LEGAL AWARENESS AS A SUBJECTIVE FACTOR OF ENGINEERING

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ABSTRACT

According to Russian legislation, engineering is a complex of engineering-consulting services that deals with production and product (work, services) sales preparation, preparation of construction and operation of industrial, infrastructural, agricultural and other facilities, pre-project and project services (preparation of technical-economic feasibility studies, design and construction development and other similar services). Legal consulting (support) in the field of design and construction of buildings and structures is a special branch of engineering which isn’t sufficiently researched. The quality of legal support for technical activities in many ways depends on the subjective factor (legal awareness). The deformation of the professional legal awareness of subjects can generate defects in the technical and legal documentation, errors in the application of the law, inability to adequately evaluate the consequences of professional activity. The connection between the quality of engineering and content of legal awareness has been analyzed on the example of equity participation in construction.

Key words: Professional Legal Awareness, Engineering, Construction, Legal Advice, Legal Support, Engineering - Consulting Services, Legal Awareness, Culture of Lawfulness, Lawyers, Legal Activity, Deformation of Legal Awareness, Defects.


1. INTRODUCTION

To determine the applicable law in the most accurate way, in every specific situation in the field of design and construction, lawyers should analyze the content of legal acts thoroughly, examine the judicial practice. Sometimes the complexity of the interpretation of legal rules,
instability (constant change) of construction legislation are massive and affect the interests of many subjects.

Russian and foreign authors often note the ambiguity of the term “engineering”. The Tax Code of Russian Federation defines engineering as construction and consulting services that deal with production and product (work, services) sales preparation, preparation of construction and operation of industrial, infrastructural, agricultural and other facilities, pre-project and project services (preparation of technical-economic feasibility studies, design and construction development and other similar services) [1].

In Russia, a national standard GOST R 57306-2016 “Engineering. Terminology and basic concepts in the field of engineering” exists [2].

In practice, a separate branch of such services is legal advice in the field of design and construction of buildings and structures.

2. LITERATURE REVIEW
In the modern period, the technical aspects of construction are actively researched [3, 4, 5] but the importance of technical and legal consulting and the role of the subjective factor (legal awareness) for the construction process are underestimated.

The Oxford English dictionary defines engineering as a “branch of science and technology related to design, construction, and use of engines, machines, and structures” [6].

In the practical legal field, the term “engineering” is sometimes used [7, 8] to describe certain actions: financial development [9], social engineering [10] 1, development of business processes - thus, the term “engineering” is common throughout the world in many areas [11, 12].

Construction and consulting services (engineering) in Russia depend on the content of the law, any changes in the legislation or practice of application of the regulations entail significant additional costs for developers and investors.

3. RESULTS
In Russian judicial and arbitration practice, developed before the adoption of The Federal Law “On Participation in Shared Construction of Apartment Buildings and Other Real Estate and on Amending Certain Legislative Acts of the Russian Federation” [13], contracts for financing of construction were often qualified as contracts for simple partnership (contracts for joint activity) [14].

However, this court practice could not be considered universal. In some cases, the courts have rightly pointed at the inconsistency of this kind of partnership [15].

Moreover, the views of the higher courts were completely different – the Supreme Arbitration Court of the Russian Federation qualified equity participation in construction as a partnership agreement, and the Supreme Court – as a contract [16]. Such agreements were often qualified as special agreements not provided by the Civil Code of Russia [17]. Only in 2004, the law which determined the legal nature of the contract of equity participation in construction defining it as an independent type of contracts was adopted.

(build) by itself and (or) with a third party’s participation an apartment building and (or) another real estate structure and after receiving the permission of commissioning of these structures to transfer the corresponding building of shared construction to the participant of equity construction, and the other party (participant of shared construction) agrees to pay the price stipulated in the contract and to accept the shared real estate construction object if the permission to commissioning of the apartment building and (or) other real estate structure had been received.

The analysis of the definition of the contract on participation in the shared construction shows that this contract is bilateral, compensated and consensual.

4. DISCUSSION

An interesting issue is the question of shared construction in relation to public contracts. From the definition given by the Civil Code of the Russian Federation, two main features of public contracts can be distinguished [18].

