

Turība University

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PROMOCIJAS DARBA KOPSAVILKUMS

SYNOPSIS OF THE DOCTORAL THESIS

ATBILDĪBA ĒKU BŪVniecībā

RESPONSIBILITY IN CONSTRUCTION

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The defence/presentation of the doctoral thesis shall be held at the public sitting of the doctoral council of Turība University for Law Science at 12:00, on 8.June 2022 at the Faculty of Law, Turība University, Graudu street -68, Riga, Room No. C205.

The doctoral thesis and synopsis can be reviewed at the library of Turība University, Graudu street 68, Riga.

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1. THE SCIENTIFIC NOVELTY OF THE RESEARCH is expressed in the fact that the author's research is the first such work of this scope in Latvia, with the aim to assess the responsibility of construction specialists and officials involved in the construction process, as specified in the regulatory enactments in force on 1 October 2014, as well as to examine how these regulatory enactments are being implemented in practice, or whether enough has been done to determine and define the responsibility of each person involved in the construction process.

The scientific novelty of the research lies both in theoretical and practical aspects. The theoretical role of the doctoral thesis is reflected in the analysis of the concept of responsibility and in analysing and systematising responsibility under the legislation, providing theoretical insights on the possibilities for improving the legal framework and on the further development of responsibility in construction. On the other hand, the **practical application** of the doctoral thesis is in identifying the challenges of the legal framework and its enforcement practice, by proposing solutions and legislative amendment proposals aimed to improve the efficiency of the institute of responsibility. The doctoral thesis in general provides a comprehensive insight into responsibility for construction and its analysis, but it does not offer a complete overview of these issues, as the study is limited both by the scope of the subject and the time of the study. The author gives a view on this issue and the related problems, based on both the study carried out and the practical experience, and calls for the issue to be assessed and considered on an individual basis by each participant or person in construction.

2. AIMS OF THE RESEARCH - to analyse the doctrine and practice of law sciences, as well as to analyse scientific materials, to develop amendments to the regulatory enactments governing construction and to offer improvements to their application in order to determine and define more precisely the responsibility of those involved in building construction.

TASKS OF THE RESEARCH, to achieve aims are:

- 1) to carry out an overview of historical regulatory enactments and scientific studies related to responsibility in construction binding on the subject, to compile and analyse the information obtained;
- 2) to clarify the meaning of the concept of responsibility in construction and to compile the information obtained;
- 3) to analyse responsibility of the participants of the construction process, which is specified in the regulatory enactments regulating construction;
- 4) to determine the responsibility of the authorities controlling the construction, by identifying the officials who perform construction control and what decisions they take;
- 5) to examine the activities of the certification institution, which has certified the construction specialists, activity and decisions regarding violations of construction specialists;

6) to collect and analyse legal liability in relation to activities or omissions performed in the construction process by the participants of the construction process and the authorities controlling the construction, as well planning construction policy;

7) to summarise and analyse the findings, and to put forward proposals for amendments to the regulatory enactments governing construction in order to offer improvements to their application, by specifying and defining the responsibilities of persons involved in building construction.

3. HYPOTHESIS: “The definition of responsibility in the regulatory framework for construction is not clear, unambiguous or sufficient enough” confirmed partially:

- the definition of responsibility for construction is detailed, setting out in detail the responsibility, responsibilities and rights of each participant of the construction process and is clearly worded;

- the definition of responsibility for construction is not clear: it is governed by the Construction Law¹ and by the Cabinet Regulation No. 500 of 19 August 2014 “General Construction Regulations” (hereinafter – General Construction Regulations)² and, in some cases, by the Cabinet Regulation No. 529 of 2 September 2014 “Construction Regulations of Buildings” (hereinafter – Construction Regulations of Buildings)³. Both inconsistencies and overlapping of norms have been identified in the definition of responsibility. On the other hand, building authorities have to apply and compare mutual obligations governed by a number of regulatory enactments to carry out comprehensive construction controls;

- the definition of responsibility in construction is not sufficient enough, both correction of errors and prevention of inconsistencies need to be addressed and amendments need to be carried out in line with the proposals put forward in this doctoral thesis;

- neither the Construction Law nor the General Construction Regulations provide for sanctions for failure to fulfil the rights or obligations of the participants of the construction process, except *administrative liability* for unauthorised construction, which do not apply to non-compliance with the rights or obligations specified for the participants of the construction process; a construction permit may be revoked by the building authority in specified cases, but it only concerns the initiator of the construction; to ensure the responsibility of construction operators other regulatory enactments are applicable, such as: Section 19, 19.¹, 19.² and 19.³ of the Construction Law regulate the legal responsibility of the participants in the construction process

¹ Construction Law. Adoption: 09.07.2013. Publication: Latvijas Vēstnesis, 146, 30.07.2013. OP No.2013/146.1. Last amended: 19.08.2021.

² Cabinet of Ministers Regulation No.500, adopted 19.08.2014. “General Construction Regulations”. Publication: Latvijas Vēstnesis, 191, 26.09.2014. OP No.2014/191.3. Last amended: 28.01.2021.

³ Cabinet of Ministers Regulation No.529, adopted 02.09.2014. “Construction Regulations of Buildings”. Publication: Latvijas Vēstnesis, 194, 01.10.2014., OP No.2014/194.4. Last amended: 11.01.2022.

and the participants of the construction process shall be liable to each other in accordance with the contracts entered into (*civil liability*); the participants of the construction process in conformity with regulatory enactments and contracts entered into shall be responsible for a result of their actions or failure to act (*civil liability insurance, the institution that has issued the construction practice certificate for construction specialist, competence*); criminal law rules are applicable to violations of construction provisions for which *criminal liability* has been determined in section 239 of the Criminal Law; if a building inspector, does not fulfil or does not fulfil properly the duties, which are specified in Paragraph 19.² of Cabinet Regulation No. 499 of 19 August 2014 “Regulations Regarding Building Inspectors”, a local government or an institution, which carries out the functions of the building authority (employs the building inspector), shall initiate and decide regarding the *disciplinary liability*.

