https://doi.org/10.12697/JI.2024.33.12

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The Author's Right of Integrity in Public Contracts in Estonia Based on Architectural Work[*1]

Abstract. The paper presents analysis of whether an author's moral rights are transferable or licensable in public contracts. At present, the European Union lacks a unified approach to regulating intellectual-property rights in public procurement: its public-procurement directives leave open the option of assigning these rights to a particular contracting entity and do not set minimal or default conditions for handling them in case the public contract does not specify intellectual-property rights' allocation. The paper delves into the question of whether moral rights are transferable/licensable and of how moral rights should be regulated in public contracts in Estonia through the lens of analysis based on legal literature. Specific attention is given to case law on moral rights in Germany, France, and Spain, in aims finding a mechanism for moral rights' regulation that is suitable for the Estonian setting. These first steps of examination reveal that the essence of moral rights precludes them being transferable since moral rights are bound to the personality of the author. Initial analysis shows also that moral rights in Estonia are only partly licensable, with only those moral rights that overlap the author's economic rights proving licensable, while the rights connected to the author's personality are not subject to licensing. For these reasons, courts need to weigh how authors might exercise their moral rights such that any transfer of their those rights cannot enable authors to interfere with the exercise of the economic rights. This entails limiting the exercise of moral rights, a matter that merits deeper examination.

Keywords: intellectual property, public procurement, public contracts, copyright, moral rights, exercise of moral rights

1. Introduction

The Berne Convention for the Protection of Literary and Artistic Works[*2] underlines that, in addition to economic benefits, copyright encompasses rights of a moral kind. This state of affairs arises from the fact that the work reflects the personality of its creator, just as the economic rights reflect the author's need to survive.[*3]

1 This article was supported by an Estonian Research Council grant (PRG1449).

2 Berne Convention for the Protection of Literary and Artistic Works (as amended on 28 September 1979) <https://wipolex.wipo.int/en/text/283698> accessed on 8 July 2024.

3 S Ricketson and JC Ginsburg, *Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)* (WIPO 1978) 41.

According to Article 6*bis* (1) of the Berne Convention, the author has two general types of moral rights: a right to claim authorship and a right of integrity. Countries that are signatories of the Berne Convention must guarantee authors those two types of moral right in their legal systems. Since the Berne Convention sets the floor but not a ceiling for the protection of moral rights, the catalogue of moral rights can be more comprehensive than what is set forth in that convention. In the context of Estonia, the catalogue of the author's moral rights is noteworthy for its comprehensiveness. Section 12 of the Estonian Copyright Act[*4] enumerates these moral rights, thereby supplying a specific list more extensive than what the Berne Convention mandates.

One of the most prominent legal challenges associated with moral rights in procurement of architectural work has its roots in the copyright doctrine (discussed below), which treats copyright as an 'extension of the personality of the author'.[*5] In Estonia, a scenario commonly arises in which an architect assigns all of her economic rights to the contracting authority, while moral rights in situations of public contracts remain unaddressed[*6]. Consequently, circumstances emerge wherein the persistence of the author's moral rights renders contracting authorities unable to assert their economic rights fully. These moral rights, particularly the right of integrity and the right of protection of the author's honour and reputation[*7], empower authors to contest any perceived infringement. One possible result is that authors can quite effectively impede the contracting authority's exercise of economic rights by claiming violations of their moral rights.

In Estonia, neither statutory provisions nor case-law precedents impose specific limits on the author's exercise of moral rights. Consequently, it becomes crucial to determine appropriate contract-based restrictions in settings of public contracts. The aim with these limitations is to balance the rights of authors with the interests of contracting authorities. This scenario involves the intersection of two legal domains: public-procurement law and copyright law. Public-procurement law seeks to enhance competition and ensure efficient utilisation of public resources[*8], while copyright law aims to foster creativity and innovation and to safeguard the rights of creators – the authors.[*9] In practical terms, the contracting authority's activities requires the use of architectural work though the author's moral rights must remain guaranteed. Achieving this delicate balance necessitates thoughtful consideration of both the author's rights and the contracting authority's needs.

Allocation of copyright in settings of public contracts remains within the purview of the contracting authority. The European directives on public procurement do not dictate how copyright connected with public contracts is to be distributed when those contracts remain silent on the issue.[*10] This is true not only for the European Union level. It holds also within most EU countries' national legal framework for public procurement[*11], Estonia's included. The author's economic rights are the ones that can be transferred and licensed – that is, used by third parties, contracting authorities among them.[*12] Meanwhile, the EU has no uniform approach or harmonised practice for transferring or licensing moral rights.[*13] In many countries (mainly those subscribing to the *droit d'auteur* doctrine) are inalienable, moral rights are

4 RT I, 29.6.2022, 16. English translation available <https://www.riigiteataja.ee/en/eli/527122022006/consolide> accessed on 8 July 2024.

5 T Aplin and J Davis, Intellectual Property Law: Text, Cases, and Materials (2nd edn, Oxford University Press 2013) 52.

6 The term 'public contract' refers to a contract for pecuniary interest, which might be a concession contract, the subject matter of which is supplies, services, or works and which is awarded to an economic operator by a contracting authority or other entity in the manner set forth in the Estonian Public Procurement Act, s 8(1): RT I, 6.7.2023, 78. English translation available <https://www.riigiteataja.ee/en/eli/515122023006/consolide> accessed on 8 July 2024.

7 Per the Copyright Act (n 4), specifically s 12(1) sub-ss 3, 5.

8 See the Public Procurement Act (n 6), s 3.

9 The purpose of the Copyright Act is defined as 'to ensure the consistent development of culture and protection of cultural achievements, [along with] the development of copyright-based industries and international trade, and to create favourable conditions for authors, performers, producers of phonograms, broadcasting service providers, producers of first fixations of films, [and] makers of databases' (s 1(1)).

10 European Commission, 'Economic Benefits of Leaving IPR Ownership Rights in Public Procurements with the Suppliers Instead of the Procurers' (2017) 3; Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Directive 2014/24/EU) art 42; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (Directive 2014/25/EU) art 60.

11 'Economic Benefits' (n 10) 3.

12 Copyright Act, s 46(1).

13 I Stamatoudi and P Torremans, *EU Copyright Law: A Commentary* (2nd edn, Edward Elgar 2021) 10–11. – DOI: https://doi.org/10.4337/9781786437808; E Mägi, 'Arhitekti isiklik õigus teose puutumatusele ning au ja väärikuse kaitsele [The

non-waivable, imprescriptible, and non-transferable, because they are conceived of as inherently linked to the personality of the author. In contrast, countries applying the copyright doctrine usually regard moral rights as waivable or transferable.[*14] As for the alignment of the EU, transferring all the author's moral rights is not possible in any legal system.[*15] Since Estonia belongs to the *droit d'auteur* tradition, moral rights are non-transferable.[*16] Estonia also lacks consensus on how third parties may use moral rights. This makes it difficult for contracting authorities to regulate the allocation of the author's moral rights under public contracts. Additionally, the author of the architectural work is usually a natural person,[*17] while public contracts get concluded between the contracting authority and the tenderer, who is usually a purely legal entity. In consequence, no direct contractual relationship exists between the actual author and the contracting authority. Furthermore, public contracts more often than not are concluded under standard terms and conditions[*18]; it is almost impossible for either the legal entity or the author to pursue changes to their content.

The topic of legal allowability of transactions encompassing moral rights is not a new one for Estonian legal literature. Several authors have addressed it.[*19] The analysis they have undertaken seems to serve as a solid knowledge base for the examination presented here. This article draws on the preceding research and situates it in the context of architectural work with emphasis on the public-procurement perspective. Its discussion focuses on legal aspects of moral rights, especially the right of integrity within the domain of architectural work[*20], which is defined for the purposes of this article as mainly works of architecture and landscape design (buildings, similar structures, parks and green areas, etc.). The starting thesis was that exercising the author's right of integrity can indeed be limited under public contracts through standard terms and conditions. For proving this, it is essential to ascertain the extent of the legal permissibility of opting for one or another model/conceptualisation of the exercise of moral rights for an agreement that regulates these in transactions pertaining to moral rights. The answer aids in assessing which limitations could be legally set by a public contract with regard to the author's moral rights. The argument presented is intended to show that acceptable contract-based limitations exist that could be stipulated in a public contract such that it strikes a balance between authors' rights and contracting authorities' needs.

The study, employing conventional legal methodology, focused predominantly on the Estonian legal framework in the absence of a standardised or harmonised practice for the exercise of the author's moral rights by third parties across the EU.[*21] The approach in other EU member states, such as Germany, France, Italy, and Spain, serves as a reference point for identifying the most appropriate technique for integrating the author's moral rights into the Estonian legal system. Examples from another Member State are cited where

Architect's Right to Integrity of the Work and Right of Protection of the Author's Honour and Reputation]' [2011] (10) Juridica 760, 760.

14 S von Lewinski, *International Copyright Law and Policy* (Oxford University Press 2008) 53. – DOI: https://doi.org/10.1093/oso/9780199207206.001.0001.

15 F Fontaine and P Celeyron, 'Beyond the Cliché: Are Authors' Moral Rights under French Law As Inflexible As They Are Said To Be?' (2017) 12(9) Journal of Intellectual Property Law & Practice 775. – DOI: https://doi.org/10.1093/jiplp/jpx089; Mägi (n 13) 766.

