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The Architect's Obligations in the Building Contracting Contract **"An Analytical Study of the Legislative Texts and the Algerian Jurisprudence"**

Dr. CHIKH Nassima

Lecturer "A" at the faculty of Law, Belhadj Bouchaib University - Ain Temouchent (Algeria)

Email: nassima.chikh@univ-temouchent.edu.dz

<http://orcid.org/0000-0001-7391-117X>

Dr. CHIKH Mohamed Zakaria

Lecturer "A" at the institute of Law, University Center Mughniyeh (Algeria)

Email: zakaria.chikh@yahoo.com

<http://orcid.org/0000-0001-8121-2838>

Dr. Lakli Nadia

Lecturer "A" at the faculty of Law, Belhadj Bouchaib University - Ain Temouchent (Algeria)

Email: nadia.lakli@univ-temouchent.edu.dz

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Summary

The architect plays an important role in the field of construction and urbanization. It is known that the first stage of the construction process of buildings and the establishment of other fixed installations is to prepare the design that the architect undertakes based on a contracting contract linking him to the project owner. The Algerian legislator has regulated the provisions of the contracting contract in the Algerian Civil Code and in several special legislative texts related to the construction and reconstruction sector, so the architect has a set of obligations, the failure of which results in responsibility on his side, so what are these obligations?

Keywords

Architect, design development, supervision and management, commitment to information and insurance.

1. Introduction

The architect's obligations are determined by the contracting contract he concludes with the project owner, and he is basically obligated to carry out the work required of him, following the rules and provisions imposed by his profession, taking into account the project owner's desire to implement.

The rule is that these obligations cannot be limited, pursuant to the principle of the authority of the will, which allows the contracting parties to create the obligations they want provided that they do not violate the public order.

Since the architect undertakes, under the contract he concludes with the project owner, to perform for the latter a certain work that he undertakes independently, in return for a fee, this relationship between them has all the characteristics of the contracting contract¹, and since the contract of contract is one of the binding contracts for both sides, it is It creates mutual obligations on the shoulders of both the project owner and the architect, and when this contract is established, it is valid, complete and conditions, it is like any contractual agreement, it arranges obligations for its parties.

In this research, we will confine myself to a statement of the obligations of the architect resulting from the contracting contract, without addressing the obligations of the project owner. What are the obligations of the architect in the field of construction and architecture?

To answer this problem, this study was divided into two axes, which dealt in the first axis the main obligations of the architect, and indicated in the second axis the new obligations on his part, following the descriptive and analytical approach for that.

2. The main obligations of the architect

The Algerian legislator stipulated the obligations of the architect in Articles 555 and 563 of the Civil Code, as stipulated in several special legislative texts related to the field of construction and reconstruction².

¹ The contract that links the project owner with the architect is a civil contract, as the project owner contracts for his own needs, and the work of the architect is always a civil work that does not meet the characteristics of the merchant, and this contract may be mixed when the project owner is a merchant and resorted to the architect for the purpose of his trade, such as the real estate promotion institutions that the legislator granted the status of a merchant because they conclude building contracting contracts to sell buildings after their completion for the purpose of speculation.

² These legal texts included:

-Law No. 29/90 of 01/12/1990 relating to development and reconstruction (Official Journal , N 52, of: 12/02/1990), amended and supplemented by Legislative Decree No. 07/94 of 05/18/1994 relating to production conditions the Architect and the Practice of the Profession of the Architect (Official Journal, No. 32, of: 25/05/1994), and by Law No. 05/04 of 14/08/2004 relating to the preparation and reconstruction (Official Journal, No. 51, of: 08/15/2004).

- Executive Decree No. 175/91 of 05/28/1991 specifying the general rules for preparation, reconstruction and building, Official Journal, N. 26, issued on 06/01/1991.

-Executive Decree No. 176/91 of 28/05/1991 specifying the modalities for preparing the construction certificate, the retail license, the division certificate, the building permit, the conformity certificate, and the demolition permit and their delivery, as amended and supplemented by Executive Decree No. 06/03

It is concluded from all these texts together, that the main obligations that fall on the architect, under the contract of contract, are to set the design of the works to be established, and to supervise and control the implementation of these works.

And we will discuss in the following these obligations, taking into account, that the architect's task is comprehensive, so that he develops the design of the works, and supervises its implementation³, then the contracting contract that links him to the project owner will be a technical consultancy contract⁴, and his job is comprehensive for the design tasks Studies, assistance, follow-up, monitoring, and completion of buildings, whatever their nature and destination⁵, and this is what we will address successively.

2.1. The architect's commitment to design development

Business design is, in fact, the essence of the profession of the architect, and this task is to draw up the engineering drawing to be created, and prepare the measurements in the light of which the works will be carried out. The architect gives a copy of the plan and measurements to the project owner⁶, and copies to the administration to obtain a building permit⁷.

of 01/07/2006, which fixes the values maximum levels, warning levels, and air quality objectives in the event of air pollution, and by Executive Decree No. 307/09 of 22/09/2009, which specifies the modalities for preparing and delivering the construction certificate, retail license, division certificate, building permit, conformity certificate, and demolition permit.

- The joint ministerial decision dated 15/05/1988 containing the modalities for the practice of carrying out works in the field of construction and the fee for that. Official Journal, p. 43, of: 10/26/1988.

³ The architect's task can be limited to designing without being in charge of monitoring the implementation, and this is what is criticized by professionals, as they see that the good implementation of their mental work in what he calls them of designs is only by monitoring the implementation of what they have accomplished personally, because they are more knowledgeable With these designs and the requirements for their implementation, the architect often sets an engineering design and the implementation and the final work are completely different, and this is what these engineers consider to be a violation of their literary works.

⁴ Technical advice includes the joint ministerial decision dated 15/05/1988 mentioned above, this decision regulates the technical advisory process in construction for the state administrations, local groups and public bodies of an administrative nature.

