is worth emphasizing that the work is protected from the moment of its creation (externalization of the work), regardless of the fulfillment of any formalities, e.g., registration, submission of the work, or payment of a fee. Protection arises automatically (by operation of law, regardless of the creator’s intention). Disclaimers appearing on the work, such as “copyright by” and “all rights reserved” are for informational purposes only. Their absence does not negate protection².

It should be noted that discoveries (e.g., scientific discoveries concerning objectively existing elements), ideas (e.g., style), procedures (e.g., a recipe), methods (e.g., used in creating a work) and principles of operation as well as mathematical concepts are not covered by protection (Article 1 sec. 2¹ of the Copyright Law). Copyright protection may apply to a concrete realization, e.g., the concept of a game as an idea is not protected, but as a specific board game – provided that it meets the requirements of the work – is protected. Moreover, the legislator clearly indicated that they are not subject to copyright: normative acts and their official drafts (e.g., acts, regulations); official documents, materials, signs, and symbols (e.g., court judgments, administrative decisions; it seems that official materials include rector’s orders, university authorities’ announcements); published patents and protections

¹ Wider about premises of a work: Barta J., Markiewicz, R. (2016). *Prawo autorskie i prawa pokrewne*, Warsaw: Wolters Kluwer Polska, 2016, p. 48–83; Grzybczyk, K. (2017). Commentary to art. 1. In: *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz*, P. Ślęzak (Ed.), Warsaw: C.H. Beck, 2017, p. 6–13.

² For example: Flisak, D. (2018). Commentary to art. 1. In: *Komentarz do wybranych przepisów ustawy o prawie autorskim i prawach pokrewnych*, D. Flisak (Ed.), lex database, 2018.

(e.g., inventions); simple press releases (simple information devoid of comments, used in press services, traditional and electronic press) (Art. 4 of the Copyright Law)¹.

2.2. Copyrights

2.2.1. Moral copyrights

With the work (according to the law in force in Poland) are connected moral and economic copyrights². Moral copyrights protects the creator's bond with the work, i.e., the emotional, psychological relationship of the creator with the "product" of his intellect (non-economic interests). Moral rights are not transferable³. Moreover, these rights are unlimited in time (Art. 16 of the Copyright Law). The entitled from moral rights is the author or co-creator (human only). If the work was created/co-created by a person who has disappeared, that person remains as the author of the work and is still entitled to moral rights.

Pursuant to Art. 16 of the Copyright Law, the catalog of an author's moral rights is open, and in particular includes the right to: 1) authorship of the work; 2) mark the work with his or her name or pseudonym or to make it available anonymously; 3) inviolability of the content and form of the work and its fair use; 4) decide on the first release of the work to the public; and 5) supervise the use of the work⁴. The author's rights indicated above may be limited by the legitimate interests of entities entitled to copyrights to the work (e.g., licensees, publishers) and due to the development of new technologies and the exploitation of works and the interests of recipients.

2.2.2. Economic copyrights

As the name implies, economic copyrights are shaped like property⁵. Contrary to moral rights, entitlement to economic copyrights may be a legal entity other than the author/co-author (see Art. 11, Art. 12, Art. 41, Art. 74 sec. 3 of the Copyright

¹ See: Markiewicz, R. (2018). *Ilustrowane prawo autorskie*, Warsaw: Wolters Kluwer Polska, 2018, p. 128–135.

² These rights have been formulated in article 6bis (1) of the Berne Convention for the Protection of Literary and Artistic Works, Paris Act of 24 July 24 1971, as amended on 28 September 1979. WIPO Publication No 287 (E), see also: Matveev, A.G. (2016). *The Structure of Copyright Systems of France, Germany and Russia*. *Perm University Herald Juridical Sciences* 33, 2016, p. 348–353; Pisuke, H. (2002). *Moral Rights of Author in Estonian Copyright Law*. *Juridica International* 7, 2002, p. 166–175.

