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November 19-21 URBAN FORUM

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LEGAL REGULATION OF ARCHITECTURAL ACTIVITY: DOMESTIC AND FOREIGN EXPERIENCE

Architectural activity is one of the important components of the developing building system and the country as a whole. Therefore it is necessary to consider questions of legal regulation of architectural activity as a component of legal maintenance of process of building. The existing for today legal order of regulation of architectural activity should be carried out weighedly and reasonably, thus interests both customers of building, designers, builders, and territorial communities, citizens and the state should be considered. This is due to the fact that the results of architectural activity have a direct impact on the life of society.

Basic material. In a broad sense, legal regulation is a legal impact on social relations, which is exercised by means of law and the whole set of legal resources [1, (p.171)]. It should be added that in legal regulation the behaviour is realized by means of legal means and forms (norms of law, legal relations, acts of realization and application of norms of law, etc.), whereas legal influence is realized by means of a system of non-legal means, namely: ideological, psychological, informational and other mechanisms. Law, as a regulatory activity, may include various legally significant actions of subjects of law, which are aimed at activating the potential of the law and also at introducing its normality into the real behavior of subjects of specific legal relations [1].

Thus, the key categories in the construction of the regulatory system, refers to the financial and legal result in this area is architectural activity. First of all, within the framework of architectural activity, the construction process should start with the project. Every future developer or customer is a natural or legal person and is obliged to have an architectural project and design and cost

estimate documentation for the construction object first.

It should be noted that construction can be carried out without an architectural design if no building permit is required for its construction. Such a permit is not required in cases when the construction work does not lead to a change in the external architectural appearance of the existing building of the city or other settlement, individual objects, and does not affect the reliability and safety characteristics of buildings, structures and utilities [2, (§ 3)].

However, such permission may be refused for certain reasons, in particular: failure to submit the documents required for decision-making; non-conformity of submitted documents with the legislation requirements; submitted documents contain unreliable data and inaccuracies. The refusal to issue a construction permit may be appealed against by the customer in court.

So, the main areas of licensing activities in the field of architecture and urban planning are licensing requirement, certification and standardization of construction and architectural products and activities [2, (p.172)].

The architectural project shall be performed by an architect who has a license for architectural activity issued by the local architectural and town planning authorities (city, settlement, district, region).

One of the key problems in the implementation of architectural activities is the issue of responsibility of architects and persons with whom they are bound by contractual relations in the performance of architectural and construction activities. General issues of liability in this sphere are regulated by general laws and legal acts, civil, administrative and criminal codes, in addition - by a special Law "On regulation of town-planning activity", according to Article 1 of which offences in the sphere of town-planning activity are illegal acts (acts or omissions) of town-planning subjects - legal entities and natural persons - entrepreneurs, which resulted in non-fulfillment or improper fulfillment of requirements of the law, established by the legislation, building and state standards and regulations.

It should be noted that in the implementation of architectural activities, architects are guided not only by the rules of laws and regulations, as well as corporate acts that provide for the observance of professional ethics of the architect, which, in fact, perform the functions of internal law for all architects.

It is worth considering and defining such a concept as "design activity".

Among the many definitions, we can highlight exactly what fully discloses and explains what is architectural activity in general from a professional point of view.

Architectural activity is the professional activity of architects, who coordinate the development of all sections of the design documentation for construction or reconstruction, perform author's supervision over the building of the architectural object.

Working out of projects of objects of architecture and pre-design works are carried out on the basis of the initial data on designing which concern: the architectural-planning task, the task on designing and specifications on engineering maintenance of object of architecture.

The project of an object of architecture should be assured by the signature and personal seal of the architect who has the qualification certificate. Prior to approval of the projects, in cases determined by the Cabinet of Ministers of Ukraine, their expertise, or, respectively, a comprehensive expertise, shall be conducted.

The approval of the project by the client can be carried out if there is a decision of the city planning and architecture authority on approval of the project. The decision on refusal to approve the project or non-adoption of any decision within one month may be appealed in court.

