

PECULIARITIES OF REGULATING CONSTRUCTION BUSINESS IN GEORGIA

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Abstract

Since 2004 Georgia has been carrying out radical reforms to regulate the construction sector. After the cancellation of the Ministry of Architecture and Construction of Georgia the regulation of the field was delegated to the Spatial Planning and Construction Policy Department at the Ministry of Economy and Sustainable Development of Georgia. In the process of regulating construction business, one of the most significant places is attributed to the construction quality control which means either the state or the private customer should set strict supervision on the architectural-building business considering the essence and specificities of the construction production. Developed countries have obtained and possess the complex system of quality assurance and control in the sphere of construction along others. It covers three stages: supervision of the state, of local authority and of insurance companies.

Keywords: Construction sector, building quality assurance, construction supervision, construction code of conduct, technical regulations of building

Introduction

The development of construction as of a business in Georgia starts from the 90-ies. Since the announcement of the country's independence regulatory legal-normative database of construction business has been multiply changed. Even though several tenfold regulatory documents were issued, the efficient regulation of the construction sector still remains to be rather urgent. According to the Constitution of Georgia each citizen is empowered to live in the environment secure and safe for life. The latter directly indicates to the necessity of efficient regulation of the branch. On the other hand regulating building business is a complex and multisided process. Respectively, along with the direct branch regulatory legislative normative acts, construction activities are regulated by the other legal acts getting over the borders of building business spreading on the scales of the whole economy of the country. It is a fact that an incomplete legislative-normative database not only hinders the development of construction sector but creates meaningful problems for customers. The existence of national technical regulations in building is one of the significant documents regulating construction business in any developed country. Engineering-technical and technical-economic type decision making in building should be based on technical parameters elaborated and recognized prior. Therefore, insufficient number of national technical regulations for Georgian building sector importantly impedes the process of reaching high construction quality in the country.

Nowadays construction sector in Georgia is regulated by the following legislative-normative acts⁷¹: the Law of Georgia on “Spatial Arrangement and Municipal Construction”; “Product Security and Free Circulation Code of Conduct”; the Law of Georgia on “Construction Business”; the Law of Georgia on “Architectural Business”; orders of the President of Georgia; =45, 57, 261 resolutions of the Government of Georgia; orders of the minister of the Ministry of Economy and Sustainable Development of Georgia; General Administrative and Procedure Codes of Conduct; Administrative Code of Georgia; the Tax Code of Georgia; the Law of Entrepreneurs; Rule of Law Enforcement and Proceedings of Georgia, etc. As we see, the list of legislative-normative papers regulating construction business in Georgia is rather various and spacious. In most cases their contradictory nature and inner cause/effect complex links prevent the decent regulation of the field preventing the development. Thus, it is urgent to codify construction regulatory-legislative normative database in the so called construction code changing the specificity of the sector regulation enabling the efficiency of the administration process.

Building quality assurance and control takes an important place in regulating construction business which means either the state or the private customer should set strict supervision on the architectural-building business considering the essence and specificities of the construction production. Implementation of the supervision on architectural-building activities, as a rule, covers the control of each phase of the construction process. The control is imposed on technologies as well as materials, constructions, machines and mechanisms, qualification of the staff in order to exclude mistakes from the very outset, the value of which is often the human life.

Developed countries have obtained and possess the complex system of quality assurance and control in the sphere of construction along others. The process of construction quality control covers three stages: supervision of the state, of local authority and of insurance companies. It should be noted that the control of building quality is performed by different schemes in different countries. For instance: in Belgium and Czech Republic state supervision is held only during the construction of the sites of particular importance, in other cases local building control bodies apply to their competence. Besides, the construction quality is exclusively controlled and supervised by the customer directly. As a rule, the state supervision of the construction is financed from the government budget, while the customer supervision is up to their personal budget. In developed countries special attention is paid to insurance companies in the process of construction quality control performance since in most of them the construction production quality and the entire site construction are insured. Respectively, insurance companies are actively engaged in construction quality control. The mentioned supervision system is successfully practiced in the USA and Japan. In most European countries (Germany, Denmark, Norway, England) the construction quality control is supervised mainly by local construction inspection⁷² (see chart #1).

⁷¹ www.economy.ge - at the Ministry of Economy and Sustainable Development of Georgia

⁷² **Building Regulations**, Explanatory Booklet. Office of the Deputy Prime Minister (ODPM) Publications PO Box 236. Wetherby, West Yorkshire 2005.

