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Moral Rights of Author in Estonian Copyright Law

Section 39 of the Republic of Estonia Constitution provides, “An author has the inalienable right to his or her work. The state shall protect the rights of the author.” The objective of this article is to analyse the moral rights of the author and their protection in Estonian law and the international factors affecting protection.*¹

1. Moral rights of author *quasi* human rights?

Article 27 (2) of the Universal Declaration of Human Rights (1948) provides, “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”. The need for protecting the moral interests of the author has also been provided in article 15 of the International Covenant on Economic, Social and Cultural Rights (1966).² The moral rights, as well as property rights, guaranteed under the Covenant are further strengthened by the right to non-discrimination. According to article 2 of the Covenant the states parties to the Covenant shall apply these rights to all individuals (citizens and aliens) within their territory and subject to their jurisdiction and ensure that these rights are exercised without discrimination of any kind.³

The European Convention of Human Rights and Fundamental Freedoms (1950), as well as the African Charter on Human and People’s Rights (1981) make no reference to the moral and economic interests of the author. The Charter of Fundamental Rights of the European Union⁴ in article 17 paragraph 2 reads without specification, “Intellectual property shall be protected”.

¹ The “personal rights” guaranteed to the author in Estonian law are denoted by the term “moral rights” in international practice. Although Estonian law does not use the term “moral rights”, this article uses the terms “moral rights” and “personal rights” as synonyms. If a direct reference is made to the text of the Estonian Copyright Act or it is quoted, the term “moral rights” is used.

² Riigi Teataja (The State Gazette) 1991, 35, 428. Article 15 paragraph 1 (c) reads that everyone has the right, “To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

³ M. Robinson. Opening Address. Intellectual Property and Human Rights. A Panel Discussion to commemorate the 50th Anniversary of the Universal Declaration of Human Rights, Geneva, 9 November 1998. WIPO, Geneva /1999/, p. 6.

⁴ OJ C 364/1 18.12.2000.

In legal science, discussion is going on about the status of the right of property in international law. It is a rather widely held belief that most property rights cannot be included in the category of fundamental human rights.⁵ As intellectual property is, by nature, related to property rights and according to the generally accepted opinion in the Anglo-American legal doctrine also derived therefrom, intellectual property rights are consequently not regarded as human rights. It has been attempted to categorise intellectual property rights as “universally recognised rights”, “universal rights”, “natural rights”, *etc.* At the same time, jurists admit especially in the countries based on the Continental European tradition that some intellectual property rights may rise to the level of human rights. In such a case, these selected rights belong to human rights as personality rights.⁶

When assuming the latter position, the moral rights of the author are most likely to be included in human rights. Moral rights as the rights that are the most directly related to creative activity are also natural rights. As long as disputes about the relation between intellectual property rights and human rights are yet in progress, moral rights may be called *quasi* human rights.

2. Berne Convention standards

Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works⁷ establishes international standards, according to which the states party to the convention shall guarantee their authors so-called moral rights. These rights have been formulated in article 6bis (1) of the Convention as follows:

- 1) the author shall have the right to claim authorship of the work (or the right of paternity); and
- 2) the author shall have the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour and reputation (or the right of integrity and respect).

According to article 6bis (1) of the Convention, these rights are independent rights of the author, which do not depend on the economic rights of the author and belong to the author even if economic rights have been transferred.⁸ The term of protection of moral rights in party states has to be at least as long as the term of protection of economic rights, *i.e.* the life of the author and 50 years after his or her death (article 7 (1)). However, the wording of the Convention directly implies that national law may provide for a longer term for the protection of moral rights or protect these rights without a term. The means of redress for safeguarding the moral rights are governed by the legislation of the country where protection is claimed (article 6bis (3)). Thus, the party states are free to choose what means of protection, in civil law, criminal law or other, they use.⁹

Article 6bis of the Berne Convention was established as an international standard at the diplomatic conference held in Rome in 1928 and its wording was revised at the Brussels conference in 1948. The inclusion of moral rights in the Berne Convention was reasoned by stating that “work is a reflection of the personality of its creator”.¹⁰

The concept of the moral interests and moral rights of the author and its first legal regulation originates from France at the end of the 18th century and at the beginning of the 19th century.¹¹ The doctrine of moral rights came to be universally recognised in the countries of Continental Europe already at the beginning of the 20th century. In common law countries, thanks to their strong historical orientation to copyright primarily as an economic right, the doctrine of moral rights has not integrated to date.

