

FIVE DOLLARS FOR PLAGIARISM: THE AFFAIR OF PHOTOGRAPHER MILAN PAVIĆ'S COPYRIGHT INFRINGEMENT (1938 – 1948)

DOI: 10.17234/SEC.34.3

Original scientific paper

Received:

29th April 2022

Accepted:

25th July 2022


HRVOJE GRŽINA

Hrvatski državni arhiv / Croatian State Archives

Trg Marka Marulića 21

HR-10000 Zagreb, Hrvatska / Croatia

hgrzina@arhiv.hr

 orcid.org/0000-0001-8064-0144

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Using preserved sources and newspaper articles as a starting point, this paper discusses the so-called the Kalvarija affair, i.e. the illegal use of a photo by Milan Pavić, an amateur photographer from Daruvar, in the American professional magazine *Minicam*. This violation of property and moral rights at the beginning of the World War Two reverberated throughout the media space of the Kingdom of Yugoslavia, with the great Croatian writer Miroslav Krleža also referring to it, in a somewhat ironic tone. In addition to the efforts of the photographer himself, the legal dispute also required the continuous involvement of the Ministry of Foreign Affairs of the Kingdom of Yugoslavia and its Consulate General in New York. Although the Second World War slowed down the process, it was continued by the bodies of the newly established Federal People's Republic of Yugoslavia at the author's urging, however – as we will see in this research – they did not achieve the desired outcome either, so the case was abandoned in 1948.

Keywords: *Milan Pavić, Elizabeth R. Hibbs, Miroslav Krleža, photography, copyright, Kingdom of Yugoslavia, Federal People's Republic of Yugoslavia, FPRY, Ministry of Foreign Affairs, Royal Yugoslav Consulate General in New York*

CASUM SENTIT DOMINUS¹

In the April 1938 issue of the professional photography magazine *Minicam* (Cincinnati, USA), a photo of the Daruvar Kalvarija ("Calvary", one of the stations of

¹ This work has been fully supported by the Croatian Science Foundation under project IP-2019-04-1772.

the cross with three crosses on top of a hill) was published, which was taken a year and a half earlier by a young photographer from Daruvar, Milan Pavić, still unknown in the general public at that time. However, the photograph was not attributed to him, as its reproduction was published as part of a report from a trip to Brazil by the author Elizabeth R. Hibbs with the title "Easter Pilgrimage" (Hibbs 1938:48–51). Such an obvious violation of authorship, after being discovered, spurred the young amateur photographer into a series of actions aimed at protecting his copyright and obtaining compensation for the illegal act.

There are several versions of the story recounting when Pavić took the *Kalvarija* photograph and how he found out about the plagiarism. In an interview with the Belgrade biweekly *Intervju* in 1982, the author himself stated that the photograph was taken "in the summer of 1937, at the Daruvar cemetery" and that he learned about the plagiarism from Croatian emigrants in the USA (Majstorović 1982:35–36). Four years later, in an appendix to his extensive photo monograph, he mentioned Christmas Eve 1936 as the date of the photo and that the issue of the American magazine in question



Figure 1: Milan Pavić, "Kalvarija", 1937 Author's vintage print in full format, no cropping. The following photograph technical data are listed: "Photographed with a Certo camera 6.5 x 9 cm. Lens: Certo: 1:6.3, F.10.5, negative 28° Sch. Lighting conditions: In the sun, 3 pm Screen: 8, – Lighting: 25 – Filter: 2"

was given to him by the photographer Milan Fizi (Depolo 1986:228).² Whatever the case, the photograph was certainly taken much earlier than its reproduction in the American magazine. It was first published – in full format – on the inside cover of the Belgrade magazine *Sad i nekad* in April 1937 (*Sad i nekad*, “Kalvarija. Photo M. Pavić, Daruvar”, 25 April 1937), and a few months later, in August, the author exhibited it at the *First Club Photo Exhibition* of the Daruvar photo club.³

For the purposes of this paper, the publication of *Kalvarija* – in a slightly different cropping – on the cover of a Croatian professional magazine from Zagreb, *Foto revija*, in November 1937, is significant (cf. *Foto revija*, “Kalvarija. Milan Pavić, Daruvar”, November 1937). Since *Foto revija*, in addition to the Kingdom of Yugoslavia, was also

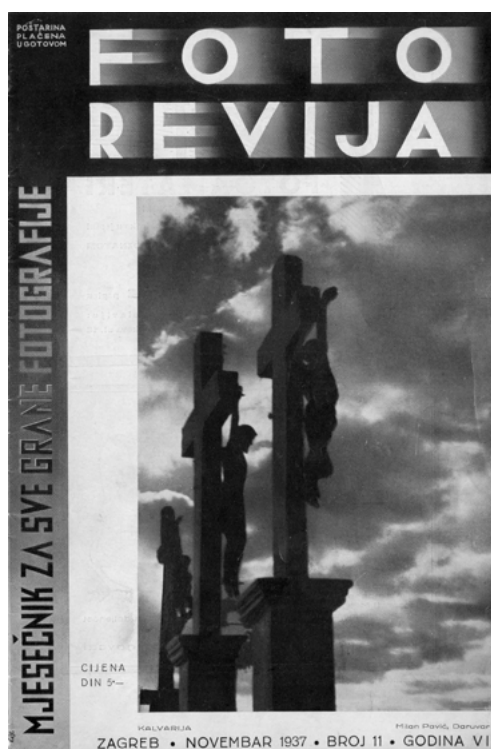


Figure 2: The cover of the professional magazine “Foto revija” from November 1937 with a reproduction of “Kalvarija” in a slightly different cropping compared to the vintage print and full format negative.

² Not even the vintage photograph of *Kalvarija* preserved in Pavić’s personal archival fonds can reveal the date on which it was taken, as the back of it, along with technical data about the photograph, has the month of “May” listed first, which was crossed out and “December” was typed, with the handwritten addition of “1936” (cf. HR-HDA-1758. Pavić Milan, box 5, folder 64)

³ HR-HDA-1758. Pavić Milan, box 9, folder 88.

distributed abroad, at the end of 1937 or the beginning of 1938 Pavić's photo was also noticed in the USA and was published a few months later as part of a text authored by Elizabeth R. Hibbs. When comparing the prints, it is clear that the version from the cover of *Foto revija* was reproduced in the American magazine. A few months later, the copy of the *Minicam* magazine in question found its way into the hands of the young Daruvar amateur photographer, who decided to request compensation for the dishonorable act and illegal appropriation of his authorial work. Thus, "at the very beginning of his work in photography, his *Kalvarija* became a global event", as noted by Jure Kaštelan in the preface to Pavić's extensive photo monograph (Kaštelan 1986:4).

