



FEATURES OF CIVIL LIABILITY UNDER A CONSTRUCTION CONTRACT

Topildiev Bakhromjon Rakhimjonovich

Professor of the "Civil Law" department of Tashkent University of Law, Doctor of Legal Sciences.

Abstract: *This article discusses such current issues of construction contracting in Uzbekistan as legal regulation and the creation of an attractive legal atmosphere for relations of this type. In Uzbekistan, the construction industry is defined as a priority sector of the economy. The modern construction industry is one of the most prominent national sectors of the economy of the Republic of Uzbekistan, showing stable annual growth.*

The construction industry plays a key role in creating the material and technical base of all sectors of the economy and meeting the needs of the population for comfortable housing, social and engineering infrastructure services, as well as cultural leisure.

In this regard, state policy in the field of construction is aimed at increasing the potential of the industry through the effective use of innovations, labor and material resources, investments in order to ensure the successful implementation of programs for the socio-economic development of the country, regions and industries.

Based on the above issues, the author of the article reviewed and analyzed these points from a legal point of view and advanced proposals aimed at improving law enforcement practice and the legal basis of a construction contract.

The construction industry plays a key role in creating the material and technical base of all sectors of the economy and meeting the needs of the population for comfortable housing, social and engineering infrastructure services, as well as cultural leisure.

In this regard, state policy in the field of construction is aimed at increasing the potential of the industry through the effective use of innovations, labor and material resources, investments in order to ensure the successful implementation of programs for the socio-economic development of the country, regions and industries ¹.

In particular, in order to further deepen reforms in the construction industry, reduce bureaucratic barriers, widely introduce innovative ideas, developments and advanced information and communication technologies, as well as ensure transparency at all stages of construction, Decree of the President of the Republic of Uzbekistan dated March 13, 2020 No. UP- 5963 "On additional measures to deepen reforms in the construction industry of the Republic of Uzbekistan." This Decree establishes a procedure in accordance with which foreign regulatory documents in the field of technical regulation in the field of urban planning activities are allowed to be applied until December 31, 2028 on the territory of the

¹Decree of the President of the Republic of Uzbekistan dated November 27, 2020 No. UP-6119 "On approval of the strategy for modernization, accelerated and innovative development of the construction industry of the Republic of Uzbekistan for 2021-2025" // <https://www.lex.uz/docs/5130488>



Republic of Uzbekistan (European Codes , British Standards , GB, CJ, JC, JG, etc.) simultaneously with national regulatory documents.

By Decree of the President of the Republic of Uzbekistan dated November 27, 2020 No. UP-6119 “On approval of the strategy for modernization, accelerated and innovative development of the construction industry of the Republic of Uzbekistan for 2021-2025”, the Strategy for modernization, accelerated and innovative development of the construction industry of the Republic of Uzbekistan for 2021-2025 was approved.

Being one of the most significant phenomena, legal liability is a rather controversial legal phenomenon. The essence, content of law and its fundamental functions are expressed and developed in this legal phenomenon.

Legal responsibility reveals connections with many other key categories and institutions of law that are inconceivable without them, and they are in isolation from it. This phenomenon receives practical significance due to its close connection with an offense and an encroachment on specific subjective rights of participants in legal relations. The peculiarity of the phenomenon of legal responsibility is that it is the closest concept to the process of law enforcement and legal practice - almost any court case is a question of responsibility.

Violation of the rules for construction work entails liability in this area. Types of liability are: disciplinary; property, administrative; criminal

Issues of property liability for violation of a construction contract are closely related to compensation for harm. Thus, the guarantee and (or) surety may cover the following types of liability for the fulfillment of obligations under a contract and subcontract: General contractor: - for the proper quality of work performed on its own, including during the warranty period established by the contract for the operation of the constructed facility; - for the proper quality of work performed by subcontractors engaged by the general contractor during the warranty period established by the contract for the operation of the constructed facility; - for compliance with established deadlines for production and completion of construction and installation work; - for destruction and damage to property not completed during construction and installation work, owned by the customer and transferred by him to the contractor for the construction period; - for loss and damage to construction machinery and equipment owned or leased by the contractor, building materials and structures located on the construction site; - for causing harm to third parties during construction and installation work due to inadequate quality of contract work; - for timely acceptance and financing of properly completed subcontract work ².

Subcontractor: - for the proper quality of the subcontracted work performed, including during the warranty period established by the contract; - for compliance with the established deadlines for the execution of subcontracted work; - for loss and damage to an unfinished set of subcontracted works; - for loss and damage to construction machinery and mechanisms rented by the subcontractor, building materials and structures purchased

²Yaroslavtsev S.V. Construction contract and liability for its violation . Master's dissertation. - Tolyatti, 2018. P. 57.



by him at his own expense or at the expense of the contractor and stored at the construction site; - for causing harm to third parties when performing subcontracted work due to inadequate quality of their performance.