4. RESEARCH METHODS USED: the *systemic method* used for analysing and determining the interconnection between legal norms; the *historical method* used to study and analyse historical elements of the norms on the objectives of legislative action, by clarifying what the legislator wanted to achieve by adopting the new Construction Law; the *teleological method*, analysing both the meaning and purpose of the regulatory acts and their justification; the *analytical method* used for analysing legislation and case law, papers of researchers from different sciences and published materials; the *comparative method* used for analysing the sources of law, including exploring the legal framework and practices of other countries, as well as legal doctrine and comparing historical and existing legislation; the *inductive method* used as part of the study, drawing conclusions and investigating components forming responsibility in construction; the *deductive method* used for separating and detailing individual elements from general aspects, as well as for assessing the knowledge and legal provisions of different researchers; the *observatory method* used for observing and analysing the speeches of officials related to the subject and also of judges (interviews, press conferences) in order to obtain up-to-date and accountable additional information related to responsibility in construction.

5. RESEARCH LIMITATIONS

The subject of the study is limited, *firstly* by looking at the issue of responsibility for building construction, because according to Annex 1 to the General Construction Regulations, buildings are classified under buildings and engineering structures⁴ and classified in three groups, which is a very large volume of study, *secondly*, the study period was limited until 17 January 2022 to limit the impact of the legislative amendments relating to the subject on the content of the study, *thirdly*, the doctoral thesis does not analyse administrative offence proceedings in the field

⁴ Cabinet of Ministers Regulation No.500, adopted 19.08.2014. “General Construction Regulations”. Publication: Latvijas Vēstnesis, 191, 26.09.2014. OP No.2014/191.3. Last amended: 28.01.2021. Annex 1.

of construction and the related case-law, since this issue is extensive and worth a separate study. *Fourthly*, the doctoral thesis does not investigate the practice of building authorities or authorities carrying out the functions of the building authority taking into account the fact that the author has not received such authorisation and the regulatory enactments for the protection of personal data as well. The case-law has been investigated in relation to the responsibility in construction of the participants of the construction process. *Fifthly*, the study is limited by limited access to other national judicial practices that are not publicly available.

6. THE LENGTH OF THE DOCTORAL THESIS AND ITS STRUCTURE

The doctoral thesis contains 168 pages. The doctoral thesis consists of an introduction, five chapters with sub-chapters, conclusions and recommendations. *The introduction* shows the scientific novelty of the research, aims and tasks of the research, hypothesis of the study, research methods used and research limitations, theoretical base and structure, dissemination of the doctoral research results – scientific publications and conferences, where the results have been presented. In *Chapter 1* of the doctoral thesis, the author clarifies the concept of responsibility and responsibility for construction, analyses the responsibility of participants of the construction process in the Construction Law⁵ 1995 and in the Construction Law⁶ 2013. The author examines the approval of projects and calculations in the 20th century and the progress towards the modelling of building information in the 21st century, as well as the ethics of the construction industry. In *Chapter 2*, the author examines the liability of the participants of the construction process, analyses the civil liability insurance contract of the participants of the construction process and the decisions of the institution that has issued the construction practice certificate for the construction specialist. In *Chapter 3*, the author examines and analyses civil liability in relation to restrictions on the right to use of buildings, liability of the owner of the building, and contractual and legal liability. In *Chapter 4*, the author examines and analyses construction control to ensure responsibility by analysing both the competence of the authorities controlling the construction, ensuring responsibility and the duties, rights and disciplinary liability of the officials performing construction control. At the same time, administrative decisions and the obligation to prevent arbitrary construction, contestation of an administrative act or actual action and a claim for compensation, as well as enforcement of decision under an administrative act - have been studied and analysed as well.. In the last chapter - *Chapter 5*, the author examines and analyses the criminal liability of construction by investigating both the criminal case of the Zolitude tragedy⁷ and the

⁵ Construction Law. Adoption: 10.08.1995. Publication: Latvijas Vēstnesis, 131, 30.08.1995.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 20, 19.10.1995. Last amended: 13.06.2013. (No longer in force).

⁶ Construction Law. Adoption: 09.07.2013. Publication: Latvijas Vēstnesis, 146, 30.07.2013. OP No.2013/146.1. Last amended: 19.08.2021.

⁷ Rīgas pilsētas Pārdaugavas tiesas 18.02.2020. spriedums krimināllietā No.11511002713, archive No.K68-0025-20/20. Viewed: 17.01.2022. <https://tiesas.lv/Contents/Item/Display/5939>

criminal proceedings and the consequences connected with the breach of construction rules. The author's conclusions and recommendations have been summarised at the end of the doctoral thesis.

7. SHORT DESCRIPTION OF CONTENTS OF THE CHAPTERS OF THE DOCTORAL THESIS

Chapter 1. “Responsibility in Construction”. The content of the first chapter is divided into six sub-chapters. *Sub-chapter 1.1* analyses the concept of responsibility and responsibility in construction from the first legal norms, which contain the regulation of certain aspects of construction law, such as in Hammurabi’s Code of Laws^{8,9}, before our era, the first responsibility and obligations in building construction mentioned in the Livonian Chronicle of Henry in 1184 about the first bishop Meinard¹⁰ in the territory of Latvia, as well the first written rules for the performance of construction works – Riga construction regulations issued in 1293 that from a modern point of view, contained the classic rules of building law (building conditions, height limits, etc.)¹¹, to the present day. The concept of responsibility has already been discussed by Aristotle, who said that responsibility is the freedom to choose to do so voluntarily, and not otherwise, knowing that choice produces consequences. Only if the action is voluntary we can talk about responsibility. If the action does not provide for a choice of action, it does not provide for liability¹². There are various explanations of legal responsibility in the legal theory. Although the problem of responsibility has been widely debated, the theory of law has not succeeded in creating a uniform and generally accepted designation of responsibility¹³. As responsibility is a concept with very extensive content, it is concluded that the concept of responsibility in construction can be linked to legal conduct that complies with legal requirements, subjective rights and obligations. Legal behaviour and responsibility is the duty of each person, it ensures legality and order in society, creates favourable conditions for the implementation of human rights and freedoms. The legal norms establish legal liability, which is the application of state coercive measures to violators of rights for the violation of the rights referred to in the legal norms. There are four types of legal liability: criminal liability, civil liability, administrative liability and disciplinary liability. In the doctoral thesis the author reviews the responsibility and liability of the participants of the

⁸ Zemītis, G. (2006). Ārvalstu valsts un tiesību vēsture. Otrais, papildinātais izdevums. Rīga: SIA „Biznesa augstskola Turība”, p. 36.

