Settlement of the Non-Conforming buildings to the Issued Building License under the Algerian Legislation: Study under the Provisions of the Executive Decree No 22-55

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Abstract

Urbanization is considered as a reflection of the progress and cultural and political awareness experienced by countries, where the inherited remnants and multifaceted causes and factors have contributed to deteriorate the Algerian urban fabric, to spread the aspects of urban chaos, and incomplete the buildings in a cumulative manner over the years, besides the constant efforts to solve it.

In this context, the Executive Decree No 22-55 has been issued pursuant the provisions of the Article 113 of the Finance Bill of 2017 to propose a bold idea, which is the resolution of the completed and uncompleted buildings that have been constructed in a non-conforming manner to the issued building permit against the payment of the settlement fine and according to the controls which will be address out by the present study .

Keywords

Non-conforming Buildings; Issued Building License; Algerian Legislation; Executive Decree No 22-55; Rehabilitation Rules.

تسوية البنايات غير المطابقة لرخصة البناء المسلمة في التشريع الجزائري: دراسة على ضوء أحكام المرسوم التنفيذي رقم 22-55

ملخص

يعد العمران انعكاسا لما تشهده الدول من تقدم ووعي ثقافي وسياسي، وقد ساهمت مخلفات موروثة وأسباب وعوامل متعددة الجوانب في تردي النسيج العمراني الجزائري، وانتشار مظاهر فوضى العمران وعدم إتمام البنايات بشكل تراكمي على مر السنوات، ما استتبعه جهود متواصلة لإيجاد الحلول لذلك.

في هذا السياق تم إصدار المرسوم التنفيذي رقم 22-55 تطبيقا لأحكام المادة 113 من قانون المالية لسنة 2017 ليطرح فكرة جريئة، وهي تسوية البنايات المتممة وغير المتممة التي تم تشييدها بشكل غير مطابق لرخصة البناء المسلمة، مقابل دفع غرامة التسوية وفق ضوابط ستتولى هذه الدراسة تبيانها.

الكلمات المفتاحية

البنايات غير المطابقة؛
رخصة البناء المسلمة؛
التشريع الجزائري؛
المرسوم التنفيذي رقم 22-55؛
قواعد التعمير.

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I- Introduction :

Algeria suffers from a cumulative situation of the urban chaos, including the problem of lack of control over the urban expansion, the insurant of the optimized management of the urban environment and the widespread of the construction practices contravened the rehabilitation and compensation norms.

As a result and in order to promote the conditions of life and improve the urban systems; a set of multiple strategies and policies were established over the years, targeted to regulate the use of the reconstructable lands, where the Rehabilitation and Compensation Act No 90-29[1] is considered as the first legal text that embodies the construction strategy and the urban rehabilitation in its modern concept, and aims to define the general rules which are directed to regulate the production of the developable lands, followed by the legislative and regulatory texts which address the different aspects of the building and construction controls.

The persistent disturbance of the reconstruction rules, results the promulgation of the law No08-15 which defines the rules of the matchmaking buildings and its full achievement[2], aiming for matching the completed and uncompleted buildings, and a built frame with an aesthetic and homogenous appearance, besides the promulgation of the Executive Decree No 15-19 which defines the modalities for preparing and delivering the reconstruction contracts as amended and supplemented[3], where through these texts; a balance was sought between the public urban interest and the practice of the property, building and the housing rights devoted by the constitution[4],by including in these texts intermediate solutions to address the status of the completed buildings or the process of completion outside the legally defined framework in their different forms.

Despite the Law No08-15's measures to achieve conformity of the buildings contravened the reconstruction rules and the extension of the settlement deadlines; it has not succeed to attract the owners of the buildings contravened the reconstruction rules, and its application has been characterized by the ambiguity and the fluctuation, if not failure.

This situation prompted the organizer to reconsider specific categories of buildings, namely those that do not comply with the issued building permit, to end the case of the unfinished buildings and regularize the status of the non-conforming buildings to the construction permit, by invoking special provisions and measures contained in a separate legal text which is the Executive Decree No 55-22 that defines the settlement conditions of the non-conforming buildings to the building permit[5] issued in application of the provisions of the article 113 of the Finance Bill 2017[6].

The present study raises a fundamental problem centered on the settlement conditions and procedures of the non-conforming buildings to the issued building permit according to the provisions of the Executive Decree No 22-55, and what is the contribution of the latter- including measures- to overcome the problem of the non-conforming buildings to the issued building permit and encourage the owners of these buildings to regularize their construction situations?

To address this issue, the present study has been divided into two main sections; The first one is dedicated to define the general framework for regularizing the non-conforming buildings to the issued building permit, while the second section is devoted to outline the procedures for regularizing the non-conforming buildings to the issued building permit.

I- The General Framework for Resolving the Non-Conforming Buildings to the Issued Building Permit:

The spread of the contravened construction to the urban planning rules and the public urban system is primarily resulted from the combination of the several social factors, such as rapid demographic growth and rural-urban migration, as well as the economic factors that have contributed to the deterioration of the urban environment, and the political factors have also hindered sustainable urban development, besides the proliferation of bureaucracy and administrative corruption, along with the lack of urban culture and the ignorance of the urban planning laws among the individuals sometimes, or during the spread of the buildings that do not comply with the rules and regulations of rehabilitation and compensation at other times[7].

Article 113 of Law No 16-14 of the Finance bill 2017, allowed the regularization of buildings that were constructed or are under construction contravened or nonconforming the instructions of the issued building permit, where this article was amended under Article 151 of the Finance bill of 2022[8], and establishing the date of January 1, 2022, as the date for the application of these provisions.

