LIABILITY FOR CONSTRUCTION WORKS UNDER THE MACEDONIAN LAW

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1. The Construction Industry in the Republic of Macedonia and the Legal Framework for Construction in the Republic of Macedonia

The past years are marked with significant increase of the construction industry in the country. The officially available data show that the annual real growth rate in 2016 compared to 2015 is [illegible], in 2015 compared to 2014 is 20.3%, in 2014 compared to 2013 is [illegible].

In the last five years (2012-2016) the average number of issued construction permits is 2.842, where most of them are for [illegible] rather than infrastructure constructions, while the average [illegible] value of the buildings is 806 million euros.

Year	Number of issued construction permits	Estimated value of the buildings (in EUR)
2012	2.794	843.876.846
2013	2.269	661.646.846
2014	2.628	1.132.2[illegible]114
2015	3.143	782.195.962
2016	3.377	841.066.602

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[1] http://www.stat.gov.mk/Indikatori.aspx?id=29

Table 1. Issued construction permits and estimated value of buildings

Investors in the constructions are in most of the cases individuals, compared to the legal entities as investors although in the past years a trend of increase is evident.

Year	Number of issued construction permits	Construction permits issued to individuals		Construction permits issued to legal entities	
		Total number	In percentage	Total number	In percentage
2012	2.794	2.010	71,94 %	784	28,06 %
2013	2.269	1.738	76,60 %	531	23,40 %
2014	2.628	1.783	67,85 %	845	32,15 %
2015	3.143	2.022	64,33 %	1.121	35,67 %
2016	3.377	2.153	63,75 %	1.224	36,25 %

Table 2. Holder of construction permit (investor)

As per the available data in the past years (2012 – 2015) spending on construction materials on average per year is 162.433.829 EUR (149.623.301 EUR in 2012, 162.983.642 EUR in 2013, 147.961.122 EUR in 2014 and 189.167.252 EUR in 2015).

The construction industry in the GDP of the country participates with 5.7% in 2012, 7.1% in 2013, 6.9% in 2014 and in 2015 and 7.6% in 2016.

Given these data the issue of creating a legal framework for construction that is efficient and effective and provides adequate level of protection for all parties involved in the process is very important.

The construction process, the basic requirements for the construction, the necessary project documentation for obtaining construction permit, the rights and obligations of the participants in the construction process, the manner of use and maintenance of the construction, as well

as other issues of significance for the construction process are regulated by the Law on Construction[2] and the by-laws enacted based on this law[3].

The construction contract and the liability for construction (contractual and non-contractual) are regulated by the Law on Obligations[4]. The current legislative process is marked by the development of the draft Civil Code of the Republic of Macedonia as a major legislative reform project. In the process of the reform the drafters have in mind the current development in the legal practice and the tendencies in the development on the civil law on international and on EU level.

In addition, the parties may regulate their mutual rights and obligations as per the Special Usages on Construction[5], however as their application depends on the agreement between the parties or emerges from the circumstances of the case (Art. 15, LOO) here they will not be specifically analysed.

A. Definition of construction process, construction contract and its main features

The Law on Construction (LC) defines the ***construction process*** to mean carrying out previous activities, preparation of project documentation, carrying out preparatory activities, building a new construction, extension or superstructure of an existing construction, reconstruction and adaptation of the existing construction that includes ground activities, setting up a building structure, carrying out construction-installation activities and final construction activities, building-in installations or

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2 Law on Construction ("Official Gazette of the Republic of Macedonia" nos. 130/2009, 124/2010, 18/2011, 36/2011, 54/2011, 13/2012, 144/2012, 25/2013, 79/2013, 137/2013, 163/2013, 27/2014, 28/2014, 42/2014, 115/2014, 149/2014, 187/2014, 44/2015, 129/2015, 217/2015, 226/2015, 30/2016, 31/2016, 39/2016, 71/2016 and 132/2016).

3 Total number of 38 by-laws are in force

4 Law on Obligations ("Official Gazette of the Republic of Macedonia" nos. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009, 161/2009 и 123/2013).

5 Sprecial Usages on Construction ("Official Gazette of the SFRY" nos. 18/1997)

equipment, and other activities necessary to complete the whole construction (Art. 2/1/1).