⁹ Blūzma, V., Osipova, S., Zemītis, G. (2007). Ārvalstu tiesību vēstures avoti: no vissenākajiem laikiem līdz 1689.gadam. Rīga: SIA „Biznesa augstskola Turība”, p. 30.

¹⁰ Feldhūns, Ā., Mugurēvičs, Ē. (1993). Indriķa hronika. Rīga: Zinātne, p. 47-53.

¹¹ Kramiņa, I., Zaļuma, Z. (2017). Būvniecības tiesības. From: Autoru kolektīvs, sast. Endziņš, A., Kronis, I. Latvijas tiesību sistēma. Kolektīvā monogrāfija. Rīga: SIA „Biznesa augstskola Turība”, p. 179.

¹² Clegg, S., Kreiner, K. (2014). Fixing concrete: inquiries, responsibility, power and innovation. Construction Management and Economics. Volume 32, Issue 3, March 2014, p.262. Viewed: 17.01.2022. <https://www.scopus.com; DOI 10.1080/01446193.2013.848996>

¹³ Bitāns, A., zinātniskais redaktors Torgāns, K. (1997). Civiltiesiskā atbildība un tās veidi. Rīga: Izdevniecība “AGB”, p. 13.

construction process, the competence of the authorities controlling the construction and administrative processes of the construction, as well as civil and criminal liability. *Sub-chapter 1.2* analyses the responsibility of the participants of the construction process specified in the previous Construction Law 1995 and *Sub-chapter 1.3* under the Construction Law 2013, concluding that the participants of the construction process are mutually responsible (against the employer) in accordance with the concluded agreements (legal liability), while each participant of the construction process is responsible for its own actions or omissions in accordance with regulatory enactments and concluded agreements. Therefore, within the framework of the doctoral thesis, both legal liability and the liability of each participant in the construction process for their actions or omissions specified in regulatory enactments are considered. In *sub-chapter 1.4* the author compares and analyses how the approval of projects and calculations was performed in the 20th century and how the legality of the construction process is currently ensured¹⁴. *Sub-chapter 1.5* analyses how modelling of building information would make the construction process more transparent and predictable, as well as reduce the increase in design errors and related costs. Referring to “the Road Map” developed by the Ministry of Economics, it is planned to establish the use of Building Information Modelling (hereinafter – BIM) in public construction procurement as a mandatory requirement by 2025¹⁵. Other countries' experience in the implementation of BIM is also examined. *Sub-chapter 1.6* studies and analyses the ethics of the construction industry. On 17 May 2017, the Latvian Construction Council approved the Ethics Code of Latvian Construction Industry (hereinafter – Ethics Code) and possible violations of ethical principles specified in the Ethics Code were examined by the Ethics Commission, and the functions of the secretariat of which were performed by the Latvian Construction Council (hereinafter – Council)¹⁶. However, at the meeting on 10 September 2020, the Council, evaluated the usefulness of the Ethics Commission and concluded that each of the industry certification bodies has its own ethics commission and a separate Ethics Commission of construction industry is not relevant¹⁷.

Chapter 2. “The responsibility of the participants of the construction process”. The content of the second chapter is divided into eight sub-chapters. In *sub-chapters 2.1 - 2.6* the responsibility, duties and rights of the participants of the construction process (developers of

¹⁴ Construction Law. Adoption: 09.07.2013. Publication: Latvijas Vēstnesis, 146, 30.07.2013. OP No.2013/146.1. Last amended: 19.08.2021. Section 7, Paragraph one, Clause 1.

¹⁵ Ekonomikas ministrija (2019). Būvju informācijas modelēšanas BIM Ceļa karte, p. 2-3. Viewed: 17.01.2022. https://www.em.gov.lv/sites/em/files/bim20cela20karte1_1.pdf; <https://www.em.gov.lv/lv/buvniecibas-informacijas-modelesana-bim>

¹⁶ Latvijas būvniecības nozares Ētikas kodekss. Adoption: The Latvian Construction Council on 17.05.2017. Viewed: 17.01.2022. <https://www.em.gov.lv/lv/media/775/download>

¹⁷ Ekonomikas ministrija (03.01.2022.). Pārskats par Latvijas būvniecības padomes darbu 2020.gadā. p.4. Viewed: 17.01.2022. https://www.em.gov.lv/lv/latvijas-buvniecibas-padome?utm_source=https%3A%2F%2Fwww.google.com%2F

building designs, performers of building expert examination, performers of author supervision, performers of supervision of construction work, performers of construction works and responsible construction work managers, owners of a land plot or building - initiators of construction) have been investigated and analysed. The responsibility of developers of building design (and other participants of the construction process) is regulated in the Construction Law, the General Construction Regulations, and in the Construction Regulations of Buildings¹⁸. The Department of Administrative Cases of the Supreme Court of the Republic of Latvia in its judgment dated 21 December 2017 in Case No. A420305714, SKA-1104/2017, concludes that the existence of a certificate demonstrates that the expert is aware of his duties, professional standards and is aware of his responsibility for the design, construction or supervision of a secure structure. Competence is not declarative, requiring formal engagement. The construction process aims to ensure that the final building must be stable, secure and strong, and able to serve people without endangering their health and life¹⁹. It has been determined that the performer of the expert-examination (also the developer of the building design and performers of the author's supervision, supervision of the construction work and the main performer of construction work) is responsible for each of his negligence²⁰. Section 6.¹, Paragraph one, Clause 4 of the Construction Law has been excluded, which determined that in specified cases the expert-examination was organised by the State Construction Control Bureau (hereinafter also – the Bureau), but this part of the rule is not excluded from Paragraph 45 of the General Construction Regulations²¹. It is concluded in this chapter that the definition of responsibility in construction is not unambiguous: it is regulated in the Construction Law and in the General Construction Regulations and, in some cases, in Construction Regulations of Buildings. There are inconsistencies and overlapping of rules in the definition of liability and proposals to resolve that are proposed at the end of the doctoral thesis. *Sub-chapter 2.7* studies and analyses civil liability insurance of the participants of the construction process. It is essential that the losses caused to the property of a third party are assessed in compliance with the regulatory enactments regarding insurance and the amount of insurance compensation is determined by agreement of the parties²², but it is not possible to compensate for

¹⁸ Cabinet of Ministers Regulation No.529, adopted 02.09.2014. “Construction Regulations of Buildings”. Publication: Latvijas Vēstnesis, 194, 01.10.2014., OP No.2014/194.4. Last amended: 11.01.2022. Paragraph 64.

