



INSURANCE ON THE CIVIL LIABILITY IN THE FIELD OF CONSTRUCTION IN THE ALGERIAN LEGISLATION

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Abstract:

Due to big importance of the construction sector, and to achieve the goals of the estate policy in Algeria and the minimal balance between the parties of the construction projects, it is necessary to enact legal provisions and guarantees. In this context, the Algerian Legislator set the civil code, Law 95-07 on the insurance, and Law 11-04 on the estate promotion. Besides, He made the insurance compulsory on the civil liability in the sector of construction through a set of laws that showed the provisions and the range of enforcement.

This is what shall be discussed in this paper that sheds light on the provisions of insurance on the professional and decennial civil liabilities in the construction sector. Besides, it shows the control on the insurance activity to protect the interest of the insured and the beneficiaries of the insurance contract.

Key words: insurance; construction; professional; civil liability; decennial liability; control.

INTRODUCTION:

The development in the construction and the collapse and cracking of buildings after a short period of delivery, sometimes before delivery which raises risks for people's and their properties' safety, led the Algerian Legislator to be strict with the actors of the construction sector through rebuttal presumption of the liability in their side. Besides, He set many guarantees including the compulsory insurance on the professional civil liability and the insurance on the decennial liability.

These guarantees are provided for in many laws including Ordinance 95/07 of 25 January 1995 on insurance¹, modified and supplemented², the Executive Decree 96/49 of 17 January 1996 on the list of the public buildings exempted from the compulsory professional liability and the decennial liability³, and Law 11/04 of 17 February 2011 on the rules that regulate the estate promotion activity⁴.

The Legislator obliged the architect, the entrepreneur, and the estate promoter to make an insurance contract to cover their professional civil liability and decennial liability to restore or renew the potential damages that may result in the field of construction during or after the construction period.

Based on what has been said, we raise the following problematic: how did the Algerian Legislator handle the issue of the insurance on liability in the sector of construction? And to what extent are these provisions efficient?



To answer these questions, we used the analytical descriptive method and divided the study into three main axes. The first tackles the insurance on the professional civil liability, the second sheds light on the provisions of the insurance on the decennial liability, while the third covers the control on the insurance process in the sector of construction.

1. INSURANCE ON THE PROFESSIONAL CIVIL LIABILITY:

Article 175 of Ordinance 95/07 on the insurance provides that the architect, the entrepreneur, the technical control, or any other actor, be it moral or physical person, must make an insurance contract to cover his professional civil liability that he may face due to the construction, renewal, or restoration of the buildings. Any insurance contract, in accordance with this Article, includes a provision that guarantees the durability of the contract with the liability on the persons subject to the compulsory insurance. The ways of applying this Article, where appropriate, are determined through regulation.

Besides, Article 177 provides that the insurance on the performance of the work lasts from the start of the workshop till the final delivery of works.

These two articles show that the architect, the entrepreneur, or any other actor in the construction, be it a moral or physical person, must write an insurance contract to cover his professional civil liability that may be faced because of the construction, renewal, or restoration works. In addition, the contract lasts from the start of the works till the final delivery.

The architect and the entrepreneur must prove they had made an insurance contract on their professional civil liabilities when inaugurating the workshop⁵.

The insurance contract covers the insurance on the damages that affect the works, the buildings, or the fixed facilities that shall be made, the machinery and tools of the workshop, the construction materials provided by the entrepreneur or the project owner, and the material or physical damages that may affect the others during the execution of the project.

The architect's or the entrepreneur's insurance on the professional civil liability does not hinder them from taking the necessary decisions or measures that help avoid incidents and damages to the others. Among these precautions, we find the choice of the labor, maintaining the good conduct of the tools and machinery needed for the works, the implementation of the administrative rules related to the work, and the respect of the insurance contract.

Moreover, the insurance company and the insured shall not annul the insurance contract on the professional civil liability when it comes into force unless the construction authorization is annulled⁶.

In this regard, the estate promoter must cover his commitments in the sale on design through an insurance contract at the insurance fund⁷. The insurance on the professional civil liability of the estate promoter covers the liability resulting from the incidents that may take place in the workplace during the construction period. The insurance covers the liability of the insured that may result due to the collapse or damage of the building structures, or the structural works after delivery, if there is a defect in the design or the execution⁸.



