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Problematic issues in forensic structural engineering analysis of attributing work at construction sites to ongoing and heavy maintenance

The article is dedicated to solving issues posed to forensic experts while forensic structural engineering analysis (research), to determine the belonging of repair and construction work performed at construction facility (conducted or planned) to heavy or ongoing maintenance.

Solution of issues encountered by forensic experts while conducting forensic structural engineering analyses as to attributing to a particular type of work (ongoing, heavy maintenance) is relevant for the theory and practice of forensic examinations and expert researches.

Legislative acts, regulatory documents and other sources of information used when carrying out this type of research and being the basis for formation of final conclusions on performed researches have been analyzed.

Discrepancies, uncertainty and complexity of data contained in these regulatory and information sources, their controversial nature, which complicates the choice of reference for these data and their use in solving expert tasks; and in particular cases it makes it impossible for forensic experts to formulate conclusions while forensic structural engineering analysis of these issues.

Relying on the analysis of legislative acts, requirements for regulatory documents, as well as forensic expert practice, it has been concluded that it is needed to systematize and develop uniform methodological approaches to solve current tasks in forensic structural engineering to attribute types of repair and construction work to a specific classification.

Keywords: *real estate, construction sites, ongoing maintenance, heavy maintenance, remodeling, rebuilding, sizes, area, building structures, intervention, works, forensic examination, analyses, window fillings, door fillings, engineering systems.*

Formulation of Research Problem. Forensic experts-builders are increasingly faced with the task: to conduct forensic structural engineering analysis on which work has been carried out on heavy or ongoing maintenance.

Attention is drawn to the difficulties that arise during the implementation of forensic structural engineering analysis to address issues related to the assignment of work on real estate to a particular type. These difficulties are due to the lack of unique algorithms for solving such issues – given the ambiguity of the data set out in current regulations and explanations, as well as in the letters of the Ministry of Regional Development, Construction and Housing of Ukraine (hereinafter referred as *the Ministry of Regional Development, Construction and Housing of Ukraine*). Thus, the relevance of the article is due to the lack and uncertainty of the data of regulatory and information sources, on the basis of which forensic experts form conclusions on the definition of a particular type of work on construction sites. At the same time, attention is focused on the need to develop general approaches to determining the types of work in each case on the object to be studied.

Analysis of Essential Researches and Publications. In regulations and information sources, the features of a certain type of repair and construction work are either not specified at all, or are ambiguous, or are not fully reflected. In addition, there are no publications devoted to the classification of works on construction sites to a certain type (in accordance with the classification of works on heavy or ongoing maintenance. These circumstances prompted the analysis of laws and regulations and conduct of forensic expert research to determine the types of ongoing and heavy maintenance and the results of this analysis – to state the need to improve methodological approaches to addressing these issues.

The Article Purpose: Relying on the analysis of laws and regulations and forensic expert practice to find out whether there are uniform approaches to definition (classification) of types of works on construction objects which are the subject of forensic structural engineering analysis and to offer the solution of this problem.

Main Content Presentation. Objects of construction production (except for standards ones), which are examined by the forensic construction expert, differ greatly in technical characteristics and functional purpose.

According to Articles 1, 9, and 10 of the Law of Ukraine *On Architectural Activity*¹:

"Article 1. Terms and definitions

¹ Про архітектурну діяльність : Закон України від 20.05.1999 р. № 687-XIV (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/687-14> (date accessed: 18.03.2021).

<...>

Architectural activity – activity on creation of objects of architecture involving creative process of searching architectural decision and its evocation, coordination of actions of the participants of elaboration of all components of the projects on planning, development and improvement of the territory, building (new building, reconstruction, restoration, capital repair) of the buildings and constructions, provision of architectural and building control and designer's field supervision, as well as scientific and research activity and teaching in this field;

objects of architectural activity (objects of architecture) – houses and constructions of civil housing, municipal, industrial and other intended purpose, complexes of them, objects of redevelopment, gardening and landscape architecture, monumental art, territories (areas of territory) of administrative territorial entities and settlements;

<...>.