¹⁹ From Judgment of the Department of Administrative Cases of the Supreme Court of Republic of Latvia, 21.12.2017. Case No.A420305714, SKA-1104/2017, and paragraph [17]. Viewed: 17.01.2022. <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs>

²⁰ Construction Law. Adoption: 09.07.2013. Publication: Latvijas Vēstnesis, 146, 30.07.2013. OP No.2013/146.1. Last amended: 19.08.2021. Section 19.², Paragraph eight.

²¹ Cabinet of Ministers Regulation No.500, adopted 19.08.2014. “General Construction Regulations”. Publication: Latvijas Vēstnesis, 191, 26.09.2014. OP No.2014/191.3. Last amended: 28.01.2021.

²² Construction Law. Adoption: 09.07.2013. Publication: Latvijas Vēstnesis, 146, 30.07.2013. OP No.2013/146.1. Last amended: 19.08.2021.

losses to the insurer for a higher amount than the liability limit provided in the insurance contract²³. *Sub-chapter 2.8* analyses the decisions of the certification institution, which has certified the construction specialists. The certification institution, which certifies construction specialists, performs supervision of practice of the construction specialists in accordance with Cabinet Regulation No. 169 of 20 March 2018 “Regulations for the Evaluation of the Competency of Construction Specialists and Monitoring of Independent Practice” however, in order to be able to take a decision regarding violations of the professional activities or professional ethics of construction specialists, the certification institution must first receive information regarding non-fulfilment of duties, improper performance or non-compliance with the requirements specified in the regulatory enactments.

Chapter 3. “Civil liability”. The content of the third chapter is divided into three sub-chapters. *Sub-chapter 3.1* summarises and analyses the responsibility of the owner of the structure (building), which is specified in the Civil Law²⁴. Section 1084, Paragraph three of the Civil Law determines that if the owner or the possessor of the structure, contrary to a request by a relevant authority, does not remove the danger presented, then the relevant institution, conducting itself according to the circumstances, shall put the structure in order or demolish it altogether at the expense of the owner²⁵. The procedures for the fulfilment of this obligation are specified in Section 21, Paragraph nine of the Construction Law – if a structure has fully or partially collapsed or is in such technical condition that it is dangerous or spoils the landscape, its owner according to a decision of the local government must put it in order or demolish it. Execution of this decision shall be ensured in accordance with the procedures laid down in the Administrative Procedure Law²⁶. Section 1086 of the Civil Law determines, if a commenced structure may endanger public safety, then not only the nearest neighbour, but also the owners of more distant structures have the right to raise objections against this. Section 1085 of the Civil Law states that applicable building regulations must be complied with in altering or reconstructing an already existing structure or constructing a new structure²⁷, the provision of that is regulated by the Construction Law and the regulatory enactments regulating construction. In the previous chapter the author concludes that the initiator of the construction has high professional requirements and responsibility for his future property. Although the initiator of the construction may not have the competence or knowledge necessary for the participants of the construction process, this liability may be based on the responsibility of the owner of the building for the property specified in Section 1084 of the Civil

²³ Alfejeva, J. (2017). *Apdrošināšanas tiesības. Monogrāfija*. Rīga: SIA “Biznesa augstskola Turība”, p.55 - 57.

²⁴ Civil Law. Adoption: 28.01.1937. Publication: *Valdības Vēstnesis*, 41, 20.02.1937. Last amended: 04.11.2021.

²⁵ *Ibid.*

²⁶ Construction Law. Adoption: 09.07.2013. Publication: *Latvijas Vēstnesis*, 146, 30.07.2013. OP No.2013/146.1. Last amended: 19.08.2021.

²⁷ Civil Law. Adoption: 28.01.1937. Publication: *Valdības Vēstnesis*, 41, 20.02.1937. Last amended: 04.11.2021.

Law. At the end of the doctoral thesis, the author proposes that the Construction Law should also prescribe that the initiator of the construction is responsible for the construction process and the safe operation of the proposed structure. The activities specified in the Construction Law are carried out on the basis of a written contract and the initiator of the construction concludes service contracts with legal persons. The legal person is responsible under civil law for the actions or failure to act of the construction specialist, so *sub-chapter 3.2* deals with the question of contractual liability. On the other hand, an action or failure to act in the construction process may be caused not only by a civil breach of contract, but also due to a breach of tort (duty of care), *sub-chapter 3.3* deals separately with legal liability for delict attributable to the construction process.

Chapter 4. “Construction control to ensure responsibility”. The content of this chapter is divided into five sub-chapters. *Sub-chapter 4.1* analyses the competence of the authorities controlling the construction to ensure responsibility. In this sub-chapter the author also examines and analyses the definition of the Construction Law of the Republic of Lithuania²⁸. *Sub-chapter 4.2* analyses the duties, rights and disciplinary liability of the officials performing construction control. This sub-chapter also analyses the duties and rights of the building inspectors. In order to improve the control of construction on the basis of the conclusions, proposals have been made at the end of the doctoral thesis. In addition, *sub-chapter 4.3* examines and analyses administrative decisions and the obligation to prevent unauthorised construction by examining the content of the decision to restore the previous condition and general principles of law applicable to its adoption, and the judicial findings on the obligation to prevent unauthorised construction. *Sub-chapter 4.4* analyses the contestation of an administrative act or actual action, and the claim for compensation and the mandatory enforcement of an administrative act, analysing the preconditions for contesting the administrative act or actual action. Moreover, when submitting an application for contesting an administrative act or actual action, compensation may be claimed at the same time²⁹. *Sub-chapter 4.5* analyses the mandatory enforcement of an administrative act by examining in detail the conditions and procedures for the mandatory enforcement.

