

**ANALIZA REGLEMENTĂRILOR INTERNAȚIONALE, STANDARDELE
ȘI PRACTICILE ÎN DOMENIUL EXECUTĂRII CONSTRUCȚIILOR
PRIN PRISMA PREVEDERILOR ART.257 COD PENAL
AL REPUBLICII MOLDOVA**

**ANALYSIS OF INTERNATIONAL REGULATIONS, STANDARDS AND PRACTICES IN
THE FIELD OF CONSTRUCTION EXECUTION THROUGH THE PROVISIONS OF ART.
257 CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA**

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Summary

Poor construction execution can have significant implications, including risks to people's safety and the potential to cause environmental damage. Although there is no unified international legislation regarding poor construction execution, there are numerous international agreements, treaties, and conventions that address standards and practices in construction, including safety, environmental, and quality standards. In this study, by appealing to the interpretation of legal norms, we have analyzed in this article the constitutive elements of the offense of poor construction execution provided for in Article 257 of the Criminal Code of the Republic of Moldova, in conjunction with international standards and provisions, regulations, international rules on construction execution presenting standardized norms regarding construction quality, conduct norms regarding their execution, and especially norms presenting non-compliance with the quality of executed constructions, which consequently may incur criminal liability and cause potentially significant harm both to individuals and exceptionally large material damages.

Keywords: *construction standards, construction execution, criminal liability.*

The construction industry is a priority and vital sector with a positive impact on the national and international economy, including the influence of the industry and the construction sector in the development of construction works and the execution of construction works. For these reasons, the importance of carrying out high-quality construction work and ensuring that the work complies with the technical requirements and recommendations laid down in national legislation, regulations and international standards has a major impact on the construction industry.

In this respect, poor construction workmanship has significant consequences for human safety, life and health, potential environmental damage, and can cause particularly high material damage. Although there is no unified international legislation on substandard construction, there are numerous international agreements, treaties and conventions covering construction standards and practices, including safety, environmental and quality standards.

In this respect we refer to the International Organization for Standardization [1] which provides a number of standards for the construction industry, including ISO 9001 [1] for quality management systems and ISO 14000 [1] for environmental management. Also in this context there are laws and regulations at national level that address the issue of substandard construction, which include penalties for construction work carried out substandardly, requirements for periodic

inspection of construction including we refer also to the design and authorisation of the execution of construction work. It is also important to note that the European Union Construction Products Directive (EU) 305/2011[2] sets harmonised rules for the marketing of construction products in the EU, while the Energy Performance of Buildings Directive (EU) 2010/31[2] obliges Member States to improve the energy performance of buildings. It is important to note that although international standards and agreements exist, they need to be transposed into national legislation and properly enforced in order to be legally and economically effective.

Referring to various European organisations we can specify the European Committee for Standardisation [2] which is a body that sets technical standards at European Union level, including standards for building materials and construction methods. CEN[2] works closely with ISO[1] to ensure that standards are internationally compatible. There are also other non-governmental and private organisations that provide certification and standards for the construction industry. For example, the US Green Building Council (USGBC)[3] is responsible for the development of the Leadership in Energy and Environmental Design (LEED)[4] standard, one of the 90 best known standards for sustainable buildings.

It is essential that all those involved in the construction industry are aware of their legal and ethical responsibilities to ensure the safety, durability and quality of construction work. This includes not only builders, but also designers, material suppliers, inspectors and building owners.

In Romania, regulations on construction and liability for poor construction are stipulated in several legislative documents, such as Law 10/1995 on quality in construction[5]. This refers to the quality standards required for construction and imposes penalties for non-compliance with these standards. Law 50/1991 on the authorisation of construction works[6], this establishes the rules for obtaining building permits and the consequences if these rules are not respected according to the legislation. There are also numerous regulations, technical rules, and standards in Romanian legislation detailing the technical and safety aspects of construction.