As per Art.649 of the Law on Obligations (LOO) ***Construction Contract*** is a service contract under which the constructor undertakes to build within an agreed time period, in accordance with a certain project, a construction on a certain piece of land, or on such piece of land or existing construction carry out any other construction works, in exchange for a price that the ordering party undertakes to pay him. The proposed amendments of this article under the draft Civil Code, Book III, Law on Obligations specify that the Construction Contract is a specific form of Service(Works) Contract and further details the details the deadlines and the activities to be undertaken by the constructor.

LOO and LC provide for two somewhat different definitions of the term ***construction***. Thus, under the LC, construction means everything that is made by building and is attached to the land, and constitutes a physical, technical-technological and construction whole, including the built installations, i.e. the equipment (Art.2/1/2). The definition under the LOO is more specific and descriptive providing that under construction, for the purposes of this Law it is to be understood buildings, dams, bridges, tunnels, water supply systems, sewage systems, roads, railroads, wells, and other constructions whose making involves large scale and complex construction works.

As for the ***parties to the contract***, the general definition of the ordering party and the construction of the LOO must be read in line with the specific definitions of the LC. While LOO only provides that the parties to the contract are the ordering party -- the one who orders the building (the service) and the construction – the one who performs the work and is entitled to payment, the LC allocated this roles to specific entities. Namely, under the LC an ***ordering party*** may only be the persons who holds the right to construct i.e. and is obliged to pay for it and it is considered as an investor. The LC in Art.13/1 stipulates that holder of the right to construct is any legal entity or natural person who is an owner of the land where the construction is built, a person that has acquired the right

to a long-term lease of construction land, a concessionaire, or a holder of the right to construction easement, a person to whom the owner of the land or the holder of the right to a long-term lease of construction land has transferred the right to construct by a legal act, a person who has acquired the right to construct based on a decision of a bankruptcy judge in the course of sale of the right to construct in a bankruptcy procedure, and a person having acquired the right to construct under law (investor). Further on, the investor by virtue of Art.13/2 the investor is be obliged to entrust the designing, the design audit, the construction and the supervision of the building of constructions to legal entities that fulfil the conditions prescribed by LC. The ***constructor*** under Art.25 of the LC is a legal entity that carries out, i.e. builds the construction or part of it, pursuant to a construction contract concluded with the investor. For carrying out these activities the legal entity should be registered in the Central Registry for carrying out construction and/or construction-craftsman activities, and should hold a constructor license[6].

The LOO does not define the general obligations of the parties to the construction contract except thus the provisions of the Service/Work Contract are applied wherefrom the service provider i.e. the constructor is obliged to carry out the work as agreed and by the rules for the specific service in the specified time. The LC, in Art.29 provides additional obligations, such as to: to carry out construction activities under the obtained license; - carry out construction activities in line with the construction permit, the audited basic and construction project and if a construction permit has been issued based on a draft project in accordance with the Law on Technological Industrial Development Zones and the Law on Industrial and Green Zones, to carry out construction activities in accordance with the construction approval and the draft project; - keep a site diary and a log book when carrying out the construction activities; - pro-

[6] The LC foresees two types of licenses: Type A for first category buildings (Art.57/1) and Type B for second category buildings (Art.57/2) and defines in Art. 29 what are the requirements for them. The licenses are issued by the Chamber of Authorised Architects and Authorized Engineers , in a procedure and under conditions defined by the LC and the relevant by-laws issued by the Minister competent in the works of urban planning (Minister of Transport and Communication)

vide proofs of the prescribed quality for built-in construction products; - implement measures for protection and safety at the construction site, in accordance with the law; - ensure proofs for the origin of the dimension stone, construction sand and gravel (sale and purchase agreement, invoice, certificate of receipt and alike), and - provide an opinion on the built level of mechanical endurance, stability and seismic protection of the construction in the course of the building and an opinion on the built level of mechanical endurance, stability and seismic protection of the construction upon completion of the whole construction system of the construction. The constructor, under Art.30/1 of LC is obliged to assign a construction engineer to manage the building of the construction and to be responsible for the fulfilment of the obligations[7]. In the performance of his obligations the constructor should act with the skill and care as per the rules and standards of the profession.

Although not direct parties to the contract the LC defines who may be the other participants in the construction process, beside the investor and the constructor i.e. the legal entities that carry out the activities related to designing, audit and supervision of the construction. Thus, in accordance with Art.15 of LC, ***designer*** is any natural person who prepares projects for building the constructions and who holds an A and/or B designing authorization[8]. The designer is obliged to prepare the project in line with the designing standards and norms and is responsible for the conformity of the projects with the construction conditions. The designer carries out the designing activities within a legal entity which is registered in the Central Registry of the Republic of Macedonia for carrying out a respective activity and which holds a designing license[9]. ***Supervisory engineer***, as per Art. 33 of LC, is any natural person that

[7] The construction engineer shall be any natural person with appropriate technical profession, holding an authorization for a construction engineer, in accordance with LC. If in the course of building the construction, the constructor assigns several construction engineers, one shall be assigned as a head construction engineer to be responsible for the fulfilment of the obligations defined in Art.29 of LC, as well as for mutual synchronization of the activities.

