

Legal Duties Of The Beneficiary Of The Building Works²⁰

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Abstract

Based on the analysis of the legal regulations concerning building works, in relation to the quality thereof, the legislature preferred to establish a series of obligations for the beneficiary, even though they may have been regulated as rights of the latter. This method emphasizes once again the importance granted to building works. We have to mention the fact that, this way, the beneficiary becomes the factor determining the quality of building works, more than any other entity taking part in the execution of building works. Pursuant to the law, the beneficiary has all the necessary means to execute the building and to provide the quality thereof, thus being the one in charge with the quality of the works.

Keywords: *building works, obligations of the beneficiary, quality of the works, verification, acceptance, execution of the works.*

Introduction

The execution and operation of building works involve a series of factors for which, due to the social and economic importance of buildings, the legal regulations in this field set a number of obligations and responsibilities. These responsibilities are largely provided by the legislation concerning the quality of building works. The cause of these regulations is the execution and operation of adequate quality building works, aiming to protect people's lives, their property, the society and the environment.

The regulations concerning the quality of building works set a minimum standard of quality, the involved factors being free to execute higher quality buildings [1]. Thus, art. 10 of Law no. 10/1995 on the quality of building works provides that technical regulations mainly set the minimum quality requirements for buildings, for the products and processes used for building works, as well as the determination and verification thereof. These technical regulations are established by rules or procedures regarding the design, calculation, composition, execution and operation of buildings.

Concerning the factors involved in the execution of buildings, the beneficiary and the builder are known to have a major role. The beneficiary is the natural or legal

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person making the investment is encountered, which is why it is referred to in the specialized literature as the investor or the owner, also due to the fact that it is the owner of the building (n.n. after the acceptance upon the completion of the works). The builder is the one executing the building works which is why it is also referred to as the executor or the contractor.

In addition to these to major factors, other persons are involved, such as: researchers, designers, project inspectors, manufacturers and suppliers of building products, owners, users, persons in charge with technical execution, technical experts, as well as public authorities and specialized professional associations. Each of them has an important role and adequate responsibilities for the execution of durable and high quality buildings.

The quality of building works is provided by a set of organizational structures, responsibilities, regulations, procedures and means applicable in all the stages related to the design, execution, operation and further use of buildings.

The following requirements must be met and maintained throughout the existence of the buildings, in order to provide the high quality thereof[2]: (i) mechanical resistance and stability; (ii) fire safety; (iii) hygiene, health and environment; (iv) operational safety; (v) noise protection; (vi) energy saving and thermal insulation. These requirements must be considered by all the factors involved in the execution of building works.

We shall further try to identify the attributions and responsibilities required by the Romanian legislation in force for the beneficiaries as well as their obligations under the building contractor agreements they conclude.

General considerations

The motivation of the beneficiary for starting the design and execution of a building is necessity, which may be social, in case they have to execute a residential building, or economic, aiming to gain profit, either directly by the sale or lease thereof, or indirectly, by the operation of the building for carrying out an economic activity. Necessity is an absolute requirement for humans. In the absence thereof, the execution of a building is useless and unimportant.

As buildings are executed by humans, but especially as they meet their requirements and as they are used by people for whatever purpose, the quality of building works is extremely important. Actually, in art. 3 of Law no. 10/1995 on the

quality of building works focuses on the protection of human lives and subsequently lists the other purposes of the law such as the protection of people's property, of the society and the environment. In my opinion, quality should be put first, even before costs [3].

If the need exists, the investor shall start the design and execution of the building according to the urban regulations in force. The investor shall need the building permit to make the investment. There is a dedicated principle that every building needs the approval of the competent authorities. This principle is included in the provisions of art. 1 and of art. 2 paragraph (2) of Law no. 50/1991 on the granting of permits for building works, stating that *"the execution of building works is allowed only based on and according to a building/decommissioning permit issued by the local public administration authorities"*. The permit is issued *"upon the request of the holder of a real property over a real estate - land and/or building - identified with a real estate registration number [...], based on and according to the legally approved town planning documentation, to the requirements of the town planning certificate, to the granted permits/approvals, and, as appropriate, based on the opinions/administrative deeds of the competent environmental protection authorities"*.

