



Court of Justice of the European Union

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Judgment in Case C-518/08

Fundación Gala-Salvador Dalí and Visual Entidad de Gestión de Artistas Plásticos (VEGAP) v Société des auteurs dans les arts graphiques et plastiques (ADAGP) and Others

Press and Information

Member States can determine the categories of persons capable of benefiting from the resale right after the death of the author of a work of art

However, in the present case, it is for the referring court to take account of all the relevant rules for determining the national law which governs the succession of Salvador Dalí's resale right and, therefore, the actual successor to that right.

Directive 2001/84/EC¹ establishes an obligatory resale right for the benefit of an author of a work of art and, after his death, for the benefit of those entitled under him. The resale right is an intellectual property right which allows the author, and those entitled under him, to receive a royalty based on the sale price obtained for any resale of one of his works subsequent to its first transfer. That right benefits the author throughout his life and, thereafter, those entitled under him for 70 years after his death.

The French legislation limits the beneficiaries of that resale right after the death of the artist to his heirs and excludes all legatees. The artist cannot therefore bequeath that right by will.

The painter Salvador Dalí died on 23 January 1989 in Spain, leaving five heirs at law, who were family members. In addition, by his will, Salvador Dalí established the Spanish State as sole legatee over his intellectual property rights. Those rights are administered by the Fundación Gala-Salvador Dalí, a foundation established under Spanish law, created in 1983 at the initiative of the painter himself.

In 1997 the Fundación Gala-Salvador Dalí granted to VEGAP, a Spanish society, an exclusive worldwide mandate to manage collectively and exercise copyright over the works of Salvador Dalí. VEGAP has, in addition, a contract with its French counterpart, ADAGP, which is responsible for the management of Salvador Dalí's copyright in France.

Since then, ADAGP has collected amounts in respect of the exploitation of Salvador Dalí's works, which were transferred by VEGAP to the Fundación Gala Salvador Dalí, with the exception of those in respect of the resale right. Pursuant to French legislation, ADAGP paid the amounts in respect of the resale right directly to Salvador Dalí's heirs.

Taking the view that, under Salvador Dalí's will and Spanish law, the royalties levied upon sales at auction of the artist's works in France should be paid to it, the Fundación Gala-Salvador Dalí and VEGAP summonsed ADAGP before the Tribunal de Grande Instance de Paris (Paris Regional Court) for payment of those royalties. In the course of those proceedings, the French court referred to the Court of Justice the question whether Directive 2001/84 precludes a provision of national law which reserves the benefit of the resale right solely to the artist's heirs, to the exclusion of testamentary legatees.

In today's judgment, **the Court considers that, in the light of the objectives pursued by Directive 2001/84, Member States may make their own legislative choice in determining the**

¹ Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ 2001 L 272, p. 32).

categories of persons capable of benefiting from the resale right after the death of the author of a work of art.

In that regard, the Court recalls that the adoption of Directive 2001/84 is based on two objectives. First, it seeks to ensure that authors of graphic and plastic works of art share in the economic success of their works. Second, the directive seeks to put an end to distortions of competition on the market in art inasmuch as the payment of a royalty in certain Member States might lead to displacement of sales of works of art into those Member States where the resale right is not applied.

As regards the first objective, which seeks to ensure a certain level of remuneration for artists, the Court finds that the attainment of that objective is in no way compromised by the transfer of the resale right to certain categories of persons to the exclusion of others after the death of the artist.

As regards the second objective, the Court states that the European Union legislature sought to resolve a situation in which sales of works of art were concentrated in Member States in which the resale right was not applied, or where it was at a lower rate than that in force in other Member States, to the detriment of auction houses or art dealers based in the territory of the latter Member States. Thus, while it was considered indispensable to provide for harmonisation concerning works of art and sales affected by the resale right as well as the basis for and rate of the royalty, the Court considers that the harmonisation brought about by that directive is limited to those domestic provisions that have the most direct impact on the functioning of the internal market. Therefore, there is no need to eliminate differences between national laws which cannot be expected to affect the functioning of the internal market, including legislation which determines the categories of persons capable of benefiting from the resale right after the death of the author of a work of art.

Moreover, the Court considers that that analysis is reinforced by the fact that, while the European Union legislature wanted those entitled under the author to benefit fully from the resale right after the death of that author, it nevertheless left to each Member State, in accordance with the principle of subsidiarity, the task of defining the persons capable of being categorised as those entitled under their national law.

That being so, the Court explains however that it is for the referring court to take due account of all the relevant rules for the resolution of conflicts of laws of succession in order to determine which national law governs the succession of Salvador Dalí's resale right and, therefore, who is the actual successor to that right under that national law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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