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The Scope of Contractor's (Employee's) Liability for Breach of Construction Contract Under Georgian Law

[Zakres odpowiedzialności wykonawcy (pracownika) za naruszenie umowy o roboty budowlane w prawie gruzińskim]

Abstract

The legal issues related to the process of performing construction and the contractor's liability are very specific and interesting in Georgian Law. The Georgian legislation regulates the relationship between contractor (employee) and the employer, but there are some problematic issues which might be arisen in practice. The present article analyzes the grounds for the contractor's liability and its legal impact on the construction process.

The present paper is related to Georgian legislation only and there is no comparison between other states' legal approaches. The aim of the article is to analyze Georgian case law and the prevailing court practice of the Supreme Court of Georgia. The article is totally based on the court practice and practical problems. In the end of the article there is a conclusion which summarizes the results of this paper.

Keywords: construction contract, contractor's liability, construction disputes.

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Introduction

The construction sector in Georgia is one of the most advanced in terms of development and growth, it shows a new improved indicator in economic terms every year¹ and is regulated by construction law,² which, in turn, is divided into two parts: civil and administrative law.³ Both in private law relations and for administrative / public law purposes, the issue of the liability of the contractor / person performing the work is one of the important and problematic issues.

The present article is aimed at the analysis of the arrangement established by the Civil Code of Georgia, which sets the general standard of the contractor's responsibility. Also, the aim of the article is to highlight the problematic issues that exist in public procurement relations. For this purpose, the article discusses the recent trends of both Georgian legal literature and legal practice and provides some interim summaries.

The structure of this article is built in such a way that it contains a separate discussion on the issues of liability in private legal relations between the contractor / person performing the work and there is a separate discussion on obligations arising from state procurement, which is part of a hybrid (unity of public and private law) legal relationship.

The General Scope of the Construction Contract Under Civil Code of Georgia

The main principles of the contract

Article 629.1 states that Under a work contract, the contractor commits to completing the specified tasks outlined in the agreement, while the client agrees to pay the contractor the agreed-upon compensation. The parties to the contract are defined by legislation: the customer and the contractor / person performing the work.⁴ Contract for work belongs to the type of service contract and by its nature it is a mutually binding ('*sinalagma*'), commutative and consensual contract.⁵

¹ National Statistics Office of Georgia, <https://www.geostat.ge/ka/modules/categories/80/mshenebloba>.

² P. Turava, *Main Concepts and Institutes of Construction Law*, 'Journal of Law' 2009, 2, p. 121.

³ *Ibid.*

⁴ Law of Georgia on Construction Activities, Article 3.

⁵ Decision AS-408-2024 of Civil Cases Chamber of the Supreme Court of Georgia dated 5th July, 2024.

The contract for work is a mutually binding contract, because each party to the contract (both the Narde and the customer) has rights and obligations. There is the existence of mutual obligations of the parties: the performance of certain work by contractor and the payment of the agreed remuneration by the customer.⁶

The amount of compensation paid to the contractor is usually determined by agreement of the parties. Remuneration is expressed through the payment of a certain amount of money, although remuneration can also be determined in kind.⁷

Contractor's (employee's) obligations

Based on the construction legal relationship, the issue of contractor's responsibility in the contract of work is relevant, where the customer's contractual rights dominate.⁸ The general contractual obligation is that a party to a contract must perform the relevant obligation exactly as it stands, no more and no less.⁹

In the Civil Code, the most important obligation of the contractor / person performing the work is given in Article 639. More precisely, if the services involve the production of an item (for example construction item), the contractor shall deliver the item to the client free from any material or legal defects. Also, the contractor is obliged to provide the client the item / construction without any legal and material defects. The Civil code is very strict to the contractor and stipulates that a construction is legally free of defects if third parties cannot assert any rights against the client. Also, a construction is considered free of material defects if it meets the agreed-upon conditions. If no such conditions are specified, the construction shall be deemed free of material defects if it is suitable for the purpose outlined in the contract or for ordinary use. A material defect is also considered to exist if the contractor produces an article different from what was ordered or in a smaller quantity.