Chapter 5. “Criminal liability”. The content of this chapter is divided into three sub-chapters. *Sub-chapter 5.1* summarises and analyses criminal liability of construction. Criminal liability for violation of construction rules are specified in Section 239 of the Criminal Law³⁰ and this chapter analyses the historic changes and development of this section. The principles of

²⁸ Construction Law of the Republic of Lithuania, (Lietuvos Respublikos statybos įstatymas). Enactment date: 30.06.2016. Published: TAR, 13.07.2016. No.20300. Viewed: 17.01.2022. <https://www.e-tar.lt/portal/legalAct.html?documentId=b2d704e048e711e6b5d09300a16a686c>

²⁹ Administrative Procedure Law. Adoption: 25.10.2001. Publication: Latvijas Vēstnesis, 164, 14.11.2001.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 23, 13.12.2001. Last amended: 11.11.2021. Section 93, Paragraph one.

³⁰ Criminal Law. Adoption: 17.06.1998. Publication: Latvijas Vēstnesis, 199/200, 08.07.1998.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 15, 04.08.1998. Last amended: 11.11.2021.

criminal law and the notion of guilt are also analysed. *Sub-chapter 5.2* examines and analyses the criminal case of the Zolitude tragedy, in relation to the judgment of the Pardaugava Court of Riga City dated 18 February 2020 in criminal case No.11511002713, archive No.K68-0025-20/20³¹. *Sub-chapter 5.3* analyses criminal proceedings and the consequences thereof, determining a violation of the construction rules. The criminal offence for violation of the construction rules is laid down in Section 239 of the Criminal Law. The Criminal Law also provides for responsibility for trading in influence (Section 326.¹) and for bribery (Section 323)³², which also applies to the construction process. However, there is a lack of regulation in the regulatory framework governing construction, which requires the authorities controlling construction to take action in identifying breaches of construction rules, and proposals to determine this are proposed at the end of the doctoral thesis.

8. DISSEMINATION OF THE DOCTORAL RESEARCH RESULTS

The results of the author`s studies have been verified at international scientific conferences:

1) “Administrative responsibility for unauthorised construction in Republics of Lithuania and Latvia”, Daugavpils: Daugavpils University, Akadēmiskais apgāds “Saule”, 2019. Proceedings of the 61st International Scientific Conference of Daugavpils University, p. 221. – 227, ISSN 2500-9842, ISSN 2500-9869, ISBN 978-9984-14-900-4. https://dukonference.lv/files/978-9984-14-900-4_61_konf_kraj_B_Soc%20zin.pdf, also available <http://web.a.ebscohost.com>;

2) “Historical review of responsibility in construction”, Riga: SIA “Biznesa augstskola Turība”, XIX Turība University Conference “Latvia 100: expectations, achievements and challenges”, 19.04.2018., p. 340 – 349, ISSN 1691-6069. <https://www.turiba.lv/storage/files/xix-conference-2018-final.pdf>;

3) “Responsibility, quality and competitiveness in civil engineering”, Riga: SIA “Biznesa augstskola Turība”, XVII Turība University Conference “Competitive enterprises in a competitive country”, 31.05.2016., p. 303 – 311, ISSN 1691-6069. https://www.turiba.lv/storage/files/konference-2016_1.pdf.

The results of the author`s studies have been disseminated in reviewed scientific publications:

1) “Administrative offence proceedings in an institution”, *submitted for publication*, science-theoretical journal “Administrative and Criminal Justice” of Baltic International Academy and Rezekne Academy of Technologies;

³¹ Judgment of the Riga City Pardaugava court, 18.02.2020. Criminal case No.11511002713, archive No.K68-0025-20/20. Viewed: 17.01.2022. <https://tiesas.lv/Contents/Item/Display/5939>

³² Criminal Law. Adoption: 17.06.1998. Publication: Latvijas Vēstnesis, 199/200, 08.07.1998.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 15, 04.08.1998. Last amended: 11.11.2021.

2) “Supervision of the construction process”, science-theoretical journal “Administrative and Criminal Justice” of Baltic International Academy and Rezekne Academy of Technologies, 2019, No.3/4 (88/89), p. 143 - 160. Print ISSN 1407-2971, online ISSN 2592-8422. <http://journals.rta.lv/index.php/ACJ>, <http://journals.rta.lv/index.php/ACJ/article/view/4380/4435>; <https://dx.doi.org/10.17770/acj.v3i88.4380>. Indexed: Index Copernicus, Crossref, OpenAir, Worldcat;

3) “Responsibility in Construction Law of Latvia”, science-theoretical journal “Administrative and Criminal Justice” of Baltic International Academy and Rezekne Academy of Technologies, 2018, No.3 (84), p. 72 - 89. Print ISSN 1407-2971, online ISSN 2592-8422. <http://journals.rta.lv/index.php/ACJ/article/view/3660/3646>; <http://dx.doi.org/10.17770/acj.v3i84.3660>. Indexed: Index Copernicus, Crossref, OpenAir, Worldcat;

4) “Responsibility in Construction Law”, science-theoretical journal “Administrative and Criminal Justice” of Baltic International Academy and Rezekne Academy of Technologies, 2017, No.4 (81), p. 36 - 44. Print ISSN 1407-2971, online ISSN 2592-8422. <http://journals.rta.lv/index.php/ACJ/article/view/2845/2821>. Indexed: Index Copernicus, Crossref, OpenAir, Worldcat;

5) “Responsibility and emotional intelligence in construction”, Riga: SIA “Biznesa augstskola Turība”, 2017, Journal of Turība University Acta Prosperitatis No. 8, p. 107 - 116. ISSN 1691-6077. <https://www.turiba.lv/storage/files/8-acta.pdf>.

