Legal regulation of construction quality and control

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Abstract: The Institute of State Construction Supervision of urban planning legislation system occupies a key place in the matter of quality assurance of construction, that is a necessary condition for the safety of buildings under construction. The article gives a brief analysis of state architectural-building supervision mechanism of the RSFSR/USSR of Soviet period and developed processes of that period of time. By Decree of the Council of People’s Commissars of August 16, 1944 No. 1110 “On the State architectural-building Supervision”, the authorities (organizations) of architectural-building supervision were created. The main activity of GASK authorities was control functions in construction process, the Construction Norms and Regulations compliance, quality assurance, project solutions relevance, the correctness of capital investments. Analyzing the legal regulation of construction quality and control of Soviet period, the author notes that the political regime of the state does not affect the essence of the state construction supervision, but defines forms and implementation methods of it.

Currently, developers are violating building codes, rules and technical standards. The violations are caused by their desire to gain more profit, reduce the construction period and turnover terms, win tenders, etc. These illegal initiatives can be implemented due to corruption practice. As a result, customers and consumers cannot enjoy quality facilities and there is a risk of technological disasters. To eliminate causes and conditions that give rise to negative phenomena, it is necessary to strengthen federal and regional government control in the construction sector.

Significant efforts aimed at improving state inspection and enforcement activities are underway in Russia. The final beneficiaries of such public functions are usually citizens, as inspection and enforcement affect public health, the safety of property as well as other public values such as environment or cultural heritage [1].

Federal laws provide requirements to the planning of supervision activities, to the order of organization and holding supervision, to documenting and arranging the results of such activities. The facts of ignoring the requirements, which brings about infringing the rights and legitimate interests of the citizens in entrepreneurship, legal persons, remain a significant negative factor due to their mass character, and hamper the economic development of the Russian Federation as a whole [2].

The relevance of this issue is due to the fact that in the field of legal regulation, problems require improvement of the legislation. Serious changes in the Russian legislation on state construction supervision were made in 2005-2006. In recent years, this institution has been reformed. At the same time, proposals for its further improvement are being made by the expert community and the government. Sometimes these proposals are diametrically opposed. During the period of development of market relations, it is necessary to create an effective mechanism to ensure quality and safety of
facilities under construction. Therefore, to understand in which direction the state construction supervision system should be improved, let us analyze the history of this institution in the Soviet period.

The purpose of this article is a historical and legal study of development of the state construction supervision system in the Soviet period.

This study was carried out using various general scientific and private scientific methods: historical-genetic, logical, system-structural, etc.

In pre-revolutionary Russia, architectural and construction supervision was carried out by provincial and local authorities. According to I.V. Kropacheva, "this scheme existed for a long time and was implemented in modern Russia" [3]. In Soviet Russia, the construction supervision system was administered by other state bodies created by the new state.

In the 20s of the XX century, supervision of the construction industry and prosecution of violators were carried out by local executive committees. The militia regulated construction works. Then, the situation changed and the militia began to carry out their immediate task of protecting law and order and public safety. Local authorities, for example, the department of district engineers, carried out construction supervision after the revolution [3].

On September 27, 1923, the Council of People's Commissars of the RSFSR adopted the decree "Regulation on the Directorates of Provincial Engineers." Under the provincial executive committees, departments which consisted of engineers (higher technical education and construction experience) appointed by the provincial executive committee were created. The staff was formed in accordance with local needs and plans of the provincial executive committee.

The provincial engineer performed his duties both directly and through district engineers appointed by the provincial executive committee on the recommendation of the local executive committees. Their activities were carried out on the basis of a special provision approved by the provincial executive committee.

The provincial engineers performed construction control, in particular, “general technical control over compliance with national building codes and local mandatory regulations when issuing permits and performing local construction works”, organization and performance of construction works; accounting and distribution of building materials; preparation of opinions on construction and planning projects and various technical conditions, local government decisions regarding local building codes; designing; inspection of facilities for reconstruction, etc. [4]. According to paragraph 1 of Section II of the Regulation, provincial engineers were able to punish people violating national construction standards, suspend works in case of a threat to public safety.

The departments of provincial engineers were replaced by the departments of construction control in accordance with the decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR "On the Approval of the Regulation on the Departments of Construction Control in the Territories, Regions and Provinces of the RSFSR of February 27, 1928. The Departments of Construction Control were subordinate to the local executive committees, as well as higher building control authorities [5].

The Construction Commission of the RSFSR was a central governing body in relation to the Building Control Departments. It supervised activities of building control bodies according to Russian laws. Local engineers were appointed by the local executive committee by special orders. Local construction authorities were appointed by special decrees. In districts, there were district engineers who were subordinate to higher construction control departments.

In addition to construction control, the functions of construction control departments included: accounting; technical and economic regulation of local construction; implementation of public safety measures.