Where a construction contract specifies a particular day for performance, failure to do so without lawful excuse is a breach of contract which might cause damages.¹⁰ Where no time is specified, performance must take place within a reasonable time and of course there is no any specific reasonable time and it depends on the nature of the contract.¹¹ Besides the abovementioned issues it is also very important to determine the place of performance

⁶ Z. Dzierishvili, Commentaries on Civil Code of Georgia, Article 629, p. 4, available at: <https://gcc.tsu.ge/wp-content/uploads/2022/07/Art.-629.pdf>.

⁷ Z. Dzierishvili, Commentaries..., p. 6, available at: <https://gcc.tsu.ge/wp-content/uploads/2022/07/Art.-629.pdf>.

⁸ Decision AS-265-2024 of the Supreme Court of Georgia dated 26th April, 2024.

⁹ J. E. Stannard, D. Capper, Termination for Breach of Contract, Oxford, 2014, p. 68.

¹⁰ J. E. Stannard, D. Capper, Termination..., p. 66.

¹¹ Ibid.

in the contract. Determining the place of performance can be important not only for the purpose of deciding whether a breach has taken place for other purposes too¹² such as court jurisdiction, applicable law etc. Accordingly, the Georgian law very strictly regulates the scope of the contractor's obligations and determines the remedies for client for breaching these obligations by the contractor.

Contractor's (employee's) liabilities – remedies

The Civil Code of Georgia stipulates the liabilities of the contractor if the construction is defected. The client may request additional performance. The contractor may choose either to remedy the defect or to produce a new construction. For the purpose of additional performance, the contractor is obliged to cover the necessary expenses, including transportation, labor, and materials. The contractor may refuse additional performance if it would require disproportionate expenses.¹³ Also, the client is entitled to demand the damages. The purpose of compensating the claimant for the fact that he or she has not received the performance concluded by the parties is undoubtedly the most important.¹⁴ In general and especially in construction contract a breach of contract always entitles the innocent party to nominal damages.¹⁵ In general damages protect the Claimant's rights to performance.¹⁶

The ways in which the contractor may breach a contract for construction services are similar to those for goods because the service may not be provided, they might be delayed, or they may be defective.¹⁷ The burden of proof lies with the injured party, but it is the responsibility of the liable party to prove that he / she acted without fault.¹⁸

As for the amount of financial liabilities of the contractor, it is very important under Georgian Law. Under the breach of construction contract the client is able to demand financial damages from the contractor. Presumptively, the burden of proof is on the claimant to prove the existence and amount of any financial loss he / she suffered.¹⁹

¹² J. E. Stannard, D. Capper, *Termination...*, p. 67.

¹³ The Civil Code of Georgia, Article 642.

¹⁴ A. Tettenborn, *Remedies, Contractual Duties: Performance, Breach, Termination and Remedies*, Fourth Edition, London 2023, p. 476.

¹⁵ N. Andrews, *Breach and Performance, Contractual Duties: Performance, Breach, Termination and Remedies*, Fourth Edition, London 2023, p. 91.

¹⁶ A. Tettenborn, *Remedies...*, p. 477.

¹⁷ K. Barnett, *Damages for Breach of Contract*, London 2022, p. 28.

¹⁸ T. Frad, *The International Compendium of Construction Contracts: A Country by Chapter Review* (Austria), ed. by Phillip Greenham and the Society of Construction Law Australia, Berlin 2021, p. 82.

¹⁹ A. Tettenborn, *Remedies...*, p. 484. Also A. Kramer, *The Law of Contract Damages*, Second Edition, Oxford 2018, p. 499.