What remains unclear after examining the controversial article by the American author is the direct responsibility for the illegal use of Pavić's photo. Since "Illustrations by the Author" is written under the title "Easter Pilgrimage By Elizabeth R. Hibbs", it

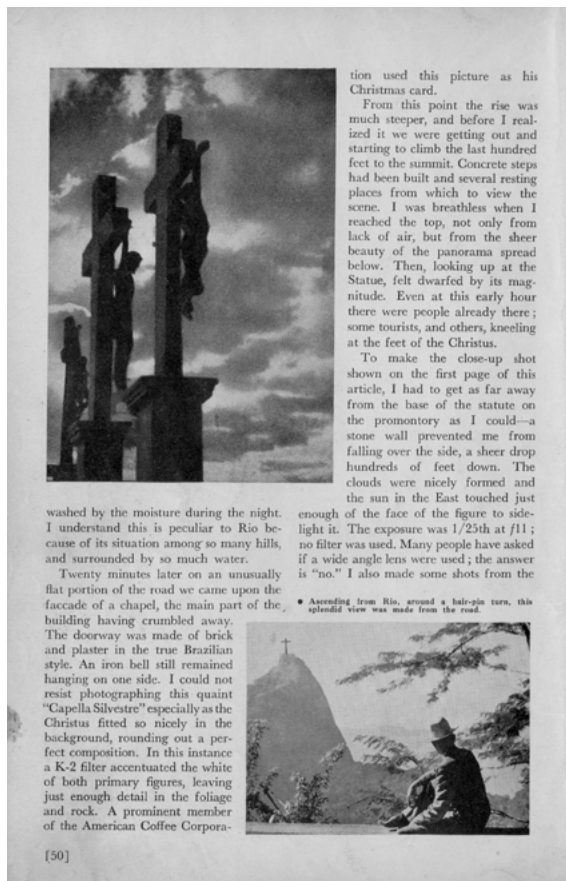


Figure 3: The page from the American magazine "Minicam" from April 1938 with the controversial reproduction of "Kalvarija", taken from "Foto revija", accompanying the text "Easter pilgrimage" by Elisabeth R. Hibbs.

is clear that Pavić's photograph was also attributed to the American photographer. However, it is the only photo without an additional caption, and the author does not refer to it in the text,⁴ so we cannot rule out the possibility that *Kalvarija* was illegally used by the graphic editor of the magazine to fill out some empty space with a photograph with the appropriate content. Unfortunately, that side of the story, although very important, will probably remain unexplained.

CULPA LATA DOLO PROXIMA

Incensed by the fact that his photo was published without mentioning his name and without permission, Pavić – in accordance with the *Copyright Protection Act of 1929* in force in the Kingdom of Yugoslavia at that time (*Službene novine*, "Zakon o zaštititi autorskog prava", 27 December 1929) – decided to take legal action in order to obtain primarily financial compensation, but also indirectly moral satisfaction, for that illegal act. Thus, on 5 September 1938, he sent a letter to Belgrade, to the Ministry of Foreign Affairs of the Kingdom of Yugoslavia, in which he requested information on the whereabouts "of the nearest consulate of the Kingdom of Yugoslavia" for Cincinnati and presents his view of the problem:

"My very successful art photograph 'Kalvarija' was published with my permission in the Zagreb monthly photo magazine 'Foto Revija' on its first page in November 1937. That issue of 'Foto Revija' also reached America. A certain Mrs. Elizabeta Hipps [sic!] wrote an article for this year's April issue of the American photography magazine 'Minicam' titled 'Easter Pilgrimage' and wrote 'Illustrations by the author' under the title. One of the pictures accompanying this article is my picture, 'Kalvarija', but without mentioning the author and his country of origin. The picture is without any doubt my picture and rephotographed from 'Foto revija'. This is an undeniable act of plagiarism/appropriation of someone else's artistic achievement. Now I would like to ask, firstly, for compensation from the author, or, alternatively, from the Editorial Board. I need to know the financial situation of Mrs. Hipps. I don't know where she lives nor anything else about her. This is why I kindly ask you for guidance on who to contact first, and information on how I can exercise my rights I also do

⁴ Depolo's monograph states that Hibbs "includes Pavić's 'Calvary' as her own work by noting the exposure and aperture" (Depolo 1986:228); however, this is not true because the author does not mention the Kalvarija motif anywhere in the text nor does she provide any technical details for the photograph, in contrast to the rest of the photographs (cf. Hibbs 1938:48–51).

not know whether America has adopted the international convention of copyright valid in the Kingdom of Yugoslavia.”⁵

A few days later, on September 11, Pavić – determined to pursue the story of the illegal use of his photo to its rightful conclusion – wrote a new letter, this time to the American Consulate in Zagreb, requesting “mediation in this matter, so that the issue does not become an affair”. In the letter, he repeats most of what he wrote to the Ministry of Foreign Affairs and asks for the address of Elizabeth Hibbs, noting that he “personally cares a lot” that he receives “a fair compensation, so that the public does not learn about the matter”.⁶

In October, while waiting for an answer, Pavić drafted a piece of correspondence intended for the editors of the *Minicam* magazine with a harsh letter for the photographer Elizabeth R. Hibbs. After repeating the already known details about the photograph itself, Pavić proposes a settlement to the American author so that her name “remains untarnished”. “I can only be placated with a decent monetary reward,” Pavić continued, “to give up pressing my claim legally or through the press”, and concludes that, in the event of a settlement, the dispute would remain a private matter and warns the photographer that she would only make the situation worse if she ignores the letter.⁷ On November 8, this piece of correspondence, which was translated into English, was sent to the editors of *Minicam* magazine, while a copy of the letter to Hibbs was preserved in a German translation as well.⁸

The eagerly anticipated response to the first letter – sent to the Ministry of Foreign Affairs in Belgrade on September 5 – arrived to Pavić on December 7 from the Royal Yugoslav Consulate General in New York. In it, consul Božidar P. Stojanović informed him that the consulate, at his request,

“contacted the editorial board of the ‘Minicam’ magazine, which in response to that intervention sent \$5 to the Consulate General as compensation for [...] the picture ‘Kalvarija’, noting that this is their usual fee for works of this type. The Consulate General considered the fee to be a paltry amount, and thus submitted the entire case to a lawyer, Mr.

⁵ HR-HDA-1758. Pavić Milan, box 5, folder 64, Letter “Ministarstvu spoljnih poslova Kraljevine Jugoslavije” (To the Ministry of Foreign Affairs of the Kingdom of Yugoslavia) dated 5 September 1938.

⁶ Ibid., Letter “Poštovanom gospodinu Američkome konzulatu” (To the Respected Mr. American Consulate) dated 11 September 1938.