And since the Algerian legislator did not regulate this process in the private field and did not address the relations of the project owner with the employer in the Algerian civil law, although it touched on his relationship with the contractor, construction professionals in the private field apply this decision so that there is an organization in their relations in the field of technical advice the provisions of this decision are valid for regulating public and private deals, and even for the construction of individual housing.

⁵ Article 2 of the aforementioned joint ministerial decision.

⁶ The owner of the project (The chief architect) is the employer in the contracting contract, the project is being built for him, and as a general rule he is the owner of the land or the owner of the right to build on it, such as the legally authorized tenant who has the economic authority in the construction process, that is, he is one of the He is obligated to pay the wages to the other contractor.

⁷ The building permit is an administrative document issued pursuant to an administrative decision, according to which the administration grants the applicant the right to complete his project, after making sure that he has not violated the provisions related to development and reconstruction, as well as special plans, environment and protected areas. The building permit is a means that gives the owner the right to build.

- Mansouri Noura, Rules of Preparation and Reconstruction According to Legislation, Dar Al-Houda, Algeria, 2012, p. 39.

The resort of the project owner to an architect to develop the design has become mandatory, especially for works in which a prior administrative license must be obtained⁸. To build a house, a building, or a building for the benefit of the state or any other building, the project owner needs a building permit, It is received by the competent authorities, and the construction request⁹ must be accompanied by a file containing a set of documents¹⁰.

Only the architect is qualified to draw up the architectural project, which contains designs and documents showing the project's location, organization, size, appearance of the facades, as well as building materials and the chosen colors.

The architect is obliged, based on the contracting contract concluded between him and the project owner, to prepare a construction project, and for that he sets preliminary drawings for the works to be completed, and a preliminary project that he develops into an executive project, and with the assistance of the project owner in selecting the competent contractor, the most qualified to implement the designs that Put it ¹¹.

The architect undertakes the task of developing the design of the buildings entrusted to him by the project owner, according to his wishes, and for that the architect prepares a preliminary drawing showing the proposed architectural aspect. One level separately, and this drawing is completed with a note showing the main approved parts and an approximate estimate of the cost of the process, according to a brief quantitative statement.

The task of the initial drawing is to prepare two or three projects, specifying one or several aspects of architectural engineering, and to prepare a presentation report that includes the drawn documents and written documents¹².

In addition to the initial drawing, the architect is obliged to prepare a preliminary project consisting of a brief study based on numbers, for a comprehensive solution that allows the completion of the project proposed by the project owner. architect to do With the help of the employer in preparing

- We note here that the building permit is not a document to prove real estate ownership. Supreme Court Decision Real Estate Chamber, File No. 413398, issued on 09/12/2007, published in the Journal of the Supreme Court, No. 1, Q. 2008, p. 231.

⁸ Concerning a building permit, which is stipulated in Article 55/1 of Law No. 29/90 relating to development and reconstruction, amended and supplemented by Law No. 05/04 of 08/14/2004, which states: "Construction projects subject to the building permit shall be issued by an accredited architect and civil engineering engineer together, within the framework of the project management contract.

⁹ The applicant for a building permit who is the owner, his principal, or the tenant must have a legal permit. The authority or department to which the plot of land or building is allocated, in accordance with Article 34 of Executive Decree No. 176/91 of 28/05/91, amended and supplemented by Executive Decree No. 307/09 of 09/22/2009. (Official Journal, p. 55, of: 09/27/2009).

¹⁰ In the content of the building permit application file, review the text of Article 35 of Executive Decree No. 176/91.

¹¹ The Algerian legislator stipulated these tasks in Article 5 of the joint ministerial decision dated 15/05/1988.

¹² Article 6 of the same joint ministerial decision.

the file related to the building permit application 13.

Then the architect prepares an executive project, which is a descriptive study that explains and justifies the proposed technical provisions, which includes the technical file of the building or the buildings distributed for shares or parts, and this study includes written documents¹⁴, drawn documents¹⁵, and any other document that falls within the limits of these. The task is necessary to better appreciate the design of the project and how it works, this implementation file is submitted for the approval of the employer, with a view to approval according to a plan prepared for this purpose.

The architect must also, when developing the design, respect the restrictions resulting from the various regulations of a technical and urban nature¹⁶. Its external appearance, preserving the horizons of monuments, respecting the space of the rooms, the height of the walls, the lighting and the ventilation of the rooms.

The architect must respect the rules of civil law relating to height rights to property restrictions¹⁷, and in general to respect the origins of art and craft.

The architect should assist the project owner in preparing the file related to the building permit by preparing the necessary technical documents for this, and informing him of all the documents that he must include in the application file¹⁸.

And it may be agreed between the parties to the contracting contract, that the architect himself deposits the file containing the building permit¹⁹, to the competent administrative departments²⁰.

The architect must also assist the project owner in choosing a competent contractor, who will implement the design he has set, in the best way, and in the shortest time, and with the lowest expenses²¹.

¹³ Article 7 of the same joint ministerial decision.

¹⁴ These documents are represented in technical specifications books, a comprehensive descriptive statement, a comprehensive quantitative and estimated statement, according to each part, with a summary table, and an executive plan for the works of all sections of the project.

¹⁵ Is a set of technical schemes under which the building is being constructed. (Article 8 of the aforementioned ministerial decision).

¹⁶ In particular, the provisions of Executive Decree No. 175/91 of 28/05/91, which defines the general rules for development, reconstruction and construction, and law No. 29/90 of 12/1/1990 related to the amended and supplemented development and reconstruction.

¹⁷ Stipulated in Article 690 et seq. of the Civil Code.

- See the decision of the Supreme Court, Civil Chamber, File No. 393987, of 03/14/2007, published in the Journal of the Supreme Court, No. 1, 2007, p. 453.