The client / customer may have the following requirements towards the contractor / person performing the work under the following articles of Civil Code of Georgia: Due to poor-quality work, the request for compensation according to Articles 629.1, 641.1 (An article shall be considered to be free of material defects if it corresponds to the agreed conditions; and if no such conditions are agreed upon, then an article shall be deemed to be free of material defects if it is suitable for the use stipulated in the contract or for ordinary use.), Article 394.1 If the obligor breaches an obligation, the obligee may claim damages arising from the breach. This rule shall not apply when the obligor is not responsible for breach of the obligation.), Article 408.1 (A person who is liable to pay damages shall restore the state of affairs that would have existed if the circumstances giving rise to the duty to pay damages had not occurred.) and Article 409 (If damages cannot be paid by restitution or if such restitution would require disproportionately high expenses, then the obligee may be given monetary compensation).²⁰ It is also important that the first way in which the law limits the recoverable damages is by allowing the creditor only to claim compensation for the real loss and deprived profits he / she suffers.²¹

Under Civil Code of Georgia damages shall be compensated not only for the loss of property actually incurred but also for lost profits.²² The evidence used to prove lost profits will vary depending upon the type of business in issue and the type of contract and breach.²³ Regarding the lost profit the Supreme Court of Georgia stated that:

“Compensation is subject to damages that were foreseeable to the debtor and are a direct result of the damage-causing action. When a party to a contract fulfills an obligation, it is meant to assume only the risk that is lawfully connected with the performance of the contract. Based on the above, he can only be requested to compensate for the damage that is perceived as a normal result of the breach of contract. Compensation is subject to unearned income, i.e. lost profit (*lucrum cessans*). Unearned income is an estimated income. Attention should be paid to how much it was expected to be received.

Unearned income, by its very nature, refers to pure economic loss experienced by the party to the contract, which would not have existed if the contract had been properly executed. In order for income to be considered unaccepted, it must have a direct and immediate connection with the debtor's breach of obligation. Direct connection refers to the logical connection of events, action and result that leaves no reason for doubt about the real possibility of receiving income.”²⁴

²⁰ The Supreme Court of Georgia, Case number: AS-810-2023, May 27, 2024.

²¹ M. J. Smits, *Contract Law: A comparative introduction*, Third Edition, Edward Elgar Publishing, United Kingdom 2021 p. 221.

²² The Civil Code of Georgia, Article 411.

²³ Kramer A., *The Law...*, p. 504.

²⁴ The Supreme Court of Georgia, Case number: AS-1398-2023, July 26, 2024.

It is also important whether only financial loss can be compensated in case of non-performance or also immaterial damage.²⁵ Under Civil Code of Georgia, a monetary compensation for non-property damages can only be sought in the specific cases outlined by law, provided in the form of fair and reasonable compensation.²⁶ Accordingly, damages for non-pecuniary losses can only be awarded when the law confers such a right to the innocent party.²⁷ In construction service the client is unable to demand non-property (non-pecuniary) damages.

Construction projects and disputes arisen from these projects commonly involve complex claims which courts / tribunals are called upon to determine.²⁸ As for the construction dispute resolution, it should be mentioned that the traditional method for dispute resolution is a court. However, there are several construction projects which determine arbitration clause. Historically, Disputes in the construction industry were resolved through litigation or arbitration and this remains common practice Today.²⁹ If any dispute or difference arises in construction relationship the parties have to refer it to the agreed arbitration.³⁰ Accordingly, if the parties agreed to arbitration the national courts usually lack jurisdiction.³¹

The General Principles of the Construction Contract in Public Procurement Law

The parties of the contract

According to Article 5, the participants in construction activities are the customer and the contractor, according to Article 97, the customer may be the person who is:³² construction permit applicant or construction permit holder.

A construction permit applicant is a person who plans to construct a building of class I–IV and carries out relevant actions for this.³³ This includes pre-design work, such as topographic-geodetic, engineering-geological, de-

²⁵ M. J. Smits, *Contract...*, p. 224.

²⁶ The Civil Code of Georgia, Article 413.

²⁷ T. Beumers, W. van Boom, *Tortious and Contractual Liability from a Dutch Perspective* [in:] *Tortious and Contractual Liability, Chinese and European Perspective*, Ernst Karner (ed.), Wien 2021, p. 239.

²⁸ A. Wahab, *International Construction Disputes, A Practitioner's Guide*, A. J. Roquette, T. Christopher Pröster (ed.), München 2022, p. 233.