³ That is connected with the interesting phenomenon called "ghostwriting", for more see: Lerman, L.G. (2001). *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*. *South Texas Law Review* 42, no. 2, 2001 p. 472–479; Lewandowska, E. (2018). *Ghostwriting, ghostpainting, ghostcomposing... czyli o pozornym autorstwie*. In: *Gospodarka narodowa a rynek wewnętrzny Unii Europejskiej. Prawno-ekonomiczne problemy integracji. Własność intelektualna – konkurencja – przedsiębiorczość*, M. Krylikowska-Olczak, D. Ossowska-Salamonowicz, M. Salamonowicz, A. Cekała (Eds.), Olsztyn: E-Seria Monografie Wydziału Prawa i Administracji UWM, 2018, p. 39–48.

⁴ For example compare: Pisuke, H. (2002). *op.cit.* p. 169–170; Jones, P. (1997). *Copyright Law and Moral Rights*. *Waikato Law Review* 5, 1997, p. 84–86.

⁵ Traple, E. (2013). *op.cit.* p. 137–144; Błeszyński, J. (2017). "Własnościowy" model autorskich praw majątkowych według polskiej ustawy o prawie autorskim i prawach pokrewnych. In: *Experientia docet. Księga jubileuszowa ofiarowana Pani Profesor Elżbiecie Traple*, P. Kostański, P. Podrecki, T. Targosz (Eds.), Warsaw: Wolters Kluwer Polska, 2017, p. 45–60.

Law). First of all, these rights are transferable, which means they can be transferred to another person by inheritance or by contract (Art. 41 of the Copyright Law)¹. As a result of the conclusion of the contract for the transfer of economic copyrights – the buyer or the contract for the use of the work (license) – the licensee becomes entitled to the economic copyrights to the extent specified in the contract, e.g., acquiring the right to use the work in a specific field of exploitation. This means that a missing person may also be an entity entitled under economic copyrights (e.g., as a creator/co-creator, producer, employer, heir, buyer of economic copyrights). It is then that relatives should consider taking actions regarding copyrights.

Pursuant to Art. 17 of the Copyright Law, unless the Act provides otherwise, the author/co-author has the exclusive right to use the work and dispose of it in all fields of use and to remuneration for use of the work². The rights resulting from economic copyrights also include the exclusive right to authorize the exercise of derivative copyright (Art. 46 of the Copyright Law), i.e., the right to compile works, in particular translations, modifications, and adaptations³. Due to the transferability of economic copyrights, the above-mentioned rights may also be held by other entities.

A characteristic of economic copyrights is that they are limited in time (as opposed to moral rights). As a rule (subject to the exceptions provided for in the Act), copyrights expire seventy years after the author's death, and co-authored works expire upon the death of the longest surviving co-author (see Art. 36 of the Copyright Law)⁴.

3. The fact of disappearance and the need to exercise and protect copyrights

Until what happened with the missing person is known, i.e., the person is found, the corpse is found, or the time required for declaring him or her dead has elapsed, he/she remains the legal entity that may dispose of his/her property and personal rights. However, *de facto* – due to the fact that the person has disappeared – a waiting situation arises, and the rights of the missing person are exposed to the risk of loss or unlawful use by other persons.

Assuming that the missing person is the creator and only person authorized under economic copyrights (i.e., there is no co-creator, other co-authorized entity, proxy, etc.), all actions falling within the scope of the rights resulting from moral/economic copyrights remain without any reaction from the entitled person. Among other things, it is not known who can give effective consent to another entity to use

¹ Kubala, W. (1995). Autorskie prawa majątkowe jako przedmiot obrotu prawnego. *Przegląd Prawa Handlowego* no. 5, 1995, p. 28–30; Sokołowska, D. (2018). O możliwości przeniesienia „całości” autorskich praw majątkowych. In: *Qui Bene Dubitat, Bene Sciet*. Księga jubileuszowa dedykowana Profesor Ewie Nowińskiej, J. Barta, J. Chwalba, R. Markiewicz, P. Wasilewski (Eds.), Warsaw: Wolters Kluwer, 2018, p. 722–732; Markiewicz, R. (2018). *op.cit.* p. 432–434; Traple, E. (2010). Umowy o eksploatację utworów w prawie polskim, Warsaw: Wolters Kluwer, 2010, p. 19 et seq.

² Barta J., Markiewicz, R. (2016). *op.cit.* p. 151 et seq., Matusiak, I. (2017). Commentary to art. 17. In: *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz*, P. Ślęzak (Ed.), Warsaw: C.H. Beck, 2017, p. 167 et seq.