⁵ See P. Drahos. The Universality of Intellectual Property Rights: Origins and Development. Intellectual Property and Human Rights. A Panel Discussion to commemorate the 50th Anniversary of the Universal Declaration of Human Rights, Geneva, 9 November 1998. WIPO, Geneva /1999/, pp. 25–26.

⁶ *Ibid.*, pp. 30–34.

⁷ Paris Act of 24 July 1971, as amended on 28 September 1979. WIPO Publication No 287 (E). Look also www.wipo.org.

⁸ About the history of moral rights see Z. Radojkovic. The historical development of “Moral Right”. – Copyright, 1966, p. 203.

⁹ For comments on article 6bis see Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971). WIPO, Geneva 1978, pp. 41–44; S. Ricketson. The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986. Centre for Commercial Law Studies, Queen Mary College. Kluwer, 1987, pp. 467–476.

¹⁰ Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971). WIPO, Geneva, 1978, p. 41.

¹¹ S. Ricketson (Note 9), pp. 456–457.

3. WTO TRIPS

Since 13 November 1999, Estonia has been a member of the World Trade Organisation (WTO). The most extensive global international agreement concerning intellectual property so far — the Agreement on the Trade-Related Aspects of Intellectual Property Rights — which is Annex 1C to the Agreement Establishing the World Trade Organisation (Marrakesh Agreement) has been concluded in the framework of the WTO.^{*12} According to article 9 (1) of the Agreement, members shall comply with articles 1 through 21 of the Berne Convention (Paris Act, 1971) and the Appendix to the Berne Convention. But the agreement makes an exception concerning article 6bis of the moral rights provisions of the Berne Convention, “However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom”. The exception provided for in article 9 (1) is a step backwards with regard to the global recognition and protection of moral rights and by this, the Anglo-American traditional approach significantly outweighs the copyright doctrine of Continental Europe. At the same time, the provision indicates that the agreement regards only economic rights as intellectual property rights.

4. Personal rights in earlier Estonian law

During the whole period of the independent Republic of Estonia (1918–1940), the 1911 Copyright Act (of the Russian Empire) was in force. In the thirties, a national draft Copyright Act was prepared based on the German law model. However, it was never adopted.^{*13} In 1927, Estonia became party to the Berne Convention for the Protection of Literary and Artistic Works (Berlin Act of 1908).^{*14} The 1911 Act did not contain a separate provision concerning moral rights. Amendments were not made to legislation after Estonia’s accession to the Berne Convention either.

After Estonia was occupied by the Soviet Union, Soviet copyright law continued to apply in Estonia for almost 50 years. During the last decades of the Soviet State, the copyright provisions were included in Part IV of the Civil Code of the Estonian SSR (CC) of 1964. Part IV of the CC was worked out in full conformity with the 1961 Fundamentals of Civil Legislation of the USSR and the Soviet Republics. The Soviet copyright legislation and doctrine were in force until the adoption of the Estonian Copyright Act in 1992. The 1992 Act was founded on bases that completely differed from the Soviet copyright doctrine. Yet the impact of the theory and evolved practice of the Soviet era on some provisions of the 1992 Act may be detected.

The Civil Code did not contain a separate regulation of the moral and economic rights of the author. All the rights of the author were set out in § 483 of the CC, supplemented by §§ 484^{*15} and 485^{*16} as specific provisions. The Soviet civil law doctrine distinguished between three groups of rights: economic rights, personal rights related to economic rights, and personal rights not related to economic rights. The doctrine regarded the moral rights of the author as rights not related to economic rights.^{*17}

Section 483 of the CC served as the basis for the catalogue of the so-called personal non-economic rights^{*18} in the Soviet copyright law:

- 1) the right of author’s name (inalienability of author’s name), *i.e.* the right to decide whether to publish, reproduce and distribute a work under the person’s own name, pseudonym or anonymously;
- 2) the right of integrity of the work.

The content of integrity of the work was specified in § 484 of the CC as:

- 1) the prohibition against making any alterations in the work, in the name of the work or in designating the name of the author without the consent of the author;

¹² See www.wipo.org.