¹⁸ Article 9 of the above-mentioned joint ministerial decision.

¹⁹ This agreement is mostly located in important deals that contain within their terms the obligation of the architect to carry out all the necessary administrative procedures to obtain all licenses, including the building permit.

²⁰ The file containing the building permit application is sent in five copies to the head of the Municipal People's Council of the municipality in which the property under construction is located, in return for a deposit receipt, in which it clearly and accurately explains the type of documents submitted.

- More details about the procedures for studying a construction application and handing over a building permit, Source: CHIKH Sanaa, CHIKH Nassima, Building Permit Provisions and Related Disputes, p. 2, Journal of Real Estate Law and the Environment, Faculty of Law and Political Science, Abdelhamid Ibn Badis University - Mostaganem, 2013, p. 129 and beyond, source: MANSOURI Noura, previous reference, p. 44 to 47.

²¹ Article 9 of the Joint Ministerial Decision.

The architect assists the project owner in preparing the technical consultation file or requesting a tender in important construction deals, and assists him in analyzing and evaluating the offers submitted by the contractors²².

The signing of the drawings by the architect is supposed to be attributed to him, even if he was not the one who actually prepared them, because in this assumption he must review them and make sure that they are in conformity with the technical principles before placing the signature on them, or else he is responsible.

After the architect prepares the engineering drawing for the work to be accomplished, he prepares the necessary measurements, which are of three types:

*** Descriptive assay**

It is a written statement drawn up by the architect, explaining the different types of materials needed to implement.

The designs he developed, the nature of each type and its characteristics that distinguish it from others, and how to use them.

*** Quantitative assay**

It includes an approximate estimation of the sizes and spaces of the works and it is concerned with indicating the amount of materials needed to implement the design, whether this quantity relates to indicating the different proportions of the materials used in the construction, which by merging them together produces the building structure to be completed or related to the statement of the total quantities of materials required to be obtained for the construction of the building²³.

*** Estimated assay**

Include a rough estimate of business costs according to the details in the quantitative assay.

When implementing his commitment to design, the architect must take into account a set of duties required by the rules of architecture, principles of workmanship, laws and regulations regulating the construction field. and its safety or render it unfit for its purpose, and this is what I will discuss in some detail below.

A. Duty to respect the principles of art

²² HAMMADI Djazia Madjida, Building Contracting Contract in Algerian Law, Memoir (thesis) a Master's Degree in Private Law, Faculty of Law, University of Abu Bakr Belkaid, Tlemcen, 2002-2003, p. 90.

²³ Abdelrazek Hussein Yassine, The Responsibility of the Architect and the Building Contractor (conditions, scope of application, and guarantees developed in them), a comparative study in civil law, Dar Al Fikr Al Arabi, Egypt, p. 757.

Art assets mean the usual skill or tact that the project owner can expect from every professional who intervenes in the construction process, and it is impossible to identify them due to their abundance, as they may relate to the nature of the land, the characteristics of designs and calculations for the construction of buildings and the technical implementation methods of works and others²⁴.

The origins of art arise from gradual experiments and preparations, so it is not possible to consider modern building materials and techniques as assets of art, only after they have proven their validity, after a certain period of time has passed when they are approved and accepted by professionals specialized in the field of construction.

And saying this opinion, does not necessarily mean that the appearance of the defect in the building during or after the warranty period is due to the architect's violation of the principles of art, the defect may result despite the fact that the latter did not violate the principles of art, due to a foreign reason, such as force majeure, or the act of the owner of the project, and the defect may result For the use of new techniques that lead to unforeseen risks, or for the use of old, outdated art assets, and the defect may be due to poor implementation²⁵.

And the architect's respect for the origins of art can usually lead to the completion of a building that is sound, free from defects and resistant to time.

The Algerian legislator stipulated in Article 21 of the joint ministerial decision dated May 15, 1988, which includes the modalities for the practice of carrying out works in the field of construction and the remuneration for that, that the architect - as a technical advisor²⁶- must carry out the tasks assigned to him by the project owner, in accordance with the contractual terms , the rules of art and the norms of the profession, without giving a definition of these rules or showing what are these assets and standards that the architect must respect, which makes Algerian professionals rely on French art rules²⁷, which is

²⁴ H.PERINET-MARQUET, *The responsibility of manufacturers*, Edition Dalloz, Paris, 1996, p 7.

²⁵ KARILA Jean-Pierre, *The liability of builders*, 2nd edition, Delmas, 1991, p32.

²⁶ The Algerian legislator defined the technical advisor, who is called by the term "employer" in Article 3 of the joint ministerial decree dated 15/05/1988, as: "A natural or legal person, who meets the conditions, professional qualifications, technical competencies and the necessary means in the construction field, for the benefit of the employer, by his commitment on the basis of the required purpose, a specific deadline and qualitative standards," under his full responsibility, and within the framework of the contractual obligations that bind him to the project owner in accordance with Article 2 of the decision.

And the technical advisor may be either an architect, while he is assigned with the tasks of designing, making an estimate, monitoring and following up on the works, and he may be a specialist in studies and a specialist in a specific field or an approved multi-specialty (Article 2/3 of the same ministerial decision).

²⁷ These art assets are included in (Unified Technical Document) published by the (Building Technical Scientific Center) that define the technical conditions for the selection of materials used and construction methods.

There are other art rules known as the French AFNOR standards, to which the parties to the contract usually refer instead of specifying these conditions. Standardized technique to ensure respect for the origins of the art.

found in the contracting contract that must be approved²⁸ .

The architect shall be respectful of the principles of art, even if his role is limited to developing the design without supervising the implementation, as long as he does not express reservations regarding the implementation and design works when he intervenes in the construction process²⁹.

In carrying out this duty, the architect must abide by the technical principles that every architectural specialist must know and respect, even if he is familiar with the restrictions imposed by the laws regulating construction operations.