³ Załucki, M. (2017). Commentary to art. 46. In: *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz*, P. Ślęzak (Ed.), Warsaw: C.H. Beck, 2017, p. 416 et seq.

⁴ Wider: Traple, E. (2013). *op.cit.* p. 241–270; Markiewicz, R. (2018). *op.cit.* 180–186.

the work (e.g., use of the work for its development, such as a translation) or transfer the rights. The lack of the entitled person also means that the entities obliged under contracts concluded with the entitled to pay remuneration for the use of the work cannot fulfill this obligation, which may have negative consequences for the property of the missing person. Among the consequences of failure to exercise copyright, without analyzing them in detail, are recognition of a lost authorship as an orphan work and loss of payment of funds (so-called revenue from rights). Moreover, due to the absence, the entitled party whose copyrights have been infringed by someone else (e.g., the work was disseminated without revealing the authorship or introducing changes to the work without the author's consent) will not file an action for their protection. The above observations prove that if we are dealing with a work and the copyright holder is a person who has disappeared, it is justified in such circumstances to consider possible ways of proceeding.

3.1. Exercise and protection of copyrights of a missing person

The provisions of the Copyright Law do not provide for any special regulations in the event of the author's absence with regard to neither moral nor economic copyrights. Therefore, the general provisions of civil law shall be applied. These, however, are not designed specifically in the event of absence, and their use is not established in practice. It seems that the court should recognize the need to protect the interests of the missing person and allow the proceedings to be conducted when referring to one of the proposed solutions. Adaptation of the indicated methods of action, in the face of the forced inactivity of the missing person, will prevent the protection of his/her rights from remaining illusory. Below, on the basis of a review of civil law provisions, are possible ways of proceeding in the event of a person's disappearance and the need to exercise and protect their copyrights. If there are differences among the presented options depending on the category of rights (personal or economic), these are indicated in the content.

3.1.1. Minor missing

It seems that in a situation where the missing child is under parental authority, its legal representative may take steps to protect copyrights. The legal basis is Art. 95, 98, 101 of the Act of February 25, 1964, Family and Guardianship Code¹. A legal representative, usually a parent, may therefore bring claims against those who threaten or violate the personal/economic rights of the missing person. On the other hand, as regards the exercise of copyrights of a missing minor, it can be indicated that parents are obliged to exercise due diligence in managing the property of a child under their parental authority². It must be stipulated that parents may not, without the consent of the guardianship court, perform "activities beyond the scope of day-to-day management" (Art. 101 of the Family Code³). It can be assumed that legal actions

¹ Act of February 25, 1964, Family and Guardianship Code (consolidated text, Journal of Law of 2020, item 1359, as amended), hereinafter: Family Code.

² Romanow, Sz. (2021). Zarząd majątkiem dziecka sprawowany przez rodziców, *Transformacje Prawa prywatnego* 1, 2021, p. 125–152.

³ The undefined, Gajda, J. (2020). Commentary to art. 101. In: *Kodeks rodzinny i opiekuńczy. Komentarz*, K. Pietrzykowski (Ed.), Warsaw: C.H. Beck, 2020, legalis database.

involving the copyrights of the missing person (e.g., granting consent to use a work) require the consent of the guardianship court. Similar is the collection of remuneration for use of a work due to a missing child. However, due to the content of Art. 101 § 2 of the Family Code, it should be taken into account that the court may refuse to permit the collection of remuneration. The provision of art. 101 § 2 of the Family Code indicates that management exercised by parents does not include the child's earnings¹.

3.1.2. Missing spouse

In the event that the missing person remains married and the spouses were living together until the disappearance, it should be considered that the spouse may request protection on the basis of Art. 29 of the Family Code. This provision provides for the legal representation of the spouse who, due to a temporary obstacle, cannot act in matters of ordinary management of his or her personal property². By the same example, it can be indicated that a spouse may collect receivables due to the other spouse without a power of attorney.

Although the protection of personal copyright is not a property matter, in this case it is about the protection of rights, i.e., conservative activities that may be performed by persons authorized under the Act to perform ordinary management activities. The protection of these rights may be the further condition of the protection of the property rights of the entitled person, especially when the work has already been made available to the public.