⁷ Ibid., the letters “Uredništvo magazina ‘Minicam’” (To the Editorial Board of “Minicam” Magazine) and “Poštovana gospođa Elizabeth Hipps” (Respected Mrs. Elizabeth Hipps) dated October 1938.

⁸ Ibid., the letters “To the Editor of the ‘Minicam’ Magazine” dated 8 November 1938 and “Geherte Frau Elizabeth Hipps” dated November 1938.

S. Kurzmann [sic!], 505 Fifth Avenue, New York City, who will contact you directly with regards to this matter.”⁹

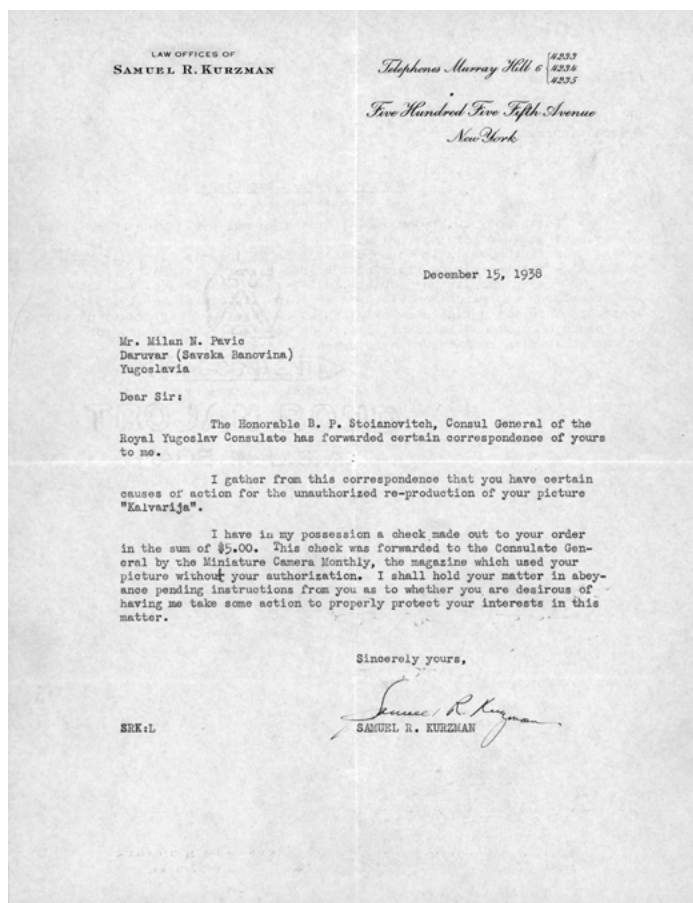


Figure 4: Letter from American attorney Samuel R. Kurzman to Milan Pavić dated 15 December 1938

A week later, the lawyer Samuel R. Kurzman sent a letter to Pavić, informing him that he had taken his case with its corresponding correspondence, as well as the check for five dollars, and was asking for instructions on how to proceed. “I shall hold your matter in abeyance pending instructions from you as to whether you are desirous of having me take some action to properly protect your interests in this matter,” Kurzman concludes.¹⁰

⁹ Ibid., letter no. 12769 “Gospodinu Milanu Paviću” (Mr. Milan Pavić) dated 7 December 1938.

¹⁰ Ibid., letter from Samuel R. Kurzman dated 15 December 1938 (translation from English on the back).

The unusual story about copyright infringement soon began to fill newspaper columns throughout the Kingdom of Yugoslavia. The wider public was first informed by Belgrade's *Pravda* as early as 22 December 1938. In a short text, it was pointed out that the injured party, amateur photographer Milan Pavić, "took emphatic measures" upon learning of the plagiarism and that "[t]he resolution of this dispute is anticipated [...] with great interest" (*Pravda*, "G. Milan Pavić iz Daruvara" (Mr. Milan Pavić from Daruvar), 22 December 1938).

At the beginning of 1939, the plagiarism news was also reported by Zagreb's *Jutarnji list*. The article in question, compared to the one published one month earlier in *Pravda*, contains a bit more detail on the legal action that Pavić had taken up to that point, however, it also contains incorrect information related to the interpretation of the text by Elizabeth Hibbs accompanying the photos. The text states that "Miss Hipss [sic!] held a lecture about her trip to South America at the elite Yokey club in Cincinnati, where she also reproduced this photograph" (*Jutarnji list*, "Daruvarski amater tužio američki magazin zbog plagijata" – Amateur from Daruvar Sues American Magazine for Plagiarism, 21 January 1939), which has nothing to do with the content of Hibbs's report. The author actually did write about the Jockey Club, however, the club in question was the famous club in Rio de Janeiro, which she had the opportunity to visit during her trip and took one of the attached photos on that occasion (cf. Hibbs 1938:51).

It cannot be ascertained with a sufficient degree of certainty whether the cause of this error is poor knowledge of the English language, in which Hibbs's article was written, or the desire to reinforce the impression of injustice against a local author, but the same error is found in the article published three days later, in the newspaper *Vreme*. The only difference is that the Belgrade daily also included the reproductions of the disputed photos published in *Foto revija* and *Minicam* (*Vreme*, "Daruvarski fotoamater Pavić" – Amateur Photographer Pavić from Daruvar, 24 January 1939).

The most famous piece which mentions the plagiarism of Pavić's photo was published a few months later, written by the great Croatian writer Miroslav Krleža. In his text "Anno Domini MCMXXXIX: Na tom mladom letu veselimo se" (Anno Domini MCMXXXIX: In this Young Year We Rejoice), published in the literary magazine *Pečat*, he ironized and amplified newspaper articles of the time (cf. Visković 1993), and one of the issues he mentions is the plagiarism of Pavić's photograph, which was a current topic at that time:

"Amateur photographer and writer Miss Elisabethy Hipss [sic!] from Cincinnati, Ohio, U.S.A. reproduced the amateur photo of Daruvar photographer Mr. Milan Pavić, 'Calvary' and published it under her own

name in the great American photography magazine 'Minican' [sic!] in Cincinnati, Ohio, U.S.A. as her own photo from South America. Sued by amateur photographer Mr. Milan Pavić from Daruvar, the amateur photographer and writer Elisabethy Hipss sent the author of 'Kalvarija' from Daruvar five dollars as compensation for illegally using his copyright. The author of 'Kalvarija' from Daruvar, amateur photographer Mr. Milan Pavić, was not satisfied with this compensation and handed the crook over to justice. From New York to Daruvar, the world is waiting to see how this extremely interesting copyright dispute will unfold with the greatest interest." (Krlježa 1939:203)