In the Republic of Moldova, the laws and regulations on construction and liability for poor construction include, but are not limited to, the following: Law No 721/2003 on Quality in Construction[7]. It regulates the obligations of the parties involved in the construction process, standardisation and quality control. The Urban Planning and Construction Code of the Republic of Moldova[8] this contains regulations on planning and construction in the Republic of Moldova. Law No. 163 on Authorisation of Execution of Construction Works [9] this regulates the process of obtaining construction permits. In case of unsatisfactory execution of construction works, sanctions may be applied, including contravention and criminal liability.

Thus, in order to safeguard and protect the essential requirements in the construction sector, with a view to protecting the legal order, the Criminal Code of the Republic of Moldova in Article 257 [10] criminalizes the offence of improper execution of constructions. Last but not least, it is important to specify that the subjects involved in the execution of constructions and responsible in this regard. Thus, the subject of the offence provided for in paragraph (1) and paragraph (2) of Article 257 of the Criminal Code of the Republic of Moldova, i.e. the subject of unqualified execution of constructions may be: the responsible natural person who at the time of committing the offence has reached the age of 16 years; the legal person (except public authorities) [11 p.316].

The natural person must have one of the following three special qualities: head of the construction organisation; site manager; person in a responsible position exercising quality control in construction [11 p.314].

According to the provisions of paragraph 2 of the Decision of the Government of the Republic of Moldova No.360 [12] the quality of constructions of any destination, regardless of the form of ownership and source of financing, as well as construction, reconstruction, modernization and capital repair works on existing constructions, production of materials and articles for construction are subject to state control.

State quality control in construction is carried out by ISC. Likewise, the "person in charge of quality control in construction" means the person who has the special quality of a person in charge of quality control, empowered to stop the work carried out improperly and to stop it by means of control acts, if it may affect the strength and stability of the constructions, being the head of the unit subject to quality control in construction, having previously been given the ISC prescriptions together with the requirements and deadlines for the liquidation of the detected non-conformities [13].

These provisions are also expressly provided for in Law no.721 [7], as well as being regulated by the legislation specific to the construction sector of Romania in Law no.10 on quality in construction, which provides for the special quality of the subjects, their obligations, responsibility and liability in the fulfilment or non-fulfilment of their obligations, as well as being regulated in the Regulation for the verification and technical quality expertise of projects, execution of works and constructions of Romania [5].

Project verifier means a natural person who is a certified specialist in project verification, in accordance with the requirements and the certified speciality, who has the obligation to verify data on the specific site conditions and technological operating conditions, the compliance with the technical regulations in force, in accordance with the requirements laid down by law, depending on the category of importance of the construction, throughout the life of the construction, including the post-use phase [5].

It is also important to specify that the certified technical expert is a natural person, a certified specialist, working under legal regulations or a body with state control contributions in the field of construction quality, who determines at any stage, the technical condition of the construction for assessing its ability to meet the requirements under the law and resolving disputes concerning the technical quality of projects or the execution of construction works. The technical expert has the obligation, as appropriate, to analyze: the conditions of location and operation of the construction; the state of the construction that is subject to the technical expertise of quality; the documents underlying the construction in the design, execution and operation phases; the provisions of the technical regulations underlying the construction and those in force at the time of the technical expertise of quality [5].

It is therefore essential to elucidate the analysis of the aspects relating to the establishment of the objective constituent elements of the offence of unlawful construction.

The special legal object in the case of the provisions of paragraph (1) of Article 257 of the Criminal Code of the Republic of Moldova is the social relations regarding the conformity of the use of buildings with quality requirements. At the same time, in the case of the provisions of paragraph (2) of Article 257 of the Criminal Code of the Republic of Moldova, [11 p.317] the special legal object is the social relations concerning the prevention of the continuation by the responsible persons of works improperly executed and stopped by control acts, if their continuation may affect the stability and strength of the constructions. However, the special legal object provided for in paragraph (2) of Article 257 of the Criminal Code of the Republic of Moldova has a complex nature consisting of: the main legal object, which is formed by social relations with regard to the

safety, stability and resistance of an urban complex or a construction, and the formal legal object, which is formed by social relations with regard to the health of the person or the integrity, substance or potential user of the construction, installations or equipment[11 p.317].

