

JUDGMENT OF THE COURT (Third Chamber)

15 April 2010*

In Case C-518/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal de grande instance de Paris (France), made by decision of 29 October 2008, received at the Court on 27 November 2008, in the proceedings

Fundación Gala-Salvador Dalí,

Visual Entidad de Gestión de Artistas Plásticos (VEGAP)

v

Société des auteurs dans les arts graphiques et plastiques (ADAGP),

Juan-Leonardo Bonet Domenech,

* Language of the case: French.

Eulalia-María Bas Dalí,

María del Carmen Domenech Biosca,

Antonio Domenech Biosca,

Ana-María Busquets Bonet,

Mónica Busquets Bonet,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, E. Juhász,
J. Malenovský (Rapporteur) and D. Šváby, Judges,

Advocate General: E. Sharpston,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 12 November
2009,

after considering the observations submitted on behalf of:

- la Fundación Gala-Salvador Dalí and Visual Entidad de Gestión de Artistas Plásticos (VEGAP), by P.-F. Veil, avocat,
- the French Government, by G. de Bergues and B. Beaupère-Manokha, acting as Agents,
- the Spanish Government, by M. Muñoz Pérez, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and W. Ferrante, avvocato dello Stato,
- the Commission of the European Communities, by H. Krämer and C. Vrignon, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 December 2009,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of Articles 6(1) and 8(2) and (3) of 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).
- ² The reference has been made in the course of proceedings brought by the Fundación Gala-Salvador Dalí and Visual Entidad de Gestión de Artistas Plásticos ('VEGAP'), against the Société des auteurs dans les arts graphiques et plastiques ('ADAGP'), Mr Bonet Domenech, Mrs Bas Dalí, Mrs Domenech Biosca, Mr Domenech Biosca, and Mrs Ana-María Busquets Bonet and Mrs Mónica Busquets Bonet, who are family members of the painter Salvador Dalí, concerning royalties received on sales of works of art by Salvador Dalí.

Legal context

Directive 2001/84

3 The third and fourth recitals in the preamble to Directive 2001/84 state:

‘(3) The resale right is intended to ensure that authors of graphic and plastic works of art share in the economic success of their original works of art. It helps to redress the balance between the economic situation of authors of graphic and plastic works of art and that of other creators who benefit from successive exploitations of their works.

(4) The resale right forms an integral part of copyright and is an essential prerogative for authors. The imposition of such a right in all Member States meets the need for providing creators with an adequate and standard level of protection.’

4 Recitals 9 and 10 in the preamble to that directive state:

‘(9) The resale right is currently provided for by the domestic legislation of a majority of Member States. Such laws, where they exist, display certain differences, notably as regards the works covered, those entitled to receive royalties, the rate applied, the transactions subject to payment of a royalty, and the basis on which these are calculated. The application or non-application of such a right has a significant impact on the competitive environment within the internal market,

since the existence or absence of an obligation to pay on the basis of the resale right is an element which must be taken into account by each individual wishing to sell a work of art. This right is therefore a factor which contributes to the creation of distortions of competition as well as displacement of sales within the Community.

- (10) Such disparities with regard to the existence of the resale right and its application by the Member States have a direct negative impact on the proper functioning of the internal market in works of art as provided for by Article 14 of the [EC] Treaty. In such a situation Article 95 of the Treaty constitutes the appropriate legal basis.’

5 Recitals 13 to 16 in the preamble to that directive state:

- ‘(13) Existing differences between laws should be eliminated where they have a distorting effect on the functioning of the internal market, and the emergence of any new differences of that kind should be prevented. There is no need to eliminate, or prevent the emergence of, differences which cannot be expected to affect the functioning of the internal market.

- (14) A precondition of the proper functioning of the internal market is the existence of conditions of competition which are not distorted. The existence of differences between national provisions on the resale right creates distortions of competition and displacement of sales within the Community and leads to unequal treatment between artists depending on where their works are sold. The issue under consideration has therefore transnational aspects which cannot be

satisfactorily regulated by action by Member States. A lack of Community action would conflict with the requirement of the Treaty to correct distortions of competition and unequal treatment.

(15) In view of the scale of divergences between national provisions it is therefore necessary to adopt harmonising measures to deal with disparities between the laws of the Member States in areas where such disparities are liable to create or maintain distorted conditions of competition. It is not however necessary to harmonise every provision of the Member States' laws on the resale right and, in order to leave as much scope for national decision as possible, it is sufficient to limit the harmonisation exercise to those domestic provisions that have the most direct impact on the functioning of the internal market.

(16) This Directive complies therefore, in its entirety, with the principles of subsidiarity and proportionality as laid down in Article 5 of the Treaty.

6 Recital 27 in the preamble to Directive 2001/84 states:

‘The persons entitled to receive royalties must be specified, due regard being had to the principle of subsidiarity. It is not appropriate to take action through this Directive in relation to Member States' laws of succession. However, those entitled under the author must be able to benefit fully from the resale right after his death, at least following the expiry of the transitional period referred to above.’

- 7 Article 1(1) of that directive, under the heading ‘Subject matter of the resale right’ provides:

‘Member States shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.’

