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Conducting forensic construction and technical expertise in relation to unauthorized reconstruction projects

This paper is devoted to the features of construction-technical expertise conducting connected with an unauthorized reconstruction. There isn't a definition of the term "unauthorized reconstruction" in Russian legislation nowadays. Therefore, requirements attitude different forms of buildings modification interpret by many in various ways. For real, it often happens that results of major repair, replanning or reengineering turns out to be the reconstruction indeed. On the other hand, the project of reconstruction which was officially announced and approved can be transformed into new unauthorized construction. Both these cases are dangerous because neglect the rules in construction can lead to violating the third rights, humans' life and health. The complexity of the subject in term of identifying the type of works in construction with the features of technical regulation in this area becomes a reason of using the special knowledge of expert to give court a hand. Researching the juridical practice, real cases show us that there isn't a united algorithm or methodical approach of how investigate the unauthorized reconstruction. It all leads to instinctive actions from expert, big numbers of mistakes in his opinion. The transformation task, which mostly must be solved by expert in case of unauthorized construction also seems quite difficult.

Keywords: *unauthorized reconstruction, replanning, reengineering, forensic construction-technical expertise, full-scale investigation, expert opinion*

The life cycle of buildings is characterized by its high duration. From the creation of one to the moment of its demolition can be passed more than 100 years. Over time construction systems tend to accumulate tears. Tear can be physical that leads to decreasing project quality, endurance of elements and merging of defects. It also can be moral wear, which connected with the reducing of ability of real estate to meet the needs of owners. Due to this phenomenon of buildings development, different processes can be carried out to modernize construction facilities, make their comfort level as well as safety parameters suitable to current requirements of legislation, people and business [1]. The major repair, reconstruction, replanning or reengineering are little part of variety of building improvement stated in Russian law. Nevertheless, in case of technical and legal regulation features of these processes there is a place for unauthorized actions in construction, reflected in juridical practice. There is not an official definition of the term unauthorized for itself. It only noted in articles 330 of the Criminal Code of the Russian Federation and 19.1 of the Administrative Code of the Russian Federation as a part of term arbitrariness, which means exercise of an existing or only assumed right contrary to the relevant legal acts. However, there is an article 222 of the Civil Code of the Russian Federation devoted exactly to an unauthorized construction. The law mentioned three signs of unauthorized construction they area violation of the land plot using order, an absence of necessary permission documents and a violation of the current urban planning and construction regulation [2].

The lack of legal regulation of other unauthorized actions with buildings, including reconstruction, becomes a reason of misinterpretation of legislation by courts and leads to situational nature of their decisions about modified real estate objects.

The analysis of juridical practices how us that issues about unauthorized reconstruction are contained in reviews devoted to arbitrariness construction as well as in materials about illegal replanning and reengineering in apartment buildings. It all can be explained by the complexity of reconstruction as a technological process. In one case, it may include transformation of exterior of building with the help of extension or superstructure what is similar to new construction. In another case, reconstruction can be local and connected with the changing or reinforcing supporting structures what is alike major repair. Thus, the specific of unauthorized reconstruction of real estate objects in the author's opinion require its allocation to a separate category of cases. It is important in case of developing methodical approaches to forensic construction-technical expertise of reconstructed with violations buildings.

To sensitize the juridical practice two groups of unauthorized reconstruction motivators can be distinguished [3]:

- an initiator of reconstruction, mostly an owner, act as he assumed it should be correct but in term of misinterpretation on law or his insufficient level of legal qualifications, he does it wrong. Real cases show that signs of unauthorized reconstruction can appear if construction and installation work about repair premise beyond established and become to affect the capital walls and callings, change the size and the area of building, or new entrances group are being built;
- in opposite, owner or user of building while reconstruction can act deliberately circumventing the law. Often a person wants to facilitate the process of transforming his construction object into desired state. Therefore, an owner names construction works as major repair not

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► to get premises or pass an expertise of project documentation but in fact reconstruction occurs. It is possible and attractive option because of the opportunity of legalizing results of unauthorized construction after its holding [2].