2. INSURANCE ON THE DECENNIAL LIABILITY:

In addition to the professional civil liability, the architect, the entrepreneur, and the estate promoter commit to making an insurance contract on their decennial liability⁹ which starts from the final reception of the project. In this regard, the project owner and the successive owners take advantage of this contract until the end of the insurance period according to Article 178 of Ordinance 95/07 on the insurance.

This insurance covers the damages that affect the solidity of the elements of equipping a building when these elements are part of the development facilities, the bases, the structure, and the coverage¹⁰.

In order for the architect and the entrepreneur to make a contract of insurance on the decennial liability, they must submit the record of the final delivery of the works to the insurer -signed by the work renters¹¹ and accompanied with the conformity certificate issued by the technical control organization to prove the realization of the works according to the ratified designs- This contract ends by law after 10 years of the writing. If there are many actors in the construction process, the project owner must precondition making an insurance contract on their liabilities at the same insurer and make sure of this¹².

Thus, if the project owner makes many long entrepreneurial contracts with various entrepreneurs in various disciplines, they must make insurance contracts on their decennial liabilities at one insurance company to facilitate getting reimbursement in incidents.

The states, local communities, and normal persons are exempted from the compulsory insurance on the civil liability and the decennial liability when building private houses for the familial use¹³ and some other facilities such as bridges, subways, channels, roads, highways, dams, ports, fire houses, water transportation channels, railways, and planes runways¹⁴.

If these conditions are met by the architect or entrepreneur, the insurance company must reimburse the insured project with the determined amount by the expert to cover the restoration works. Moreover, the insurer must appoint an expert to check the damages in a 07 days deadline starting from the notification about the incident. Then, the payment must be in 03 months of the report establishing the damages if the insurer and the insured agree on the amount specified by the expert. On the other hand, if they do not agree, the insurer must pay $\frac{3}{4}$ of the amount determined by the expert to the insured in a 03 months deadline until the court settles the case and determines the final reimbursement amount according to Article 183 of Ordinance 95/07.

If the insurer does not pay the reimbursement amount after the deadline, the insured can ask for the reimbursement with benefits on each day of delay according to Article 03 of Law 06/04 of 20 February 2006 on the insurance¹⁵.

If the architect or the entrepreneur do not abide by the insurance on the professional civil liability and the decennial liability, they shall bear the penal and civil liabilities and be sanctioned with a monetary fine between 5000 and 100000 Dinars without prejudice to the other applicable sanctions¹⁶.

3. THE CONTROL ON THE INSURANCE PROCESS:

The Algerian Legislator established a committee for supervising the insurance¹⁷ that works as a controlling administration through the body in charge of insurance at the Ministry of Finance. This



body is assigned with controlling the insurance activity to protect the interests of the insured and insurer. Besides, it works to make sure of the legitimacy of the insurance processes.

This committee is made up of 5 members including the president who is appointed by a presidential decree based on the suggestion of the Minister of Finance.

Moreover, the members are chosen based on their competencies in the field of insurance, laws, and finance¹⁸.

The committee includes two judges suggested by the supreme court, a representative of the Minister of Finance, and an expert in insurance suggested by the Minister of Finance. The control is made by certified insurance inspectors. Each violation during the exercise of the insurance or reinsurance companies' activities is down written on a report signed by the inspector in insurance at least. The report is sent to the regional competent republic prosecutor if the violation requires a penal prosecution¹⁹.

In his regard, we ask the following question: are there measures that identify the tariff in the compulsory insurance including the insurance in the field of construction?

Paragraph 01 of Article 245 Bis of Law 06/04 on insurance provides that the insurance or/and reinsurance company and the branches of foreign insurance companies that violate the tariff of the compulsory insurance provided for in Article 233 shall be fined with at most 1% of the turnover of the closed financial year. Besides, Article 233 of this Law was not amended. However, the Legislator alluded to Article 233 of Ordinance 95/07 that provides that there is a body that indentifies the tariff in the compulsory insurance including the insurance on the damages during the construction and the insurance on the professional liability. Nevertheless, this body was dissolved by Law 06/04 and substituted by the committee of supervising the insurances that determines these measures.

Hence, if the insurer does not respect this tariff, he shall pay a monetary fine to the public treasury that does not exceed 1% of the turnover of the closed financial year. In case of any incident mentioned in the insurance contract, the insured gets the right to reimbursement based on what is mentioned in the contract. The reimbursement amount must not exceed the value of rebuilding the insured property when the incident takes place²⁰.