16 The moral rights of an author are inseparable from the author's person and are non-transferable, under the terms of the Copyright Act, s 11(2). This is in line with the Constitution of the Republic of Estonia, s 39 of which states that 'authors have the inalienable right to their creative works' and that 'the state shall protect the rights of authors'. The Constitution of the Republic of Estonia, RT I, 15.5.2015, is available in English translation at <https://www.riigiteataja.ee/en/eli/530122020003/consolide> accessed on 8 July 2024.

17 For purposes of this article, the author is understood to be a natural person, even though there is some debate as to whether artificial intelligence might replace input of architects. See, for example, M Matoso, 'Will Artificial Intelligence Replace Architects?' (2023) <https://www.archdaily.com/1007802/will-artificial-intelligence-replace-architects#:~:text=AI%20can%20help%20architects%20design,and%20reduce%20its%20environmental%20impact> accessed on 8 July 2024.

18 Civil Chamber of the Supreme Court decision 2-15-15662 [2017] para 21.

19 See, for instance, H Pisuke, 'Moral Rights of [the] Author in Estonian Copyright Law' (2002) 7 Juridica International 166; M Rosentau, 'Intellektuaalse omandi õigused infotehnoloogias. Autori isiklikud õigused [Intellectual Property Rights in Information Technology: The Personal (Moral) Rights of the Author]' [2007] (9) Juridica 651; A Kelli and others, 'The Exercise of Moral Rights by Non-Authors' (2014) 6(6) Journal of the University of Latvia Law 108.

20 The Estonian Copyright Act lists architectural graphics, letters of explanation that specify the content of a project, additional text and programmes, 'architectural works of plastic art', works of architecture and landscape architecture (buildings and other constructions, parks, green areas, etc.), urban-developmental assemblages, and complexes as copyright-protected works (s 4(3) cl 14).

21 Stamatoudi and Torremans (n 13) 10–11; Mägi (n 13) 760.

that state's regulation pertaining to the author's moral rights is similar to that in Estonia and where legal discussions have emerged that clarify matters of regulating the author's moral rights in public contracts in the context of architectural work. Furthermore, parallels from France, Germany, and Italy possess value in that these countries are the strongholds of the Continental European moral-rights tradition, which Estonia follows. Drawing from this analysis, the study produced a framework proposed as suitable for the author's moral rights under public contracts.

2. Frameworks for moral rights

2.1. The international framework for moral rights

The genesis of international agreements' protection of moral rights arrived with their inclusion in the Berne Convention upon its revision in 1928 in Rome.[*22] Namely, the Berne Convention, which sets the minimal standards for authors' protection, articulated that, in addition to economic benefits, copyright extends to rights of a moral nature. The concept of copyright as a natural right of the personal creator of literary or artistic works, anchored in awareness that such works reflect the personality of their creator just as the economic ones reflect her need for a livelihood[*23], has profoundly influenced the structure and contents of the Berne Convention.[*24]

Article 6*bis* (1) of the Berne Convention stipulates the following: 'Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and 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 honor or reputation.' The specification of rights provided in Article 6*bis* (1) of the convention indicates that, in essence, the author has two types of moral right: firstly, a right to claim authorship and, secondly, a right of integrity. Signatory countries must guarantee authors both kinds of moral rights in their legal system, though the national catalogue of moral rights may be more comprehensive than what is listed in the Berne Convention.

No other international treaties set forth either minimal standards for moral rights, as the Berne Convention does, or additional standards for them. The TRIPS Agreement[*25] refers to the Berne Convention and states an exception regarding further implications of Article 6*bis* by stating: 'Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.' The TRIPS Agreement is not alone in citing the Berne Convention; for instance, the WIPO Copyright Treaty[*26] too refers to it[*27].

All member states of the EU have subscribed to the Berne Convention, so their national copyright legislation already meets the minimum standard mandated for protection in accordance with its Article 6*bis*. The moral rights of authors, however, have not been harmonised across the EU, on account of the divide between civil-law countries and common-law countries.[*28] This bifurcation stems from the fact that most national copyright laws of the world are governed by one of two main systems of protection: the Anglo-Saxon or Anglo-American 'copyright system' and the Continental European 'author's rights' or *droit*

22 I Harding and E Sweetland, 'Moral Rights in the Modern World: Is It Time for a Change?' (2012) 7(8) Journal of Intellectual Property Law & Practice 565, 566. – DOI: https://doi.org/10.1093/jiplp/jps077.

23 Ricketson and Ginsburg (n 3) 41.

24 A Kur and T Dreier, *European Intellectual Property Law: Text, Cases and Materials* (Edward Elgar 2013) 21.

25 Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) <https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm> accessed on 8 July 2024.

26 This is a special agreement under the Berne Convention that deals with the protection of works and the rights of their authors in a digital environment. In addition to the rights recognised under the Berne Convention, they are granted certain economic rights here. The treaty also deals with two specific sorts of subject matter that are to be protected by copyright: computer programs, whatever the mode or form of their expression, and compilations of data or other material ('databases'). WIPO Copyright Treaty (1996) <https://wipolex.wipo.int/en/text/295166 accessed on 5 March 2023.

27 Its art 1(4) states: 'Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.'

28 In this respect, Brexit could facilitate the harmonisation of moral rights. Please see the discussion by Stamatoudi and Torremans (n 13) 11.

d'auteur system.[*29] The term 'moral rights' itself is a translation of the French[*30] concept of *droit moral*, in which 'moral' refers to non-pecuniary interests in property. Moral rights are personal rights in a work, anchored in the notion that when something happens to a work this constitutes an attack on the person or personality of its author.[*31] In England, copyright law grew from an awareness of the economic value of an author's works rather than any ideological respect for the author. By the early twentieth century, it was clear that bridging the gap separating jurisdictions such as France and the UK demanded international consensus.[*32] A gap still exists, however, which is why the moral rights of authors are not harmonised at EU level.

2.2. The context of moral rights relevant for architectural work in Estonia

Estonia recognises a relatively extensive catalogue of the author's moral rights. The Copyright Act lists the author's moral rights in its Section 12[*33]. These consist of the right of authorship, the right of the author's name, the right to integrity of the work, the right to make additions to the work, the right of protection of the author's honour and reputation, the right to disclosure of the work, the right to supplement the work, the right to withdraw it, and a right to request that the author's name be removed from a work that is being used. Through this list, the Copyright Act lays out a set of moral rights more extensive than the Berne Convention requires.

Since this article focuses on works of architecture procured under a public contract, it gives attention mainly to the right of integrity, which the Berne Convention's Article 6*bis* defines in the manner presented above as the right to object to any modification of the work (or to other derogatory action related to that work) that would be prejudicial to the author's honour or reputation. The Estonian Copyright Act grants the author the right to contest any changes made without the author's consent (under the right of integrity of the work); to permit the addition of other authors' works to the author's work (part of the right to make additions to the work); and to contest any misrepresentation of the work, inaccuracies in its reproduction, or in its title or the designation of the author's name, and any assessments of the work that is prejudicial to authorial honour and reputation (all falling under right of protection of the author's honour and reputation). Thus, exercising the right of integrity as expressed in the Copyright Act does not necessitate the change in the author's work having been prejudicial to her honour or reputation. This divergence from the Berne Convention, which does state such a requirement, is not in violation of the convention – remember that the Berne Convention specifies a minimum for the protection afforded authors, so the catalogue of moral rights can be more extensive than that set forth in the latter. The Copyright Act's parallel to the right of integrity articulated in the Berne Convention consists of the following moral rights: the right of integrity of the work, the right to additions to the work, and the right of protection of the author's honour and reputation. The protection of these three rights confers on the author the same rights granted under the terms for the right of integrity articulated in the Berne Convention.

The above-mentioned rights are especially relevant in the context of the author's moral rights in architectural output. Therefore, this article attends mainly to those particular moral rights of an author. In practice, it could be difficult to differentiate which moral right might be infringed upon when a contracting authority makes changes to an architectural work – this could constitute abridgement of the right of integrity of the work, the right of additions to the work, and/or the right of protection of the author's honour and reputation as delineated in the Copyright Act. Also, changes of such a nature might prompt the author to exert her right to withdraw the work or request removal of the author's name from the work in use; however, the author's exercise of those rights is at her own expense, and the author must compensate for damage caused to the contracting authority that used the work.[*34] Therefore, it is unlikely that an author

29 Per von Lewinski (n 14) 33.

30 France is often called the birthplace of moral rights, and the notions of 'author's rights' (*droit d'auteur*) and 'moral rights' (*droit moral*) originate from France, according to Kelli and others (n 19) 113.

31 Harding and Sweetland (n 22) 565.

32 Ibid 566.

33 These are found in s 12 of the English-language translation available at <https://www.riigiteataja.ee/en/eli/527122022006/consolide> accessed on 8 July 2024.

34 According to the Copyright Act's s 12(2), the right of supplementation of the work, to withdraw the work, and to request that the author's name be removed from a work that is being used shall be exercised at the author's expense, and the author is

will exercise those two rights in the real world; one would presume that this would prove disproportionately expensive for the author. The same is true for the right of supplementation of the work.

Other moral rights relevant in the context of architectural work are the right of authorship, the right of the author's name, and the right of disclosure of the work. Regulation of the first two is relevant in the realm of public contracts because the author of an architectural work might want to appear in public as the creator of the work and claim recognition; alternatively, the author might not wish to do so.[*35] The right of disclosure is relevant for architectural work in that it can hardly be assumed that some architectural work acquired through public procurement has been published before (from a practical point of view, after the first lawful publication, the right of disclosure is not relevant anymore: disclosure of the work encompasses only the first release of the work, where the work is deemed published if, with the consent of the author, it is placed at the disposal of the public[*36]). For this reason, the contracting authority should have the author's consent to publish the work, so as to avoid any spectre of infringing on the author's right of disclosure of the work.

