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## LEGAL REGULATION OF CONTRACTUAL RELATIONS IN ARCHITECTURAL ACTIVITY

**Formulation of the problem.** Architecture – is the art of designing and constructing buildings, structures, and their complexes to create a comfortable living environment. As a form of art, architecture belongs to the sphere of spiritual culture. With the evolution of society, ideas about the functions and types of buildings, technical and aesthetic solutions changed. The purpose of an architectural structure forms its spatial structure, and the level of engineering and technology determines specific methods of its creation. Functional (usefulness), aesthetic (beauty) and technical (quality) functions are interconnected in an architectural work. Expressive means in architecture are composition, scale, proportions, plasticity, texture and color range of materials [1].

Architectural activity is a complex process, the ultimate goal of which is the creation of an architectural object in the form of buildings, structures, etc. So according to Art. 1 of the Law of Ukraine "On Architectural Activity", architectural activity is defined as the activity of creating architectural objects, which includes the creative process of finding an architectural solution and its implementation, coordinating the actions of participants in the development of all components of projects for planning, development and improvement of territories, construction (new construction, reconstruction, restoration, overhaul) of buildings and structures, implementation of architectural and construction control and author's supervision of their construction, as well as implementation of research and teaching work in this field.

From a legal point of view, relations that arise in the process of architectural activity have 3 components: 1) copyright relations that arise between the customer and the author, the result of which is a created work of architecture that is protected by copyright; 2) contractual relations arising between the customer and the designer, resulting in design documentation; 3) services related to author supervision.

These legal relations are regulated by a number of civil law contracts. The contractual form for the use of a work of architecture ensures the realization and protection of the personal non-property and property rights of the author. In addition, the contractual form meets the interests of users – they acquire

certain rights to use the work of architecture and can profit from their implementation. Society is also interested in the contractual regulation of the use of works of architecture, since such an order stimulates the creative activity of its members and contributes to the increase of the spiritual wealth of society [2].

**The aim of this article** is to study such an essential condition of contracts related to architectural activity, as the object of the contract is a work of architecture.

**Presenting main material.** In Art. 2 of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as the Berne Convention) provides a list of literary and artistic works whose authors' rights are protected. Thus, "the term "Literary and artistic works" includes all works in the field of literature, science and art, in whatever way and in whatever form they are expressed, such as: books, pamphlets and other written works, lectures, appeals, sermons and other similar works; dramatic and musical-dramatic works; choreographic works and pantomimes, musical works with or without text; cinematographic works, which are equivalent to works expressed in a way similar to cinematography; drawings, works of painting, architecture, sculpture, graphics and lithography; photographic works, to which are equated works expressed in a manner analogous to photography; works of applied art; illustrations, geographical maps, plans, sketches and plastic works related to geography, topography, architecture or sciences" [3].

A work, according to its most common definition formulated by V. Serebrovsky, is "a set of ideas, thoughts and images that have acquired as a result of the creative activity of the author their embodiment in a concrete form accessible to perception by human senses, which allows for the possibility of reproduction" [4]. If we analyze the list of works given in the Berne Convention from the standpoint of this definition, we can come to the conclusion that this non-exhaustive list contains both types of works and the most common forms of their embodiment.

Art. 433 "Objects of copyright" of the Civil Code of Ukraine is similarly formulated. The objects of copyright are works, namely: works of architecture; illustrations, maps, plans, sketches and plastic

works relating to architecture. That is, the objects of copyright in the field of architecture are works of architecture, plastic works related to architecture and forms of embodiment of works (illustrations, maps, plans, sketches) related to architecture.

The analysis of the provisions of the Law of Ukraine "On Copyright and Related Rights" indicates the existence of a conflict between the definition of a work of architecture and objects of copyright in the field of architecture contained in the Law of Ukraine "On Copyright and Related Rights". Thus, a work of architecture is a work in the field of the art of construction of buildings and landscape formations (drawings, sketches, models, constructed buildings and structures, parks, plans of settlements, etc.) (Article 1 of the Law). At the same time, the objects of copyright in the field of architecture include works of architecture, urban planning and garden and park art, as well as illustrations, maps, plans, drawings, sketches, plastic works related to architecture (Article 8 of the Law). Similarly, the objects of copyright in the field of architecture are defined in Art. 29 of the Law of Ukraine "On Architectural Activity".

