A Guide to Rights and Obligations under Design Contracts

CERHA HEMPEL
CONSTRUCTION PAPERS

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On design requirements

1. Technical requirements in design contracts

[1] At first sight, the answer to the question of what requirements a design should meet might appear simple: ones that the parties have agreed on in the contract. However, the situation is much more complex than that, which is something that even businesses that otherwise act prudently tend to overlook. Perhaps no wonder that the misunderstanding of the rights and obligations that apply under design contracts is the primary source of lawsuits associated with design defects. The following is a summary of the criteria that you should keep in mind if you want to avoid legal disputes.

[2] Under the relevant case law, the function of the design documentation dictates that it should not only include illustrative and textual representations of the appearance, and interior and exterior design elements of a building (in the form of drawings and technical specifications), but it should also describe how the building should be built, what technological steps should be taken and what materials should be used in the construction process, and what the expected costs of the project are.

[3] A design must meet the general rules concerning the performance of contracts as well as certain special requirements that apply to design activities. Section 123(1) of the Hungarian Civil Code states that a service provided under a contract (and therefore any design and the related building) must meet the following requirements: (i) must be fit for the purpose intended, as specified in the by the customer, and for the purpose for which similar services are generally used; (ii) must be of the quality and capacity that are specified in the contract, and that are customary in the case of similar services and can be reasonably expected by the customer in the light of public statements made with regard to the service; (iii) must have the qualities that are stated in the relevant specifications or that the relevant sample has; (iv) must meet the applicable statutory requirements. Under Section 6:251(2) of the Civil Code, however, any design documentation must also (v) include technically feasible, cost-effective and practical solutions and (vi) be able to satisfy the developer's requirements as they are discernible from the purpose of use.

[4] On the basis of the relevant case law as it has evolved over the last few decades, these criteria must be evaluated in the following order and manner:

2. Fitness for the purpose stated in the contract and compliance with contractual quality and performance requirements

[5] A design and the planned building must primarily meet the requirements stated in the design contract. The design contract can determine the requirements that the developer wishes to apply in the design and in the building in addition to, or instead of, the generally applicable requirements. On the other hand, the designer will have to deviate from the general requirements if the developer has set requirements in the contract or before the conclusion of the contract that contradict or modify such requirements. If the developer does not set such requirements, the design will not have to be fit for any purpose that is not implied by the nature of the contract or expressly specified before it is concluded.

[6] Therefore, a designer may only be held accountable for the absence of any quality or attribute of their service to the extent that they could reasonably have anticipated the requirement for such quality or attribute in the light of the general practices and the developer's discernible needs.

3. Satisfying the developer's stated and discernible needs

[7] In addition to the requirements specified in the contract, the design must also meet (i) the needs stated by the developer before the conclusion of the contract and (ii) any non-specified needs that the designer could discern from the purpose of use [Civil Code, Section 6:251(2)].

[8] According to the relevant case law, all this means that a designer must pay special attention to the developer's assumed intent as well as the purpose of use as it can be discerned at the time when the contract is concluded. The technical information necessary for a design must be provided by the developer, but if it fails to do so or the information is incomplete, the designer is required to request further information. If the developer's instructions are impractical or unprofessional, the designer has an obligation to warn the developer [Sections 6:177(2)b) and c) of the Civil Code]. The developer's discernible interests in, and intentions regarding, the building must be taken into consideration in the design process. On the other hand, special requests made after the conclusion of the contract (i.e. requests for design choices that are not in line with the general requirements and that were not reasonably discernible for the designer on the date of the contract) qualify as orders for extra work and the designer is entitled to additional fees for them.

[9] Keeping in mind that a legal dispute down the line is always possible, it is advisable to record the developer's requirements and the designer's feedback, if any, in writing.