[8] Art. 17-19 of LC

[9] Art. 16 of LC

supervises the building of the construction, and holds an A and/or B authorization for a supervisory engineer[10]. The supervisory engineer carries out the supervisory activities within a legal entity registered in the Central Registry for carrying out the respective activity and holds a supervisory license[11]. Supervisory engineer cannot be a person employed in the legal entity, contractor of the construction under supervision, or it shall be considered basis for permanent revocation of the authorization for a supervisory engineer.

As per the Law on Construction, Art. 41-a, all of the participants in the construction process (investor, entities for design, audit, constructing and supervision of construction), are libale for the the damage caused to third parties during the performnace of their of their work and contractual obligations. The legal entities for design, audit, constructing and supervision of construction are required to have libality insurance for the damage that could cuase to the investor or third parties. The annual insured amount for the total number of constructions per year, for participants in the construction of first category buildings can not be less than 10,000 euros in denars, and the for the constructions of second category buldings can not be lower than 5.000 euros in denars.

II. Liability for Construction

The constructor has the general duty in the construction to adhere to the technical documentation (which is principle is considered as part of the construction contract), the technical regulations, norms and standards and the rules of the profession. Thus, the constructor guarantees that in the time of the hand-over of the construction the work has been performed as per the contracts, the regulations and the and rules of the professions, and that there are not any defects that hinder the use of the construction., its value or its suitability for the regular use or the use agreed with the contract[12]. The constructor who did not adhere to these

[10] Art. 35-37 of LC

[11] Art. 34 of LC

[12] Слободан Перовић (гл.редактор), *Коментар закона о облигационим односима*, Књига

rules shall be liable for the defects of the construction. The Macedonian legislation regulating the construction contract foresees two types of liability – liability for the defects of the construction and liability for the solidness of the construction.

A. Liability for Defects

The general rules on the defects of the construction defined by the LOO defines are those that regulate the types of defects that are not related to the stability and the solidness of the construction and refer to those that are related to the quality of the so called small works[13]. This liability of the constructor for the construction is regulated as per the rules on liability for defects are provided within the provisions for Service/Work Contract (Art. 660 of LOO). The general rule is the that service provider, in this case the constructor, is liable for the visible defects that the ordering party will notice in the regular inspection that they are obliged to carry out upon the receipt of the work (Art.633/1,2). The constructor, following the inspection and the receipt of the work, will not be further liable for the defects that could have been noticed upon regular inspection, unless they were aware of them and did not notified the ordering party about them (Art. 633/3). Beside the liability for the visible defects, the constructor is liable for the hidden as well. Thus, the ordering party has the right to claim liability for the defects that will appear following the inspection, under the condition they notify the constructor of this as soon as possible but not later than one month following their discovery. This right ceases within two years following the hand-over (receipt) of the work (Art.634). In the process of drafting the Civil Code it was assessed that for the cases of the construction contract, due to the specificities of the work this period is not sufficient for proper protection of the ordering party, so it is proposed the period for liability for hidden defects for construction to be set to three years following the hand-over (provide alternative to Art. 660 by introduction of additional paragraph (2) to the article). Beside the provided deadlines for notification the LOO provides a shorter deadline for obsolesce (limitation) of claiming liability. Namely, as per the rules of liability for defects under the Service Contract (Art. 635) the ordering party duly notifying the constructor about defects in the work performed loses their rights after two years following such notification. However, even after expiry of this time limit, the ordering party shall have the right, provided they have duly notified the constructor about the defects, to object to the constructor's demand for payment and state his demand for reduction of payment due to the constructor and damages compensation. The amendments to this article proposed under the project for drafting Civil Code provide the deadline to be expected to two years following the notification.[14]

The rights of the ordering party against the constructor as regards defects in a construction shall be transferred to all subsequent acquirers of the construction or parts thereof with the exception that they shall not be granted a new time limit for notification and claim but shall have that granted to the predecessor (Art.661 of LOO).