Several drafts for potential newspaper articles have been preserved in the archival material, which were written by Pavić himself in all probability; however, no indication that they were published in that form could be found. The first one is from 24 January 1939 and was drafted with the intention of being published in one of the professional magazines – it ends with the words: "All photography circles are waiting with interest to see how this affair will develop"¹¹ – while the second one, from June of the same year, refers to Krlježa's text from *Pečat*, and was intended for the literature and art section in some of the newspapers.¹²

AFFIRMANTI INCUMBIT PROBATIO

At the end of January 1939, Pavić responded to Consul General Stojanović, asking him in a letter to continue acting as a liaison in his communication with lawyer Kurzman, primarily because it was "very difficult for him to get an English translation" and the American lawyer "does not speak Serbo-Croatian". To this letter he attached another letter intended for Kurzman, clippings from the newspapers *Pravda* and *Jutarnji list*, and reproductions of the photos in question published in *Foto revija* and *Minicam* magazine, concluding that

"These types of plagiarism cases do not happen [...] often, so I believe that they should be used to get as much out of them as possible. Especially when you take into account that I'm not doing great financially and that I really need the money. Apart from that, I, as the poor author of

¹¹ Ibid., typescript "Uspjela slika našeg fotoamatera plagirana u Americi" (Successful Photo by our Amateur Photographer Plagiarized in America) dated 24 January 1939.

¹² Ibid., typescript "Jedna Amerikanka plagirala sliku našeg fotoamatera" (American Woman Plagiarizes Photo by our Amateur Photographer) from June 1939.

the photograph, from Yugoslavia, possibly stand against a rich American woman, Mrs. Hibbs. Perhaps she won't find it difficult to give a few hundred dollars for this theft."¹³

In his letter to Samuel Kurzman, sent through the Consulate General, the amateur photographer from Daruvar lengthily states his opinion on how the dispute should be resolved – with many valuable details:

“So, Mrs. Hibbs made a mistake. This is irrefutable. She should remedy this mistake. And she can do so by paying me a decent monetary compensation, which I would be satisfied with. My suggestion would be something like this: First, Mrs. Hibbs's financial situation and assets should be ascertained. After that, she should be offered an out-of-court settlement. If she would agree to that and offer a decent sum, which would approximately be equal to the amount for which she could be sued, with the addition of any potential incurred costs, then a settlement could possibly be reached. If I were familiar with Mrs. Hibbs's financial situation, it would be easier for me to present my claim and indicate the amount of damages I am seeking for the infringement of my copyright. If she asks that you disclose the amount of compensation sought, I ask you to judge the situation yourself, based on the collected information regarding her standing. The richer she is, the higher the demand – American style! I would be grateful if you would immediately let me know where her offer stands, before you agree to it. I don't think we should settle for less than 300 dollars. We could ask for up to 500 dollars. If she is from a particularly wealthy family, perhaps it is possible to ask for around 1,000 dollars. Of course, when offering a settlement, all the consequences of court proceedings should be pointed out to Mrs. Hibbs: the fine, compensation payments to the author, court and attorney fees, suffering reputational damage in the Yugoslav and American press, etc. If Mrs. Hibbs does not agree to the settlement, or if she offers a paltry sum that cannot be agreed to, I ask that you file a lawsuit against her, and possibly against the Editorial Board of 'Minicam' magazine. Please file the suit if the outcome is certain to be in my favor. I cannot give any advances because my finances are weak. And all the costs of the proceedings (for the court and yours) should be borne by Mrs. Hibbs, as

¹³ Ibid., letter “Poštovani gospodin B. P. Stojanović” (Respected Mr. B. P. Stojanović) dated 24 January 1939

the guilty party. You are aware of the legal possibilities in your country, so please be so kind as to benefit me, and of course yourself, from this dispute. Cases like this are not very common, so I believe that they should be used to the fullest extent possible.”¹⁴

As Pavić did not receive any response in the next four months, he decided to write another letter to Consul General Stojanović, noting again that he considers “this case of plagiarism” to be a “serious violation of copyright”, and that he expects “adequate material compensation”. “America is well-known as a country of justice”, Pavić highlights, but despite this – considering the long wait – he also expresses a degree of skepticism with regards to the successful conclusion of litigation:

“However, I still fear that without your supervision and your interest in a beneficial outcome in my favor, the dispute may end unfavorably for me due to some secret agreement between the plagiarist and the lawyer. – – These are fears that come to my mind during this long period of waiting for news from America.”¹⁵

In spite of his attempts to expedite the issue, Pavić had to wait for an answer for some time. It was only on 8 November 1939 that he found out he made a mistake when he addressed Božidar P. Stojanović directly – who had in the meantime been transferred to Belgrade to the position of “Consultant of the Ministry of Foreign Affairs” – instead of the Consulate General as a legal entity. The employees of the consulate thought that Pavić’s letter was Stojanović’s private correspondence and, after a certain time, forwarded it, along with other correspondence, to the recipient in Belgrade at his new workplace. On May 31, the former consul returned the letter sent to New York to the Daruvar amateur photographer and instructed him to resend it to the address of the Consulate General “for further arrangements, if the [...] issue has not already been resolved.”¹⁶

Heeding the advice of the former consul, Pavić sent a new letter to New York on November 17, with the same content as the one from May 31,¹⁷ and a few days later he thanked Stojanović, once again repeating the gist of the legal dispute.¹⁸ Before

¹⁴ Ibid., letter “Poštovani gospodin Samuel R. Kurzman” (Respected Mr. Samuel R. Kurzman) dated 24 January 1939.

¹⁵ Ibid., letter “Poštovani gospodin B. P. Stojanović” (Respected Mr. B. P. Stojanović) dated 31 May 1939.

¹⁶ Ibid., letter “Poštovani Gospodine Paviću” (Respected Mr. Pavić) dated 8 November 1939.

¹⁷ Ibid., letter “Poštovanom gospodinu Generlnom konzulu Kraljevine Jugoslavije” (To the Respected Mr. Consul General of the Kingdom of Yugoslavia) dated 17 November 1939.

