

## **Abstract**

The thesis offers a systematic overview of the law of performers' rights. This specific field of law forms no major area of law by itself, but rather covers various legal regulations that are related to artistic performances. The author argues for specific protection of an artistic performance which emanates from the protection of a persona as it is understood by the theory of natural law. The author thus opposes those who consider the protection of a performer to be only a protection of an investment in the economic competition.

That being said, it is impossible to automatically apply authors' rights to performers because of numerous differences between the two. The performer is not creating a new work of art which would enrich the knowledge of mankind, but only performs an existing work of art, making the societal benefit of an authors' work greater. The author therefore opposes the notion that Art. 34(1) of the Czech Charter of Fundamental Rights and Freedoms can be applied to artistic performances. Nevertheless, the protection of artistic performances is necessary because the society does not need only the existence of authors' creations, but also needs the art to be performed, if live art is to exist at all. Today, when live art is endangered more than ever before by technologies allowing unrestricted consumption of virtual reality or allowing the replacement of an audio-visual actor by his or her digital substitute, the importance of legal protection of an artist is on the rise.

The author briefly comments on the development of philosophical and legal thinking concerning artistic performances since antiquity while paying special attention to the developments in Bohemia and Moravia. The author focuses on the partly forgotten work of F. L. Rieger (1850) and explains the development of legal protection of the artist since the beginnings when he or she was protected under the umbrella of author's rights (as a person who is adapting a work) up to the introduction of special performers' rights (in Czechoslovakia already in the year 1953).

The main part of the thesis delineates the borders of performers' rights and their place within the legal order by showing the relations to constitutional law, civil law, general personality law, labour law, law of copyright and related laws and property rights (rights in rem). The author offers his own definition of an artistic performance which should comprise a

personal, artistic, direct and live delivery of an artistic work within the bounds of such work. The author also analyses the terms of a variety and circus artist. The thesis criticizes the predominant scholarly opinion which considers an artistic performance to be a creation of a “lower” originality which can become a work of authorship once it crosses the originality threshold, such as the work of a sound engineer or director – the so called “absorption rule” (Absorptionsregel). The author believes that artistic activity either represents artistic performance or not, and that the creativity of an author must not be confused with the artistic performance of a performer. The author also points out that under recent copyright case law of the CJEU, the term artistic performance itself may be considered to be an autonomous term of EU law which should be interpreted by the CJEU.

An important part of the thesis is dedicated to the person of the performing artist, specifically in light of the protection of foreigners, heirs, the problem of the presumption of the rightholder (and related issues with copyright and phonogram notices) and the problem of artistic performances delivered jointly by members of an artistic ensemble. With this regard, the author analyses the position of the so-called joint representative of the members of an artistic ensemble (Section 68 of the Czech Copyright Act) and the practical problems it brings, including the questions related to the law of corporations (an artistic ensemble as *societas iuris civilis*) and to the law of civil procedure.

The second half of the thesis is dedicated to a systematic explanation of the performers’ moral and economic rights with focus on particular practical problems, where the author offers his own solutions while criticizing the CJEU for its analysis of certain issues (incorrect interpretation of the term “communication to the public” and creation of factors such as new public or profit, which are, according to the present author, ill-founded). Further, the author explains contract law while paying special attention to the issue of a commissioned performance (arguing against the applicability of rules concerning commissioned works). Lastly, the thesis describes the instruments for enforcement of performers’ rights by civil law, administrative law and criminal law while highlighting deficiencies of the current legislation with proposals *de lege ferenda* (e.g. concerning the rightholder’s right of information, provisional measures concerning the preservation of evidence etc.).