If in Art. 8 of the Law to reveal the definition of a work of architecture, the text of the article can be stated as follows: "The objects of copyright are works in the field of science, literature and art, namely: works in the field of art of construction of buildings and landscape formations (drawings, sketches, models, constructed buildings and structures, parks, plans of settlements, etc.); illustrations, maps, plans, drawings, sketches, plastic works related to architecture. It follows that works of architecture, works of architecture, materialize in almost identical forms, except for constructed buildings, structures and parks, which are a form of embodiment only for works of architecture.

As for models, by their nature they are plastic works. In view of the above, it is not necessary to answer the question: whether a work of architecture is a single object of copyright, and illustrations, maps, sketch plans and plastic works are different forms of embodiment of a work of architecture. Alternatively, it is necessary to recognize the presence of several more independent works of copyright in the field of architecture, namely: illustrations, maps, plans, sketches and plastic works related to architecture. Among scientists, there are different views on this problem. Thus, a specialist in the field of copyright and related rights, D. Liptyk, believes that works of architecture covered by copyright include both buildings and structures, as well as projects, drawings, plans, and models prepared for their construction [5].

Another opinion is supported by X. Pizuke, who, having considered the stages of the architect's creative process, singled out two types of copyright

objects that he creates in the course of his activity: first, works of architectural graphics and plastics, which are the results of the design stage and consist of sketches, plans, schemes, sections, facades, perspectives, drawings, layouts and models, and, secondly, directly works of architecture, which combine buildings, structures and their complexes as a result of the natural form stage of creating a work of architecture [6].

According to O. Lyukshin, it is important to distinguish between the work itself, which has an immaterial essence and appears as a complex of ideas and images that receive their objective expression in the created object, and the form of its embodiment, that is, the material form that is a material carrier of the work. It follows from this that the object of copyright is the work of architecture itself, embodied, for example, in the forms of an architectural project, documentation for construction developed on the basis of an architectural project, an architectural object, etc. [7]. Pointing out the fallacy of identifying ideas with objects, V. Dozortsev notes that "an invention cannot be identified with the machine in which it is embodied. A literary work cannot be equated with a manuscript or a book. This is a set of ideas that are the result of intellectual activity, which have social value regardless of the objects in which they are embodied, because they can be fixed in other objects as well" [8].

E. Grekov expresses a similar opinion regarding the definition of objects of copyright in architecture. He believes that in the field of architectural activity there is a single object of copyright – a work of architecture, and the provisions of civil legislation, which recognize works of architecture and illustrations, maps, plans, drawings, sketches, plastic works related to architecture, as independent objects of copyright are those that do not correspond to the doctrine of copyright, where a work is recognized as an intangible product of a person's creative activity. According to E. Grekov, initially in the author of a work, in particular a work of architecture, based on certain initial data, a series of ideas and images are formed, which are formed in the author's imagination into a single object. When the material result of the expression of the author's thoughts is changed, in particular in the form of a sketch, drawing, model, constructed building and structure, plan of a settlement, etc., the original author's intention does not change, a new work does not arise and, as a result, a new object of copyright. In this case, the actual reproduction of the copyright object, originally expressed in one form, takes place in another objective form [9].

In order to answer the above question, it is necessary to investigate the stages of creation of architectural objects. The specificity of architectural activity lies in the fact that the ideas and decisions of the

architect are first materialized in sketches, plans, layouts, later they are embodied in the project, and therefore are implemented in buildings and structures of residential, civil, communal, industrial and other purposes, their complexes, about projects of landscaping, garden and landscape architecture, monumental and monumental-decorative art.