3.1.3. Co-authorship

If the copyrights of the missing person result from co-authorship, each of the co-authors is entitled to pursue claims for infringement of copyright to the entire work. The benefit obtained is granted to all co-authors, depending on the size of the shares (Article 9 sec. 4 of the Copyright Law). The provisions of the Civil Code on joint ownership in fractional parts³ (Art. 9 sec. 5 of the Copyright Law).

3.1.4. Establishing a custodian

In the event of a person's disappearance, it is possible to submit an application to the guardianship court for the appointment of a custodian for a person who, due to his absence, cannot conduct his affairs and has not appointed an attorney (Article 184 of the Family Code). Since the person is missing and it is not known where he/she is, the fact of his/her death has not been established, and there is a need to protect the rights, this solution seems to be justified. In this case, it should be indicated that the person could act as the custodian of the missing person. After obtaining the decision to appoint a custodian of a missing person, the custodian will be able to bring claims against entities that threaten or violate the rights of the missing person⁴.

¹ The concept of earnings is broad, includes remuneration for contract work and income obtained from self-employed business activity, Gajda, J. (2020). op.cit. legalis database.

² Judgment of Administrative Court in Bialystok of March 8, 2013, case reference: No. I ACa 894/12 (legalis database, No. 715198).

³ I.e. the provisions of Art. 195 et seq. of the Civil Code.

⁴ The custodian of the missing person should not be confused with the proceeding custodian. It is a procedural institution that allows to conduct or initiate proceedings to pro-forma ensuring the existence of the other party to the process. It is established on the basis of procedural law or when

3.1.5. Application to the prosecutor

Another option to act in the event of a person missing is the possibility of applying to the prosecutor to initiate proceedings (Article 7 of the Act of November 17, 1964, Code of Civil Procedure¹). This can be done by any person if only the moral / economic rights of the missing person are threatened by someone else's action or have been infringed. Such an application should indicate the circumstances related to the threat/violation of the author's copyrights. It is worth pointing this out in an application to the disappearance of the entitled. The prosecutor assesses whether there is a need to protect the rights of a given person. He or she may request the initiation of proceedings in any case, as well as take part in any pending proceedings, if, in his or her opinion, it is required to protect the rule of law, citizens' rights or social interest (Article 7 of the Code of Civil Procedure). If proceedings are instituted, the prosecutor participates in the proceedings as a party with the rights of a party. He or she may submit statements, evidence applications, and also challenge decisions².

3.1.6. Analogous application of the provisions in the event of death

It seems that at the time of the disappearance of a person, it is also possible to consider allowing authorized entities in the event of their death to take protective measures. It is about invoking the fact that in the event of the death of person, others would have the right to demand protection of their rights (as if that person was already dead). An analogy would be that it is unknown whether the missing person is alive, his or her absence lasts for a long time, and there is a need to protect his/her copyrights.

In the case of moral rights, the legislator in the Copyright Law provided for a special solution in the event of death, namely Art. 78 sec. 2 and 4 of the Copyright Law. The cited provision provides (if the author has not expressed a different will) a group of people entitled to claim protection of moral copyrights after the author's death. On the other hand, as regards economic copyrights, the general provisions of civil law regulating inheritance are applied, subject to Art. 42 of the Copyright Law.

So far, no proceedings based on the proposed analogy are known, so it is difficult to decide whether the courts will accept such a solution. Therefore, it is even more worth discussing the proposed ones.

3.2. A missing person as authorized to exercise the moral rights of another creator

Although the author cannot renounce the relationship with the work, in practice he/she can contractually regulate the rules of exercising these rights, e.g., authorizing

the provisions of substantive law so require. The proceeding custodian performs actions only in the pending proceedings as a substitute party to the trial and may not take out-of-court actions, judgment of Court of Appeal in Szczecin of June 18, 2014, case reference I ACa 236/14 (legalis database, No. 1241503, wider: Gajda, J. (2020). Commentary to art. 184. In: *Kodeks rodzinny i opiekuńczy. Komentarz*, K. Pietrzykowski (Ed.), Warsaw: C.H. Beck, 2020, Legalis.

¹ Act of November 17, 1964, Code of Civil Procedure (consolidated text, Journal of Law 2020, item 1575, as amended), hereinafter Code of Civil Procedure.