Both cases arbitrariness in construction industry, which is a part of technical regulation, threatens a public danger and may pose risks to life and health of an unspecified group of people. Such circumstances substantiate a necessity from judges to attract a knowledgeable person in sphere of design, erect, maintenance and demolition of buildings to investigate issues about unauthorized reconstruction. Thanks to the expertise factual data about compliance of construction works with norms and rules, the degree of deviation from them, the safety of reconstructed structures and the possibility of their further usage can be defined [4].

Having identified the main reasons for committing violations with real estate objects, it becomes possible to write down the order of conducting forensic construction-technical expertise connected with unauthorized reconstruction. To be more consecutive let's divide some milestones based on expert tasks solved by a knowledgeable person.

The first step and expert's task are classification one. It let expert solve the issue of assignment of the object to a certain class, species, genus. To do it a knowledgeable person should learn information from the case material and check if data is enough. Firstly, expert can identify the functional purpose of the building, it could be residential, commercial or industrial. This information can help him to select technical standards and regulations which contain specific requirements for object under investigation [5]. Secondly, it is important to identify the category and the type of permitted usage of the land plot to select urban planning regulations spreading on it. It should be noted that the availability of data which helps to track changes in an object over time is quite important for expert's activity. These are documents such as technical passport for the building, floor plans, acts of previous inspections or examinations, acts of acceptance of repair works, some technical conclusion and initial project (if any). There is also a necessity for availability of project and permissions devoted to construction and installation works being the subject of a dispute. The absence of any document from the list above allows the expert to apply a petition toward the court about providing him with missing materials in accordance with procedural legislation [6]. Thirdly, works performed on the site can be classified. Expert-engineer while studying secondary documentation with his special knowledge defining what types of work are supposed to be doing or what of them are presented as completed [7]. For separating construction work carried out on buildings that may be confused with reconstruction a brief description of all of them will be given:

1. The reconstruction itself according to article 1 point 14 of Urban Planning Code of the Russian Federation is aimed to change the main parameters of current buildings including enlarging of volume and area, increasing number of floors, or replacement or restoration of load-bearing structures [8]. There is a necessity to design project documentation to perform the reconstruction in legal order. Positive result from an expertise of construction project must be received, permission of construction and commissioning also need to be got. Reconstruction as a rule can be carried out with the relocation of dwellers in case of residential buildings or cessation of main production processes in industrial objects. Typical features of reconstruction are extensions of current object, replanning or changing its functional purpose and exterior. As about factories

and manufactories reconstruction accompanied by technical re-equipment [9].

2. The major repair also is a type of work that is regulated by Urban Planning Code. Major repair is devoted to reinforcement of non-load-bearing elements of building or fractional replacement of load-bearing structures with similar properties or restoration engineering and technical supplying systems. As it is stated in article 48 of Urban Planning Code, designing project documentation for major repair is optional, but necessary in case of using budget funds, similar with getting different permissions. An expertise of construction project was carried out only in part of the reliability of the estimated section. Major repair can be comprehensive when most of construction elements of building are being replaced or restored. It also can have a local scale when only one or some elements or parts of building are being maintained. Both cases are not supposed residents or users of object to be relocated. It is not allowed to change main technical and economical parameters of building, its functional purpose in result of major repair it is only let decrease the level of tear and wear.

3. New construction is pointed to the erection of buildings and structures with the creation of new real estate objects in legal sphere. This process demands not only architectural and construction projects to be created and permission and approvals to be received but also purchasing of land plot and registration of rights on it also must be done [10].

4. Restoration is a type of architectural and art works that are aimed at recreation or preservation of objects with historical and cultural value, some pieces of décor and interior items. This activity demands a comprehensive rehearsal in term of fulfilling the historical and culture expertise. Restoration is based on the principles of minimizing changes in exterior, using the original materials and gentle technologies of repair works [1].