In terms of the building permit, building works are divided into two categories: (i) works for the erection of a building of any kind and (ii) works for the decommissioning or demolition of a building of any kind.

In order to obtain the building permit the investor must comply with a series of regulations. Some of which is being related to the location of the land or building and others being related to the quality of the design and of the materials to be used. As this survey does not imply the limitations and requirements imposed by the location of the investment, we shall focus on the requirements related to the quality of the design and of the building works generating obligations towards the entities taking part in the execution of building works.

For this purpose, the legislature establishes a set of general rules to be complied with by all participants, regardless of the stage of the investment. Thus, the legislature sets an absolute interdiction for all the entities taking part in the execution of building works to use materials with uncertified quality for the execution of the said works, this certificate attesting the quality level according to the requirements [4]. This way, the obligation to use exclusively certified products lies with all the responsible factors involved in the design, execution and use of the buildings. The

certification of the products used in the execution of the building works must be granted by the manufacturers or importers [5].

Another interdiction which is also imposed by the legislature for all entities taking part in the execution of building works, is not to execute any building works based on designs that have not been verified in terms of the compliance with the technical regulations regarding the requirements of attested specialists in the field of design verification, other than the specialists having drafted the designs [6]. Moreover, the technical expertise of the designs and buildings must only be performed by attested technical experts.

Based on the above-mentioned regulations we may notice that the legislature tried not to leave anything at hazard, regulating the quality of the products as well as that of the design, in this case imposing a verification of the compliance with quality requirements to be performed by qualified participants.

The contractor has the major role in the execution of the building according to the requirements, within the execution stage of the building works. However, the legislature preferred to require a continuous monitoring of the quality of the execution to be performed by the investors pursuant to the legislature. For this purpose, investors represented by specialized managers or consulting businesses, must check the quality of the execution of building works.

The execution stage of the works is completed upon the acceptance thereof by the investor. Article 17 paragraph (1) of Law no. 10/1995 on the quality of building works provides that “*the acceptance of erected buildings is the certification of their execution based on direct examination, pursuant to the execution documentation and to the documents comprised in the building log book*”. We may thus note that the legislature also imposes certain requirements in this stage. On the one hand it requires for the acceptance to be performed on site (*direct examination [of the works]*) and on the other hand the executed works must be checked in terms of their compliance with the execution documentation and with the documents comprised in the building log book. Provided that the two requirements mentioned above are met, the acceptance can be performed.

Article 21 of Law no. 10/1995 defines investors as being natural or legal persons financing and investing in new buildings or in certain interventions to existing buildings. The said article also establishes the major obligations of the investor in the stage of design, execution and acceptance of the building works.

Duties of the investor

Investor's duties during the building works in design stage

Setting the quality level

The first major obligation of the investor in the stage of design and execution of the works is to set the quality level to be met by design and execution obviously based on the minimum quality standards provided by the regulations in force.

This moment, considering several factors, such as the location of the real estate, the existing purpose thereof, the best use of the property, the demand on the market, the user profile and others, investors shall practically determine the quality level required for the building to be erected. It is obvious that the above-mentioned factors may also act in certain cases as limitations of the quality level, but the major constraint of the investor is usually determined by the market and by the budget allocated for the execution of the building.

The market is the major factor determining the budget for a building. Thus, in a developing economy such as the one in Romania, the budgets allocated to building works are very limited because although there is a need [given for example the housing market where many Romanians would like to buy a home] the purchasing power of many categories of people is very limited. Under these circumstances, investors may often decide for the budget to be minimum, and, if possible, they may further reduce it during the investment.

We consider that in these cases, the state institutions controlling the quality of building works should be extremely vigilant, and that strict controls should be performed concerning all the requirements mentioned in article 5 of Law no. 10/1995. Unfortunately, this is not the case, and there are also cases in which the buildings are accepted with no actual verification, which hardly meet the quality requirements concerning resistance and stability and fire safety.

A good thing is that there is a number of investors preferring to raise the quality level of the works concerning one or more requirements [7], which grants certain advantages when the buildings are capitalized by leasing or sale.

Attaining the necessary permits for the investment

The second major obligation of the investor is related to the attainment of all the permits and authorizations provided by the law as well as of the building permit.

This obligation is very important, as certain authorizations may directly affect the investment and the design.