In the context established by the Copyright Act, it is crucial to recognise that certain moral rights of authors overlap with their economic rights. Let us take for an example one of the author's economic rights articulated in the Copyright Act: the right of alteration to the work – i.e., rights to carry out adaptation, modification (rearrangement), and other changes to the work.[*37] Making modifications to the work is included in the author's moral rights too; it is intimately bound up with rights such as that of integrity of the work, that of additions to the work, and that of protection of the author's honour and reputation. This overlap poses challenges for legal practice, since economic rights are transferable[*38] while moral rights are not.[*39] Consequently, situations arise wherein a contracting authority acquires all of the economic rights but is prevented from fully exercising them by the potential for infringement of the author's moral rights linked to modifying a work of architecture. In such cases, the author may request restoration of the original work.[*40] To address this overlap in arenas of law, Estonian literature on jurisprudence recommends copyright agreements' inclusion of a clause stipulating that authors shall not use their moral rights to restrict the exercise of transferred economic rights.[*41] This approach is consistent with the principle of good faith.[*42]

Given the expansive scope of moral rights and their occasional intersection with economic rights under the Copyright Act, authors retain an ability to challenge the contracting authority's exercise of economic rights by asserting violations of their moral rights. Consequently, it is crucial to delineate an author's moral rights precisely and consider any potential restrictions that could impinge on their exercise.

In Estonia, both legal provisions and case law maintain a non-limitation stance with regard to an author's exercise of moral rights. While the Estonian Supreme Court has specifically addressed violations related to the right of integrity in works of architecture, it has not explicitly restricted the author's ability to exercise these moral rights.[*43]

Furthermore, the right that authors possess in Estonian law to protect their honour and reputation is distinct from the right of integrity.[*44] This protection has a clear influence on practice, with contracting authorities often expressing concerns about its potential impact on their economic rights.[*45] The key question

required to compensate for damage caused to the person who used the work.

35 One more aspect to consider is how to identify the author of an architectural work. However, since procured architectural work should not be treated differently from other architectural work and for reason of space limitations, this topic is not analysed further in the paper.

36 Copyright Act, s 9(1).

37 Copyright Act, s 13(1) cl 5.

38 Copyright Act, s 11(3).

39 Copyright Act, s 11(2).

40 The Copyright Act's s 81^7(2) foresees the following remedies if, in consequence of a violation of copyright legislation, a work is altered: '1) restoration of the work or object of related rights in the original form; 2) alteration of copies of the work or object of related rights by specific means, or 3) destruction of pirated copies.' The act's s 81^7(3) specifies that 'the provisions of clauses 2 and 3 of subsection 2 of this section do not apply to works of architecture'.

41 Rosentau (n 19) 664.

42 As expressed in the Law of Obligations Act, s 6(1): RT I, 6.7.2023, 116. An English translation of the act is available <https://www.riigiteataja.ee/en/eli/527122023005/consolide> accessed on 8 July 2024.

43 Civil Chamber of the Supreme Court decision 3-2-1-39-03 [2003].

44 Copyright Act, s 12(1) sub-ss 3, 5.

45 See, for example, Rosentau (n 19) 652; E-L Ventsel, *Arhitekti isiklik õigus teose puutumatusele* [The Architect's Right of Integrity] (Tartu Ülikool 2020) 41.

revolves around interpreting this right and identifying any limitations to its scope. Ascertaining whether a given change or other action is damaging to an author's honour or reputation necessitates evaluating case-specific circumstances. Ultimately, it is up to the author to identify and claim such harm, but the associated criteria must be assessed from the perspective of a reasonable person rather than solely in reliance on the author's viewpoint.[*46] Otherwise, authors could assert that their honour and reputation have suffered harm without the contracting authority being left with any way of countering their argument.

3. Exercise of the author's moral rights by third parties

3.1. The various models for the exercise of the author's moral rights

Copyright in a work arises upon that work's creation by its author.[*47] Moral rights and economic rights constitute the content of copyright.[*48] Since the copyright in a work is created with the creation of the work[*49] and no registration or deposit of the work or completion of other formalities is required for either the formation or the exercise of copyright,[*50] it is not necessary to regulate this aspect of matters in the public contract. Only the transfer or licensing of copyright must be regulated, not copyright creation.

The Berne Convention does not directly stipulate whether moral rights are transferable or licensable. The WIPO-issued *Guide to the Berne Convention* explains that some laws expressly state that moral rights cannot be assigned and that the author may not waive them.[*51] Consequently, the determination of this aspect of the landscape lies within the field of discretion of the signatories to the Berne Convention.

The EU has not adopted a uniform approach to transferring or licensing moral rights, there is no harmonised practice for this, etc.[*52] A gulf is evident, as noted above: moral rights in many countries, mainly those following the *droit d'auteur* tradition, are taken to be inalienable, non-waivable, imprescriptible, and non-transferable because of an inherent link to the author's personality under said rubric, while countries adhering to the copyright doctrine, in contrast, deem those rights usually waivable or transferable.[*53] It bears reiterating that full transfer of all the author's moral rights is impossible, in any legal system,[*54] with Estonia naturally following suit in finding moral rights non-transferable.[*55] In Estonia, the treatment of moral rights remains subject to uncertainty. Specifically, whether these rights can be licensed, made subject to consent for others' use, and/or waived is unclear. While legal precedent sheds some light on this matter, gaps persist. In one instance, the Supreme Court did not categorically exclude the possibility of licensing moral rights, yet the specifics of how such licensing might occur have gone unspecified.[*56] In another judgement, that court emphasised that alterations to a work shall be made only by the author herself or by someone authorised by the author.[*57] Here too, the court did not prescribe a definitive form for granting corresponding authorisation – whether through a licence or via explicit consent. Finally, the Supreme Court has acknowledged the feasibility of waiving an author's rights too. The court clarified that, under tort law, a defendant might have legitimately interfered with the plaintiff's copyright on the basis of oral consent, even without a formal written agreement permitting this. Consequently, when an author consents to third-party modifications of her work, a prospective plaintiff relinquishes the right to seek damages from a prospective

46 Civil Chamber of the Supreme Court decision 2-21-5449 [2023] para 11.

47 According to sentence 1 of the Copyright Act's s 11 sub-s 1.

48 Copyright Act, s 11 sub-s 1.

49 Copyright Act, s 7 sub-s 1.

50 Copyright Act, s 11 sub-s 3.

51 Ricketson and Ginsburg (n 3) 42, with reference to art 6bis6.

52 Stamatoudi and Torremans (n 13) 10–11; Mägi (n 13) 760.

53 von Lewinski (n 14) 53.

54 Fontaine and Celeyron (n 15) 775; Mägi (n 13) 766.

55 Recall that an author's moral rights are inseparable from the author's person and non-transferable, per the Copyright Act, entirely in accordance with the Constitution of Estonia; see n 17.

56 Civil Chamber of the Supreme Court decision 3-2-1-67-07 [2007] para 17.

57 Decision 3-2-1-39-03 (n 43) para 26. The court referred to the Copyright Act's s 12(1) cl 3 (on the right of integrity), which employs the language 'the author of a work has the right to make or permit'.

defendant for copyright infringement.[*58] Nonetheless, the precise mechanisms for granting such consent remain open for debate in Estonian jurisprudence.

A licence is permission to carry out an act that would have been prohibited without the consent of the proprietor of the copyright. The licence enables the licensee to use the work without accusation of infringement. So long as the use falls within the lines of the terms of the licence, the licensee is immune to such action by the copyright-owner.[*59] There are two fundamental types of licence: exclusive and non-exclusive.[*60] In the case of a non-exclusive licence agreement, the licensor may also exercise the right that is the object of the agreement or grant the right of use to other persons, besides the licensee.[*61] An exclusive licence agreement grants the licensee the right to exercise the rights arising from intellectual property to the agreed extent and precludes the right of use by other persons and the licensor to the same extent.[*62]

Within the realm of Estonian legal literature, several jurists have found that granting an exclusive licence for moral rights is presumably impossible.[*63] The author of this article concurs with their view. Providing an exclusive licence for moral rights should not be feasible, as these rights are explicitly non-transferable by law. Moreover, an exclusive licence would yield the same outcome as outright transfer of moral rights – rendering the author unable to exercise them for all practical purposes. In its essence, such an arrangement is tantamount to actual transfer of moral rights. Furthermore, allowing non-exclusive licensing for moral rights should be approached with caution on account of an aspect of rationale seen as fundamental for safeguarding copyright: the argument of personhood. From its perspective, a creative work serves as an embodiment of the creator's personality; consequently, maintaining control over the work becomes vital to securing and maintaining the creator's control over her very personality.[*64] Moral rights, as extensions of the author's personality, serve precisely this purpose. For instance, the right of authorship is inherently tied to the individual author. Therefore, there would be incongruity to permitting third parties to claim authorship when moral rights are licensed. Such licensing would empower a third party to exercise these rights – whether asserting authorship, objecting to modifications that harm their honour or reputation, or engaging in other acts. This divergence from anchoring in the essence of moral rights, which inherently connects them to the author's personhood, must not be countenanced. In summary, expressing an author's personality through moral rights should remain inviolable and immune from third-party intervention.