¹³ About the 1911 Act see Al. Pilenko. *Novyi zakon ob avtorskom prav. S.-Peterburg: Izdaniye A. S. Suvorina, 1911*; P. Ambur. *Märkmeid autoriõiguse kaitse seaduse projekti kohta (Notes on Draft Copyright Protection Act)*. – *Õigus*, 1939, No. 9, pp. 410–414 (in Estonian).

¹⁴ *Riigi Teataja (The State Gazette)* 1927, 44, 41; *Le Droit d’Auteur*, 1927, No. 8, p. 89; No. 9, pp. 102–103. Estonia was the 29th country to become party to the Berne Convention.

¹⁵ Protection of integrity of work and author’s name during the life of the author.

¹⁶ Protection of integrity of work and author’s name after the death of the author.

¹⁷ I. V. Savelyeva. *Pravovoye regulirovaniye otnosheni v oblasti khudozhestvennogo tvortchestva. Izdatelstvo Moskovskogo universiteta, 1986*, p. 72.

¹⁸ The Soviet doctrine did not use the term “moral right”.

- 2) the prohibition against including illustrations, a foreword, an epilogue, comments and any explanations.

After the death of the author (§ 485 of CC), protection of the integrity of the work and author's name was provided for either by successors (until the expiry of the term of copyright) or by "organisations that have been assigned the task of protecting copyright" (for example, the Ministry of Culture, All-Union Agency of Copyrights VAAP, etc.).

Also a third personal non-economic right was included in the doctrine — the right of authorship.*¹⁹

5. Moral rights of author in applicable Estonian law

5.1. Catalogue of moral rights

Section 11 of the 1992 Copyright Act provides that copyright in a work arises upon the creation of the work by the author of the work, while moral rights and economic rights constitute the content of copyright. The legislator has always placed the moral rights of the author first in the list of the rights of the author. This evidences convincingly that Estonia belongs to those countries characterised by the so-called continental or *droit d'auteur* tradition.

The moral rights of the author are characterised by a relation to the personality of the creator. This has been set out directly in § 11 (2) of the Copyright Act, "The moral rights of an author are inseparable from the author's person." The catalogue of moral rights has been provided in § 12 of the Act. The law applicable in Estonia ensures the author the following moral rights:

- 1) right to authorship;
- 2) right to author's name;
- 3) right to integrity of the work;
- 4) right to additions to the work;
- 5) right to protection of author's honour and reputation;
- 6) right to disclosure of the work;
- 7) right to supplementation of the work;
- 8) right to withdraw the work;
- 9) right to request that the author's name be removed from the work which is being used.

Thus, Estonian law provides the author with considerably ampler opportunities to protect his or her personal interests than demanded by the Berne Convention. The legal definitions of all the rights specified in the catalogue have been provided in subsection 12 (1) of the Copyright Act.

5.2. Authorship and right to authorship

The Copyright Act of Estonia clearly distinguishes between the notions "authorship", "right to authorship" and "right to author's name". Authorship is a notion that expresses the relation between the creator and the result of his or her specific creative activity (work). Authorship is a link over time; as long as a work exists, we can speak about authorship. The Estonian Copyright Act explicitly provides that the relationship between the author and of a certain work (the authorship) shall be protected without a term (§ 44 (1)). The task of protecting authorship has been assigned to the Ministry of Culture (§ 88 (3) of the Copyright Act). In Estonian law, it is thus the authorship of Cicero, Mozart, Pushkin and Hegel that is protected in respect of their specific work and not their right of authorship that they have never had or that has expired long ago. If someone refers to himself or herself as the author of a work by Mozart, the Ministry of Culture is obliged to interfere. This is protection in public law. From the point of view of economy of legislative drafting, the relevant public law provisions have been included in the Copyright Act.

What is then the right of authorship? The right of authorship is defined as the right to "appear in public as the creator of the work and claim recognition of the fact of creation of the work by way of relating the authorship of the work to the author's person and name upon any use of the work" (§ 12 (1) 1)).

¹⁹ E. P. Gavrilov. *Sovetskoye avtorskoye pravo. Osnovnye polozheniya. Tendentsi razvitiya*. Moskva: Nauka, 1984, p. 138–140.

The right to author's name has been described in the Estonian Copyright Act as the right secured to the creator of a work by law to decide in which manner the author's name shall be designated upon use of the work — as a real name of the author, identifying mark of the author, a fictitious name (pseudonym) or without a name (anonymously) (§ 12 (1) 2)). Only the author himself or herself may choose between these options.