Generally, these permits and authorizations prior to the attainment of the building permit, impose certain limitations for designers and investors. These limitations may be related to technical or town planning issues.

The investor shall find out what are the permits and authorizations necessary for making the investment after requesting and attaining the town planning certificate. The town planning certificate shall comprise the technical, legal and town planning requirements to be met by the building to be erected.

In order to perform the design and to attain the permits and authorizations required based on the town planning certificate, the beneficiary has two possibilities: they may either perform the design themselves or contract third persons to perform the design. The first solution is rarely encountered in practice, as the beneficiary must have qualified personnel attested for all the specializations required by the law.

The second solution is frequently encountered in practice. For this purpose, the beneficiary shall hire a person to be in charge with the necessary qualified personnel. There are three possible cases involved by this solution. In the first case, the person employed by the beneficiary shall perform the design of the building works. This person is usually the architect who shall also attain the necessary permits, approvals and authorizations related to the building. In the second case, the design shall be performed by the person monitoring and checking the quality of the executed works, namely the consultant. In the third case, the beneficiary shall appoint the contractor to perform the design.

Both if the design is performed by the architect or by the consultant, the risk related to the design shall be borne by the beneficiary of the works under the contractor agreement. Thus, in case of any design defects, the contractor shall be entitled to claim, as appropriate, the extension of the execution term, the payment of additional costs and of the profit rate. In case the design is performed by the contractor, the related risk shall be undertaken by the latter, and the beneficiary shall not have the obligation to extend the execution term, or to pay the additional costs or the profit rate to the contractor.

There are numerous cases in which the investor does not wish to perform the design and assigns this task to the contractor of the building works. Even if the design is performed by the contractor, the obligations related to the authorization of

building works are legally binding for the investor which has two possibilities: (i) to attain by themselves the necessary approvals, authorizations and building permits based on the documentations drafted by the contractor or (2) to authorize the contractor for this purpose based on the building contractor agreement. In the second case, the contractor shall perform the design and based on the granted authorization it shall attain all the necessary approvals, authorizations and building permits for and on behalf of the investor.

In practice, there shall be cases in which the design is undertaken by the so-called “*specialized consulting businesses* [8]”, which are practically referred to as Engineers or Consultants. This solution may be chosen by the investor for economic or organizational reasons. It is definitely more efficient from an economic point of view for the person having performed the design to provide technical assistance on site and to also check the quality level of the works throughout the execution thereof. The second reason for which the investor may choose such a solution is of organizational nature. In certain cases, it is preferable to communicate to fewer people in order to make a decision. It is very difficult to be in the place of the investor which is supposed to make a decision concerning a technical issue for which the contractor, the designer and the consultant have different and even contradictory solutions [9]. The design of the works by the consultant may generate many disputes. Thus, in the event of any defects concerning the design, the contractor must inform the consultant and the beneficiary in this respect. As the consultant drafted the design, it will be difficult for the latter to accept any defects concerning the design and it shall postpone its decision as much as possible. Thus the consultant, which is the specialized representative of the beneficiary on the site, shall be in a conflict of interests. On the one hand it represents the beneficiary and it is the author of the design, and on the other hand it should admit that there are certain defects concerning the design. If the consultant admits that there are defects related to the design, it admits its fault. Otherwise, the consultant shall have to use the contractual mechanisms in order to solve the dispute.

In order to avoid additional costs and the delay of the works, it is recommended that the time allocated for the planning and design of the works to be in accordance with the complexity of the works, regardless of the design being undertaken by the beneficiary or by the contractor. If the time allocated for the design is too short in relation to the complexity of the works, the beneficiary shall have to

cope with the problems arising from the latter's requests to change the design. These requests to change the design shall lead to the extension of the execution term of the works and may generate additional costs.

Verification of the designs

The third major obligation of the investor is to provide the verification of the designs concerning the execution of the building works. This obligation is binding for the investor regardless of the person to which the design works are assigned. After the verification of the design works, after the completion of the design stage and after the attainment of the building permit, the building works may be marked.

Concerning this component of the building quality insurance system, the legislature issued several regulations concerning the verification of both the types of designs and of the subjects able to perform such verifications.