The liability for the defects of the construction in principle means that the constructor guarantees for the manner in which the work is performed and the quality of the materials used, as well as that the construction will function as per the requirements of the contract. This liability is to be understood as liability for conformity with the contract[15] and acting in conformity with the regulation and standards of the profession. Thus the constructor shall be liable even when they had acted upon the ins-

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арута, Београд, 1995, члан 641, стр. 1134 [Slobodan Perović (ed.), *Commentary of the Law on Obligations*, Book Two, Belgrade, 1995, article 641, p. 1134 (reference translated for convenience)]

Jelena Vilus, Borislav T. Blagojević, Gradanskopravna odgovornost izvodača i projektanta, Beograd, 1973, str. 224 [Jelena Vilus, Borislav T. Blagojević, Civil Liability of the Constructor and the Project Designer, Belgrade, 1973, p. 224 (reference translated for convenience)]

[14] The proposed amendments aim to provide for harmonization with Article 5/1 of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees; *Official Journal L 171 , 07/07/1999 P. 0012 - 0016*

[15] See for example the IV.C.–3:104: Conformity of the DCFR [http://ec.europa.eu/justice/contract/files/european-private-law_en.pdf]

tructions of the ordering party[7] when those instructions are contrary to the norms of the profession to which they are obliged in the performance of the work (Art. 628/1[8] in conjunction with Art. 628/2[9]). In addition the constructor shall be liable for the defects that are result of the defects in the projects as they will be obliged to inspect the project and notify the ordering party of any flaws within.[10]

The constructor shall be liable for the defects in building the construction also when the defect is result of the defect in the design project

(Judgment of the Commercial Court of Macedonia, No. 1945/88 from 13.12.1988.)

Further the constructor shall be liable for the defects that arise from the defects in the material that the ordering party provided since as per Art. 625 the constructor is obliged to warn the ordering party of any defects in the material provided by the ordering party which he has noticed or ought to have noticed, otherwise they are liable for damages. When the ordering party instructed that material whose defects have been brought to their attention by the constructor is used, the constructor shall be obligated to act in accordance with the client's instruction, unless it is obvious that the material is unfit for the work ordered or if the use of such material might harm the reputation of the constructor. In these cases the constructor has the right to terminate the contract.

These rules on liability for defects are applicable even in the cases when the work has been performed by sub-constructors. Namely, the LOO stipulates that unless the contract or the nature of the work pro-

[7] As per Art. 622 of LOO the ordering party has the right to give instruction to the constructor.

Art. 625/3:The constructor shall warn the ordering party of any defects in his orders and of any other circumstances of which he was aware or ought to have been aware, that might be of significance for the work ordered or for its timely execution; failing that, he shall be liable for damages.

[8] Art. 626/1. The constructor shall perform the work in accordance with the contract and the rules of the profession.

[9] In this case the project should be considered as order form the ordering party and the rules of Art. 628/2 are to be applied.

vide otherwise, the constructor is not obligated to perform the work personally. When such cases occur, the constructor shall be liable for the persons employed by them to perform the work that they took upon themself to perform as if they performed it personally.[10]

The rights of the ordering party in cases of existence of defects are also governed by the rules of the Service Contract (Art. 632-640).[11] The ordering party duly notifying the constructor about a defect have the rights to demand removal of the defect in due time and to compensation for damages sustained. In the cases when the removal of defects implies excessive costs, the constructor may refuse to carry out such removal, and in such a case the ordering party may choose between a reduction of price or termination of the contract, and have the right to damages compensation. In the cases when the work performed has a defect which makes it unfit for use or when it is performed contrary to the explicit terms of the contract, the ordering party may, without asking for previous removal of defects, terminate the contract and demand damages compensation. When minor defects are concerned i.e. when the work performed has a defect which does not make it unfit for use or when the work is not performed contrary to the explicit conditions of the contract, the ordering party is obliged to allow the contractor to remove such a defect, granting an appropriate time limit for the removal. If the removal is not performed within the given deadline, the ordering party may either remove the defect at the expense of the constructor or reduce price[12] or terminate the contract. The right to contract termination cannot be exercised where the defect is an insignificant one. In each case the ordering party is entitled to damages compensation.

[10] Art. 629 in conjunction with Art. 630 of LOO.

[11] See further Гале Галев, Јадранка Дабовиќ Анастасовска: Облигационо право, Скопје, 2012, стр. 502 [Gale Galev, Jadranka Dabović Anastasovska: Law of Obligation, Skopje, 2012, p. 502 (reference translated for convenience)].

