

Protection of Copyright

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Decision No. 2/5-249-2002 of 13 January 2003 of Tbilisi Regional Court, which was upheld by the Supreme Court Decision of 8 July 2003, concerns the protection of copyright, protection of a deceased person's authorship and dignity.

Under its Judgment of 15 November 2002, the Civil and Entrepreneurial Chamber of Tbilisi Regional Court, on the basis of Article 182.4 of the Civil Procedure Code decided to conduct a joint trial of Case No. 20-196-2002 – Zhordania v. Janelidze concerning a violation of copyright and Case No. 2/5-249-2002 – G. Abuladze v. Zhordania concerning the protection of copyright and dignity.

1. Main Facts

The applicant Zhordania filed an application to the Civil and Entrepreneurial Chamber of Tbilisi Regional Court against the respondent Janelidze claiming restitution for infringed copyright. The applicant alleged that T. Abuladze and his team used and misappropriated his work "Wedding Trip on Your Birthday" without the applicant's consent and indication of his name and without which the film "Repentance" would not have been created.

The applicant wrote the book "Wedding Trip on Your Birthday" in 1960-1962, but was not able to publish it (in 1963 he tried to publish it in the magazine *Tsiskari*). Having not succeeded to publish it the applicant decided to have his work staged or shot. During that period he met with the film director T. Abuladze at the Public Library and handed over to the latter his story hoping that if he liked the screenplay they would make a film together. T. Abuladze refused and advised the applicant to address the film director Michael Romm in Moscow.

The applicant submitted the following evidences: The screenplay typed on a computer under the title "Wedding Trip on Your Birthday", the story "Somewhere by the Sea" published in No. 2 edition of magazine *Drosha* and an extract from the autobiographic work "Where Did Father Go" published in No. 7 edition of magazine *Drosha*.

The respondent Janelidze rejected the claim and considered it unsubstantiated. She stated that together with T. Abuladze and Kveselava she was involved in writing the screenplay for the well-known film "Repentance". The applicant's work was not available to her because it had not been published and she had no knowledge of the existence of the applicant's screenplay in 1963. She was also unaware of the form of subject matter of the application. According to the respondent, the applicant was not able to specify which property copy-

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right was infringed and what exactly the infringement resulted in. The applicant failed to name the cases of reproduction of his work and only allegorically tried to make the impression of infringement of copyright. The respondent claimed to reject the applicant's claim as ill-founded.

On 12 November 2002, G. Abuladze filed an application to the Court claiming the following: 1) the court should oblige Zhordania to cease infringement of T. Abuladze's copyright on the screenplay for the film "Repentance"; 2) to renounce the statements infringing the dignity and copyright of T. Abuladze disseminated in the media, blaming T. Abuladze that he misappropriated Zhordania's work as a screenplay for "Repentance". The statements should be renounced in the same media in which they were disseminated.

The applicant – T. Abuladze's successor – considered the following words published by the respondent as infringing the copyright and dignity of his father T. Abuladze:

- 1) "Abuladze committed an even graver crime than the one condemned in his so well-known film". "Thus, there is more evidence to demonstrate such a mafiosa method". (Article "Having already spoken I will bring it to an end", newspaper Kabadoni – 8, №23, 08.09 1990).
- 2) The point is that Abuladze, if he has problems to conceal the stolen, refers to a dream or shooting area"; "...The film director has read, thought over and learnt by heart the scenes and persons taken and stolen from others but people are unaware of it. In addition he involves the whole group of persons in the crime" (same article).
- 3) "...The series of my articles were published, which reveals the misappropriators of others' thoughts and work or the ones who in science, literature and art are called plagiarists...These materials disclose in a documentary manner the use and misappropriation of my work by the film director T. Abuladze and his "brain" when making the film "Repentance". A comparison of the work and film shows the way of plagiarism (Article "Abuladze has stolen "Repentance" away from me", newspaper Asaval-Dasavali 9 December 1996).
- 4) Kvlividze has not only translated and dubbed "Repentance" but was also involved in the film director's mafia-criminal way. (Article "Whose is "Repentance" after all", newspaper Amer-Imeri, 14 September 1978).

2. Tbilisi Regional Court Assessment and Qualification

The court dismissed Zhordania's claim and partially awarded G. Abuladze's claim. When reviewing the application, the court was guided by the regulations laid down in Title 9 of the 1964 Civil Code because the relations between the applicant and respondent with regard to copyright originated before the enactment of the Law of Georgia on Copyright and Related Rights and the Civil Code of 25 November 1997. Article 67 of that Law applies to the relations with regard to the creation and use of works protected under copyright and related rights that originated after the enactment of this Law.

The court found that:

The screenplay presented by Zhordania was not published before reviewing the application. Evidence presented in the case did not prove the fact that the respondent Janelidze had in any way infringed the applicant's rights under Articles 512 and 503 of the Civil Code with regard to the work "Wedding Trip on Your Birthday" submitted with the case file.