The legislature provides that the verification of the designs is the obligation of the investor and that the designs may be checked by specialized persons [10] attested for the performance of this activity. More than that, there are certain special regulations concerning the quality and experience [11] required for a certain person to be attested to perform this activity. The legislature continued and also regulated the fact that, depending on the training and experience of the applying persons, the latter shall be attested for certain specializations [12] in the field of building works.

Considering the extremely detailed regulation established by the legislature for a person to be certified for the verification of the designs as well as concerning the designs to be checked, we may conclude that the obligation to check the designs is essential in terms of providing the quality level of the building works according to the requirements [13] provided by the law.

In practice, although the legislature grants a specific importance to the verification of the designs, this activity is disregarded by most of the involved factors and is performed by default [14]. The beneficiary shouldn't neglect this legal obligation, not necessarily based on the penalties under the law. The motivation of the beneficiary is the fact that a lot of time and material resources could be saved if the verification of the designs were made responsibly.

Investor's duties during the building works in construction stage

Delivery of the site

The beneficiary must deliver the site to the contractor for the execution of the building works. Although this is an essential obligation of the beneficiary, it is not expressly provided by the law. The provisions of art. 1875 paragraph (1) of the Civil Code only stipulate the obligation of the beneficiary to grant the contractor's access to the access ways to the site and to the water supply plants or other units on the site. The obligation to deliver the site is determined by the cause of the contractor agreement and by the object thereof. Thus, the immediate objective of the agreement would be the execution of the building works against the payment of the equivalent value thereof. The particular nature of the building contractor agreement compared to other contractor agreements is the very object of the agreement, namely the execution of works for a certain building. Consequently, if the execution of a building work is not the immediate object, the agreement shall be null and void [15] and if the object does not involve the execution of works for an existing building, the agreement cannot be classified as a building contractor agreement.

Concerning the concept of site, it is not defined by the law, but according to the arguments in the previous paragraph, the site is the place where the building works are executed. Generally, the object of the agreement requires the performance of both permanent and temporary works. Permanent works are the building works representing the immediate object of the agreement and temporary works are the building works performed in order to facilitate the execution of the permanent works to be decommissioned once the permanent works are completed.

A problem that may be encountered in practice is whether the site concept comprises both permanent works and temporary works. While the contractor agreement stipulates a definition of the site that may include or not the location of temporary works, the problem is solved. If the agreement does not stipulate any definition of the site and a conflict arises between the beneficiary and the contractor concerning the delivery of the site, things get more complicated.

For example, the builder must build a dam comprising a hydropower plant, involving the deviation of the water course and the execution of a series of temporary buildings such as aqueducts and other embankments. None of the contractual documents stipulates the location to be delivered, only mentioning the fact that the beneficiary shall deliver the site. These temporary works were provided in the initial

documentation but the location of these works was not delivered. The beneficiary states that they met their obligations by delivering the site where the permanent works shall be executed. The builder claims that they cannot start the execution of the works if the location of the temporary works and the building permits are not delivered. In my opinion, as long as the initial documentation provides the temporary works, the location thereof, as well as the design for the execution thereof, the beneficiary also has the obligation to deliver the location set for the execution of the temporary works. In this case I consider that the concept of site also includes the location of the temporary works. If the contractual documents include no provisions concerning the temporary works necessary for the execution of the permanent works, it means that they must be executed by the contractor and their location may not be included in the concept of site.

Thus, depending on the complexity of the works, the parties concluding the contractor agreement should define the concept of site. If general contractual terms are used, where the concept of site is generally defined as the location of the permanent works, the parties should maintain or amend the existing definition depending on the works to be executed.

Payment of the price

The beneficiary of the building works must pay the price of the works. This obligation is provided in the definition of the contractor agreement included in the provisions of art. 1851 paragraph 1 of the Civil Code, stipulating that: “under the contractor agreement, the contractor undertakes to execute a certain work, either material or intellectual, at its own risk, or to provide a certain service to the beneficiary, in exchange for a certain price”. The price of the contractor agreement may be an amount of money, a product, a service or a combination between the latter. The Civil Code stipulates three types of prices for building contractor agreements: the estimate price [16], the price based on the estimate [17] and the lump sum price [18].

If the contractor agreement has an estimate price, the beneficiary of the works does not have any obligation to pay a higher price requested by the contractor. If the contractor makes such a request, the latter must prove the causes having led to the increase of the price as well as the fact that the said causes were unpredictable upon the conclusion of the agreement.