In application of this, the architect shall be responsible when designing foundations that are insufficient to support buildings or other fixed installations³⁰, that they are not sufficiently connected to each other or based on a solid layer in the ground or not sufficient in number, such that the proportions of their formation are contrary to what is required. The origins of art and its rules in terms of saving in the amount of cement, rebar, or otherwise.

The engineer shall be mistaken, if he designs the columns, roofs, walls and all the load-bearing structures of the building, in such a way that they are unable to carry the buildings or fixed structures to be erected, or if the engineer makes a mistake in the measurements of the different dimensions by making them disproportionate to the thickness of the load-bearing columns, or he makes a mistake in the measurement. Different angles of elevation and depression, contrary to what the art origins stipulate.

And the architect is considered violating the duty to respect the principles of art, if he makes a mistake in the design of the public utilities of the building, such as the mistake in defining the places where drinking water enters, and defining the places for draining dirty water or rain water, by placing them near the pillars of support, which threatens the durability and solidity of the building³¹.

The task of the architect of the designs, lies in the work of drawings, maps, models and measurements, which requires the architect to fully study the soil and know its characteristics, to know which materials are most appropriate, the amount of quantities that will be needed for implementation, and their prices.

And the architect must conduct a study of the soil and its geological composition to test the extent of its hardness and endurance for the works to

-AFNOR standard: French Association for Standardization. B. BOUBLI, business contract, DALLOZ encyclopedia, civil IV, DALLOZ edition, Paris, 1999, p9.

²⁸These technical rules are not considered mandatory for the lessors of work unless they are expressly stipulated in the contract, and the contracting parties usually include these rules within the section on the technical instruction book, to indicate the considerations under which the materials used in construction and the approved construction method are selected.

²⁹PERINET-MARQUET Huges, Architects, Construction Law, Dalloz editions, Paris, 2000, p12.

³⁰ HAMDJ Belkacem Al-Ayach, Contractual Responsibility of the Architect before Handing over the Works, Memoir (thesis) a Master's Degree in Business Law, Faculty of Law, Hadj Lakhdar University - Batna, 2004-2005, p. 27.

³¹ Abdelrazek Hussein Yassine, previous reference, pp. 747-748.

be built³², and the architect is responsible for everything that befalls the building from demolition or defect due to a defect in the soil to be built with.

The architect is also violating the principles of art, if the design is developed in such a way that the property is always vulnerable to violent currents such as hurricanes and winds, without ensuring it an appropriate degree of resistance, by deepening and strengthening the foundations and strengthening the concrete ligaments necessary to confront these currents, or if the building design is placed On a groundwater reservoir, or near the seashore, without taking adequate precautions required by the rules of art and craftsmanship, to prevent the dangers of rising water or the occurrence of floods 33.

To sum up, the architect, when developing designs and measurements, must take into account the condition of the building, whether in terms of soil, climate, building size, area, or loads, and the architect must do everything in his power to ensure The durability of buildings or fixed installations, their safety, and making them resistant to time, despite what may occur from air or ground changes, otherwise he will be responsible for the defects of this the design.

B- Duty to respect laws and regulations

In addition to the architect's obligation to respect the principles of art, when designing the designs of the buildings to be constructed, he should respect the legislation and regulations applicable in the field of construction, especially the general rules for preparation and reconstruction, building rules and general provisions stipulated in the Civil Code related to property restrictions³⁴.

The architect must take into account, when developing designs, what is imposed by the laws related to construction, by respecting the specific depth of the foundations, given the nature of the land, the height of the buildings to be constructed, and the thickness required for the walls, whether internal or external, and he must also take into account the specific proportions of the materials needed to complete the concrete columns. And pillars, iron, cement and their quality.

The architect must also, when developing the design, not exceed the legally permissible height, the prescribed distances for balconies³⁵, and in

³² Mohamed Chokri Sorour, *Responsibility of Building Engineers and Contractors and Other Fixed Facilities, A Comparative Study in Egyptian Civil Law and French Civil Law*, Arab Thought House, Cairo, 1985, p. 57.

³³ Abdelrazek Hussein Yassinein, previous reference, p. 748.

³⁴ Rules stipulated in Article 690 and later of the Civil Code.

³⁵ Supreme Court Real Estate Chamber Decision, File No. 358696, issued on 09/13/2006, Supreme Court Journal, No. 2, Q. 2007, p. 369, which states: "There is no contradiction between the requirements of Article 709 of the Civil Code and Article 24 of the Executive Decree. No. 175/91, regarding the distance to be observed concerning the balcony.

- The decision of the Supreme Court of the Real Estate Chamber, File No. 390416 issued on 02/14/2007, published in the Supreme Court Journal, v. 2, 2007, pg. 407, which stated that: "The legality of the balcony depends on respecting the legally prescribed distance and not on the damage.

general the architectural style prevailing in the area.

The architect must also take into account, in his design, the easements prescribed for the land to be built on, for the benefit of real estate owned by others, and any restrictions that may limit the owner's authority to build on his land, taking into account the public interest and the private interest, in accordance with the provisions of Article 691 et seq. of the Civil Code.

Accordingly, the architect is responsible for the damages caused to the employer, when he put designs in violation of what is required by the laws regulating the construction process and the regulations of the organization.

The architect must, when developing the design, take into account the purpose of erecting the building specified by the employer in the contracting contract, and if an error occurred in the design, he shall be responsible. He is wrong, and whoever is done is not responsible, as long as the contract does not include a specific clarification, for example, that it is mentioned in the contracting contract that the purpose of the construction is to build a car warehouse, without another limitation, here the architect may prepare a design in which the normal size is assumed. For cars, it will not be asked later, if its design is not suitable for accommodating large-sized trucks³⁶.

