ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.40

Nº 73
Julio
Diciembre
2022

Cuestiones Políticas Vol. 40, Nº 73 (2022), 151-171
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Legal regulation of the institute of control in the field of housing construction in the conditions of armed aggression of the Russian Federation

DOI: https://doi.org/10.46398/cuestpol.4073.07

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Abstract

Housing and social infrastructure have suffered significant damage during the Russian armed aggression, and it needs to be restored in a short time. So, the aim of the study was to analyses the legal background for construction control and determine its importance for the development of the construction industry. The chosen topic was comprehensively studied through empirical and theoretical methods of scientific knowledge, as well as the comparative analysis. The legal basis of control in the field of housing construction in the conditions of armed aggression is determined. It is established that cconstruction control is exercised by inspecting construction sites, issuing construction permits, conducting examinations of construction projects for compliance with building codes, rules and standards, and identifying violations of construction legislation in order to eliminate them. The mechanism of legal regulation of construction control consists of construction and legal rules that ensure control in the construction industry; subjects of architectural

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Recibido el 03/04/2022 Aceptado el 16/04/2022

and construction control; construction control tools; the control procedure. The prospect of further research is the organizational support of effective control in the field of housing construction in the context of the armed aggression of the Russian Federation in order to restore the quality of housing in Ukraine.

Keywords: construction control; construction industry; safety; standard; rules.

Regulación legal del instituto de control en el campo de la construcción de viviendas en las condiciones de agresión armada de la Federación Rusa

Resumen

La vivienda y la infraestructura social han sufrido importantes daños durante la agresión armada rusa, y es necesario restaurarla en poco tiempo. Por lo tanto, el objetivo del estudio fue analizar el marco legal para el control de la construcción y determinar su importancia para el desarrollo de la industria de la construcción. El tema elegido fue estudiado integralmente a través de métodos empíricos y teóricos del conocimiento científico, así como del análisis comparativo. En las conclusiones se indica que, el mecanismo de regulación jurídica del control de la construcción consiste en normas constructivas y jurídicas que aseguran el control en la industria de la construcción; materias de control arquitectónico y de la construcción; herramientas de control de la construcción; el procedimiento de control. La perspectiva de una mayor investigación es el apoyo organizacional del control efectivo en el campo de la construcción de viviendas en el contexto de la agresión armada de la Federación Rusa para restaurar la calidad de la vivienda en Ucrania lo antes posible.

Palabras clave: control de la construcción; industria de la construcción; seguridad; estándar; reglas.

Introduction

The issue of the need to create new residential and industrial buildings to accommodate production facilities and housing workers and their families became urgent as a result of the rapid development of the economy, increasing consumption, improving welfare of the population and growing population. The legal, organizational, institutional and financial support

is required to solve such problems. Construction, as an object of legal regulation, regulates various social relations, including private and public legal relations. Government regulation of the construction sector is carried out through the development, adoption and application of current building legislation, building codes, standards and regulations.

The priority task of the government regulation of the construction industry is the control and supervisory function of the state over the entities operating in the construction market. The number of cases of violation of construction legislation, rules and standards during construction is growing along with the development of the construction industry. Consequently, the protection of construction market participants requires an effective system of government supervision of the construction sector. Quality control of construction, which assesses the compliance of construction products with the rules and regulations of the construction industry occupies an important place in the system of legal measures aimed at improving safety and quality of construction.

In a state governed by the rule of law, construction control is exercised within clearly defined legal framework. The construction legislation is the legal background of construction control. The aim of this legislation is to regulate administrative relations during the organization and execution of construction works, thus providing the possibility of government influence construction control bodies on the construction sites under their jurisdiction. Therefore, the main point in the legal regulation of legal relations of construction market participants is to regulate administrative relations and determine the legal status of each participant in such relations, which determines the topicality of this research.

The aim of this study is to determine the legal background for construction control and determine its importance for the development of the construction industry. The aim involved the following research objectives:

- determine and describe European standards of the construction industry in the context of ensuring the quality and safety of construction facilities;
- consider the mechanism of the legal regulation of construction control and describe its components;
- identify the main problems of construction control and suggest ways to solve them.