If the contractor agreement provides that the price is to be established based on the equivalent value of the executed works, of the provided services or of the delivered goods, the beneficiary must pay the contractor the equivalent value of the works depending on the actual amounts executed. In this case, the contractor agreement usually provides the unit value of the works depending on the types of works to be executed. Thus, upon the conclusion of the agreement, the parties do not know the value of the works, but they do know the unit prices for each type of works. The total value of the works shall be known on the date of acceptance when all the amounts of the executed works shall be known.

If the price of the contractor agreement is a lump sum price, none of the parties shall be entitled to request an increase or a decrease of the said price. The only exception is in the case of the amendment of the initial terms and only if the agreement provides this case. In the lack of such an express contractual provision, the price shall remain unchanged.

In case the beneficiary fails to meet its payment obligations towards the contractor, the latter shall be entitled to a legal mortgage over the works pursuant to art. 1869 of the Civil Code to be established and preserved pursuant to the provisions of art. 2377 of the Civil Code.

On the other hand, if the contractor fails to pay its subcontractors or suppliers, the latter shall be entitled to take direct action [19] against the beneficiary for the recovery of the outstanding amounts until the concurrent coverage of the outstanding amount due by the beneficiary to the contractor.

Assessment of the execution of building works

As we stated before, the legislation on the quality of building works aims the compliance with quality standards in all the stages related to the design, execution, operation and further use of buildings. Once the building permit is attained, the investor shall have new responsibilities. One of the major obligations of the investor when executing building works is to check the correct execution throughout the performance of the works, pursuant to the execution documentation.

This obligation set by the legislature for the investor is logical and it is meant to continue the verification and control process required by the legislature for all the participants in the execution of building works.

As shown [20], in the design stage when the designer has the obligation to comply with quality standards but it is also verified by attested project inspectors employed by the investor. Like in the execution stage when the contractor must execute the building works pursuant to the standards stipulated in the execution documentation, the investor shall check the quality level throughout the execution of the works.

As in most cases the investor does not have the necessary training or qualification to provide the verification of the correct execution of building works, the law [21] requires for the verification to be performed by means of specialized managers or specialized consulting businesses.

Just as in the case of regulations concerning the verification of projects by attested project inspectors, the verifications concerning the correct execution of the works also involve detailed regulations regarding both the objective of the works undergoing verification and the subjects having the capacity to perform the said verifications.

In our opinion, in this stage, if all the participants to the execution of building works act responsibly and professionally, any design or execution errors shall be remedied and the quality of the executed works shall be according to the execution documentation. For this reason we consider that the legal provisions concerning verification throughout the execution of the works should be interpreted as a continuous verification, without being limited only to the determinant stages. This does not imply that the site managers should be permanently present on the site, except for the case in which the rhythm of the execution of building works so requires.

The remedy of nonconformities

The fifth major obligation of the investor implies “taking action for the remedy of the nonconformities and defects incurred during the execution of the works, as well as of project deficiencies [22]”.

Thus, in addition to the obligation to check the quality of the executed works, the investor must also take certain measures for the remedy of any execution nonconformities or deficiencies. Moreover, if the designs are ascertained to be deficient, they must be corrected by the investor during the execution stage.

The obligation to remedy the deficiencies observed in the execution stage, even if it is not expressly mentioned by the law, should be reasonably assigned to the investor, as otherwise the works may be continued and even completed and the acceptance committee may reject the acceptance as a result of the fact that the quality level of the building is not according to the execution documentation.

We consider that this obligation was expressly stipulated in the law in order to provide economic effectiveness on the one hand, but also to emphasize that the obligation to verify the execution must render a certain result, namely the execution of a quality building.

In this context, we consider that upon the acceptance of the building works at the completion thereof, the acceptance committee is not entitled to recommend the acceptance of the building works as long as there are major deficiencies regarding the quality of the works for one of the requirements [23], especially if these deficiencies are likely to endanger people's lives, their property, the society or the environment.

Obligation to accept the building works

The building works execution stage ends upon the completion thereof by concluding the acceptance protocol upon the completion of the works. The legislator binds the investor to take all the necessary measures for the acceptance of the building works.