5. Replanning is a concept from residential legal relations. This procedure is aimed at changing of technical and economic parameters, inner layout of particular apartment or several adjacent apartments including merging of new one from them [11]. Results of replanning must be reflected in Register of Real estate. The project of replanning must be created and approved by local government before the start of works. Act of commissioning ought to be fulfilled, cadastral measurements reflected of all changes in premise must be done after repair work and then owners have to apply to Register of Real estate to correct graphical data about his apartment [12].

6. Re-engineering is also suitable for premises only. It is a type of work that is carried out on engineering networks and equipment including their replacement or renewing. Such works demand project and approving stage and making an entry in the technical data sheet. In spite of it there is no necessity to reflect changes in Register.

The next step for the expert is conducting nature studies of objects under investigation. In cases of unauthorized reconstruction this phase is so important because studying of buildings only by its description in documents and materials is not allow to state the factual data about it. So, such principles as completeness, reliability and objectivity of expert's research can't be done. A knowledgeable person solves existential, volumetric and situational tasks with help of visual or instrumental examination. Existential research let expert answer a question of the presence of argued object, its part or result of unauthorized reconstruction in general [13]. Carrying out measurements in frame of volumetric task it becomes possible to establish real volume of fulfilled construction and installation works on object and compare it with stated in documents. There are a lot

Main features of unauthorized reconstruction

Feature	Norm of the law	Characteristics
Illegal usage of the land plot	LC, CCar. 5.2	Contradiction of the building parameters or functional purpose to the category or type of permitted use of the land plot
Violation of urban planning rules	Ch. 4 UPC, LC, ar. 222 CC	Changing technical and economical parameters of building with the exceeding that is set in baseline and permission documents. Contradiction of exterior to urban planning regalement
Violation of construction rules	Ar. 222 CC, ar. 5 FL No. 384, FL No. 123	Non-fulfillment of mechanical, fire, ecological safety requirements
Absence of permission documents	Ar. 48, 51, 52, 55 UPC	Absence of permission to construction (reconstruction) and commissioning, positive opinion from expertise, technical condition to increasing the power demanding
Contradiction of types of construction works to the legal description of reconstruction	Ar. 1 UPC	Changes not stated as reconstruction but lead to transmogrify initial parameters of buildings or serious work with load bearing elements
For apartments only. Decreasing the area of common shared ownership without legal decisions of all owners	Ar. 36 HC	The absence of the protocol of owner's meeting decision about alienation of part of common property. Illegal reconstruction of attics and basements

Abbreviations: Ch. — chapter; ar. — article; LC — the Land Code of the Russian Federation; UPC — the Urban Planning Code of the Russian Federation; HC — Housing Code of the Russian Federation; CC — the Civil Code of the Russian Federation; FL — Federal Law.

of cases where, for instance, project suppose only replacement of rafter system of the roof but in fact the mansard floor is erected. Such changes are going out from the legal frame of major repair and can be named as illegal reconstruction. Group of situational tasks is aimed to capture the placement of building in space or its location in attitude neighborhood objects. These types of research can help to examine cases with signs of enlarging of construction side spot and changing border lines of land plot [7].

Further expert's steps should be pointed to solving diagnostical tasks. They mean establishing of current technical condition of construction object. A knowledgeable person solves more detailed issues called attributive subtasks. Step by step parameters of individual structures and nodes or microclimate characteristics like lightning level, temperature and so on are researched. Then expert accumulates all the information about fragmental parts of building and is willing to make a decision about object's condition in general. Detected defects and incongruities allow expert to say if the object is safe for users and further exploitation or not, what is particularly important when reconstruction was held with violations of technical regulations and rules [14].

Next stage can be carried out already in cabinet conditions. It is a normative study. Based on data represented in another article [15], questions about the following to technical rules, fire safety standards, compliance with the urban planning regalements and different premises both construction works and reconstructed building itself may be expert asked by judge. All what have been understood within normative analysis helps an expert to know whether there are signs on unauthorized activity, how serious are the violations or could they be fixed. So, it is necessary to highlight the main features of unauthorized reconstruction of real estate objects, they are synthesized in Table below.