We must point out that the Ministry of Finance established the insured fund and assigned it with baring the whole, or part of, the debts towards the insured. This includes a better guarantee for the insured in cases of incidents.

The incomes of this fund come from an annual subscription paid by the insurance or reinsurance companies and the branches of the foreign insurance companies. The subscription should not exceed 1% of the net premiums after cancellations²¹.

We notice that the insurance contract is consensual, not formal²² because writing it is not a condition, but a tool to prove it. Thus, the insurance contract in the construction sector is a contract that proves the existence of insurance on all the defects that may affect the buildings and proves the contractual and decennial liabilities. Furthermore, writing the contract in this sector is subject to the general rules of insurance. Therefore, it requires an application from the insured to the insurer who makes an insurance contract that comes into force after the agreement of the insured on the contract.



The contract must include compulsory information, some are related to the general conditions of making the insurance contract that must be accepted by the insured while the rest are related to the special conditions that can be negotiated according to the nature and size of the building; then, the contract is signed by the two parts. The insurance contract is written in clear letters and includes the signatures, names and addresses of the two parts, the insured building or project, the nature of the included risks, date of writing, duration of the contract and date of coming into force, the insurance amount estimated by the expert assigned with this task by the insurer, the premium amounts, and the insurance subscription²³.

Because the insurance contract is consensual, it is subject to *pacta sunt servanda*. Hence, the two parts may agree on any conditions they want in the insurance document. Nevertheless, we notice that the Legislator provided for some conditions that cannot be included in the insurance contract, and that shall be void if included, as follows²⁴:

- The condition that provides for the loss of the insured right to reimbursement due to the delay in declaring the insured accident or in submitting the document if the delay is proven to be due to an acceptable excuse.

- Any printed condition, that is not clear, that is related one of the cases that lead to annulment.

- The arbitration condition if included in the document among the printed general conditions; not in the form of a special agreement separated from the general provisions.

- Any coercive condition whose violation does not affect the occurrence of the insured accident.

Besides, the application for the insurance by the actor in building does not raise any commitment on the insured and insurer unless they accept it²⁵. The contract must include the commitments of the insurer²⁶ and insured²⁷. If the latter violates his commitments and causes results that lead to damage or widening the damage, the insurance company gets the right to reduce the reimbursement amount in the limits of the real damage according to Article 22 of Ordinance 95/07 on the insurance.

CONCLUSION:

In the end of this study that revolved around the provisions of the compulsory insurance on the liability in the sector of construction, we found out that:

- Insurance in the field of construction is compulsory under a monetary fine without prejudice to the other penalties.

- The architect, the entrepreneur, the estate promoter, and any actor in the construction process have to write a contract of insurance on the professional civil liability and the decennial liability whose date starts from the final delivery of the project till the end of the guarantee deadline after 10 years.

- The insurance in construction provides the guarantees to the harmed and avoids the insurer the prosecution that may result due to the damages.

In the end, despite the compulsory insurance in the field of construction, there are opposite indexes mainly regarding the fact of not writing the insurance on the professional civil liability because such contracts are very important and the sanction would be slight against the



entrepreneur. Hence, the Legislator must redouble the sanction so that it achieves the desired result.

BIBLIOGRAPHY LIST:

¹ The official gazette of the Algerian republic, No° 13 of 08/03/1995.

² Law 06/04 of 20/02/2006, amends and supplements Ordinance 95/07 on insurances, published in the Official gazette No° 15 of 12/03/2006.

³ The official gazette of the Algerian republic, No° 5 of 21/01/1996.

⁴ The official gazette of the Algerian republic, No° 14 of 03/06/2011.

⁵ Article 176 of Ordinance 95/07 on insurances.

⁶ Mohamed Hussein Mansour, Architectural Responsibility, New University Publication House, Alexandria, 1999, p. 222.

⁷ Mesouda Marouche, entrepreneurship contract in Algerian Civil Law, Magister thesis, Faculty of Law, University of Algiers, 2003, p. 105.

⁸ Maskar Saham, sale of property based on designs in real estate promotion, analytical study, Magister thesis, Faculty of Law, University of Saad Dahlab, Blida, 2006, p. 68.