²⁹ H. C. Lenz, S. Osing, *The International Compendium of Construction Contracts: A Country by Chapter Review (Germany)*, ed. by Phillip Greenham and the Society of Construction Law Australia, Berlin 2021, p. 384.

³⁰ A. Jaeger, G. Hök, *FIDIC: A Guide for Practitioners*, Springer-Verlag Berlin, 2010, p. 397.

³¹ *Ibid.*

³² Spatial Planning, Architectural and Construction Code of Georgia, Article 97.

³³ *Ibid.*

velopment, and other surveys.³⁴ In practice, these pre-design surveys are important for successfully implementing a project.³⁵

In order to save costs in construction projects, detailed design cannot or is not done. New things are often discovered during construction that require changes in the project. A lot of resources and a significant amount of time are spent in construction, which leads to the contractor's liability.³⁶

The holder of a construction permit has the right to construct buildings of classes I–IV from the relevant authority, which is issued by the municipality within the territorial unit.³⁷

Under the current circumstances in the Georgian construction market, the largest customer is the state itself, its governing government, municipalities, or other legal entities, which carry out public procurement following the state's administrative norms.³⁸ It is precisely because of the large budget and numerous projects that, taking into account the legislative possibilities, pre-design work is carried out in a way that subsequently creates several difficulties for the contractor during the implementation of the project. However, in practice, the issue is very relevant and especially problematic, since the problem of the contractor's liability often arises, which is expressed in the imposition of default interest and other sanctions.³⁹

In construction legal relations, a contractor can be an individual or a legal entity.⁴⁰ They perform the following works: Pre-design; Design-exploration; Construction-installation; Commissioning-commissioning; Launch-control.

The contractor must be a person who has received a design and construction license for the implementation of the aforementioned under the rules established by the legislation of Georgia and is responsible for the implementation of these works and the activities of the sub-contractor. Each work is specific depending on its importance, however, the pre-project activity is distinguished by its specific relevance, because it is as a result of its implementation that important information is obtained, conducted studies, and planned: design works, budget, and others.

It is because of the incompletely performed long-term design works that the contractor has to deal with many difficulties during the implementation of construction works,⁴¹ many changes are included in the project and the completion date is delayed.

Thus, in a construction contract concluded for the implementation of construction works, the contractor can be either an individual entrepreneur or

³⁴ P. Turava, K. Kalichava, *Construction Law*, Tbilisi 2020, p. 179.

³⁵ Supreme Court of Georgia, Civil Cases Chamber Decision No. AS-243-2023 of Sept. 28, 2023.

³⁶ Supreme Court of Georgia, Civil Cases Chamber, Oct. 30, 2024 Ruling No. AS-1052-2024.

³⁷ Spatial Planning, Architectural and Construction Code of Georgia, Article 100.

³⁸ Transparency International – Georgia's Conclusion on the 2024 State Budget of Georgia, Tbilisi 2023.

³⁹ Supreme Court of Georgia, Civil Cases Chamber, Nov. 15, 2024, Ruling No. AS-61-2023.

⁴⁰ Law of Georgia on Construction Activities, Article 3.

⁴¹ Supreme Court of Georgia, Civil Cases Chamber Decision No. AS-1066-2023 of July 26, 2023.

a legal entity, who is selected in accordance with the work to be performed. In the case of a state construction project, based on a public procurement announced by an administrative entity or another authorized legal entity.⁴²

Rights and obligation in general

Georgian legislation defines contractual legal relations,⁴³ several important issues of the rights and obligations of the parties to a construction project.⁴⁴ The contractor is selected by several methods, the use of which depends on the customer / specificity of the work to be performed. Procurement can be carried out: directly⁴⁵ or by announcing a tender.⁴⁶ Direct procurement, which characterizes civil relations, is easily carried out by a contract concluded during the procurement of construction works.

A large share of the procurement of construction works through a tender falls on the state, which is carried out by its administrative bodies or a circle of persons who carry out the procurement through public procurement.

