

The liability of the contractor of a private or public works project is governed by the provisions of the Greek Civil Code on work contracts. Especially public procurement is governed by the pertinent special legislation (i.e. law 3316/2005 on design contracts, law 1418/1984 on public works, Directive 2004/18/EC, codified law 3669/2008 “Code on Public Works”) and whichever issue is not explicitly dealt with by this legislation is covered by the provisions of Civil or/and Administrative Law.

In both public and private works the contractor’s liability is a purely objective one (Greek Civil Code articles 688, 689), while -in some exceptional cases- liability depends the contractor’s having committed a fault (Greek Civil Code articles 687, 690). The Greek Civil Code provisions, which govern this liability, are not mandatory; it is, therefore, possible for the contracting parties to limit or to extend this specific from of liability.

It must be also mentioned that, in Public Works, the engineers-employees of the contractor also have an administrative and disciplinary liability, which results from the special legal provisions of Public Works and of the Civil Servants Code.

I. THE CONTRACTOR’S LIABILITY DURING A WORKS PROJECT EXECUTION

I.1. Private Contract

The contractor is bound to execute the work project in accordance with the contract, the law and the rules of art and science. He must execute the project free of defects and with all agreed qualities. Therefore, in a case where the project has deficiencies, the contractor is liable for their non-fulfillment and the employer is entitled to either request the restoration of these deficiencies, the proportionate reduction of the contractor’s fee, the unilateral termination of the contract or to ask for damages in order to cover the losses sustained due to the deficiencies of the project, as long as these are indeed attributable to the contractor.

Deficiencies include all actual defects, whether **substantial** or **minor**, as well as the **lack of agreed qualities**.

Substantial are the defects which render the works project useless either taking into account its contractually determined purpose of construction or taking into account the rules of art and science. As far as the minor defects are concerned, they do not render a works project totally useless; they, nonetheless, limit its use

and diminish its value. **Agreed qualities** are the specific project's characteristics which do not -ipso facto or naturally- result from the project's nature or from the contract's purpose, but have been specifically agreed and described by the parties in their agreement.

I.1.A. Rights of the employer in case of minor defects (exercised alternatively)

a) Restoration Right: If the project which has been executed presents minor defects the employer has the right to request their restoration within a reasonable deadline, provided that the restoration does not require to disproportionate expenses. The reasonableness of the deadline is considered on the basis of the interest of both contracting parties; amongst other criteria which are taken into account, are the following: the nature of the executed project, the extent of the corrections that need to be made, whether this project is essential for the fulfillment of the employer's professional tasks etc. If the contractor does not proceed to the corrections within the reasonable deadline he is rendered in default with the execution of the restoration and the employer has the right to execute by other means the restoration in question at the contractor's expenses. It is important to stress that, in any case, the request for the restoration of the project is excluded whenever the corrections needed require disproportionate expenses. Whether the expenses are disproportionate or not is considered on the basis of the financial cost of the restoration as well as on the financial value of the whole project. The contractor bears the burden of proof so as to establish the disproportionate nature of the restoration expenses.

b) Right to request a proportionate reduction of the contractor's fee: The exercise of this right constitutes the unique possibility given to the employer whenever the restoration of minor defects of a project requires disproportionate expenses. It is a formative right, which is exercised either by means of a unilateral declaration of will, subject to no specific form requirements, addressed to the contractor or by means of a legal action before courts.

The contractor's fee shall, in such a case, be reduced. The amount of this reduction shall be equal to the amount of the project's value decrease which results from its defects and deficiencies compared to the projects' value without such deficiencies. This practically results in the possibility for the employer to pay a smaller fee to the contractor or to request the return of part of the fee already

paid. The critical time for the evaluation of the amount of the fee reduction is the time of the project's delivery.

I.1.B. Rights of the employer resulting from the existence of substantial defects or from the lack of agreed qualities (exercised alternatively)

Except from the right to request restoration **(a)** and the right to request a proportionate reduction of the contractor's fees **(b)**, which can be exercised by the employer in case of substantial defects or lack of agreed qualities, he also has the following right:

c) Right of withdrawal/repudiation: The withdrawal is a formative right, exercised before courts or in an extrajudicial manner, by means of a unilateral declaration of will, which is addressed to the contractor, and is subject to no particular form requirements. Exercising this right results in the immediate annulment of the contract and has an exclusively contractual and retroactive effect; the contractual obligations of both parties become void and they need to mutually return all benefits already received by each other due to the contract's execution up to that point, in accordance with the provisions for unjust enrichment (article 389 paragraph 2 of the Greek Civil Code).

I.1.C. Right to compensation where the contractor is liable for the deficiencies of the project

In case where the contractor is liable for the deficiencies of the project (whether they constitute minor defects or substantial ones or lack of agreed qualities), the employer is entitled, after the project's delivery, to: **(d)** claim damages for the non-execution of the contract. In case where the contractor wishes to prove that he is not liable for the non-execution, he bears the burden of proof of this absence of liability. The damages in question include any harm sustained by the employer, due to the non-execution of the contract, and cover not only the incidental damage sustained but also the loss of income or any other harm sustained by him (i.e. any future damage which cannot be determined in advance).

