



PUBLIC LAW | CONSTRUCTION

Legislation and case law updates

2nd Quarter

LEGISLATIVE NEWS

APPROVAL OF THE NATIONAL RAIL PLAN

[Resolution of the Council of Ministers 77/2025](#) of 16 April

The Resolution approves the National Rail Plan and determines that Infraestruturas de Portugal, S.A. will carry out an evaluation of priority rail investments, specifically:

- Connection between Terras de Santa Maria and the Porto Metropolitan Area
- Connection between the Western Zone and Lisbon
- Cross-border connections between Bragança/Zamora, Aveiro/Salamanca and Faro/Huelva

CASE LAW

PUBLIC WORKS CONTRACTS - CONTRACTOR'S RESPONSIBILITY

[Supreme Administrative Court Judgment](#) of 15 May 2025 (Case no. 02836/10.5BEPRT)

The legislation governing public works contracts contains a general rule that the owner of the works is responsible for any defects in the specifications and execution plans (Article 378(1) of the Public Contracts Code). However, exceptions to this rule are permitted, and a mechanism has therefore been created that makes the contractor responsible for identifying and rectifying certain errors and omissions in the designs.

In the pre-contractual phase, the Public Contracts Code imposes on the contractor the burden of identifying errors and omissions in the specifications (see Article 61(1) of the Public Contracts Code). This obligation does not apply if it can be demonstrated that such errors could only be detected during the execution of the work, despite the objectively required diligence (Article 61(2)).

If the contractor detects and reports errors and omissions during the contract formation phase, they are entitled to full compensation for the correction costs. If the contractor fails to detect any errors or omissions, but it is proven that they were detectable at this stage, the costs will be shared equally between the contractor and the owner of the work (Article 378(3) and (5) of the Public Contracts Code).

THE RIGHT OF THE OWNER OF THE WORK TO WITHDRAW FROM IT AT ANY TIME

[Judgment of the Court of Appeal of Guimaraes](#) of 8 May 2025 (Case no. 27045/23.OYIPRT.GI)

The owner of the work may decide at any time, either before or during the execution of the work, that they do not wish to continue with the contract (see Article 1229 of the Civil Code). This decision may be made for various reasons, such as a change of circumstances or economic conditions, or an intention to complete the work with another contractor or in a different way.

In these situations, the owner of the work does not need to explain their decision or notify the contractor in advance. The owner can communicate their withdrawal in writing, orally, or by taking actions that clearly demonstrate their intention to terminate the contract (see Articles 1229 and 217 of the Civil Code).

For this reason, if the owner of the work demonstrates a lack of interest, this will be understood as an intention to abandon the work. The intention will be assessed based on how any ordinary, diligent contractor would act in the same situation.

AMENDMENTS TO THE CONTRACT

The contractor must not make any changes to the 'agreed plan' for the work without authorisation from the owner (see Article 1214 of the Civil Code). If the contractor does so, the work will be considered defective and the owner may exercise the rights provided for in Articles 1221 et seq. of the Civil Code, such as the elimination of defects, a reduction in the price, the termination of the contract or compensation for any loss or damage caused. However, the owner may also accept the contractor's changes, provided that this does not imply an increase in the price or an obligation to pay compensation on the grounds of unjust enrichment if the value of the work has increased.

There are, however, situations in which changes to the contract are necessary for objective reasons, such as technical issues or third-party rights (see Article 1215 of the Civil Code). When this happens, there are two possibilities:

- **Agreement between the parties:** The owner of the work and the contractor must agree on any necessary changes, the new price, and the deadline for completion. This agreement can be made informally.
- **Judicial decision:** If the parties fail to reach an agreement, the court will decide which changes are necessary, setting new prices and deadlines.

This flexibility protects both the owner of the work, who can withdraw when necessary, and the contractor, who can make necessary changes with proper approval. It ensures that contractors can adapt to circumstances that arise during the execution of the work.

THE RIGHT TO COMPENSATION FOR THE OWNER OF THE WORK

[Judgment of the Court of Appeal of Coimbra](#) of 29 April 2025 (Case no. 2324/21.4T8CBR.CI)

The right to compensation is complementary to the other rights conferred on the owner of the work by Articles 1221 (elimination of defects) and 1222 (reduction of price or termination of the contract) of the Civil Code. It serves to remedy any loss or damage that cannot be remedied by exercising these rights. Non-performance of the contract justifies the owner of the work refusing to pay the remainder of the price, at least until the situation is regularised.

Suggestion:

If the contractor defaults, the owner of the work may require the contractor to correct any defects (Article 1221 of the Civil Code), request a reduction in the price, or terminate the contract (Article 1222 of the Civil Code). Additionally, the owner is entitled to financial compensation to cover any loss or damage that cannot be remedied by exercising these rights.

Finally, while the breach of contract persists, the owner has the right to withhold payment of the outstanding amount to the contractor, at least until the situation has been properly resolved and regularised (except in cases of non-compliance).

WHAT IS THE DIFFERENCE BETWEEN SUBCONTRACTING AND THE ASSIGNMENT OF A POSITION IN A WORKS CONTRACT?

[Judgment of the Court of Appeal of Coimbra](#) of 8 April 2025 (Case no. 1141/17.0T8LMG.CI)

If there is any doubt over whether a contract should be classified as a subcontract or an assignment of contractual position, it will be presumed that the contractor has entered into a subcontract rather than an assignment of their position in the works contract.

A subcontracting agreement is deemed to have been entered into when someone agrees, at the contractor's request, to fulfil a contract awarded to the contractor by the owner. This will not be considered subcontracting if it can be proven that the parties intended to transfer the contractor's position in the original contract in its entirety.

If the owner agrees to the contractor's chosen subcontractor completing the work, this does not constitute a change in the contractual parties, and the contractor remains in the same contractual relationship with the owner under the contract made between them.

THE EXPIRY OF THE RIGHT TO RESTORE THE CONTRACTUAL BALANCE

Judgment of the Northern Central Administrative Court of 4 April 2025 (Case no. 00353/20.4BEAVR-SI)

The limitation period for exercising the right to restore the contractual balance (see Article 352(2) of the Public Contracts Code) begins to run from the moment the contractor became aware of the event that triggered the need for an extension to the performance period of the contract, provided that the event in question is attributable to the owner and falls outside the normal risks of contracting.

The law does not require any specific form or content for a request to restore the financial balance of the contract. Therefore, the contractor does not need to:

- Use a specific format; or
- State the exact amount being claimed.

The important thing is that the request sets out the facts and legal grounds that justify it.

In the specific case that led to this judgment, even though the contractor's communications to the owner did not formally appear to be a request or expressly refer to a "restoration of the financial balance of the contract", they nonetheless contained the essential elements of such a claim.

THE PERFORMANCE OF A WORKS CONTRACT WITHOUT A FIXED TERM

[Judgment of the Supreme Court of Justice](#) of 25 March 2025 (Case no. 45436/22.IYIPRT.GI.SI)

In a service contract concerning a works project for which no fixed deadline was set, but only an estimated period, a party that completes the work within six working days of the end of the estimated period is not at fault for late completion. ■