Article 9. Building of the object of architecture

Building (new building, reconstruction, restoration, capital repair) of the object of architecture shall be performed according to the approved design project documentation, state standards, norms and rules, local rules of settlements development due to the procedure, envisaged by the Law of Ukraine On Regulation of Urban Development.

<...>

Article 10. State architectural and building control and supervision

State architectural and building control and supervision shall be performed according to the legislation with the view of guaranteeing during the development of the territories, allocation and building of the objects of architecture the adherence by the actors of architectural activity of the enforced city development and other design project documentation, local rules of settlements development, input data requirements, and with the view of state protection of the rights of consumers of building materials.

State architectural and building control shall be performed by the executive body on the issues of building, city development and architecture <...>¹.

Among the topical issues that arise in any modern litigation and require the application of special knowledge in the field of construction, there is the question of classifying repair and construction work to a certain type. To resolve such issues, forensic structural engineering analysis or expert studies are appointed.

Determining the affiliation of repair and construction works carried out on construction sites (those that are carried out or those that are planned to be carried out) to the heavy or ongoing type of maintenance or reconstruction is a classification task of forensic structural engineering analysis (expert research).

¹ Ibidem.

An important basis for the classification of works – the need for their registration in the manner prescribed by law.

In accordance with Articles 34 and 36 of the Law of Ukraine: *On Regulation of Urban Planning Activities* ¹:

"Article 34. Right to perform construction work

1. The customer has the right to perform construction work after:

1) submission of the notice of commencement of construction works by the customer to the relevant body of the state architectural and construction control – concerning construction objects which by a class of consequences (responsibility) belong to objects with insignificant consequences (CC1), and concerning objects which construction is carried out on the basis of a construction passport and which do not require a construction permit in accordance with the list of construction sites approved by the Cabinet of Ministers of Ukraine. The form of notification on the commencement of construction works and the procedure for its submission shall be determined by the Cabinet of Ministers of Ukraine; ²

*3) issuance of a permit for construction works to the customer by the state architectural and construction control body – in respect of objects that by class of consequences (responsibility) belong to objects with medium (CC2) and significant (CC3) consequences or are subject to environmental impact assessment according to Law of Ukraine: *On Environmental Impact Assessment*.*

2. These <...> documents, that give the right to perform construction work, are valid until the completion of construction.

<...>

5. Control over the implementation of preparatory and construction works shall be exercised by the bodies of state architectural and construction control.

7. Execution of construction works without the corresponding documents <...> is considered as spontaneous construction and entails responsibility according to the law.

<...>

Article 36. Notice to proceed construction works

<...>

2. It is forbidden to perform construction works without submitting a notice to proceed construction works ³.

¹ Про регулювання містобудівної діяльності : Закон України від 17.02.2011 р. № 3038-VI (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/3038-17> (date accessed: 18.03.2021).

² Пункт 2 ч. 1 ст. 34 Закону України від 17.02.2011 р. № 3038-VI «Про регулювання містобудівної діяльності» виключено на підставі Закону від 17.01.2017 р. № 1817-VIII.

³ Про регулювання містобудівної діяльності : ... URL: <https://zakon.rada.gov.ua/laws/show/3038-17> (date accessed: 18.03.2021).

In Section 3.7 of BC A.2.2-3-2014 *On Structure and Content of Project Documentation for Construction* (hereinafter referred as BC A.2.2-3-2014) ¹ the concept of heavy maintenance is defined:

Set of works on the construction site, put into operation in the prescribed manner, without changing its geometric dimensions and functional purpose, involving intervention in the load-bearing and enclosing systems [Emphasis added – Author's notes], when replacing or restoring structures or engineering systems and equipment in connection with their physical deterioration and destruction, improving its performance, as well as landscaping.

Heavy maintenance involves the suspension for the duration of the operation of the facility as a whole or its parts (subject to their autonomy) ².