The architect shall also, when developing the design, take into account the aesthetic aspect of the building, so that it is valid to achieve the goal, for example, that the building to be designed should be a hotel designated to receive guests with artistic and aesthetic interests, or a restaurant of a certain style. Responsible for the construction of a defect in the design, rendering it unfit to achieve the intended purpose of its construction.

The architect is also responsible for the comfort in using the buildings, and the security of their occupants, according to the purpose assigned to him, for example, the architect's failure to take into account the thickness to be respected in the design of the external walls of the building, which leads to the inability to isolate the heat of the external atmosphere or to make a mistake in the sound insulation system. Or air conditioning or the design of a sanatorium

As it is legally established that a neighbor may not have a balcony above his/her neighbor at a distance of less than two meters for the facing overlook, and not less than sixty centimeters for the tilted balcony. And since it is clear from reading the contested decision that the judges of the subject and obligating the appellant to close the three windows, they stated that the balconies that belong to the appellant cause harm to others and are in violation of the rules of urbanization and this without highlighting the availability of legal distance or not, pursuant to Articles 709 and 710 of the Civil Code.

And since, accordingly the judges have ruled, it would have faulted their decision by lack of reasoning and have predisposed it to denunciation and annulment.

- The same meaning is confirmed by the decision of the Supreme Court and the Real Estate Chamber, File No. 188803, issued on 07/28/1999, in which it was stated that: "According to Article 709 of the Civil Code, it is not permissible for a person to have a view of his neighbor facing a distance of less than two meters (2m) And that the contested decision that ordered the closing of the window and the construction of a wall separating the two meters at a height of two meters, and if this appeal is or was made, it must be rejected.

³⁶Mohamed chokri Sorour, *Responsibility of Building Engineers and Contractors and Other Fixed Facilities, A Comparative Study in Egyptian Civil Law and French Civil Law*, Arab Thought House, Cairo, 1985, p. 57.

for rheumatic patients that are not equipped with factors proper heating.

In addition to drawing up engineering drawings for the building to be constructed, the architect is obligated to set the standards and must be accurate in preparing them, and to make a reasonable and appropriate estimate of the costs of the works. If it is not valid yet, or if his description of it and its properties is not sufficient to prevent mistakes when obtaining it, or if the standards he prepared do not correspond to the engineering drawing that he had previously drawn up, he shall be responsible for these errors, and he shall also be considered responsible for the error in Quantitative measures If it does not adhere to sufficient proportions, the corruption of the organic composition of reinforced concrete, for example, leads to damage to the building.

The architect is not exempted from responsibility if the project owner signed the drawings drawn up or approved by the competent administrative authority, or that he responded to the employer's desire to reduce construction costs when developing the design, such as adopting an unfamiliar material to use instead of the familiar material, which leads to To defect the thermal insulation system³⁷.

However, the architect may apply simple modifications to the drawings he has drawn up and which the employer has previously approved, as long as they do not reduce the value of the building and do not conflict with the type of use assigned to him by the employer, such as the deviation of the views of the views, and the different dimensions of some building facilities, And change the location of some walls.

However, if the modifications in the drawings are substantial so as to affect the design or change the purpose of the building to be completed, the architect must issue a license in this regard.

It remains to point out that the architect should be left free in his design of works and his choice of materials, and he cannot be held accountable, unless he opposes in this regard a clear opposition, such as being extravagant in adopting luxury materials or expensive methods or putting works that are not useful in the first place.

We point out by this that the architect of the design is responsible for all defects that appear in his design during the implementation process, even if he is not the one who is supervising the implementation of the works, provided that the works have been carried out in accordance with the agreed designs exactly, because the design owner is not responsible for defects in the works, is due to failure to apply the designs properly, or to badly modify them.

2.2. The architect's obligation to supervise and manage the works

We saw in what was shown that the main obligation on the architect is the obligation to design the design of the alleged works, but in addition to that,

³⁷ Mohamed Chokri Sorour, previous reference, p. 50.

he may be charged with supervising and managing the implementation of these works.

The architect must follow up and monitor the works during the project completion process, as he is the guarantor that they are in conformity with the designs and standards he has set.

It is not easy to enumerate the various tasks that the architect must perform, in fulfilment of his obligation to follow up and monitor the implementation of the works.

In the following, we will mention the most important of these tasks, which were stipulated by the Algerian legislator in Article 10 of the joint ministerial decision dated May 15, 1988.

The architect must impose on the contractor to respect the terms of the contract, to make sure that the implementation of the works is carried out in accordance with the designs and standards that he has set, and to the principles and rules of art, and to verify the validity of the materials used in construction, and their conformity with the specifications specified in the assay, especially in the event that The materials were provided by the contractor, and he must also verify the method of carrying out the works, and the agreed deadlines.

The architect must also follow up on the progress of the works constantly, and hold meetings to discuss the difficulties and obstacles to its proper functioning, and prove this in minutes, and he must overcome the difficulties, and solve the problems presented by the contractor, which fall within his competence.

In the event that the architect notices that the building contractor has deviated from the implementation of the agreed works, he writes³⁸ service orders and sends them to him, after the employer has approved the signature, as he is the only speaker with the contractor, regarding the project adaptations and modifications approved by the project owner³⁹ Prepare a schedule of payments, in the presence of the building contractor, and inform the project owner in writing.

The architect is deemed to be in breach of his obligation to monitor the project, which is useful in finding a defect in the buildings or fixed installations to be completed, when he is constantly monitoring the works in the workshop, to inspect the works periodically to enable him to notice any mis-implementation related to the project, as well as noting the building contractor's lack of respect for the assets Art, and consequently the prevention of defects in the works under construction, that the architect's supervision of the works does not make him a guard of the workshop, as he is not obliged to attend daily, but his continuous monitoring is sufficient for the good implementation of his obligation

³⁸ Service orders are a means of communication between the architect and the building contractor, as they enable the architect to give orders regarding the materials used, and it is a way of responding to all the requests of the building contractor, and if the architect wants to change something in the project, he must inform the building contractor about that by service order.