4. Compliance with characteristics included in public statements, (material) descriptions and samples

[10] In addition to the developer's express requirements, the performance of the relevant services must also be in compliance with various public statements concerning the services and materials (such as a manufacturer's quality statement), as well as product characteristics as they are reflected in samples or described in technical specifications. These requirements primarily apply to contractors, as they are the ones that are liable for the quality of the materials installed in a building. The designer may be held liable if a material they propose is unsuitable for the purpose intended in general (rather than due to a defect in the product).

[11] For example, a court ruled in a lawsuit that in addition to the contractor, the designer was also liable for the tiles in a building becoming loose, on the grounds that the designer had used an outdated design guide for the tile adhesive and ignored the updated product information. However, the contractor will always be liable for the quality of any installed material (and any possible defect).

5. Fitness for purpose and compliance with customary quality and performance standards

[12] In addition to the specific requirements imposed by the developer, a design must also comply with the generally applicable quality and other requirements: standards, technical specifications, as well as the quality and performance generally expected in the market. A design will therefore have to meet the requirements of mandatory standards, but compliance with these requirements will not in itself be sufficient. If the design fails to meet general market quality standards and conventions or the rules generally applied in a given construction trade, the performance (the design) will be considered defective.

[13] It is important to bear in mind that such general standards, requirements and rules do not have to be explicitly stated in the contract, and, unlike the developer's specific requirements, they will become a part of the contract implicitly. The only situation where a designer is not required to comply with such requirements is if the developer expressly waives them in the contract for whatever reason (for example, because lower than average quality is acceptable for it or because it does not want to apply a relevant standard). In this case, however, the designer has on obligation under Section 6:240(2) of the Civil Code to warn that developer that it has given instructions for a design that will be unreasonable, unprofessional or deviate from customary requirements generally applied on the market or in construction trades (in terms of quality/cost, etc.). Such a warning must address the consequences, risks and costs associated with the relevant instructions in a way that the developer can clearly understand and assess them (therefore, it must be detailed but at the same time written in a language that is easily comprehensible for the developer). If the developer insists on unreasonable or unprofessional instructions despite the warning, the designer may rescind the contract.

However, it is important to keep in mind that the designer must refuse to carry out an instruction if it would result in the violation of a statute or a regulatory resolution, or jeopardise any third party's life, limb or property.

[14] In view of the large number of standards and the fact that the parties often do not have the opportunity to obtain an in-depth understanding of them, in order to avoid misunderstandings, it can be a good idea to specify the standard that the parties consider to be applicable to their contract and to expressly exclude the application of other standards.

6. Compliance with regulatory requirements

[15] Designers must inform themselves about all general and specific requirements that must be met so that the necessary permits for a building can be obtained and construction can begin. To this end, designers must consult with the competent regulatory authorities as necessary. The relevant case law holds that designers are liable for the risk that construction will not be permitted on the basis of the design documentation.

[16] Therefore, in the light of the specific circumstances, it might be imperative for the designer to have a good understanding of the conditions of the building plot and its access to infrastructure.

[17] A designer will generally be considered to have breached the contract if a competent authority does not grant a permit for the building due to the design, or if the building cannot be built in accordance with the design due to the characteristics of the building plot.

7. Compliance with the requirements of cost-effectiveness and practicality

[18] A design will also be considered defective if a technical solution included in it is unreasonably expensive. Designers must use cost-effective and practical solutions, and therefore the costs of construction and post-handover operations must be factored in the design. The budget that forms a part of the design documentation must include realistic calculations and may not mislead the developer with regard to the cost of construction. A design will also be considered defective if the construction costs shown in the design documentation substantially exceed the amount that has been directly or indirectly agreed in the contract and that is available for the developer.

[19] Designers must use technical solutions that will keep the project within the cost limits determined by the developer. Under the relevant case law, the budget is an integral part of any design documentation. If the budget is inconsistent with the rest of the design documentation, the design will be considered defective, and the designer will have warranty liability and liability for damages. For

example, a situation where the design includes a heating device in a kitchen but its costs is not included in the budget qualifies as such a defect.