Customer: - for timely acceptance and payment for properly completed construction and installation work; - for the timeliness and completeness of construction financing, as well as if the customer is assigned additional obligations by the contract; - for the proper execution of all permits for construction work; - for the timeliness of provision to the contractor and the quality of design estimates and supplied materials and equipment; - for death and damage to parts of buildings accepted from the contractor, except when the reason for this is the poor quality of work performed by the contractor. The specified distribution of responsibilities between the parties to construction contracts may vary depending on the specific conditions of these contracts. These types of liability of the parties are usually covered by: - insurance; - payment of penalties; - guarantees and bank guarantees. Thus, a guarantee and surety are forms of securing obligations that fully cover liability for certain obligations of the parties, regardless of the reason for the violation of these obligations³.

Among the disputes considered by the courts, a significant place is occupied by disputes related to the execution of contracts, including construction contracts.

The imperfection of the regulatory framework leads to frequent disputes between the contractor and the customer. The most common grounds for litigation are:

an increase in the cost of construction due to circumstances beyond the control of the parties (increase in price as a result of inflation);

the fate of funds and materials saved by the contractor;

deadline for transferring funds;

payment for additional work not specified in the estimate, etc.⁴

As a rule, such litigation is of a mixed nature. The parties refer to unsatisfactory quality, deviations from technical documentation, and inconsistency in the scope of work.

The effectiveness of judicial protection of violated rights under work contracts often depends on the completeness of the terms of the concluded contract, which becomes binding on the parties after its conclusion, and on the proper preparation of executive documentation by the parties to the contract.

As judicial practice shows, in the context of an increase in the total number of concluded contract agreements, their quality leaves much to be desired. Ignoring the proper procedure for drawing up documentation, inattentiveness to the nuances of the procedure, failure to include important conditions in the document - all this inevitably leads to an ambiguous interpretation of the content of the contract, disagreements between the customer and the contractor/executor, fraudulent abuses and, as a result, legal proceedings.

A feature of legal relations under construction contracts is the multiplicity of participants in legal relations, for example, it can be simultaneously a customer, a general

³Yaroslavtsev S.V. Construction contract and liability for its violation . Master's dissertation. - Tolyatti, 2018. P. 57.

⁴ Zebrina A.I. Construction contract. – Tomsk, 2017. – P. 43.



contractor, a subcontractor, architectural and technical supervision. In addition, significant material costs and investments, phased financing and delivery of work, long construction periods, classify disputes arising between the parties during the execution of construction contracts as specific and complex cases.

Thus, we can distinguish the following types of disputes related to the execution of construction contracts.

- Disputes related to the parties' failure to comply with the essential terms of the agreement.

For example, the court may refuse to collect a penalty for violating the deadline for completing construction and installation work under a government contract if the construction contract does not specify the terms for the start or completion of work. Thus, the start and end dates of work must be clearly defined or must be tied to a condition that will inevitably occur.

Often, construction contracts provide for the condition that final acceptance of work is carried out after the provision of hidden work certificates, intermediate acceptance certificates or other related documents or acts, and therefore, failure to comply with this condition by the contractor may be grounds for releasing the customer from the obligation to sign the final act of acceptance of the work performed, and the refusal of the claim for recognition of the validity of such an act, in the event of unilateral signing by the contractor.

- Disputes related to violation of the procedure for acceptance and transfer of completed work and the procedure for their registration.

When concluding a construction contract, the parties must determine the persons authorized to accept the work performed, especially if a third party was involved to perform the work under the contract.

For example, documents drawn up by a subcontractor unilaterally on the acceptance of work performed and their cost were not recognized by the court as proper evidence in the case, since they were drawn up in violation of the procedure established by the contract, since the general contractor was not properly notified of the start of acceptance of work, and the third party representative present at the site did not have the appropriate authority to accept the work and check the documents drawn up by the subcontractor.

Claims from contractors against customers regarding the obligation to timely accept completed work by the customer are also common.

Since the customer did not fulfill the obligation to accept the completed work after notification of its readiness for delivery, by virtue of the above provisions of the law, the contractor has the right to draw up acts unilaterally and send them to the customer for payment. If the customer avoids signing the acts and paying for the work performed, the contractor has the right to file a lawsuit to recognize the unilateral acts as valid and to recover from the customer the amount of payment for the work performed.

- Disputes related to the failure of the parties to fulfill their obligations under a construction contract.



Of particular interest are the disputes about the application of the cost increase factor, especially when it comes to additional work not included in the estimate. If such disputes arise during the execution of construction contracts concluded using the public procurement procedure, the provisions of the legislation on public procurement should be taken into account, in particular the rules governing the issues of changing the terms of the public procurement contract in terms of increasing the contract price.

An analysis of judicial practice in the consideration of construction contract disputes shows that disputes and disagreements mainly arise due to the parties' failure to comply with their obligations under the construction contract, which subsequently becomes the basis for filing claims for penalties for violation of deadlines for fulfilling obligations, losses caused by violation of obligations, as well as due to omissions of the parties who did not provide in the contract all the necessary conditions clearly regulating the scope of obligations, the timing of their implementation, or the consequences of their non-compliance.

