

FEDERAL STATE-FUNDED EDUCATIONAL INSTITUTION OF HIGHER
EDUCATION
RUSSIAN PRESIDENTIAL ACADEMY OF NATIONAL ECONOMY AND
PUBLIC ADMINISTRATION

Preprint



Olga Vladimirovna MONCHENKO

CIVIL LAW REGULATION OF INTERNATIONAL CONSTRUCTION

Specialisation: 5.1.3 Private law (civilistic) sciences

Abstract

of the dissertation for the degree of Candidate of Legal Sciences

Scientific Supervisor

Candidate of Legal Sciences,

Associate Professor

Ivanova Tatyana Nikolaevna

Moscow – 2025

Relevance of the research topic. The construction sector is one of the main spheres of the economy, according to Rosstat it amounted to 5% of Russia's GDP for 2023. Its share in the Russian economy will only increase, as evidenced by the adopted in 2022 Strategy for the development of the construction industry of housing and communal services of the Russian Federation for the period up to 2030 with a forecast to 2035 (hereinafter - Strategy). The Strategy pays special attention to optimization of legislative regulation in the construction industry and development of scientific activity in construction, which should ensure its innovative development. The state recognizes the need to improve the competitiveness of Russian contractors abroad, as well as to create conditions for increasing the export potential of the industry.

Russian companies also aim to promote services in foreign markets, which can be demonstrated by the example of Rosatom's activities: over the past 15 years, the company has provided foreign countries with 8 power units, and by 2030, more than half of its revenue should come from foreign contracts.

However, the only desire to increase presence in foreign markets is not enough. It is necessary to learn how to use the tools of legal regulation of the construction industry that are widespread abroad, which primarily include standard forms of contracts.

Previously, legal support for foreign projects of Russian contractors was provided by foreign legal advisors. In 2022, Russia faced new challenges, as a result of which the European Union imposed a ban on legal assistance to Russian companies. The envisaged exceptions to the sanctions do not apply to legal support of trade deals, which also includes legal assistance in the conclusion and execution of contracts in the field of international construction.

Thus, the desire of Russian business to enter foreign markets, the presence abroad of peculiarities of the practice of realization of construction projects, as well as the reduction of the legal services market for Russian companies as a consequence of the sanctions imposed on the Russian Federation leads to an objective need for

Russian lawyers to build up their competence in the field of legal support of international construction projects.

We believe that, first of all, Russian science in this area should focus on mastering tools applicable abroad. Scientific developments in the field of construction will make it possible to increase the adaptability of lawyers to participate in international construction projects where Russian companies act as contractors and where foreign applicable law is used. The next step should be to adapt Russian legislation to global trends in the regulation of the construction industry.

The main problem faced by the researcher, whose sphere of interest lies in the designated area, is insufficient development and incompleteness of the process of formation of the conceptual and categorical apparatus. Thus, with regard to contracts in the sphere of international construction activities different authors use such terms as "cross-border construction contract", "international construction contract", "construction contracts", unknown to Russian law "EPC-contract" and others. There is no well-established and generally accepted terminology with respect to certain contractual structures in the sphere of international construction activities. This circumstance, on the one hand, complicates the research, as it makes it necessary to build a conceptual and categorical apparatus, on the other hand, determines the special relevance and significance of our research for Russian science and practice.

Degree of development of the research topic. There is a limited number of works considering the problems of civil law contracts in the sphere of international construction activity. Among them it is necessary to emphasize the researches of D.Y. Yalilov and V.V. Vakhtangov. V.V. Romanova. D.Y. Yalilov in his study emphasizes the procedural peculiarities of regulation of relations in the field of construction. V.V. Romanova also considers contracts in the sphere of construction in Russian law, selectively paying attention to certain inherent features of contracts in the sphere of international construction, in particular, the procedure of changes.

The monograph by V.E. Varavenko "Adaptation of FIDIC Model Contracts to Russian Law. Comparative legal study", however, despite its undoubted value for practicing lawyers, it is, unlike our study, of purely applied nature. Indicating the degree of development of the topic, we should also mention the articles by V.E. Varavenko devoted to the consideration of individual problems arising in the implementation of contracts in the field of international construction activities.