It is important to note that the implementation of Executive Decree No 22-55, which provides mechanisms for the regularization of completed buildings or which are in the process of being built in non-compliance with the issued building permit, is indefinite. Therefore, anyone who holds a building permit and has constructed their building in contrary of this permit before the publication date of this decree can request the regularization and this is in contrast to Law No 08-15, which had provisions that were fixed for a period of five years from the date of its publication in the official journal, and it was extended multiple times, the last one being in 2016[9].

1- Amended Building Permit and Compliance Certificate as a means of Settlement: Innovative Reconstruction Mechanisms for Regularizing Non-Compliance Buildings:

The result of the complex administrative procedures for obtaining the building and the construction permits, along with the weak control mechanisms exercised by the administrative authorities and their inability to keep up with the rapid pace of urban activity, has led to the accumulation of buildings, both completed and incomplete, that do not comply with the issued building permits over the years[10].

In this context, new construction contracts have been established under Executive Decree No 22-55, which defines the conditions for regularizing buildings that do not comply with building permits. Where the organizer has attempted to balance two variables: the first is the pursuit the maintain of the general rules of urban planning and construction to achieve a coherent urban fabric, and the second one is to facilitate and assist owners of the nonconforming buildings to the building permits to regularize their construction situations, even if it requires overlooking some violations that can be regularized against the payment of the due fine.

A- The Amended Building Permit as a Settlement:

The reliance of construction works on licenses and administrative certificates enables the individuals to meet their various needs while maintaining the requirements for protecting the public urban order and the rational use of property, is one of the fundamental guarantees for respecting the urban planning rules.

As a part of the legislator's and regulator's efforts to find the mechanisms for regularizing the nonconforming buildings to the urban planning rules and regulations, new urban planning contracts were established under the Finance Bill of 2017 and Executive Decree No 22-55, as an amended building permit for the settlement purposes.

-Definition of the Amended Building Permit Provided as a Settlement:

Law No 90-29 related to the rehabilitation and compensation does not provide any definition of the building permit, but rather specifies the cases that require obtaining one, as well as the related compensation texts. However, the legal scholars have provided various definitions of the building permit, defining it as the official document that certifies an individual's right to construct a new building or expand an existing one, issued by the competent administrative authority after the technical services approval following their verification of the compliance with the urban planning rules in the relevant area[11].

The building permit is defined as an individual administrative decision issued by a competent administrative authority, which authorizes the execution of the construction work while respecting the easements and the building regulations[12].

Thus, the building permit is one of the means of restricting property rights and a form of the administrative regulation, as it constitutes authorization from the competent authority to construct a new building or more, or to update an existing building or more, after ensuring that the proposed project complies with all legal rules governing the construction process[13].

After reviewing the definitions provided for the building permit and examining the provisions of Executive Decree No 22-55, the amended building permit for regularization can be defined as "that individual administrative decision granted by the competent administrative authority based on a request submitted by the concerned party for the regularization, by which the latter is granted an amended building permit that corresponds to what has been observed in terms of additions or amendment to the issued building permit, provided that the conditions are met, especially the payment of the regularization fine, which ultimately achieves the regularization of the building of the permit.

-The Privacy of the Amended Building Permit Provided as a Settlement: The amended building permit for regularization established by Executive Decree No 22-55, which defines the conditions for regularizing buildings that do not comply with the issued building permit, has specific characteristics compared to the ordinary building permit and the regularization building permit which is devoted by Law No. 08-15, as well as its specify compared to the conformity permit particularly considering the following aspects:

-The Amended Building Permit is a Mechanism for Addressing the Actual Violations: an amended building permit will not be issued if the applicant has previously submitted a request for settlement unless there is an actual violation of the urban planning rules and a non-compliance with the issued building permit. Where these practical violations are identified by comparing the plans of the issued building permit with the plans of the buildings of the settlement request and after a field inspection of the committee charged with handling settlement requests.

-The Amended Building Permit is a Subsequent Administrative Decision: The original building permit is typically issued as a prior administrative decision for the construction process, which cannot be initiated until this permit is obtained. However, the amended building permit, issued as a settlement, takes the form of a subsequent administrative decision for construction that was done contrary to the issued building permit.

-The Amended Building Permit is an Administrative Decision Issued for the Settlement Purpose: The decision including the amended building permit is issued solely for the buildings settlement purpose that do not comply with the issued building permit.

-The Amended Building Permit is an Administrative Decision Related to Buildings under Construction: The amended building permit is issued to the applicant for regularization concerning a specific category of buildings, namely those that are incomplete and do not comply with the issued building permit.

-The Amended Building Permit Settlement Differs from the Building Permit Settlement: Law No 08-15, which defines the rules to comply buildings and complete their constructions, has devoted the settlement-building permit

as a means to regularize the legal status of the completed buildings that were constructed without obtaining a building permit at all[14].

On the other hand, the amended settlement-building permit, as previously mentioned, pertains to the incomplete buildings, for which the owner possesses a building permit but has not adhered to it.

B- Conformity Certificate as a Settlement:

The legal texts, both legislative and regulatory, related to the urban planning do not include a definition of the conformity certificate, which has led legal scholars to show interest in defining it, given its connection to the building permit, where the beneficiary of the building permit is legally required, upon completion of the construction and preparation works, to obtain a certificate that proves the conformity of the completed works with the provisions of the building permit.

-Definition of Conformity Certificate as a settlement:

The compliance certificate is defined as an administrative decision through which the competent administrative authority declares the compatibility and the conformity of the completed construction and preparation works with what is indicated in the related building permit[15].

The conformity certificate is considered one of the means of post-control by the administration, proving the performance of works according to the approved designs in accordance with the provisions of the building permit. Thus, it serves as a legal means for the acceptance of the building or project and to confirm that the beneficiary of the building permit has adhered to the building permit for reconstruction rules[16].