The Regulation defined the concept of technical and construction control as follows: “consideration and approval of construction, reconstruction and overhaul projects and ... control at the construction sites ... supervision of works performed in compliance with construction projects and permits” [5].

Officials were empowered to visit construction works and inspect objects, give orders to suspend
works “if there are significant deviations from the approved project or when performing works not agreed with the Construction Control Department, or works performed carelessly and threatening public safety” [5].

In addition, the construction control authorities were empowered to liquidate construction organizations and terminate activities of private contractors.

In the resolution “On improving housing construction” of April 23, 1934, the Council of People's Commissars of the USSR said that “... the existing practice of housing construction does not correspond to the cultural level and needs of workers” [6]. A number of drawbacks were emphasized: poor quality of construction and finishing works, and the design of mass housing.

As a result of reorganization of the building control authorities in 1935, functions of the state construction supervision were entrusted to the RSFSR Chief State Inspector for Construction according to the decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR "On Reorganization of Construction Control". It was subordinate to the Council of People's Commissars of the RSFSR; its duties were assigned to the People's Commissar of Communal Services of the RSFSR.

To carry out functions assigned to the Chief State Controller for Construction, the department of the Main State Construction Control of the RSFSR was created. The staff and funding were approved by the Council of People's Commissariats of the RSFSR.

The staff of the State Construction Control under the heads of regional, communal administrations and people's commissars of communal services of the Autonomous Soviet Socialist Republic and presidiums of city councils were approved by the regional, executive committees and councils of people's commissariats of the Autonomous Soviet Socialist Republic.

The Chief State Inspector for Construction had the following rights: to issue general instructions and specific instructions on the operation of the State Construction Control System of the RSFSR; arrange meetings and conferences of employees of the State Construction Control in order to instruct workers and share experience; require the submission of information and reports on the work of state inspectors for construction and supervise their activities.

In 1938, the Committee for Construction Affairs under the Council of People's Commissars of the USSR was created to coordinate activities of construction organizations. The main tasks of the Committee were as follows: project and construction management, development of production standards and technical regulations. In 1939, its functions were transferred to the People's Commissariat for the Construction of the USSR which was created by a special Law. More than hundred departmental building trusts as well as territorial and specialized heads and functional departments were subordinate to the People's Commissariat. The general construction control was carried out by the People's Commissariat, which was divided according to the industrial principle in 1946: the People's Commissariat for the construction of fuel enterprises, the People's Commissariat for the construction of military and naval enterprises. In March 1946, in the USSR, there were 29 all-Union and 19 Union-Republican People's Commissariats. On March 15, 1946, all People's Commissariats were transformed into the ministries according to the law “On the Transformation of the Council of People's Commissars of the USSR into the Council of Ministers of the USSR”.

The main document which regulated bodies of architectural and construction supervision was the Resolution of the Council of People's Commissariat of August 16, 1944 No. 1110 signed by Molotov. In accordance with the decree, the Main Directorate of the State Architectural and Construction Control of the USSR was created as part of the Committee for Architecture of the Council of People's Commissars of the USSR. There were departments of architecture under the Council of People's Commissars of the Union Republics, inspections of the State Architectural and Construction Control of the Union Republics; departments of architecture under the CPC of the Autonomous Soviet Socialist Republic and executive committees of the Councils of Deputies - the Inspectorate of the State Architectural and Construction Control of the Autonomous Republics, territories, regions of Moscow, Leningrad and Kiev; in the offices of the chief architects (according to a special list approved by the
USSR Council of People's Commissars) - state inspections of the State Architectural and Construction Control.

The State Architectural and Construction Supervision Committee of the Committee for Architecture controlled development of large cities and urban settlements, quality of construction of the most important buildings and structures, architectural designs of facades of industrial buildings, city highways and driveways.”

These bodies monitored quality of building materials and products, did not allow the use of building materials and products that did not comply with approved projects and technical specifications. They had the right to suspend construction works performed in violation of the legislation and in case of emergencies. They demanded the removal of persons who did not have the right to perform construction works, brought persons who had violated construction laws, building rules and norms to disciplinary and criminal liability and demanded production expertise and testing of materials, parts and individual structures.

In 1972, a new Construction Regulation was approved by the order of the State Architecture Committee. It was valid until the collapse of the USSR.

In accordance with the decree, the state architecture control bodies carried out the following tasks: “...control of construction of housing and civil facilities in cities, towns, rural and other settlements, regardless of their departmental subordination; control of building materials and products used in the construction of housing and civil facilities” [7]. This control was carried out at construction sites and plants. The authorities were entrusted with monitoring functions: implementation of approved projects and compliance with technical requirements for industrial buildings and structures in terms of architectural decisions and quality of façade works "included in city highways and passages; planning and development of rural settlements in accordance with approved projects; compliance with standards and technical conditions for the transportation of warehousing and storage of building materials, products, sanitary and other engineering equipment, buildings and structures at construction sites and manufacturing plants, etc”[7].