Finally, it is necessary to point out the monograph by I.V. Nikiforov and L. Claye, which deals with some standard forms of international contracts in construction and peculiarities of their fulfillment in individual countries.

Otherwise, the subject of our study was disclosed in the Russian scientific literature only at the level of individual articles, which will be referenced further in the text of the paper.

Taking into account that the dissertation research is also connected with the development of issues of private international law, it is necessary to pay attention to the studies of legal regulation of international commercial contracts in general and international advisory regulators in particular. These problems were dealt with by O.V. Ablezgova, S.V. Bakhin, Y.S. Bezborodov, N.G. Vilkoval, A.S. Dedusenko, A.A. Drozdov-Tikhomirov, E.E. Veselkova, N.Y. Erpyleva, I.S. Zykin, E.V. Ivanova, T.N. Ivanova, V.A. Kanashevsky, N.A. Karsakova, E.V. Lomakina, L.A. Lunts, V.N. Lipovtsev, M.A. Mazhorina, T.V. Matveeva, R.I. Muchak, D.P. Strigunova and others.

Among foreign researchers who deal with general problems of the *lex mercatoria* institute and international commercial contracts, we should name B. Goldman, A. Goldstein, O. Lando, Ж. B. Goldman, A. Goldstein, O. Lando, J. Paulson, K. Schmittgoff and others.

A.A. Rybentsov, A.H. Berbekov, V.P. Bugorsky, M.I. Braginsky were engaged in doctrinal development of the construction contract, M.V. Vinogradov, V.V. Vitryansky, B.M. Gongalo, O.G. Ershov, E. A. Kalinenko, N. N. Kovrov, E. B. Kozlova, P.V. Krashenninnikov, O. E. Makhova, D.E. Medvedev, S.N. Mokrov, R.I. Muchak, A.V. Nikitin,

P.S. Ozerov, T.V. Sazonova, A.P. Sergeev, E.A. Sukhanov, V.R. Faizulin, R.D. Farkhutdinov, Y.I. Frolovskaya, A.E. Sherstobitov, A.E. Scherbak, N.B. Shcherbakov.

The category "contracts related to construction activities" has been developed in the works of V.P. Bugorsky, N.V. Arakelyan, E.B. Kozlova, Y.A. Kliman, A.A. Rybentsov.

At the international level, the study of contracts in the field of construction was carried out by N. Bunni, E. Baker, J. Bailey, M. Dunn, L. Klee, M. Cowlin, Levine, E. Lievers, J. Murdoch, L. Reid, H. Randolph Thomas, S. Furst, J. Hughes, W. Hughes, S. Chalmers, D. Chappel, R.D. Ellis Jr, A. Janos, C. Seppälä, J. Wiley.

The object of the dissertation research is public relations arising in connection with the implementation of international construction activities by Russian persons. **The subject of the research** is legal and advisory norms regulating relations in the sphere of international construction activities; standard forms of FIDIC and other professional associations; materials of arbitration practice of Russian courts; available Russian and foreign doctrine in the sphere of international construction activities.

Objectives and tasks of the dissertation research. The purpose of the study is to comprehensively analyze the civil law regulation of legal relations arising in the sphere of international construction activities.

In the process of achieving the named goal, the following **tasks** were set and solved:

- formulate a definition of international construction activities (international construction);

- to formulate the concept of "contractual construction in the sphere of international construction activity";

- to consider the evolution of standard forms of contracts in the sphere of international construction activity;

— to consider the object and subjects of legal relations in the sphere of international construction activity and to identify the main features of their subject composition;

— to analyze the peculiarities of the content of legal relations arising in the sphere of international construction, on the example of variation procedure;

— to study conflict of laws regulation of contracts in the sphere of international construction activity;

— to determine the peculiarities of application of the principle of autonomy of will of the parties in terms of regulation of the construction contract in private international law;

— to analyze the correlation of national law, international legal and international advisory acts in the conflict of laws regulation of civil law contracts in the sphere of international construction activities.