1. Literature Review

Many researchers studied the construction control and the main problems of exercising it. Akimova *et al.* (2020) studied the legal tools of construction control and their components. Lou and Xu (2017) covered quality control of residential construction in the city and found that such projects should be controlled in three stages: before construction, during construction and after construction. Fatourehchi and Zarghami (2020) considered the problems of construction supervision and noted that the problems of construction supervision usually result from gaps in the relationship between the participants in the construction process.

Binninger *et al.* (2017) examined the control of construction sites in Germany, determined its effectiveness and appropriateness of implementation in different countries. Ding *et al.* (2017) reviewed the functioning of regional construction supervision and control systems in China, and determined its dependence on the work of practical managing engineers. Zhou (2019) and Mu (2020) revealed the content of the substance of control over public construction from the perspective of the China's market economy.

Zhao *et al.* (2017) studied the effectiveness of government control of construction, which is exercised through information and communication technologies. Ciampa *et al.* (2019) and Rouhanizadeh and Kermanshachi (2020) analysed the effectiveness of the use of unmanned aerial vehicles and drones in construction inspections, and found that their use speeds up the construction inspection process. Zhang and Arditi (2020) studied the use of laser scanners during construction inspections and found out their significant effectiveness for construction inspections.

Akimova *et al.* (2020) analysed the substance of construction control from the perspective of safety and quality of the construction site; from the perspective of reducing the number of construction accidents and measures to prevent them — Ravi *et al.* (2017) and Benny and Jaishree (2017); from the perspective of labour protection and safety — Nnedinma (2017; 2017a). Analysing the effectiveness of construction supervision, Khanzadi *et al.* (2020) noted that compliance with quality, stages of construction and reducing financial costs for construction is the basis of supervision in the construction sector.

Despite a rather wide range of research on this issue, the issues of the development of legal mechanisms for the residential construction control are not comprehensively covered, which determines the relevance of the chosen research topic.

2. Methods and Materials

The study was conducted in three stages. The first stage involved the search and study of scientific literature on construction law, scientific works of researchers on government supervision of the construction industry and construction control, provisions of international agreements on construction, practice of the application of legal tools that regulate construction control, as well as the analysis of statistics of the EU statistical service — Eurostat — on the development of the construction industry in the EU and the metrics on construction accidents. The analyses of the indicated resources gave grounds for the formulation of the topic, aim and objectives of the study.

The second stage involved a theoretical and experimental study of the chosen topic by comparing their results and analysing the differences. Theoretical research allowed determining the substance of the mechanism of legal regulation of the residential construction control from the perspective of compliance with building codes and standards. Experimental research based on international standards, legal principles of European construction and labour protection, as well as the summary of their practical application, as well as doctrinal analysis of scientific papers on problematic issues of assessing the effectiveness of construction control of construction sites, helped to fulfil the research objectives and determine the importance of construction control for the development of the construction industry.

The third stage involved the final analysis for achieving the aim of the research, and presentation of the research results.

The research topic was studied through the use of empirical and theoretical methods. From the perspective of international legal support of the construction industry and the importance of construction control for the quality of constructed buildings, empirical knowledge reflects the substance of the object of study — the mechanism of legal regulation of construction control.

Comparative analysis was used to analyse scientific, legal, statistical and practical information on the components of the mechanism of legal regulation of construction control. Theoretical knowledge of construction and the means of its regulation reveals the subject of research from the perspective of universal internal essential connections and regularities, which are covered by rational processing of empirical data. The combination of empirical and theoretical methods provides an empirical interpretation of the theory and theoretical interpretation of empirical data, as well as reveals the importance of construction control as an effective tool to regulate the construction sector.

The research sample included such objects of research as: general characteristics of construction activities and the means of their regulation, analysis of construction control through the prism of improving the quality of buildings and safety of the construction sector. Eurostat statistics on the EU construction industry allowed determining the importance of the effectiveness of construction control in the construction sector. The combination of the study of these objects helped to reveal the problems of supervision of the construction industry. The research was carried out on the basis of information retrieval and scientometric databases.

The following international legal acts formed the background of the study: Safety Provisions (Building) Convention, Safety and Health in Construction Recommendation, International Building Code, Eurocodes, Construction Products Regulation (EU) No. 305/2011, European legislation governing safety and labour protection on the construction site, and Eurostat statistics.