[12] As per Art. 640 LOO, the price shall be reduced by the amount of difference between the value of the work with no defects at the time of entering into the contract and the value that such work would have had at that time with defects.

B. Liability for Solidness of the Construction

In addition to the liability for the defects and specific to the regulation of construction contract, the LOO provides for liability for the solidness of the construction[23]. The solidness of the construction is to be understood to mean that the construction meets the basic or the essential requirements that arise from the legislation and the state of the art in civil engineering. Law on Construction defines (Art. 3) that every construction, depending on the purpose, should meet the essential requirements for the construction anticipated by the parameters of the urban plan or the state, i.e. local urban planning documentation or the infrastructure project and other conditions prescribed by law. These essential requirements for the construction refer to mechanical endurance, stability and seismic protection[24], fire protection[25], sanitary and health protection, protection of the working and living environment[26], protection against noise[27], safety in the use[28], efficient use of energy and thermal protection[29], unobstructed access and movement to and in the construction[3031], and technical characteristics of the construction products used in building. The basic requirements for construction products, their technical features and other technical requirements have to conform to the law and the other regulations on the quality of construction products.

The need for introducing this liability arises from the specificities of the construction as a process where the defects that put into question the stability and the safety of the construction may not appear immediately.

[23] The Law on Obligations of Croatia (*Official Gazette nos. 35/05, 41/08, 125/11, 78/15*) uses the term "essential requirements of a construction" (Art. 633/1)

[24] See Art. 4 and 4-a of LC

[25] See Art. 5 of LC

[26] See Art. 6 of LC

[27] See Art. 8 of LC

[28] See Art. 7 of LC

[29] See Art. 9 of LC

[30] See Art. 11 of LC

[31] In addition the LC defines the requirement's for connection to gas infrastructure (Art. 11-a), providing bicycle area (Art. 11-b) and physical infrastructure for electronic communication networks for high speed transmission (Art. 11-c)

Thus, the need to protect the ordering party i.e. the investor, which is the laic party to the contract[32], is addressed by allocated the liability primarily with the constructor, but also to the project designer and the supervisory engineer, and extending it for the period of ten years from delivery and acceptance of works.

LOO, in Art.633/1 defines that the constructor is liable for any defects in building the construction which relate to its solidness where these defects are detected within a period of ten years from delivery and acceptance of works. The definition provided in LOO refers that the liability is stricter than the one for the defects of the construction that are not related to the defects in quality of the work that endanger the stability and safety , it relates to the building of constructions (not to reconstruction processes for example) and not to temporary objects[33]

The defects in the building of the construction – cracks in the plaster on the facade due to lack of quality of the performed work do not relate to the solidness od the construction, so the constructor is liable for them within the agreed period i.e. in period of 2 years following the delivery and acceptance of the work.

(Judgment of the Supreme Court of the Republic of Macedonia Rev.no. 25/200 from 27.06.2002)

As the construction is inevitably connected to the land on where the construction is erected, , the constructor is liable for any defects of the **land**, detected within a period of ten years from the date of delivery and acceptance of works. Such liability will not exist where geotechnical examination or other appropriate document has shown the land to be suitable for construction and there was no indication in the course of construction that would cause the said documents to be questioned.

[32] Дарко Спасевски, Договорот за градење во македонското и во споредбеното право, Скопје, 2013, стр. 215 [Darko Spaseski, *Construction Contract in the Macedonian and the Comparative Law*, Skopje, 2013, p. 2015 (reference translated for convenience)]

[33] Slobodan Perović, *ibid*, p. 1141

The rules on the liability for solidness are applicable to the ***designer (project engineer)*** in case where the defect in the construction is attributable to a defect in the plan (the project). The liability arises from the specific obligation of the designer to prepare the project in line with the designing standards and norms and their responsibility the project to be in conformity with the construction conditions. The person supervising the work (***supervisory engineer***) is liable when the defect in a construction or land is attributable to defective supervision. The draft Civil Code specifies that the liability of the supervisory engineer may be invoked when they failed to require the defects to be corrected. The existing legislation, neither the proposed amendments within the project for drafting Civil Code, does not foresee specific liability of the designer for the defects of the land.

The LOO in Art.662/6, specifically provides that the liability for the solidness of the construction cannot be contractually excluded or restricted. Although the general rules of the contract law provide for the possibility the parties to a contract to limit or exclude their liability, except in the cases where the damage is caused by intent or gross negligence (Art. 254/1 of LOO) this specific provision prohibits such contractual provision. This means that even when the parties acted negligently i.e. lacked the professional skill and care required for the performance of the contract they will be liable for the damage.

