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An Interdisciplinary Approach to the Study of Art Forgery

Abstract

In Polish law, in other European legal systems in Europe and elsewhere in the world, the issue of art forgery is regulated in a variety of ways. This dissertation includes a study and analysis of the phenomenon of art forgery from the legal and interdisciplinary perspective. This topic is of fundamental importance not only in terms of the content of legal regulations but also cultural heritage, including cultural property, historical monuments and works of art. Despite the detailed regulations on trade in counterfeit items as well as on faking and altering objects of historical interest, included in articles 109a and 109b of the Act of 2003 on the Protection and Care of Monuments, there is no reference to the term 'work of art' there. This dissertation may become the basis for further interdisciplinary research in this field. The issues addressed here include that of a need to develop art forgery in the Act on the Protection and Care of Monuments. The main goal of the study was to combine various approaches in order to present a comprehensive picture of the subject. This was achieved by adopting a synchronized approach to the issue of art forgery with its practical dimension involving the question of the legal consequences of illegal acts under public (criminal) law and private (civil) law, discussed in Chapter 3: 'Art forgery in criminal law', and Chapter 4: 'Art forgery in private law' respectively.

The work consists of five chapters in which the author applies theoretical frameworks for legal research and those applicable for research and dogmatic purposes. Following Jerzy Stelmach, legal studies as a general rule use two basic types of description: normative and empirical; thorough empirical considerations can be found in Chapter 5: 'Art forgeries. Case studies'. Historical and legal arguments have been included in the part of the work discussing the selected key concepts and phenomena, and in the chapter on selected cases of art forgery.

The dissertation addresses some side issues related to interdisciplinarity in legal studies and recalls some selected issues formerly associated with them (which seems to be crucial here), all corresponding both with the topic of the thesis and the theory of law. The author has used her research findings from the area overlapping law and art history as well as other 'extra-legal' fields applicable to legal studies in a given case.

Approaching the problem of art forgery should be preceded by an analysis both in relation to law and the use of other disciplines: art history and heritage conservation in particular. The proposed topic not only crosses the boundaries of one branch of law but also goes beyond the limits of one academic discipline as well. The work proves that, because of the extensive nature of the subject of art forgery, a need for interdisciplinarity exists, also in practical terms, and it has been indicated that, when conducting multidimensional research on art forgery, it is reasonable to analyse all issues explored thoroughly enough, taking into account two methods: external integration of legal studies and internal integration of the study of law. It seems insufficient to limit the research to a formal analysis of legislative texts concerning the existing law and to ignore extra-legal disciplines through their isolation resulting in the scatter of research (K. Opalek and J. Wróblewski, *Prawo: metodologia, filozofia, teoria prawa*, Warsaw, 1991, p. 141). The creation of second order constructs, which externalise themselves as universal experiences of the social world derivative of specific socio-economic formations and applicable in the group that applies them (creating a vision or rules for those who are able to impose meaning), is detrimental to legal studies, because such an approach is limited to analyses at the micro level and, as such, ignores broader determinants (See: K. Sztandar-Sztanderska, *Teoria praktyki i praktyka teorii. Wstęp do socjologii Pierre'a Bourdieu*, Warsaw, 2010, pp. 25–26).

The approach put forth in this dissertation and the coordination of research proposed counteract the disintegration of studies, prevent one-sided repetition of similar theses according to the specifics of only one field of knowledge, and lead to many-sided research results, which is especially important in the case of researching issues related to art forgery because, as regards this research subject, there is a need to devise a theoretical and methodological structure of the analyses conducted, and encourage increased cooperation between representatives of various academic disciplines (J. Łakomy, *Pojęcie integracji zewnętrznej nauk prawnych*, in M. Sadowski, and P. Szymaniec (eds.), *Wrocławskie Studia*

Erazmiańskie. Zeszyty Studenckie. Prace prawnicze, administratywistyczne i historyczne, Wrocław, 2009, p. 61; K. Opalek, and J. Wróblewski, *Prawo: metodologia, filozofia...*, p. 141.). If a counterfeit artwork is seen from a legal perspective, the question of the definition of an original, copy, imitation, etc., should also be addressed. If one's search for such reflections in sources used in legal studies turns out to be ineffective, then it is art history or, in the broader sense, other disciplines that may be treated as part of legal studies or even auxiliary sciences of law, allowing, *inter alia*, reflection on jurisprudence.