3. Results

Russia's armed aggression in Ukraine has created the conditions for a rapid response of society and the state to its consequences. Mass destruction of infrastructure and housing stock of Ukraine needs immediate restoration, so the Government of Ukraine issued a number of regulations and amended existing ones, in particular: Amendments to the Procedure for inspection of commissioned construction (Verkhovna Rada of Ukraine, 2022a); Amendments to the Procedure for approval of construction projects and their examination (Verkhovna Rada of Ukraine, 2022d); Procedure for carrying out urgent work to eliminate the consequences of the armed aggression of the Russian Federation related to damage to buildings and structures (Verkhovna Rada of Ukraine, 2022b); Procedure for dismantling facilities damaged or destroyed as a result of emergencies, hostilities or terrorist acts (Verkhovna Rada of Ukraine, 2022c); Methods of inspection of buildings and structures damaged as a result of crises, hostilities and terrorist acts (Ministry for Communities and Territories Development of Ukraine, 2022c); Estimates of Ukraine "Guidelines for determining the cost of work to assess the technical condition and operational suitability of facilities" (Ministry for Communities and Territories Development of Ukraine, 2022b); Rules of maintenance of residential buildings and adjacent territories, approved by the order of the State Committee for Construction, Architecture and Housing Policy of Ukraine (Verkhovna Rada of Ukraine, 2005).

Also, the government has developed a Clarification on fixing the destruction to eliminate the consequences of hostilities and restore the

infrastructure of settlements in a state of war (Ministry for Communities and Territories Development of Ukraine, 2022a).

Adopted bylaws allow making informed decisions on the restoration of damaged objects or their dismantling under a simplified procedure, including the procedure of examination of project documentation. Development of projects for the restoration of damaged objects is possible in a short time. Thus, the institute of control in the field of housing construction was partially changed for a specific category of buildings that suffered from the armed aggression of the Russian Federation in Ukraine.

The mechanism of legal regulation of control in the construction industry consists of legal provisions of construction legislation and building codes, standards and rules; entities that carry out architectural and construction control; means of control of construction sites; the construction control procedure.

Construction legislation is wide-ranging, which includes rules relating to the general legal framework, the implementation of construction policy, fundamental rights and responsibilities of all participants in the construction process, requirements for the development, creation and construction of real estate properties, control of construction sites, commissioning procedure, liability for violations of building codes, etc. Many countries (Australia, Germany, Canada, USA) and international organizations (EU, the International Code Council) have codified construction legislation into a single legal document — the Building Code — in order to regulate legal relations in the construction industry.

Eurocodes are an EU-developed set of harmonized standards for the calculation of load-bearing structures of buildings (European Commission, n.d). This document contains ten separate standards (Eurocodes), which set requirements for the calculation of building structures of different materials. The International Building Code developed by the International Code Council regulates the issues of labour protection and safety at the construction site, based on regulatory building requirements and standards (ICC Digital Codes, 2018). The aim of the provisions of the Code is to ensure the quality and safety of construction works and reduce costs for construction stages. This Code complies with quality control of construction projects by mandatory use of standardized and certified construction materials and equipment and compliance with the conditions of construction operations.

In addition to international documents and national legislation, the system of construction legislation includes international levels and standards of international organizations: standards of the International Organization for Standardization (ISO), which determine uniform requirements for quality of construction products, materials, equipment and construction works, the provisions of the World Federation of Technical Assessment

Organisations (WFTAO), which sets the requirements for technical regulation of the construction industry, FIDIC (International Federation of Consulting Engineers) International Building Standards, which determine the rules of construction works, etc.

The construction practice emphasizes the need to control and reduce the risks associated with the creation and operation of the property. Ignoring construction control and the failure to comply with the construction rules and standards entails the creation of dangerous and inappropriate construction sites and accidents during construction works. Approximately 3 million workplace accidents are reported in the EU each year, of which 65.6% are construction, transport and storage, manufacturing, agriculture, forestry and fisheries, and 44.3% are in other areas. According to Eurostat, in 2018 the EU built 74.1% of small buildings, 12.9% of medium-sized buildings, 13% of large buildings, with almost 20.5% of fatal accidents occurred during construction on their construction sites. The construction sector has the highest accident rates, which is almost 3.2-3.4 thousand cases per year, compared to the transport sector (2.5-2.7 thousand cases per year) and manufacturing (2.1-1.8 thousand cases per year). Figure 1 shows accident rates in these areas during 2012-2018 (Eurostat, n.d.).