The project, in accordance with Art. 1 of the Law of Ukraine "On Architectural Activities" is documentation for the construction of architectural objects, consisting of drawings, graphic and textual materials, engineering and cost estimates, which determine urban planning, spatial planning, architectural, constructive, technical and technological solutions, value indicators of a specific object of architecture, and meets the requirements of state standards, building codes and regulations. Designers need to ensure the compliance of design solutions, in particular: architectural and urban planning requirements, defined in urban planning conditions and land plot development restrictions; source data; the basic requirements for objects to ensure mechanical resistance and stability, fire safety; safety of human life and health and protection of the natural environment, operational safety, noise protection, energy saving. The composition and content of design documentation for new construction, reconstruction, capital repair and technical re-equipment of buildings, buildings, structures of any purpose, their complexes, linear objects of engineering and transport infrastructure is established by the State Construction Regulations of the National Bureau of Statistics "Composition and Content of Design Documentation for Construction» [10].

This regulatory document defines the following design stages: 1) technical and economic justification; 2) technical and economic calculation; 3) sketch project; 4) project; 5) working project; 6) working documentation. The availability and number of design stages depends on the complexity category of the design objects and their purpose. For example, for certain objects, the design is carried out in the following stages: 1) for objects of non-production purpose, a sketch design, and for objects of production value, a technical and economic feasibility study; 2) project; 3) working documentation. The sketch project is developed on the basis of the customer's task for the principle determination of requirements for urban planning, architectural, artistic, ecological and functional solutions of the non-industrial object, confirmation of the possibility of its creation, and the Project – for the determination of urban planning, architectural, artistic, environmental, technical, technological, engineering solutions of the object, the estimated cost of construction. When designing, the Project is carried out on the basis of the approved preliminary stage of the sketch design. Each of the stages of design is

completed by the preparation of plans, drawings, documents, calculations, the content of which is regulated by the State Construction Regulations of the National Bank of Ukraine "Composition and content of project documentation for construction".

After the approval of the Project, according to the decision of the customer, the working documentation can be developed by the author of the project or another designer. The development of working documentation by other designers is carried out in compliance with the author's decisions of the approved Project and with respect for copyright. Therefore, the architect's idea is consistently objectified in plans, sketches, drawings, which are included in architectural solutions at all stages of design up to their implementation in the corresponding architectural object. For example, when building a house, a sketch project is first developed – an architectural solution of the building without structural and engineering calculations. Sketches and drawings created at this stage give the future developer only a general impression of the building. However, thanks to them, it is easier to imagine the appearance of the building, its style, internal layout. At this design stage, the architectural part of the Project already contains a list of drawings, general project data and specifications, floor plans, facades, and a roof plan. The project usually includes several sections (drawings of the vertical section of the house), by which it is easy to determine the height of the rooms on the floors, the size of the depth of the basement or basement floor, and the angle of inclination of the roof slopes.

The floor plans indicate the layout of each of the floors, internal rooms with dimensions and areas, indicate the location of ventilation shafts and chimneys. According to the plans, it is possible to determine the thickness of the walls and partitions. The working documentation already contains drawings with detailed processing of the facade of the building, floor plan, etc. Summarizing what has been said, one cannot but agree with the conclusion reached by E. Grekov, that despite the direct instruction in the Civil Code of Ukraine, the laws of Ukraine "On copyright and related rights", "On architectural activity", the object of copyright in architecture has one, and this is the work of architecture itself, which can be embodied in various forms, namely: illustrations, maps, plans, drawings, sketches, plastic works, constructed buildings and structures, parks, plans of settlements, etc. [11].