8. Compliance with statutory requirements

[20] In addition to the above, a design must always comply with the requirements specified by law. As mentioned above, a designer may not deviate from such requirements even if the developer expressly instructs it to do so. The most important technical regulations that apply to design and construction activities include:

- Government Decree No. 253/1997 (XII. 20.) on National Zoning and Construction Requirements,
- Decree No. 54/2014 (XII. 5.) of the Minister of the Interior on the National Fire Safety Regulation, and
- local building codes, which are published by municipal governments in the form of local ordinances.

Designers' liability

1. Corrections and price reductions

[1] If a design is flawed, the developer can primarily exercise rights associated with statutory warranties. Under Section 6:159(2) of the Hungarian Civil Code, the developer can, at its choice, primarily demand correction or replacement, unless honouring the chosen warranty claim is impossible or would result in disproportionately higher expenses for the designer than the other form warranty would, in the light of the value represented by the service if supplied properly, the gravity of the breach of contract and the inconvenience caused to developer with the performance of the warranty right. If the developer is not entitled to demand a correction or a replacement, or the designer does not or cannot agree to perform either under the relevant conditions, the developer may, at its choice, demand a fee reduction or rescind the contract. However, rescission is not permitted on the basis of an immaterial flaw.

[2] Under the relevant case law, the following factors must be evaluated in the order and manner discussed below:

[3] The method of how the corrections should be performed and the related costs must be determined in such way that the corrected design meets the quality and performance indicators, and the purpose of use, specified in the contract. However, it is also important to keep in mind that if this objective can be attained in several different ways, the relevant options must be carefully weighed and any solution that entails disproportionately high costs must be discarded. Consequently, the correction can be performed in a manner that differs from the what was originally agreed – so long as the end result is the same and the required quality standards are met.

[4] The recovery of the cost of obtaining corrections is predicated on the performance of itemised cost calculations, because the developer is entitled to the reimbursement of the reasonable costs it incurs in connection with such corrections. This means that if, instead of demanding a correction of the flawed design, the developer requests the designer to reimburse it for the costs of obtaining such correction from another designer, it will have to provide evidence of the costs it has incurred or is expected to incur.

[5] If the structure fails to meet the quality requirements specified in the contract and in the relevant regulations and standards even after the corrections or repairs are made, or it is worth less than it would have in the case of the designer's proper performance of the contract, the developer may demand a fee reduction. The rate of the fee reduction must be determined on the basis of all

circumstances of the case; the nature and extent of the design flaw, and all factors that reduce the structure's value, usability and lifespan or impair its aesthetics will have significance in this respect. However, it is important that the amount demanded as correction or repair costs may not be disproportionately higher than what could be assessed as a fee reduction, and vice versa. The reduction can be as high as 100% of the designer's fee. On the other hand, the general rule is that an amount in excess of the designer's fee (in fact, several times as much) can be demanded as damages.

[6] If the designer does not agree to correct or replace the design under terms that are acceptable for the developer, the developer can terminate the design contract, resulting in the designer's possible loss of their fees.

[7] Under Section 6:174 of the Civil Code, designers are required to compensate developers for damage incurred due to the designers' defective performance. The flaws in the design must primarily be eliminated with corrections or replacement. If the designer does not agree to either under acceptable terms, the developer may, in addition to rescinding the contract, demand compensation for any damage it has suffered in connection with the correction of the flaws. The developer may also demand (whether with or without the reimbursement of the costs of repair) compensation for damage resulting from the designer's breach of contract or from a design flaw where reparations cannot be obtained through corrections, repairs, the reimbursement of repair costs or a fee reduction. It is important to note, therefore, that any breach of contract by a designer, such as defective performance (including a miscalculated budget, the failure to obtain a regulatory permit and any other issue that results in a breach) and delay may entail a liability for damages.

2. Liability for damage

[8] If a developer suffers damage as a result of the designer's breach contract, the designer will be required the compensate the developer for the damage under Section 6:142 of the Civil Code. Whether the designer is liable for the damage will depend on the following key questions: (i) in the case of what kind of damage can the developer demand compensation from the designer; (ii) in what cases can the designer be exempted from liability; (iii) when is the damage caused jointly; (vi) how can the designer limit their liability for the breach of contract.

