

Nataša Ivančević
Art Historian, Senior Curator
Museum of Modern and Contemporary Art
Dolac 1/II
51000 Rijeka
Croatia
Phone: + 385 51 33 42 80; 33 52 52
Fax: + 385 51 33 09 82
natasa.ivancevic@mmsu.hr

Collaborator: Ana Smokina
Lawyer
Museum of Modern and Contemporary Art
Dolac 1/II
51000 Rijeka
Croatia
Phone: + 385 51 33 42 80; 33 52 52
Fax: + 385 51 33 09 82
ana.smokvina@ri.htnet.hr

Copyright issues of exhibiting and purchasing an art installation including an artwork by another author

Summary

This paper deals with a challenging museological problem in connection with copyright/legal issues of exhibiting and purchasing Jusuf Hadžifejzović's art installation which - as its constitutional part - includes an artwork by another author. At 2003 solo exhibition organised by Rijeka *Museum of Modern and Contemporary Art*, Hadžifejzović has exhibited work titled *Rijeka Depot 87-03*, by which he reconstructed and reinterpreted installation made at the 14th *Biennial of Young Artists* in Rijeka, held in 1987. The installation comprised of ready-made objects (museum scales with weights and 25 flags of countries participating at the *International Exhibition of Drawings*, that were exhibited at the Museums' facade during the actual exhibition). The installation also included bronze statue titled *Sculptor* by Croatian modernist sculptor Frane Kršinić (1897-1982), an artwork from the Museum's holdings. Contemporary art practice encounters numerous examples of usage, reinterpretation, quoting and similar procedures in using the already existent artworks. However, after deciding to purchase the abovementioned installation, curators have – for the first time – faced the issue of how to exactly purchase the piece of art which as its constituent part includes the artwork by another artist, and which in this case is also a museum piece and hence belongs to a museum collection. The exposition will expound on such cases and necessary procedures complying a new Croatian *Copyright and Related Rights Act*.

Ever since its founding in 1948 the *Museum of Modern and Contemporary Art* has been systematically purchasing artworks. During 2004, the Museum has, for the first time, encountered the issue of purchasing an artwork whose constituent part is another author's artwork, the latter belonging to the museum collection.

Contemporary art practice meets numerous procedures of using, reinterpretation, quotation and other examples of employing the already existent, other author's works. One of the first artists to freely use masterpieces by other authors when creating his own pieces was a Croatian conceptual author Braco Dimitrijević. From middle of the 70ies onwards, he has realized numerous cycles titled "Triptychos Post Historicus". These art installations are composed from three elements: an art master-piece borrowed from a museum, an everyday object and a fruit. Their unity in composition symbolizes totality of the world which in our cultural reality is disassociated. The first "Triptychos Post Historicus" has been created in 1975 at *Städtisches Museum Munchengladbach*. On that occasion Dimitrijević for the first time used another artwork from a museum collection. He took Max Roeder's bronze bust that was kept in museum's holdings for already 50 years and exhibited it together with another object on a pedestal. The museum has purchased this work as Dimitrijević's piece. That is, since the 1975 this artwork has a twofold life – it can be exhibited as a bust by Max Roeder, the German author from the 20ies of the 20th century, but also as Dimitrijević's work. Talking to Klaus D. Pohl, Braco Dimitrijević¹ stated this operation was entirely conceptual, i.e. semantic, since the work in question has been in museum's holding for a long time. Now, however, a new connotation has been given to already existent object and form. "When the museum director and myself have signed that sale contract, two artworks started to live in one and the same object. Actually, this contract seemed to confirm plurality of two truths. These two truths are separated by half a century, and yet they do not annihilate each other."² This purchase can presently be labelled as an already historic example.

During the 14th Rijekan *Youth Biennial* in 1987, Jusuf Hadžifejzović, an artist from Sarajevo, requested access to holdings of *Museum of Modern and Contemporary Art*. However, at the time, museum personnel could not have imagined consequences of this visit. Hadžifejzović has chosen few objects he found within holdings: the old museum scales, the flags of few countries participating at the International Drawings Exhibition that were flying at the Museum's facade during the actual exhibition, and one artwork from the holdings – a bronze statue titled "Sculptor" by Croatian modernist sculptor Frane Kršinić. Kršinić has lived from 1897 to 1982, and the work concerned

¹ Group of authors: *Braco Dimitrijević, PosthistoricDimension*; Klaus D. Pohl: *Converstaion with Braco Dimitrijević, Art Studio Azinović. Art Gallery Dubrovnik, 2004, pg. 49*