The right of authorship and the right of author's name are protected under the general term of the validity of copyright, which is the life of the author and 70 years after his or her death (§ 38 (1) of the Copyright Act). In the case of joint authorship the term is the life of the last surviving author and seventy years after his or her death (§ 39 of the Copyright Act). In the case of anonymous or pseudonymous works, the term of protection shall run for seventy years after the work is lawfully made available to the public. If the author discloses his identity during this period or there is no doubt as of the authorship, the term of protection is the life of the author and seventy years *pma*.

As in the case of authorship, the selection made by the author to designate his or her name (the author's name) is also protected without a term in Estonia (§ 44 (1) of the Copyright Act) and if this is violated, protection is implemented by the Ministry of Culture (§ 88 (3) of the Copyright Act).

5.3. Rights of author in relation to integrity of work

Estonian copyright law goes beyond article 6bis of the Berne Convention also with regard to the right of integrity and respect. Three independent rights are guaranteed to the author:

- 1) the right of integrity of the work, which gives an author a possibility to make or permit other persons to make any changes to the work, its title (name) or designation of the author's name and the right to contest any changes made without the author's consent;
- 2) the right to additions to the work, *i.e.* the right to permit the addition of other authors' work to the work (illustrations, forewords, epilogues, comments, explanations, additional parts, *etc.*);
- 3) the right to protection of author's honour and reputation, *i.e.* the right to contest any misrepresentations of and other inaccuracies in the work, its title or the designation of the author's name and any assessments of the work which are prejudicial to the author's honour and reputation.

In practice, some problems have occurred when delimiting the rights referred to in clauses 1) and 2) above, as they formed an integrated whole both in the Berne Convention and also in earlier law.

The following moral rights of the author are also less directly related to the right of integrity of the work:

- 1) the right to supplementation of the work, *i.e.* to supplement and improve the author's work which has been made public;
- 2) the right to withdraw the work, *i.e.* request that the use of the work be terminated;
- 3) the right to request that the author's name be removed from the work which is being used.

The latter three rights are the exclusive rights of the author, but in practice, they are exercised at the expense of the author. According to § 12 (2), these rights shall be exercised at the expense of the author and the author is requested to compensate for damage caused to the person who used the work. These rights are relatively unlikely to be exercised in practice. Nevertheless, the fact that the author has been secured these rights is an important principle of Estonian copyright law: protection in copyright law has been structured around the creator of the work, which entitles him or her to withdraw a work that has been already made available to the public.

After the expiry of the term of protection of copyright, the author's honour and reputation shall be protected without a term according to the same procedure as the authorship and author's name (§§ 44 (1) and 88 (3) of the Copyright Act).

One more important right has been guaranteed to the author — the right to disclosure of the work. This right is manifested in the possibility that solely belongs to the creator of the work to decide when the work is ready to be made available to the public (§ 12 (1) 6)).

6. Exercise of moral rights of author

According to § 11 (2) of the Copyright Act, moral rights are not transferable. Consequently, for the purposes of Estonian law, moral rights cannot be assigned. However, it is possible to issue an exclusive licence and a non-exclusive licence for exercising any moral right. A licence to use a work is a possibility to perform acts within the limits of the author's rights (§ 47 of the Copyright Act). Thus, in Estonian law, the issues related

to the so-called “ghost authors”²⁰, authors of trademark and other issues that may come up in practice have been settled. In such a case, the creator transfers his or her economic rights under an author’s contract. The economic rights to a work created under an employment contract or in the public service in the execution of the author’s direct duties shall be transferred to the employer or state (§ 32 of the Copyright Act). A separate agreement for the issue of an exclusive licence by the author can be concluded regarding the moral rights of the author.

The enforcement of the new Law of Obligations Act in 2002 may (but need not) entail some alterations in the procedure specified above.²¹

In practice it is rare that licence agreements are concluded or licences are issued under an author’s contract concerning the moral rights of the author. This may result in the violation of the moral rights of the author. However, a growing trend may be detected in such agreements.

There is no practice yet for the exercise of some of the rights set out in § 12 of the Copyright Act (for example, the rights specified in § 12 (1) 4) and in §§ 6–10 of the Copyright Act).