In examining whether third parties may exercise an author's moral rights, a critical consideration arises with regard to the interplay of waiver and consent. Specifically, can authors voluntarily relinquish their moral rights or grant consent to third parties to waive those rights? Estonian legal literature has established that moral rights must be addressed individually – each right necessitates a distinct agreement on its exercise.[*65] That legal scholarship has drawn on insight from case law in France and Germany, from which several key principles have emerged. Firstly, authors cannot legally relinquish or abandon the rights of attribution and integrity altogether. These fundamental moral rights remain inviolable even in a context of licensing or contractual arrangements. Secondly, advance blanket waivers are unenforceable. Authors cannot sign away their moral rights without specificity. Instead, a nuanced approach is required – one that considers the unique circumstances of each situation. Thirdly, highly tailored waivers that entail reasonably foreseeable limitations to the author's moral rights are generally valid.[*66] In such a light, these targeted waivers strike a balance between protecting the author's creative expression and accommodation of practical considerations. France, Germany, and Estonia are among the countries protecting moral rights extensively.[*67]

58 Civil Chamber of the Supreme Court decision 3-2-1-124-06, para 11; Law of Obligations Act, s 1045(2) cl 2: 'The causing of damage is not unlawful if the victim consents to the damage being caused, except in the case where the grant of such consent is contrary to law or good morals.'

59 L Bently and others, Intellectual Property Law (5th edn, Oxford University Press 2018) 295.

60 Copyright Act, s 48[1] sub-s 1 para 2; Law of Obligations Act, s 370 sub-ss 1, 2.

61 Law of Obligations Act, s 370 sub-s 1.

62 Law of Obligations Act, s 370 sub-s 2.

63 Rosentau (n 19).

64 Aplin and Davis (n 5) 52.

65 Rosentau (n 19).

66 CP Rigamonti, 'Deconstructing Moral Rights' (2006) 47(2) Harvard International Law Journal 354, 377; consult also the case law cited.

67 Kelli and others (n 19) 113.

Authors should have the legal option of agreeing to not assert their moral rights or to waive them, provided that the agreement is specific and considers each moral right of the author individually. Moral rights are intrinsic to the creator of an architectural work. Since these rights are closely tied to authors' personal identity, the authors must decide when and how to exercise them. In drafting of an agreement, addressing each moral right separately lets the author tailor the approach. This technique honours the core principles of private law, which emphasises individuals' autonomy and recognises freedom of contract as a fundamental value.[*68] Notably, the Copyright Act underscores this perspective by using the term 'permit' in relation to both the right of integrity and the right of additions to the work.[*69] Consequently, the clauses employed should be precise, explicitly mentioning each moral right. In practice, an author can consent to limitations to her moral rights without necessarily relinquishing them entirely. Consent applies to specific actions; a waiver should follow the same rationale. For instance, an author might agree not to assert moral rights in a particular situation rather than waive them completely. In one illustration, an author could agree not to be publicly acknowledged as the creator of a work or could insist on being credited by her full name. This approach maintains consistency both with the primary justification for moral rights[*70] and with the relevant case law in France and Germany[*71]. Regulation of the exercise of moral rights should not create undue restrictions if each right is addressed individually. This approach empowers authors to make context-specific decisions on their moral rights in relation to a specific architectural work. Regulating each moral right separately in a contract would furnish room for both concepts, a waiver and consent.

3.2. Contracting authorities' exercise of the author's moral rights

Regulating each moral right separately in a public contract is problematic for two reasons: 1) public contracts are concluded between a contracting authority and a tenderer; 2) there is usually no possibility of negotiations between a contracting authority and the tenderer, not to mention an author.

A public contract is a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities, where the parties have as their object the execution of work, the supply of products, or the provision of services.[*72] In regulation of the author's moral rights, inclusive of the right of integrity in a public contract, it is important to delineate who is the author of said work – i.e., who owns the moral rights to it. The author of a work is the natural person or persons who created the work.[*73] The tenderer (generally a legal entity only) is not the work's author. Therefore, it must be kept in mind that the author and the contracting authority are not entering into a public contract with each other.

In the context of public contracts, architects – authors of works of architecture – are typically members of the tenderer's team. They may be employees of the tenderer or under contract to the tenderer. When creation of a work takes place under an employment contract or in the public's service as part of direct duties, the author retains copyright in the work. However, the economic rights related to using the work for the specified purposes and to the extent outlined by those duties are transferred to the employer unless specifications in the contract indicate otherwise.[*74] Importantly, moral rights remain with the author irrespective of the legal relationship between the tenderer and the author.

From a practical standpoint, it is the contracting authority's responsibility to establish the framework for the author's moral rights within a public contract. Tenderers, on the other hand, must verify that the author of the architectural work agrees to the contract conditions before submitting their tenders. If the author does not consent to these terms, the tenderer cannot proceed with the submission. It is impermissible for a tenderer to exercise the author's moral rights on the author's behalf without the author having provided prior confirmation that it may do so.

68 Ibid 112.

69 Copyright Act, s 12(1) cls 3, 4.

70 The so-called argument from personhood is that, work being an embodiment of the creator's personality, control over the work is essential to securing authorial control over the author's personality. See Aplin and Davis (n 5) 52.

71 Both fall under the *droit d'auteur* doctrine.

72 Directive 2014/24/EU, art 2 para 5; Directive 2014/25/EU, art 2 para 1; Public Procurement Act, s 8(1).

73 Copyright Act, s 28 sub-s 2.

74 Copyright Act, s 32 sub-s 1.

Addressing the regulation of an author's moral rights within a public contract presents several challenges. While one approach could involve the author signing the public contract alongside the tenderer and contracting authority, this method is complicated: Public contracts are formalised in writing between economic operators and contracting authorities[*75], and their terms are established on the basis of procurement documents and the winning tender[*76], where the tender represents tenderers' commitment to the contract, binding them to its terms.[*77] However, authors are not tenderers[*78] and therefore cannot directly sign a public contract. Furthermore, it would be legally impossible for an author to sign only the portion of the contract that is related to her moral rights. The tripartite agreement required – involving the contracting authority, tenderer, and author – represents an extremely impractical solution, especially when multiple authors are involved. Such complexity raises even more questions about the parties to the contract and their responsibilities. The most obvious, perhaps, is that legal norms permit only the contracting authority and tenderer to be parties to a public contract. Consequently, the idea of authors too signing a contract of this nature is not viable.

An alternative approach would be for the author and the tenderer to start by regulating the exercise of the author's moral rights between themselves. This should equip the tenderer with the right to agree on behalf of the author to exercise that author's moral rights in a public contract with the contracting authority. One implication in this scenario is that the tenderer is the author's representative under the public contract. A transaction may be carried out through a representative: a transaction executed by a representative is valid in respect of the principal on the condition that it was carried out by the representative in the name of the principal and provided that the representative possessed the corresponding authority of representation.[*79] A transaction that by law or mutual agreement must be carried out in person may not be carried out through a representative.[*80] Granting authority for representation of the principal requires the principal to provide a corresponding manifestation of intention to the representative, to the person with whom the transaction that requires the authority is to be carried out, or to the public.[*81] The scope of the authority to represent the principal is determined solely by the principal. The meaning that the person who was granted the authority or the person who otherwise relies on the manifestation of intention had to understand that manifestation of intention or the conduct of the principal as conveying is interpreted to be the meaning of the authority conferred in fact.[*82]

Authors should have the legal option to either refrain from asserting their moral rights or waive them, provided that such agreements are specific and consider each of the author's moral rights individually. Since moral rights are intrinsically tied to an author's personal identity, the decision on when and how to exercise them rests with the author. In practical terms, authors can consent to restrictions on their moral rights without necessarily relinquishing them entirely. Consent is connected with specific actions, and waivers follow a similar rationale. In this context, the author could, alternatively, consent to the terms and conditions of the public contract, thereby granting the tenderer the authority to agree with the terms and conditions regulating the author's moral rights. Importantly, regulating the exercise of moral rights is not a transaction that, by law, must be conducted in person. While the author must decide how to address the exercise of these rights, there is no legal requirement for in-person execution. Therefore, if the author provides specific confirmation to this effect, the tenderer can effectively manage that particular exercise on the author's behalf.

Given that the tenderer's submission must adhere to the conditions outlined in the procurement documents,[*83] the author's consent to these conditions, which include those expressed within the public contract, follows a similar pattern of reasoning. Specifically, the author should confirm that the tenderer has

75 Directive 2014/24/EU, art 2 para 5; Directive 2014/25/EU, art 2 para 1; Public Procurement Act, s 8(1).

76 Public Procurement Act, s 120(1).

77 Public Procurement Act, s 110(1).

78 A tenderer is an economic operator who has submitted a tender or preliminary tender to the contracting authority in a public procurement, according to the Public Procurement Act, s 7(1).

79 Act on the General Part of the Civil Code, RT I, 20.6.2022, s 115(1). English translation available <https://www.riigiteataja.ee/en/eli/503022023002/consolide> accessed on 8 July 2024.

80 Ibid, s 115(2).

81 Ibid, s 118(1).

82 Ibid, s 120(2).

83 Public Procurement Act, s 110(2).

the right to submit an offer (this confirmation would be inherently specific, given that both the tenderer and the author are aware of the terms and conditions of the public contract[*84]). However, the author remains the ultimate decision-maker in respect of the suitability of the regulation handling treatment of their moral rights. If the terms are not acceptable to the author, the tenderer cannot proceed with submitting a tender. Should the tenderer do so anyway, the terms and conditions of the public contract cannot cover the author, since the author is not directly a party to the contract. The tenderer's role in this setting is that of the author's representative in management of the regulation of moral rights.

