

PRZEMYSŁAW MAŃKE

Art. 647¹ CC – Important Protection of Subcontractors in the Construction Works Contract or the Legislator’s Error?

Art. 647¹ of the Civil Code¹ (henceforth referred to as CC) belongs to a group of codes which regulate construction works contracts and relate to an important issue of concluding contracts with subcontractors. This regulation became part of the CC as a result of modification made on 14 February 2003,² which was a response to unfair practices in the construction market. The moment the regulation came into force, it aroused numerous controversies in the legal doctrine and was severely criticized due to editing ambiguities as well as joint and several liability of the investor for the payment of remuneration for the construction works performed by the subcontractor. The literature presented opinions calling for a necessary change and even for the removal of this regulation from the CC.³ Finally, on 1 June 2017, the amended Art. 647¹ CC came into force.⁴

The purpose of this article is to analyze the process of creating the regulation concerned and to present the doubts it has aroused and finally to assess it. It should be indicated that the literature has so far focused on raising editing doubts which Art. 647¹ CC has aroused without conducting an in-depth analysis of circumstances under which it was introduced into the legal system. While endeavoring to evaluate the regulation, it is also essential to undertake an attempt to consider the proposed changes therein both from the perspective of investors and subcontractors. Finally, the new contents of Art. 647¹ CC, which came into force on 1 June 2017 should be analyzed and compared with the previous one.

1 Civil Code Dz.U. no. 16, item 93.

2 The act of 14 February 2003 amending the act – Civil Code and some other legal acts (Dz.U. no. 49 item 408).

3 M. Gutowski, *Odpowiedzialność inwestora w umowach o roboty budowlane na tle Art. 647¹ §5 k.c.*, „Państwo i Prawo” 2008, no. 2, p. 75.; R. Szostak, *O potrzebie uchylenia Art. 647¹ k.c.*, „Przegląd Prawa Handlowego” 2008, no. 6, pp. 12 - 18.

4 The act of 7 April 2017 amending some legal acts in order to make recovery of claims easier (Dz.U. 2017 item 933).

Legal Nature of Construction Works Contracts and Contracts with Subcontractors

Art. 647 CC defines what construction works contracts are. As set out in this article, the construction works contract stipulates that the facility be handed over in accordance with the design and technical know-how. Parties to the contract are the investor and the contractor. The investor is the entity which commissions a facility to be completed. The contractor is the person which undertakes to complete the facility.

It should, however, be pointed out that the contractor, as the "general contractor", can make use of services provided by other entities or, in other words, "subcontractors". For this purpose a contract is concluded between the contractor and the subcontractor. This contract is not defined in regulations. This type of contract will be relating to the organization and performance of works by the contractor which will be engaging additional entities with a view to performing the works the contractor is responsible for.⁵ What needs to be highlighted is the fact that the contract between the investor and the contractor and the contract between the contractor and subcontractor will be two separate contracts. However, there will be some relationships between these types of contracts.⁶ Firstly, the joint purpose of these contracts can be defined – they are both aimed at delivering the facility. Secondly, there will be a sequence of activities as the general contract will lead to signing contracts with subcontractors.

Contracts with subcontractors and the protection of the legal situation of subcontractors are set out in Art. 647¹ CC. And the purpose of this article is to deal with these issues.

Enforcement of Art. 647¹ as a Part of CC

The idea to introduce a regulation into the CC with a view to providing a certain degree of protection to subcontractors as a part of construction works contracts came into being in 2002.⁷ Unfair practices in the construction services market were the grounds for proposing the bill. These unfair practices mainly included the remuneration for construction works performed by small and medium-sized entrepreneurs whose counterparts (as parties to contracts with subcontractors) were large construction enterprises, most often joint-stock companies, limited companies or developer enterprises which had immense share capital, production and financial capabilities. As was emphasized, potential subcontractors found these circumstances encouraging to commence business relationships with general contractors. This was however disillusioning as general contractors often