⁹ The document of the decennial liability insurance is a compulsory; review: Erzil al Kahna, (insurance companies in the face of real estate promotion activity), Journal of Rights and Freedoms, experimental issue, Biskra, September 2013, p. 101. Decennial liability insurance aims to protect the architect and the entrepreneur from recourse to them or to one of them if the terms of the special guarantee are met, the insurance company substitutes the insured person in the payment of compensation determined by the technical judicial expertise, in order to ensure that the employer receives fair compensation when injured by the construction process. Review Sabahi Rabia, the particularities of civil liability of the architect and entrepreneur after the delivery of buildings in Algerian law", Journal of Rights and Freedoms, experimental issue, Biskra, September 2013, p. 343.

¹⁰ An integral part of the achievement is any element of processing that cannot be removed, dismantled, or replaced without damaging or deleting a substance of this achievement in accordance with the requirements of Article 181 of Ordinance No. 95/07 on insurance.

¹¹ They are the entrepreneur, the employer, the project owner and representatives of some bodies such as the Construction Technical Supervisory Authority

¹² Article 179 of Ordinance No. 95/07 above provides that the project owner shall:

- Upon conclusion of the contract, the participants in the same project are required to enter into a contract to secure their liability with the same insured person.

- This requirement shall be verified

¹³ Review Article 182 of Ordinance No. 95/07 on insurance

¹⁴ Review Article 2 of Executive Decree No. 96/49, which establishes the list of public buildings exempt from the compulsory professional and decennial liabilities

¹⁵ Article 14 of Ordinance No. 95/07 on insurance was amended

¹⁶ Review Article 185 of Ordinance No. 95/07 on insurance

¹⁷ Before the amendment of the insurance law by Law 06/04, there was a control body called control administration entrusted with the same tasks as the Insurance Supervisory Committee. However, this body had additional authority in the field of compulsory insurance such as construction damage insurance, liability insurance by the real estate promoter and the entrepreneur. The control administration determines the tariff or its standards through a proposal from the specialized body in the field of tariff after the National Insurance Board's opinion is expressed in accordance with Article 233 of Ordinance No. 95/07 on insurance.

¹⁸ Articles 209 bis, 209 bis 1, and 209 bis 2 of Act No. 06/04 on insurance.

¹⁹ Article 202 of Law 06/04 on insurance

²⁰ Article 30 of Act No. 06/04 on insurance provides that in case of an incident provided for in the contract, the insured person shall be entitled to compensation in accordance with the terms of the



insurance contract. The reimbursement amount shall not exceed the amount of substituting or rebuilding the property

²¹ Article 213 bis of Law 06/04 provides that an insurance fund shall be established by the Ministry of Finance designated as the Insured Person's Fund, which shall be charged with bearing the whole, or part, of the debts. If the insurance company cannot

The resources of the fund shall consist of the annual subscription of the insurance and/or reinsurance companies and the branches of approved foreign insurance companies; however, the subscription amount shall not exceed 1% of the issued premiums.

²² Article 619 of the Civil Law reads provides that the insurance is a contract whereby the insurer is obliged to give a sum of money to the insured person or to the beneficiary for whom the insurance is required, revenue, or any other financial allowance after an accident or the risk set forth in the contract, in exchange for a premium or any other payment made by the insured person

²³ Article 7 of Ordinance 95/07 on insurance.

²⁴ Article 622 of the Civil Law.

²⁵ Article 8 of Ordinance 95/7 on insurance.

²⁶ In accordance with article 12/1-2 of Ordinance 95/07 on Insurance, the insurer shall pay a compensation for losses and damages resulting from emergencies and damages resulting from the unintentional error of the insured person, or by damages caused by persons whose insured person is a civil official, such as the fault of a subordinate party in the performance of his tasks, regardless the type of error committed, its gravity and the damage caused, as objects under his custody and with the ability to use, manage and control. It is also obliged to provide the service specified in the contract when the guaranteed risks occur or the deadlines set forth in the contract have been met, and the insurer does not commit to any greater extent.

²⁷ When the insurer prepares a contract of insurance for damages during the performance of work and for professional civil liability, he must declare all known data and circumstances in the question form, to assess the risks on which he is responsible. Moreover, he commits to pay the premiums or contributions within the agreed term, and accurately state the change or aggravation of the risk in accordance with the requirements of Article 15 of Ordinance 95/07 on insurance.