Firstly, the mandatory participant is a commercial entity acting as a seller, contractor or executor. In this case, such party is represented by a developer, but in accordance with the law on shared construction, it can be any legal entity, regardless of its legal form, that is, any non-profit organization too. The second attribute relates to the nature of the activities carried out by a commercial organization. This activity is connected with the execution of obligations under the sale of goods, performance of works and rendering of services in respect to everyone who applies for the commercial entity's services, i.e. the activities should be made public. According to the analyzed agreement, the mentioned obligation is not registered directly for the developer. In addition, the developer always has the opportunity to refuse to enter the contract on the basis of the apparent insolvency of the applicant. Moreover, when concluding a public contract, the price and conditions are supposed to be the same for all applicants, in practice, the developer always makes concessions and reduce the price for a more profitable counter-party (for example, a counter-party that wants to buy a whole floor).

Thus, even if a citizen is a participant in the equity construction, it is impossible to call such contract public.

In all above-mentioned and similar cases, where the subjects and ideological components of ordinary legal awareness are not sufficiently rational, it is necessary to connect the elements of professional and doctrinal legal awareness for the quality of legal consulting services to support construction.

A clear confirmation of the involvement of separate components of legal awareness in some areas of law enforcement are the decisions of the Plenum of the Supreme Court of Russian Federation, which explain how to implement the law in the most standard situations at the theoretical level.

The highest courts develop the programs of the legal behavior of a company, time sequence of their implementation, performance of legal actions and operations, forecast of legal behavior and assessment of its current state.

Generalization of the past and future makes it possible to predict the prospects of the development of engineering services and construction sector, to prevent to a certain extent the legal conflicts in the field of design and construction, to reduce the possibility of erroneous law enforcement. This, in turn, provides an opportunity to improve professional activities.
So, the prospects are already outlined that in Russia the shared construction of real estate will be limited starting from July 2019. In fact, a different legal regulation of the construction sector will be established, which will affect the content of engineering services. Such measures are associated with a huge number of deceived investors who invested in housing construction and faced bankruptcy of developers.

It turns out, that over the past 30 years in Russia the attitude of the state to shared construction has changed dramatically twice – from an attempt to regulate it to a projected total ban [19].

The legal awareness of subjects of construction activity has to be formed based on deep legal generalizations, patterns and social researches of legal activity, helping to analyze a huge array of information in the construction sphere, to monitor the last changes and to expect consequences of change in the legislation. Doctrines, the developed legal concepts can help subjects of construction find possibilities to increase the efficiency of professional activity, possibilities to eliminate the defects in design and construction.

Knowledge of the rules of the legal technique developed by jurists promotes the reduction of defects in the technical construction documentation. A legal technique is a set of principles, rules, methods, means and receptions used for high-quality writing and execution of texts of the technical and project documentation.

For example, construction documentation has to meet the general standards of the modern official state language. Functional and stylistic features of the text assume an official character, maximum accuracy, economical use of language means. It is important that the conditions of technical and legal documents didn’t contradict the laws of logic. Following certain rules of use of details and paperwork in general and also its structural parts, use of additional structural and semantic elements, observance of requirements for legal and construction terminology, such as unity, semantic unambiguity, stylistic neutrality, systematicity of terminology, prevalence and general recognition, stability, availability, correctness are necessary.

5. CONCLUSIONS

The wrong interpretation of the law leads to the wrong conclusions about the rights and duties of subjects of design and construction activity, to defects of technical documentation.

Necessity and specifics of interpretation predetermine features and possibilities of use of legal and technical tools in construction, engineering. Along with the particular legal representations by means of which formally fixed legal instructions are understood, legal awareness of subjects of construction activity has to include the ideas of the right in general, its principles and properties.

Thus, defects of professional activity (mistakes and offenses), the legal conflicts are forms of manifestation of deformation of professional legal awareness that affect the quality of construction activity, influence the end result and activate deformation of mass legal awareness of the population.

REFERENCES

Legal Awareness as a Subjective Factor of Engineering