- 8 Under the heading ‘Persons entitled to receive royalties’ Article 6(1) of Directive 2001/84 provides as follows:

‘The royalty provided for under Article 1 shall be payable to the author of the work and, subject to Article 8(2), after his death to those entitled under him/her’

- 9 Under the heading ‘Term of protection of the resale right’ Article 8(1) to (3) of that directive provides:

‘1. The term of protection of the resale right shall correspond to that laid down in Article 1 of [Council] Directive 93/98/EEC [of 29 October 1993 harmonising the term of protection of copyright and certain related rights (OJ 1993 L 290, p. 9), pursuant to which “the rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death ...”].

2. By way of derogation from paragraph 1, those Member States which do not apply the resale right on [the entry into force date referred to in Article 13], shall not be required, for a period expiring not later than 1 January 2010, to apply the resale right for the benefit of those entitled under the artist after his/her death.

3. A Member State to which paragraph 2 applies may have up to two more years, if necessary to enable the economic operators in that Member State to adapt gradually to the resale right system while maintaining their economic viability, before it is required to apply the resale right for the benefit of those entitled under the artist after his/her death. ...'

¹⁰ Under the heading 'Implementation', the first subparagraph of Article 12(1) of Directive 2001/84 states:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2006. They shall forthwith inform the Commission thereof.'

National law

¹¹ Law No 2006-961 of 1 August 2006 on copyright and certain related rights in the information society (JORF, 3 August 2006, p. 11529), which transposed Directive

2001/84 into French domestic law, amended Article L. 122-8 of the Intellectual Property Code ('the IPC'), the first paragraph of which now states:

'Authors of original works of graphic or plastic art who are nationals of a Member State of the European Community or a State party to the Agreement on the European Economic Area enjoy a resale right, which is an inalienable right to participate in the proceeds of any sale of a work subsequent to its first transfer by the author or by those entitled under him or her, where a professional in the art market participates as seller, purchaser or intermediary. ...'

- ¹² Under Article L. 123-7 of the IPC, which was not amended by the transposition of Directive 2001/84:

'After the death of the author, the resale right referred to in Article L. 122-8 shall pass to the author's heirs and in usufruct – provided for in Article L. 123-6 – to his or her spouse, to the exclusion of any legatees and successors in title, for the remainder of the year of the author's death and the next 70 years thereafter.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- ¹³ The painter Salvador Dalí died on 23 January 1989 at Figueras (Spain), leaving five heirs at law. By will dated 20 September 1982, he had appointed the Spanish State as sole legatee, within the meaning of the French law of succession, of 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 and under the control of the painter.

- 14 In 1997 the Fundación Gala-Salvador Dalí granted to VEGAP, a society under Spanish law, an exclusive worldwide mandate to manage collectively and exercise copyright over the works of Salvador Dalí.
- 15 VEGAP has, in addition, a contract with its French counterpart, ADAGP, which is responsible for the management of Salvador Dalí's copyright in France.
- 16 Since 1997, 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 the provisions of Article L. 123-7 of the IPC, which reserve the benefit of the resale right to the heirs alone, to the exclusion of legatees and successors in title, ADAGP paid the amounts in respect of the resale right directly to Salvador Dalí's heirs.
- 17 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) on 28 December 2005 for payment of those royalties, and ADAGP requested that the painter's heirs be joined so that the judgment to be given would be applicable to them too.

¹⁸ In those circumstances, the Tribunal de grande instance de Paris decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

- ‘1. Can [the French Republic], subsequent to Directive [2001/84], retain a resale right allowed only to heirs to the exclusion of legatees or successors in title?

2. Do the transitional provisions of Article 8(2) and (3) of Directive [2001/84] allow [the French Republic] to have a derogation?’

The questions referred

Admissibility of the reference for a preliminary ruling

¹⁹ The Spanish Government and the defendants in the main proceedings contest, in their written observations, the admissibility of the reference for a preliminary ruling.

²⁰ In that regard, they claim that, in the light of the facts in the main proceedings, those entitled under the author of the work, within the meaning of Article 6(1) of Directive

2001/84, is not determined by French law but exclusively by the Spanish law of succession, since the painter Salvador Dalí, of Spanish nationality, died at his residence in Figueras in Spain. They take the view, accordingly, that the issue whether Article L. 123-7 of the IPC complies with Directive 2001/84 is irrelevant for the outcome of the dispute in the main proceedings, which should be decided under Spanish law alone.

- 21 However, it is not for the Court, in the context of a reference for a preliminary ruling, to give a ruling on the interpretation of provisions of national law, in particular those concerning private international law, or to decide whether the interpretation given by the national court of those provisions is correct. The Court must take account, under the division of jurisdiction between it and the national courts, of the factual and legislative context, as described in the order for reference, in which the questions put to it are set (see, to that effect, Case C-244/06 *Dynamic Medien* [2008] ECR I-505, paragraph 19 and the case-law cited).
- 22 It is apparent from the reference for a preliminary ruling that it is based on the premise that French law and, in particular, Article L. 123-7 of the IPC is applicable to the dispute in the main proceedings. Since the referring court raises questions concerning the interpretation of Articles 6(1) and 8(2) and (3) of Directive 2001/84 in order to assess whether Article L. 123-7 complies with those provisions, the reference for a preliminary ruling is not manifestly irrelevant to the outcome of the dispute in the main proceedings.
- 23 In the light of the foregoing, the reference for a preliminary ruling must be held admissible.