7. Means for protecting moral rights under criminal law

Criminal liability is provided for the most severe violation of the moral rights of the author in Estonia. By the 1999 amendments to the Criminal Code²², independent chapter 15 “Crimes against intellectual property” of the Criminal Code was established.²³ Section 277 of the Criminal Code provides for a fine or up to two years of imprisonment for the violation of the moral rights of the author or performer. Plagiarism (making a work or performance that was not created by the person available to the public in his or her own name) and “other violation of the personal rights of the author or performer” are regarded as a violation of moral rights.

The new Penal Code adopted on 6 June 2001²⁴ contains independent chapter 14 “Offences Against Intellectual Property”. Liability for the violation of all the moral rights possible in Estonia in the field of intellectual property has been assembled in one provision. Section 219 of the Penal Code establishes liability “for making a work, performance, invention, industrial design or lay-out design of integrated circuit that was not created by the person available to the public in his or her name or any other violation of the personal rights of the author or performer of the work”. A fine or up to three years of imprisonment is provided for as a response. The 2001 Penal Code establishes criminal liability of legal persons as a novel solution for Estonia. A pecuniary punishment may be imposed on a legal person for the same act (§ 220 (2)).

8. Means for protecting moral rights under civil law

The protection of moral rights and the general provisions applying thereto have been set out in chapter 2 of division 4 of part II “Protection of personal rights” and in chapter 8 of part IV “Exercise and protection of civil rights” of the General Principles of the Civil Code Act²⁵ since the entry into force of the Act in 1994. In 2001 and 2002, a wide-ranging reform has been carried out in Estonian civil law. As a result, entire civil law has undergone both conceptual and structural changes. The new General Principles of the Civil Code Act²⁶ adopted on 27 March 2002 does not contain any provisions concerning the protection of the rights.

²⁰ Ghost author is a person who writes, for example, works protected by the copyright for another person, which are made available to the public in the name of a person who is not the author. In practice, this is very common, above all, in writing political speeches.

²¹ See chapter 8 below.

²² Riigi Teataja (The State Gazette) I 1999, 10, 156 (in Estonian).

²³ In the 1964 version of the Criminal Code, the violations of copyright were set out in § 136, a new version of which was enacted in 1995.

²⁴ Riigi Teataja (The State Gazette) I 2001, 61, 364 (in Estonian). The new Penal Code will enter into force on 1 September 2002.

²⁵ The General Part of the Civil Code Act was adopted on 28 June 1994 (Riigi Teataja (The State Gazette) I 1994, 53, 889 (in Estonian)) and it entered into force on 1 September 1994. The Act has been repeatedly supplemented and amended later. See the English translation of the Act at the homepage of the Estonian Legal Translation Centre at www.legaltext.ee.

²⁶ Riigi Teataja (The State Gazette) I 2002, 35, 216 (in Estonian).

These provisions serve as a part of the Contracts and Non-contractual Obligations Act (abbreviated as the Law of Obligations Act)^{*27}, adopted on 26 September 2001. The Law of Obligations Act entered into force on 1 July 2002.

Chapter 53 “Causing of damage by unlawful action” of the Law of Obligations Act is a direct basis under civil law in compensating for any damage caused by violation of any moral rights.^{*28} Currently, the Copyright Act also contains some provisions concerning the protection of the moral rights of the author^{*29}, including the right to seek recovery of material compensation for moral damage.^{*30} At the time of writing this article in May 2002, the Ministry of Culture was preparing amendments to the Copyright Act, arising from the enforcement of the Law of Obligations Act. It is impossible to assess before the adoption of the Act by the *Riigikogu* whether the specific provisions of the Copyright Act concerning author’s contracts and protection of rights are only reproducible principles of the Law of Obligations Act or go considerably beyond that.

9. Estonian judicial practice concerning protection of moral rights

9.1. Overview of court system and court statistics

In Estonia, justice is administered based on the three-level court system: by city and county courts, and administrative courts (1st instance), by circuit courts (courts of appeal) (2nd instance), and by the Supreme Court (3rd instance).^{*31} This article only regards the practice of the Supreme Court in civil matters.^{*32}

The case law of the Supreme Court in intellectual property matters is still in the stage of development after the adoption of the new legislation for intellectual property in the first half of the 1990s. Most of the intellectual property matters decided by the Supreme Court involve copyright and related rights. During the period 1994–June 2001, five civil law matters, three criminal law and four administrative law matters concerning intellectual property were decided.^{*33}

Several decisions in civil law and administrative law matters regarding copyright and related rights were rendered by the Tallinn Court of Appeal, the Tallinn City Court and the Tallinn Administrative Court.

