

Legal opinion

Statutory Supervision of construction process by architect

The issue of supervision of the construction process by the architect is regulated both by public-law norms and private-law norms, specifically by the Construction Law of 7 July 1994 (henceforth "c.l.") and the Copyright and Related Rights Act of 4 February 1994 (henceforth "c.r.a."), respectively. This state of affairs often leads to interpretive confusion.

Supervision of the construction process is a key duty of the architect of a project. Under article 20, item 4 of c.l., the architect has a duty to perform such supervision if requested by the investor or by the competent construction and architectural administration authority. Furthermore, Article 19, item 1 of c.l. stipulates that the construction and architectural administration authority can impose on the investor an obligation to ensure supervision of the construction process by the architect, where this is warranted by the complexity of the structure or of the construction works, or by their anticipated impact on the environment. (If the authority decides to do that, a condition to this effect is included in the project's building permit.) C.l. does not, however, spell out in any more detail the criteria that the authority should consider in determining whether to impose such an obligation on the investor – and neither does any other law. This gives the authority considerable discretion in this matter.

Under article 20 item 4 of c.l., supervision of the construction process by the architect consists in the architect assessing the degree of compliance of the construction works with the plans prepared by him or her, and negotiating and agreeing to possible alterations or departures from the plans as suggested by the construction site manager or the investor's inspector. Article 12 of c.l. states that this supervision represents an independent technical function in construction, which means that the person responsible for it is subject to professional liability. Under article 95 item 5 of c.l., the architect can be held professionally liable for evading the duty to perform supervision of the construction process, or for discharging the duty in a negligent manner.

Article 18, item 3 of c.l. introduces the principle that the investor can require the architect to supervise the construction process. However, it is generally accepted that this provision alone does not constitute sufficient grounds for ordering the architect to perform supervision, particularly without compensation. That is because the relationship between the investor and the architect has a private-law, contractual character, and the obligation to supervise the construction process has to follow from a contract. It would appear, therefore, that unless the architect has concluded a contract with the investor to supervise the construction process, he or she cannot be held professionally liable for failing to do so under Article 95 item 5 of c.l..

In line with the general principle laid down by Article 16, item 5 of c.r.a., the author's right to supervise the way his or her work is used – including an architectural work – is a personal copyright. Personal copyright has no time limitation and may not be transferred. This would suggest that only the architect who authored the plans can supervise the construction process. However, article 60, item 5 of c.r.a. states that separate laws regulate the issue of the author's supervision over the way his or her architectural work (or architectural and urban-planning work) is used. These "separate laws" are often understood in the literature to mean article 44, item 3 of c.l., under which it is possible to change the architect who supervises the construction process.

(Such a change requires the inclusion in the project's dossier of a statement by the new architect that he or she is taking over the supervisory role.) Under this interpretation, in the event of a dispute between the investor and the project's architect, another person can be appointed to supervise the construction process; the investor does not have to work with the author of the plan. Such an interpretation is by no means uncontroversial, however, and both in the literature and in court decisions the view has also been expressed that only the author of the plan can supervise the construction process.

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