³⁹ Article 30 of the above-mentioned joint ministerial decision.

to monitor 40.

The architect must assist the employer upon temporary receipt, by showing him all the apparent defects that may have occurred in the existing project, even if they were minor defects, and to indicate to him an opinion in regard to them, either by advising him to take over the works without expressing any reservations, Or he advises him to take delivery with a reservation, if the defects he discovered can be fixed, in this case the architect must waive these reservations by correcting the observed errors, and suggesting final delivery to the employer, which is done according to a report signed by the lessors of the work.

And if the architect fails to perform the tasks mentioned above, he shall be responsible to the owner of the project for any destruction or defect in the buildings or fixed installations and all that threatens their durability and safety.

3. The Architect's Updated Obligations

Due to the development in the field of construction and construction, most legislations tended to expand the scope of the obligations of architects, especially the architect. The law added, in addition to the main special obligations mentioned above, two new obligations:

Commitment to inform, guide and adhere to liability insurance, which we will present respectively.

3.1. The architect's commitment to inform and guide

The law requires every professional to inform and guide those who contract with them, especially the ignorant, the rules of their profession. Since the architect is a professional, he must provide the project owner with all the necessary assistance, inform him of everything necessary and refer to him with the correct technical opinion, whether before Commencing the implementation of the works, during their implementation or after their completion, i.e. agreement phase⁴¹, in order to enable him to make correct decisions regarding the building he wants to construct.

The obligation to inform and guide the architect is considered a contractual obligation resulting from the contracting contract that binds him to the employer, even if this obligation is not stipulated in the contract. .

It is noted that the French judiciary affirmed the doctrinal basis of the architect's obligation to inform and guide about everything that needs to be known⁴², sometimes basing it on Article 1135 of the French Civil Code, which

⁴⁰ HAMMADI Djazia Madjida, previous reference, p. 91.

⁴¹ Mghabgab Naim, Building Contracting Contracts and Private and Public Works, without a publishing house nor a place of publication, 1997.

⁴² The French jurisprudence calls for separating this obligation from the contract and linking it to the rules of the profession and the principles of law. However, this establishment may lead to the loss of

corresponds to Article 107, second paragraph of the Algerian Civil Code, which was stipulated as follows: "The contract is not limited to obligating the contracting party only with what is stated in it, but also deals with its requirements in accordance with the law, custom, and justice, according to the nature of the obligation" and sometimes on Article 1147 of the French civil, which corresponds to Article 176 of the Algerian civil, which states: If it is impossible for the debtor to carry out the obligation, he shall be judged to compensate for the damage resulting from the failure to perform his obligation, unless he proves that the impossibility of performance is due to a reason beyond his control, and the judgment shall be the same if the debtor delays in implementing his obligation.

Accordingly, we see that the architect's obligation to inform and guide is a contractual obligation resulting from the contracting contract, as it is one of the requirements of this contract, in accordance with custom and justice.

We point out that it is not possible to limit the assistance that the architect can provide to the employer, as this is a matter of reality, which varies according to the circumstances of each case, and the level of the architect's specialization, or his knowledge of the art of architecture.

The degree of the architect's commitment to informing and guiding also varies, according to the difference of the project owner and his personal competencies in the field of construction. Building ⁴³, but if the project owner is a professional person expert in the origins of art and craftsmanship, the architect's commitment to information and guidance is less necessary, because the project owner is aware in advance of the information that the architect will provide to him.

The architect, being a man of art who directs and guides the works, must trust the project owner in his experience and techniques by advising and guiding him during each phase of the construction process, whether before starting work, during implementation, or upon delivery of construction.

In the project preparation stage, the architect must give the project owner an accurate picture of the actual costs that must be implemented, and inform him of any misconception and alert him of legislation, regulations and building rules, and alert him, for example, about some organizational restrictions so that he can contact the administration in advance to verify the that.

He must also alert the project owner about all technical issues in terms of the nature of the land or the suitability of the buildings to be built on it, as well as about the geological characteristics of the land⁴⁴, as well as about the area of the plot of land to be built on, the legally permitted heights and other matters.

the right of the project owner to inform ,as it is difficult for him to extract this obligation from the general rules, and it is better to make this obligation within the contract circle.

- Chahida kada, The Architect and Contractor's Commitment to Information and Guidance in the Contracting Contract, Journal of Legal Studies, Faculty of Law, University of Abu Bakr Belkaid, Tlemcen, v. 3, 2006, p. 78.

⁴³ KARILA Jean-Pierre, The liability of builders, *ibid*, p 51.

⁴⁴ Chahida kada, *ibid*, p. 78.

He must also warn the employer about the danger of carrying out the works to be accomplished, and about all the necessary reservations, for example, if the land on which the construction is to be built is not suitable for construction or if these buildings will cause damage to neighbouring properties.

The architect is also obligated to provide the employer with an accurate picture of the extent to which the foundations bear the roles to be built, and advises him not to ramp up, or to re-establish the foundations again, or at least the necessary repairs therein.

The architect must choose a competent contractor to complete the works and implement them for the project owner, in the event that he is asked to do so or alerts him about the incompetence of the contractor he chose to carry out the works⁴⁵.

Also, the architect at this stage must prepare a design that agrees with all the wishes and requests of the project owner in the event that he sees that in implementing the orders and wishes of the project owner that there is harm to others or him personally, or that implementing the design on the selected land is impossible, due to the lack of techniques The necessary for this, or that the implementation of the design will cost exorbitant money that far exceeds the expectations and financial capabilities of the project owner, or that the nature of the land is not suitable for the construction of this building, he must inform the employer of this and advise him and guide him to the correct way in which the works must be carried out.