5 M. Behnke, B. Czajka-Marchlewicz, D. Dorska, *Umowy w procesie budowlanym*, Warszawa 2011, p. 87.

6 J. Strzępka ed., *Prawo umów budowlanych*, Warszawa 2012, p. 552.

7 Sejm Paper no. 888 of 16 September 2002.

filed for bankruptcy once subcontractors had completed their works. As a result, subcontractors found themselves in very uncomfortable circumstances because they could only turn to an entity for remuneration with whom they had concluded a contract. Legal action they took was a lengthy and time-consuming process. Legal expenses were often greater than the size of remuneration recovered. Even trials which were won often proved ineffective as it was impossible to recover the debt that was adjudged by the court. The bill argued that it was a far-reaching problem (gradually becoming a macro-economic issue even though it was originally a micro-economic issue, vastly commented on by the mass media). In order to emphasize the disciplining nature of this regulation, this regulation was defined as *ius cogens*.⁸

As a result of the circumstances described above, it was necessary to introduce a regulation to prevent a situation when the subcontractor will be unable to receive the remuneration due for performing the construction works in line with the contract with subcontractors. In the bill concerned Art. 647¹ CC encompassed six paragraphs and its reading was almost identical to that we have today.

No controversies were raised when it was first presented before the Sejm. Commissions and sub-commissions started some discussions on the subject concerned. During a meeting of the Special Committee for changes in legal codes dated 21 November 2002, the Chairman, deputy Janusz Wojciechowski, read out the bill and asked who was against the proposal. No one voiced against it. More importantly, deputy Ryszard Kalisz, stated that he agreed to the bill and that it was a long-awaited amendment and should be enforced as quickly as possible.⁹ At that point, the discussion on Art. 647¹ CC came to an end.

After the bill was presented for the second time, no modifications were made to Art. 647¹. Some changes were made when the Senate was dealing with the bill. The Senate proposed that in §4 phrases „in this article and their modifications and supplements” be replaced with „in §2 and §3”. As was stated by the Senate, that this was a clarifying alteration and was designed to pinpoint that only contracts with subcontractors and further subcontractors require to be written down –otherwise they will be deemed invalid.¹⁰ At another meeting, the Special Committee for changes in legal codes focused on the alterations made to the regulation by the Senate. It was stated that it was an editing and clarifying alteration and made the regulation more concise.¹¹ At that point, the discussion on Art. 647¹ CC came to an end. Ultimately, the regulation was enforced on 14 February 2003.¹²

8 Ibidem.

9 Special Committee for changes in legal codes of 21 November 2002, no. 12, bulletin no. 1224/IV.

10 Sejm Paper no. 1290 of 7 February 2003.

11 Special Committee for changes in legal codes of 11 February 2003, no. 17, bulletin no. 1477/IV.

12 The act of 14 February 2003 amending the act – Civil Code and some other acts (Dz.U. no. 49, item 408).

The above presentation of the legislative process with reference to Art. 647¹ CC is aimed at proving that it was necessary to enforce this type of regulation. At no stage whatsoever were the reasons for commencing work on this bill questioned. No doubts were raised as to the general reading of Art. 647¹ CC either, including the investor's joint and several responsibility. The purpose of the alterations referred to above was to clarify the regulation and they were approved without any doubt. Ultimately, Art. 647¹ CC was enforced practically unchanged as was originally presented in the bill.

Some Selected Doubts Relating to the Original Contents of Art. 647¹ CC

Art. 647¹ CC read as follows:

§ 1. In the construction works contract referred to in Article 647 executed between the investor and the contractor (general contractor), the parties set forth the scope of the works which the contractor will perform personally or through subcontractors. § 2. The execution by the contractor of a construction works contract with a subcontractor requires the investor's consent. If, within 14 days of receiving from the contractor a contract with a subcontractor or a draft contract, together with part of the documentation concerning performance of the works set forth in the contract or in the draft, the investor does not submit objections or stipulations in writing, he is deemed to have consented to the execution of the contract. § 3. The execution of a contract by the subcontractor with a further subcontractor requires the consent of both the investor and the contractor. The provision of the second sentence of § 2 applies accordingly. § 4. The contracts referred to in § 2 and 3 should be executed in writing; otherwise they will be invalid. § 5. The person executing the contract with the subcontractor and the investor and the contractor bear joint and several liability for payment of remuneration for the construction works performed by the subcontractor. § 6. Any provisions of the contracts referred to in this article to the contrary are invalid.¹³