The liability of the constructor, designer and supervisory engineer extends not only towards the ordering party but also towards any other acquirer of the construction. The LOO, sets for them rules on ***notification obligations*** that when not respected may result in ***loss of right***. Thus, the ordering party or an acquirer is obliged to notify the constructor, designer or person supervising the work of any defects within six months from the moment a defect is detected. The failure to provide such notification will result in loss of the right to make claims in respect of such a defect (Art. 664/1). The performance of their right vis-à-vis liability for defects of the constructor or designer shall cease within one year following the notification of the project engineer or constructor by the ordering party or the acquirer of the defect. The working group drafting

the Civil Code noted the omission the article has i.e. the omission of the supervisory engineer and extended the application of the rules for the loss of the right to them as well.

The issue of the liability for solidness of the construction, as we have already seen, is regulated in more detail compared to the regulation of the liability for defects. While in regard to the liability for defects the provisions refer to the rules of the service contract, for this specific liability special rules exists. This is particularly case for the regime on ***reduction and relief from liability.*** The LOO, in Art.665 specifically provides, as general rule, that the constructor shall not be relieved from liability for solidness of the construction if in the performance of specific works they acted in accordance with the requirements of the ordering party. In the cases when they warned the ordering party before performance of a specific work about the threat of damage, their liability shall be reduced and where the circumstances of a specific case so warrant, they shall be relieved from liability.

The liability for the solidness of the construction is ***liability based on fault.*** The potentially liable parties (the constructor, designer and supervising engineer) are each liable to the extent of their fault (Art. 666/1). The question arises what rules will be applicable in the cases when the extent of their individual fault cannot be established. We believe that in these cases the ordering party may seek remedy from them *in solidum*. The rules that have been established for the recourse among the parties, which will be further elaborated, confirm this position. As per LOO, the designer who has also been entrusted with the supervision of the planned work is also be liable for defects in the performed work which are the fault of the constructor, if they could detect them through normal and reasonable monitoring of the work, however they have the right to demand appropriate compensation from the constructor[34]. The person supervising the work is also be liable for any defects in the work performed which are the faults of the constructor, if they could detect them through conscientious supervision of the work, but they have the

[34] Art. 666/2 of LOO

right to demand appropriate compensation from the constructor. As seen, the wording defining the level of diligence required from the designer when they perform tasks of supervision and the supervisory engineer are differ[36]. One could explain such difference with the difference in the position and the professional expertise hence different levels of skills and care needed for the performance of the tasks. On the other hand when the project designer is entrusted with the supervision and agrees to perform it the standard of skills and care to be applied should be one that is relevant for the performance of the tasks. It is our understanding that there is no difference in the standard of skill and care the one or the other should observe. Both of them are obliged to diligently supervise the works so as to prevent any defects in the construction. However, in the further activities related to the drafting of the Civil Code this provision should be revised in light of the case law, if such exists, as well as the current practice and the diligence in the supervision to be more clearly and similarly expresses in both cases. The further analysis of the set rules for liability and recourse raise the question on which rules will be applicable in invoking the liability of the designer and/or the supervisor and in which deadline. For this purpose one should define the nature of the relations between the ordering party and the project designer and the ordering party and the supervisor. In principle, the relation between the ordering party and the project designer in regard to the design related activities is governed by the rules of the Service Contract. When the activities of the project designer go beyond the scope of the design only, and include activities of supervision, decision-making related to the activities at site etc. the contract will be considered as mixed contract with elements from the Mandate Contract and Agency[37] thus the rules regulating them will be applied. In the case of the supervision the liability rules of the Service Contract are applied.

[36] Art. 666, 3 of LOO

[37] Compared to thus the LOO of Croatia requires the same level of diligence (Art. 6[illegible]

[illegible] Vilim Gorenc (gl. redaktor), *Komentar zakona o obveznim odnosima*, Zagreb 20[illegible] str. 954 [Vilim Gorenc (ed.), *Commentary on the Law on Obligations*, Zagreb 2[illegible] 954] reference translated for convenience)]

The LOO provides the constructor with the right to ***recourse*** against the designer and/or the person supervising the work. Thus, when the constructor paid damages compensation due to defects in the work performed they have the right to demand compensation from the project designer commensurate with the defects in the work performed attributable to defects in the plans and/or from person supervising the work the commensurate with the defects in the work performed attributable to defective supervision.