At the same time, the letter of the State Committee of Ukraine for Construction and Architecture No. 7/7-401 dated on 30.04.2003 *Regarding the attribution of repair and construction works to heavy and ongoing maintenance* ³ clarifies the following:

Heavy maintenance of a building is a complex of repair and construction works, which involves the replacement, restoration and modernization of structures and equipment of buildings due to their physical deterioration and destruction, improving performance, as well as improving building planning and landscaping without changing construction dimensions of the object.

Heavy maintenance involves the suspension for the duration of the operation of the facility as a whole or its parts (subject to their autonomy).

Ongoing maintenance is a complex of repair and construction works, which provides for systematic and timely maintenance of operational qualities and prevention of premature wear of structures and engineering equipment. If the building as a whole is not subject to heavy maintenance, the set of ongoing maintenance may include individual works that are classified as related to heavy maintenance (except for works that involve the replacement and modernization of structural elements of the building). Ongoing maintenance should be carried out at intervals that ensure efficient operation of the building or facility from the moment of completion of its construction (heavy maintenance) to the moment of installation for the next heavy maintenance (reconstruction) ⁴.

The letters of the Ministry of Regional Development, Construction and Housing of Ukraine № 9/9-26 dated on 13.01.2009 (hereinafter referred as

¹ ДБН А.2.2-3-2014. Склад та зміст проектної документації на будівництво : затв. наказом Мінрегіонбуду України від 04.06.2014 р. № 163 [Чинний від 01.10.2014 р.]. URL: https://dbn.co.ua/load/normativy/dbn/dbn_a_2_2_3_2014/1-1-0-1168 (date accessed: 18.03.2021).

² Ibidem.

³ Щодо віднесення ремонтно-будівельних робіт до капітального та поточного ремонтів : лист Держкомбудархітектури України від 30.04.2003 р. № 7/7-401. URL: <https://zakon.rada.gov.ua/rada/show/v-401509-03> (date accessed: 18.03.2021).

⁴ Щодо віднесення ремонтно-будівельних робіт URL: <https://zakon.rada.gov.ua/rada/show/v-401509-03> (date accessed: 18.03.2021).

Ministry of Housing and Communal Services of Ukraine) informed in a letter No. 8/7-2425 ¹ dated 11.03.2009 on the following:

"A suggested list of services for the maintenance of buildings and structures and adjacent territories and services for the repair of premises, approved by the Order of the State Housing and Communal Services No. 150 dated on 10.08.2004 (as amended) was developed to implement the Law of Ukraine On Housing and Communal Services".

Given the above, the Ministry of Housing and Communal Services believes that mentioned above Suggested List No. 150 can be used to determine the ongoing or heavy maintenance of hospitals, educational institutions, office buildings by the decision of their owners ².

The letter of the Ministry of Regional Development, Construction and Housing of Ukraine No 9/9-1056 ³ dated on 15.07.2009 states:

The Ministry of Regional Development, Construction and Housing of Ukraine has considered the letter from Heads of Control and Audit Department (CAD) regarding the assignment of repair and construction works to heavy or ongoing maintenance and on matters of authority reports:

The State Construction Committee of Ukraine by the letter No. 7/7-401 dated on 30.04.2003 addressed to the central and local executive bodies explained that the heavy maintenance is a complex of repair and construction works that involves replacement, restoration and modernization of structures and equipment in connection of their physical deterioration and destruction, improvement of operational indicators, as well as improving the planning of the building and landscaping without changing the construction dimensions of the object. Heavy maintenance involves the suspension of the operation of the building as a whole or its parts (subject to their autonomy). Ongoing maintenance is a complex of repair and construction works, which provides for systematic and timely maintenance of operational qualities and prevention of premature wear of structures and engineering equipment. If the building as a whole is not subject to the heavy maintenance, the set of ongoing maintenance may include individual works that are classified as related to the heavy maintenance (except for works that involve the replacement and modernization of structural elements of the building).