[9] The developer can demand that the designer pay compensation for the reduction in the value of its property (e.g. the depreciation of the relevant building), lost income (e.g. as a result of the limited ability to exploit the building due to its depreciation), or the costs associated with the elimination of the damage [e.g. the costs of demolition and construction work required to repair defective building sections (i.e. not only correction of the design)]. The designer will have

to pay compensation for the damage to the extent that the developer can prove that the damage, as a potential consequence of the breach of contract, was foreseeable. Essentially, this means that the developer may not demand compensation for damage that the designer could not have anticipated as a typical consequence of a design flaw (e.g. where the project as a whole is scrapped due to the design flaw, for business reasons that are not known for the designer).

[10] In lawsuits brought against designers, developers typically seek the recovery of costs incurred in connection with repair works that are necessary due to design flaws and, as the case may be, compensation for depreciation in the value of the building. Courts have generally ruled that such costs are foreseeable consequences of design flaws and ordered designers to pay them. In a particular case, for example, the designer miscalculated the load-bearing capacity of the foundations of a four-storey building. The foundations were actually designed for a single-storey building, and therefore the completed floors had to be demolished so that the foundations could be strengthened. The designer had to compensate the developer for the demolition and reconstruction costs.

[11] A designer will only be exempted from liability if they can prove that the breach of contract was a result of circumstances that were beyond their control and that could not be foreseen at the time when the contract was signed, and they could not be reasonably expected to avoid the circumstance or to avert the damage or loss. For example, this can serve as grounds for the designer to be exempted from the payment of contractual penalty for the late delivery of the design. In order for such exemption to apply, the designer will have to prove that the delivery was delayed by a circumstance beyond their control (e.g. the absence of information that they could not have obtained, or an order for extra work), and the delay could not be avoided with the reorganisation of the design process. The designer will be exempted from the penalty for as many days as for which they can prove the existence of the circumstances that prevented their performance.

[12] On the other hand, the opportunities for designers to obtain exemption from liability for damage caused through design flaws are limited and rare. A flaw in a design cannot be treated as a circumstance that is beyond the designer’s control. A designer may not cite the lack of professional knowledge or experience to avoid the legal consequences of their defective performance. Courts generally do not grant exemption from liability on the basis of design flaws. Exemption may obtained in connection with damage related to delays and to contractual penalties, if the designer can prove that they were prevented from performing properly by objective reasons (such as the lack of information).

3. Damage caused jointly with the contractor

[13] Pursuant to Section 6:524 of the Civil Code, if the damage is caused jointly by the designer and another participant in the project, the rules pertaining to joint damage must be applied, and therefore the designer and the other participant will be held liable for the damage jointly and severally. This means that the developer can choose whether it demands compensation from the designer or the other participant (typically the contractor). The liability will be shared between the designer and the other participant proportionately with the culpability of their respective actions or, if this cannot be determined, with the impact of their actions (or equally, if this cannot be determined either). For example, if a defect was caused by the designer and contractor jointly, and the contractor then compensated the developer fully, the contractor may demand that designer pay its own share of the compensation to it.

[14] Courts usually rule on the share of culpability on the basis of the expert opinion of an architect or engineer. According to the relevant case law, joint damage can exist simply on the grounds of a flaw in the design that the contractor should have identified with due care. It is important to bear in mind, however, that contractors are not expected to identify calculation errors or flaws that require significant engineering analysis, and therefore such errors and flaws cannot serve as grounds for the sharing of liability. For example, a court ruled that the designer was solely liable for the existence of thermal bridges near concrete beams in a building and for the application of dry plaster inside the building, which exacerbated the negative effects of the thermal bridges. The court found that the identification of these problems would have required thermal calculations that were not covered by the contractor's obligation to check the designs, and in the absence of relevant experience, the contractor could not have known what consequences the application of dry plaster would have on thermal performance. Therefore, the designer had to bear all of the applicable costs (correction, demolition and construction work).