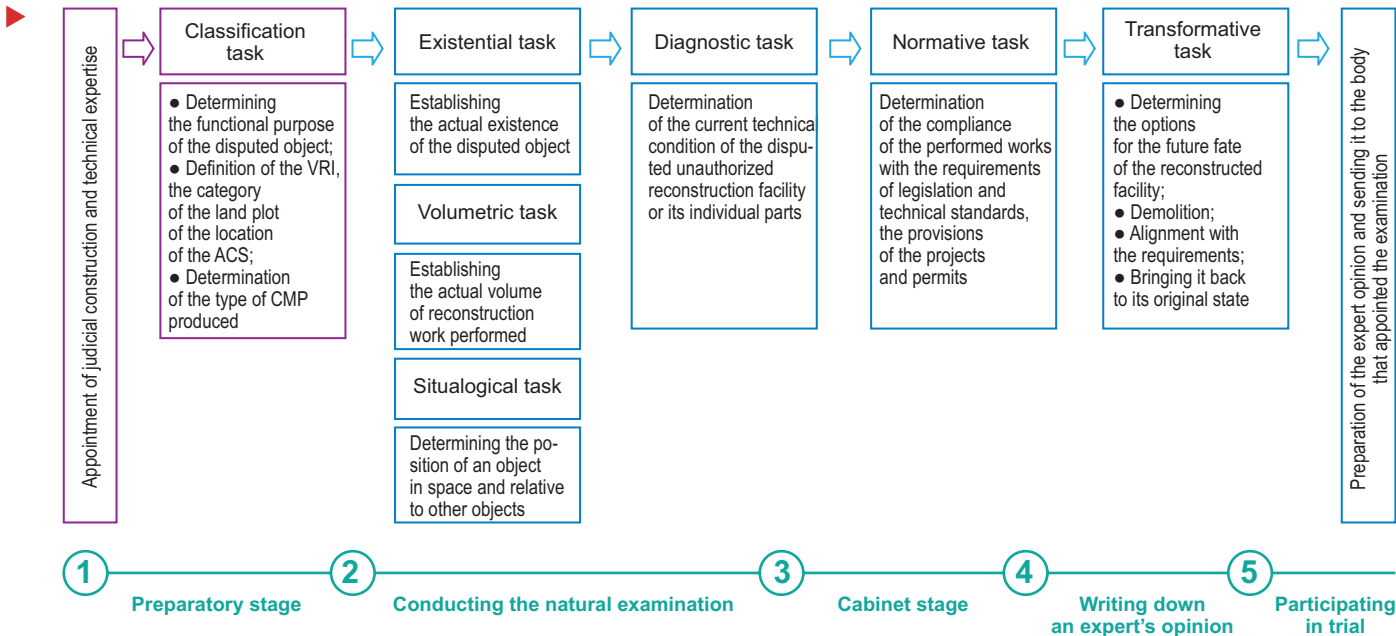
Finally, the key expert's task is transformative one. It consists of analysis and creation options of further fate of building. This question is characterized as ambivalent due to an imperfection of legislation. On the one hand, compared to expertise connected with division households the number of transformation options for unauthorized objects is limited by article 222 of UPC. They could be the demolition of object, bringing the object in accordance with construction rules and regalements or turning back to the original state (applicable for reconstruction only). On the other hand, there

are no legal norms regarding legitimization of illegal reconstruction in comparison to cases with unauthorized construction or algorithm of actions when one part of building suit the legislation while other not. An additional clarity brings the Resolution of the Plenum of the Supreme Council with number 44. This document says that the key principal for unauthorized reconstruction is proportionality of the punishment. So, the demolition of ones is considered to be an extreme measure. Have mentioned this fact an expert should create variants for reconstructed objects based on safety parameters of building or ability of bringing its condition to state available to use.

That is why the absence of permitted documents is less significant than contradictory the reconstructed building to requirements of technical rules and regalements and least than the existence of real threat to lives and souls without ability of its elimination to write down an opinion of necessity of demolition the object. The Resolution of Plenum No. 44 also prohibit to demolition such categories of real estate objects as individual residential houses and cultural heritage sites [7].