The main legal object within the provisions of paragraph (4) of Article 257 of the Criminal Code of the Republic of Moldova has a complex character and is made up of the main legal object, which is formed by social relations regarding the safety, resistance and stability of an urban complex, or of a construction, and the secondary legal object, which is formed by social relations regarding the life of the person[11 p.325].

In the case of the constituent element relating to the object of the offence provided for in Article 257 of the Criminal Code of RM, the object may be both material and immaterial. According to paragraph (1) of Article 257 of the Criminal Code, the object can be both tangible and intangible, which are: dwelling houses, industrial buildings, buildings in the field of transport and energy, other buildings [11 p.315]. Thus, they must be in an unsatisfactory, unfinished or inadequate condition for the project.

With regard to the provisions of paragraph (2) of Article 257 of the Criminal Code, the subject matter is immaterial, which is the work carried out improperly and its cessation by means of control acts. According to the provisions of paragraph (3) of Article 257 of the Criminal Code, the object is material, having a complex character, the main material object being the urban complex or construction and the secondary material object being the person's body [11 p.321].

In the case of subparagraph (b)(3), the secondary object of the material damage is the totally or partially destroyed structure and subparagraph (c)(3) has as secondary object of the material damage the plant or machinery of importance [11 p.322].

With regard to the provisions of paragraph (4) of Article 257 of the Criminal Code, the object is also material and has a complex character consisting of the main material object, which is the urban complex or the building, and the secondary material object, which is the person's body. The victim of the offence provided for in Article 257 of the Criminal Code is the investor of the construction put into use in an unsatisfactory, unfinished or inadequate state, as in the case of paragraph (2) of Article 257, the victim is also the investor of the construction whose strength and stability may be affected as a result of the continuation by the perpetrator of the work carried out inadequately and stopped by acts of control [11 p.325]. The victim according to paragraph (3) of Article 257 of the Criminal Code is the investor of the urban complex or of the construction which was either designed, checked, surveyed or built by the perpetrator, or which was modified by the perpetrator without observing the provisions of the normative documents on safety, strength and stability, and the victim may also be the person who suffers serious injury to body or health or loss of working capacity [11 p.321].

According to paragraph (4) of Article 257 of the Criminal Code of the Republic of Moldova, the victim may be: the investor of the urban complex or of the construction that was either designed, verified, surveyed or built by the perpetrator, or was modified by the perpetrator without respecting the provisions of the normative documents on safety, strength and stability, or the deceased [11 p.325].

The objective aspect of the offence provided for in paragraph (1) of Article 257 of the Criminal Code consists in the harmful act which is expressed by the action of putting into use buildings in an unsatisfactory state, unfinished or which do not meet the conditions of the project [11 p.315].

In the case of the offence referred to in paragraph (2) of Article 257 of the Criminal Code, the objective aspect consists in the harmful act expressed in the action of continuing the work carried out improperly and stopped by means of control acts, when it may affect the strength and stability of the construction, and also includes the causal link between the harmful action analysed and the danger of affecting the strength and stability of the construction [11 p.319].

According to the provisions of paragraph (3) of Article 257 of the Criminal Code, the objective side [11 p.319] consists of the harmful act consisting of: the action, carried out in relation to an urban complex or a construction, consisting of design, verification, expertise, implementation or execution of modifications; the failure to comply with the provisions of regulatory documents on safety, resistance and reliability; the harmful consequences, namely: serious injury to body integrity or health or loss of working capacity; the causal link between the harmful act and the harmful consequences.

In the case of paragraph (b) paragraph (3) of Article 257 of the Criminal Code, the harmful consequences include the total or partial destruction of the construction, paragraph (c) provides for harmful consequences, namely the destruction or breakdown of important installations or machinery, and paragraph (d) provides for large-scale damage as harmful consequences [11 p.322].