The Supreme Court has made three decisions on the violation of the economic rights of the author in criminal matters.^{*34} In 2000, the Estonian courts heard 15 criminal cases and made 15 convictions in piracy of copyrighted works (§ 280 of the Criminal Code), and one criminal matter in handling of technical devices designed for removal of protective measures preventing violation of copyright or related rights (§ 281 of the Criminal Code). No criminal cases concerning violation of moral rights were heard.^{*35}

²⁷ Riigi Teataja (The State Gazette) I 2001, 81, 487 (in Estonian).

²⁸ See § 1045 (1) 4 “Unlawfulness of causing of damage” and § 1046 “Unlawfulness of violation of personal rights”.

²⁹ Clauses 81 (2) 1) and 4) and § 81 (4); § 83.

³⁰ This provision is based on § 25 of the Constitution, according to which, “Everyone has the right to compensation for moral and material damage caused by the unlawful action of any person”.

³¹ The Internet web site of the Supreme Court is located at www.nc.ee. The web site contains a database of the judgments of the Supreme Court (in the Estonian language). The Tartu Circuit Court has a similar database: www.tarturk.just.ee. Databases of judgments of other courts of appeal and county and city courts are being developed.

³² The Supreme Court situated in Tartu includes four chambers — the Civil Chamber, the Criminal Chamber, the Administrative Law Chamber and the Constitutional Review Chamber. In the Chambers, matters are examined by panels of three judges (five justices in the Constitutional Review Chamber) or by the Supreme Court *en banc*. Not all appeals are heard by the Supreme Court: the Appeals Selection Committee, composed of three judges, grants leave to appeal.

³³ The database of decisions of the Supreme Court on the Internet web site of the Supreme Court www.nc.ee/lahendid/ (in Estonian).

³⁴ A decision of the Criminal Chamber of the Supreme Court, 25 November 1997 (3-1-1-119-97), 25 August 1998 (3-1-1-86-98) and 9 March 1999 (3-1-1-15-99).

³⁵ The statistics were provided by the Ministry of Justice.

9.2. Decisions of Supreme Court in matters concerning violation of moral rights

The decisions of the Supreme Court concerning the violation of the moral rights of the author will be discussed below.

On the basis of a contract concluded in 1992, H.R. undertook to write a script for a 13-part cartoon not involving any text. According to the author's contract, the studio was not entitled to make alterations in the script or to involve third parties in the work with the script without the author's written consent. The studio used an announcer's text not written by the author in four parts of the cartoon. H.R. filed an action against the studio claiming that her right of integrity of the work had been violated (§ 12 (1) 3) of the Copyright Act). She demanded that the studio discontinue distribution of the cartoon and pay 125,000 kroons for the moral damage caused by the violation of the copyright.

The Tallinn City Court dismissed the action and the Tallinn Circuit Court agreed to the decision of the City Court.^{*36}

H.R. filed an appeal in cassation with the Supreme Court, demanding the payment of 10,000 kroons to compensate for the moral damage caused to her and discontinuation of the distribution of the cartoon containing text. The Civil Chamber of the Supreme Court annulled the decision of the circuit court reasoning that the conditions of the contract and the author's right of integrity of the work had been violated by adding the announcer's text to the script without the author's consent. The matter was remitted to the circuit court for a new hearing.^{*37}

The newspaper *Postimees* published a readers' letter criticising the Ministry of Culture in 1994. The Secretary General of the Ministry of Culture V.J. responded to the newspaper with an article, reasoning the position of the Ministry. The newspaper published about 40% of the article by V.J. and altered the title of the article.