² *ibid.*

was created around 1932. The Museum has purchased it for its sculpting collection in 1949. Since the Museum has no facilities for a permanent setup, the sculpture has spent most of the time in darkness of the museum's depot, far from the public eye. Using the above-mentioned elements, Hadžifejzović has created a new work, an installation he named "Rijeka Depot 1987". This installation existed only temporary, in course of the 1987 Youth Biennial. Hadžifejzović reconstructed the same work in 2003 and exhibited it at the solo exhibition organized by Rijekan *Museum of Modern and Contemporary Art* under the name "Rijeka Depot 87-03". Then it was decided this installation shall be purchased, so the sculpture of Frane Kršinić can also be exhibited as a part of installation by Jusuf Hadžifejzović. This is how curators have come to face the copyright issue of exhibiting and purchasing an artwork which as its constituent part includes artwork by another author. In this case the latter is a museum exhibit, hence belongs to the museum collection. We shall expound steps taken in accord with regulations by new Croatian *Law on Copyright and Connected Rights*.³

Using artwork by one author in realizing work by another author is not legally possible without a permission by the actual author or holder of the copyright. Notion of using an artwork in a case of realization and purchase of work by Jusuf Hadžifejzović certainly enters issue of respecting the author's copyright, in this actual case a sculptor Kršinić, whose sculpture became a part of newly made work of art.

We shall consider procedures necessary for respecting the moral rights. This is the issue of legal regulation pertaining to respecting "authors' work and honour or reputation of an author" as one of the authorizations ensuing from the author's moral rights (article 16 of *The Law on Copyright and Connected Rights*).⁴ Although being the owner of the abovementioned sculpture and the copyright holder in a scale immanent to the museums (right to exhibit, right to borrow the work) the *Museum of Modern and Contemporary Art* expressed a following opinion: in order to realize, i.e. purchase of Hadžifejzović's work, a consent should be asked from the deceased sculptor's heir. In this sense, a sculptor's heir, his daughter Marija Kršinić, has given written consent allowing the *sculpture "Sculptor" to be used as a part of installation "Rijeka depot" by Jusuf Hadžifejzović, and as such to be employed for all the museum's needs*. By this consent, the Museum has obtained a right to purchase Hadžifejzović's work, to use it and borrow it as any other work from its own holdings. In considering this problem, there's certainly a need to emphasise that according to the Croatian law which is almost entirely aligned with European legal norms, moral rights of an author do not become statute-barred. i.e. there is always an authorized person who can start a process of determining whether the work is used in a manner respecting the actual work, as well as honour and reputation of the author himself / herself. We can say these rules are eternal, while persons (physical person or corporation) authorized for such

³ Law on Copyright and Congenial Rights, Narodne novine 167/03

⁴ *ibid.*

acts have been mentioned in the Law: *By the termination of copyright, a copyrighted work shall become the public good, and may be used freely, with the obligation of recognizing authorship, paying respect to the work, and to the honour or reputation of the author. Against those who do not comply with the obligation referred to in paragraph (1) of this Article the author's heirs, the associations of the authors the author belonged to, other persons having legal interest in it and the Croatian Academy of Arts and Science, shall be entitled to demand the termination of infringement of such obligation.*⁵

Besides the issue of paying respect to the rights of deceased author, another legal dilemma has risen during a purchase of the mentioned installation. What is Museum really purchasing, since it already owns all the elements making Hadžifejzović's work (statue- scales-flags-weights)? Copyright cannot be "sold or bought" which brings us to a conclusion that what is really bought is the idea i.e. conception. The law explicitly states that the subject matter of copyright, and hence the subject matter of legal protection can include only *"the subject matter of copyright shall include expressions and not ideas, procedures, methods of operation or mathematical concepts as such."*⁶ Hence, this purchase should be interpreted (since the author has expressed or "objectified" his idea through artwork by another author) as founding a right to use work by Jusuf Hadžifejzović to the benefit of *Museum of Modern and Contemporary Art*.

Thus, from a legal standpoint, we can conclude that origination of new authorial work through using another author's work is always possible if certain conditions are respected. Primarily, newly made work should not inflict damage to honour and reputation of the work used and its author, which of course is a situation that cannot be defined or regulated in advance. In most cases it is a question of interpretation of newly made work, where legal profession cedes definition of "an appropriate measure" to the authorized subjects, even to a social context as such. The other condition is: if the author is still alive or there are heirs, i.e. if the copyright is still valid (70 years from an author's death), a written consent for use should be obtained, hence protecting the newly made work from legal actions on behalf of the third party.

⁵ *ibid.*, article 106

⁶ *ibid.*, article 8