During tender procurement, the buyer has his requirements included in the tender documentation, as well as a draft contract to be concluded with the contractor.⁴⁷ In this regard, the difference is clear between public procurement and procurement by a private person because in public procurement, the draft contract is to be concluded with the contracting authority, its terms are attached to the announced tender, and its important characteristics are determined. However, in private procurement, the draft contract to be concluded later may be agreed upon with the winner later / the terms in the attached draft contract may be further specified or may be formed differently by agreement of the parties.⁴⁸

Considering that it is difficult to determine a specific line in the private sector as to what a small, medium, and large project can be. For this, a specific vision can be created from the state's public procurement, which the private sector is also actively guided by.⁴⁹ Accordingly, in construction relations, the difference in the project value between the contract projects to be concluded between small and large procurements is assumed to be 200,000 GEL.⁵⁰ How-

⁴² Law of Georgia on Public Procurement.

⁴³ Civil Code of Georgia.

⁴⁴ Draft State Procurement Agreement, NAT240015002.

⁴⁵ Supreme Court of Georgia, Civil Cases Chamber, July 9, 2024 Ruling No. AS-748-2024.

⁴⁶ Law of Georgia on Public Procurement.

⁴⁷ Draft State Procurement Agreement, NAT240015077.

⁴⁸ Sh. Julakidze, G. Sisoshvili, Efficiency of Electronic Public Procurement: Collection of Scientific Papers, Tbilisi, 2021, p. 110.

⁴⁹ Agreement "NT-B-3-2020-FSI" concluded between the Georgian Farmers Association and "IB Construction Group" LLC, 2020.

⁵⁰ Law of Georgia on Public Procurement.

ever, despite this, the private sector does not have any restrictions on this, and this separation is carried out only in the case of public procurement.⁵¹ When there are specific articles in the contract on the rights and obligations of the parties, unlike public, the relations of private individuals in the contractual part are rather free and oriented towards the mutual agreement of the parties, and during public procurement, the legislation stipulates that in the case of a large procurement, the contractor must submit a guarantee of contract performance to the customer.⁵² Accordingly, the rights and obligations of the parties still differ in terms of the contractual value of the project, such as the timing of the start of work, which must begin within 3–5 days from the conclusion of the contract according to the schedule, although in the private sector this reservation is not found and the obligation is directed to the observance of the schedule agreed between the parties. This differs from public procurement where there is a specific reservation at the start of work and informing the customer about it.⁵³ However, when selecting materials, there is a similar obligation that the contractor must agree with the customer on the materials to be used and their appearance. The contractor must also comply with the project specifications before starting work. This is a very important provision that serves to prevent many unforeseen problems later.⁵⁴

The rights and obligations of the parties to the contract clearly show how the conditions are formulated according to the total value of the contract. Despite the differences in the contracts, there are also common conditions that must be fulfilled a clear example of this is when the contractor discovers an inaccuracy in the construction project, he must notify the customer and suspend the work until it is corrected. This fact affects the total deadline and causes the work to be delayed.⁵⁵

Thus, several factors prevent the existing plan and schedule in contractual relations from being fulfilled, which subsequently leads to the issue of contractor's liability. In addition to the specified deadlines, there are often changes in meteorological conditions and seasons, which have a very serious impact on the intensity of work on the current project, especially in the winter period. Accordingly, the issue of contractor's liability cannot be caused by any factor independent of it, which can be caused by the customer using his rights and obligations.⁵⁶

⁵¹ U. Hagenlocher, *Architect's Responsibility in Germany*, 'Georgian-German Journal of Comparative Law' 2024, 2, p. 7.

⁵² Draft State Procurement Agreement, NAT240015002.

⁵³ Agreement "NT-B-3-2020-FSI" concluded between the Georgian Farmers Association and "IB Construction Group" LLC, 2020.

⁵⁴ Draft State Procurement Agreement, NAT240015002.

⁵⁵ Supreme Court of Georgia, Civil Cases Chamber, July 9, 2024 Ruling No. AS-AS-748-2024.