Administrative control and supervision shall be exercised by the central executive body that implements the state policy on issues of state architectural and construction control [4, (paragraph 1 of Article 11)].

It should be noted that author's and technical supervision is also provided for by law and is no less important in architectural activities. It should be mentioned that author's and technical supervision is also provided by law, which is no less important in architectural activity.

Technical supervision is provided by the client and carried out by persons who have the appropriate qualification certificate. Author's supervision is carried out by the architect - author of the design of the architectural object, other developers of the approved design or persons authorized by them.

The prevailing point of view is that author's supervision is a civil law institution aimed at ensuring the optimal possibility of embodying a work of architectural art in the material, in exact accordance with the project created as a

result of the author's creative activity, which gives him the opportunity to make necessary changes during the construction process.

In this case, an organizational legal relationship arises between the architect and the developer.

The Resolution of the Cabinet of Ministers of Ukraine of July 11, 2007 N 903 On author's and technical supervision during the construction of the architectural object is currently in force. This Procedure determines the mechanism of author's supervision during construction of an architectural object (new construction, reconstruction, restoration, capital repair of buildings and structures as well as technical re-equipment of existing enterprises).

Author's supervision is exercised by the architect - the author of the design of the architectural object, other developers of the approved design or authorized persons (hereinafter referred the General Designer) in accordance with the legislation and the contract with the customer (developer) during the whole period of time.

In case of detection of deviations from design decisions made during the construction of the architectural object, and the contractor's refusal to eliminate them, the person carrying out the author's or technical supervision, informs the customers and the appropriate inspection of the state architectural and construction control to take action in accordance with the law, namely, the prohibition of the building permit. The procedure for copyright and technical supervision established by the Cabinet of Ministers of Ukraine [4, (paragraph 1, Article 11)].

As stated in the Law, relations arising from the creation and use of architectural objects as objects of copyright are regulated by the Civil Code of Ukraine, the Law of Ukraine "On Copyright and Related Rights", the Law "On Architectural Activity" and other legislative acts of Ukraine [5, (para. 1, art. 29)].

There is a need to bring in line with the rules of copyright the provisions of the legislation establishing the procedure for making changes to the project documentation in the course of copyright supervision, since the current regulations provide for the possibility of making changes to the construction project without the consent of the authors of this project, which is a direct violation of their right to use the work provided by Articles 440, 441 of the Civil Code of Ukraine [6].

Lack of clear regulations on the determination of the place of a contract for copyright supervision in the system of contractual law of Ukraine is a limiting factor for the full implementation and effectiveness of copyright protection methods that exist within the framework of this legal institution, which leads to the need to address at the scientific and legislative level the problem of development of legal provisions on contractual regulation of relations arising from copyright supervision [6].

Concerning the liability for violation of the legislation on architectural activity I can note: Violation of legislation on architectural activity causes disciplinary, administrative, civil or criminal liability according to the laws of Ukraine [7, (p.7, art.32)].

Disputes arising in the process of implementation of architectural activity, including those involving foreign legal entities and individuals [6, (p.7, art.33)].

In the Law of Ukraine "On Liability for Offences in the Sphere of Urban Planning Activity" pursuant to Article 1 - offenses in the sphere of urban planning activity are illegal acts (acts or omissions) of urban planning subjects - legal entities and individuals - entrepreneurs, which resulted in non-fulfillment or improper fulfillment of requirements established by the legislation, construction norms, state standards and rules.

And in article 2 Law of Ukraine "On Liability for Offences in the Sphere of Urban Planning Activity" of the subject of town-planning, carrying out designing of objects, examination of projects of building, bear responsibility in the form of the penalty for transfer to the customer of the design documentation for performance of civil work on object of building, developed with infringement of requirements of the legislation, the town-planning documentation, the initial data for designing of objects of town-planning, building norms, the state standards and rules, including for not creation of an unobstructed environment for persons with disabilities.

In order to improve the legal regulation of architectural activity in Ukraine it is possible to consider the experience of foreign countries, a critical analysis of which will make it possible to assess the current state of the legal regulation of architectural activity in Ukraine and to change it for the better.