If the only object of copyright in architecture is a work, then Part 1 of Art. 433 "Objects of copyright" of the Civil Code of Ukraine should have the following wording. "The objects of copyright are works, namely: works of architecture; illustrations, maps, plans, sketches and plastic works relating to geography, topography or science". In addition, the rel-

evant articles of the laws of Ukraine "On copyright and related rights" and "On architectural activity" need to be amended. So part 1 of Art. 8 of the Law of Ukraine "On Copyright and Related Rights" can be stated as follows: "The objects of copyright are works in the field of science, literature and art, namely: works of architecture, urban planning and garden and park art; illustrations, maps, plans, drawings, sketches, plastic works related to geography, geology, topography, technology and other fields of activity. However, not all objects of architecture (houses and structures of residential and civil, communal, industrial and other purposes, their complexes, objects of improvement, garden and park and landscape architecture, monumental and monumental and decorative art, territories (parts of territories) are administratively -territorial units and settlements) can be recognized as works of architecture, that is, objects of copyright. An object of architecture as an object of copyright must be the result of the embodiment of a person's creative intellectual activity.

It can be said that a work of architecture should be considered any work related to an object of architecture, regardless of its completeness, purpose and merits, if the work is the result of the creative work of the author and is expressed in an objective form. The second issue that requires research is the definition of that part of the project documentation that is a work of architecture. The specificity of a work of architecture includes the combination of artistic and material and social functions, the creation of a new objective spatial environment, the associative nature of the perception of information transmitted by architecture, the visual nature of the perception of an artistic image, the spatiality of a compositional construction, the unity of spatial, plastic and other compositional means, the connection of these means with the structural sub-base of buildings [12].

It follows from this that not all project documentation, the content of which is defined in Art. 1 of the Law of Ukraine "On Architectural Activity" and regulated by the State Construction Regulations of the National Building Code "Composition and Content of Design Documentation for Construction", is the subject of copyright. In our opinion, for the correct definition of the creative part of the project documentation, it is necessary to compare the concept of a work of architecture as an object of copyright with the concept of an architectural solution. According to Clause 4 of Art. 1 of the Law of Ukraine "On Architectural Activity", an architectural decision is an author's idea regarding the spatial, planning, functional organization, appearance and interior of an architectural object, as well as engineering and other support for its implementation, set out in the architectural part of the project on all stages of design and fixed in any form.

At the same time, the objects of copyright in the field of architecture are works of architecture, urban planning and garden and park art, as well as plans, drawings, plastic works, illustrations, maps and sketches related to architecture (Article 29 of this Law). Therefore, only the architectural part of the project, the author's idea of which is embodied in plans, drawings, plastic works, illustrations, maps and sketches, is the object of copyright. The object of copyright is not the documentation for construction as a whole, but only the architectural project, that is, a part of such documentation in which the architectural decision is expressed. An architectural solution is an author's idea of an architectural object, its external and internal appearance, spatial, planning and functional organization, recorded in the architectural part of the documentation for construction and implemented in the built architectural object. That is, the object of copyright is not all the documentation for construction, but only that part of it, in which the architectural decision is expressed, is expressed by such scientists as O. Lyukshin and E. Grekov [13].

As already mentioned, each of the design stages is completed by the preparation of documents and drawings provided to the customer, the content of which is regulated by the State Construction Regulations of the State Building Code "Composition and content of design documentation for construction". We will consider this project documentation taking into account the requirements for the registration of the material form of the work, which are put forward during the registration of copyright and contracts in accordance with the Resolution of the Cabinet of Ministers of Ukraine "On State Registration of Copyright and Contracts". Depending on the object of copyright for which the application for registration is submitted, a copy of the work must be provided in the appropriate material form. For works of architecture, urban planning and garden and park art, these are photographs or slides, or copies of the main drawings of the Project, primarily the general plan, floor plans, facades, sections, other drawings (at your choice), photographs or slides of models of constructed buildings and structures on electronic medium or a copy on a paper medium. So, in the said Resolution, it is generally disclosed which part of the project documentation can be the object of copyright. At the stage of the sketch project, the following drawings are developed, in particular: situational plan; scheme of the master plan; scheme of transport and pedestrian connections; floor plans, facades, sections of buildings and structures.