As a result of the requirement for the issuance of the compliance certificate to be linked to the conformity of the construction with the building permit, many beneficiaries refrain from applying for the conformity certificate, even under the provisions introduced by Law No 08-15 aimed to achieve the buildings conformity. This has led to Executive Decree No 22-55 to introduce the compliance certificate as a settlement means, in an effort to encourage the owners of the completed and nonconforming buildings with the building permit to regularize their building situation.

Accordingly, the settlement conformity certificate can be defined as an individual administrative decision granted by the legally authorized authority, which regularizes the status of completed and nonconforming buildings with the issued building permit, provided that the conditions for this are met, particularly the payment of the settlement fine determined by law according to the value of the added or amended built parts and the nature of the violation.

-Privacy of the Conformity Certificate as a Settlement:

The specificity of the settlement conformity certificate can be inferred in comparison to the conformity certificate and the settlement-building permit, considering the following aspects:

-The Privacy of the Settlement Conformity Certificate in terms of its Subject Matter: The settlement conformity certificate is granted for regularizing a factual situation, which is the non-conformity of the completed building with the issued building permit. Thus, the settlement conformity certificate is issued to confirm conformity with the final status of the completed building, rather than the conformity with the issued building permit, which is the subject of the compliance certificate.

-Privacy of the Settlement conformity Certificate in terms of the Issuer:

If the amended building permit is issued by the same authority that issued the original building permit, whether this authority is the mayor as a general rule, the delegated wali, the wali, or the minister in charge of the urban planning in specific cases[17], then the settlement conformity certificate is prepared exclusively by the urban planning services of the municipality and is signed and issued by the mayor for all types of buildings[18].

2. Conditions for the Settlement of Nonconforming Buildings to the Issued Building Permit in Accordance with the Executive Decree No 22-55:

In order to regularize completed buildings, the under construction or the nonconformity ones with the issued building permit, the Executive Decree No 22-55 that defines the settlement conditions of the nonconforming buildings to the issued building permit has devoted the required conditions:

A- Scope of Settlement Buildings:

Article 03 of Executive Decree No 22-55 limited the scope for applying the provisions for the buildings settlement to a specific category of buildings, namely completed buildings, the under construction or the nonconforming ones to the issued building permit prior to the publication of Executive Decree No 22-55.

The regulator clarified in Article 14 of Executive Decree No 22-55 the nature of the contravention occurring in the construction of the building and distinguished between contraventions that can be regularized and those that cannot be regularized, which are subject to specific penalties that vary from one case to another and based on a fundamental criterion: the to the neighborhood building , the construction standards, the safety, and the general urban planning rules.

Therefore, the buildings that have been completed or are under construction can be regularized if the violations are related to the following:

1.If the Contravention is Related to Encroachment on the Area of Retreat within the Property: In this case, the settlement fine, which will be referred to later, is estimated based on the area that has been encroached upon and according to the use of the building.

2-If the Contravention is Related to the Holes on the Completed Facades and is not Stipulated in the Issued Building Permit: Provided that these facades do not directly affect the neighboring properties, in this case, the settlement is done after paying a fine for each affected facade, and according the use of the building.

3-If the Contravention is Related to the Added Floors: If they are without prejudice to the general urban planning rules and the construction and the safety standards, even though they are not stipulated in the issued building permit, in this case, the settlement fine is estimated according the added areas and to the use of the building.

4-If the Contravention is Related to the Excess of the Land Occupancy Area: Provided that they do not affect the neighboring properties and the construction and safety standards, while the fine is estimated according the added areas and to the use of the building.

On the other hand, the Article 14 of Executive Decree No 22-55 considers a category of completed buildings, the under-construction or the nonconforming ones to the issued building permit as subject to specific contravention that cannot be regularized, which are subject to the demolition or closure penalties. Finally, it is worth noting that the identification of these contraventions is carried out by comparing the plans of the issued building permit with the plans of the buildings subject to the settlement request, following a field inspection by the committee responsible for processing the settlement requests, and the single building may be subject to one or several contraventions at the same time.

B- Nature of Buildings Subject to the Settlement:

The scope of the settlement established by Executive Decree No 22-55 is limited to the nonconforming buildings to the issued building permit, whether they are completed or under construction before the publication of this decree, that is, before February 3, 2022. Thus, this type of building can be regularized even if it was completed before the issuance of Law No 08-15, which defines the rules for building compliance and completion[19].

Accordingly, the completed or the uncompleted buildings, which their owner has not obtained a building permit are excluded from the settlement procedures stipulated under the Executive Decree No22-55, and remain nettableunder the procedures of the Law No 08-15, that defines the rules for building compliance and completion.

On the other hand, due to the nature of the building permit, which requires being associated with specific fixed-times, where the permit becomes invalid if the works have not been initiated within these deadlines, and resulting the withdrawal of the permit's effects and rendering it ineffective. Therefore, if the building is constructed despite this, it is regarding as being built without a building permit [20], and this type of building is exempted from the provisions of Executive Decree No 22-55.

C- The Nettable Buildings Respect for the General Rules of Reconstruction:

According to Executive Decree No 22-55, the general urban planning rules refer to the set of legal and regulatory rules that govern neighboring properties, particularly concerning the proximity and the spacing between buildings, facade holes, land use, and dimensions.

Article 04 of Decree No 22-55 has stipulated that the buildings intended for settlement must comply with the general urban planning rules regarding:

-Encroachment on the setback area within the property.

-Holes on facades that are not authorized by the issued building permit.

-Raising levels or floors without authorization.

- Exceeding the land occupation area.