In the cases where the performance of one part of the work was entrusted to third party (sub-constructor) and this person is liable for a defect, the constructor, where they intend to demand compensation from such a person, is obliged to notify that person about such defect within two months from the date he was notified about the defect by the ordering party.

III. Non-contractual liability for construction

The major amendments of the LOO in 2008[38] provided for introduction of specific rules on non-contractual liability for construction. The newly added article 165-l introduces the Liability for Damage from Construction as a special form of strict liability (liability regardless of fault). Thus, the owner of a building or other construction is liable for the damage caused by their destruction or collapse of any part thereof or in any other way. The owner, as in the general rules on strict liability (in the national legislation named as liability for dangerous things and dangerous activities) shall be liable for any damage (material and/or immaterial damage as may be the case) that may occur as result of the destruction or the collapse. The liability in this case, is explained with the rules of the theory of created risk - the person creating the risk for occurrence of damage shall be liable if such damage emerges[39]. Causality in these cases is presumed i.e. it is considered that the damage caused

[38] Law Amending the Law on Obligations ("Official Gazette of the Republic of Macedonia" no 84/2008)

[39] Гале Галев, Јадранка Дабовиќ Анастасовска, ibid. стр. 599

results from dangerous things thing or activity, unless it has been proved that they have not caused the damage. The owner is exonerated from liability if they prove that the damage was caused by force majeure[40] or the fault of the injured party. This specific rule follows on the general rule of the strict liability that the owner shall be liable for damage resulting from a dangerous thing (Art. 160, LOO) unless they can prove that the that the damage results from another unforeseeable cause not incident to the thing, which could not be prevented, avoided or eliminated (Art. 163/1). The general rules also provide that the owner will be released from liability fully if they prove that the damage has occurred exclusively due to an action of the injured party or a third party, that could not have been foreseen and the consequences of which could not have been avoided or eliminated; or shall be partly released from liability if the injured party has partly contributed to the occurrence of damage.

In the same time, the owner has the right to seek compensation from persons to whom fault could be attributed for the occurrence of the damage. Such persons would be the persons responsible for building the construction and their liability will be established as per the rules for liability under the Construction Contract. Namely, the LOO, regulating the non-contractual liability for construction, specifically defines that these rules do not preclude joint and several liability to the ordering party and contractor working on the property for the damage suffered by third parties.

The damaged party has the right to seek material damage compensation, including pure economic loss and loss of profit[41], as well as immaterial damages (Just Pecuniary Compensation)[42] in the event of violation of personality rights (right to life, to physical and mental health, reputation, honour, dignity etc.)[43].

[40] As per LOO *force majeure* is an external event which could not be predicted, avoided or prevented and for which none is liable (Art. 126, Art. 252 etc.).

[41] Art. 178 of LOO

[42] Art. 189 of LOO

[43] Art.9-a of LOO

Conclusion

The legal regime on the liability for construction in the Macedonian law is governed, primarily by the rules of the Law on Obligations and the Law on Construction. As the analysis shown, the national legislation provides for adequate framework for the protection of all interested parties in the construction process as well as third parties. The process of drafting a Civil Code of the Republic of Macedonia, provide for opportunity for critical analysis of the exiting provisions and amendments that are expected to further clarify the different roles and responsibilities of the parties to the construction contract and other participants in the process. The regulation of the contractual liability for defects in the national legislation depends of the type of the defect and the existing rules are sufficient to provide remedy in the potential cases. The introduction of the new rules for non-contractual liability for construction provided explicit and further protection of third parties.

Summary

The article deals with the issue of the contractual and non-contractual liability related to construction works in the Macedonian law. It analyses the regime as set in the Law on Obligations and the Law on Construction.

The Law on Obligations defines the rights and the obligations of the parties to the contract, among which special attention is paid to the liability for defects. Law on Construction defines specific obligations of the participants in the construction process. Therefore the author reviews the cases of liability of non-performance or defective performance of the contract and the specificities of the liability for the defects of the construction and liability for essential requirements of a construction. In regard to the first issue the author provides for the general rules of the liability for non-performance and the defective performance of the contracts under the Macedonian legislation. In regard to the liability for the defects of the construction the legislation provides, thus the author

analyses the special and general rules for the liability. Namely, in the case of defects the liability is governed both by the special provisions of the Law on Obligations regulating the construction contract and the general provisions regulating the contract for services. The Macedonian legislation, further regulates the liability for defects in the construction which relate to the fulfilment of essential legally prescribed requirements for a construction and defects of the land where the construction was erected, so the author examines the conditions for liability of each of the (potentially) liable persons and the possibilities for the limitation and the exclusion of the liability.