According to the offence provided for in paragraph (4) of Article 257 of the Criminal Code, its objective aspect consists of three signs, namely: the harmful act consists of: the action, carried out in relation to a building complex or a construction, consisting of design, verification, expertise, implementation or execution of modifications; the inaction of non-compliance with the provisions of normative documents on safety, resistance and reliability; the harmful consequences - the death of the person and the causal link between the harmful act and the harmful consequences [11 p.325].

The offence provided for in paragraph (1) of Article 257 of the Criminal Code [11 p.315] is a formal offence, it is deemed to have been committed from the moment of putting into use the buildings in an unsatisfactory state, in most cases, manifesting itself in the superficiality manifested in relation to the fulfilment of the obligations undertaken.

Unlike the above-mentioned provisions, in the case of paragraph (2) of Article 257 of the Criminal Code, the offence is a formal-material one, being considered to have been committed from the moment of the occurrence of the real danger of affecting the strength and stability of the buildings.

In the case of the offences referred to in paragraphs (3) and (4) of Article 257 of the Criminal Code [11 p .324-325a) paragraph (3) shall be deemed to have been committed from the moment of serious injury to body or health or loss of working capacity; b) paragraph (3) shall be deemed to have been committed from the moment of total or partial destruction of the construction; c) paragraph (3) shall be deemed to have been committed from the moment of the total or partial destruction of the construction; d) paragraph (3) shall be deemed to have been committed from the moment of the total or partial destruction of the construction.(c)(3) shall be deemed to have been consumed from the moment of the destruction or breakdown of important plant or machinery; (c)(3) shall be deemed to have been consumed from the moment of the occurrence of extensive damage, and (4) shall be deemed to have been consumed from the moment of the person's death.

Thus, in the context of the analysis of the criminal norm provided for in Article 257 of the Criminal Code of the Republic of Moldova, it is recommended to make comparative and recommended reference to international regulations and standards on construction execution and quality of construction execution, as well:

- The International Organization for Standardization (ISO) has developed numerous standards related to construction quality management, such as ISO 9001 [1] for quality management systems and ISO 14001 [1] for environmental management systems. These standards provide guidelines for ensuring quality and environmental sustainability in construction projects.
- The International Code Council (ICC) publishes the IBC, which provides comprehensive regulations for the design, construction and maintenance of buildings. These codes cover various aspects of construction, including structural integrity, fire safety and accessibility [11].
- The European Committee for Standardisation (CEN) [2] has developed a set of standards known as European Norms [2] that apply to construction products and processes in the Member States of the European Union. These standards cover aspects such as materials, test methods and performance requirements.
- ASTM International develops and publishes technical standards for various industries, including construction. ASTM standards [16] cover materials, test procedures and performance criteria for building materials and products.
- The Construction Specifications Institute (CSI) [17] provides a framework for organizing and standardizing construction specifications through its MasterFormat system. This system helps to ensure consistency and clarity in the documentation of construction projects.

These are just a few examples of the many international regulations and standards that govern the execution of construction and the quality of construction work. Compliance with these standards helps to ensure the safety, durability and sustainability of construction projects globally.

In this sense, the construction sector in Romania is regulated by international standards, such as: Technical Regulations for Construction, which sets out a set of mandatory technical regulations in Romania, including minimum quality and safety requirements for construction; Technical Standards for Design and Execution in Construction, these standards provide specific details and practical recommendations for the design and execution of different types of construction works; Law on Construction and Land Use Planning, which regulates the legal and administrative aspects of construction and land use planning in Romania, including construction authorization, urban planning rules and environmental protection; Technical Approval Norms for Construction Works, which establish the procedures and criteria for the technical approval of construction projects and works in accordance with national legislation; Design Codes and Technical Standards, documentation containing the technical requirements and recommendations for the design and execution of various construction elements and systems, such as structures, electrical and plumbing installations; Regulations of the National Authority for Qualifications, which establish the standards and requirements for the qualification and certification of construction professionals, as well as the recognition of qualifications obtained abroad. Also referring to government regulations, there are also standards developed by professional and industry organisations, as well as research and development organisations, which influence construction practices throughout Europe.