The regulation on the procedure for organizing, financing and lending construction carried out at the expense of centralized sources, approved by Resolution of the Cabinet of Ministers of September 12, 2003 No. 395, provides for the responsibility of the parties.

The customer, in accordance with the law and the contract, bears property liability to the contractor for:

- delay in transfer of initial permitting documentation for work;

- delay in the transfer of the geodetic alignment base and points and signs fixed in the construction area;

- unreasonable delay in the start of acceptance of a completed construction facility, its separate phase, start-up complex, building, structure prepared for the production of products or provision of services, in accordance with the terms of the contract;

- untimely financing, confirmation and payment of work performed in accordance with the contract;

- failure to fulfill or improper fulfillment of other obligations stipulated by the contract.

The contractor, in accordance with the law and the contract, bears property liability to the customer for:

- poor-quality development of working documentation (during the construction of a turnkey project);

- poor quality of construction and installation work;

- untimely completion of the construction of an object, its queue, stage;

- violation of deadlines for the delivery of space for installation of equipment (if this is provided for by the terms of the contract and competitive bidding), carried out by installation and other specialized organizations under contracts concluded with the customer;

- violation of the terms and scope of land reclamation work established in the special conditions of the contract concluded with the customer;



delay in eliminating deficiencies and defects in works and structures identified by the customer, designer's supervision and regulatory authorities during the construction process or intermediate acceptance;

failure to fulfill or improper fulfillment of other obligations stipulated by the contract.

In cases where the work was performed by the contractor with deviations from the contract or with other shortcomings, the customer has the right, unless otherwise provided by law or the contract, at his choice to demand from the contractor:

elimination of deficiencies free of charge within a reasonable time;

a proportionate reduction in the price set for the work;

reimbursement of their expenses for eliminating defects, if the customer's right to eliminate them is provided for in the contract.

The contractor has the right, instead of eliminating defects, to perform the work again free of charge with compensation to the customer for damages caused by the delay in performance ⁵.

If the contractor does not eliminate the defects within the time period established by the parties, the customer or operating organization has the right to eliminate the defect on their own at the expense of the contractor with the recovery of the cost of work to eliminate the defect and compensation for losses from untimely elimination of the defect.

In case of late payment for work performed and services rendered in accordance with the contract, the guilty party shall pay the other party a penalty in the manner prescribed by law and the contract.

In addition to the sanctions provided for in these Regulations for failure to fulfill obligations under the contract, the party that violated them shall compensate the other party for actual losses, expressed in expenses incurred by it, in loss or damage to property, in the amount not covered by the penalty (fine, penalty).

Payment of a penalty (fine, penalty), as well as compensation for damages for improper fulfillment of obligations, does not relieve the parties from fulfilling their obligations under the contract, except in cases provided for by law.

In the event that the customer, due to the fault of the contractor, is forced to terminate the contract, the contractor's guarantor (if any) may assume the obligation to continue construction of the facility until its complete completion, in accordance with the terms of the concluded agreement between the customer and the contractor, or fulfill financial obligations arising from the guarantee issued by him.

The guarantor can complete the work on his own or with the involvement of any contractor at his discretion ⁶.

⁵Regulations on the procedure for organizing, financing and lending construction carried out at the expense of centralized sources, approved by Resolution of the Cabinet of Ministers of September 12, 2003 No. 395 // Collection of Legislation of the Republic of Uzbekistan, 2003, No. 17-18, Art. 146; National Legislation Database, 12/19/2017, No. 07/17/3437/0423, 01/23/2018, No. 09/18/34/0605, 03/14/2018, No. 09/18/197/0892.

⁶Regulations on the procedure for organizing, financing and lending construction carried out at the expense of centralized sources, approved by Resolution of the Cabinet of Ministers of September 12, 2003 No. 395 // Collection of Legislation of the Republic of Uzbekistan, 2003, No. 17-18, Art. 146; National Legislation Database, 12/19/2017, No. 07/17/3437/0423, 01/23/2018, No. 09/18/34/0605, 03/14/2018, No. 09/18/197/0892.



An increase in property liability and the level of risks leads to the fact that the contract becomes the main legal document regulating the rights and obligations of counterparties in all areas of investment and construction legal relations. And the stability of this market segment and the degree of legal protection of its participants depend on how legally competent the terms of the contract are determined.

Building codes must also be followed when constructing projects. A new procedure has been established, according to which until December 31, 2028, the use of certain foreign regulatory documents in the field of regulation of urban planning activities is allowed (Presidential Decree No. 5963 dated February 13, 2020). Moreover, this assumption is due to the fact that such documentation must be adapted and the costs of paying for the services of foreign specialists, if necessary, must be covered by the customer. The list of acceptable documents in the field of technical regulation includes:

- Eurocodes (European Codes , EU);
- British Standards Standards , BS);
- Chinese National Building Standards (GB, CJ, JC, JG, etc.);
- Korean building codes (Korean building code , KVS);
- Construction norms and rules (SNIIP);
- International Building Codes building code , IBC);
- National standards Japan (Japanese Industrial Standards, JIS).