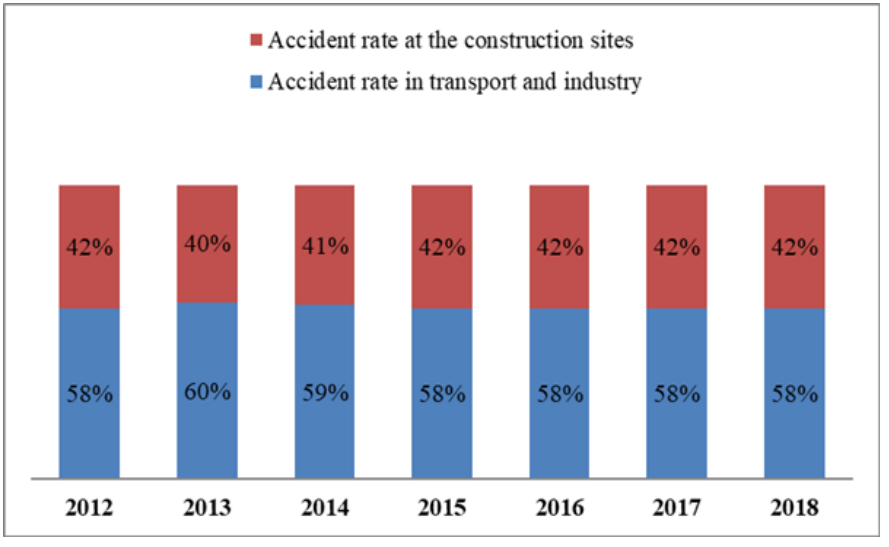

Figure 1. The accident rates in construction, transport and industry in the EU for 2012-2018.

Source: author's own development based on (Eurostat, n.d.)

In 1939, the International Labour Organization adopted the Safety Provisions (Building) Convention in order to reduce the number of injuries and the risk of accidents on construction sites (International Labour Organization, 1937). The provisions of the Convention regulate the activities of all types of operations on the construction site, including the construction, repair, reconstruction, maintenance and demolition of all types of buildings. This international document contains standardized minimum safety measures and a set of standard safety rules, where the control over their compliance is the basis of construction sector policy.

The provisions of the Safety and Health in Construction Recommendation reveals the practical implementation of the set of standard safety rules (International Labour Organization, 1988). According to the Recommendation, all participating countries undertake to harmonize their national construction legislation on labour protection by establishing appropriate occupational health and safety measures that will ensure the safety of workplaces. Compliance with such safety measures is the employer's and employees' responsibility. The planning, preparation and execution of construction stages must take into account:

- the risks that may arise during the construction because of the failure to comply with safety rules;
- avoidance of excessive overload of employees, which can cause injury or accident;
- organization of work on observance of safety and labour protection regulations;
- use of harmless and high-quality materials;
- providing employees with appropriate means of protection.

According to the Recommendation, the provisions of national construction legislation of the member states should provide for the establishment of a competent body that will regulate the construction sector, verify construction project documents and construction permits, monitor compliance with building codes and standards, and prosecute for non-compliance with construction legislation. A total of more than 60 Council of Europe directives have been adopted so far on occupational health and safety, the system of which is presented in Figure 2.

According to the Regulation (EU) No. 305/2011 on construction materials, construction works in general and parts thereof that must be suitable for their intended use and must be safe for the users' health throughout the life cycle (Eur-lex, 2021). The safety of construction projects is achieved through the quality of construction materials that comply with the rules of this Regulation. The provisions of the Regulation establish not only the conditions for entering the EU market of construction materials,

but also agreed rules for assessing the conformity of quality of construction products, its main characteristics and the use of CE marking for such products. The Regulation also establishes methods for assessing the conformity of construction equipment and products.

During the construction control at the construction site, the construction process is monitored and inspected for the functioning of the construction projects under control, and assessed for its compliance with construction requirements and standards, as well as the violations or deviations from the specified parameters are detected. This government regulation of the construction sector is realized by a specially authorized body. In many countries, not only public authorities, but also private institutions and insurance companies perform such oversight and supervisory functions. They not only carry out architectural and construction control and inspections, but also issue building permits. Table 1 shows the list of entities that exercise construction control in different countries.