⁵⁶ Supreme Court of Georgia, Civil Cases Chamber, Ruling No. AS-850-2023 of June 4, 2024.

Contractor's (employee's) liability

The issue of contractor's liability arising from the construction legal relationship is determined based on Georgian legislation and the construction contract concluded with the customer. In the case of a construction contract concluded during the construction relationship, the liability differs in terms of severity, which is directed to contractor, depending on the contractual value of the project.⁵⁷ Although the contracts concluded in the case of public procurement and private procurement differ, in the event of untimely or improper performance by contractor, a large default interest will still be imposed. Legal practice takes into account several circumstances and in many cases exempts contractor from paying the default interest imposed (in full or in large part).⁵⁸ As for the reduction of the default interest, it is explained that the imposition of a default interest should be aimed at compensating the customer for damage, and not at enrichment.⁵⁹

The root of the problems in practice is clearly visible when studying the circumstances of the case, which is related to the incomplete implementation of pre-design works and some changes to the project during construction. Suspension of construction before making changes to the project and subsequent continuation has its own deadline. If the mobilization necessary to continue the work is hindered by several factors, including meteorological conditions, which means that the work will continue, but achieving a specific pace, which is related to the project plan and schedule, is difficult. In particular, in the case of one of the projects, during construction work on-site, it turned out that it would not be possible to arrange a concrete road surface with heavy equipment and this had to be done manually.⁶⁰ Of course, this is related to a completely different deadline and meteorological conditions have a greater impact on the work, which would have been identified in the case of proper pre-design works and a completely different project concept would have been developed.⁶¹ Accordingly, the implementation of construction works on site and the issue of liability of contractor is very specific from a practical point of view and requires a conscientious approach from the customer.

The grounds of the liability

Regardless of whether the procurement is public or private, the customer has the option of imposing several types of default interests on contractor,

⁵⁷ Draft State Procurement Agreement, NAT240015077.

⁵⁸ Supreme Court of Georgia, Civil Cases Chamber, Ruling No. AS-850-2023 of June 4, 2024.

⁵⁹ Supreme Court of Georgia, Civil Cases Chamber, January 18, 2024, Ruling No. AS-51-2023.

⁶⁰ Ibid.

⁶¹ U. Hagenloch, *Architect's...*, p. 5.

including a default interests of 0.1% for each day of delay,⁶² 1% of the contractual amount for poor-quality work, along with compensation for damage,⁶³ a default interest for violating the plan-schedule, and finally, if the amount of the default interest reaches 3% of the contract, the customer has the right to unilaterally withdraw from the contract.⁶⁴

If the customer himself violates the terms of the contract, he must pay contractor only 0.02% of the remaining contractual amount as a default interest.⁶⁵ This is the case if the supplier / contractor terminates the contract for his own reasons, in which case he will exceed 5% of the total value of the contract. In addition to all this, the most severe sanction against contractor is when the customer blacklists him.⁶⁶ And in the case of a large purchase, the existing draft contract is characterized by a much higher default interest, for example, in case of inadequate or non-fulfillment of work, the default interest is 5% for unfulfilled work, and 0.1% for each day of delay beyond the plan.⁶⁷ There is positive judicial practice on which.⁶⁸

Thus, in the case of simplified electronic procurement, the legal status of contractor / supplier under the contract for the implementation of a construction project is associated with heavy legal liability and must be consistent with judicial practice. Which clearly establishes the scope of liability on the part of contractor's liability.

Exemption of liability

According to the contractual terms that exist between the parties during the implementation of a construction project, the parties differ, especially in terms of liability.⁶⁹ Which is clearly regulated by legal practice, concerning the release from obligation. Practice shows that the contractual obligation is much greater than the damage determined by the circumstances.⁷⁰ In particular, if for each overdue day from the plan schedule, contractor is liable for 0.1% of the remaining work in the form of a penalty. The court, having studied the circumstances, determined that 0.02% would be sufficient to compensate for the damage in the form of a default interest.⁷¹

⁶² Draft State Procurement Agreement, NAT240015077.