Terms such as work of art, original, counterfeit, copy, replica, imitation, reproduction, pastiche, monument, cultural property, and cultural heritage should be defined from the point of view of the problem area and, to a lesser extent, the language and concepts used for describing the problems (A. Bator, 'O dwóch nietypowych koncepcjach normy oraz o ryzyku związanym z zewnętrzną integracją prawoznawstwa', in *Przegląd Prawa i Administracji. Księga Jubileuszowa na siedemdziesięciolecie Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego*, Part 2, Wrocław, 2015, p. 590). It is also reasonable to give the terms and notions derived from outside legal studies an instrumental and pragmatic meaning, and subordinate them to legal research goals (A. Bator, 'O dwóch nietypowych koncepcjach...', p. 590). The definitions discussed in this work are related to the arts, techniques to create works of art, and the fact of them being linked to a specific product of human activity; therefore it is necessary to provide unambiguous explanations of the terms due to a possible continuous process of changes in their understanding and openness (A. Hart, *The Concept of Law*, Oxford, 1961, pp. 121 et seq.). As regards the term 'work of art', for example, it is impossible to decide what it involves (falls under this term) precisely. Therefore, using legal language, it is impossible to say what exactly might qualify to belong to the set of designata of this term. Bearing the above in mind, some of the terms discussed belong to word families whereas others are open terms that cannot be explicitly defined; therefore it seems advisable to enumerate what may be included in their category.

In this study, the author has decided to characterise selected terms by putting together a catalogue of points typical for them and to which other problems can be subordinated, for example: a historical outline, definitions of the terms, the relationships between the terms in the meaning of law and other academic disciplines, examining some legal-philosophy and as well as purely philosophical issues, including aesthetics, an analysis of legal reasoning, an

analysis of sociological reasoning, and addressing the issue of choosing appropriate research methods.

The fact that the humanities and social sciences play a special role in taking account of the past and researching the historical events as well as circumstances leading to the act of forgery is a good enough reason to reach for external integration while addressing the problem of art forgery. There are also criminological and forensic aspects (this also includes technical and forensic research of works of art, as well as criminal aspects *par excellence* falling within the scope of penal studies (P. Rybicki, 'Technicznokryminalistyczne badania dzieł sztuki', in *Problemy kryminalistyki* 250/05, pp. 7–13). On the other hand, private law, which is particularly important in relation to the civil law consequences relating to, *inter alia*, the damages resulting from the purchase of a forged artwork, falls within one of the broadest branches of law covering a set of legal norms regulating property relations and, to a certain extent, non-property relations between legal entities, which is civil law. This is hardly an exhaustive catalogue of disciplines relating to the broadly understood problem of forgery, however. That is why, there is merit in using the achievements of other disciplines. Psychology, for example, deals with the psychological profiling of a forger by studying, broadly speaking, the psychological phenomena which determine interpersonal interactions with the environment and the accompanying internal psychological experiences. On the other hand, sociology in a general sense focuses on the way society functions and undergoes changes (See K. Iwińska, 'Socjologia jako nauka, czyli znów zadane pytanie: What is so great about science?', *Studia Socjologiczne* 2006/1, pp. 64–66)

Free reflection leads to the conclusion that the application of the proposed solution will contribute to the implementation of objective rationality and the rejection of 'methodological conservatism' resulting in legal studies encapsulation and isolation from other extra-legal studies that can be considered not only useful, but also auxiliary to the study of law (disciplines providing supplementary knowledge complementing legal sciences can be perceived as 'auxiliary sciences of law'), thus allowing for the development of comprehensive and pragmatic juridical solutions.

In order to prevent the appearance of forgeries on the art market, it would be invaluable to create a code of ethics in Poland, setting standards of professional and ethical conduct both for experts who prepare an assessment of the authenticity of works of art as well

as for dealers trading works of art and items of historical interest. The lack of a law specifying professional standards or a legal definition of dealers and experts results in failure to regulate the sphere of professional standards and reduce the risk associated with incorrect assessment of the situation resulting at least in inaccurate estimates of the assessed item.

It is necessary to develop criteria for the evaluation of expert appraisal, which are discussed in this dissertation. It is also necessary to standardise and compile separate lists of experts depending on the disciplines in which they specialise, taking into account the scope of competences of the person dealing with a given field, as well as implement several proposed solutions not included in the current bill on expert witnesses giving evidence in court and experts participating in other proceedings conducted pursuant to the binding legal acts (a bill on expert witnesses in court and other proceedings conducted pursuant to the binding legal acts, http://orka.sejm.gov.pl/proc6.nsf/projekty/667_p.htm, Accessed 22/05/2022). Attention has also been paid to the so-called tokenisation of works of art and its impact on the transparency of the art market as well as on the issue of the forfeiture of forgeries derived directly from criminal activity.

In a broader context, this dissertation discusses the implementation of legal regulations regarding a ban on the production and sale of forgeries as well as their entering the country. In order to enhance the protection of cultural heritage, an introduction of a regulation concerning the liability of collective entities producing forgeries or participating in their circulation should be considered. This necessity may be included in the amendment to the act on the liability of collective entities for acts prohibited under penalty. The adopted research methods and the approach taking into account the notion of internal and external integration of the study of law have allowed the formulation of a set of postulates to improve the regulations on combating art forgery currently in effect in Poland.

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