The drawings embodying the creative idea of the architect and meeting the requirements for the material form of the work of architecture are the general plan diagram and floor plans, facades, sections of buildings and structures. Therefore, at this

stage of design, only these drawings can be qualified as objects of copyright in the field of architecture (works of architecture). In accordance with the State Construction Regulations of the National Bank of Ukraine "Composition and content of project documentation for construction", the project for the construction of non-production facilities consists of the following sections: explanatory note, architectural and construction solutions, technological part, engineering equipment solutions, basic drawings, construction organization, estimate documentation. Therefore, at the Project stage, a separate section "Architectural and construction solutions" appears in the project documentation, which contains in an objective form the ideas and ideas of the author about the future architectural object and their compliance with the functional purpose, taking into account urban planning requirements [14].

The composition and content of this section are defined in the State Construction Regulations of the National Building Code "Composition and content of project documentation for construction". The section "Architectural and construction decisions" should contain: decisions and main indicators of the general plan, improvement and greening; a brief description and justification of architectural solutions and their compliance with the functional purpose, taking into account urban planning requirements, installation diagrams, categories of responsibility of structures and their elements; calculations of the main load-bearing elements of buildings and structures; decisions regarding decoration of buildings and structures; basic decisions from the accepted structural scheme of objects (materials of walls, floors, roofs); justification of the applied types of foundations and other structures; effectiveness of enclosing structures and thermophysical characteristics; architectural and engineering solutions to protect premises from external and internal noise.

If you analyze the content of this section, you can see that it contains a text part, a calculation part and drawings. According to the definition of a work of architecture in Art. 1 of the Law of Ukraine "On Copyright and Related Rights", its objective embodiment is drawings, sketches, models, constructed buildings and structures, parks, plans of settlements, etc. Therefore, not the entire section "architectural and construction solutions" of the project documentation can be attributed to the work of architecture, but only the drawings. However, according to the State Construction Regulations of the National Building Code "Composition and content of design documentation for construction", the drawings are an independent section of the project, so they must be analyzed for compliance with the content of the section "Architectural and construc-

tion solutions" and separate from them those that embody the architect's creative idea.

The main drawings of the project are: situational plan; master plan on a topographic basis in scale; principled decisions on vertical planning, landscaping and landscaping; scheme of transport and pedestrian connections; route plan of external engineering networks and communications; plans of routes of intra-site networks and structures to them; plans of foundations, floors, facades, sections of buildings and structures with a schematic representation of the main supporting and enclosing structures; main nodes of conjugation of structural elements, details of enclosing structures; interiors of main premises; floor plans, facades and sections when using reuse projects (design solutions); principle schemes for the arrangement of engineering equipment, principle decisions regarding the implementation of energy saving measures; technological layouts with plans for placing the main equipment; raw data for the development of design documentation for individually manufactured equipment. An architect may dispose of the exclusive property right to a work of architecture belonging to him in any way that does not contradict the law, including by granting another person the right to use the said work on the basis of a license agreement. Types of works of architecture are projects, drawings, images, layouts, models, plans, sketches, drawings, three-dimensional computer images, buildings, structures, etc. An architectural solution is an author's idea regarding the spatial, planning, functional organization, appearance and interior of an architectural object, as well as engineering and other support for its implementation, laid out in the architectural part of the project at all stages of design and recorded in any form". An architectural project is documentation for the construction of architectural objects, consisting of drawings, graphic and textual materials, engineering and estimation calculations, which determine urban planning, volume-planning, architectural, constructive, technical and technological solutions, cost indicators of a specific object of the architectural project, and complies with building standards and regulations [15].

The author of a project of a work of architecture, urban planning has the exclusive property right to participate in its further implementation, unless otherwise stipulated by the terms of the contract with the customer (developer) or a legal or physical person where or in which he works, as well as to make changes to unfinished construction or a built work of architecture, urban planning in the event of a change in its functional purpose or reconstruction. During the construction of an architectural object, it is subject to author's and technical supervision. Remuneration for an architectural work can be in the form of a one-time (lump sum) payment

or deductions for each sold copy or each use of the work (royalty) or in the form of combined payments, which must also be taken into account when concluding the contract.