The ongoing maintenance should be carried out at intervals that ensure efficient operation of the building or facility from the moment of completion of its construction (heavy maintenance) to the moment of installation for the next heavy maintenance (reconstruction).

¹ Лист Мінжитлокомунгосп України від 11.03.2009 р. № 8/7-2425. URL: <https://zakon.rada.gov.ua/rada/show/v2425662-09> (date accessed: 18.03.2021).

² Ibidem.

³ Лист Мінрегіонбуду України від 15.07.2009 р. № 9/9-1056. URL: <https://zakon.rada.gov.ua/rada/show/v1056661-09> (date accessed: 18.03.2021).

Issues related to the operation of residential buildings, the timing of their repairs and the distribution of repair and construction works according to the classification belong to the powers of the Ministry of Housing and Communal Services of Ukraine.

According to the explanations provided by the letter No. 8/7-2425 dated on 11.03.2009 from the Ministry of Housing and Communal Services of Ukraine, the Suggested List of services for maintenance of buildings and structures and adjacent territories and services for repair of premises, buildings, structures, developed to implement the law of Ukraine: On Housing and Communal Services (approved by the Order of the State Housing and Communal Services of Ukraine No. 150 dated on 10.08.2004 as amended by the Order No. 198 dated on 12.11.2004), can be used to determine the work of ongoing or heavy maintenance of hospitals, educational institutions, administrative buildings by the relevant decision of the main fund manager.

In accordance with laws and regulations on construction, the issues of development of construction projects and their approval, implementation of financing and calculations for the volume of work performed are within the powers of the customer (fund manager) ¹.

Thus, the above quotations indicate that the definition of the concept of the *heavy maintenance* is given Section 3.7 of BC A.2.2-3-2014 and in the explanations of the Ministry of Regional Development, Construction and Housing of Ukraine (with reference to the Suggested List of services for the maintenance of buildings, structures, and adjacent territories and services for the repair of premises, buildings, structures, approved by the Order of the State Housing and Communal Services of Ukraine No. 150 dated on 10.08.2004 ²), differ, namely in the definition of the Ministry of Regional Development, Construction and Housing of Ukraine in the concept of the *heavy maintenance* there is a lack of an important feature characteristic of the classification of works – the prohibition to interfere in the load-bearing and facing systems.

Therefore (in accordance with Section 3.7 of BC A.2.2-3-2014), the important features of the heavy maintenance are:

- performance of works providing intervention in load-bearing and facing systems in case of replacement or restoration of designs or engineering systems and the equipment because of their physical deterioration and destruction, improvement of operational indicators;
- suspension for the duration of the operation of the building as a whole or its parts (subject to their autonomy).

¹ Лист Мінрегіонбуду України від 15.07.2009 р. № 9/9-1056. URL: <https://zakon.rada.gov.ua/rada/show/v1056661-09> (date accessed: 18.03.2021).

² Примірний перелік послуг з утримання будинків і споруд та прибудинкових територій та послуг з ремонту приміщень, будинків, споруд : затв. наказом Держжитлокомунгоспу України від 10.08.2004 р. № 150 (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/z1046-04> (date accessed: 18.03.2021).

It is also necessary to pay attention to Article 34 paragraph 2 (2) of the Law of Ukraine *On Regulation of Urban Planning Activities*, according to which *"the list of construction works that do not require documents allowing their performance, and after which the object is not subject to operation, approved by the Cabinet of Ministers of Ukraine"*¹.