¹⁸ Ibid., letter “Poštovani gospodine savetniče” (To the Respected Mr. Advisor) dated 22 November 1939.

that, on June 22, while waiting for news from New York, he issued a power of attorney to Leon Gros, the director of the Daruvar commercial company "Industrija", so that "he can represent him in all [...] legal matters in court and outside the court, and so that he can arrange a settlement in [his] name, give up legal remedies, and to receive money or monetary compensation and issue valid confirmations thereon, in the matter of plagiarism of [his] photograph perpetrated by Miss Elizabethy Hibbs of America and infringement of copyright."¹⁹

Shortly thereafter, Leon Gros traveled to the US on business and, during his stay in New York, on July 24, he visited the lawyer Kurzman. The latter informed him that he had prepared the suit and that he had to file it through another lawyer in the state of Ohio. On Pavić's behalf, he requested a compensation of 1,000 dollars, of which, in case of a favorable outcome, he would keep 25% for representation. The Daruvar industrialist paid an advance of 10 dollars to the New York lawyer to carry on with the proceedings and returned home with a receipt.²⁰

Pavić also mentioned the details of Gros's visit in two new letters sent in mid-November 1940 to the Ministry of Foreign Affairs in Belgrade and to the new Consul General of the Kingdom of Yugoslavia, Oskar Gavrilović, in New York. In these letters, he repeats everything he said before and asks for intervention so that his case is resolved before "the statute of limitations runs out". "My financial state is not so good that I could waste money, nor miss this extremely convenient opportunity to get some money from a plagiarist or the magazine for the theft of my photograph."²¹ These two letters were Pavić's last attempt to seek justice before the Kingdom of Yugoslavia was engulfed in the whirlwind of the Second World War.

In the meantime, he exhibited *Kalvarija* at the *Second National Exhibition of Art Photography* held in Osijek, Sušak and Daruvar in 1940, with the photograph being reproduced in full format in the catalog for this occasion (*Nacionalne izložbe umjetničke fotografije*: s. p. – National Art Photography Exhibitions). On the first of the three exhibitions, the *Hrvatski list* newspaper from Osijek stated that "the photograph 'Kalvarija' by Milan Pavić is also famous [...] in America" (*Hrvatski list*, "II. nac. izložba umjetničke fotografije" - Second National Exhibition of Art Photography, 9).

¹⁹ Ibid., power of attorney for Leon Gros dated 22 June 1939.

²⁰ Ibid., Receipt for 10 dollars dated 24 July 1939.

²¹ Ibid., letters "Ministarstvu spoljnih poslova Kraljevine Jugoslavije" (To the Ministry of Foreign Affairs of the Kingdom of Yugoslavia) dated 10 November 1940 and "Poštovanom gospodinu Generalnom konzulu Kraljevine Jugoslavije" (To the Respected Mr. Consul General of the Kingdom of Yugoslavia) dated 11 November 1940. Fragments of the mentioned two letters were also published in an interview in 1982 (cf. Majstorović 1982:37).

Milan Pavić was born in Daruvar on 30 January 1914 to father Nikola and mother Julijana, née Filipović.²² After schooling in his hometown, from 1930 to 1942 he worked as a clerk for the city municipality in Daruvar, and in the mid-1930s he started working as a contributor to the Zagreb-based *Novosti* and the Belgrade-based weekly *Panorama*. It was during this time that he became interested in photography, and in 1937 he initiated the founding of Daruvar's Fotoklub (Photo club), where he held the position of secretary (cf. Depolo 1986:228). In 1942, he moved to Zagreb and became a member of Fotoklub Zagreb which was very active at that time (Lozić 2009:254). In Zagreb, on August 21, he started working in the "Office for Photography of the State Reporting and Promotional Office at the Presidency of the Government of the Independent State of Croatia", which was a position he held when the war ended.²³ According to several witness statements from the days after the end of the Second World War, while working in the Promotional Office of the Government of the Independent State of Croatia during the war, Pavić also aided the national liberation movement.²⁴ After the end of the war, he continued to work in the "Photography Section of the Press Department of the Presidency of the Croatian People's Government" (Croatia's Photography Center) until 1958, when he started working as a freelancer (cf. Depolo 1986:231–232). Over the years, he produced a rich photographic oeuvre and is now considered one of the biggest names in Croatian photography of the 20th century. He died in Zagreb on 13 October 1986.²⁵

Although Pavić consistently claimed that the outbreak of the Second World War stopped any efforts to resolve the Kalvarija plagiarism issue in interviews (cf. Kuzmić 1979:6; Majstorović 1980:20, 1982:37), as well as in the extensive photo monograph published near the very end of his life (Depolo 1986:228), the preserved material tells a different story. On 19 December 1943, through the Consul General of Argentina

²² The date of birth was taken from the baptism register of Daruvar Parish as a primary source (cf. HR-HDA-1448, Zbirka mikrofilmova matičnih knjiga i popisa obitelji, Parohija Daruvar, MKR 1910. – 1924. – Collection of microfilms of registers and family lists, Daruvar Parish, Baptism Register 1910 – 1924, p. 62, no. 3/312), while all later publications state January 31 as the date of birth (cf. e.g., Depolo 1986:227).

²³ HR-DAZG-1152, Pavić Milan, box 1, folder 8. Records no. 33749/47 and 1651/52.

²⁴ Ibid., folder 4, Statement of Edo Murtić "o ilegalnoj suradnji s drugom Milanom Pavićem" (On the Illegal Collaboration with Comrade Milan Pavić) dated 19 August 1946; folder 5, confirmation from Vanja Murtić "o ilegalnom radu druga Milana Pavića" (On the Illegal Work of Comrade Milan Pavić) dated 29 August 1946; folder 6, "Izjava" (Statement) from Stevo Zebo dated 31 August 1946 and folder 7, "Izjava" (Statement) from Danica Georgijević dated 10 August 1947.

²⁵ HR-HDA-1448, Zbirka mikrofilmova matičnih knjiga i popisa obitelji, Parohija Daruvar, MKR 1910. – 1924 (Collection of microfilms of registers and family lists, Daruvar Parish, Baptism Register 1910 – 1924), p. 62, no. 3/312.

in Zagreb, he sent a new letter to Consulate General in New York, in which he again requests that someone contacts the lawyer Kurzman to see how his case is progressing so he can receive the appropriate compensation at the end of the war. "Given our circumstances, we cannot write to you", Pavić concludes, "[and] you are surely also familiar with how things stand."²⁶ According to the preserved correspondence, this was Pavić's only attempt to proceed with the legal issue during the war.