In the context of contracting authorities' activities, adopting this approach in practice necessitates ensuring that the tenderer possesses the capability of regulating the author's moral rights on the author's behalf. Under the previous version of the Public Procurement Act,[*85] there existed a provision requiring the contracting authority to seek the tenderer or applicant's confirmation of the existence of the intellectual-property rights relevant for the execution of a public contract.[*86] However, the Public Procurement Act in its current form, by lacking an equivalent provision, lays the burden of responsibility directly on contracting authorities: they must address this issue explicitly within the public contract. Failure to do so renders the terms and rules stated in the public contract ineffective with respect to the author's moral rights. Consequently, it becomes imperative to incorporate the tenderer's explicit confirmation – acknowledging said entity's authority to regulate the exercise of the author's moral rights – into the public contract. Additionally, the contracting authority should include protective provisions in the contract to safeguard against situations wherein the tenderer does not hold the necessary rights. The relevant terms might feature provisions for an obligation for the tenderer to compensate the contracting authority for any resulting damages.

An alternative route for the contracting authority's verification that the tenderer possesses a right to regulate the author's moral rights within the public contract's sphere would involve seeking direct confirmation from the author. In this scenario, the contracting authority requests tenderers to provide an author's confirmation alongside the offer. Implementing this method would increase the administrative burden for the contracting authority, however – the authority would need to review these confirmations meticulously, to verify their alignment with regulatory requirements, and need to make sure that all authors concerned have provided confirmation to the tenderer – and simultaneously impose additional responsibilities on tenderers. Alternatively, the same level of confirmation from the contracting authority's angle can be achieved by incorporating it directly into the public contract, as discussed above.

An additional consideration when the regulation of an author's moral rights in the public-contract domain is that of the limited opportunity for negotiations between the contracting authority and the author. Typically, public contracts get drafted by the contracting authority without prior consultation with tenderers in the course of the procurement process. This practice stems from the requirement that contracting authorities follow either the 'open' or the 'restricted' procedure, unless otherwise instructed by the law.[*87] In the context of architectural work, most public procurements follow the former,[*88] which precludes direct negotiations with tenderers.[*89] This method entails the contracting authority drafting procurement documents – including the terms and conditions for the public contract[*90] – and making them available to tenderers.[*91] Neither tenderers nor authors (whether architects or any others) can directly alter these documents' terms and conditions. While there exists a mechanism for suggesting modifications to certain aspects of the public contract,[*92] one highly significant challenge plaguing the process is that the procurement process necessarily entails the identity of the tenderer behind the ultimately successful bid being unknown as the process progresses toward its conclusion. The associated lack of specificity impairs the ability of individual

84 This one-time confirmation applies to an open procedure while, for example, the terms and conditions in a negotiated procedure might change without prior publication, under the Public Procurement Act, s 72(6).

85 Public Procurement Act 2013: RT I, 23.12.2013, 74. English translation available <https://www.riigiteataja.ee/en/eli/530012014002/consolide> accessed on 8 July 2024.

86 Found in s 31(8^1).

87 The current version of the Public Procurement Act, s 48(1).

88 The Estonian Ministry of Finance has provided statistics specific to public procurement in connection with state aid and assets. These are available via <https://www.fin.ee/riigihanked-riigiabi-osalused/riigihanked> accessed on 8 July 2024.

89 Public Procurement Act, s 52(4).

90 Public Procurement Act, s 4 cl 17.

91 Public Procurement Act, s 77(1).

92 The terms of the Public Procurement Act, in s 81(1), specify that the contracting authority may modify the contract notice or other procurement documents before the closing date for tenders' submission in an open procedure.

authors to regulate terms and conditions, not least those connected with the exercise of their moral rights, within the public contract. In this context, addressing each moral right separately in the contract becomes problematic on account of the authors' limited influence.

While options exist, the regulation of author-specific moral rights within public contracts lacks a universal approach. In the open procedure, the contracting authority has the flexibility to adjust the procurement documents until the tender-submission deadline.[*93] Once that deadline passes, no further modifications can be made to those documents or the public contract. Regrettably, this restricts the room for tailoring the treatment of an author's moral rights in accordance with her preferences.[*94] Such limitations are at odds with the fundamental principle that authors should have the autonomy to decide how their moral rights are regulated. Therefore, it is crucial to consider whether the mechanism of standard terms and conditions precludes effectively managing moral rights or, instead, permits striking a fair balance between author rights and the needs of contracting authorities.

Under the Estonian Law of Obligation Act[*95], a contract term that is pre-drafted for use in standard contracts or has not been negotiated case-specifically by the parties for any other reason is considered a standard term.[*96] Since contracting authorities apply an open procedure for most public procurement related to architectural work,[*97] the contracts in most cases are concluded under standard terms[*98]. Because these contracts' conditions are not subject to negotiation between the parties but are instead prepared by the contracting authority, said contracts' interpretation must follow the regulations governing the interpretation of standard terms.

The interpretation of standard terms should adhere to objectivity,[*99] with the implication that the terms must be understood in the way a reasonable entrepreneur participating in public procurement would perceive them under the given circumstances. In situations of uncertainty, standard terms are construed in the manner less favourable for the party imposing the condition[*100] (i.e., the contracting authority). A standard term is considered void if, when the contract's nature, content, and entry process are taken into account, it unfairly harms the other party. Unfair harm might arise from a significant imbalance in the parties' rights and obligations, with prejudice against the weaker party. There is a presumption of unfair harm when a standard term deviates from fundamental legal principles or restricts the other party's rights and obligations to such an extent that the likelihood of achieving the contract's purpose gets called into question.[*101]

When the exercise of an author's moral rights is governed by standard terms and conditions, those terms may be found void if they prove unfair from the author's perspective. Since moral rights are tied to the architectural work's creator, bound up with the author's personal identity, the authors are the ones who must determine when and how those rights are to be exercised, yet standard terms and conditions are not subject to negotiation. These terms prepared unilaterally by one party might well place the author at a disadvantage. For instance, the content of the standard terms might require the author to waive certain moral rights. Such terms are likely void, as they unfairly harm the author. The author lacking an opportunity to negotiate these terms – terms with which the author may not agree – is only one factor. Secondly, the significant imbalance in rights and obligations allows the contracting authority to modify the architectural work without concern for the author's right to integrity. This contradicts the very essence of moral rights: because they are inherently tied to an author's personhood, only the author should possess the power to decide how to exercise them. Achieving a fair balance between the contracting authority's needs and an author's rights necessitates genuine negotiation of the contract's terms, terms on the exercise of moral rights among them.

93 Public Procurement Act, s 81(1).

94 Neither can authors contest the procurement documents, because they are not tenderers. See the Public Procurement Act's s 185(1) and s 185(2) sub-s 1.

95 Law of Obligations Act, s 116.

96 Law of Obligations Act, s 35(1).

97 Ministry of Finance (n 88).

98 MA Simovart and M Parind, *Riigihangete seadus. Kommenteeritud väljaanne* [The Public Procurement Act: A Commentary] (Juura 2019) 101: point 25, about s 8(2).

99 Per the first sentence of s 39(1) of the Law of Obligations Act.

100 Law of Obligations Act, s 39(1).

101 Law of Obligations Act, s 42(1).

4. Contractual restrictions to the author's exercise of moral rights

4.1. Contractual restrictions pertaining to reasonable and necessary changes

The right of integrity is derived from the Berne Convention. The *Guide to the Berne Convention* explanation is that the formula for the right of integrity, sometimes called the right of respect, is very elastic and leaves a good deal of latitude to the courts.[*102] This indicates that courts may interpret the right of integrity such that some limitations follow; in fact, it is almost entirely up to the courts to interpret the right of integrity. The guide's explanation states also that the author's 'right of respect' allows the author to demand, for example, the preservation of her work and the main features of her literary characters from changes that are bound to alter the nature of the work or the author's most basic message.[*103]

Contracting authorities' practice often incorporates provisions into a public contract that grant the authority a right to make reasonable and necessary modifications to construction projects[*104].[*105] Simultaneously, the provisions in question stipulate that authors cannot prohibit such changes. This contract-rooted limitation serves as a mechanism to balance the interests of contracting authorities and authors' rights in some fashion. By allowing only those adjustments that are necessary, so as to safeguard the author's creative vision, authorities that take this approach seek harmony between the two parties' needs within the context of public contracts.

It is impossible for public contracts to capture the meaning of such notions as 'reasonable' and 'necessary' explicitly. While a contract could offer definitions for these words, specifying a meaning that functions in every possible scenario is both complicated and unnecessary. Public contracts are subject to the provisions outlined in the Law of Obligations Act and in legal acts relevant to the specific type of contract unless otherwise specified by the Public Procurement Act.[*106] The Supreme Court of Estonia has recognised that the unique nature of public-procurement procedures leads to these contracts typically being based on standard conditions in conditions wherein the parties have not negotiated specific terms.[*107] The standard conditions' objective interpretation supports ensuring that reasonably informed and diligent tenderers can understand them consistently.[*108] While regulating the exercise of the author's moral rights through standard terms and conditions might produce terms that are deemed void since they could, in theory, be unfair from the author's perspective, the requirement that they be interpreted objectively – that is, not from the contracting authority's perspective alone or solely from the author's either – could represent a path to a safeguard. Regulating the exercise of the author's moral rights through standard terms is permissible only when a fair balance is struck between the contracting authority's needs and the rights of the author. Stating the limitations by means of the public contract such that the contracting authority maintains the right to make reasonable and necessary changes might be a way to create the required balance between those sets of interests.