V.J. filed a claim against the newspaper with the Tartu City Court, requesting that payment of material compensation of 5,000 kroons by the defendant be ordered for the moral damage caused by the violation of the moral right (right of integrity of the work) of the author. The Tartu City Court satisfied the action. On the basis of an appeal filed by the newspaper, the Tartu Circuit Court annulled the decision of the city court. The circuit court claimed that the article did not serve as a work subject to protection by copyright.^{*38} On the basis of the appeal in cassation by V.J., the Civil Chamber of the Supreme Court annulled the decision of the circuit court. The Supreme Court claimed that the article as a deliberating piece of writing was a work protected by copyright and the article was not excluded from protection due to the fact that it had been written in response to the article published earlier. The Supreme Court reasoned that the Copyright Act did not provide for exceptions to the integrity of the work concerning the works sent to the press for publishing.^{*39}

The Tartu Circuit Court made a new decision on the matter. The court found that the violation of the right of integrity of the work provided in § 12 (1) 3) of the Copyright Act by the newspaper was proven. Yet the court found that the violation of the right to protection of the author's honour and reputation provided in § 12 (1) 5) of the Copyright Act was not proven. The court claimed that although violating the right of integrity of the article, the newspaper had not inserted distortions or inaccuracies in the article and had not provided assessment of the author and the article, damaging the honour and reputation of the author. The circuit court worded the principle, "the allegation that the violation of integrity of the work in itself causes moral damage is not correct, since § 12 (1) 5) of the Copyright Act provides damaging of the honour and reputation of the author in relation to misrepresentations and inaccuracies and assessments of the author or his or her work that are prejudicial to the honour and reputation of the author." The circuit court decided that "although the violation of integrity of the work was proven (alteration of the title and failure to publish a part of the article), the action has to be dismissed as prejudicing of the honour and reputation of the author is not proven".^{*40}

Such a decision on the relation between two moral rights of the author is rather disputable. This decision has no significance as a precedent since the later decisions of the Supreme Court and Circuit Courts do not follow such approach. However, the later decisions also fail to provide an explicitly different principle.

³⁶ The decision of the Tallinn City Court of 21.06.1994 and the decision of the Tallinn Circuit Court of 22 September 1994.

³⁷ The decision of the Civil Chamber of the Supreme Court, 27 December 1994 (III-2/1-60/94).

³⁸ It was a material mistake of the court both concerning reasoning and conclusions.

³⁹ The decision of the Civil Chamber of the Supreme Court, 6 December 1995 (III-2/1-91/95).

⁴⁰ The decision of the Tartu Circuit Court, 18 June 1996 (II-2-95/96).

J.E. prepared designs of clothes (costumes) “Human is not fish” for her diploma paper in the Art Institute. AS Iguaan Destudio used the designs for preparing and distributing commercial photography without the author’s consent in 1993–1995. The author found that besides several economic rights, the following moral rights had been violated: the right to author’s name (§ 12 (1) 2), as the author’s name was not indicated in the photographs) and the right of integrity of the work (§ 12 (1) 3), as the parts of different costumes were combined without authorisation when making reproductions, the costumes were not displayed as an integral set and mass production items were added). The author demanded 25,000 kroons to compensate for the moral damage caused by the violation of her moral rights.

The Tallinn City Court found that the right of the author to author’s name and integrity of the work regarding the fashion design work subject to protection had been violated and required the photographers to discontinue reproduction and distribution of the photographs. At the same time, the court did not satisfy the action filed against AS Iguaan Destudio and the photographers concerning compensation for material and moral damage.

The circuit court found that the dismissal of the claim for material and moral damage by the city court had been unfounded and that the receipt of a compensation of 25,000 kroons for moral damage was sufficiently founded. The Supreme Court did not annul the decision of the court of appeal.

In its decision, the Supreme Court proceeded from the fact that the matter also involved the violation of the right of authorship. The plaintiff’s allegation that she as “the fashion designer was deprived of recognition of authorship in public” directly refers to the violation of the right of authorship. Both the Tallinn City Court and Circuit Court failed to indicate in their decisions that the dispute involved, *inter alia*, the violation of the most fundamental moral right — the right of authorship.^{*41}

AS Hiiu Mets and AS Laks ja Ko concluded a contract, according to which the latter published a slide of a bulk substances collection bunker in a commercial publication *Eesti Puit 95*. AS Hiiu Mets delivered the slide together with all the information about the author of the slide. But the author’s name was not indicated in the publication when published and the slide was published in a cropped form. The author of the slide T.R. filed an action against AS Laks ja Ko, claiming that his right of authorship, the right to author’s name and integrity of the work had been violated. T.R. requested that the entire print run be collected and destroyed and the payment of 50,000 kroons to compensate for the moral damage caused by the violation of his moral rights be ordered. The Tallinn City Court found that all the moral rights of the author had been violated. The court requested AS Laks ja Ko to collect and destroy the print run, thus restoring the situation preceding the violation of the rights. The claim for moral damage was not satisfied.