Methodological foundations of the research. The methodological basis of the thesis is modern methods of scientific research, including general philosophical (dialectical), general scientific (methods of generalization, analysis, synthesis, induction, deduction, analogy), private-scientific (historical-legal, formal-legal, comparative-legal).

Information base of the research. The list of sources and literature used by the author in researching the topic of the thesis: 146 sources of domestic scientists; 134 sources in foreign languages; 11 international legal normative and recommendatory acts; 10 acts of legislation and recommendations of the Russian Federation; 57 acts of Russian courts; 6 foreign court decisions; 19 sources related to electronic resources.

Scientific novelty of the dissertation research is determined by the fact that for the first time it comprehensively considered the concept of international construction activity, investigated civil law contracts and contractual structures in the sphere of international construction activity, as well as some features of legal relations arising in the considered sphere (subject composition, variation procedure). In addition, for the first time at the level of dissertation research the application of

the principle of autonomy of will to legal relations in the sphere of international construction activities is analyzed, as well as the issue of correlation of national law, international legal and international advisory acts in the conflict of laws regulation of international construction activities is systematically considered.

Arguments to be defended.

1. The concept is given and the definition of international construction activity is formulated as a set of active purposeful actions of subjects of civil law, which (1) is aimed at the realization of a construction project, which requires, among other things, the transfer of rights to intellectual property objects (closely related to technology), (2) includes all social relations arising in connection with the realization of such a project, the core of which are relations on construction, reconstruction or dismantling (deconstruction, reconstruction or dismantling). *This provision refers to items 7, 31 of the passport of scientific specialty 5.1.3 "Private-law (civil) sciences".*

2. The notion and definition of contractual construction in the sphere of international construction activity is derived and formulated. It is substantiated that under contractual constructions in the sphere of international construction activity should be understood a set of abstract models of agreements in the sphere of international construction, which can be reflected in the practice of subjects of civil turnover, doctrine, recommendatory acts, including model contracts, and legislation, specific to international construction activity and reflecting the features of the latter. *This provision refers to point 8 of the passport of scientific specialty 5.1.3 "Private-law (civilistic) sciences".*

3. It is substantiated that the specificity of international construction activities necessitates the presence in private international law of a conflict of laws reference that allows to unambiguously establish the applicable law. The most optimal conflict of laws reference for determining the applicable law to contracts in the field of international construction activities is the application of the law of the country where the construction site is located. *This provision refers to paragraph 31 of the passport of scientific specialty 5.1.3 "Private-law (civilistic) sciences".*

4. It has been established that in Russian law there is a peculiarity of application of the principle of autonomy of will in the part of regulation of the construction contract. It has been substantiated that the legal effect of realization of the principle of autonomy of will and the choice by the parties of the law applicable to the contract in the case when all the obligations concerning the substance of the parties' relations are related only to one country (clause 5 of article 1210 of the Civil Code of the Russian Federation) cannot be achieved due to the predominantly peremptory nature of regulation of the construction contract in the Russian law. *This provision refers to paragraph 31 of the passport of scientific specialty 5.1.3 "Private-law (civilistic) sciences"*.

5. It is substantiated that denationalization of conflict of laws regulation has taken place in the sphere of international construction activity. This allows to provide greater flexibility and legal certainty to the relations of the parties due to the lack of dependence on the changing legislation of individual states. Practical manifestations of denationalization of conflict of laws regulation are the detailed specification of civil law contracts in the sphere of international construction activities and the desire to minimize the cases of the need to refer to the conflict of laws rules of individual countries, reflected in international and international recommendation acts, as well as arbitration rules. *The present provision refers to paragraphs 31, 32 of the passport of scientific specialty 5.1.3 "Private-law (civilistic) sciences"*.