Pursuant to the legislation in force, the acceptance of the building works is performed in two stages [24]. The first stage is the acceptance upon the completion of the works and the second stage is the final acceptance after the expiry of the warranty period.

The main effects of the acceptance are the transfer of the risk [25] from the contractor to the investor and the beginning of the warranty term of the works. Based on the desire to transfer the risk to the investor, and on the other hand to begin the warranty term of the works, it is natural for the contractor to seek the acceptance of the works as soon as possible after the completion thereof.

What happens if the investor fails to meet its obligation to organize the acceptance? In case the investor does not take the necessary steps to organize the acceptance, the contractor is entitled to request the competent court of law to force

the investor to organize the acceptance under the penalty to pay the conservation expenses and damages.

The building log book

The building log book comprises all the technical documents concerning the design, execution, operation and monitoring of the operation behavior of the building, as well as the further use thereof, including all the necessary data, documents and evidence for the identification and determination of the technical state of the respective building and of its further evolution.

It is the obligation [26] of the investor to draft the building log book and to deliver the latter to the owner. Pursuant to art. 75 paragraph (1) letter a) of the Methodological Regulations of 12 October 2009 for the enforcement of Law no. 50/1991 on the authorization of the execution of building works the building log book *“must be drafted and filled in during the execution by all the entities involved in the execution of the works, supervised by the site inspector”*. With respect to these provisions we would like to emphasize that the reference of the legislature to *“the site inspector”* may only be construed as a reference to the site manager based on the following arguments: (i) the investor must draft the building log book, and the latter is legally bound to employ certified specialized staff for monitoring the quality of the building works, namely the site manager, and (ii) the phrase *“site inspector”* is never mentioned in the legislation on the quality of building works in direct connection to any obligation of the investor.

Building expertise

Another major obligation of the investor is to perform a technical expertise drafted by a certified technical expert in case the investor makes any interventions to the existing buildings involving rebuilding, reinforcement, transformation, extension, partial decommissioning or repair works.

The investor shall employ a certified technical expert only if the initial designer of the building does not approve with the new design. The expertise shall be performed by a technical expert certified for the performance of such expertise.

Attainment of the energy certificate

The investor has the obligation to attain [27] the energy certificate for the building prior to the acceptance upon the completion of the works. The original copy of the energy certificate must be provided by the investor to the acceptance committee. A copy of the energy certificate for the building shall be appended to the acceptance protocol upon the completion of the works and shall be an integral part of the building log book.

The energy certificate is the deed certifying the fact that the legal requirements concerning energy saving and thermal insulation, as well as those concerning environmental protection, are affected by the quality level of building works. The energy performance certificate is the only deed certifying the extent to which building works meet the quality standards concerning energy saving and thermal insulation. For this reason, the legislature considered that the acceptance may not be performed in the absence thereof, and if the committee dodges these provisions, the acceptance protocol upon the completion of the works shall be considered “*null by default* [28]”

The investor has the obligation to attain the energy performance certificate for the building when executing new buildings as well as [29] when the intervention works for the structural and architectural rehabilitation of the building also involved thermal rehabilitation works. In the second case as well, the energy performance certificate for the thermally rehabilitated building shall be drafted, upon the request of the beneficiary, by a certified energy auditor for buildings, and shall be financed based on the funds of the beneficiary.

Other obligations of the investor

The investor has the legal obligation to inform the issuer of the building permit and the State Inspectorate for Constructions on the date and time of commencement of the authorized building works and on the time of completion of the authorized building works.

The investor shall visibly display the investment identification board pursuant to the provisions of appendix no. 8 to the methodological regulations [30] of 12 October 2009 for the enforcement of Law no. 50/1991 on the authorization of the execution of building works. The investment identification board must have the size of at least 90x60 cm and must comprise the following information: the name of the

investment, the address of the building, the beneficiary, the name of the general designer, the name of the builder/contractor, the number of the building permit and the date of issuance thereof; the building execution terms (the commencement and the completion date).

The investor shall conclude [31] labor agreements or temporary labor agreements, pursuant to the law, in order to employ the legally certified design inspectors, or it shall conclude a services agreement with an authorized natural person or a legal person having the quality and capacity to perform design inspections.