D- The Nettable Buildings Respect for the Security Standards:

The construction and safety standards defined by the Decree No 22-55, as a set of legal and technical rights and obligations that ensure the respect of the building regulations concerning the stability and safety of the project against all potential hazards, such as earthquake risks and other dangers. The extent to which the construction adheres to these standards is determined according to the technical report submitted by the civil engineer, and approved by the technical construction control authority as applicable.

E- Submit of File by the Legally Qualified Parties:

The Article 08 of the Executive Decree No 22-55, specifies the individuals who are entitled to submit a request for the settlement of buildings that have been completed or are under the construction in a manner that does not comply with the submitted building permit. These individuals include owners, project developers, delegated project owners, or any relevant stakeholders.

F- Payment of the Settlement Fine:

One of the reasons for including the requirement to pay a financial fine for the settlement of buildings that do not comply with the building permit in the Executive Decree No 22-55 is to contribute for the increasing revenues through the payment of settlement fines, as discussed during the deliberation of the 2017 Finance Bill, where this period witnessed a significant decline in oil prices, which led to the adoption of the additional sources of income.Consequently, the Executive Decree No 22-55 required for the completion of the settlement process for the buildings that do not comply with the building permit; a prepayment of the settlement fine, which ranges from 10% to 25% of the value of the amended or added part of the building that is subject to the contravention.

G- Respecting the Deadlines for Completion of Work:

When the Article 113 of Law No 16-14, including the 2017 Finance Bill, allowed for the settlement of buildings that do not comply with the building permit, it devoted a condition related to the deadlines for completing the work, which are determined by the amended building permit, provided that the building is not completed.

However, the Executive Decree No 22-55 did not mention the condition related to the deadlines for completing the work, unlike the model decision for granting the amended building permit for settlement annexed to the Executive Decree No 22-55, which stipulated in the Article 05 a validity for this permit. Where this validity constitutes deadlines for completing the building, and its non-completion within these deadlines will cancel the amended building permit, unless the concerned party submits a new request to obtain a building permit compulsorily.

II- Settlement Procedures of the Nonconforming Buildings to the Issued Construction Permit:

Executive Decree No 22-55, which defines the conditions for the settlement of the nonconforming buildings to the issued building permit, stipulated procedures and phases of the settlement request, starting with the submission of the request for the amended building permit or a certificate of compliance for settlement, and culminating in the issuance of the final decision regarding that:

1- Filing of the Amended Construction Licence or Conformity Certificate with Municipal Reconstruction Authorities:

Executive Decree No 22-55, which defines the settlement conditions of the nonconforming buildings to the issued building permit, requires owners, project developers, or any relevant stakeholders to submit a file for the request of an amended building permit or a conformity certificate for regularization to the urban planning services of the municipality where the building is located. This submission must be accompanied by a receipt issued on the same day, signed by the head of the service or their representative, after verifying that the necessary documents are in accordance with the documents of the file.

What is notable about this article is that it includes a mandatory formulation, indicating that the submission of a request for an amended building permit or a conformity certificate of settlement is a mandatory procedure whenever the conditions for submitting this request are met. However, the Executive Decree No 22-55 did not mention the penalties resulting from the failure to initiate the settlement request. Additionally, the requirement for this request confirms that the administration cannot initiate the settlement procedures on its own, even if it is aware of cases of non-compliance with building permits.

The Executive Decree No 22-55 stipulated that the request submitted for settlement must be accompanied by a copy in electronic format, in addition to a file consisting of three copies for private buildings and five copies for other projects, clearly detailing all modifications made or in progress that were carried out in a manner not compliant with the building permit.

The Ministerial Circular No 01 of 2022 assigned the urban planning department, the authority to receive files and register them in both a paper and a digital register, and to issue a receipt of the file submission to the applicant, then send the file to the relevant single window within a maximum period of 48 hours.

The urban planning services of the municipality are also responsible for preparing payment orders for fines in the case of a favorable opinion and receiving payment receipts, in addition being responsible for preparing and drafting projects for decisions to grant the conformity certificates and the amended building permits if they are competent in accordance with the two models annexed to Executive Decree No 22-55.

Executive Decree No. 22-55 distinguished between the content of the file annexed to the request for an amended building permit or the settlement conformity certificate, differentiating between completed buildings in a manner not compliant with the issued building permit and buildings that are still under construction:

- Concerning the finished buildings that do not conform to the issued building permit: the file for finished buildings that do not conform to the issued building permit includes:

-A copy of the plans indicated in the issued building permit.

- The written documents and plans prepared according to the Executive Decree No 15-19, which defines the procedures for preparing and delivering the urban planning contracts that indicate the status of the finished buildings, where these documents must be prepared by a licensed architect and a licensed civil engineer. Additionally, the Executive Decree No 22-55 requires that these documents must be accompanied by a memorandum that includes a descriptive and estimated report of the completed works, indicating the amount of the amended or added portion, along with a detailed report illustrated with photographs.
-An expert report prepared by a licensed civil engineer in the case of changes to the load-bearing structure of the building. Additionally, the file is supplemented with an expert report approved by the National Authority for Technical Control of Construction hen it is concerned buildings that accommodate the public, investment projects, and the collective housing.

- Concerning the Buildings that are still under Construction and not Compliant with the Issued Building Permit: the file in this case consists of the same documents included in the file for the settlement request of the finished buildings that do not comply with the building permit, with the addition of the estimated deadline for completion prepared by an architect.

After the examination of the file by the urban planning services at the municipality, it is sent to the head of the relevant single window within a maximum of 48 hours from the date of file submission, where the head of the single window then presents it to the chairperson of the committee responsible for processing requests in order to address it within the next 48 hours.

