

Ethical considerations regarding the protection of Intellectual Property in Albania

The intellectual property law has always aimed to protect the private rights of the different authors. Recently, however, we are witnesses of the rise of another way of thinking which has challenged the priority of the absoluteness of the rights of the author, the character of which is being now the theme of a vast discussion. Too many other interests, chiefly of ethical and moral character, come now to play, and, despite the protectionist ideas still existing, make it the centre of new developments of the property rights in the world.

Since 1705 Christian Thomasius (1655-1728) had underlined the differences between law, moral and politics. In his writing *Fundamenta juris naturae et gentium*, he states that *honestum* is the moral (do to yourself what you would like other people do to you), *justum* is the just, the law (do not do to the other what you do not like to be done to you) and finally *decorum*, or the policy, (do to the other what you would want the others do to you). Later, Immanuel Kant in his *Metaphysics and Customs* and *The Perpetual Peace*, states that morality means to abide the laws which ask people that given acts to be understood. In his book *The Doctrine of the pure law* (1960) Hans Kelsen writes that the distinction between *law* and *morality* cannot be grounded on the kind of behaviour a man is obliged by the norms of both systems, which means that the same behaviour may be object of law and/or moral norms. According him, it is not true that morality refers to inner while law the exterior aspects of a phenomenon.

Anyway, after the dictatorships, in Europe now is developed a self-consciousness way of thinking which we may call “the era of the rights” (R. Dvorkin has labelled it the era where the rights are being considered seriously). Since 1990 we realize that new constitutional concepts are developed, the public law is draining in favour of *lex mercatoria*, a law which is more commercial than state one. The law is imposed by the human beings therefore the first demand for a just law is to respect the human rights. Consequently, justice demands that the legal norms be first considered axiologically.

Concerning the protection of Intellectual Property in Albania there are two principal laws: Law of 28 April 2005, n° 9380 about copyright and other related rights (which is amended by two other laws of 2008 and 2009) and law of 7 July 2008, n° 9947 about the Industrial Property (now is being prepared a new law). My intention is to discuss these two Albanian laws just having especial concern the moral and ethical considerations of these laws.

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