Talking about expert's opinion in cases of unauthorized reconstruction, an unambiguous or probabilistic answer may be given. For instance, the unambiguous one "To ensure that the building after unauthorized reconstruction meets all requirement it is necessary to install a dormer window ow ventilation holes in the vertical wall of the new roof to ventilate an attic space, waterproofing the basement of new foundation and complete installation work connected with stair and entrance to object". The probabilistic wording example "There is a successful case of reinforcement load-bearing constructions from similar building in construction practice. That is why object could be brought in line with requirements theoretically". The second variant would be less preferable to court needs and unclarity and incompleteness of a construction-technical expertise may become a reason of demanding an additional investigation [16, 17].

The other features of expert's opinion also should be noted. To describe the variant of bringing the condition of object to the previous state it is obviously that deinstallation of all erected or replaced elements is impossible because can lead to degradation of endurance and safety of other structures. Despite it the functional purpose of premise, exterior of building, some entrances or engineer systems' location can be turned back to original state but also



Algorithm for conducting research on unauthorized reconstruction of real estate object

with the condition of decreasing their tear percentage [18]. Well, the more rational way for expert would be the description of certain element what demolition or restatement is technologically and economically possible and approved [19]. In case of reconstructed building's parts what demolition is necessary but difficult to occur like disassembly of masonry of upper floors or extensions expert should write down the volume of demolition and works connected with conservation and restoration of modified parts. There is a general scheme of expert's research algorithm of unauthorized reconstruction in the Figure below.

To summarize, construction-technical expertise of unauthorized reconstruction has unique features what separate it from investigation of illegal construction or replanning premises. However, there aren't any difference between them in current legislation and juridical practice what leads to unreasonable and unsystematic decisions. Remaining the fact that phenomenon of illegal construction and reconstruction affect the state's interests, investigations connected with such cases were allowed only to government experts in 2023. Increasing cases of unauthorized reconstruction multiply the burden on experts what in the situation of absence of comprehensive methodical recommendations make their work less operative and more intuitive. That is why cases of unauthorized reconstruction should be synthesized in manuscripts for knowledgeable people. List of difficult issues about illegal reconstruction also must be described. For instance, what expert should do if the reconstruction has been already done when others requirement for it were relevant but for today, they have changed.

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Особенности производства судебной строительно-технической экспертизы в отношении объектов самовольной реконструкции

Освещаются вопросы особенностей проведения исследования объектов капитального строительства, обладающих признаками самовольной реконструкции в рамках судебной строительно-технической экспертизы. В настоящий момент из-за отсутствия в законодательстве указанного понятия многими неоднозначно трактуются требования к строительно-монтажным работам (СМР), связанным с различными вариантами изменения объектов недвижимости. Нередко реконструкцией оборачиваются результаты, полученные в рамках капитального ремонта зданий, реставрации, перепланировки или переустройства помещения. С другой стороны, проект, изначально заявленный и согласованный как реконструкция, может преобразоваться в создание новых объектов капитального строительства. В любом случае неправомерное использование земельных участков, действия в отсутствие на то технической или разрешительной документации, а также нарушение предъявляемых к СМР требованиям — все это признаки самовольности. Самоуправство в области строительства и реконструкции чревато множеством негативных последствий, начиная от нарушения прав третьих лиц, заканчивая возникновением угрозы жизни и здоровью людей. Сложность вопроса отнесения СМР к тому или иному процессу, а также комплексность регулирования в строительстве являются причиной назначения строительно-технической экспертизы для исследования самовольных построек. Судебная практика показывает отсутствие единых методических рекомендаций к экспертизе самовольной реконструкции и ситуативность действий сведущих лиц, неверную ориентацию на алгоритмы исследования самовольных построек, большое количество ошибок и неточностей в заключениях. Также особенно затруднительной представляется преобразовательная задача, которая должна разрешаться экспертами для помощи суду в принятии решения о дальнейшей судьбе самовольно реконструированного объекта.