² Wider: Pogonowski, P. (2021). Commentary to art. 7. In: *Kodeks postępowania cywilnego. Komentarz*. Tom I. Artykuły 1–366, T. Wiśniewski (Ed.), Warsaw: Wolters Kluwer Polska, 2021, lex database.

another person to exercise moral rights¹. The situation may raise doubts when that authorized person goes missing.

At the beginning, it can be noticed that if a missing person is authorized to exercise the moral copyrights of another creator, assuming that the creator is alive, there is nothing to prevent him or her from exercising his or her moral copyrights. Whereas, when the only person authorized to exercise the author's moral copyrights (e.g., because he or she is deceased) is missing, it seems that other people interested in protecting the rights of the deceased creator should seek help from the association of authors competent in terms of the type of creativity or an organization for collective management of copyright or related rights that managed the copyrights of the deceased creator (Art. 78 sec. 4 of the Copyright Law). This interpretation is the result of the term "sequentially" as used in the mentioned provision².

4. Pending proceedings and the disappearance

A different situation from the ones discussed so far is when an action for the protection of moral/economic copyrights has already been brought before the disappearance of the person (i.e., the proceedings are pending), where the claimant/defendant is a missing person. As long as the authority does not have a death certificate or a legally binding court decision confirming death or a declaration of death, it is necessary to appoint an absent person's custodian. When representing a person absent in civil proceedings, the custodian acts on their behalf and in their interest (they are their legal representative). An interested person may submit a request to initiate proceedings for the appointment of a custodian for a missing person. Anyone whose rights are affected by the outcome of the proceedings is an interested person (Art. 510 in conjunction with Art. 601 of the Code of Civil Procedure). Basically, it is a person who, for example, is a party to the proceedings. Therefore, no one from the missing person's family may submit a motion to institute proceedings for the appointment of a custodian for a missing person. Since the proceedings for the protection of moral/economic copyrights are pending, the determination of the absence of the plaintiff/defendant (missing entitled person) should be made by the court *ex officio* and on this basis appoint a probation officer.

5. Declaring a missing person dead

Recognition of a missing person as deceased (Articles 29–32 of the Civil Code) results in a statement in law that he or she has died from the date specified in the court decision and from that date the provisions apply, as in the case of human death³. A death certificate is drawn up, the inheritance is opened, and certain entities can exercise their powers in the field of the rights of the deceased. The legal effects

¹ Wider: Wyrwiński, M. (2019). *Autorskie prawa osobiste w obrocie prawnym*. Warsaw: Wolters Kluwer Polska, 2019, p. 295–325.

² Lewandowska, E. (2018). Katalog podmiotów uprawnionych z tytułu praw autorskich osobistych po śmierci twórcy. In: *Prawo w służbie małżeństwu i rodzinie. Księga jubileuszowa dedykowana ks. prof. dr. hab. Ryszardowi Sztuchmillerowi z okazji 70. rocznicy urodzin*, M. Ryżański, J. Krzywkowska, M. Rzewuska (Eds.), Olsztyn 2018, p. 207–208.

³ Pazdan, M. (2012). In: *Prawo cywilne – część ogólna. System Prawa Prywatnego, Tom 1*, M. Safjan (Ed.), Warsaw: C.H. Beck, 2012, p. 1072.

of declaring a missing person dead are the same as those of a natural person's death¹. This has a significant impact on the actions that may be taken by persons close to the missing person in terms of copyright.

5.1. Actions that may be taken by the closest of the missing person in relation to the moral copyrights of the deceased person

Contrary to the protection of personal rights under the general provisions of civil law, moral copyrights do not expire upon the author's death, but continue indefinitely². For obvious reasons, however, the creator can no longer demand their protection. The legislator provided for a regulation for such a situation, stating that if the missing author did not express a different will (e.g., in a will), then after his or her death the spouse is entitled to exercise moral copyrights, and in the absence of such a spouse then descendants, parents, siblings, or descendants of siblings (art. 78 sec. 2 and sec. 3 of the Copyright Law)³. It should be emphasized that the indicated persons become eligible in the correct order (i.e., if the spouse of the deceased author is alive, other persons do not have the right to exercise the moral copyrights of the deceased author, etc.). Persons indicated in Art. 78 sec. 2 of the Copyright Law have the power to demand protection whether or not they are appointed to the estate. In the event that the author has entrusted the management of his or her rights to a collective rights management organization and has not expressed any other will, this organization may request protection of moral copyrights (Art. 78 sec. 4 of the Copyright Law). The indicated entities may demand that the violations be discontinued and their effects be removed, in particular that the person who committed the violation should make a public statement of appropriate content and form. The claim for the obligation of the infringer to pay an appropriate sum of money for the indicated social purpose also seems admissible⁴.