Outlining the principle of reasonableness, the Estonian Law of Obligations Act, Section 7, furnishes some of the meaning for these notions. Reasonableness is judged by what persons acting in good faith would ordinarily consider reasonable in the same situation.[*109] Various factors come into play when one is assessing reasonableness here, among them the nature of the obligation, the transaction's purpose, industry practices, and other relevant circumstances.[*110] Reasonableness is judged objectively. Indeed, the law requires this. To that end, the evaluation hinges on modelling a neutral person's behaviour: the

102 Ricketson and Ginsburg (n 3) para 42, on art 6*bis*4.

103 Ibid, on art 6*bis*5.

104 The list of works 'for which copyright arises' is laid out in the Copyright Act, s 4(3) sub-s 14; see n 21.

105 See, for example, the details of public procurement 256304 <https://riigihanked.riik.ee/rhr-web/#/procurement/5107120/general-info> and 261161 <https://riigihanked.riik.ee/rhr-web/#/procurement/5589540/general-info>. Both links accessed on 8 July 2024.

106 Public Procurement Act, s 8(2).

107 Decision 2-15-15662 (n 18) para 21.

108 Law of Obligations Act, s 39(1).

109 Law of Obligations Act, s 7(1).

110 Law of Obligations Act, s 7(2).

content considered reasonable in the objective circumstances identified is concretised, and a model for rational and considered behaviour is formed. A reasonable person looks after her economic interests, but reasonableness implies ethical behaviour in addition.[*111] This is where the final element in the list of factors in assessment of reasonableness asserts itself. Hence, the Estonian Supreme Court has found that it may be necessary to consider other circumstances in addition to the nature of the debt relationship, the purpose of the transaction, and the customs and practices of the relevant fields/professions.[*112]

Additionally, the Estonian Act on the General Part of the Civil Code[*113], specifically Section 63 (1), delineates which costs related to property are considered necessary. Costs incurred in connection with a property object are necessary where they serve to preserve that object or protect it from either complete or partial destruction. For instance, the Estonian Supreme Court has ruled that expenses related to replacing a fully depreciated heating system[*114] and renovating water and sewerage systems qualify as necessary costs.[*115] Ultimately, ascertaining whether a change to a construction project is necessary and reasonable depends on the findings from case-by-case assessment.

To safeguard the interests of contracting authorities or the public interest, it is crucial for the authority to retain the ability to make modifications to construction projects as needed.[*116] The public contracting authorities serve as the owners of buildings constructed through the corresponding projects. In Estonia, the property-owners' rights are safeguarded by both the Constitution of the Republic of Estonia[*117] and the Law of Property Act[*118], where ownership is defined as full legal control by a person over a thing. An owner has the right to possess, to use, and to dispose of the thing and to demand the prevention of violation of those rights and the elimination of the consequences of violation arising from all other persons.[*119] Consider a scenario wherein a building requires restoration work to protect against its partial or complete destruction. Examples of work of this nature are replacing a compromised heating system that should protect the structures in winter and renovating the water-supply and drainage systems to meet current requirements. These types of improvements are deemed necessary. This perspective, consistent with the principles outlined in the Act on the General Part of the Civil Code, is supported by the Estonian Supreme Court's case law. Contracting authorities should not have to fear that such modifications might infringe on the author's moral rights. When it comes to necessary changes in settings such as schools or hospitals, the goal is to prevent the building from collapsing and otherwise ensure that it fulfils its intended purpose, through actions such as protecting its users from harm caused by everything from asbestos fibres to excessive radioactivity. Letting contracting authorities make the corresponding essential adjustments enables them to exercise their rights as property-owners and honour their responsibilities to maintain and enhance the properties as needed. The approach evident here strikes a balance between intellectual-property rights and the practical requirements of maintaining and improving public infrastructure.

In the context of the contracting authority's prerogative to effect changes to a building, it is imperative to reconsider the term 'necessary'. While the Act on the General Part of the Civil Code provides a definition, this definition may prove overly restrictive. The scope of necessity extends beyond mere preservation; it encompasses a broader spectrum of circumstances. Consider the scenario of an educational institution, such as a school, facing population growth specific to its geographical region. Extending an existing school might be a more pragmatic solution than constructing an entirely new one. Making such extensions, whether to schools or hospitals, should qualify as necessary work within the context of construction projects. The need for modifications of this sort arises not only from preservation concerns but also from practical exigencies. Furthermore, both necessity and a contracting authority's motivation to alter a building can arise from diverse factors. For instance, the imperative to enhance energy-efficiency might prompt replacing the

111 P Varul and others, *Võlaõigusseadus. Kommenteeritud väljaanne I* [The Law of Obligations Act: Commentary I] (Juura 2016) point 4.1, regarding s 7.

112 Civil Chamber of the Supreme Court decision 3-2-1-135-15 [2015] para 17.

113 Act on the General Part of the Civil Code, s 33.

114 Civil Chamber of the Supreme Court decision 3-2-1-116-11 [2012] para 33; Civil Chamber of the Supreme Court decision 3-2-1-105-16 [2016] para 14. Both in the Estonian language.

115 Decision 3-2-1-105-16 (ibid) para 14.

116 All modifications to public contracts also have to be in line with s 123 of the Public Procurement Act.

117 Namely, under its art 2.

118 Law of Property Act 1993, RT I, 17.3.2023, 57. English translation available <https://www.riigiteataja.ee/en/eli/524032023005/consolide> accessed on 8 July 2024.

119 Law of Property Act, s 68(1).

existing roof, whether it be a traditional tile roof or a sheet-metal roof, with one equipped with solar panels. In this scenario, the need to modify the building transcends preservation aims and aligns with broader goals. As a steward of the building, the contracting authority should possess the agency to prosecute these changes, recognising that necessity encompasses multifaceted dimensions, far beyond mere preservation.

Reading the foregoing discussion could raise concerns from authors' perspective, however. By exerting their power to commission necessary alterations to a building, contracting authorities could significantly alter its appearance. Such alterations might, in turn, lead to erosion of the author's honour and reputation – i.e., violate the right of protection of the author's honour and reputation. For instance, consider the above-mentioned scenario of replacing the original roof with a roof adorned with solar panels. This change could fundamentally transform the building's character, thus negatively influencing the author's reputation and honour. The author might perceive this alteration as damaging because she would never have associated a solar-panel roof with a building featuring a yellow façade and Art Nouveau windows. Clearly, it is not merely the necessity of modifications to the structure that matters; the changes must be reasonable also from the perspective of safeguarding the author's moral rights.

For instance, in a prominent Estonian Supreme Court case, architects Leonhard Lapin and Toomas Rein alleged an infringement of their right of integrity by the municipality of Kihnu.[*120] The district court concurred with the county court's determination that the project took a course that deviated from the authors' original design during construction without their consent. Specifically, the district court concluded that the alterations – made to the vestibule, the cloakroom, the canopy of the main entrance, the façade and its eaves heights, the glass pyramid above the lobby, and the building's ventilation – violated the moral rights of the project's authors. The architects contended that these changes significantly and irreparably compromised the conceptual and architectural integrity of the original design, while the argument on the other side asserted that these alterations were necessitated by technical constraints, with the initial project having not provided unambiguous solutions for every construction-related issue. In such a context, imposing limitations via the public contract so as to allow for truly necessary adjustments would avoid violation of the author's moral rights.[*121]

Let us examine the solar-panel example further. In the context of building modifications, contracting authorities hold the power to replace traditional roofing materials with solar panels; however, doing so should be deemed permissible only if it qualifies as making a reasonable change. The principle of reasonableness, as outlined in the Law of Obligations Act, plays a pivotal role in judging the acceptability of alterations of this kind. For assessing whether these changes to a building are reasonable, factors such as the above-mentioned nature and purpose (of the modification) and prevailing practices (in the field of restoration work) come into play. The Copyright Act explicitly safeguards the author's moral rights, with the right of integrity and the right of protection of the author's honour and reputation counting among these, so any modifications to a building must adhere to reasonableness standards if they are to avoid infringing upon those rights. Were contracting authorities to order necessary changes that fundamentally alter a building in a manner detrimental to the author's reputation or honour, their actions would constitute a violation of said moral rights. Consequently, the reasonableness criterion can serve as a shield for an author's moral rights. It ensures that contracting authorities cannot legally impose changes that fall short of reasonableness. In other words, to go forward, the 'necessary' alterations to a building must both be required and be justifiable from the perspective of preserving the author's artistic intent and reputation. For instance, adding solar panels to enhance energy-efficiency might be deemed reasonable on condition that it dovetails with the overall purpose and appearance of the building. Since reasonableness is an objective requirement,[*122] its conceptual framing affords considering both the author's rights and the practical needs of the contracting authority. The purpose of the building, its aesthetic character, and other relevant facets to the setting should be carefully weighed to determine whether the modifications proposed in a given case meet the reasonableness standard.