Moreover, if the architect is charged, in addition to the process of preparing the project, to implement and monitor the works, as he is a business owner, he is also obligated to inform the project owner, of all shortcomings and technical and economic obstacles that may hinder the implementation of the works.

The architect must alert the project owner of the risks arising from the completion operations and the quality and quality of the materials used in construction and their suitability for the buildings to be constructed, whether he is the one who provided these materials or the building contractor, and he must also inform him of the necessity of some works The additional fees required to maintain the safety of the project owner and the rest of the workers.

The architect must also assist the employer in collecting statements of accounts from contractors and reviewing them before transferring them to him.

In conclusion, the architect is generally responsible for alerting the project owner to all the important obstacles that may arise during the implementation of the task assigned to him, such as the risks they cause to him or to others, and he must provide him with all the necessary advice.

The architect is obligated to assist the employer in the handover process that takes place between him and the building contractor, and he must alert him about the apparent defects that may have occurred in the buildings, even if they

⁴⁵ Chahida kada, the same previous reference, p. 82.

are minor defects, and if they need to be repaired before the final delivery, or the possibility of taking over the works. Temporarily with reservation about defects visible at the time of delivery. He must also show him the safety of the constructed buildings, and their conformity to the designs, so that the project owner can take over the works, by accepting them.

If the architect neglects his duty to inform and guide and does not alert the project owner about the apparent defects in the buildings or installations completed upon delivery, he will be severely responsible for this negligence, in accordance with the general rules, and he may not be exempted from this responsibility that is assigned to the architect. The apparent defects that the employer was not informed of, in the case of accepting these works without expressing reservations, prevents him from referring to the building contractor on a claim called the ten-year guarantee.

3.2. Architect's commitment to liability insurance

In addition to the obligation to inform and guide, Algerian legislation requires the architect to write insurance to cover his professional and ten-year civil liability, and perhaps the reason for imposing insurance in the field of construction is to cover damages that may result from construction works, renewal or restoration that may occur during the period construction or beyond.

Referring to the Algerian legislation, we find the legislator of insurance systems in the field of construction in Ordinance No. 07/95 related to insurance⁴⁶, in Articles 175 to 185, obligating the lessors to subscribe to two (2) liability insurance contracts, one for professional civil liability, the second for liability decimal places.

A. Professional Civil Liability Insurance

The Algerian legislator stipulated in Article 175 of Ordinance No. 07/95 related to insurances as follows: "Every architect, contractor, technical observer, and any interfering person, whether natural or legal, must write insurance to cover his professional civil liability that he may be exposed to because of Construction works, renovation or restoration of buildings.

Every insurance contract written under this article is deemed to include a condition that guarantees the validity of the contract for the period of liability imposed on persons subject to the obligation to insure, even if they agree otherwise.

The conditions and modalities of applying this article, when necessary, shall be determined by regulation."

Article 177 stipulates the following: "The insurance for the completion of the works extends from the opening of the workshop until the final receipt of the works".

⁴⁶ Official Journal, No. 13, issued on: March 8, 1995.

It is concluded from these two articles that the architect and everyone who has a hand in the construction process, whether a natural or legal person, must write an insurance to cover his professional civil liability, which he may be exposed to as a result of construction, renovation or repair works. The insurance period lasts from the day the works start until the final receipt of it, and any agreement that violates the condition of the period is considered as if it did not exist.

The architect must prove that he had written a contract to secure his professional civil liability at the time of opening the workshop⁴⁷.

The insurance contract includes: Insurance for damages to works, buildings or fixed installations to be constructed, as well as machinery and equipment in the workshop, and building materials, whether provided by the contractor or the project owner. It also includes insurance for material and physical damages that may affect others during the implementation of the project.

The architect's insurance on professional civil liability does not prevent him from taking the necessary measures and precautions to avoid accidents that may lead to harm to others, even if he is insured. Among these precautions, good selection of labor and maintenance of the proper functioning of machinery and equipment necessary to carry out construction works And the application of administrative rules related to work. And respect the terms of the insurance contract.

Neither the insurance company nor the insured may cancel the professional civil liability insurance contract during its validity period in the event that the building or business permit has not been cancelled, with the awareness of the competent authorities to be relevant in this regard⁴⁸.

B. Decimal liability insurance

In addition to professional civil liability insurance, each of the architects must subscribe to a contract to insure his ten-year liability⁴⁹, and this insurance starts from the date of the final receipt of the project, so that the project owner and his successive owners benefit from this guarantee, until the expiry of the guarantee period⁵⁰.

⁴⁷ Refer to the text of Article 176 of Ordinance 07/95 mentioned above.

⁴⁸ Mohammad Hussein Mansour, *Architectural Responsibility*, D, New University for Publishing, Alexandria, 1999, p. 292.

⁴⁹ The ten-year liability insurance policy is a mandatory insurance policy, Source: Arzel Kahina, *Insurance Companies Facing Real Estate Promotion Activity*, Journal of Rights and Freedoms, trial issue, Biskra, September 2013, p. 101.

- Decimal liability insurance aims to protect the architect and the contractor, if the conditions of the special guarantee are met, then the insurance company replaces the insured in paying the compensation determined by the technical judicial expertise, in order to ensure that the employer obtains a fair compensation when he is injured as a result of the construction process, see: SABIHI Rabia, *The specifics of the civil responsibility of the architect and the contractor after the handover of buildings in Algerian law*, Journal of Rights and Freedoms, trial issue, Biskra, September 2013, p. 343.

⁵⁰ Article 178 of Ordinance 07/95.

This insurance covers damages that violate the solidity of the elements of the equipment of a building, when these elements are an important part of the achievements of preparation, laying the foundation, structure, briefing and coverage⁵¹.

And in order for the architect to be able to subscribe to a contract to secure his ten-year liability, he must submit the final handover report of the works signed by the lessors of the work⁵². The insurer and this contract expires by the force of law after ten years from the date of subscription.