Figure 5: Milan Pavić (circled on the left) with members of the Daruvar Fotoklub during the club's exhibition in August 1938. The exhibited reproduction of "Kalvarija" is circled in the middle

ONUS PROBANDI INCUMBIT EI QUI ASSERIT

A new letter followed shortly after the end of the war, on 2 July 1945, and was addressed to the Consulate General of Yugoslavia in New York. "War broke out in Europe and our ties with the U.S. were severed. I waited. The war ended. And now I am contacting the General Consulate again, with a request to investigate the matter with the lawyer Mr. Samuel Kurzman [...] and would appreciate if you could let me know the situation with this case as soon as possible." In this instance, Pavić was prepared to refund the Consulate General for any funds spent on the intervention or to contribute

²⁶ HR-HDA-1758. Pavić Milan, box 5, folder 64, letter "Kr. Generalnom konzulu" (To the Consul General) dated 19 December 1943.

from the compensation “for the devastated regions of Bosnia, Lika, Bania and Kordun in Yugoslavia, which are in need of great help.”²⁷

Pavić’s next letter, sent to the same address a year later, was similar in tone. Seeing as the proceedings did not progress at all, and the author did not receive any news from the American lawyer, he again asked the Consul General of the Federal People’s Republic of Yugoslavia “to make inquiries with the lawyer regarding his actions and why [...] he did he not report any results.” “Maybe the lawyer thinks that I have died”, concludes Pavić, and continues “but having withstood the great struggle against the occupiers and their servants, I survived the most difficult period in the history of the Yugoslav peoples. Now we are all working to build a better life for our peoples under the leadership of our dear Marshal Tito.”²⁸

Despite the almost epic phrasing of the concluding paragraph, news from the US still did not arrive. However, Pavić, determined to bring the proceedings to an end, was not ready to give up. At the end of November, he decided to write two letters, one to the Consulate in New York and one to the Ministry of Foreign Affairs in Belgrade, and then, in early December, another one, to lawyer Kurzman.²⁹ Based on the preserved correspondence, the Ministry of Foreign Affairs forwarded Pavić’s letter to the Consulate General in New York (Corr. No. 8646) on December 7, after which the case started to resolve. The Consulate, most likely during 1947, managed to get in touch with lawyer Kurzman, who submitted a report outlining the following (the quote in the transcript is as it arrived at the Ministry of Foreign Affairs):

“Until the war, I was in constant contact, first with the former Consul General Stojanović, and then with Consul Oskar Gavrilović. I informed them that I was not able to do much regarding this matter and that ‘Minicam’ offered me a check dated 30 November 1938 issued to Milan N. Pavić in the amount of 5 dollars, which of course I refused to accept. During the war, I once wrote to Mr. Pavić, but I did not receive any reply from him. Afterwards, the matter remained unchanged, and is currently at the same stage as I once presented it to the aforementioned Consuls. Upon reviewing this matter, I realize that I cannot press it any further, so I would

²⁷ *Ibid.*, letter “Pn. Generalni konsulat Jugoslavije” (To the Consulate General of Yugoslavia) dated 2 July 1945.

²⁸ *Ibid.*, letter “Generalnom konzulatu F.N.R. Jugoslavije” (To the Consulate General of the Federal People’s Republic of Yugoslavia) dated 9 July 1946.

²⁹ *Ibid.*, letters “Generalnom konzulatu F.N.R. Jugoslavije” (To the Consulate General of the Federal People’s Republic of Yugoslavia) dated 26 November 1946, “Ministarstvo inostranih poslova F.N.R. Jugoslavije” (To the Ministry of Foreign Affairs of the Federal People’s Republic of Yugoslavia) dated 27 November 1946 and “Mr. Samuel R. Kurzman” dated 4 December 1946.

be grateful if you could advise Mr. Pavić to choose another representative who could pursue the matter for him. I would be very happy to hand over the entire file to my successor, when he indicates one to me.”³⁰

Following Kurzman’s report, Consul General Miodrag Marković, in his reply to the Ministry of Foreign Affairs sent on 30 April 1948, concluded “from the aforementioned, it appears that there are no chances of success, which should be brought to Milan Pavić’s attention before he incurs any costs related to filing a lawsuit in an American court.”

By the beginning of June, the American lawyer’s statement had reached the People’s Republic of Croatia, and the Office of the Presidency invited Pavić to come and personally collect Kurzman’s statement at 12 Matoševa Street. Considering that the two mentioned invitations, dated 4 and 15 June 1948, are the last preserved documents related to the “Kalvarija affair”,³¹ it is reasonable to assume that the young photographer – whose successful career was just beginning at that time – followed the advice of the Consul General from New York and the “Legal Department” of the Ministry of Foreign Affairs and did not insist on continuing this decade-long, unsuccessful legal battle.

QUAE NOCENT, SAEPE DOCENT

It appears his *Kalvarija* experience, as well as the virtually complete absence of any form of satisfaction (financial and moral), made Pavić more sensitive to the issue of respecting photographers’ copyrights. Considering his visionary article entitled “Dokle anonimnost autora” (How Long Will Authors Remain Anonymous?), published in the newspaper *Novinar*, he continued to face similar issues even after the Second World War, but now in Croatian daily newspapers. Aware that little has changed since the “Kalvarija affair”, Pavić took the opportunity to call copyright infringement a “weakness” that “has been going on [...] for years, and when complaints are made to responsible editors, they always produce a variety of excuses, the blame is shifted to the technical editor, or someone else, who is not present. And so life goes on...” (Pavić 1964:20).

The second part of Pavić’s text reveals a great change in the way he looked at the problem of copyright infringement. While during the 1930s and 1940s, he primarily insisted on financial compensation for the illegal use of his photograph, which is obvious from the events described above, two decades later he is quite willing to

³⁰ Ibid., transcript of letter no. 1424/48 “Ministarstvu inostranih poslova” (To the Ministry of Foreign Affairs) dated 30 April 1948.

³¹ Ibid., invitations no. Kab. 1007/48 dated 4 and 15 June 1948.

accept that only his name be noted under the published photograph, “even if that means mentioning the author with the smallest letters” (Pavić 1964:20).

Given the above, it seems that not much has changed in terms of respecting photographers' copyrights from 1938 to 1964. For Pavić, the only important difference was that he eventually became a recognized name in the world of photography, probably with a significant increase in income, so he no longer needed legal battles like the one undertaken over the “Kalvarija Affair”. However, the problem persisted, and we occasionally encounter it even today, and the story of the “Kalvarija Affair” – deprived of the grotesque dimension first noticed by Krleža due to the selective argumentation of Pavić himself – continued to live on in the media even after the photographer's death as an example of infringement of authorship by illegal use of a photograph without the permission of its author.

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When looking at the case of plagiarism of Pavić's *Kalvarija* photo in the American professional magazine *Minicam* in light of all that has been said, one can notice several important differences compared to the previous, “official” version of the so-called affair. The first and fundamental difference is that the legal proceedings, initiated in 1938, did not end with the outbreak the Second World War on the territory of the Kingdom of Yugoslavia as it existed at that time, which is a version of events recorded in several biographies of Pavić (cf. Kuzmić 1979:6; Majstorović 1980:20, 1982:37; Depolo 1986:228), but rather, it was continued until the moment when American legal experts, in 1948, advised the wronged author to give up further legal battle.