Substance

The first question

- ²⁴ By its first question, the referring court asks, in essence, whether Article 6(1) of Directive 2001/84 must be interpreted as precluding a provision of national law, such as Article L. 123-7 of the IPC, which reserves the benefit of the resale right to the artist's heirs at law alone, to the exclusion of testamentary legatees.
- ²⁵ It should be recalled, at the outset, that according to the settled case-law of the Court, in interpreting a provision of Community law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the legislation of which it is part (see Case 292/82 *Merck* [1983] ECR 3781, paragraph 12; Case C-223/98 *Adidas* [1999] ECR I-7081, paragraph 23; Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 41; and Case C-199/08 *Eschig* [2009] ECR I-8295, paragraph 38).
- ²⁶ In that regard, it must be noted, first, that the wording of Directive 2001/84 gives no guidance in relation to the concept, referred to in Article 6(1), of 'those entitled' under the author of the work. In the absence of any express definition of that concept, the objectives which governed the adoption of Directive 2001/84 must be examined.
- ²⁷ In that regard, it should be borne in mind that the adoption of Directive 2001/84 is based on two objectives, namely first, as is apparent from recitals 3 and 4 in the preamble to that directive, to ensure that authors of graphic and plastic works of art

share in the economic success of their original works of art and, second, as recitals 9 and 10 in the preamble to the directive indicate, to put an end to the distortions of competition on the market in art, 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.

- ²⁸ The first objective seeks to ensure a certain level of remuneration for artists. For that reason, Article 1(1) of Directive 2001/84 provides that the resale right is to be defined as inalienable and not to be subject to an advance waiver.
- ²⁹ The attainment of that first 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 the transfer is ancillary to that objective.
- ³⁰ As regards the second objective, 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. As is clear from recital 9 in the preamble to Directive 2001/84, 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.

- 31 That second objective explains the choice of the legal basis on which Directive 2001/84 was adopted, namely Article 95 EC. That choice confirms that the adoption of that directive forms part of the harmonisation of the Member States' laws, regulations and administrative provisions which concern the establishment and functioning of the internal market. Therefore, as is apparent from recitals 13 and 15 in the preamble to that directive, there is no need to eliminate differences between national laws which cannot be expected to affect the functioning of the internal market and, in order to leave as much scope for national decision as possible, it is sufficient to limit the harmonisation exercise to those domestic provisions that have the most direct impact on the functioning of the internal market.
- 32 That analysis is reinforced by recital 27 in the preamble to Directive 2001/84, from which it is clear that while the Union legislature wanted those entitled under the author to benefit fully from the resale right after his death, it did not, in accordance with the principle of subsidiarity, consider it appropriate to take action through that directive in relation to Member States' laws of succession, thus leaving to each Member State the task of defining the categories of persons capable of being considered, under national law, as those entitled.
- 33 It follows from the foregoing that, in the light of the objectives pursued by Directive 2001/84, it is permissible for Member States to make their own legislative choice in determining the categories of persons capable of benefiting from the resale right after the death of the author of a work of art.
- 34 That being so, there is nothing in Directive 2001/84 to indicate that the European Union legislature intended to rule out the application of rules governing coordination between the various national laws relating to succession, in particular those of private international law which are intended to govern a conflict of laws such as that arising in the dispute in the main proceedings.

35 It follows that it is for the referring court, for the purposes of applying the national provision transposing Article 6(1) of Directive 2001/84, to take due account of all the relevant rules for the resolution of conflicts of laws relating to the transfer on succession of the resale right.

36 In those circumstances, the answer to the first question is that Article 6(1) of Directive 2001/84 must be interpreted as not precluding a provision of national law, such as the provision at issue in the main proceedings, which reserves the benefit of the resale right to the artist's heirs at law alone, to the exclusion of testamentary legatees. That being so, it is for the referring court, for the purposes of applying the national provision transposing Article 6(1) of Directive 2001/84, to take due account of all the relevant rules for the resolution of conflicts of laws relating to the transfer on succession of the resale right.

The second question

37 The referring court's second question concerns the issue whether the derogating provisions in Article 8(2) and (3) of Directive 2001/84 must be interpreted as authorising the transitional retention of the IPC provision in question.

38 However, in the light of the reply to the first question, it is not necessary to reply to that second question.

Costs

- ³⁹ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 6(1) of 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 must be interpreted as not precluding a provision of national law, such as the provision at issue in the main proceedings, which reserves the benefit of the resale right to the artist's heirs at law alone, to the exclusion of testamentary legatees. That being so, it is for the referring court, for the purposes of applying the national provision transposing Article 6(1) of Directive 2001/84, to take due account of all the relevant rules for the resolution of conflicts of laws relating to the transfer on succession of the resale right.

[Signatures]