The author also examines the non-contractual liability for damage arising out of construction from the perspective of the liable person(s) and the conditions for liability which under the Macedonian legislation is a strict liability. The article reviews how this liability is connected to the liability under the construction contract.

The article also provides for a review of the remedies available under the national legislation in the cases of liability for construction works and construction.

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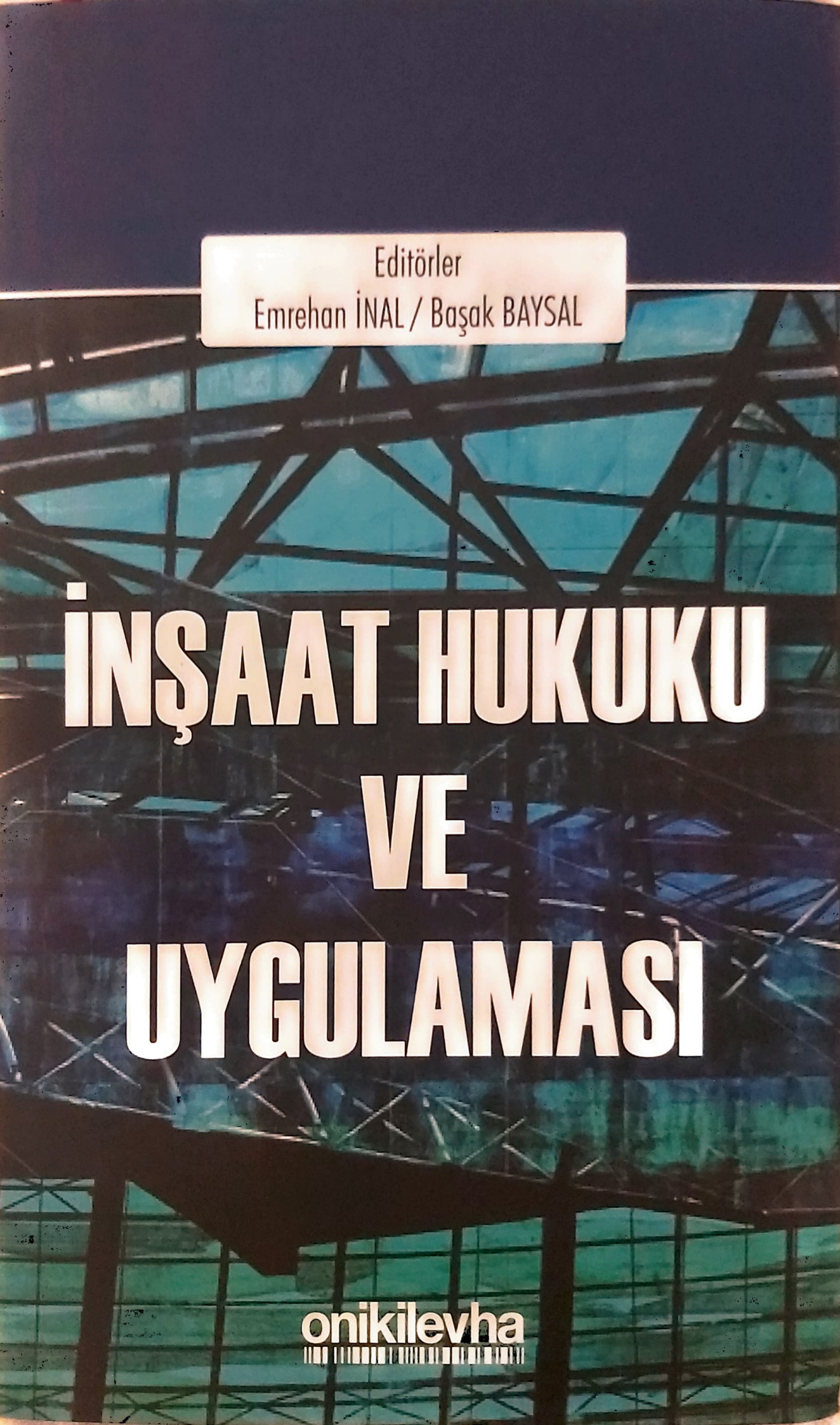

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