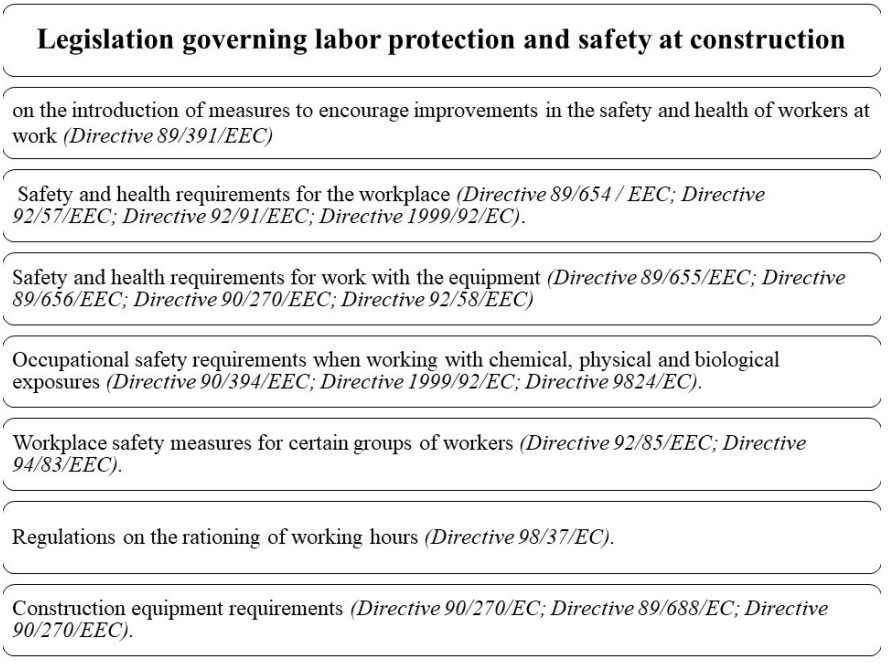

Figure 2. System of labour protection and safety regulations.

Source: author's own development based on (Eur-lex, n.d.).

Table 1. Institutional support for construction control in some countries

Country	Entities that exercise control and supervision over the construction	Authority of the entities
Austria, Estonia, Iceland, Spain, Norway, Slovenia, Croatia, Czech Republic, Sweden	Specialized public bodies and special independent private institutions or independent private experts	Architectural and construction control
Great Britain	Ministry of Housing, Communities and Local Government	Regulation of the construction sector policy, construction control, approval of uniform construction codes and regulations
	Building Regulations Advisory Committee; Building Regulations and Standards Department	Providing advice on the application of building codes
	Local authorities and inspectors	Architectural and construction control
Denmark	Ministry of the Interior and Housing	Regulation of the construction sector policy
	Local authorities, National Agency for Construction and Housing	Architectural and construction control, issuance of building permits, verification of compliance of construction projects with building codes
Ireland	Specialized government agencies	Architectural and construction control
Canada	Canadian Commission on Building and Fire Codes	Technical regulation of construction works, compliance of the construction projects with natural and climatic conditions, Canadian building traditions, building codes and rules
	Canadian Construction Materials Centre	Architectural and construction control
Poland	Ministry of Regional Development Regional Development Agencies	Regulation of the construction sector policy, attraction of investments in the construction industry, verification of compliance with the control of construction projects

Romania	Regional Development Agencies	Development of a regional development strategy for the construction industry
France	Ministry of Construction, Transport and Tourism	Regulates the policy of the construction industry, makes forecasts and develops strategies for the development of the construction sector
	Construction companies that are members of the National Federation of Public Works and the National Federation of Construction Companies	Issuance of building permits, verification of compliance with building legislation; technical regulation of construction works, etc.
	National Centre for Construction Machinery	Architectural and construction control
	Insurance companies — controllers	

Source: authorship.

The construction permits are issued by the entities that exercise architectural and construction control before the start of construction by checking the compliance of the documents required for construction. At this stage, the inspector identifies inconsistencies in the submitted documents and indicates them for elimination purposes. In 2020-2021, the Building Permits Index in the EU averaged 128.8. The index of constructed buildings during this period is much lower and amounted to 106.7.

Figure 3 shows quarterly values of these indices (Eurostat, n.d.). The European Real Estate Index is calculated from the perspective of the number of completed constructions, real estate pricing policy, cost of construction materials and valuation of construction projects. The Building Permits Index reflects the indicators of permits issued by the relevant institutions for the construction of only one-apartment houses and houses with two or more apartments. These indices do not, however, take into account indicators of social construction projects, such as homes for the elderly, schools or kindergartens. These data give grounds for the conclusion that the EU permitting system of the construction industry exceeds the indicators of completed construction, which testifies to the existence of a legal mechanism for government regulation of the construction sector.