Chart #1
Construction Regulator in Developed Countries⁷³

Country	State Supervision Body
Poland	1. Main Inspection of Construction Supervision at the Ministry of Planning and Construction (started in 2006 instead of the Ministry of Construction); 2. Bodies of Architectural-Building Supervision of Administrative Units; 3. Supervision Bodies of Particular Construction (perform supervision on defense, national security, water management, navy, transportation and mining construction sites)
Lithuania	The Inspectorate of State Territorial Planning and Construction of the Ministry of Environmental Protection
Latvia	State Construction Inspection of the Ministry of Economy (until 2003 the inspection would be included in the Ministry of Environmental Protection and Regional Development)
Sweden	Housing, Construction and Planning National Council of the Ministry of Environmental Protection

Since 2004 Georgia has been carrying out radical reforms to regulate the construction sector. After the cancellation of the Ministry of Architecture and Construction of Georgia the regulation of the field was delegated to the Spacial Planning and Construction Policy Department at the Ministry of Economy and Sustainable Development of Georgia which became obliged to perform the following main functions: elaboration, implementation, administration and monitoring of the policy in spacial planning and construction activities sphere; initiation, organization, analysis, inculcation and performance monitoring of of the regulatory legislative-normative documents in the sphere of spacial planning and construction activities; support of new technologies, promotion and introduction of construction materials considering contemporary requiremenets in the field of construction business; etc. Moreover, a legal entity “Agency of Technical and Construction Supervision⁴” has been operating in the system since September 24, 2012. Its functions include⁷⁴: permit the construction of the sites of particular importance on the whole territory of Georgia; exploit construction complete sites; elaborate construction project norms, rules, technical regulations and standards within the scope of its competence; enforce the administrative responsibility on the construction law breakers, etc. Architectural services were formed on the levels of local municipalities entitled to manage architectural-urban construction processes on the territories stated by administrative borders of certain municipalities; also to handle the unified policy of coordination and regulation of building activities; to state the terms for utilizing the land for the construction according to the stated rule; to settle architectural-construction projects; to issue construction permit, etc. The resolution №57 of the government of Georgia about ”Issuing Construction Regulations and Permit Conditions”, 2009, March 24 regulates the processes of permitting construction, execution of permit terms and recognition of the validity of buildings on the territory of Georgia. According to the processes in Georgia there exists the three-phase procedure of the construction permit⁷⁵ (see scheme #1).

⁷³ www.parliament.ge, materials of Parliament of Georgia.

⁷⁴ tacs.gov.ge - Agency of Technical and Construction Supervision

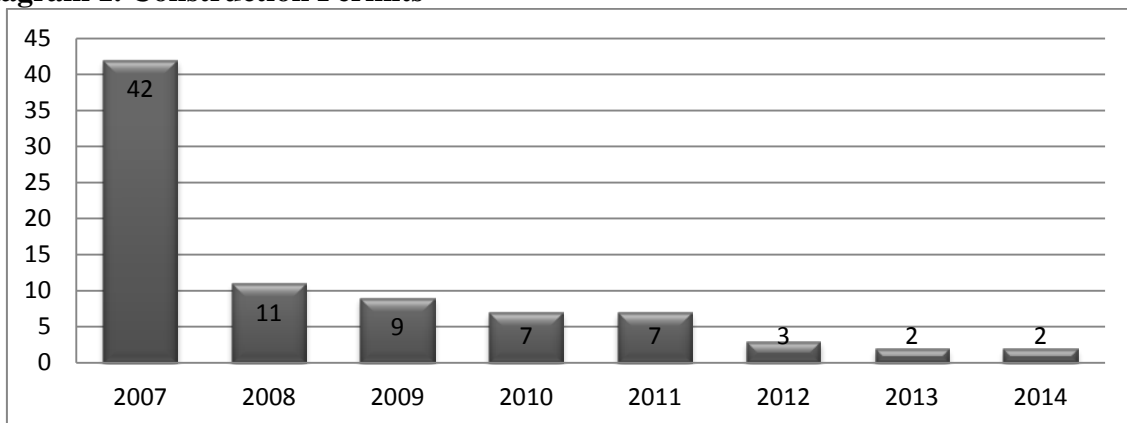
⁷⁵ Resolution №57 of the government of Georgia about ”Issuing Construction Regulations and Permit Conditions”, 2009, March 24.

Scheme 1. Procedures of Construction Permit in Georgia



The procedure of getting construction permit in case of having all the essential documents lasts for 50 days: 30 days for the first stage and 10 days for the second and third for each. Additionally, the country is annually progressing in the easiness and availability of getting the construction permit. Referring to the joint annual research of the World Bank and International Finance Corporation **“Doing Business”** in the year 2014 out of 189 countries Georgia is taking the second position in terms of the easiness of getting the construction permit. In 2007 Georgia would possess the 40th place in the same rating. However, based on the carried out reforms the country’s position would promote yearly⁶ (see diagram #1).