The second difference becomes clear only after a careful examination of the controversial article in which Pavić's *Kalvarija* was published without the author's consent. Plenty of incorrect information circulated in the media of the former Kingdom, which could simply not be corroborated in the “Easter Pilgrimage” text. Unfortunately, it is not possible to determine whether these errors were the result of poor understanding of English, or do they stem from the desire to amplify the injustice done to a local author. As a result, doubts regarding the actual responsibility for this, quite evident infringement of Pavić's copyright still exist. *Kalvarija* is the only photograph included with the text that does not have a short caption below the image, and the author does not refer to it in her text, which means that there is a possibility that a graphic editor included the photo in Hibbs' text. This could be supported by the five-dollar check that the magazine's editors sent to the lawyer Kurzman as compensation for the author of the photograph after the dishonorable act was discovered.

Whatever the case, the obvious fact remains that the publication of Pavić's photo without his knowledge violated his property and moral rights. The young amateur photographer, whose career was just beginning at that time, wholeheartedly devoted himself to this legal battle in order to secure material and moral satisfaction, at times even showing excessive enthusiasm for the possibility of a generous financial compensation for the illegal act. However, difficult communication with his legal representative in the US, a lack of knowledge of the English language and the start of the Second World War prolonged the proceedings for almost ten years, and in the end, in 1948, he was advised to give up any further legal action.

Although he did not reach any formal justice in the end, Milan Pavić's life changed drastically during the ten years he tried to resolve the "Kalvarija affair" through legal means. In 1948, he was a photojournalist and head of photography in the Photography Service of Croatia, with thousands of photographs in his portfolio, and over the next four decades he would establish himself as one of the most important names in Croatian photography of the 20th century. Thus, already in 1954, Fedor Vidas would write that today "no E. Hipss [sic!] will dare to sign a photo of Milan Pavić, because he is no longer an unknown amateur photographer from Daruvar, who happened upon an issue of 'Minicam' by chance; today he is known in all editorial offices of photography magazines and all major art photography salons" (Vidas 1954:3). No one else tried to misattribute one of Pavić's photographs again, that we know of, but the problem of author anonymity and selective access to copyright remained present in the media even after the "Kalvarija affair" and the end of World War II.

SOURCES AND REFERENCES

ARCHIVAL SOURCES

State Archives in Zagreb, HR-DAZG-1152 – *Pavić Milan*.

"Izjava Ede Murtića o ilegalnoj suradnji s drugom Milanom Pavićem" (Statement of Edo Murtić On the illegal collaboration with comrade Milan Pavić), 19 August 1946, box 1, folder 4

"Potvrda Vanje Murtić o ilegalnom radu druga Milana Pavića" (Confirmation from Vanja Murtić on the illegal work of comrade Milan Pavić), 29 August 1946., box 1, folder 5

"Izjava Steve Zebe" (Statement from Stevo Zebo), 31 August 1946, box 1, folder 6

"Izjava Danice Georgijević" (Statement from Danica Georgijević), 10 August 1947, box 1, folder 7

"Zapisnik br. 33749/47" (Record no. 33749/47), 21 July 1947, box 1, folder 8

- "Zapisnik br. 1651/52" (Record no. 1651/52), 9 April 1952, box 1, folder 8
Croatian State Archives, HR-HDA-1448 – *Zbirka mikrofilmova matičnih knjiga i popisa obitelji*
(Collection of microfilms of registers and family lists)
- "Parohija Daruvar, MKR 1910. – 1924." (Daruvar Parish, Baptism Register 1910 – 1924)
Croatian State Archives, HR-HDA-1758 – *Pavić Milan*.
- "Osnivački upravni odbor Fotokluba Daruvar na Prvoj izložbi Fotokluba Daruvar"
(The founding management board of Fotoklub Daruvar at the First Exhibition of
Fotoklub Daruvar), August 1937, box 9, folder 88
- "Kalvarija" (Calvary), 1937, box 5, folder 64
- "Pismo Ministarstvu spoljnih poslova Kraljevine Jugoslavije" (Letter to the
Ministry of Foreign Affairs of the Kingdom of Yugoslavia), 5 September 1938,
box 5, folder 64
- "Pismo Poštovanom gospodinu Američkome konzulatu" (Letter to the Respected
Mr. American Consulate), 11 September 1938, box 5, folder 64
- "Pismo Uredništvo magazina 'Minicam'" (Letter to the Editorial Board of "Minican"
Magazine), October 1938, box 5, folder 64
- "Pismo Poštovana gospođa Elizabeth Hipps" (Letter to Respected Mrs. Elizabeth
Hipps), October 1938, box 5, folder 64
- "Pisma To the Editor of the 'Minicam' Magazine" (Letter), 8 November 1938, box
5, folder 64
- "Pismo Geherte Frau Elizabeth Hipps" (Letter), November 1938, box 5, folder 64
- "Pismo br. 12769 Gospodinu Milanu Paviću" (Letter no. 12769 To Mr. Milan
Pavić), 7 December 1938, box 5, folder 64
- "Pismo Samuela R. Kurzmana" (Letter from Samuel R. Kurzman) 15 December
1938, box 5, folder 64
- "Strojopis Uspjela slika našeg fotoamatera plagirana u Americi" (Typescript
Successful Photo from our Amateur Photographer Plagiarized in America), 24
January 1939, box 5, folder 64
- "Strojopis Jedna Amerikanka plagirala sliku našeg fotoamatera" (Typescript
American Woman Plagiarizes Photo from our Amateur Photographer), lipanj
1939., kut. 5, folder 64
- "Pismo Poštovani gospodin B. P. Stojanović" (Letter to the Respected Mr. B. P.
Stojanović), 24 January 1939, box 5, folder 64
- "Pismo Poštovani gospodin Samuel R. Kurzman" (Letter to the Respected Mr.
Samuel R. Kurzman), 24 January 1939, box 5, folder 64
- "Pismo Poštovani gospodin B. P. Stojanović" (Letter to the Respected Mr. B. P.
Stojanović), 31 May 1939, box 5, folder 64
- "Pismo Poštovani Gospodine Paviću" (Letter to the Respected Mr. Pavić), 8
November 1939, box 5, folder 64
- "Pismo Poštovanom gospodinu Generlnom konzulu Kraljevine Jugoslavije"

(Letter to the Respected Mr. Consul General of the Kingdom of Yugoslavia), 17 November 1939, box 5, folder 64

“Pismo Poštovani gospodine savetniče” (Letter to the Respected Mr. Advisor), 22 November 1939, box 5, folder 64

“Punomoć Leonu Grosu” (Power of Attorney to Leon Gros), 22 June 1939, box 5, folder 64

“Potvrda o primitku iznosa od 10 dolara” (Receipt for 10 dollars), 24 July 1939, box 5, folder 64

“Pismo Ministarstvu spoljnih poslova Kraljevine Jugoslavije” (Letter to the Ministry of Foreign Affairs of the Kingdom of Yugoslavia), 10 November 1940, box 5, folder 64