A license agreement for the use of a work of architecture is an agreement under which one party – the architect (the other holder of the exclusive property right to the work of architecture) (the licensor) grants or undertakes to grant to the other party (the licensee) the right to use such a work within the limits stipulated by the contract, which include the methods of using the work of architecture, the term of its use, the territory within which the granted right is valid. The parties to the contract are the licensor-architect (other right holder) and the licensee-acquirer of the exclusive property right. Licensors can be co-authors, as well as rights holders who have common rights to the work (for example, the heirs of a deceased architect). In this case, the specified persons use the work of architecture jointly. By agreement between them, any of the co-authors can be entrusted with the use of the work in the common interests. If a work of architecture forms an inseparable whole, then none of the co-authors has the right to prohibit its use by other co-authors without sufficient grounds. The essential conditions of the license agreement for the use of works of architecture include: subject (granting the right to use the work of architecture); means of using a work of architecture; the amount of remuneration for the use of a work of architecture or the procedure for calculating such remuneration, if the contract is for a fee (the right holder may allow certain ways of using the work for free, and some – for a fee) [16].

Regarding the subject matter, there may be disputes between the parties to the license agreement regarding the right to use parts of the work of architecture separately from the work itself. The main criterion for such use is the independence of the object expressed in any objective form. In a work of architecture, the author's idea can be expressed both in the creation of the external and internal appearance of the architectural object. Each of these elements is an independent result of the creative activity of the architect and, therefore, can be used separately from each other at the desire of the architect. The licensee may use the work of architecture only within the limits of the rights and in the ways provided for in the license agreement. It can be: reproduction, distribution, public demonstration of a work of architecture; import of the original or copies of a work of architecture for the purpose of distribution; rental of an original or copy of a work of architecture; practical implementation of an architectural project; making a work of architecture available to the public in such a way that any person can access the work from any place and at any time of their choice. Payment of remuneration under the license agreement may be

provided in the form of fixed one-time or periodic payments, percentage deductions from the received profit or in another form [17].

At the same time, if the licensee does not use the work of architecture, and accordingly does not receive any profit, he has no right to refer to this circumstance as a justification for non-payment of remuneration to the licensor. As a general rule, the following main types of license agreements can be distinguished depending on the types of licenses granted: 1) a license agreement on the granting of a simple (non-exclusive) license, by virtue of which the licensee is granted the right to use the work with the licensor retaining the right to issue licenses to other persons. If the license agreement does not provide otherwise, the license is assumed to be simple (non-exclusive); 2) license agreement on the granting of an exclusive license, by virtue of which the licensee is granted the right to use the work without the licensor retaining the right to issue licenses to other persons.

Regarding the granting of a simple (non-exclusive) license in relation to a work of architecture, there are peculiarities related to the so-called "open" license. An open license for the use of a work of architecture is a so-called accession agreement. All its conditions must be available to an indefinite number of persons and placed in such a way that the licensee familiarizes himself with them before starting to use the corresponding work (this placement of the license conditions is possible, for example, on the Internet). An open license for the use of a work of architecture may contain an indication of actions, the performance of which will be considered acceptance of its terms (for example, putting a "tick" on a dialog box on the website of the right holder). In this case, the written form of the contract is considered to have been complied with. The licensor may grant the licensee the right to use the work of architecture owned by him to create a new work of architecture, which can be used within the limits and under the conditions provided by the open license [18].

Acceptance of such an offer is also considered acceptance of the licensor's offer to enter into a license agreement for the relevant work of architecture. The licensor, who granted an open license for the use of an architectural work, has the right to unilaterally withdraw from the contract in whole or in part if the licensee grants third parties the right to use the licensed architectural work or to use a new architectural work created by the licensee based on it of the work, outside the rights and (or) under conditions other than those stipulated by the open license. In the event that the exclusive property right to a work of architecture is violated by illegal actions regarding the granting or use of an open license, the licensor has the right to demand the application of measures to protect his rights against the violator