The applicant failed to bring evidence proving the actual existence of the disputable work during 1960-1963 in the form as it was submitted with the case papers.

The court did not agree with the applicant's statement that the story "Somewhere by the Sea" presented by him as evidence is the extract from his work "Wedding Trip on Your Birthday" created in 1960-1962. There is no evidence that the story published in No. 2 edition of magazine Droscha, which was submitted in the case as an extract from the applicant's screenplay, would have been expressed in the same form at that time too. This could not be provided by the story "Somewhere by the Sea" published in 1968 in the No. 2 edition of magazine Droscha. It was published in the magazine as a separate story and had no introduction which could specify that the published story was the extract from the author's other work. The fact that the disputable work presented in the case was really handed to T. Abuladze in 1963 at Public Library was not proven.

During the hearing the fact of use of Zhordania's work ("Wedding Trip on Your Birthday") was not proven and respectively the fact of misappropriation under the pretence that when writing the screenplay for "Repentance" the applicant's work was not available for Janelidze.

The court did not consider that the circumstances named by the applicant looked like infringement of copyright in legal terms and as for ideas and concepts, copyright is not applicable.

According to Article 448 of the Civil Code, copyright applies to a production in the scientific, literary and artistic domain whatever may be the mode or form, purpose and dignity as well as the manner of reproduction. Copyright applies to works published in any objective form that allows for reproduction of the product of an author's creative work.

With regard to G. Abuladze's claim, the court considered one of the four wordings published in the newspaper Amer-Imeri in October 1998 as infringing the dignity of the applicant's father, the deceased famous film director T. Abuladze which reads as follows: "Michael Kvlividze has not only translated and dubbed "Repentance" but was also involved in the film director's mafia-criminal way". Article 18.2 of the Georgian Civil Code was applied, pursuant to which a person is entitled to demand in court the retraction of information that defames his honour, dignity, privacy unless the person who has disseminated such information can prove that it corresponds to the true state of affairs.

The rights referred to in Article 18 may also be exercised by a person who, although not the bearer of the name or the right of personal dignity himself, nevertheless has an interest that deserves protection. He/She may exercise the right to demand such protection of the

name and dignity [of a person] which determines the essence of the person and continues to exist as well after death.

A person appears before the court as a person and as a personality. As a person he/she has rights and duties. A personality contains the spiritual wealth of a person. After death, a person disappears as an object of legal relations but his/her personality remains. He/She stays in people's awareness and even after death remains honourable for the society.

By protecting a deceased's personality the interest of not only a deceased's relatives but also society is protected. The Code does not list the persons who have the right to demand protection of personal rights of a deceased. A deceased's successors as well as other persons are entitled to this right.

The court considered the applicant's claim on application of the regulations of the new Civil Code to the three articles disseminated by Zhordania before 25 November 1997 as ill-founded.

The court dismissed the position of G. Abuladze's representative who alleged that because his mandator became aware of the existence of the dispute after his father's death (1994) and that only in 2002 he became aware that he as a successor had the right to protect his dead father's dignity under Article 19 of the Georgian Civil Code, the new Civil Code should be applicable to the relations originated before 25 November 1997.

According to Article 7 of 1964 Civil Code, only an individual and organisation have the right to demand protection of his/her honour and dignity. Article 19 of the Georgian Civil Code is a novelty in civil legislation that grants the right of protection of a deceased's dignity to their successors and other persons.

As per Article 1509 of the Georgian Civil Code, the Civil Code applies only to relations originating after entry of this Code into force. Under Article 6 laws and sub-legal normative acts shall not be retroactive except when pronounced by law. A law may not be retroactive if it is prejudicial to or disadvantages a person.

Proceeding from the above, the civil law and sub-legal normative acts regulate the relations that originate only after their adoption, issuance and publication in the official gazette.

The court dismissed G. Abuladze's claim, which alleged that the words "thief", "plagiarist", "Mafioso" disseminated in the media by the respondent infringed his father's right to authorship. The court considered groundless G. Abuladze's claim on suppression the violation of T. Abuladze's copyright on screenplay of "Repentance" by Zhordania.

According to Article 67.1 of the Law on Copyright and Related Rights the court applied the 1964 Civil Code to resolve the case.

According to Article 512, a person or if dead his successor, has the right to demand protection of copyright only if a work was used without concluding a contract with an author or his legal successor (Article 500 of this Code) or if terms laid down for use of this work were violated without the author's consent (Article 506, 507 of this Code) or if the right on the work inviolability (Article 503) or author's other personal non-property rights were violated.

As per Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works (Georgia acceded on 24 November 1994), independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

Proceeding from this provision, under infringement of an author's honour or reputation is meant changing the work by another person, which would make the author or his legal successor feel dishonourable. On the basis of the case papers the court held that the respondent Zhordania did not violate T. Abuladze's right to authorship with regard to the screenplay "Repentance". T. Abuladze is still believed to be one of the co-authors of the screenplay "Repentance".