9. THE MAIN SOURCES OF SCIENTIFIC LITERATURE SOURCES USED IN THE DOCTORAL THESIS

The theoretical and methodical basis of the study consists of the national laws, regulations and case-law of Republic of Latvia, and for comparison, the laws, regulations and case-law of the Republic of Lithuania. Case law of the Court of Justice of the European Union has also been investigated and analysed. The doctoral thesis analyses and includes the experience and conclusions of other countries (Germany, Estonia, Norway, the Netherlands, Korea, Italy, Lithuania, Austria, France, New Zealand and the Czech Republic), published both in scientific papers and in practice materials, as well other publications and Internet resources.

The base of the doctoral thesis is composed of publications of the author, as well as the issues discussed in the publications have been supplemented or updated if they have been affected by changes in regulatory enactments or other relevant events. 179 sources of literature, 53 regulatory enactments, 20 court rulings, as well as other sources have been used in the doctoral thesis and in total 318 bibliography sources were used.

10. CONCLUSIONS AND RECOMMENDATIONS

1. On 17 May 2017, the Latvian Construction Council approved the Ethics Code and

possible violations of ethical principles specified in the Ethics Code were examined by the Ethics Commission, secretariat functions of which were performed by the Council, but at the meeting on 10 September 2020, the Council, evaluated the usefulness of the Ethics Commission and concluded that each of the industry certification bodies has its own ethics commission and a separate Ethics Commission of construction industry is not relevant.

Recommendation. It is necessary to amend the Ethics Code, stating that *“The violations of the basic ethical principles specified in the Ethics Code shall be examined by the industry certification bodies”*. At the same time, the rules laid down in the Ethics Code for the Ethics Commission should be excluded, as the Ethics Commission has been terminated.

2. Section 19², Paragraph eight of the Construction Law was supposed to state that the developer of the building design (in Latvian *“Būvprojektēšanas veicējs”*) (...) shall be responsible for each negligence, but currently the law has a clerical error, naming the developer of the building design (*Būvprojekta izstrādātājs*) as the performer of the construction project (*Būvprojektēšanas veicējs*) which must be corrected so that this section is not construed so as to mean that the developer of the building design (*Būvprojekta izstrādātājs*) is not responsible for each negligence.

Recommendation. To amend the Construction Law as follows:

Replace the words “performer of the construction project” (“Būvprojektēšanas veicējs”) in the eighth paragraph of Section 19.² with the words “developer of the building design” (“Būvprojekta izstrādātājs”).

3. If the repeated expert-examination is carried out by another performer of the expert-examination, then a full expert-examination of the building design should be performed. If the developer of the building design is changed during the course of construction, the new developer of the building design shall assume full responsibility for the building design, as well as for its conformity with the original intention. As regards the change of other participants of the construction process there is no regulation on the division of responsibility or the transition of it to the new participants of the construction process and therefore such division or transition should be stipulated.

Recommendation. To make the following amendment to Cabinet Regulation No. 500 of 19 August 2014 “General Construction Regulations”:

To add a third sentence to paragraph 130 as follows:

“The new participants of the construction process shall undertake full responsibility for the continuation of construction in accordance with the requirements of the regulatory enactments.

4. Section 6.¹, Paragraph one, Clause 4 of the Construction Law has been excluded because the Bureau was in a conflict of interest situation while performing both supervision of practice of performers of the expert-examination and the organisation of the expert-examination.

In order to exclude confusion in the application of Paragraph 45 of the General Construction Regulations from which this part of the rule is not excluded, it is also necessary to amend Paragraph 45 of the General Construction Regulations so that it does not conflict with the Construction Law.

Recommendation. To make the following amendment to Cabinet Regulation No. 500 of 19 August 2014 “General Construction Regulations”:

Paragraph 45 shall be amended as follows:

“45. If an expert-examination of a building design is mandatory or it is requested by the building authority, by substantiating the necessity for an expert-examination, the performer of the expert-examination of the building design shall be selected by the initiator of construction. A contract on expert-examination shall be entered into and the expenditure related thereto shall be covered by the initiator of construction.”

5. Previously, Cabinet Regulation No. 75 of 10 February 2004 “Regulations regarding the Latvian Construction Standard LBN 303-03 “Regulations of supervision of the construction work” determined that the initiator of the construction was entitled to invite a performer of supervision of the construction work in other cases, not just in cases specified in regulatory enactments. At present, it is not specified in the General Construction Regulations that supervision of the construction work may be performed in cases not provided for by regulatory enactments, therefore Paragraph 120 of the General Construction Regulations should be supplemented by providing that the initiator of the construction is entitled to invite the performer of supervision of the construction work in other cases.

Recommendation. To make the following amendment to Cabinet Regulation No. 500 of 19 August 2014 “General Construction Regulations”:

To supplement the regulations with a sub-paragraph 120.5 as follows:

“120.5. the initiator of the construction shall also invite the performer of supervision of the construction work in other cases”.

6. After the amendments made on 15 April 2021 the Construction Law does not stipulate that the owner of the land plot or building is responsible for choosing the developer of the building design, performer of the expert-examination, performer of the supervision of the construction work and main performer of construction work in conformity with the regulatory enactments, but such responsibility may be justified by Section 1782 of the Civil Law, which determines that a person who fails to exercise due care in choosing servants or other employees and to previously satisfy himself or herself as to their abilities and suitability to perform the duties as may be imposed on them shall be liable for losses they cause to a third person thereby.

Recommendation. To supplement such regulation in the Construction Law by extending it to the initiator of the construction and make the following amendments to the Construction Law:

Supplement Section 19.¹ with a fourth paragraph in the following version:

“(4) The initiator of the construction shall be responsible for choosing a developer of the building design, performer of the expert-examination, performer of the supervision of the construction work and main performer of construction work in conformity with the regulatory enactments.”

7. The initiator of the construction is subject to high professional requirements and responsibility with regards to the initiated building structure, although the initiator of the construction may not have the competence or knowledge as necessary for the participants of the construction process. This liability may be justified by the responsibility of the owner of the structure specified in the Civil Law Section 1084, that in order to protect the safety of the public, every owner of a structure shall maintain their structure in such condition that harm cannot result from it to neighbours, passers-by or to users of it.