As has already been stated in this article, the regulation aroused no doubts whatsoever at the time of its passing, only with some insignificant alterations being made to clarify it, so it was nearly adopted as had been originally proposed. However, at a later time, while Art. 647¹ CC was in use, some discrepancies appeared both in judgments that had been passed and in the doctrine. The discrepancies related to some elements of its content.

Firstly, one should point out to the doubts that have arisen in relation to § 2 of the regulation in question and the necessity to obtain the investor's consent for a contract to

¹³ Civil Code Dz.U. no. 16, item 93.

be concluded between the contractor and subcontractor. Initially, it was believed that the investor's consent should be regarded as a third party's consent to other entities performing a legal act (defining the legal nature of this consent by applying Art. 63§1 CC).¹⁴ This approach assumed the contract would be deemed valid provided that this type of consent was given. If a contract was concluded between the contractor and the subcontractor without the investor's consent, it did not bring about any legal effects until the consent was given by the investor. If the investor refused to give their consent, the contract would be deemed invalid.¹⁵ This approach seems to be very close to the linguistic interpretation of the paragraph concerned. It was also indicated in the proposed Art. 647¹ CC, as discussed above, that the contract with the subcontractor would be concluded provided that the investor expressed their approval.¹⁶ According to the legislator's intention, this would imply that the validity of the contract with the subcontractor would depend on the investor's consent. This understanding was however criticized on teleological grounds. The investor's refusal could have a detrimental impact on the subcontractor if the contract was already concluded and performed by the subcontractor,¹⁷ which could take place in the construction services market. In such circumstances the subcontractor would not be able to demand remuneration payment as it would be resulting from an invalid legal act. This type of situation would be in defiance of the *ratio legis* of Art. 647¹ CC. It should be borne in mind that Art. 647¹ CC was enforced with a view to protecting subcontractors against unfair practices in the construction services market. Adopting an interpretation which would ultimately be unfavorable for persons who need to be protected by the regulation (subcontractors) would be against the *ratio legis* of the regulation discussed.

For this reason, with the passage of time, another interpretation was formed. According to this second concept, the investor's consent as stated in Art. 647¹ CC, should be of special character, and Art. 63 CC should not apply to it. As part of this understanding, the investor's consent is not a condition for the validity of the contract with the subcontractor but is a condition for the arising of the joint and several liability of both the investor and contractor for the remuneration payment to the subcontractor.¹⁸ If the investor does not give their consent, the contract with the subcontractor will be deemed valid, but the joint and several liability of both the investor and contractor will not arise. This stance was approved by the Supreme Court.¹⁹ It should however be mentioned that this interpretation has also some flaws. Without doubt, the subcontractor will

14 P. Drapała, *Umowa o roboty budowlane*, „Przegląd Prawa Handlowego” August 2003, p. 11.

15 J. Strzępka ed., op. cit, pp. 554–555.

16 Sejm Paper no. 888 of 16 September 2002.

17 J. Strzępka ed., op. cit., p. 555

18 K. Koźmińska, J. Jerzykowski, *Zgoda inwestora na zawarcie przez wykonawcę (generalnego) umowy z podwykonawcą*, „Radca Prawny” 2005, no. 5, p. 60.