[15] A similar situation can result if the contractor departs from the designs but the designer approves such departure. Case law holds that in such a situation, the designer must examine with due care whether the solution proposed by the contractor is technically correct before issuing its approval, regardless of whether the contractor provides any guarantee for the solution. If the designer approves a solution that is technically incorrect, it will be liable to pay damages. The designer will not be relieved from the obligation to examine a modification of the design even if the contractor provides a guarantee with regard to the proposed solution.

4. Possibility of limiting liability for damages

[16] A designer's liability for damages can be disclaimed or limited, with the exception of breaches of contract that are caused wilfully or result in damage to human life, limb or health (Civil Code, Section 6:152). Therefore, subject to the developer's consent, the designer can disclaim or limit their liability for damages vis-à-vis the developer in the design contract, with exceptions noted above. However, in most cases it is unlikely that the developer will accept a general disclaimer. A solution that is more in line with market standards and have a better chance of being accepted by developers is where the designer caps the liability for damages, for example at the amount of the design fee or a certain percentage of it.

[17] Another typical solution for designers to limit their liability is to conclude the design contract with the developer through a limited liability company (korlátolt felelősségű társaság, or kft.) rather than directly. In that case, a developer will primarily have to seek the recovery of any claims, including claims for damages, stemming from a breach of the design contract from the limited liability company, and, under the general rules, none of the designer's private property will be used towards the payment of the damages. If the design contract is signed via a limited liability company, the designer may only be held personally liable if they act in bad faith. A capital contribution of at least HUF 3,000,000 must be made when a limited liability company is established and, in addition to a cash contribution, it can also take the form of an in-kind contribution of assets.

[18] Liability insurance is also a very important (and in the case of certain types of buildings, mandatory) form of risk management for designers. However, it is important to keep in mind that the insurer will only pay the compensation instead of the designer to the extent of the coverage specified in the insurance policy. Therefore, before signing an insurance contract, it is advisable to check the offer in terms of the risks covered and excluded under it.

[19] A designer may typically be held liable vis-à-vis a contractual partner, i.e. the developer, and therefore the discussion above focuses on such matters. However, it is also possible that a third party rather than the developer files a lawsuit against the designer, or that the Chamber of Architects or an authority starts a procedure against them. If a third party suffers damage as result of a design flaw (for example due to an object falling off the building), they may demand compensation from the designer. Third parties may also seek compensation from the designer on the grounds of damage that is caused in neighbouring buildings due to the flawed design. On the other hand, the relevant case law holds that liability for damage caused by objects thrown or dropped and liquids poured from an apartment or other premises in a neighbouring building may not be shifted to the designer who designed that building or to the contractor that built it on the grounds that a more expensive solution could have

prevented the damage which resulted from the fact that the building was not used as intended.

[21] If a designer makes fundamental professional errors in a design and acts with gross negligence, the Chamber of Hungarian Architects or an authority may start a procedure against them. If execution documentation prepared by a designer is technically or otherwise incorrect, the competent construction oversight authority will contact the organisation that keeps the official list of qualified designers and request it to launch a procedure against the designer [Section 66(3) of Government Decree No. 312/2012 (XI.8.)]. It is important to note that designers may not rely on liability disclaimers made in contracts with developers or (under the main rule) on the limited liability afforded by limited liability companies to defend themselves in such procedures.

5. Special prescription rule for designers

[20] Finally, we would like to point out a special rule on prescriptive periods applicable to designers' obligations, which states that rights existing on the basis of a breach of a contract associated with a design flaw may be enforced against the designer for as long as the rights associated with the faulty performance of the related works (such as a fault in the relevant building) may be enforced against the contractor.