Recommendation. Specify in the Construction Law that initiator of the construction is responsible for the progress of the construction of the initiated structure and its safe operation thereof, and make the following amendments to the Construction Law:

Supplement Section 19.¹ by a fifth paragraph in the following version:

“(5) The initiator of the construction shall be responsible for the progress of the construction work of the initiated structure and its safe operation thereof.”

8. The building authority may cancel a construction permit if Section 16, Paragraphs 2.¹, 2.², 2.³, 2.⁴ or Section 17, Paragraph 2.¹ of the Construction Law are not adhered to during designing and construction work, which only partly relates to the recipient of the building permit, because it also determines the competence of the building authority and the coordination of changes in the activities to be performed, which the recipient of the building permit may neither influence nor violate.. Sub-paragraph 132.2 of the General Construction Regulations must be amended to specify the infringements done by the recipient of the building permit that may lead to revoking of the building permit by the building authority, because activities carried out by the building authority when approving or refusing to approve changes may not be attributed to the recipient of the building permit.

Recommendation. To make the following amendment to Cabinet Regulation No. 500 of 19 August 2014 “General Construction Regulations”:

Sub-paragraph 132.2 shall be amended as follows:

“132.2. during designing and construction work it fails to comply with provisions of Section 16, Paragraphs 2.¹, 2.² of the Construction Law;”

9. In accordance with Section 6, Paragraph four, Clause 5 of the Law “On Prevention of Conflict of Interest in Activities of Public Officials” a public official is permitted to combine the office of a public official with execution of such authorisation on the grounds of which such official is acting on behalf of his or her relative if it does not result in a conflict of interest. There is recommendation to amend the General Construction Regulations, specifying and supplementing that the building inspector may carry out construction as a builder for his or her own needs or may provide construction services to relatives within the meaning of the Law “On Prevention of Conflict of Interest in Activities of Public Officials”, while prohibiting the building inspector from controlling any such construction object.

Recommendation. To make the following amendment to Cabinet Regulation No. 500 of 19 August 2014 “General Construction Regulations”:

Supplement regulations by a Paragraph 133.¹ in the following version:

“133.¹ A building inspector may carry out construction as a builder for his or her own needs or may provide construction services to relatives within the meaning of the Law “On Prevention of Conflict of Interest in Activities of Public Officials”. The building inspector is prohibited from controlling those construction objects.”

10. Building authorities should apply and compare their obligations in a number of regulatory enactments (the Construction Law, General Construction Regulations and Construction Regulations of Buildings) to carry out complete construction controls. The order of the control of construction, as well as the competence, rights and obligations of the building inspectors should be laid down in one regulatory act in order to avoid duplication and partial interpretation.

Recommendation. The procedures and conditions for building control, the rights and obligations of building inspectors should be set out only in the General Construction Regulations according to Section 5, Paragraph one, Clause f of the Construction Law.

11. A decision regarding the renewal of a building to its previous condition shall not be taken if the building has been demolished arbitrarily, but if the demolition of the building infringes public interest, taking the example of Lithuania, the renewal of the arbitrarily demolished building should be assessed.

Recommendation. To make the following amendment to Cabinet Regulation No. 500 of 19 August 2014 “General Construction Regulations”:

The second sentence of Paragraph 147 shall be amended as follows:

“A decision to renew previous condition shall not be taken, if the structure is demolished arbitrary, except, in cases when the demolition of the structure infringes the interests of the public where a decision to renew the previous condition should be considered.”

12. In order to reduce the volume of unauthorised construction in Latvia, sanctions for

unauthorised construction should be more severe.

Recommendation. *Additional unauthorised construction approval fee should be specified in the local government binding regulations on fees for issuing a construction permit or accepting the construction intention.*

13. Before authorising a building inspector on behalf of the building authority to take on the decisions specified in Section 18, Paragraphs five, 6.¹ and seven, and also Section 21, Paragraph seven of the Construction Law, the building authority or authority which carries out the functions of a building authority shall evaluate the risks of the authorisation. A building inspector who is authorised to take those decisions on behalf of the building authority must prepare a separate decision (in the name of the building authority) instead of including the text of the decision in the opinion regarding inspection of the structure.

Recommendation. In Section 12, Paragraph ten of the Construction Law, it should be specified that the building inspector must prepare and take a separate decision, and the following amendments to the Construction Law should be made:

Supplement Section 12, Paragraph ten with a second sentence in the following version:

“The building inspector must take a separate decision on behalf of the building authority or authority which carries out the functions of a building authority in such cases.”

14. In order for a person directing criminal proceedings, to fulfil his/her duty to inform the Ministry of Economics and certification institution, which has certified the specialist, regarding possible infringements of professional operations of the construction specialists which have caused or may cause threat to human life, health and environment, he or she must first receive information regarding such infringement. In addition there is a lack of regulation in the regulatory enactments regulating construction regarding how the authorities controlling construction must act while identifying infringements of the construction regulations specified in Section 239 of the Criminal Law. Such regulation should be laid down in the General Construction Regulations.

Recommendation. To make the following amendment to Cabinet Regulation No. 500 of 19 August 2014 “General Construction Regulations”:

Supplement regulations with a Paragraph 146.¹ in the following version:

“146.¹ In order to establish that construction works are being carried out during a time period when they are suspended, in a Group 3 building or an apartment building, if construction works have been suspended due to their being carried out without a building permit or due to commencing of construction works prior to fulfilling the conditions of the building permit, or construction norms or provisions regarding buildings, bridges, overpasses or other construction are violated and as a result thereof a structure or part thereof collapsed, the building authority or

authority which carries out the functions of a building authority has a duty to notify the State Police and the Office of the Prosecutor, indicating the committing of a possible criminal violation.”

11. THESES PUT FORWARD FOR DEFENCE:

1. THESIS: In order to improve the clarity of the definition of responsibility in construction with regard to the construction control procedures, which are currently regulated in the Construction Law and General Construction Regulations and, in some cases, in Construction Regulations of Buildings, in accordance with Section 5, Paragraph one, Clause f of the Construction Law, the procedures and conditions for building control, the rights and obligations of building inspectors should be determined only by General Construction Regulations.