2- Processing Phase of the Settlement Files at the Level of the Commission Charged with Handling Settlement Requests:

The submitted files of the concerned parties are sent by the single window to the head of the committee responsible for processing requests for the amended building permits for regularization or the settlement conformity certificates. This committee is established:

- At the single window of the municipality by a decision from the president of the communal people's assembly when the building permitis issued by him,

-At the single window of the administrative district by a decision from the delegated wali when the building permit is issued by him,

-At the single window of the province by a decision from the wali if the building permit is issued by the wali or the minister in charge of the urban planning[21].

The Executive Decree No 22-55 defines the composition of the committee responsible for processing the settlement requests, which consists of a representative from the state services in charge of the urban planning as the

chairperson, a representative from the municipal urban planning department as a member, and a representative from the civil protection agency as a member.

The composition of the committee can be expanded to include additional representatives for specific categories of buildings, such as the collective housing, the buildings that accommodate the public or those related to the investment projects. The following services are represented in the committee: SONELGAZ (the national gas and electricity company), public works, water resources, industry, and the environment.

The Executive Decree No 22-55 also allows for the membership of the committee responsible for processing the settlement requests to coincide with the membership in the relevant single window[22].

The committee is responsible for receiving files from the relevant single window and registering them in both a paper file and a digital file. It may also request additional information regarding the file if necessary -in this case; the processing deadlines for the files are suspended-. Additionally, as part of its processing of the requests submitted for settlement, the committee conducts field visits to verify and confirm contraventions of the general urban planning rules established by the Article 14 of the Executive Decree No 22-55. It also proposes the measures that should be taken and calculates the fines based on the nature of the recorded contraventions.

According to the information obtained from its investigations, the settlement committee fills out a preparation card[23] that is signed by all committee members. This card follows the template annexed to the Executive Decree No 22-55, and accordingly, the committee expresses its opinion regarding the settlement of the building and the amount of the fine as specified in the Articles 12 and 13 of the Executive Decree No 22-55.

The Executive Decree No 22-15, as part of its aim to simplify the settlement procedures of the buildings that do not comply with the issued building permit and to shorten the deadlines for the committee responsible for processing the settlement requests, granted a maximum period of 30 days from the receiving date of the file [24] to complete the processing of the request and to send the preparation card annexed by the file to the single window of the municipality, the single window of the administrative district, or the single window of the province, as applicable[25].

Finally, it is important to note that the processing of files by the settlement committee must take into account the type of building subject to settlement and the nature of its use, according to the classification adopted in the Article 13 of Executive Decree No 22-55, where this classification becomes essential when reviewing the files, especially when determining the value of the part of the building that is the subject of the contravention and consequently estimating the fine imposed for the settlement[26].

3- Requests Preparation Phaseat the Level of the Competent Single Window:

When the committee responsible for processing settlement requests completes its tasks, it expresses its opinion, annexed by the file and the preparation card, the template of which is stipulated in the annex of the Executive Decree No 22-55. This is then sent to the relevant single windows, which the regulator has referred to regarding their composition and powers in the Executive Decree No 15-19, as amended and supplemented:

A- Single Window of the Municipality:

The files of the amended building permits or the certificates of compliance for settlement are prepared by the single window of the municipality if the issuance of the building permit falls under the authority of the president of the municipal people's assembly, whose authority is considered the norm for all permits unless otherwise specified by law.

The single window established at the municipal level, according to the Article 58 of the Decree No 15-19, which defines the methods of the contracts preparation and reconstruction, is composed of permanent members and invited members, who may be present or represented. In addition, the single window can seek assistance from any person, authority, or body to provide guidance and support in its work.

B- Single Window of the Administrative District:

The single window of the administrative district is responsible for preparing requests of the amended building permits or the settlement conformity certificates when the issuance of the building permit falls under the authority of the delegated wali in the cases stipulated in the Article 49/06 of the Executive Decree No 15-19, as amended and supplemented.

The single window of the administrative district is established at the delegated directorate responsible for urban planning by a decision from the delegated wali. Where the Article 58 bis of the Executive Decree No 15-19, as amended and supplemented, defined the composition of the window and the powers assigned to it

C- Single Window of the Province:

The single window of the province is responsible for preparing files the amended building permits and settlement conformity certificates when the issuance of the building permit falls under the authority of the wali or the minister in

charge of the urban planning, in the cases stipulated in the Article 49 of the Executive Decree No 15-19, as amended and supplemented.

The Article 59 of the Executive Decree No15-19, as amended and supplemented, defined the composition of the single window of the province, which is established at the Directorate of the Urban Planning, chaired by the director in charge of the urban planning or the head of the urban planning department when necessary. To carry out its tasks, where it may seek assistance from any person, authority, or body to provide guidance and support in its work.

In the context of reviewing requests for amended building permits and the settlement conformity certificates, the competent single windows are responsible for preparing the requests within the deadlines stipulated in the Executive Decree No 15-19, which outlines the procedures for preparing and delivering the urban planning contracts. This deadline is 15 days from the date the file is sent by the committee responsible for processing the settlement requests, in order to issue its final decision regarding these requests.

The granting of the single windows the authority to prepare the settlement requests embodies the principle of transparency, considering the diverse composition that characterizes these windows and the representation of various relevant administrative interests, where all files submitted for settlement are presented to all members, allowing them the discretionary power to accept requests when the conditions are met or reject them[27].

4- Final Verification Phase of the Settlement Requests:

After the completion of the single windows specialized in preparing files within the legally specified deadlines, which the circular No 01 of 2022 has mandated the relevant authorities to strictly adhere to, they issue their decision regarding these files, which may be: an opinion approval, an opinion approval with reservations, or an opinion of rejection, where the consequences resulting from the decision of the single windows vary depending on the nature of the opinion issued. In all cases, the applicant is informed by the president of the municipal people's assembly within a maximum period of 8 days starting from the date they are notified of the decision by the single window[28].