The implementation of and compliance with these rules and regulations is essential to ensure the quality of construction work and to meet the requirements and expectations of society, as well as to comply with legal requirements and regulations. Again, technical control of construction

quality is a crucial aspect in ensuring that the work is carried out according to established standards and specifications and that the resulting constructions are safe, durable and compliant. In this regard, it is important to respect the conduct of the construction work execution process, which includes:

- **Project planning**, as technical quality control of construction starts at the planning stage of the construction project. At this stage, the quality criteria, technical specifications and standards to be respected during the execution of the works are established.
- **Construction materials**, an important aspect in the execution of construction works and their quality is the quality of the construction materials and suppliers, which determines the verification of the conformity of the materials used in the execution of constructions.
- **Periodic inspection during the execution of the works**, it is particularly important to carry out inspections, periodic tests to verify compliance with the established specifications and standards. These inspections may include checking the quality of materials, construction procedures and work carried out.
- **Technical quality control** involves continuous monitoring and control of work processes to ensure that established procedures and standards are followed, which involves: checking welding procedures, concrete casting or assembly of metal structures, etc.
- **Documentation** includes reporting of inspections and tests performed and any deviations or non-conformities identified, including must be properly documented and reported.

In this respect, technical control of construction quality is essential to ensure that the resulting constructions are safe, durable and conform to the requirements and expectations set. Implementing an effective quality control system helps to reduce risks, improve efficiency. In this respect, it is important to mention the criteria and conditions that lead to poor construction performance, such as:

- **The use of inappropriate or inferior materials**, which includes the use of inferior construction materials to the detriment of quality, non-durable, in order to use cheap materials to save costs, thus violating quality and safety standards, in order to maximize profit or to meet the project budget.
- **Neglect of construction standards and quality control procedures**, which includes negligence and disregard of construction standards and quality control procedures, which consequently leads to improper execution of work and unsafe results. Including, we refer to the provision of incorrect or insufficiently prepared construction plans which can lead to construction errors or late identification of quality problems.
- **Violation of legal regulations and building permits**, which exclusively lead to potential illegal construction or non-compliance with safety and quality standards. Including, we refer to the neglect of duties to check compliance with legal regulations and to grant the necessary permits which may allow unqualified or illegal works to be carried out.

In each of these cases, the consequences can be serious, impacting public safety, the environment and financial interests. Identifying and sanctioning those involved in construction violations is crucial to preventing and remedying unsafe construction and ensuring high quality and

safety standards in the construction industry. Of course, in the given case we are referring to the following illegalities committed, related to unqualified constructions and the violations involved, such as: neglect of supervision and quality control, falsification of documentation and reports, unqualified specialists in the execution of construction works, negligence of building inspectors and accreditation organizations. Etc

In conclusion, unqualified constructions can involve a wide range of violations and problems, and liability can fall on several parties involved in the construction process. Identifying and remedying these breaches is essential to ensure the delivery of high quality, safe and sustainable construction works. These violations and problems related to unsound construction are mainly regulated by governmental authorities, international organisations and relevant industry standards, which indicates that effective enforcement and regulation of legislation is important, including more complex regulation of the offending subjects, including the application of harsher sanctions, given that the category of violations and the consequences that may be caused can cause considerable damage in particular can harm the life and health of many people. In this regard, given the fact that the infrastructure and construction sector it a magnitude in the development of this branch, the importance of construction control in execution and quality of construction are the most important criteria, in order to execute qualitative constructions and their execution in accordance with both national and international legislation. It should be noted that in the European Union, the construction sector, from the point of view of consolidation and implementation of rules, laws, regulations in the field of construction works execution, is quite complex, which leads us to the conclusion that national legislation must be improved in line with European rules and provisions, given the fact that the economy of the Republic of Moldova with regard to the construction sector in execution, planning and design is growing, which shows that the importance of implementing modernized rules, including regulations of quality control of construction execution will be welcome and will help to avoid harmful facts and consequences that may arise from the unqualified execution of construction.

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