As of today, the List of construction works that do not require documents that give the right to perform them, and after which the object is not subject to operation, approved by the Cabinet of Ministers of Ukraine from No. 406 dated on 07.06.2017 (hereinafter referred as the *List No. 406*)². This paper draws attention to such works as:

1. *Works on re-equipment and re-planning of a residential building and residential premises, as well as non-residential buildings, buildings, structures, premises within them, the implementation of which does not involve interference in facing and load-bearing structures and / or engineering systems of public use — class of consequences (responsibilities) belong to objects with insignificant (CC1), with average (CC2) and significant (CC3) consequences.*

<...>

3. *Reconstruction, heavy maintenance, technical re-equipment of internal systems:*

- *heating, including installation or replacement of equipment of individual heating stations, replacement of pipelines of heating systems <...> change of type of heating systems from one-pipe to two-pipe and / or from vertical to horizontal, installation and / or replacement of heating appliances, equipment of heating devices with automatic temperature regulators in premises, installation and replacement of devices-distributors and other equipment of regulation and accounting of thermal energy;*

- *ventilation;*
- *water supply and drainage, including pipelines;*
- *power and low-current systems that ensure the functioning of buildings and structures.*

4. *Replacement of existing fillings of window, balcony and doorways*³.

So, the question arises: to what kind of work do these works belong, which do not require the issuance of permits for their conduct and operation after their implementation?

¹ Про регулювання містобудівної діяльності ... URL: <https://zakon.rada.gov.ua/laws/show/3038-17> (date accessed: 18.03.2021).

² Перелік будівельних робіт, які не потребують документів, що дають право на їх виконання, та після закінчення яких об'єкт не підлягає прийняттю в експлуатацію : затв. Постановою КМУ від 07.06.2017 р. № 406 (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/406-2017-п> (date accessed: 18.03.2021).

³ Перелік будівельних робіт, які не потребують документів ... URL: <https://zakon.rada.gov.ua/laws/show/406-2017-п> (date accessed: 18.03.2021).

Let's consider in more detail in what way it is possible to perform separate works:

- re-planning of rooms of building objects without interference in *facing and load-bearing* constructions (for example, on condition of demolition of the existing partitions not carrying loadings from other constructions of the object) and installation of new constructions of partitions which increase or, conversely, reduce the size and area of certain premises without increasing (decreasing) the construction object as a whole).

These works are connected with the replacement of old constructions of partitions by new;

- replacement of heating system (radiators, pipelines), water supply (pipelines and relevant devices), ventilation and power and low-current systems in buildings with autonomous utilities. These works are related to the replacement of old engineering systems with new ones;
- replacement of fillings of window, balcony and doorways. These works are related to the replacement of old window and door fillings with new ones.

From the aforementioned it can be seen that the implementation of these works involves the replacement of old building structures with new ones.

If we refer to the norm of Section 3.7 of BC A.2.2-3-2014, the work on the replacement or restoration of structures or engineering systems and equipment due to their physical deterioration and destruction are the heavy maintenance, but subject to intervention in the load-bearing and facing systems.

According to the aforementioned explanations of the Ministry of Regional Development, Construction and Housing of Ukraine, these works can also be classified as works belonging to the type of the heavy maintenance works, but not observed: with or without intervention in the load-bearing and facing systems. Simultaneously, these explanations introduce the concept of *ongoing maintenance* and state that *a set of ongoing maintenance may include individual works that are classified as related to heavy maintenance (except for works that involve replacement and modernization of structural elements of the building)*¹.

Consequently, if the object of the forensic structural engineering analysis is a building in which work with the following features is carried out: the geometric dimensions have not been increased, the functional purpose of the object has not been changed, structures that do not bear a certain load and autonomous engineering systems have been replaced (without interfering with load-bearing and facing structures), and operation of the building as a whole or its parts (subject to their autonomy) did not stop — then they can be classified as work related to the ongoing maintenance.

¹ Лист Мінрегіонбуду України від 15.07.2009 р. № 9/9-1056. URL: <https://zakon.rada.gov.ua/rada/show/v1056661-09> (date accessed: 18.03.2021).

Based on the above, it is deemed that the regulatory requirements for determining the type of construction (repair) work are not fully correlated with the explanations of the Ministry of Regional Development, Construction and Housing of Ukraine.

In addition, in accordance with the requirements of the Law of Ukraine *On Architectural Activity*, restoration, heavy maintenance, reconstruction of existing buildings and structures, as well as the construction of new architectural objects is carried out in accordance with the approved design documentation, current building codes and regulations, provided by the Law of Ukraine: *On Regulation of Urban Planning Activities*.