A- If the Single Window Decision Includes an Opinion of Approval:

The specialized single window can take a decision that includes an opinion approving the settlement request submitted by the concerned party, and the president of the municipal assembly is responsible for notifying the applicant within the legally specified deadlines. In this case, the applicant must approach the municipal treasury services to pay the due fine for a receipt, and both Executive Decree No 22-55 and Ministerial Circular No 01 of 2022 outline how to calculate this fine.

-The settlement fine is calculated based on a percentage ranging from 10% to 25% of the value determined for the added or modified parts of the building, as follows:

- Rural housing and housing constructed in social fragmentations (southern regions and high plateaus) supported by the state: 10%.

-Individual housing and collective housing: 15%.

-Buildings of the investment projects, buildings that accommodate the public, and facilities: 20%.

What is noticeable about these percentages is that they range between 10% and 20% of the value of the added or modified parts, meaning that the determination made by the regulator has not reached the maximum limit stipulated in the Article 113 of the Finance Bill of 2017, which is 25%. This is intended to reduce the amount of the fine in a way that encourages and motivates those concerned to regularize the status of their buildings.

Ministerial Circular No 1 for the year 2022 serves as a practical guide for the relevant authorities to determine the amount of the fine due for the settlement, starting from the valuation of the part of the finished building or the under construction that is subject to the contravention, based on the value of one square meter.

When the settlement fine is paid, the urban planning services of the municipality will prepare the decision containing the conformity certificate for all types of buildings, which will be signed by the president of the municipal people's assembly if the building has been accomplished according to the model annexed to the Executive Decree No 22-55 in order to standardize the formats of these decisions at the national level.

If the building is under construction, the urban planning services of the authority that issued the original building permit are responsible for preparing the amended building permit for settlement, and the included decision is issued by this authority, which may be- according to the Article 49 of the Executive Decree No 15-19, as amended and supplemented- the President of the Municipal People's assembly, the delegated wali, the wali, or the minister in charge of the urban planning, in accordance with the model annexed to Executive Decree No 22-55.

The decision contained the amended building permit specifies a validity period for this permit, which constitutes deadlines for completing the construction, and Failure to complete the construction within these deadlines will cancel the amended building permit. However, in an effort to simplify and facilitate the settlement procedures, the organizer has allowed for the resumption and the continuation of works after the expiration of the permit validity, after submitting a new request for a building permit to obtain a compulsory building permit, where a new permit will be issued without a new study, on the condition that the rehabilitation and compensation provisions are not changed contrary to this renewal, and the additional works are complied with the amended building permit[29].

The decisions regarding the amended building permits and conformity certificates will be delivered to their owners within a maximum of eight days from the date of the delivery payment of the fineto the municipality[30].

B- If the Single Window Decision Includes an Opinion of Approval with reservations:

The preparation card issued by the committee responsible for processing settlement requests may include reservations that have been observed and set a deadline for addressing them, where in this case, the decision of the single window includes an approval accompanied by these reservations.

The applicant for the settlement is granted a deadline to address these reservations. Both Executive Decree No 22-55 and Ministerial Circular No 01 of 2022 do not specify the deadline granted to the applicant, despite the consequences of the non-addressing of reservations, which is the rejection of the settlement request. However, this is justified by granting the committee discretionary power to determine the necessary deadline for addressing the reservations based on the type of buildings and the nature of the reservations that have been observed.

It should be noted that closing some non-adjustable holes and demolishing parts of the non-adjustable building, may constitute reservations expressed by the committee responsible for processing settlement requests, which are not included in the calculation of the fine amount. As well as its lifting and inspection will result the granting of an amended building permit and a conformity certificate for settlement, provided that the other conditions are met.

If the reservations are lifted by the applicant for the settlement, and after the settlement committee's inspection, the due fine is paid to the municipal treasury in exchange for a receipt of the fine payment. In this case, an administrative decision including the amended building permit or the decision including the conformity certificate for the settlement is prepared and it is signed and communicated to the applicant within a maximum period of 8 days.

C- If the Single Window Decision Includes an Opinion of Rejection:

After examining and preparing the file and reviewing the preparation card prepared by the settlement committee, the single window can issue a decision to reject the settlement request, provided that this decision is justified.

The Executive Decree No 22-55 allows the applicant, whose request for settlement has been rejected to file an appeal against this decision, referring to the provisions of the Executive Decree No15-19, which defines the procedures for preparing and delivering construction contracts. By referring to the provisions and examining the articles 62 and 69 of the amended and supplemented Executive Decree No 15-19, it is clear that a building permit applicant who is not satisfied with the notified reply, or he did not receive a response to his request within the legally specified deadlines , can submit an administrative appeal and file a legal action either after submitting the administrative appeal or independently of it.

It is noted that the Executive Decree No 22-55 has mentioned a single case for the administrative or judicial appeal, which is "expressing an opinion to reject the request for settlement." While the assigned Executive Decree No 15-19, has outlined two cases: the case of rejecting the request and the silence of the relevant administration about the request within the specified deadline.

This indicates the legislator's desire to commit the relevant administrative bodies to adjudicate on these requests; otherwise, it would be considered an abuse of power that warrants an appeal against their actions, where the importance of this obligation lies in pushing the competent authority to examine and process requests for the settlement of buildings that do not comply with the building permit within the legally specified deadlines, in order to avoid delaying the interests of citizens seeking settlement and to encourage settlement initiatives[31].

Nevertheless, it is possible to generalize the application of these provisions to the case of the rejection of a settlement request under the Executive Decree No 22-55, based on the general rules in administrative decisions, which stipulate that the silence of the administration within the specified deadlinesis considered an implicit decision of rejection[32]. This was established by the Administrative Chamber of the Supreme Court in a decision issued on February 10, 1990[33].