Both parties filed appeals with the circuit court. The circuit court amended the decision of the court of the first instance, reasoning that the restoration of the former situation by way of collecting and destroying the print run was not founded and feasible.

The Supreme Court claimed that “the correct reflection of the author’s information is the direct obligation of the publisher” and “the author decides on the making of alterations in the work. The user of the work who wishes to make alterations shall request the author’s prior consent”. The Supreme Court refers both to § 11 of the Copyright Act and article 6bis of the Berne Convention, reasoning that the moral rights belong to the author of the slide.^{*42} The Supreme Court claimed that the moral rights for the protection of which the action was filed “arise from law and the publisher shall adhere to these rights”. The Supreme Court found that “the moral rights of the author subject to protection by the Copyright Act could be violated only by the publisher (person publishing) of the publication, to whom the work was delivered together with the information about the author, if the work was published without the author’s name and in a cropped form”. The higher court referred the matter back to the circuit court with the instruction, “in the new hearing of the matter, the court of appeal shall identify whether the author’s moral rights of the plaintiff guaranteed by the Copyright Act were violated and if they were violated, the court has to decide whether it is possible and necessary to restore a situation preceding the violation of the rights and to decide on the amount of the compensation to be ordered for the moral damage caused”.^{*43}

In all the disputes reaching the Supreme Court, matters related to the nature of the work or its protection by copyright were of significant importance. In the first matter, the defendants contested the announcer’s text as a part of the script of the cartoon and an independent work protected by copyright, in the second matter, the protection of the article written in response to the article sent to the press under copyright. In the third and fourth matter, it is important that the defendants attempted to assert as if they did not know that the object (clothes and slide) were subject to protection by copyright. In settling all these disputes, the Supreme

⁴¹ The decision of the Civil Chamber of the Supreme Court, 25 June 1998 (3-2-1-84-98).

⁴² In the previous decision, the Supreme Court also referred to the Berne Convention, but not to reason moral rights, rather the issue of reproduction.

⁴³ The decision of the Civil Chamber of the Supreme Court, 6 May 1998 (3-2-1-60-98).

Court first had to identify the existence of the work subject to protection by copyright. This indicates that in these disputes an important relationship exists between the notion of the protected work and the moral rights arising therefrom. The Supreme Court adopted a firm position that “the rights belonging to the author do not depend on whether the work has been made available to the public or not (§ 8 of the Copyright Act), whether the work bears the author’s name or not (§ 12 (1) 1) and 2) of the Copyright Act). Thus, the defendants are not exempted from liability by the fact that they were unaware of the plaintiff’s authorship of the objects”.⁴⁴

Conclusions

Estonia belongs to the countries where the entire copyright, both the doctrine and regulations, have been founded on the person of the author. Therefore, the personal or moral rights of the author constitute the backbone of copyright law. The Estonian Copyright Act goes beyond the standards of article 6bis of the Berne Convention and contains an extensive catalogue of the moral rights of the author (nine rights). The Act makes a clear distinction between authorship and the right of authorship. Authorship as the author’s name and the honour and reputation of the author are protected without a term in public law. The moral rights of the author are protected by copyright under a general term — the life of the author and 70 years after his or her death.

The moral rights of the author cannot be expropriated (§ 39 of the Constitution) and transferred under a contract, although a licence may be issued concerning all the moral rights of the author by a contract. In practice, such licence agreements are concluded rarely. This may result in the violation of the moral rights of the author. There is also no practice regarding the use of some rights set out in § 12 of the Copyright Act.

The Estonian courts of all the three instances have heard several disputes about the violation of moral rights, the majority of which is constituted by disputes about the violation of the right of integrity of the work and the right of authorship. The Supreme Court has amended several obvious mistakes of the courts of the first and second instance. This indicates that the court of first instance and the circuit court lack sufficient experience and certainty for settling the disputes arising from copyright. A uniform Supreme Court practice concerning the violation of the moral rights of the author has not yet evolved due to the limited number of decisions.

It is disputable in literature whether the moral rights of the author also rise to the level of human rights. In a certain sense, we can speak about moral rights *quasi* human rights.

⁴⁴ The decision of the Civil Chamber of the Supreme Court, 25 June 1998 (Note 41).