In this regard, there are at least two questions: 1) whether it is possible to consider the works that contain the List No. 406 and which are provided for in Article 34 of the Law *On Regulation of Urban Planning Activities*, simple, if they do not require permits, and after their completion, construction products are not subject to operation? 2) whether these works can be considered as those that do not require the preparation of design documentation or state architectural and construction control for compliance with legislation in the field of urban planning, building codes and regulations, state standards during construction (repair, reconstruction).

Conclusions. Thus, the ambiguity of interpretation in legislative, regulatory and information sources of classification features of types of work on construction sites complicates, and sometimes makes it impossible to form the conclusions of experts in forensic structural engineering analysis. Therefore, it is necessary to develop common approaches to solving such classification problems of forensic structural engineering analyses (research) in each case at studied facilities.

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Shchodo vidnesennia remontno-budivelnikh robit do kapitalnoho ta potochnoho remontiv : lyst Derzhkombudarkhitektury Ukrainy vid 30.04.2003 r. № 7/7-401. URL: <https://zakon.rada.gov.ua/rada/show/v-401509-03> (data zvernennia: 18.03.2021).

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Проблемні питання будівельно-технічних досліджень із віднесення робіт на будівельних об'єктах до поточного та капітального ремонтів

Розглянуто актуальні проблемні питання будівельно-технічних досліджень щодо визначення певного виду робіт (поточний, капітальний ремонт).

Проаналізовано нормативні документи й інші джерела інформації, які фахівці застосовують під час проведення цього виду досліджень і для формування остаточних висновків експертних досліджень.

Акцентовано увагу на неоднозначному й дискусійному характері даних цих нормативів та інформаційних джерел, що ускладнює вибір посилання на такі дані й використання їх для розв'язання експертних завдань.

За результатами аналізу законодавчих і нормативних документів та експертної практики зроблено висновок про потребу у створенні класифікації різновидів будівельних робіт.

Ключові слова: *нерухомість, будівельні об'єкти, поточний ремонт, капітальний ремонт, пере планування, перебудова, розміри, площа, будівельні конструкції, утручання, роботи, експертиза, дослідження, віконні заповнення, дверні заповнення, інженерні системи.*

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Проблемные вопросы строительно-технических исследований по отнесению работ на строительных объектах к текущему и капитальному ремонтам

Статья посвящена решению вопросов, которые ставят перед экспертами при выполнении строительно-технических экспертиз (исследований), по определению принадлежности проведённых на строительных объектах ремонтно-строительных работ (проводимых или запланированных) к капитальному или текущему ремонту.

Решение проблем, с которыми приходится сталкиваться экспертам при проведении строительно-технических исследований по отнесению

к определённому виду работ (текущему, капитальному ремонту), актуально для теории и практики судебных экспертиз и экспертных исследований.

Проанализированы законодательные акты, нормативные документы и другие источники информации, используемые при проведении такого вида исследований и являющиеся основанием для формирования окончательных выводов выполняемых исследований.

Отмечены разночтения, неопределённость и неоднозначность данных, содержащихся в этих нормативных и информационных источниках, их дискуссионный характер, что затрудняет выбор ссылки на эти данные и их использование при решении экспертных задач, а в отдельных случаях делает невозможным формирование выводов экспертов строительно-технических исследований по этим вопросам.

На основании анализа законодательных актов, требований нормативных документов, а также экспертной практики сделан вывод о необходимости систематизировать и выработать единые методические подходы к решению актуальных задач судебной строительно-технической экспертизы по отнесению видов ремонтно-строительных работ к определённой классификации.

Ключевые слова: недвижимость, строительные объекты, текущий ремонт, капитальный ремонт, перепланировка, перестройка, размеры, площадь, строительные конструкции, вмешательство, работы, экспертиза, исследования, оконные заполнения, дверные заполнения, инженерные системы.

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