6. It has been established that the peculiarities of international construction activities have influenced the subject composition of legal relations arising in this area. The special subjects of legal relations in the sphere of international construction activity include dispute resolution councils and engineers. The rights and obligations of dispute resolution councils as subjects of legal relations in the sphere of international construction activities consist not only in resolving disputes between the parties, but also in their function of dispute prevention, which is expressed in their active participation in the implementation of the construction project during the

greater part of its life cycle. *The present provision refers to paragraphs 6, 32 of the passport of scientific specialty 5.1.3 "Private-law (civil) sciences".*

7. It has been substantiated that as a subject of international construction activities an engineer has a special set of rights and obligations. On the example of model forms of contracts developed by the International Association of Consulting Engineers, it is demonstrated that the engineer acts both as a person performing the function of the client's representative and a person called upon to assist the parties in reaching an agreement on certain issues, and in case of impossibility to reach it, to resolve the dispute before its transfer to dispute resolution boards. *This provision refers to items 6, 32 of the passport of scientific specialty 5.1.3 "Private-law (civil) sciences".*

8. It is formulated that a variation should be understood as a modification of documentation (expressed in any form, including drawings, specifications, descriptive part of requirements, etc.), which is a part of the contract and which describes the requirements for the construction object, construction process (including requirements for temporary works), construction schedule (including the order of work execution and completion dates), implemented on the basis of a proper (agreed in the contract) procedure and at the initiative of the authorized subject (the customer or the customer's representative). It is established that, from a functional point of view, a variation is a method of dispute resolution formalized by the parties to the contract regarding modifications in individual contract terms. *This provision refers to paragraphs 7, 32 of the passport of the scientific specialty 5.1.3 "Private-law (civil) sciences".*

Theoretical significance of the research is determined by the fact that the conclusions formulated in the course of the work can be used for the purposes of research and further scientific development of civil law contracts in the sphere of international construction activities. The results of the dissertation can be used in the educational process to develop and conduct lectures and practical classes on the courses "Civil Law" and "Private International Law".

The practical significance of the study is determined by the fact that it systematically considers and outlines the peculiarities of contractual constructions and standard forms in the sphere of international construction activities, as well as some issues of choosing the applicable law to such contracts. The study may be of interest to practicing lawyers who work in the construction sector of the economy in the international market.

In addition, the study contains proposals to supplement and amend the norms of the Russian legislation. Adoption of the proposed changes may increase the attractiveness of Russian law for use in international construction projects.

Degree of validity and approbation of the results of the study

Some proposals of the dissertant have been approved in speeches at the following conferences: VII International Scientific and Practical Conference of Students, Postgraduates and Young Scientists "Speran Readings" in the Russian Academy of National Economy and Public Administration under the President of the Russian Federation, conference of young scientists "Legal regulation of the fuel and energy complex in modern conditions" in Gubkin Russian State University of Oil and Gas (National Research University). In addition, the materials of the dissertation have been approved by the author in the framework of scientific conferences, as well as in his own practical and teaching activities.

The conclusions of the thesis, including those concerning the procedure for changes, were tested by the author on the Hanhikivi-1 NPP construction project. The author independently analyzed, legally assessed and prepared documents related to variations under the construction contract. As a result, the author's conclusions have shown their practical applicability.

The main provisions and results of the dissertation research have been published by the author in scientific articles, including in the editions recommended by the VAK of the Ministry of Education and Science of the Russian Federation: Monchenko O.V. EPC and EPCM: Choice of the optimal contractual form // Law and Economics. 2021. № 7 (401). С. 52-56; Monchenko O.V. Inclusion in the contract of conditions on reimbursement of costs incurred in connection with the

obstruction of timely performance of works by the contractor, as a guarantee of his rights: international and Russian approaches // Juridical World № 7. 2022. C. 40-46; Monchenko O.V. Model forms of international construction contracts as a source of *lex mercatoria* in the construction sphere // Law and Economics. 2023. № 9. C. 41-48; Monchenko O.V. Correlation of Variations (Variations) and requirements for acceleration of works in international construction activity // Juridicheskiy Mir. № 11. 2024. C. 43-46; Monchenko O.V. Variations (Variations) in civil law contracts in the sphere of international construction and in the Russian civil law: comparative legal aspect // Law and Economics. 2024. № 11. C. 89-95.

Structure of the study. The structure of the work is determined by the goals, objectives and the range of problems investigated. The dissertation includes the following structural elements: introduction, three chapters uniting seven paragraphs, conclusion and bibliography. The main conclusions of the conducted research are presented in the dissertation by paragraphs.