The bodies were entrusted to give binding instructions to correct poorly completed construction and installation works, replace low-quality products and materials.

The Regulation established the right of the State Architectural Control bodies to retain the cost of poorly performed construction and installation works. The deducted amounts were recovered only after defects were eliminated. It was an effective mechanism. As a result, the legislation did not establish administrative responsibility.

The system of architectural and town-planning control changed only in 1991. As a result of the federal policy, the private construction system was eliminated, since the state monopolized distribution of building materials, developed construction plans and established a complicated procedure for obtaining construction permits and land plots.

Undoubtedly, government control was carried out by those ministries and departments which performed construction works. According to the Decree of the Council of Ministers of the RSFSR dated December 25, 1987 No. 513 “On Further Development of Architecture and Urban Planning in the RSFSR”, ministries and departments, councils of ministers of autonomous republics, executive committees of local Councils of People’s Deputies were responsible for quality of designing and construction works, development of urban plans, activities of design and construction organizations. According to I.V. Kropacheva “…the bodies of internal affairs bring persons who violated construction norms to liability” [3]. Thus, these bodies were not supervisory.

The situation changed as a result of the decree of the President of the RSFSR of November 27, 1991 No. 105-r “On the of bodies of the State Architectural and Construction Supervision of the RSFSR”.

The inspections of the State Architecture and Construction Supervision of the RSFSR had to ensure the compliance of buildings and structures, building materials and products with standard technical and design documents; organizational and legal procedures. The inspections were empowered to take administrative measures (penalties) for violation of regulatory acts and state standards for the successful completion of tasks. Consequently, their activities can be characterized as supervisory.
In 1991-1992, state departmental control over quality of construction works was eliminated. In post-Soviet Russia, the reform of the state construction supervision system began. Currently, in accordance with the legislation, the state construction supervision system includes a number of authorities (see Table 1).

**Table 1.** The structure of state construction supervision in the Russian Federation

| State Construction Supervision | Executive authorities of constituent entities of the Russian Federation (independently determine the structure of authorized bodies of constituent entities of the Russian Federation) |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal executive body        | Supervision during the construction, reconstruction, overhaul of nuclear facilities, hazardous production facilities, communication lines, defense and security facilities, facilities that are state secret, especially dangerous, technically complex and unique facilities |
| Supervision during the construction, reconstruction, overhaul of other facilities subject to state construction supervision |

**Federal Service for Ecological, Technological and Nuclear Supervision** (during construction, reconstruction, overhaul of facilities specified in clause 5.1. Article 6 of the Town Planning Code of the Russian Federation)

**Ministry of Defense of the Russian Federation** (during the construction, reconstruction and overhaul of military infrastructure facilities of the Armed Forces of the Russian Federation)

**Federal Security Service** (during construction, reconstruction and overhaul of facilities under the jurisdiction of the federal security agencies (Decree of March 6, 2008 No. 325))

**Federal Security Service of the Russian Federation** (during the construction, reconstruction and overhaul of facilities under the jurisdiction of security agencies) (Decree of November 28, 2007 No. 1594)

The procedure for the implementation of state construction supervision in the Russian Federation is established by a decree of the Government of the Russian Federation of 1.02.2006. No. 54 (as amended by Decree of the Government of the Russian Federation of July 18, 2019 No. 926)

A. Lapidus and D. Topchiy come to the conclusion that "...a modern approach to construction supervision based on the criteria of a risk-based approach should be the basis for improving the quality and safety of construction products at all stages of their formation" [8].

In the situation of the current construction boom, the existing construction control procedures fail to prevent growing accidents at buildings and structures or construction product defects [9]. One of the solutions to this problem is to develop an automated design system for the quality management process of construction products, which will be used to improve construction control [10].

Thus, in the history of development of the state construction supervision system, there are several stages:

1. 1917-1938 - The bodies of architectural and construction supervision (administration of provincial engineers, construction control) which operated in difficult political and legal conditions;
2. 1939-1991 - development of Soviet architecture and urban planning legislation, creation of the People’s Commissariat for Construction, state architectural and construction control bodies.
There were no differences between the concepts “control” and “supervision”, the main functions were assigned to the executive authorities, which can be observed in modern Russia.

During the Soviet period, the viable structure of architectural and construction supervision bodies was created. It solves problems of quality of design materials and urban development. Being a part of Soviet society, the state construction supervision system was influenced by administrative bureaucratic methods, the totalitarian regime, but the essence of the state construction supervision system did not change: it ensures compliance with the legislation on urban planning, technical regulations and design documents.

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