5.2. Actions that may be taken by the closest of the missing person in connection with the economic copyrights of the person declared dead

Economic copyrights are a part of the estate. In the case of inheritance of economic copyrights, the general provisions of civil law are applied (Art. 922 et seq. of the Civil Code) with one exception, namely if the copyrights of one of the co-authors were to be transferred to the State Treasury as the statutory heir, this part is transferred to the survivor co-authors or their legal successors, depending on the size of their shares (Art. 42 of the Copyright Law)⁵.

¹ Kalus, S. (2018). Commentary to art. 29, 30. In: Kodeks cywilny. Komentarz. Tom I. Część ogólna (art. 1-125), M. Frasz, M. Habdas (Eds.), Warsaw: Wolters Kluwer Polska, 2018, lex database.

² Wojnicka, E., Giesen, B. (2013). In: System Prawa Prywatnego, Prawo autorskie, t. 13, J. Barta (Ed.), Warsaw: C.H. Beck, 2013, p. 384; Ślęzak, P. (2007). Dziedziczenie praw majątkowych w świetle polskiego prawa autorskiego. Rejent 1, 2007, p. 94 et seq.

³ Jankowska, M. (2017). Commentary to art. 78. In: Ustawa o prawie autorskim i prawach pokrewnych. Komentarz, P. Ślęzak (Ed.), Warsaw: C.H. Beck, 2017, p. 534–539.

⁴ Wider: Wyrwiński, M. (2021). Commentary to art. 78. In: Komentarz do ustawy o prawie autorskim i prawach pokrewnych, Ustawy autorskie. Komentarze. Tom II, R. Markiewicz (Ed.), Warsaw: Wolters Kluwer Polska, 2021, lex database.

⁵ Wider: Załucki, M. (2018). Wokół problemu dziedziczenia praw autorskich. In: *Qui Bene Dubitat, Bene Sciet*. Księga jubileuszowa dedykowana Profesor Ewie Nowińskiej, J. Barta, J. Chwalba, R. Mar-

The source of the inheritance may therefore be a will or a statute (if the deceased did not leave a will or the will did not contain any regulations regarding the author's economic copyrights). It can be mentioned here that, by virtue of inheritance, the heirs obtain a right which is consistent with the law of the testator. The heirs may use the work and dispose of the right to use it for the duration of copyright protection.

Summary and conclusions. The conducted analysis proves that, on the basis of the applicable regulations, there is no single, appropriate legal solution in a situation where there is a need to exercise and protect the moral / economic copyrights of a missing person. This creates uncertainty as to how to proceed, and is undoubtedly troublesome for the closest of the missing persons. Although some solutions seem obvious (e.g., in the case of the disappearance of a minor or a spouse), the choice among the others (appointment of a custodian, application to the prosecutor, application of the provisions in the event of death by analogy) is not easy. It can be concluded from legal experience that the optimal solution in the event of a person missing is appointing a custodian. However, as noted, the analyzed issues have not been discussed in the literature so far.

In view of the significance of the problem of the current disappearances of natural persons, it seems desirable to regulate the legal situation in the time between the disappearance of a person and declaring him or her dead. The considerations carried out show the issue only from the copyright point of view. Therefore, it is a small or even a marginal fragment of the problems that the closest of the missing person may have to deal with. It is worth the legislature considering on a general level the regulation concerning the situation of a person from the moment of his or her disappearance until he or she is deemed dead so that there is a clear legal basis for taking specific actions. *De lege ferenda*, this could be done by introducing a provision providing for the possibility of appointing a custodian to handle the missing person's affairs. Undoubtedly, the issues discussed in this paper require a broader discussion – even at an international level.

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Ключевые слова: пропавший без вести; объявлен умершим; авторские права.

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