19 Ruling of the Supreme Court of Poland of 30 May 2006, IV CSK 61/06; Resolution of the Supreme Court of Poland of 28 June 2006, III CZP 36/06.

find themselves in a more favorable position even if the investor has not expressed their consent, the contract between the contractor and subcontractor remains valid. A question can however be posed whether it does not mean that contractors will be less willing to conclude contracts with subcontractors. The investor will have no interest in consenting to assuming additional responsibility and the contractor will not be interested in encouraging the investor to give their consent. Therefore opponents to this interpretation argue that if subcontractors do not have a strong market position (e.g. are ones of very few specialists in the market place), they will not be likely to make the investor and contractor sign a specific contract with them.²⁰ In view of this, everything appears to depend on the nature of the investment and on the fact whether the contractor will be able to hand over the facility without the assistance of subcontractors or whether some works will be so specialist that both the investor and the contractor will be interested in signing contracts with subcontractors. Despite this practical problem, the understanding of the investor's consent not as a condition for the validity of the contract but as a condition for the arising of the joint and several liability of both the investor and the contractor for the remuneration payment to the subcontractor is the prevailing statement in the legal doctrine.²¹ Teleological interpretations unveil weaknesses of linguistic interpretations.²²

The form of expressing this consent is the problem that has arisen in response to the problem of the legal nature of the investor's consent to the conclusion of a contract with the subcontractor. The attitude to the form of expressing this consent depends on what attitude is adopted in relation to the legal nature of this consent. If it is assumed that the investor's consent is a condition for the validity of this contract (which is not however a prevailing view in the legal doctrine), requirements as to the form of concluding such a contract are also defined in Art. 63 CC. Under such circumstances, if Art. 6471§4 stipulates that a contract between the contractor and subcontractor be concluded in writing (otherwise it shall be deemed invalid), then as per Art. 63§2 CC the investor's statement including the investor's consent should also be made in writing. As per another attitude, if the investor's consent is not a condition for the validity of the contract with the subcontractor but a condition for the arising of the joint and several responsibility of the investor and contractor, applying Art. 63 CC is pointless in relation to the form of expressing the investor's consent. Therefore, according to this attitude, this consent can be expressed in any form whatsoever. It will suffice that the investor's consent to the subcontractor performing their construction works will be resulting from the investor's behavior.²³ In practice it means that the investor's joint and several responsibility can arise even if the subcontractor does not have the investor's consent in writing.

20 J. Strzępka ed., op. cit., p. 556.

21 M. Gutowski ed., *Kodeks cywilny, t. II*, C.H.Beck 2016, pp. 703 - 704.

22 M. Gutowski, *Odpowiedzialność...*, op.cit., p. 77.

23 Ruling of the Supreme Court of Poland of 20 June 2007, II CSK 108/07.

The subcontractor will find themselves in more demanding circumstances in terms of producing relevant evidence in court.

Another practical problem relating to the investor's consent is the problem of receiving from the contractor a contract with the subcontractor or a draft contract with part of the documentation concerning performance of the works set forth in the contract or in the draft. One of the views expressed in the jurisdiction was the assumption that the joint and several responsibility of the investor arises provided that the investor is presented with the contract or the draft contract with relevant documentation beforehand.²⁴ This was designed to ensure that minimal legal protection was available for the investor. In the meantime, the Supreme Court stated in another verdict of 20th June 2007²⁵ that the investor's joint and several responsibility will arise irrespective of whether or not the contractor presents the documents mentioned above. According to the Supreme Court the investor's knowledge of the content of the documents may come from other sources if the circumstances surrounding the investment process which is underway pinpoint to this knowledge. In accordance with part of the doctrine, it is hard to accept this attitude because this does not require minimal investor protection standards.²⁶

It should be noted that the above doubts as to the consent also related to the conclusion of contracts with further subcontractors (as in line Art. 647¹§3 CC the investor's and the contractor's consent is required for the subcontractor to conclude contracts with further subcontractors). One can also see some difference in relation to the remaining part of this regulation. §3 defines the contract with a further subcontractor only as a "contract" without stating explicitly that there is a reference to a construction works contract. §2 defines the contract with the subcontractor as a construction works contract. Therefore, by applying the linguistic interpretation rule, it might appear that the contract with the subcontractor must always be regarded as a construction works contract while the contract with the further subcontractor may not always be a construction works contract. Part of the legal doctrine assume that the contract with the further subcontractor may also be regarded as a specific work contract. It is difficult to make a distinction between the construction works contract and the specific work contract. As distinction criteria might be treated the way the facility is constructed (in accordance with the design and technical know how²⁷ and specific co-operation of the parties to the contract during the time of construction work)²⁸. As a result of different phrases used in §2 and §3 there arise doubts on the legal nature of the contract with the subcontractor. It is