For example, in Germany there is a practice that allows 134000 architects to work as freelancers, government workers or engaged in construction and

construction business (that is, build their business under their own responsibility). At the same time, there are many firms and enterprises in Ukraine which employ a lot of specialists in this field, so it is difficult to provide specific data on the specialists-architects employed in them.

The Federal Chamber of German Architects (Bundesarchitektenkammer) is an association of 16 chambers of architects of the German states, public law authorities. It represents German architects, landscape architects, interior designers and urban planners in politics and society. Although the rules for both architects and building clients are subject to individual federal law, many important policy decisions regarding the profession are made in Berlin or Brussels.

The task of the 16 chambers of architects in the German states is to: promote the culture of construction, architecture, construction, urban planning and landscape management; protect the professional interests of all its members and the reputation of the profession; advise members on professional practice and monitor the performance of professional duties; promote and organize professional training; maintain lists and handbooks as required by law and other legislation.

It is known that Germany has a Federal Building Code which covers issues such as land use, property rights, administrative procedures and the like. However, each of the 16 federal states in Germany has its own "Bauordnung" - the building code. These building codes set out the requirements for building sites, construction work and building regulations. In other words, they are more oriented towards individual construction projects. In addition, there is a "Musterbauordnung" (Model Building Code), which is intended to provide a basis for harmonizing regional codes, but it has not eliminated regional differences [8].

Conclusions: The Musterbauordnung is a model building code, but it has not eliminated regional differences [7]. It will be interesting to compare legal aspects of architectural activity in Ukraine with leading European countries such as Poland, Germany, Austria, the Netherlands, etc. So we can draw the following conclusions: In Ukraine the legislative acts are the same for all oblasts, and in Germany there are laws for each of the 16 federal states besides the single Building Law; The Polish legal system explicitly determines requirements related

to pursuing the profession of an architect. Since the accession to the EU, the competent authority that recognizes them is National Chamber of Polish Architects (Krajowa Izba Architektów RP - IARP). National Chamber of Polish Architects IARP's activities are based on the implemented EU Directive and all the regulations are transparent and identical to all [8].

The title or speciality "architect" in Ukraine is defined in the classifier of professions, and in Germany it is fixed in the charter of the Federal Chamber of German Architects;

Training of architects was harmonized in Poland with EU requirements based on Directive PQD and a graduate with a title magister inżynier in architecture after completing 2-year professional practice, passing an exam in National Chamber of Architects (requirement of a national level) and being enlisted in National Chamber of Architects is obliged to abide by the standards of pursuing the profession which aim is consumer protection as well as cultural heritage.

- In Ukraine there is no list of all architects and it is impossible to see it anywhere, while in Germany every architect is obliged to register in the Chamber of Architects of the land where he lives; In Germany there is an architectural accounting network - an organization that represents architects on the international scene, promotes their employment in other countries and represents their interests in foreign authorities. Such an organization does not exist in Ukraine:

In Germany there is a law on tariffs for architects, which clearly defines the cost of services, protects the rights of consumers and customers, while in Ukraine the cost of services is set by the performers themselves at their discretion;

All the procedures in IARP are conducted without costs for applicants. On the national level, from 2010 to April 2014 there were 237 investigation procedures (by the National Commissioner for Professional Liability) and 71 legal procedures (by the National Disciplinary Court) in Germany, most architects work on a contractual basis, their profession is more "free", while in Ukraine there are firms, groups, workshops that bring together specialists, the qualification of which is not always defined and the client can not always be sure of the qualification of performers and quality of work. Foreign experience directly on an example of Germany also confirms the general tendency of the

developed countries to denationalization of management of building and transfer of a considerable quantity of power administrative functions to the organisations of self-regulation (the professional participant of the market of architectural services). The control system over pursuing the profession of an architect described in Polish law demands constant and consistent supervision over its execution. Possible problems are a matter of discussion with national authorities in order to change the law.

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