In total, the employer, in the context of this provision's application, has the right to reject contractor's and to either request compensation for the non-fulfillment

or to accept the project and request compensation for the damages resulting from the deficiencies.

The above rights are exercised alternatively. The employer has the right to choose which to exercise and does so by means of a declaration of will which is subject to no particular form requirements.

I.2. Public Contract

I.2.A. Public Design Contract

In case of a design's defect **up to the time of the beginning** of a project's construction, the project's Directing Service (ΔY) of the Awarding Authority addresses an invitation to the designer, who is liable for the defects or the deficiencies reported, inviting him to restore them within a reasonable deadline. If he refuses to do so, the Directing Service awards the study to another designer, who has the required qualifications for it, by means of a direct award, charging with the related expense the initial designer.

A modification of the approved design can also take place **during the execution** of the project if the modification is required due to defects or to deficiencies of the study, committed by the designer, or due to other, unforeseen and unpredictable reasons. The designer is invited to attend a meeting, in which the contractor as well as a representative of the Service, which has approved the initial design is present; they all submit a written memorandum to the Technical Council. The Awarding Authority takes a decision, following a Technical Council opinion, within thirty (30) days. The Awarding Authority, apart from the financial claims against the designer, provided that his liability is established, also initiates and directs the process concerning the establishment of the disciplinary responsibility of the contractor or of any employees having committed disciplinary offenses.

The designer of the initial design can submit a "request for remedy" against the decision modifying the design if he does not agree that there is a need for modification due to defects or deficiencies of the study. The submission of this request for remedy temporarily suspends the financial consequences of the decision taken against him as well as the beginning of the disciplinary process; it

does not, however, suspend the execution of the modified design (law 3316/2005, article 31) [question 3]

I.2.B. Public Works Contract

Whenever, in the context of a works project, either during its construction or after its completion and up to the time of its definitive delivery, it is established that a part or the whole of the project is not executed or has not been executed in accordance with the rules of art and science or with the contract or that it has defects or that the materials used are not suitable for this project, a special order is notified to the contractor, which specifies the nature and the extent of the defects as well as the steps that need to be taken by the contractor so as to restore the defects or deficiencies within a reasonable deadline.

In case of substantial defects, the project owner is entitled to impose (by means of an order) the restoration of the defects. This right can even result to the demolition of the flawed works and to their reconstruction, if necessary. The above-mentioned also apply in the case of lack of agreed qualities. If the defects established are minor ones and their restoration requires disproportionate expenses from the contractor, the aforementioned order determined the respective amount by which the contractor's fee is reduced; the contractor may also be ordered to execute some works for the limitation of the defects' extent. Against such an order the contractor has the right to submit an objection (plea before a superior entity of the administrative hierarchy), in a peremptory 10-day deadline, before the Awarding Authority. The submission of the objection produces a suspension result, unless the flaw established has been considered to be "dangerous". In such a case, the contractor is compelled to execute the restoration works immediately. If the contractor does not agree with the decision issued on his objection, he is entitled to submit a request for remedy. If the contractor receives gain of cause, he is compensated for the works executed in accordance with the order, on the basis of the contractual provisions and prices applicable to additional works. In case of an inaccurate special order, the contractor can submit a request for provisional measures before the Court of Appeal. He can then request an immediate expertise to take place, an "autopsy" (namely the in situ observation of the project) and the interruption of the works until a decision is issued. If the contractor does not execute the restoration works in the above-mentioned deadlines or if he proceeds to a late and overdue objection, these works can be executed by someone else,

following a decision of the Directing Service (ΔY). The related expense shall then be charged to the contractor and he can even be declared in default. Similar provisions apply whenever a contractor does not abide by his obligation to maintain a works project during the relevant maintenance time period although he is bound to.

I.2.C. Public Design & Build Contracts

The contractor is liable towards the project owner not only for the design, but also for the construction of the project. However, the relation between the contractor and the designer (namely a private technical studies office) is governed by private law and by the provisions of the Civil Code on work contracts (articles 681 and following). If the modification of the design is necessary due to its defects and deficiencies in the study, the designer modifies it as long as he admits his relevant liability and provided that the claims of the employer have not been prescribed. In any other case, the contractor undertakes the modification of the design, in collaboration with a designer who possesses the required qualifications stipulated in the relevant law (Public Works Code (KAE), article 45, paragraph 2).

II. PRESENCE OF PROFESSIONAL TECHNICIANS FOR THE PROJECT'S DELIVERY

The presence of professional technicians at the time of the delivery of the project is considered as a given fact, not only in private but also in public works projects' deliveries. Specifically for the latter ones, the project owner usually has a technical service of its own, which is staffed with engineers, being present for the delivery. In Public Works the project owner also appoints expert supervising engineers to follow the project's evolution and delivery [question 2].