“Pismo Poštovanom gospodinu Generalnom konzulu Kraljevine Jugoslavije” (Letter to the Respected Mr. Consul General of the Kingdom of Yugoslavia), 11 November 1940, box 5, folder 64

“Pismo Kr. Generalnom konzulu” (Letter to the General Consul), 19 December 1943, box 5, folder 64

“Pismo P.n. Generalni konsulat Jugoslavije” (Letter to the General Consulate of Yugoslavia), 2 July 1945, box 5, folder 64

“Pismo Generalnom konzulatu F.N.R. Jugoslavije” (Letter to the Consulate General of the Federal People’s Republic of Yugoslavia), 9 July 1946, box 5, folder 64

“Pismo Generalnom konzulatu F.N.R. Jugoslavije” (Letter to the Consulate General of the Federal People’s Republic of Yugoslavia), 26 November 1946, box 5, folder 64

“Pismo Ministarstvo inostranih poslova F.N.R. Jugoslavije” (Letter to the Ministry of Foreign Affairs of the Federal People’s Republic of Yugoslavia), 27 November 1946, box 5, folder 64

“Pismo Mr. Samuel R. Kurzman” (Letter to Mr. Samuel R. Kurzman), 4 December 1946, box 5, folder 64

“Prijepis pisma br. 1424/48 Ministarstvu inostranih poslova” (Transcript of letter no. 1424/48 to the Ministry of Foreign Affairs, 30 April 1948, box 5, folder 64

“Poziv br. Kab. 1007/48” (Invitation no. Kab. 1007/48), 4 June 1948, box 5, folder 64

“Poziv br. Kab. 1007/48” (Invitation no. Kab. 1007/48), 15 June 1948, box 5, folder 64

PRINT

Službene novine (Official Newspaper):

“Zakon o zaštiti autorskog prava” (Copyright Protection Act), 27 December 1929

Sad i nekad:

“Kalvarija. Foto M. Pavić, Daruvar” (Calvary. Photo M. Pavić), 25 April 1937

Foto revija (Photo Magazine):

“Kalvarija. Milan Pavić, Daruvar” (Calvary. Milan Pavić, Daruvar), November 1937

Pravda:

"G. Milan Pavić iz Daruvara tužio je za plagijat g-dicu Elizabetu Hips iz Sinsinatia u Sjedinjenim Američkim Državama" (Mr. Milan Pavić from Daruvar Sues Ms. Elizabeth Hibbs from Cincinnati, USA for Plagiarism), 22 December 1938

Jutarnji list:

"Daruvarski amater tužio američki magazin zbog plagijata" (Daruvar Amateur Sues American Magazine for Plagiarism), 21 January 1939

Vreme:

"Daruvarski fotoamater Pavić tuži američki magazin 'Minicam' za plagijat" (Daruvar Amateur Photographer Sues American Magazine "Minicam" for Plagiarism), 24 January 1939

Hrvatski list:

"II. nac. izložba umjetničke fotografije" (Second National Exhibition of Art Photography), 12 May 1940

REFERENCES

- DEPOLO, Josip. 1986. *Milan Pavić*. Zagreb: Spektar.
- HIBBS, Elizabeth R. 1938. "Easter Pilgrimage". *Minicam: The Miniature Camera Monthly*, vol. 1/8:48–51.
- KAŠTELAN, Jure. 1986. "Slikovnica svjetlosti" (Picturebook of Light). In DEPOLO, Josip. 1986. *Milan Pavić*. Zagreb: Spektar, 4–8.
- KRLEŽA, Miroslav. 1939. "Anno Domini MCMXXXIX: Na tom mladom letu veselimo se" (Anno Domini MCMXXXIX: In this Young Year We Rejoice). *Pečat*, no. 3:199–208.
- KUZMIĆ, Zdenko. 1979. "U poseti poznatom fotografu" (Visiting a Famous Photographer). *Foto kino revija*, March 1979, no. 3:6–7.
- LOZIĆ, Vladko. 2009. *115 godina Fotokluba Zagreb 1892. – 2007.* (115 Years of Fotoklub Zagreb). Zagreb: Fotoklub Zagreb.
- MAJSTOROVIĆ, Božo. 1980. "Foto-hronika umetničkog dometa" (Photo Chronicle of Artistic Accomplishment). *Rad*, 1 August, no. 32:20.
- MAJSTOROVIĆ, Božo. 1982. "Povest jednog foto-plagijata" (A History of One Case of Photo-plagiarism). *Intervju*, 6 August, no. 31:35–37.
- Nacionalne izložbe umjetničke fotografije* (National Exhibitions of Art Photography). 1940. Osijek: Tisak građanske tiskare k. d.
- PAVIĆ, Milan. 1964. "Dokle anonimnost autora" (How Long Will Authors Remain Anonymous?). *Novinar*, 12 April, no. 4:20.
- VIDAS, Fedor. 1954. "Pjesnik fotografske kamere" (A Poet of the Photo Camera). *Globus*, 10 July, no. 17:3.
- VISKOVIĆ, Velimir. 1993. "Anno Domini MCMXXXIX". *Krležijana*. Zagreb: Leksikografski zavod Miroslav Krleža. URL: <https://krlezijana.lzmk.hr/clanak.aspx?id=206> (accessed April 4, 2022).

Pet dolara za plagijat: afera kršenja autorskih prava fotografa Milana Pavića (1938. – 1948.)

Hrvoje Gržina

Na temelju sačuvanih izvora i novinskih napisa u članku se progovara o tzv. aferi Kalvarija, odnosno protupravnom korištenju jedne fotografije daruvarskoga fotoamatera Milana Pavića u američkome stručnom časopisu *Minicam*. Ta je povreda imovinskih i moralnih prava u osvit Drugoga svjetskog rata odjeknula medijskim prostorom Kraljevine Jugoslavije, a na nju se pomalo ironično osvrnuo i veliki hrvatski književnik Miroslav Krleža. Osim truda samoga fotografa, rješenje toga pravnog spora iziskivalo je i kontinuirani angažman Ministarstva vanjskih poslova Kraljevine Jugoslavije te njezina Generalnoga konzulata u New Yorku. Bez obzira na to što su ratna događanja usporila postupak, autorovim zalaganjem nastavila su ga tijekom novouspostavljene FNRJ, međutim – kako doznajemo iz ovoga istraživanja – ni ona nisu polučila traženi uspjeh, pa je s 1948. godinom slučaj obustavljen.

Ključne riječi: *Milan Pavić, Elizabeth R. Hibbs, Miroslav Krleža, fotografija, autorsko pravo, Kraljevina Jugoslavija, FNRJ, Ministarstvo vanjskih poslova, Generalni konzulat u New Yorku*



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