Ключевые слова: самовольная реконструкция, перепланировка, переустройство, судебная строительно-техническая экспертиза, натурное обследование, заключение эксперта

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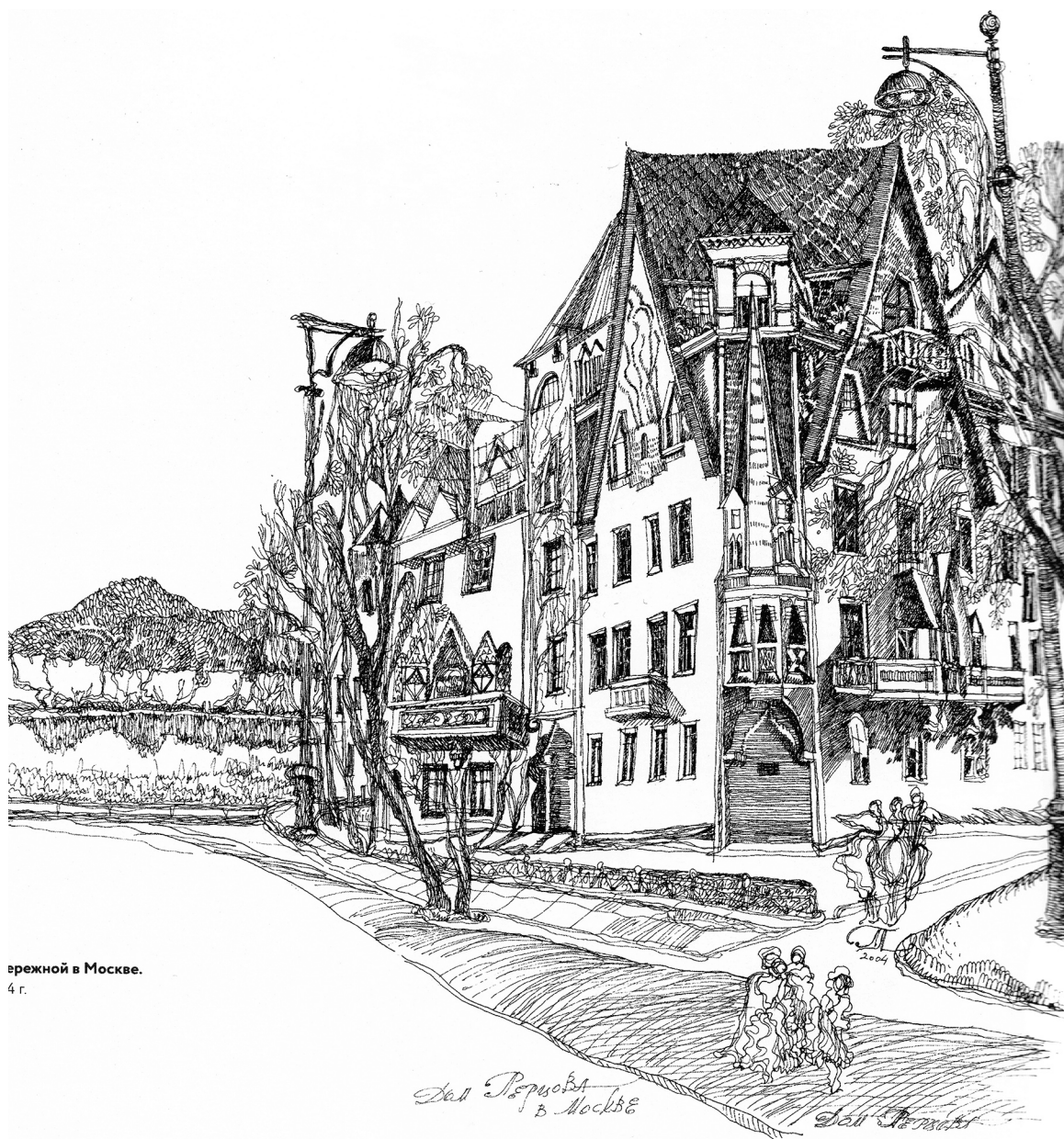
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