Moreover, setting the contract's limits such that they permit only 'reasonable and necessary' changes would create a similarity to limitations employed in other EU member states. The German Federal Supreme Court stated in several 2019 decisions that, in general, the owner's rights take precedence over the author's

120 Decision 3-2-1-39-03 (n 43).

121 Ibid, paras 10, 26.

122 Decision 3-2-1-135-15 (n 112) para 17.

rights when the construction or remodelling of a building is at issue – but only in cases wherein the property-owner's non-aesthetic interests necessitate the construction or remodelling of the building.[*123] Likewise, in a 2006 decision, the District Court of Berlin found that changing the plans for the ceiling of a building's lower floor for aesthetic reasons without sufficient economic justification is not allowed.[*124] In contrast, if the building is not safe anymore, the façade of the building may be changed without the author giving permission. Among the other permissible criteria are economic, environmental, and various other interests, so long as the sources of justification are non-aesthetic ones. These factors might intersect when, for example, the building-owner cannot rent out the building anymore. In Germany, one can seek guidance in the national Copyright Act, which states that the author has the right to prohibit distortion or any other derogatory treatment of the work that could prejudice said author's legitimate intellectual or personal interests in the work.[*125] Italian copyright law grapples with such issues by foreseeing an exemption for architectural work. Namely, the Italian Copyright Act states that in cases of architectural work, the author may not oppose modifications deemed necessary during construction. Furthermore, the author may not oppose other modifications that may be necessary in any such completed work.[*126]

As for how the aesthetics issue could be tackled in Estonia, if limits were imposed at contract level so as to permit 'reasonable and necessary' changes only, public-procurement contracts would most probably restrict the contracting authority from making non-aesthetic alterations to a building. This conclusion is based on the need for two key conditions to apply: firstly, there must be a genuine need for the contracting authority to initiate modifications, and, secondly, those changes must meet the criterion of reasonableness. Changing a building's appearance merely to enhance its perceived elegance or align with personal tastes or aesthetic standards of the day would be unlikely to qualify as a reasonable change from the author's perspective. There would have to be other, demonstrably practical considerations behind the need envisioned for some aesthetic change. In this context, reasonableness necessitates attention to the delicate balance between the interests of the contracting authority and the author. Again, since reasonableness is an objective requirement, it empowers practitioners to consider the practical needs alongside the value of preserving the author's artistic intent and reputation – this tool supplies a lens suited to considering economic interests, ethical behaviour, etc. simultaneously[*127].

An alternative approach to achieving a balance between the needs of contracting authorities and an author's rights involves legal reform akin to that informing the Italian model. Under a system following that model, authors do not retain the right to oppose modifications specifically in the context of architectural work that are deemed necessary and reasonable. Consequently, setting limits to this effect in contracts become unnecessary. However, it is essential to recognise that the restriction imposed in this scenario pertains specifically to the author's right of integrity, as discussed earlier in the paper.

In summary, surveying the state of affairs led to the following recommendation expressly for the purpose of striking a fair balance between the interests of the contracting authority and the rights of an author subject to a public contract: public contracts should explicitly grant contracting authorities the right to make architectural modifications that are both reasonable and necessary without contestation from the author. The changes found necessary might be connected with preservation efforts, energy-efficiency enhancements, adaptations to population changes, or other factors; however, appropriate equilibrium between the author's rights and the contracting authority's interests necessitates these modifications also meeting the criterion of reasonableness, lest the alterations potentially harm the author's reputation and honour. Crucially, this limitation must be articulated explicitly in the public contracts, since it does not follow naturally from the legal provisions now in force. Implementing such a mechanism with careful attention to the 'both reasonable and necessary' condition could serve as a practical means of balancing some of the important competing interests evident in the context of public contracts.

123 German Federal Supreme Court decision I ZR 98/17 *HHole (for Mannheim)* BGH, 21.2.2019; decision I ZR 15/18 *Minigolfanlage* BGH, 21.2.2019; decision I ZR 99/17 *Pharadise* BGH, 21.2.2019.

124 District Court (Landgericht) Berlin decision 16 O 240/05, 28.11.2006.

125 See s 14 of the German Copyright Act.

126 See the Italian Copyright Law's art 20 co. 2.

127 Again, please see Varul and others (n 111) point 4.1, regarding s 7.

4.2. Contractual restrictions connected with the public interest

The terms 'public' and 'public interest' represent legal concepts that lack precise definitions. Their interpretation varies greatly with the context. Accordingly, legal scholars and case law have explored these terms extensively, and only a few facets to them can be carved out for attention here.

The target of public interest is a certain public (general, societal) good.[*128] According to interest theory, public law tends to matters related to the state while private law concerns itself with individual-level gains. From an interest-theory perspective, a legal issue falls within the realm of public law when the interests of the state deserve priority. However, it is crucial to note that there exist public-law norms that protect private interests and, even more significantly, some norms of private law are established with consideration for public interests.[*129] Additionally, the topic can be approached with either a normative or an analytical tack. From a normative angle, the relationship between individuals' rights and public interests becomes a question of the state's and society's fundamental structure, so discussion of private and public interests remains relevant as long as it is encapsulated with the concept of justice. With an analytical lens, in contrast, the focus is on precisely defining the relationship in question, which necessitates precise delineation of individual-level rights and societal interests. While the latter is far from simple, the inherent ambiguity of these terms renders a normative approach impossible.[*130] One can argue that, as a rule, the target of public interest – the public good – is indivisible between members of a society. The public interest does not necessarily even reflect the interest of most individuals in the society, because no society is the sum of its private interests.[*131]

Some needs that fall under 'public good' as defined by the Court of Justice of the European Union (CJEU) are the general need to preserve public order; the imperative of protecting the environment; protection of public health, inclusive specifically of the provision of medicinal products of reliable and good quality; pursuit of the objective of security and solid public policy when a genuine serious threat places a fundamental interest of society at risk; the promotion of research and development and of high standards of education;[*132] and earthquake-resistance of buildings.[*133] Golding and Henty have mentioned the Olympic Games as another possible example.[*134] On the other hand, the CJEU has consistently excluded considerations of an administrative, economic, or financial nature from among the overriding elements in the public interest.[*135]

Estonian case law too reflects the fact that 'public interest' is an undefined legal concept. The Supreme Court has found that, in light of the vital nature of freedom of the press, the press has extensive leeway for decision-making with regard to the range of topics whose investigation and reporting falls within the public's interest.[*136] Furthermore, case law reveals multiple instances wherein the court has meticulously balanced competing interests amid definitional ambiguity. For instance, in a case involving the potential closure of a school, the court weighed the larger public interest against the interest of the applicants (the parents of the school's students) in maintaining the school's operations.[*137] Some other examples that have shed light on the definition of 'public good' have involved peace internal to and beyond the country's borders, a thriving economy, the integrity of the environment, and a high level of culture.[*138] This underscores the nuanced interplay between public and private interests.

In light of the foregoing discussion, an additional limitation that could be incorporated into public contracts with regard to the exercise of an author's moral rights is one grounded in the public interest. In essence, the provision envisioned would empower contracting authorities to effect changes to a construction

128 K Ikkonen, 'Avalik huvi kui määratlemata õigusmõiste [Public Interest As an Undefined Legal Concept]' [2005] (3) Juridica 187, 187.

129 R Narits, *Õiguse entsüklopeedia* [Encyclopaedia of Law] (Juura, Õigusteabe AS 2002) 44–45.

130 Ikkonen (n 128) 193.

131 Ibid 199.

132 MA Simovart, 'Old Remedies for New Violations? The Deficit of Remedies for Enforcing Public Contract Modification Rules' [2015] (1) Upphandlingsrättslig Tidskrift (UrT) 33-47, 36; also see the case law cited.

133 Case C-159/11 *Azienda Sanitaria Locale di Lecce and Università del Salento v Ordine degli Ingegneri della Provincia di Lecce and Others* EU:C:2012:817, para 37.

134 Simovart (n 132) 36 and the legal literature cited.

135 Simovart (n 132) 37 and the case law cited.

136 Administrative Chamber of the Supreme Court decision 3-17-62 [2021] para 15.2; Administrative Chamber of the Supreme Court decision 3-3-1-85-15 [2016] para 23. Both in Estonian.

137 Tartu District Court order 3-22-984 [2022] para 12.

138 Ikkonen (n 128) 187 and the case law cited.

project on grounds of public-interest considerations. In the Estonian legal context, the issue of restricting an author's moral rights on the basis of public interest is notable for not having been broached yet – or having been addressed in case law in any way. Nevertheless, it merits thoughtful examination. Might such a stipulation in public contracts help ensure an equitable equilibrium between the author's prerogatives and the interests of the contracting authority?

The Spanish Supreme Court grappled with the interplay between the moral right of integrity and the public interest[*139] in a case involving two architects, Calatrava and Isozaki. The City of Bilbao commissioned Isozaki to add a walkway to Calatrava's bridge in the aim of enabling pedestrians to use and leave the bridge without needing to ascend or descend long flights of stairs to access several of the commercial buildings on one of the banks of the river. In its design, the pedestrian passage differed significantly from the original bridge. Calatrava sued, seeking the walkway's demolition and the restoration of the railing originally part of the structure. Initially, the court accorded greater weight to the public interest, concluding that the author's interests/reputation had not been damaged because the interest of the public at large to use the more practical passage should prevail. On appeal, the court recognised that Calatrava's moral rights had indeed been violated, however. The court considered the public purpose for which the bridge had been created, emphasised the bridge's original purpose, and ruled in favour of Calatrava.[*140]

There could be a possibility of identifying scenarios wherein public-interest-driven alterations to a building may outweigh private interests (i.e., the author's moral rights). However, the crucial goal again is to strike a fair balance between the author's rights and the contracting authority's needs, given that public contracts are concluded on standard terms and conditions[*141]. After all, contracting authorities' use of taxpayer funds to procure supplies and services inherently brings in the public interest, yet pursuit of the associated public interest should not disproportionately infringe upon the author's moral rights.