[19]. As for the liability of the licensor, it is possible for actions capable of making it difficult for the licensee to exercise the right to use the result of intellectual activity granted to him. In the contract, it is advisable to specify possible violations of the licensor, which may cause the licensee to unilaterally refuse to perform the contract and apply other liability measures. Such violations regarding the work of architecture can be: failure of the licensor to submit the architectural project within the stipulated period; violation by the licensor of the obligation not to allow other persons to use the architectural project during the validity period of the concluded license agreement; violation by the licensor of the authorship of others on the architectural project. In order to expand the possibilities of mutual control of the licensor and the licensee over the implementation of the terms of the license agreement, it would be advisable to provide for the registration of both the primary and all subsequent license agreements concluded on its basis, for example, those concluded regarding architectural projects as the most important from the point of view of civil turnover. This would allow the parties to receive the necessary information both about the facts of concluding the relevant license agreements and their conditions.

**Conclusions.** According to the results of the analysis, it is possible to single out the following drawings that meet the requirements put forward for works of architecture as objects of copyright: a general plan on a topographical basis; principled decisions on vertical planning, landscaping and landscaping; plans of foundations, floors, facades, sections of buildings and structures with a schematic representation of the main supporting and enclosing structures; interiors of the main premises. Summarizing the above, it is possible to reach the following conclusions. Firstly, the objects of copyright are works of architecture, urban planning and garden and park art embodied in drawings, sketches, models, constructed buildings and structures, parks, plans of settlements, etc. Secondly, not all project documentation for the construction of architectural objects, consisting of drawings, graphic and textual materials, engineering and estimate calculations, is the object of copyright, but only that part of it that relates to the architectural decision. Thirdly, a work of architecture as an object of copyright is only a drawing, namely a general plan, principle decisions on vertical planning, improvement and landscaping; plans of foundations, floors, facades, sections of buildings and structures, part of architectural solutions, interiors of main premises.

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### Summary

**Mazurenko S. V. Legal regulation of contractual relations in architectural activity.** – Article.

Traditionally, the construction of buildings and structures is carried out in accordance with previously prepared project documentation, the basis of which is made up of works of architecture. However, it should be noted that the legal nature of these objects has not been fully investigated. In particular, it is necessary to answer the question of what is the essence of such works and how their creative nature is manifested as a necessary element of legal protection. Traditionally, the very concept of "architecture" is associated with the creation of a new, beautiful, original and unique building. This is achieved by using previously developed structural elements, the set of which forms the architectural style. Hence, on the one hand, the difficulty lies in how to distinguish between a simple set of elements within one architectural style and a created, creatively completed object. It is necessary to pay

attention to the fact that we are talking about works as a set of ideas, thoughts and images that have received, as a result of the author's creative activity, their expression in a form accessible to human perception. Thus, in terms of content, a work is an intangible good that is the result of creativity and has an objective form of expression. It is the creative nature of the work and the objective form of expression that should be considered as its features, which subsequently provide conditions for the protection of the author's rights. The main task of this article is to find out what is the creative nature and the objective form of expression in works of architecture. It is rather difficult to determine the creative nature of a work of architecture, since we are talking about a set of features that are characteristic only of a work. In addition, it is necessary to find out what the minimum level of creativity must be in order for a work of architecture to be protected by copyright rules. With regard to works of architecture, we can talk about the ability, characteristic only of the author of this work, to select architectural or structural elements. In addition, one can point to the individual author's layout and the ratio of space-planning solutions, expressed in the location of various rooms, decorating the facades of buildings with elements borrowed from various architectural styles. It is due to this kind of combinatorics of structural elements carried out by the author that the novelty, uniqueness and individuality of the work of architecture are achieved. Works of architecture cannot be completely equated with design results. For the emergence of copyright, it is necessary to have creative principles in the design object. The presence of creative principles is typical only for architectural and planning solutions. The construction project consists of working drawings, which, in fact, display architectural and planning solutions as a creative idea of the author, and an explanatory note. It seems that copyright norms should protect only that part of the design object that contains architectural and planning solutions. Works of architecture must have an objective form of expression. It seems that the form of expression of this kind of works is the project. A building (structure) constructed according to the project cannot be a work of architecture or an object of copyright. The constructed building can only be considered as the second form of displaying the work of architecture, since the first is the project. Thus, from the moment of the creation of an architectural project, we can say that the work already exists, and therefore, it is the project that should be considered as a form of objective expression of the work of architecture.