In the event of any disputes arising between the certified design inspector and the designer, they may be settled by a quality technical expert to be employed [32] by the investor. The expert's decision shall be binding for both parties, and the said expert shall bear the related responsibility.

The investor shall employ a site manager to monitor the correct execution of the building works in terms of quality pursuant to the execution documentation.

The investor shall bear the costs related to the supervision of the execution of building works. The execution of building works shall be monitored by entities certified for this purpose by the authorities: (i) the site manager employed by the investor and (ii) the technical expert certified in terms of execution, representing the contractor (a legal person involved in building activities). The costs related to the monitoring of the execution of the building works by the technical expert certified in terms of execution and by the site manager, throughout the execution, are included in the amount of the general estimate of the investment.

The investor must [33] pay 0.70% of the amount of the expenses incurred for the execution of the buildings and works provided in art. 2 of Law no. 10/1995 subject to the issuance of building permits, pursuant to the law. The owners acting as natural persons executing reinforcement and repair works to their own homes are exempt from the payment of the said amounts. The calculation and transfer of these amounts is done in installments, together with the payment for the building works.

The investor also has the obligation [34] to pay the State Inspectorate for Constructions, on the date of commencement of the execution of the building works, 0.1% of the amount of the works according to the building permit. This amount shall be adjusted on the date of acceptance according to the real value of the building works.

The investors and the other entities taking part in the execution and operation of building works, as appropriate, have the obligation to include in the designs and to use materials with valid technical arguments, and the use thereof must be in compliance with the relevant provisions [35].

Conclusions

Pursuant to the law, the beneficiary has full rights, as well as a series of essential obligations aiming to provide a high quality level of the building works. We noticed that the legislative technique used by the legislature, especially in terms of the quality of building works, is not to grant any rights to the beneficiary, such as the right to inspect the designs or the execution of the works. Based on the importance granted to quality, the legislature preferred to impose certain obligations to the beneficiary, such as the obligation to inspect the designs or the execution of the works.

Moreover, the legislature imposed a dualistic quality check system. Thus, while the designer has the obligation to comply with quality related regulations, pursuant to the law the beneficiary also has the obligation to inspect the quality of the design. The execution stage was also regulated, the contractor having the obligation to inspect the quality of the design, to act in compliance therewith and to employ a specialist to be in charge with the quality of the execution. Furthermore, in the works execution stage, the beneficiary also has the obligation to inspect the quality of the works.

Based on the analysis of the related legal provisions concerning the quality of building works, we may conclude that the beneficiary of the works has a major role in determining the quality level of the works. Thus, if the building works do not meet the quality standards, the beneficiary shall be held liable in the first place, followed by the contractor.

References:

- [1] See art. 7 paragraph (2) of Law no. 10/1995 on the quality of building works providing that *“Agreements cannot stipulate any quality related levels or requirements inferior to the regulations in force, concerning the requirements provided in art. 5.”*
- [2] See art.5 of Law no. 10/1995 on the quality of building works
- [3] Unfortunately in the field of public procurements there is a generalized practice that the sole criterion for awarding the works is the lowest price.
- [4] See the provisions of art. 11 of Law no. 10/1995 on the quality of building works