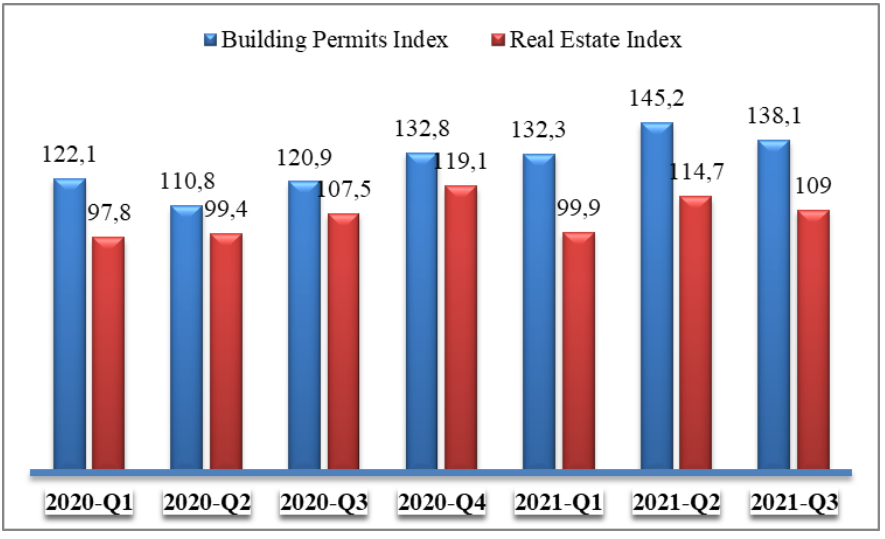

Figure 3. Quarterly Building Permits Indices and the Real Estate Indices in the EU in 2020-2021.

Source: author's own development based on (Eurostat, n.d.)

The object of the construction control is the construction process itself and closely related legal relations, and the subject is compliance with building codes and standards. The latter include, in particular, international and national standards during design and construction; provisions of construction legislation; construction project design documentation; labour protection and safety requirements; environmental and sanitary requirements; licensing conditions and compliance with the certification of construction materials and equipment; the regime of use and development of land plot on which construction will be carried out; compliance of construction works in accordance with the issued permits; terms of construction stages and its completion.

4. Discussion

Control of construction projects establishes the quality of construction structures by assessing the compliance of their characteristics with construction legislation, as well as construction standards and requirements. Ignoring the control and supervision of the construction process can lead to violations of building codes, which can result in accidents, both during construction and in the subsequent use of the building.

According to Lou and Xu (2017), in order to establish an effective state regulatory policy in the field of construction, government supervision of construction should be carried out not only upon completion of construction, but in three stages: before construction, during construction and after constructio. Binninger *et al.* (2017) noted that the effectiveness of government supervision over construction sites should be achieved through the control and inspection of those sites. According to Onaiwu (2020), the clearly regulated legal mechanism for compliance with building codes will create favourable conditions for the development of the construction industry and the economy as a whole.

Zhao *et al.* (2017) and Zeng *et al.* (2022) emphasized that the real-time control over the construction stages can also be effective. Online inspection of the remote construction site helps to improve the management of the construction process and eliminate shortcomings in the construction stages. According to Ciampa *et al.* (2019) and Rouhanizadeh and Kermanshachi (2020) the use of unmanned aerial vehicles and drones during construction inspections helps to speed up the inspection procedure. These researchers state, however, that their use should be clearly regulated. With their low cost, efficiency, ability to inspect the construction site in real time, these technological tools can not only indicate problems and shortcomings during the inspection of the construction site, but also to carry out construction inspections of high-rise buildings, in remote areas or other complex cases.

Kim *et al.* (2020) also considers the use of unmanned aerial vehicles in construction control to be effective. In their opinion, these tools help to technically implement government regulation of construction by constantly monitoring the construction process, its stages, quality and safety of work. In aggregate, this will improve the quality and safety of the construction object. As Zhang and Arditi (2020) noted, the use of laser scanners during construction control significantly speeds up the inspection of the construction stages.