*Key words:* architecture, awakening, construct, architects, copyright, license agreement.

### Анотація

**Мазуренко С. В. Правове регулювання договірних відносин в архітектурній діяльності.** – Стаття.

Традиційно будівництво будівель та споруд здійснюється відповідно до попередньо підготовленої проектної документації, основу якої складають твори архітектури. Проте слід звернути увагу, що юридична природа даних об'єктів остаточно не досліджена. Зокрема, необхідно відповісти на питання про те, в чому сутність подібних творів і яким чином проявляється їх творчий характер як необхідний елемент правової

охорони. Визначити юридичну природу творів архітектури досить складно. Традиційно саме поняття «архітектура» пов'язане зі створенням нової, красивої, оригінальної та неповторної будівлі. Це досягається застосуванням раніше розроблених елементів конструкцій, набір яких утворює архітектурний стиль. Звідси, з одного боку, складність вже в тому, як розмежувати простий набір елементів у рамках одного архітектурного стилю та створений творчо завершений об'єкт. Звісно ж, у разі дослідження творів архітектури як об'єктів авторського права має здійснюватися з урахуванням таких положень. Необхідно звернути увагу на те, що йдеться про твори як про сукупність ідей, думок та образів, що отримали в результаті творчої діяльності автора своє вираження у доступному для сприйняття людиною формі. Таким чином, за змістом твір є нематеріальним благом, яке є результатом творчості і має об'єктивну форму вираження. Саме творчий характер твору та об'єктивна форма вираження повинні розглядатися як його ознаки, що забезпечують у подальшому умови захисту прав автора. Основне завдання цієї статті – з'ясувати, у чому полягає творчий характер та об'єктивна форма вираження у творах архітектури. Визначити творчий характер твору архітектури досить складно, оскільки йдеться про сукупність ознак, які властиві лише твору. З іншого боку, необхідно з'ясувати, який має бути мінімальний рівень творчості, щоб твір архітектури забезпечувалося захистом нормами авторського права. Щодо творів архітектури може йтися про властиву лише автору цього твору здатність підбирати архітектурні чи конструктивні елементи. Крім того, можна вказати на індивідуальне авторське komponування та співвідношення об'ємно-планувальних рішень, виражених у розташуванні різних приміщень, прикрасі фасадів будівель елементами, запозиченими з різних архітектурних стилів. Саме завдяки застосуванню автором комбінаторики конструктивних елементів досягається новизна, неповторність та індивідуальність твору архітектури. Твори архітектури не можна ототожнювати повністю з результатами проектування. Для виникнення авторського права необхідна наявність творчості в об'єкті проектування. Наявність творчості характерна лише для архітектурно-планувальних рішень. Проект споруди складається з робочих креслень, на яких, власне, і відображаються архітектурно-планувальні рішення як творчий задум автора, так і пояснювальні записки. Звісно ж, що нормами авторського права має охоронятися лише та частина об'єкта проектування, що містить архітектурно-планувальні рішення. Твори архітектури повинні мати об'єктивну форму вираження. Звісно ж, що формою вираження подібних творів є проект. Побудована за проектом будівля (споруда) не може бути твором архітектури або об'єктом авторського права. Побудована будівля можна розглядати лише як другу форму вираження твору архітектури, оскільки першою є проект. Таким чином, з моменту створення архітектурного проекту можна говорити про те, що твір вже існує, і, отже, саме проект має розглядатися як форма об'єктивного вираження твору архітектури.

*Ключові слова:* твори архітектури, будівлі, споруди, архітектори, авторське право, ліцензійний договір.