III. CONTRACTOR'S EXEMPTION OF LIABILITY

III.1. During the project's execution

The employer has no rights/claims (against the contractor) whenever he is liable for the deficiencies of the project either because of the instructions that he gave to the contractor, despite the latter one's explicit objections, or in another way (article 691 Civil Code - "contributory fault"). This provision has been established

so as to guarantee the contractor's protection, since he is the only one held responsible for the manner in which a project has been executed. Such a clause figures in most public works contracts.

III.2. After the definitive delivery

By means of the project's (definitive) delivery, whether this project constitutes construction works or a design, the risk is transferred from the contractor to the project owner (employer) (Public Works Code (ΚΔΕ), article 75, paragraph 4). The contractor continues, however, to be liable, according to the provisions of the Greek Civil Code (articles 692-693), for any hidden defects or for the defects that he concealed intentionally [question 1]. "Hidden" defects are considered to be the ones which were not possible to identify, by means of a regular examination of the project, when it was delivered (Civil Code, article 692) [question 2].

IV. PRESCRIPTION

In private works projects, the provisions of the Greek Civil Code article 693 stipulate that the employer's claims against the contractor, based on project's deficiencies (defects), as long as mobile objects are concerned, prescribe six (6) months after takeover. The same applies where the employer has discovered the project's defects after takeover. Thus, the relevant prescription deadline always starts at takeover of the mobile object, even if the employer who took the object over discovered its defects later. In case of immobile objects (buildings) or other immovable installations, the employer's claims, which result from deficiencies of the project, prescribe ten (10) years after takeover (article 693 Civil Code).

Similar provisions apply to the Public Works projects: The prescription deadline for claims of the project owner is a six (6)-year one, starting at the takeover of the relevant design or at the termination of the relevant contract, in whichever form this takes place (Public Works Code (ΚΔΕ), article 45, paragraph 3, law 3316/2005, article 31, paragraph 1); in works projects the prescription is ten (10) years starting at the project's definitive takeover. The claim prescription deadline begins at the end of the financial year during which the claim arose and since which it was possible for it to be the object of a legal action [question 4].

V. SPECIAL LEGAL ISSUES

Some special legal issues are related to the contractor's liability after the definitive takeover of a public works project, especially as far as the administrative sanctions imposed to the person who is accountable for a project, responsible for its execution's control as well as for its takeover (namely the supervising engineer) are concerned. Other such special legal issues are those related to the possibility for the State to ask for damages (article 105 Introductory Law of Civil Code) in cases of supervising engineers' liability for losses sustained.

It must also be stressed that, in case where a negligence in indicating existing defects -up to the works project's takeover or during the takeover itself- has been committed by an employee of the employer - project owner, whether the project is a private or a public one, this negligence is considered to constitute a contributory fault, committed by the employer; this affects the final determination of the liability extent of each contracting party, since, in case of such a negligence, the contractor's liability extent decreases accordingly [question. 7].

It must also be indicated that the contractual liability of the contractor, which has been previously analyzed, does not exclude that he can be held liable on the basis of other forms of liability as well: for example, a) for Torts, b) on the basis of special laws (Labor, Environmental, or Penal ones), as long as their application conditions are met, or c) on the basis of contractually agreed penal clauses, which give the right to the employer to request penalties' payment.

VI. LIMITATION OF CONTRACTOR'S LIABILITY TO A SPECIFIC AMOUNT

The legislation which is applicable to Public or Private Works projects does not provide for any limitation of the contractor's liability to a specific amount.

However, especially for Public Works projects, penal and administrative sanctions apply in case where the specifications and the works regulations are not observed (Public Works Code (ΚΕΔ) article 176, paragraph 3).

As far as the penal sanctions are concerned, a fine of at least fifty nine (59) Euros applies to all cases where intentional infringements of imperative or prohibitory provisions of the administrative laws take place (Penal Code article 458).

As far as the administrative sanctions are concerned, a fine varying from 880 to 73.500 Euros per control operated, applies and is imposed by means of the Greek Minister for the Environment and Public Works decision, on a case-by-case basis, in

various infringement situations: Whenever the contractor has not observed some regulations or mandatory specifications, concerning the construction mode of a Public or of a Private works project, given its contract provisions and its approved studies, whether this infringement has to do with the quality, the composition, the treatment or the transport, the use and the control of the construction materials. If the infringement established influences or may substantially influence -in a justified manner- the basic requirements which need to be met by the structural materials and works, especially if it influences the mechanical resistance, the stability, the fire safety, the hygiene, the health and the environment or the safety of use of a project, the fine above-mentioned cannot be inferior to 15.000 Euros per infringement, without exceeding in total -per control operated- the above-mentioned maximum amount. The fine amount varies, depending on the gravity of the infringement established. All fine amounts above-mentioned can be increased by means of a Greek Minister for the Environment and Public Works decision [question 5].

The relevant provision of the Dutch Law could be considered as being restrictive for the project owner's rights; still, it contributes to the acceleration and to the simplification of the procedures involved [question 6].