In the realm of architecture modifications, practical factors often render alterations necessary. The above-mentioned case of the bridge provides an example of weighing the needs involved. In the context of buildings, a contracting authority may commission an extension to a school in response to local population growth. Just as additional space for students might be needed, solid patient-care capacity might require expanding an existing hospital. Again, constructing entirely new schools or hospitals is likely to be impractical from a financial standpoint if nothing else. Creating extensions becomes essential, aligning with the broader public interest. In such cases, constructing extensions to existing buildings is in the public interest. Conversely, administrative, economic, and financial considerations have consistently been regarded as outside the domain of overriding reasons associated with public interests, as noted above with reference to the CJEU.[*142] A stalemate does not necessarily follow, however: Estonia's Public Procurement Act and the European public-procurement directives provide a potential solution to address scenarios such as these. Specifically, contracting authorities have the right to employ a negotiated procedure without prior publication. This procedure allows the public contract to be awarded exclusively to a particular economic operator on account of factors related to the protection of exclusive rights – intellectual-property rights included.[*143] Contracting authorities, then, may engage the author of the original work to design an extension to it. Still, each case demands careful assessment of the appropriateness of this procedure for its unique circumstances.[*144]

Allowing building modifications solely because they are financially advantageous for the contracting authorities potentially constrains authors' freedom. For instance, if the contracting authority seeks to alter the choice of building materials purely to reduce costs, this might be justified in the context of public funds; however, contracting authorities might well prioritise cost savings over an author's right to integrity in such cases. While alterations rooted in financial considerations could be justified with regard to public funds, it is

139 MG León, 'Moral Right of Integrity and the Public Interest' (2019) 14 Journal of Intellectual Property Law & Practice 294, 295. – DOI: https://doi.org/10.1093/jiplp/jpz011; Spanish Supreme Court decision 1869/2009, 18 January 2013.

140 León (ibid) 295–96; Provincial Court of Bizkaia decision of 10 March 2009; RC Vallès, 'El caso Calatrava o Zuri Zuri, ¿una victoria pírrica en apelación?' [2009] (32) Revista de Propiedad Intelectual 99.

141 Simovart and Parind (n 98) 101: point 25, on s 8(2).

142 Simovart (n 132) 37 and the case law cited.

143 See the Public Procurement Act's s 49(1) cl 2. This is in accordance with Directive 2014/24/EU's art 32(2).

144 Because of the limited space available for this article, the applicability of applying a negotiated procedure without prior publication is not analysed, since such examination cannot shed light on appealing to the public-interest argument as a way of limiting the author's exercise of moral rights.

essential for contracting authorities to assess their financial resources thoroughly before initiating a public-procurement procedure in the first place.

That said, modifications might be justified by public interests when, irrespective of such diligence, the necessity arises from architectural deficiencies, such as fire-safety standards no longer being met or inadequate earthquake-resistance. In such instances, the need to safeguard public health overrides the author's interests. Where a building is teetering on the brink of collapse and rife with fire-safety violations, safety should receive priority over the author's right of integrity even if materials at variance with those in the original plan get used. This is an extreme example by design: modifications on public-interest grounds should be permitted only in specific cases and be well-justified. Therefore, considering the public interest could form the core of an additional restriction that public contracts could incorporate with regard to the exercise of an author's moral rights. A provision of this type would empower contracting authorities to execute changes to a construction project on the basis of prevailing public interest.

An alternative approach to using public-interest-underpinned contract terms for seeking balance between the needs of contracting authorities and an author's rights is to undertake legal reform to the equivalent effect. The outcome, specific to the context of architectural work, would be that authors do not retain the right to oppose those modifications deemed necessary in light of public interest. Handling the limitations through legal reform would make contract-level limitations unnecessary; nevertheless, one must remember here too that the restriction at issue pertains specifically to the author's right of integrity.

In summary, public interests, of various sorts, merit careful consideration when one is evaluating the necessity of building-modification work. In some scenarios, public interests may outweigh private interests when these two distinct concerns come into collision with each other. It is important to recognise that considering the public interest can impinge on the author's exercise of her moral rights, the right of integrity specifically, and that the case law permits this in only a rather limited range of scenarios. The law neither mandates nor precludes a public-interest-oriented limitation. Incorporating one into public contracts could function to harmonise the interests of the parties – contracting authorities and authors.

5. Conclusions

The intention behinds this paper was to draw attention to legal aspects of the author's moral rights in public contracts, specifically the right of integrity within the context of architectural work. The primary objective of the study reported upon was to ascertain whether, and how well, the exercise of the author's right of integrity can be limited in public contracts through standard terms and conditions. To this end, the evaluation of the legal permissibility of transactions involving moral rights aided in identifying the most suitable model for agreements that govern these rights in public contracts.

Drawing on prior Estonian legal research led to the conclusion that the optimal method for regulating an author's moral rights within the Estonian legal framework is through a structured approach of consent and waiver. This approach allows explicit tailoring of each moral right's consideration in accordance with its inherent nature, thereby ensuring precise and individualised regulation. The landscape of issues accentuates the need for rules in this area to be detailed and targeted rather than constitute a sweeping granting of consent that could infringe on the author's moral rights.

That said, addressing individual moral rights within a public contract poses challenges in that public contracts are concluded between a contracting authority and a tenderer, without the author as a direct party to them, and because negotiations between a contracting authority and an author are quite often infeasible. It was largely because of these two major challenges that the option for authors of works of architecture to consent to the terms and conditions of the public contract and give the tenderer the right to agree with those terms and conditions regulating the author's moral rights emerged as one of the more viable options. Legally, there is no impediment to the tenderer regulating this aspect of the transaction on behalf of the author if the author has provided the tenderer with specific confirmation that the latter may do so under specific circumstances. For the contracting authority's work, ensuring that the tenderer can effectively regulate the exercise of the author's moral rights on behalf of the author becomes essential, so contracting authorities must explicitly address this within the public contract. Failure to do so would render the terms of the public contract ineffective in the realm of regulating the author's moral rights. This situation produced the conclusion that public contracts should explicitly encompass and mandate contract-winners' explicit

confirmation of their ability to manage the authors' moral rights on those authors' behalf. In addition, the contracting authority should incorporate protective provisions to safeguard its interests in case the tenderer turns out to lack the authority necessary for managing these rights. The relevant provisions could specify remedies such as compensation for any damages.

One of the properties of standard terms that demand the greatest awareness in this context is that these terms and conditions are unilaterally prepared by one party and not subject to negotiation with the other party. Consequently, they may disproportionately favour the contracting authority and potentially disadvantage the author. Hence, if standard terms are to regulate the exercise of an author's moral rights effectively, specifically the right of integrity, a delicate balance must be struck, one that considers both the contracting authority's needs and the author's rights. The author's thorough assessment of the scope of moral rights was rooted in this concern. From this exploration of potential limitations on their exercise, it appears prudent to incorporate a specific provision in public contracts, for solid alignment with the legal literature and case law.

Meticulous examination of the practical restrictions commonly employed by contracting authorities in the context of contractual limitations on the exercise of an author's moral rights in settings of public contracts identified a pattern wherein contracting authorities' contracts often include language that obliges the author to permit reasonable and necessary modifications to her work. It is noteworthy that this limitation lacks a legal foundation and does not receive an explicit endorsement in case law. Thoughtful analysis conducted against this backdrop sought a route to the overarching objective of reaching and maintaining an appropriate equilibrium between the legitimate interests of contracting authorities and the moral rights of authors. The aim was to ascertain whether such a limitation could be judiciously applied in public contracts. While this appears possible, carefully evaluating the implications and potential consequences painted a fuller picture. The aim here was to contribute to a nuanced understanding of the interplay between contractual provisions and the protection of moral rights in the domain of architectural work.

Within the context of public contracts, the exercise of an author's moral rights encounters a potential limitation arising from the property-owner's interests (here, the contracting authority's specifically). These interests may prompt contractual stipulations that preclude the author from contesting reasonable and necessary modifications to architectural work. Especially in the space of public and individual-level interests' knotty interrelations, the concept of 'reasonable and necessary changes' assumes critical significance for reaching an equitable balance between the author's rights and the contracting authority's needs. The changes must be necessary, and, on the other hand, requiring them to be reasonable ensures that they do not compromise the author's honour or reputation. Importantly, although not directly rooted in legal statutes, a limitation to this effect warrants explicit inclusion in public contracts. It provides an avenue toward that delicate balance for safeguarding both the author's moral rights and the needs of contracting authorities.

Practice in the realm of architectural-work contracts pointed to a need for meticulous examination of an additional limitation to the exercise of moral rights: one anchored in the public interest. The ensuing analysis revealed that public contracts could incorporate terms preventing authors from contesting architectural modifications deemed necessary in light of public interest. Appeals to legitimate public interest can legally curtail the author's exercise of her moral rights, specifically the right of integrity, but only in the narrow range of scenarios identified by case law. Without adequate justification, alterations could potentially undermine the author's reputation, violate her right of integrity, and disrupt the delicate balance inherent in moral rights' protection. Given the absence of direct legal precedent, it is imperative that a clear public-interest-based limitation be explicitly stipulated in public contracts, to ensure clarity and fairness in navigating the intricate web between creative expression and public welfare.

In the context of public contracts, which are often governed by standard terms and conditions, the various limitations discussed here as possible for inclusion in the contracts can serve striking a balance between the interests of contracting authorities and the rights of authors. These limitations alleviate concerns for contracting authorities, ensuring that authors do not hinder the authority's exercise of its economic rights. Simultaneously, authors can find reassurance that their moral rights (that of integrity especially) remain safeguarded and unharmed.

An alternative approach to achieving a balance between the needs of contracting authorities and an author's rights involves legal reform. Specifically, in the context of architectural work, authors would not retain a right to oppose modifications deemed necessary and reasonable or those in the public interest. After such reform, there would be no need for setting limits in each contract with specific regard to the author's right of integrity, though other rights are certain to continue requiring regulation.