- [5] See the provisions of art. 11 of Law no. 10/1995 on the quality of building works and of art. 7 of the Regulation of 7 February 2000 on the exercise of control over the quality of the materials, building elements and products used in building works.
- [6] See art. 13 paragraph (2) of Law no. 10/1995 on the quality of building works
- [7] These are the provisions of art. 5 of Law no. 10/1995
- [8] within international building contractor agreements, the *Engineer* or the *Consultant* generally provide, throughout the execution of the building works, the verification of the quality of building works according to the execution documentation. Law no. 10/1995 on the quality of building works includes a single reference in this respect in art. 21 paragraph (1) letter d) where they are referred to as *specialized consulting businesses*.
- [9] This was the case in 2001 when the subcontractor in charge with all installation, electrical, plumbing, heating and air conditioning works for an office building in Bucharest reported that the technical solution concerning the electrical installation works was wrong. At first, both the investor and the consultant, as well as the designer and general contractor took no measures whatsoever. The subcontractor raised the problem one more time right before starting to supply the specific materials. This time, only the general contractor reacted and requested a meeting with the involved factors after a few days. The meeting took place but no decision was made. The specialized subcontractor didn't want to take any responsibility in this respect and sent a notification by means of the judicial executor to all the involved factors, including to the State Inspectorate for Constructions, suspending the execution of the electrical installation works until the date a decision is adopted concerning the said issues. On this occasion, the specialized subcontractor also notified that, in case the initially designed solution is not changed, it shall not undertake the execution and it shall terminate the agreement concerning the said works. The solution proposed by the subcontractor was adopted after about 25 days, and the latter was appointed to redesign all the electrical installation works. The entire project was delayed by about 20 days compared to the initial completion term.
- [10] See art 21 paragraph (1) letter c) of Law no. 10/1995 on the quality of building works.
- [11] For further details, please see the Technical Regulation of 26 May 2003 "Guideline for the technical and professional certification of specialists involved in building works" approved by Order no. 777/2003
- [12] See the provisions of Art. 8 of the regulation of 20.11.1995 on the verification and technical expertise of the quality of designs, of the execution of the works and buildings approved by Decision no. 925/1995 and the provisions of the Technical Regulation of 26 May 2003 "Guideline for the technical and professional certification of specialists involved in building works" approved by Order no. 777/2003
- [13] See art.5 of Law no. 10/1995 on the quality of building works
- [14] I was often confronted with the situation in which the design verification term was extremely short compared to the term required for the completion thereof. Another criterion to be considered in order to determine whether the verification of the designs was performed according to the importance granted by the legislature in this respect, is the amount of the fee due to the inspector compared to the fee of the designer for the same specialization.
- [15] Beleiu, G. (1994). *Drept civil român: Introducere în dreptul civil, Subiectele dreptului civil*. București, România: Casa de editură și presă Sansa, p. 147
- [16] See the provisions of art. 1865 of the Civil Code
- [17] See the provisions of art. 1866 of the Civil Code.
- [18] See the provisions of art. 1867 of the Civil Code.
- [19] See the provisions of art. 1856 of the Civil Code.
- [20] See subsection 3.1.3. above.
- [21] See art 21 paragraph (1) letter d) of Law no. 10/1995 on the quality of building works.
- [22] See art 21 paragraph (1) letter e) of Law no. 10/1995 on the quality of building works.
- [23] See art.5 of Law no. 10/1995 on the quality of building works
- [24] See the provisions of art.21 paragraph (1) letter f) of Law no. 10/1995 on the quality of building works and of art. 3 of the Regulation of 14 June 1994 on the acceptance of building works and related installations
- [25] Flavius-Antoniou Baias, E. C. (Ed.). (2012). *Noul Cod Civil: comentariu pe articole*. București, Romania: C.H. Beck p. 1903 and Mangu, C. E. (2012). *Riscul lucrului și riscul contractului în contractul de antrepriză în construcții. Pandectele Române (1)*
- [26] See the provisions of art. 21 paragraph (1) letter g) of Law no. 10/1995 on the quality of building works
- [27] See the provisions of art. 20 of Law no. 372 of 13 December 2005 on the energy performance of buildings, republished based on art. VIII of Law no. 159/2013 on the amendment and completion of

Law no. 372/2005 on the energy performance of buildings, published in the Romanian Official Gazette, Part I, no. 283 of 20 May 2013, where the texts are renumbered

[28] See the provisions of art. 20 paragraph (2) din Law no. 372 of 13 December 2005 on the energy performance of buildings, republished

[29] See art. 19 paragraph (3) of the Methodological Regulations of 28 September 2011 for the enforcement of Law no. 153/2011 on the measures to be taken for increasing the architectural and ambient quality of buildings

[30] They were approved on 23-11-2009 by Order no. 839/2009

[31] See the provisions of Art. 4 of the regulation of 20 November 1995 on the verification and technical expertise of the quality of designs, of the execution of the works and buildings

[32] This possibility is stipulated in art. 14 of the regulation of 20 November 1995 on the verification and technical expertise of the quality of designs, of the execution of the works and buildings

[33] See art. 40 of Law no. 10/1995 on the quality of building works

[34] See art. 30 of Law no. 50 of July 29th, 1991 on the authorization of building works.

[35] See art. 27 of the regulation of 21 November 1997 concerning the technical agreement for new building products, procedures and equipment.