According to Piasny and Pasławski (2015), modern approaches to construction control do not reflect a comprehensive approach to the development of uniform requirements for the scope and level of construction control, which will ensure proper assessment of quality and safety of the construction project. Vesela and Synek (2019) and Mu (2020) state that the mission of construction control is ensuring quality in construction, as quality is the basis for calculating the preparatory, production and evaluation procedures and stages of construction. Khanzadi *et al.* (2020) believe that quality, strict compliance with the progress of construction and reduction of financial costs for construction is the main objective of supervision in the construction industry. Ravi *et al.* (2017) and Benny and Jaishree (2017) maintain that construction control should help to reduce the number of construction accidents and develop clear preventive measures. Nnedinma

(2017; 2017a) contend that monitoring compliance with labour protection and safety regulations should be the main objective of construction control.

Ding *et al.* (2017) studied the effectiveness of regional construction supervision and control systems in China, finding that practical managing engineers who supervise construction design and life cycle cost of the construction project is the current priority in the construction control system. The competitiveness of the construction project is assessed based on the results of their work, thus allowing the developer to enter the market with this project and maintain competitive advantages.

According to Zhou (2019), the quality of engineering works on construction sites can be approved through construction control. Government supervision of construction should be implemented through inspections of compliance with construction standards, construction progress and construction stages. Actual methods of construction control allow analysing the current scheme of construction management at a particular site, identify its gaps, and suggest ways to solve them.

Akimova *et al.* (2020) and Piasny and Pasławski (2015) explored the legal means of exercising construction control and found that self-regulation of licensed organizations is a component of government regulation. Although these organizations are engaged in civil law relations and issue construction permits, certificates, inspect construction technical regulations, etc., their powers are administrative.

Compliance with building standards, quality and safety is the basis of the construction industry (O'Brien *et al.*, 2020). According to Fatourehchi and Zarghami (2020), the main problems of construction supervision are related to the imperfection of the relationship between the participants in the construction process, compliance with quality standards and deadlines for investment construction projects. As Zeng *et al.* (2022) noted, barriers to construction control are the imperfection of the regulatory framework governing compliance with standards and codes of the construction industry and the powers of inspectors of construction control.

The theoretical analysis of the problems of construction control and its effectiveness from the perspective of compliance with safety and quality of construction objects showed that researchers consider it reasonable to further study residential construction control from the perspective of its legal regulation, effective recommendations for the practical implementation of the legal regulation, which would adjust the development of the construction industry.

Conclusion

Russia's armed aggression has destroyed much of its housing stock and social infrastructure. Therefore, the state authorities are obliged to take immediate action to restore the destroyed and damaged buildings in the territories liberated from the occupiers. The government has approved a legal framework for the rehabilitation these facilities, which partially simplifies some stages of construction.

Government construction control of construction projects is the activity of entities that carry out construction control by inspecting and supervising construction in order to ensure its compliance with state building codes, requirements, rules and standards, as well as aimed at preventing, detecting and terminating actions that violated the above regulations, as well as bringing the perpetrators to justice. The construction control is exercised by inspecting construction projects, issuing building permits, conducting examinations of construction projects for compliance with building codes, rules and standards, and identifying violations of construction legislation in order to eliminate them.

The mechanism of legal regulation of control in the construction industry includes such elements as: building codes and legal rules that ensure the exercise of control in the construction industry; subjects of architectural and construction control; tools of construction control; construction control procedure. Building codes and legal rules consist of construction legislation, international construction standards, rules and regulations. The entities that exercise construction control are specially authorized government bodies, private independent institutions, experts, inspectors and insurance companies.

The purpose of construction control is ensuring compliance of construction projects with the quality and safety regulations, as well as reduction of risks associated with the creation and use of the buildings. Ignoring construction control and adhering to building codes and standards entails dangerous and unserviceable construction sites and accidents during construction operations.

The prospects for further research include the analysis of the mechanism of legal regulation of construction control. Therefore, we consider the empirical study, as well as theoretical and methodological justification of effective measures for the state supervision of the construction sector to be further prospects of the research in this area.

The prospect of further research is the organizational support of effective control in the field of housing construction in the context of the armed aggression of the Russian Federation to restore the quality of housing in Ukraine as soon as possible.

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CUESTIONES POLÍTICAS

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Esta revista fue editada en formato digital y publicada en julio de 2022, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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