At the same time, Sub-paragraph 132.2 of the General Construction Regulations must be amended to specify the infringements which are attributable to the recipient of the building permit, because the person cannot be subject to activities carried out by the building authority. So, Sub-paragraph 132.2 shall be amended as follows: *“132.2. during designing and construction work it fails to comply with provisions of Section 16, Paragraphs 2.1, 2.2 of the Construction Law;”*

2. THESIS: In order to improve the adequacy of the definition of responsibility in construction, a **correction of errors is required:**

- Section 6.¹, Paragraph one, Clause 4 of the Construction Law has been excluded, but in Paragraph 45 of the General Construction Regulations this part of the rule is not excluded, and it is necessary to amend Paragraph 45 of the General Construction Regulations and Paragraph 45 shall be amended as follows: *“45. If an expert-examination of a building design is mandatory or it is requested by the building authority, by substantiating the necessity for an expert-examination, the performer of the expert-examination of the building design shall be selected by the initiator of construction. A contract on expert-examination shall be entered into and expenditure related thereto shall be covered by the initiator of construction.”*

- Section 19², Paragraph eight of the Construction Law has a clerical error, naming the developer of the building design as the performer of the construction project, which must be corrected so that this section is not construed so as to mean that only the developer of the building design (Būvprojekta izstrādātājs) is not responsible for each negligence and the Construction Law should be amended as follows: *Replace the words “performer of the construction project” (“Būvprojektēšanas veicējs”) in the eighth paragraph of Section 19.2 with the words “developer of the building design” (“Būvprojekta izstrādātājs”);*

- it is necessary to amend the Ethics Code, stating that *“The violations of the basic ethical principles specified in the Ethics Code shall be examined by the industry certification bodies”*. At the same time, the rules laid down in the Ethics Code for the Ethics Commission should be excluded, as the Ethics Commission has been terminated.

3. THESIS: In order to improve the responsibility of the initiator of the construction during the construction, that arise out of Sections 1782 and 1084 of the Civil Law, Section 19.¹ of the Construction Law should be supplemented by a fourth and a fifth paragraph in the following version:

“(4) The initiator of the construction shall be responsible for choosing a developer of the building design, performer of the expert-examination, performer of the supervision of the construction work and main performer of construction work in conformity with the regulatory enactments.”

“(5) The initiator of the construction shall be responsible for the progress of the construction work of the initiated structure and its safe operation thereof.”

At the same time, since it is currently not specified in the General Construction Regulations that the supervision of the construction work may be performed in cases not provided for by regulatory enactments, Paragraph 120 of the General Construction Regulations should be supplemented by providing that the initiator of the construction is entitled to invite the performer of supervision of the construction work in other cases and supplement the regulations by subparagraph 120.5 as follows: *“120.5. the initiator of the construction shall also invite the performer of supervision of the construction work in other cases”*.

4. THESIS: In order to improve the responsibility of the participants of the construction process during the construction in relation to the lack of regulation on the division of responsibility or the transition of it to the new participants of the construction process, the General Construction Regulations should be supplemented by adding a third sentence to paragraph 130 as follows: *“The new participants of the construction process shall undertake full responsibility for the continuation of construction in accordance with the requirements of the regulatory enactments.*

5. THESIS: In order to improve the control of construction, ensuring responsibility in construction, if the building inspector is authorised to take decisions on behalf of the building authority specified in Section 18, Paragraphs five, 6.¹ and seven, and also Section 21, Paragraph seven of the Construction Law, it must be determined that the building inspector must prepare a separate decision (in the name of the building authority) instead of including the text of the decision in the opinion regarding inspection of the structure. It should be specified in Section 12, Paragraph ten of the Construction Law, and Section 12, Paragraph ten should be supplemented with a second sentence in the following version: *“The building inspector must take a separate decision on behalf of the building authority or authority which carries out the functions of a building authority in such cases.”*

Taking into account the fact that a building inspector could also may carry out construction as a builder for his or her own needs or may provide construction services to relatives within the

meaning of the Law “On Prevention of Conflict of Interest in Activities of Public Officials”, while prohibiting the building inspector from controlling any such construction objects, the General Construction Regulations must be supplemented with a Paragraph 133.¹ in the following version: *“133.¹ A building inspector may carry out construction as a builder for his or her own needs or may provide construction services to relatives within the meaning of the Law “On Prevention of Conflict of Interest in Activities of Public Officials”. The building inspector is prohibited from controlling those construction objects.”*

6. THESIS: In order to enhance the capacity of authorities controlling construction to act by detecting violation of construction provisions, since the regulatory enactments regulating construction lack regulation regarding how the authorities controlling construction must act while identifying infringements of the construction regulations specified in Section 239 of the Criminal Law, such regulation should be laid down in the General Construction Regulations and must be supplemented with a Paragraph 146.¹ in the following version: *“146.¹ In order to establish that construction works are being carried out during a time period when they are suspended, in a Group 3 building or an apartment building, if construction works have been suspended due to their being carried out without a building permit or due to commencing of construction works prior to fulfilling the conditions of the building permit, or construction norms or provisions regarding buildings, bridges, overpasses or other construction are violated and as a result thereof a structure or part thereof collapsed, the building authority or authority which carries out the functions of a building authority has a duty to notify the State Police and the Office of the Prosecutor, indicating the committing of a possible criminal violation.”*

Whereas, determining that a structure has been demolished arbitrary, but its demolition would have affected the interests of the public, the decision to renew the previous condition should be considered. In this context, the second sentence of Paragraph 147 of General Construction Regulations should be amended as follows: *“A decision to renew previous condition shall not be taken, if the structure is demolished arbitrary, except, in cases when the demolition of the structure infringes the interests of the public where a decision to renew the previous condition should be considered.”*

At the same time, in order to reduce the volume of unauthorised construction in Latvia, sanctions for unauthorised construction should be more severe and additional unauthorised construction approval fee should be specified in the local government binding regulations on fees for issuing a construction permit or accepting the construction intention.

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