24 Resolution of the Supreme Court of Poland of 28 June 2016, III CZP 36/06.

25 Ruling of the Supreme Court of Poland of 20 June 2007, II CSK 108/07.

26 R. Szostak, *op.cit.*, p. 16.

27 Ruling of the Court of Appeal in Białystok of 19 November 2015, I ACa 607/15.

28 M. Gutowski ed., *Kodeks...*, *op.cit.*, p. 694.

unknown whether the application of different phrases in §2 and §3 was intentional or whether the legislator was not consistent in the wording.

Doubts also arose as the adoption in Art. 6471§5 CC of the investor's and contractor's joint and several responsibility for the payment of remuneration to the subcontractor for the construction works that the subcontractor performed. As has already been indicated in this text, there is no contractual bond between the investor and the subcontractor because the (general) construction works contract concluded between the investor and contractor and the contract concluded between the contractor and the subcontractor are two separate contracts. The introduction of the idea of the joint and several responsibility (which is in this case a guarantee type responsibility) highlighted that the subcontractor might seek to satisfy their claims by reference to the investor's assets.²⁹ For this reason, the Supreme Court expressed their doubts as to whether there is any point in charging the investor (who must anyhow deal with the investment risk and bear investment expenses) with responsibility for a third party's debt which might be tantamount to making them liable for their counterparty's mismanagement or ill intention.³⁰ However, the Supreme Court stated that in specific circumstances this construction is well known in the prevailing legal system, and what is more, minimal protection is guaranteed to the investor because without their express statement of will or the passing of 14 days of the presentation of relevant documents to them, this type of responsibility will not arise.³¹ Taking account of this, the Supreme Court recognized the appropriateness of the investor's joint and several responsibility construction and resigned from asking the Constitutional Tribunal to assess whether Art. 6471§5 is compliant with the Constitution.

The above mentioned doubts are not the only doubts that have appeared while analyzing and applying Art. 647¹ (some issues were omitted by the content of Art. 647¹ for example the issue of resource claims between the investor and the contractor) but I perceive them to be the most important ones. These doubts are discussed with a view to demonstrating significant interpretation discrepancies that have arisen on the appropriateness of the content of the regulation in the process of creating and applying it. In the legislation process there was general agreement on the justification and appropriateness of the regulation as well as its editing precision (only insignificant modifications were made) while during its application numerous ambiguities were identified and questions were raised as to the compliance of Art. 647¹ with the Constitution, and the regulation was criticized.

29 R. Szostak, *op.cit.*, p. 13.

30 Resolution of the Supreme Court of Poland of 28 June 2006, III CZP 36/06.

31 *Ibidem*.

Proposed Modifications

Despite a myriad of varying views on the justification and appropriateness of Art. 647¹ this regulation has remained unchanged until the present day. This might testify to the fact that despite the doubts that have arisen so far, it fulfills its role in protecting small and medium entrepreneurs (subcontractors) against the insolvency of their counterparties (contractors).