⁶³ G. Okruashvili, *Personal Punishment / Adaptation to Changed Circumstances*, 'Georgian-German Journal of Comparative Law' 2021, 5, p. 55.

⁶⁴ Supreme Court of Georgia, Civil Cases Chamber, April 26, 2024 Ruling No. AS-265-2024.

⁶⁵ Draft State Procurement Agreement, NAT240015077.

⁶⁶ Supreme Court of Georgia, Civil Cases Chamber Decision No. AS-243-2023 of September 28, 2023.

⁶⁷ Draft State Procurement Agreement, NAT240015002.

⁶⁸ Supreme Court of Georgia, Civil Cases Chamber, April 26, 2024 Ruling No. AS-265-2024.

⁶⁹ Draft State Procurement Agreement, NAT240015002.

⁷⁰ Supreme Court of Georgia, Civil Cases Chamber, December 4, 2023 Ruling No. AS-1164-2023.

⁷¹ Ibid.

Thus, contractor was partially exempted from the default interest, and fully from the default interests that were imposed due to the failure to fulfill the plan schedule on time. The fact that the court will study the existing factual circumstances was also highlighted⁷² and clearly indicates the changes in the project to which contractor has to adapt. Ultimately, several changes included in the project will negatively affect contractor's activities and lead to the imposition of disproportionate default interests on him. The scope of which has been established by judicial practice and must be reflected in the relevant contracts of the company, both in the case of private and public procurement.

Conclusion

From the presented discussion, several important issues can be highlighted. First and foremost, it should be noted that Georgian legislation recognizes both private and public legal relationships in construction law. The most significant legal act in construction relationships is the Civil Code of Georgia, which explicitly defines the rights and obligations of the client and the contractor.

Particularly noteworthy is the issue of compensation when the contractor fails to fulfill their obligations during the construction process. Non-fulfillment of obligations grants the client the right to demand compensation and damages. This issue is particularly problematic and inconsistent in Georgian judicial practice.

According to the recent court practice, compensation is subject to damages that were foreseeable to the debtor and are a direct result of the damage-causing action. When a party to a contract fulfills an obligation, it is meant to assume only the risk that is lawfully connected with the performance of the contract. Based on the above, he can only be requested to compensate for the damage that is perceived as a normal result of the breach of contract. Compensation is subject to unearned income, i.e. lost profit (*lucrum cessans*). Unearned income is an estimated income. Attention should be paid to how much it was expected to be received.

It should be mentioned that the method of the dispute resolution of construction is very important. The traditional method for dispute resolution is a court. However, there are several construction projects which determine arbitration clause. Arbitration became more popular in recent construction projects.

As for the public procurement and public construction law, Several problematic issues have been identified in public procurement, which should be

⁷² Ibid.

resolved in a way that leads to equalization of rights between the parties. In particular, when construction is suspended due to a project flaw, this additional period should be included in the contract itself, with an appropriate reservation, and the damage taken should be compensated for each day of this delay by the employer.

Abstrakt

Kwestie prawne związane z procesem wykonawstwa robót budowlanych i odpowiedzialnością wykonawcy w Gruzji ujęte są ciekawie i bardzo specyficznie. Gruzjińskie ustawodawstwo reguluje relacje między wykonawcą (pracownikiem) a pracodawcą, występują tu jednak w praktyce pewne sporne kwestie. Niniejszy tekst analizuje podstawy odpowiedzialności wykonawcy i jej prawny wpływ na przebieg procesu budowlanego.

Artykuł odnosi się wyłącznie do gruzińskiego ustawodawstwa i nie zajmuje się rozwiązaniami przyjętymi w innych państwach w aspekcie prawnoporównawczym. Jego celem jest zbadanie gruzińskiego orzecznictwa i dominującej praktyki sądowej Sądu Najwyższego Gruzji. Tekst w całości opiera się właśnie na praktyce sądowej i rzeczywistych problemach w niej występujących. Zamyka go konkluzja podsumowująca wyniki badań.

Słowa kluczowe: umowa o roboty budowlane, odpowiedzialność wykonawcy, spory budowlane.

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