Diagram 1. Construction Permits⁷⁶



The existence of national technical regulations in any developed country is a significant document regulating construction business. Engineering-technical and technical-economic type decision making in building should be based on technical parameters elaborated and recognized prior. This would happen always and everywhere in construction sphere, but in modern civilization conditions the mentioned parameters consider many factors. What is more important, decision making is regulated by regarding these factors. Currently, construction in Georgia is regulated by using Russian technical data (СНиП), since only the part of national regulations is practiced which is not surely sufficient. Obviously, Russian “SNIPS” disregard the influence of local natural conditions, geopolitical reality, territorial settlement and lifestyle on economic development, formation of healthy environment and security. Foreign experience, having different conceptual approach towards the issue, should be considered in this respect. In particular, the state does not work on all the standards of construction announcing it to be obligatory, it only states technical regulations

⁷⁶ <http://www.doingbusiness.org/reports/global-reports/doing-business-2014>

counting on the country's security, technical-economic progress, state and private interests. Definite standards can be set within the frames of the stated technical regulations by certain firms or different competent organizations or structures. The part of the stated standards can be for mandatory as well as for optional use thus providing their authors and owners with certain extra reviews since they become commercial bodies. Consequently, based on the international experience there are two different models of technical regulating of construction. The basis of technical regulation is the legislation and national development programs in the USA, Europe and civilized countries of Asia, while in Russia and CIS countries the same basis is the recommendations made on the background of collective contracts between those countries which in most cases do not consider national legislation and developing trends. Incomplete legal-normative database not only hinders the development of construction sector but creates meaningful problems for customers. Notwithstanding recent political-economic events of the country the construction sector is still being developed with more or less dynamics. Majority of the population able to pay is actively involved into the country's construction business; they have their financial means mainly invested in housing. In Georgia the rights of housing and construction customers are not preserved as customers in fact are not aware of their legal rights; construction sector is not provided by the necessary contemporary standards and technical regulations; there are no insurance mechanisms to protect customers' rights; contract relationships between the consumer and builder are not regulated, etc. We should note the particular urgency of the topic on the premis of signing European Union Association Agreement. The fact implies the protection of customers' rights on an appropriate level along other various requirements. The above-mentioned problem needs to be studied with the complex approach thus fostering the formation of united policy in the sphere of customers' rights enabling each consumer to stand for their legal rights better.

Conclusion

Even though Georgia has many years of experience in developing construction business, the sector still needs to have perfect legislative-normative database adjusted to the national interests. Although, the country accepted a lot of legal-normative acts in recent years to improve construction regulation, the current reality does not indicate any improvement.

- It is a fact that the abundance of legislative-normative acts regulating construction in Georgia stipulates the difficulty of their use, because of which in 2004 the Parliament of Georgia issued the resolution on “Construction Code of Conduct of Georgia” but the resolution has not been fulfilled so far. The project of “Spatial Planning and Construction Business Code” having the mission of playing a significant role in the efficient regulation of the sector is still being under the reviews and discussion;
- Currently, construction in Georgia is regulated by using Russian technical data (СНИП), since only the part of national regulations is practiced which is not surely sufficient. Owing to the wrong methodology and incorrect approach towards technical regulation the latter formed as a problematic issue in Georgia;
- The Spatial Planning and Construction Policy Department at the Ministry of Economy and Sustainable Development of Georgia determines the policy of construction sector development while supervision activities are executed by the “Agency of Technical and Construction Supervision”;
- On the scales of separate towns and regions for the regulation of construction processes the architectural local services are created within local urban bodies and their basic purpose is to provide fullscale management of architectural-construction processes in their administrative frames;

- Developed countries have obtained and possess the complex system of quality assurance and control in the sphere of construction covering three stages: supervision of the state, of local authority and of insurance companies;
- Referring to the foreign experience we should inculcate a new system of elaborating technical regulations and standards in construction approved by the state while definite standards can be set within the frames of the stated technical regulations by certain firms or different competent organizations or structures. Functioning and the utilization of standards will be either mandatory or optional;
- Georgia does not use the potential of insurance companies to control construction quality. There are no legal mechanisms and construction companies do not insure the building unless rare exceptions. The reality makes a customer particularly vulnerable having no guarantee proving construction quality or the guarantee of the construction to be completed.

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