Designer Copyrights

1. What are designer copyrights?

[1] Authors and designers hold copyrights in their works and designs automatically, without the need for registration. In Hungary, the meaning of copyrights and the system of copyright protection is defined in Act LXXVI of 1999 on Copyrights (hereinafter: "Copyrights Act"). Under the Copyrights Act, copyright protection exists for 70 years after the author's death. The protection exists regardless of the quantitative or aesthetic characteristics of the work or any value judgment concerning its quality; the only quality that matters is that it is original and unique.

[2] A Register of Architectural Copyrights was set up on 1 January 2020, and it is kept by an organisation known as Lechner Tudásközpont (Lechner Knowledge Centre). For more detailed information on the register, please see: this article. The option to register copyrights does not override the rule that authors hold copyrights in their works automatically, but it makes it easier to obtain information about the owners of copyrights in protected architectural works. An additional benefit of being entered in the register is that the registered copyright owner is assumed to be the author of the underlying work. In line with this, developers and designers have had an obligation to report the name and personal data of the holders of economic rights in architectural designs to the Register of Architectural Copyrights since 1 January 2020.

[3] Copyrights, which consist of economic and moral rights, are held by the author or, in the case of an architectural design, the architectural designer. Economic rights include the right to exploit the work (design) and to license others to do same. In the case of architectural designs, exploitation includes the construction of the building and the alteration of an existing building.

[4] Additionally, reproduction is one of the most important forms of the exploitation of architectural designs. The construction or recreation of an architectural work conceptualised in a design, or even the construction of certain core elements of a design can qualify as the reproduction of the design. Adaptation is also an important form of exploitation, and it means the alteration or modernisation of a building. However, not all renovations require an exploitation licence from the designer. A project where the objective is to restore the building to its original condition does not qualify as adaptation. However, if the project involves the addition of a new wing to the original building, it can qualify as an adaptation of the original work and therefore the designer's permission may be required. The designer may demand a fee for the licence – even after the adaptation has taken place.

[5] Moral rights include publication rights, the right of attribution and the protection of the integrity of the work. The distinction between economic rights and moral rights is important: while an exploitation contract can be concluded with regard to economic rights (generally as part of the design contract), authors may not waive their moral rights and may not licence another party to exercise such rights even under a contract. Consequently, if a designer believes that the proposed alteration of a building, they designed violates the integrity of their work, they may be entitled take action against the alteration even if they previously permitted the exploitation of the designs, i.e., the construction of the building and the adaptation of the design.

[6] Therefore, it is advisable keep in mind that by ordering the design, the developer will not replace the author (architect) in terms of copyrights in the same way as for example the new owner replaces the old in the sale of an apartment. The developer "simply" receives a long-term opportunity and permission to exploit the designs (including, in particular, the right of construction, reproduction and, potentially, adaptation) in accordance with the contract on exploitation (design contract).

2. Typical disputes and potential solutions

[7] If a copyright is infringed, the author may seek the protection of their rights in court. Firstly, they may request the application of objective legal consequences, such as a ruling that the infringement has taken place, a cease and desist order concerning the infringement or any action that could directly result in one, enjoinment from the continuation of the infringement, etc. Secondly, the author may seek compensation if they suffer any loss or damage. Additionally, the author may also demand the payment of a penalty known as "grievance money" under Hungarian law if their moral rights (publication, attribution, integrity) are infringed. If the case of a claim for compensation, the author will have to prove that they have suffered damage or loss in connection with the infringement. The same does not apply to grievance money, as the existence of any damage or loss beyond the infringement does not have to be proved.

[8] Disputes concerning copyright infringements are highly varied and multifaceted, but there are two key areas that should be highlighted in connection with architectural works:

2.1. Disputes concerning exploitation contracts

[9] One of the typical reasons for disputes over designer copyrights is the infringement of exploitation contracts. The Copyrights Act states that under exploitation contracts, authors (architects) grant a licence to use their work, and users (developers) are required to a pay fee in return. Disputes are often

rooted in the parties' failure to define the limits of the licence and what the fee is supposed to cover carefully enough. This is why it is advisable to define the "mode' of exploitation as accurately as possible. Under the Copyrights Act, an author (architect) can limit the licence to a particular area or timeframe, or in terms of the mode or extent of exploitation. It is also important to note that the Copyrights Act requires an *express* permission for certain modes/rights of exploitation. In such cases, a general statement that the licence "applies to all modes of exploitation" or "is unlimited" will not be sufficient.

