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Chesterton's work still alive in Spain

Patricia Mariscal (Elzaburu) · Monday, May 18th, 2015



A recent [judgment](#) by the Spanish Supreme Court draws a line under the legal dispute between the heirs of the British writer G. K. Chesterton and a Spanish publishing house concerning the term of protection applicable to the former's works in Spain. The judgment declares that Chesterton's works, just like those of any national or foreign author who had died whilst the Spanish Act of 1879 was in force, are protected in Spain for a period of 80 years *post mortem auctoris*.

Protection of G. K. Chesterton's works in Spain for a period of 80 years would not be quite so startling if it were not for the fact that in the United Kingdom, the writer's country of origin, the rights in those works have been in the public domain since 1986, or at the very latest, since 2006. This is even more surprising bearing in mind that Spain is the only country in which the rights in Chesterton's work are still in force.

The case was brought by the Royal Literary Fund (RLF), a British foundation which is the heir and representative of the rights of the author G. K. Chesterton. RLF filed a complaint against the Spanish publisher, Enokia, S.L., because it was publishing and marketing a series of the British writer's works which, in the foundation's view, had not yet fallen into the public domain in Spain. Consequently, it petitioned the court for a declaration that the editing, publishing and marketing of Chesterton's works constituted infringement of the plaintiff's copyright, and sought an order for the defendant to cease exploiting the works and to pay compensation to the rightholders for actual and moral damages.

The Spanish Supreme Court confirmed the first instance judgment and held that the protection granted in Spain to any author deceased prior to 1987 must be governed by the 1879 Act, which provides that the term of protection extends to 80 years *p.m.a.*

The complexity, and richness, of this lawsuit stems from the fact that the solution to

the dispute (determination of the term of protection of the British writer's works in Spain) requires bringing together and reconciling provisions located in different spatial and temporal planes. Added to the transitional law problems arising from Spanish law are the problems deriving from having to reconcile the various applicable laws (national, Community and the rules laid down in international conventions) in respect of some contradictory points.

From an abstract angle, it could be held that the conclusion arrived at by the Spanish Supreme Court is the result of applying three basic principles, namely:

1. *The principle of non-discrimination among EU nationals.* The works of G. K. Chesterton are protected in Spain for 80 years just like the works of any other Community author, Spanish or otherwise, because if this were not the case, then the writer would be receiving discriminatory treatment in respect of other national authors, whose works would be protected throughout the whole of that period.
2. *Respect for acquired rights.* Pursuant to this principle of respect for acquired rights, and to the set of transitional provisions of the successive Copyright Acts, authors who were deceased prior to 1987 would not be subject to either the period of 60 years initially provided in the 1987 Act, or the period of 70 years fixed following Community harmonisation, but rather, they would be subject to the 80-year term provided in the 1879 Act.
3. *Minimum protection.* Art. 5.2 of the Berne Convention states that the enjoyment and exercise of the rights recognised therein "*shall not be subject to any formality*". The entry into force of the 1987 Act compensated authors who had been at its receiving end by enabling them to "rescue" works which had fallen into the public domain due to the fact that they had not been registered.

It must be said that the implications of this judgment by the Spanish Supreme Court go much further. In case there is any lingering uncertainty, the term of protection in Spain of the works of authors, national or otherwise, who had died prior to 1987 is 80 years *p.m.a.* This decision will likely have come as a pleasant surprise for heirs of many authors whose works were already believed to be in the public domain.

A [full summary](#) of this case has been published on [Kluwer IP Law](#)

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