- Administrative Appeal:

The applicant may file an administrative appeal when his request to settle buildings that violate the building permit is rejected. However, the Executive Decree No 15-19, as amended in 2020 under the Executive Decree No 20-342[34], stipulated that the administrative appeal against the decision to refuse building permit and appeal against decision to deny the conformity certificate could only be made at one level, rather than two levels.

- Administrative Appeal against the Decision to Deny the Amended Building Permit:

According to the provisions of Article 62 of the Executive Decree No 15-19, the applicant for the settlement of a building under construction that does not comply with the issued building permit, and who has received a rejection of their request; can file an appeal with the province or the Administrative district for provinces where the administrative districts have been established. Additionally, the appeal may be submitted to the ministry responsible for the urban planning if the building permit was issued by that ministry.

The regulator has required that the province, the administrative district, or the ministry responsible for the urban planning respond to the appeal with justification within 15 days from the date of filing the appeal. In this context, an important issue arises: the ministerial circular No 01 of 2022 has confirmed the exclusive authority of the urban planning services of the municipality to prepare the compliance certificates for all types of buildings, to sign and to deliver them by the president of the municipal assembly. While, the amended building permit is prepared by the relevant urban planning services and is signed and delivered by the authorized bodies that grant building permits, which may include the president of the municipal assembly, the delegated wali, the wali, or the minister responsible for the urban planning: doesn't the filing an appeal before these bodies undermine the seriousness and the value of such appeals?

- Administrative Appeal against the Decision to Deny the Conformity Certificate for Settlement:

If the applicant of the compliance certificate dissatisfied with the notified response or the silence of the competent authority regarding the response within the required deadlines, he canfile an appeal with the province – according to the provisions of the Article 69 of the Executive Decree No 15-19, as amended and supplemented-

While concerning the provinces that have established administrative districts; the appeal should be filed with these districts, and in this case, these bodies are obliged to provide a justified response within 15 days from the date of filing the appeal[35].

- Judicial Appeal:

The applicant of settlement has the right to file an appeal against the competent administrative authority due to its silence in responding to his request within the legally specified deadlines or its rejection of his request without a legitimate justification.

In this case, the administrative judiciary intervenes as a supervisory authority over the administration actions in the field of permits and construction certificates, in order to assess the administration adherence to the provisions of the law and the legality of the decisions it takes in the area of the urban planning and construction[36].

The Executive Decree No 15-19 has stipulated judicial appeals independently of the administrative ones, which confirms that the appellant can resort to file an appeal either after submitting an administrative appeal and dissatisfies the outcome, or he can file the appeal directly without submitting any administrative appeal, as the regulator has deemed the latter optional by using the term "may."

Conclusion:

The Executive Decree No 22-55 is a legal text arranged in a series of legal texts aimed to find solutions and measures to eliminate that Algeria's reconstructionchaos, or at least to reduce its severity through the motivated and non-crippling conditions and procedures it established, besides the introduction of the urban planning contracts that address the practical issues arising from the nonconforming construction that to the building permits.

Through the present study, we reached a series of conclusions, including:

- The Executive Decree No 22-55 includes the incentive measures to encourage settlement initiatives by simplifying the content of the file and shortening the deadlines for its study and processing, as well as avoiding excessive estimates of the settlement fine.

- Although the regulator has required the owners of the nonconforming buildings to the issued building permit to initiate requests for settlement, it has not imposed any penalties for failing to do so.

-The Executive Decree No 22-55 –pursuant to the Finance Bill of 2017- established the amended building permit as a settlement mechanism that allows for the legalization of additions and modifications to buildings that do not comply with the issued building permit.

- It also introduced the conformity certificate as a settlement mechanism through which the subsequent decision complies with the finished building, including amendments or additions, with the issued building permit- In order to complete the settlement; the organizer obliged the applicant of the settlement to pay a legally specified fine without maximum limit, stipulated in the Finance Bill of 2017, to alleviate the burden on those concerned with the settlement. As well as the exclusion of a category of the nonconforming buildings to the building permit issued, which subject to specific contraventions from the settlement process.

-The Executive Decree No 22-55 did not specify deadlines for submitting settlement requests, merely requiring that these buildings must be finished or be under construction before its publication in the official journal.- The Executive

Decree No 22-55 relies the on electronic means for submitting and registering settlement requests and files at the municipal urban planning services and at the committee responsible for processing settlement requests. However, it did not recognize this means for other procedures.

Based on the reached conclusions, a set of suggestions can be offered**:**

-Although the Executive Decree No 22-55 includes important measures for regularizing the legal status of the nonconforming buildings to the building permits, this still insufficient, and requires imposing penalties for failing to submit a settlement request.

- The need for the activities of public awareness to educate them about the importance of this legal text to settle the status of their buildings, which might be in this situation for several years.

Referrals and References:

[1] - Law No 90-29 dated on December1, 1990, related to the Rehabilitation and compensation, OJAR No52, issued on February 2, 1990, amended and supplemented.

[2] - Law No 08-15 dated on July20, 2008, determines the rules for conformity and completion of buildings, OJARNo44, issued on August 03, 2008.

[3]- Executive Decree No 15-19 dated on December25, 2015, determines the modalities for preparation and delivery the constructions contracts, OJAR No 07, issued on February12, 2015, amended and supplemented.