In practice, there has however appeared the problem referred to above, which is connected with the unwillingness of investors to express their consent to the conclusion of contracts with subcontractors and therefore making themselves liable for a third party's debt. This triggered a certain negative phenomenon – "pretending to be unaware". This was raised by the Deputy, Tomasz Kulesza, in his opinion no 20614 to the Minister of Justice on the protection of the rights of small entrepreneurs – construction works subcontractors, dated 28 August 2013.³² As part of this process, the contractor does not formally register subcontractors and the investor, through their avoidance to create documents confirming this fact, approves the presence of subcontractors on the construction site. As has been indicated in this text, some part of the doctrine tends to be liberal with regard to the formalism of expressing the consent by the investor, and due to the "pretending to be unaware" phenomenon subcontractors may find it difficult to produce relevant evidence in court. Therefore, through an interpellation a modification was proposed. This modification assumed that whenever the investor does not expressly oppose to the conclusion of a contract with a subcontractor, it will be deemed that the investor has expressed their consent to completing such a contract. If despite the objection on the part of the investor, the contractor has completed a contract with a subcontractor, the investor would acquire the right to dissolve the contract with the contractor.³³ On the one hand this modification was a good response to the „pretending to be unaware" phenomenon by improving the subcontractor's ability to produce evidence because only the investor's express statement of will would prove that the investor has not expressed their consent. On the other hand, this was not a protection against unfair action of the contractor who might attempt to conceal from the subcontractor the fact the investor objected to the contract. In effect, this might lead to the dissolution of the contract by the investor with the contractor and therefore the subcontractor's financial standing might be adversely affected. This proposed modification was not however holistic. For example, it did not address the doubts associated with the legal nature of the contract with the subcontractor.

Another modification was proposed by the Senate of the Republic of Poland. It assumed that the investor must express the consent to the conclusion of a contract with

³² Interpellation to the Minister of Justice of Poland no. 20614 of 28 August 2013.

³³ Ibidem.

the subcontractor in writing for the investor to bear the joint and several responsibility.³⁴ The Senate put forward this proposal in response to the petition P IX-02/15 submitted to the Speaker of the Senate dated 24th September 2015. This modification was aimed at stating univocally that if the investor has not expressed their consent in writing, then the investor will not be charged with joint and several responsibility. According to those who submitted the petition the present text of the regulation implies overly responsibility of the investor as the investor bears joint and several responsibility together with the contractor irrespective of whether the investor was aware of the provisions of the contract with the subcontractor, whether the investor was only aware of the subcontractor's presence on the construction site.³⁵ Thus, this proposed modification was aimed at protecting the investor by making the investor's consent with the subcontractor and circumstances of arising joint and several responsibility for the investor more formal.

Both modifications didn't come into force. Both of them didn't solve all problems connected with the content of Art. 647¹.

The New Contents of Art. 647¹ CC

The amended Art. 647¹ came into force on 1 June 2017.³⁶ Taking into consideration all problems connected with the interpretation of this regulation (some of them presented in this article), the purpose of the legislator was to change the contents of Art. 647¹ in an essential way.

First of all, it must be indicated, that the new contents of this regulation tries to define, in a unequivocal way, conditions for the arising of the joint and several responsibility of the investor and contractor. According to the amended Art. 647¹, the contractor or the subcontractor should present to the investor detailed scope of construction works, which the subcontractor is allowed to do. It wouldn't be necessary if the investor and the contractor defined this scope in a separate contract. Both presentation and contract should be executed in writing; otherwise they will be invalid. If the investor expresses the objection for this scope in the 30 days since presentation, the investor's joint and several responsibility won't arise. The investor's objection should be also executed in writing. This change causes that conditions for the arising of the joint and several responsibility of the investor and the contractor are now concretized. Only formal presentation of the scope of subcontractor's construction works would cause legal consequences. It would eliminate the opinion that the arising of the joint and several responsibility of the inves-

³⁴ Senate Paper no. 152 of 14 April 2016.

³⁵ *Ibidem*.

³⁶ The act of 7 April 2017 amending some legal acts in order to make recovery of claims easier (Dz.U. 2017 item 933).

tor and contractor is possible even when the investor finds out the subcontractor's work from all circumstances of investment process.

The issue of the investor's consent was amended as well. Only the clear objection of the investor after the presentation of the scope of subcontractor's work would exclude the joint and several responsibility of the investor. This solution protects the subcontractor and isn't harmful for the investor. However, the new contents of Art. 647¹ doesn't regulate the situation when the investor would like to agree for the proposed scope of the subcontractor's work before the expiry of the deadline of 30 days. It can be assumed that, according to the literal interpretation of the new contents of Art. 647¹ CC, the investor couldn't agree for the proposed scope of the subcontractor's work in an "active" way and should always wait 30 days without an objection. Only the lack of investor's objection will have legal consequences. This solution unfortunately could slow down the investment process.