And if there are several people involved in the construction process, the project owner must stipulate that when concluding the contracting contract, they must subscribe to the insurance contract of their liability with the same insurer, and he must verify the implementation of this condition⁵³. If the project owner concludes several contracting contracts with different contractors, all in his field of specialization, he must require all of them to subscribe to their ten-year liability insurance contracts with one insurance company in order to facilitate obtaining compensation in the event that the insured risk is realized.

It is noted that the mandatory insurance for professional civil liability and decimal liability is exempted from it by the state, local groups and natural persons when they build private homes for family use⁵⁴, and some buildings and installations represented in bridges, tunnels, canals, roads, highways, and water hill barriers Ports, protection buildings, water channels, railways and airstrips⁵⁵.

If the conditions of liability are fulfilled on the part of the architect, the insurer, i.e. the insurance company, must compensate the insured project owner or its owner within the amount specified by the expert and representing the cost of completing the repair works left by the damages.

The insurer must appoint an expert to inspect the damages for a period of seven days, starting from the date of notification of the accident, provided that compensation is to be paid within three months, starting from the date of the expert's inspection of the damages, if it is agreed between the insurer and the beneficiary on the amount of insurance determined by the expert. This amount is agreed upon. The insurer must pay three quarters (3/4) of the amount specified by the expert to the beneficiary within a period of three months, pending the court's decision on the dispute, and the determination of the final

⁵¹ An integral part of the work is every element of the equipment that cannot be removed, dismantled or replaced without destroying or deleting one of the articles of this work in accordance with the requirements of Article 181 of the same order.

⁵² They are: the entrepreneur and the employer, the contractor, and representatives of some bodies, as furnished.

⁵³ Article 179 of the above path command reads states:

"- It is required when concluding the contract on the parties involved in the same problem
- Verifies that this condition is fulfilled.

⁵⁴ Revise the text of Article 182 of the above-mentioned order.

⁵⁵ Revise the text of Article 2 of Executive Decree No. 49/96 of 01/17/1996 which specifies the list of public buildings that are exempt from the obligation to insure professional and decimal liability, Official Journal, p. 5, of: 01/21/1996.

amount of compensation, in accordance with Article 183 of Order No. 07/ 95.

If the architect fails to fulfil his duties by committing himself to insurance for professional civil liability and decimal liability, he shall be considered liable, both civil and penal, and shall be punished with a fine of between 5,000 and 100,000 DA, without prejudice to other penalties in accordance with legislation⁵⁶.

4. Conclusion

At the conclusion of this study, in which we reviewed the obligations of the architect in the construction contract in law Algerian, we came to several results, which we summarize as follows:

- The architect is obligated to develop the design, taking into account my duty to respect the principles of art, laws and regulations.
- The architect is primarily obligated to supervise and manage the works.
- The architect is obligated to inform and guide the owner of the project and the building contractor who implements the design, given his competence and specialization in the field of construction and architecture.
- The architect is obligated to subscribe to insurance contracts to cover his civil and ten-year liability.
- Every breach of these obligations, collectively or individually, entails responsibility on his part.

5. Bibliography

- Abdelrazek Hussein Yassine, *The Responsibility of the Architect and the Building Contractor (conditions, scope of application, and guarantees developed in them)*, a comparative study in civil law, Dar Al Fikr Al Arabi, Egypt.
- H.PERINET-MARQUET, *The responsibility of manufacturers*, Edition Dalloz, Paris, 1996.
- KARILA Jean-Pierre, *The liability of builders*, 2nd edition, Delmas, 1991.
- Mansouri Noura, *Rules of Preparation and Reconstruction According to Legislation*, Dar Al-Houda, Algeria, 2012.
- Mohamed Chokri Sorour, *Responsibility of Building Engineers and Contractors and Other Fixed Facilities, A Comparative Study in Egyptian Civil Law and French Civil Law*, Arab Thought House, Cairo, 1985.
- Mohammad Hussein Mansour, *Architectural Responsibility*, New University for Publishing, Alexandria, 1999.
- Mghabgab Naim, *Building Contracting Contracts and Private and Public Works*, without a publishing house nor a place of publication, 1997.

⁵⁶Article 2 of Executive Decree No. 49/96 of 01/17/1996 which specifies the list of public buildings that are exempt from the obligation to insure professional and decimal liability, Official Journal, p. 5, of: 01/21/1996.

⁵⁶ Refer to the text of Article 185 of Ordinance 07/95 related to insurances.

- PERINET-MARQUET Huges, Architects, Construction Law, Dalloz editions, Paris, 2000.
- Arzel Kahina, Insurance Companies Facing Real Estate Promotion Activity, Journal of Rights and Freedoms, trial issue, Biskra, September 2013.
- Chhida kada, The Architect and Contractor's Commitment to Information and Guidance in the Contracting Contract, Journal of Legal Studies, Faculty of Law, University of Abu BakrBelkaid, Tlemcen, v. 3, 2006.
- CHIKH Sanaa, CHIKH Nassima, Building Permit Provisions and Related Disputes, n^o. 2, Journal of Real Estate Law and the Environment, Faculty of Law and Political Science, Abdelhamid Ibn Badis University - Mostaganem, 2013.
- SABIHI Rabia, The specifics of the civil responsibility of the architect and the contractor after the handover of buildings in Algerian law, Journal of Rights and Freedoms, trial issue, Biskra, September 2013.
- HAMMADI Djazia Madjida, Building Contracting Contract in Algerian Law, Memoir (thesis) a Master's Degree in Private Law, Faculty of Law, University of Abu Bakr Belkaid, Tlemcen, 2002-2003.
- HAMDY Belkacem Al-Ayach, Contractual Responsibility of the Architect before Handing over the Works, Memoir (thesis) a Master's Degree in Business Law, Faculty of Law, Hadj Lakhdar University - Batna, 2004-2005.