[4] - Article No 63 of the constitutional amendment of 2020 issued according the presidential decree No 20-442 dated on December 30, 2020 concerning the constitutional decree issuance, approved in the referendum on November 1, 2020 in the Official Journal of the Algerian Republic, OJAR issued 82, issued on December 30, 2020 confirms that The state is obligated to ensure that citizens have access to housing. In contrast, the Article 34/02 of the same law emphasizes that rights and freedoms can only be restricted by law and for reasons related to the preservation of public order...

[5] - Executive Decree No 22-55 dated on February 02, 2022, determines the conditions to settle the nonconforming buildings to the issued construction permit, OJAR No 09, issued on February 03, 2022.

[6] - Law No 16-14 dated on December 28, 2016, including Financial Bill of 2017, OJAR No 77, issued on December12, 2016.

[7] - For more details on the causes of the urban chaos, see: ABDISH Layla, 2022, Urban Control: A Mechanism for Achieving Sustainable Development, PhD Thesis, Faculty of Law and Political Sciences, University of Tizi Ouzou, Algeria, p63-114.

[8] - Law No 21-16 dated on December 30, 2021, including Financial Bill of 2022, OJAR No 100, issued on December 30, 2021.

[9] - DJAROUNI Faiza, BETINA Malika, 2018, Measures to Settle the Non-conforming Buildings under Law No 15-08, Journal of Law and Political Sciences, Vol 09, Issue 03, p 03, Algeria.

[10] - MAHZOUL Aissa, 2014, Powers of the President of the Municipal People's Assembly in the Field of Urbanization, Djoussour(bridges) for Publishing and distribution, Algeria, p 180.

[11] - AZRI Azzayn, 2005, Individual Urban Decisions and Methods of Appeal,Dar Elfadjr(dawn house) for Publishing and distribution,Egypt, p 13.

[12] - DROBENKO Bernard, Urban Law, 3rd edition, Gualino editor, EYP, paris, France, 2006, p 217.

[13] - JACQUOT Henri, PRIET François, Urban Law, 3rdedition, Dalloz, paris, France, 1998, p 191.

[14] - Article 21 of Law No 15-08, determines Building conformity and completion rules.

[15] - ARBI Bey Yazid, 2014-2015, Urban Control: Construction Strategy under the Algerian Rehabilitation and Compensation Law, Sciences PhD, Faculty of Law and Political Sciences, University of Batna, Algeria, p 231.

[16] - LAOUAR Badra, 2016, The Role of the Developed Reconstruction Contracts in the Promotion of Algerian Urban Public Order, Jurisprudence Journal, Vol 08, Issue 17, p 134, Algeria.

[17] - See the decision model containing the amended building permit as a settlement annexed to Executive Decree No 22-55.

[18] - Circular No 01 issued by the Minister in charge of Housing, Urban Planning, and the City, dated on March 18, 2022 , concerning the implementation of the provisions and regulations of the Executive Decree No 22-55, dated on February 02, 2022, which defines the conditions for regularizing buildings that do not comply with the issued building permit.

[19] - Ministerial Circular No 01 of 2022.

[20] - Ben DOUHA Aissa, 2014, Legal Restrictions on the Construction Process, Journal of Law and Political Science, Vol 01, Issue 02, p 34, Algeria.

[21] - Ministerial Circular No 01 of 2022.

[22] - Article 06 of Executive Decree No 22-55, determines conditions for regularizing buildings that do not comply with the issued building permit.

[23] - The legislator used the phrase (File Study Card) in the Arabic text of Article 07 of Executive Decree No 22-55. However, in the French text of the same article, the phrase 'la fiche d'instruction' was used, which means 'Instruction Sheet,' and it is the correct term.

[24] - For example, Law No 08-15, which defines the rules for the compliance and completion of buildings, granted the district committee a period of 3 months from the notification date by the President of the Municipal People's Assembly to decide on the feasibility of the request for compliance.

[25] - Article 11 of Executive Decree No 22-55.

[26] - Al-AIFAOUI Karima, 2022, Settlement of Buildings that do not Comply with the Issued Building Permit According to the Executive Decree No 22-55, Journal of Legal and Political Thought, Vol 06, Issue 02, p 587, Algeria.

[27] - BELOUL Fahima, 2022, Single window: A New Mechanism for Preparing and Issuing the Urban Planning Contracts, The Academic Journal of Legal Research., Vol 17, Issue 01, p 371, Algeria.

[28] - Article 18 of the Executive Decree No 22-55.

[29] - Article 05 of the amended building permit model annexed to the Executive Decree No 22-55.

[30] - Article 19 of the Executive Decree No 22-55.

[31] - HADJOUJ Kalthoum, 2018, Control of Urban Planning Permits and Certificates in Algerian Legislation, Sciences PhD Thesis, Faculty of Law and Political Science, University of TiziOuzou, Algeria, p 100.

[32] - Mohamed Faouzi NOUIJI, MANSOUR Mohamed Ahmed, Administrative Law, second part: Administrative Activity, Al-Ma'arif Printing House, Egypt, pp 200, 201.

[33] - Decision No 62040 issued on February 02,1990, citing: Qazati Yasmin, 2016, The Penal Dispute Resulting from Construction without a Permit, Dar Houma, Algeria, p 57.

[34] - Executive Decree No 20-342 dated on November 22, 2020, amending and supplementing Executive Decree No 15-19 dated on January 25, 2015, which defines the procedures for preparing and issuing urban planning contracts, OJAR, No 71, issued on December 02, 2020.

[35] - Article 69 of Executive Decree No 15-19, which defines the procedures for preparing and issuing urban planning contracts, as amended and supplemented.

[36] - BELDJILALI Khaled, BELDJILALI Nour El Huda, 2022, The Role of Administrative Judiciary in Balancing the Necessity of Preserving Urban Order and the Right to Build, Journal of Urban Planning and Construction, Vol 05, Issues 02 and 03, p 78, Algeria.