The really important change is the indication of limits of the responsibility of the investor. The previous contents of Art. 647¹ CC didn't regulate it. Fortunately, according to the new one, the investor is responsible for the subcontractor's remuneration payment (of course when conditions of arising of this responsibility are fulfilled), unless the level of this payment is higher than the payment of the contractor. In this situation, the level of the investor's responsibility is limited by the contractor's payment.

As it can be seen, the new content of Art. 647¹ CC in some aspects is better than the previous one (especially because of the formalism of conditions for the arising of the joint and several responsibility of the investor and contractor and because of the limit of investor's responsibility). However some new solutions are not understandable (like the impossibility of giving by the investor consent for the scope of the subcontractor's work in an "active" way). What's more, unfortunately, the amendment of this regulation is not complex. There is still no answer to the question which types of contracts Art. 647¹ CC concerns. The previous text of this regulation defined a contract with a subcontractor as a "construction works contract" and a contract with a further subcontractor as a "contract", which caused questions about legal nature of contracts with subcontractors and further subcontractors. In the amended text of Art. 647¹ CC one cannot find any legal definition of contracts with subcontractors (new Art. 647¹ doesn't define contracts with subcontractors in any way). It means that there are still debts about legal nature of this type of contracts. New regulation also doesn't regulate the problem of resource claims.

Conclusion

In endeavoring to answer the question presented in the title of this article, it should be stated that Art. 647¹ CC is essential for the protection of subcontractors was part of construction works contracts as it provides subcontractors with additional sources of satisfying

their claims in circumstances in which they might be unable to achieve this goal in relation to the contractor. The editing ambiguities of the regulation triggered diverse interpretations. In addition to theoretical aspects, one must take account of practical aspects and the avoidance of responsibility by investors despite the enforcement of this regulation. Therefore, one must concede that the previous text of the regulation, in addition to providing protection to subcontractors, was also a certain error that the legislator made because of its textual imperfections and the legislator's inability to anticipate some negative effects in construction practice. It can be assumed that the new text of the regulation which came into force in June 2017 "fixes" some previous legislator's errors but it isn't still a satisfying amendment. In my understanding, the following components of Art. 647¹ CC need to be univocally clarified: legal nature of the contract with the subcontractor, catalogue of premises resulting in arising the investor's joint and several responsibility, the form of expressing consent by the investor and the problem of resource claims. Currently, these issues were not univocally expressed in the previous regulation and the new regulation doesn't deal with all of them as well. What's more, it must be said that problems connected with the previous content of Art. 647¹ CC are still current, because the previous text of this regulation will be still used to the contracts which were signed before the new regulation came into force.

To conclude, Art. 647¹ CC is really needed in polish law system. Unfortunately, both the previous contents of this regulation and the present one aren't sufficient to guarantee the lack of doubts in interpretation.

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SUMMARY

Art. 647¹ CC – important protection of subcontractors in the construction works contract or the legislator's error?

The purpose of this article is to present and assess the impact of the regulation Art. 647¹ CC on subcontractors in the construction market and outline doubts in respect of the contents of the regulations. The first part of the article shows reasons why the regulation concerned was enforced – unfair practices in the construction services market which had a detrimental impact on subcontractors. Furthermore, selected doubts are presented, those associated with the contents of the regulation in question and raised by the doctrine and jurisdiction, for example, the legal nature of the investor's consent or the investor's joint and several responsibility. It is important to indicate the contrast between the unproblematic legislative process and doubts disclosed during its application. The author of this article also depicts two proposed modifications, which appeared in doctrine. The important issue for this article is also a description of the amended text of this regulation and comparison to the previous one. In conclusion, it should be emphasized that art. 647¹ CC is really important for the Polish legal system but both the previous content of this regulation and the present one aren't sufficient to guarantee the lack of doubts in interpretation.

Keywords: art. 647¹ CC, protection of subcontractors, investor's consent, joint and several responsibility, legislator's error

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