[10] The Copyrights Act requires an express permission in the following cases, i.e. the developer will only securely obtain a licence for the following modes of exploitation if these are expressly mentioned:

- Exploitation contracts can only grant exclusive rights with an express provision (Section 43).
- The licence holder may only transfer the licence to a third party or grant a licence to a third party to exploit the work with the author's express permission (Section 46).
- The exploitation licence will only apply to adaption if there is a relevant express provision in the contract.
- A permission regarding reproduction will only authorise the licence holder to make visual or audio recording of the work or to store electronic copies of it on a computer or electronic data carrier if the contract includes an express provision to that effect.
- A permission regarding the distribution of the work will only authorise the licence holder to import copies of the work to Hungary if there is a relevant express provision in the contract (Section 47).

[11] <u>Possible solutions that can be incorporated to exploitation contracts:</u>

- The issue can be regulated in an arrangement where the design may only be used in the construction of a particular building, and additional instances of exploitation require a new licence and the payment of additional fees.
- However, a general exploitation licence may also be granted, where the designer's permission does not have to be obtained for additional instances of exploitation.

[12] It is important to keep in mind that if the exploitation contract does not identify the permitted modes of exploitation or does not specify its permitted extent, the licence will be limited to the modes and extent that are strictly necessary in order to realise the objectives of the contract. With this provision, the Copyrights Act protects authors, because it limits exploitation in the absence of a specific contractual provision. However, the determination of what qualifies as a mode of exploitation that is "strictly necessary in order to realise the objectives of the contract" can easily lead to disputes between the parties, and therefore it is always advisable to define the framework of the parties' cooperation precisely.

[13] The Chamber of Hungarian Architects and the Chamber of Hungarian Engineers have created a joint policy that includes their recommended fee calculations. The application of the fees stated in the policy is not mandatory and the parties are free to use other rates. If the parties do not conclude a contract, they can submit the issue to a copyright dispute resolution board, where the author's fee claim will be examined by experts and that will try to help the parties to reach an agreement.

2.2. Protection of integrity

[14] The Copyrights Act includes special rules to protect the integrity of architectural works. Under these rules, any change in an architectural work or the design of an engineering structure that has an impact on the external appearance or intended use of the structure qualifies as an unauthorised modification of the work. As noted above, an architect will be entitled to the protection of the integrity of their work even if they have permitted the exploitation of the design. This issue typically has relevance if alterations are carried out on a building, and in particular, if the architect disagrees with the proposed changes because they believe that the changes will affect the external appearance or intended use of the building.

[15] On the other hand, copyrights are limited by ownership rights as long as they are exercised properly, which does not mean a violation of the architect's copyrights in the building. These are cases where ownership rights and copyrights collide, and therefore courts must proceed very carefully in the related disputes. The copyright dispute resolution board stated in the past that an architect could invoke the protection of integrity if, as a result of an alteration, "*the external appearance of the building is distorted to a degree where the essence of the work is affected, or its intended purpose is modified in a manner that can harm the author's reputation.*" Judicial practice holds that "*the owner can exercise their ownership rights, with or without a violation of the author's moral rights spelled out in the Copyrights Act, if the interest in the modification of the work, or even the destruction of the building as the physical embodiment of the work, is based on an overriding ("real") private or society-wide need that causes the enforcement of copyrights to be an improper exercise of rights.*"

[16] In summary, if the alteration of building infringes the architect's copyrights as discussed above, the architect may take legal action against the alteration even if they have previously granted permission for the exploitation of their design. However, the outcome of such lawsuits is always doubtful, because if the owner has an overriding interest in the alteration, it can go ahead and perform it even with a violation of the integrity of the work. Courts have generally sided with owners in such cases.

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