Urban Public Order Between the Classical Concept and the Consolidation of the Aesthetic Dimension in Algerian Legislation

Sofiane ZELMAT *

University of Mascara – Algeria
sofiane.zelmat@univ-mascara.dz

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Abstract: This research examines the evolution of the concept of urban public order in Algerian legislation, highlighting its transition from its traditional form based on public security, public health, and public tranquility to a broader concept that incorporates the aesthetic dimension as a modern public interest imposed by urban and social transformations. Administrative intervention in the field of spatial planning and urban development is no longer limited to the prevention of risks; it has also come to aim at protecting the urban landscape, preserving architectural identity, and ensuring the quality of the living environment.

The study demonstrates that the establishment of aesthetic public order has not been achieved through a single legislative text, but rather through an integrated legal framework led by the Law on Spatial Planning and Urban Development and its planning instruments, supported by other related statutes such as the Framework Law on the City, the Law on the Protection of Cultural Heritage, the Law on the Management of Green Spaces, and the Law on Regional Planning and Sustainable Development. This legislative plurality confirms the unity of the concept of urban public order despite the diversity of its sources, and highlights the transformation of the role of the state from mere preventive regulation to the construction of a balanced, harmonious, and aesthetically pleasing city within the framework of sustainable development.

Keywords: Urban Public Order; Aesthetic Public Order; Urban Planning; Spatial Planning and Urban Development

***Corresponding author: Sofiane ZELMAT.**

Introduction:

Urban development has become one of the most prominent fields of administrative intervention in the modern state, given the intertwined challenges it raises concerning the safety of individuals, their health, comfort, and quality of living environment, as well as the preservation of architectural identity and urban harmony. In this context, the concept of urban public order has emerged as a comprehensive legal framework aimed at regulating urban activity and organizing construction operations and land use, by reconciling individuals' freedom to dispose of their real estate property with the requirements of the public interest.

Historically, administrative intervention in the urban field was based on the traditional concept of public order, founded on the elements of public security, public health, and public tranquility, as fundamental pillars justifying the restrictions imposed on urban activity, particularly in light of the potential risks it poses to public safety, the health of residents, and their stability. However, the urban and social transformations experienced by Algerian cities, accompanied by rapid urban expansion and imbalances within the urban fabric, have revealed the limitations of this traditional concept in encompassing all the requirements of modern urban regulation.

In response to these developments, the Algerian legislator, influenced by comparative doctrinal and judicial developments, moved toward broadening the scope of public order in the urban field by incorporating new considerations that extend beyond the preventive functional dimension to include aesthetic, environmental, and heritage aspects. This evolution has established what is known as aesthetic public order as a functional and developmental extension of classical public order. This approach has been embodied through an integrated legislative framework which, alongside the Law on Spatial Planning and Urban Development, includes a set of statutes relating to the city, urban heritage, green spaces, regional planning, and sustainable development.

Based on this, the present study raises the following main research question:

To what extent has Algerian legislation preserved the elements of classical public order in the field of spatial planning and urban development, while simultaneously contributing to the consolidation of the aesthetic dimension as a modern form of public order aimed at protecting the urban landscape and the quality of the living environment?

Several subsidiary questions stem from this main issue, including:

– How are the elements of public security, public health, and public tranquility reflected in the rules governing spatial planning and urban development?

– What is meant by aesthetic public order, and what is its legal basis within Algerian legislation?

– How do the various legislative texts complement one another in serving the concept of urban public order in its modern sense?

In order to address this problem, the descriptive analytical method has been adopted through the analysis of legal and regulatory texts related to spatial planning and urban development, in conjunction with relevant doctrinal interpretations. The deductive method

has also been employed to identify the manifestations of the establishment of aesthetic public order within the various urban and environmental legislations.

Accordingly, the study is structured into two main sections:

– **The first section** is devoted to examining classical public order in the field of spatial planning and urban development, by clarifying the role of public security, public health, and public tranquility as the historical and functional foundations of administrative intervention in urban affairs.

– **The second section** addresses modern public order in the field of spatial planning and urban development by establishing the concept of aesthetic public order, explaining its legal basis within Algerian legislation, and highlighting the unity of the concept of urban public order despite the diversity of its legislative sources.

Section I: Classical Public Order in the Field of Spatial Planning and Urban Development

Classical public order, embodied in public security, public health, and public tranquility, constitutes the traditional framework upon which the administration has relied to justify its intervention across various areas of administrative regulation. However, the specific nature of spatial planning and urban development requires an important methodological observation: these elements are not presented as independent objectives but are instead employed as historical and functional foundations for organizing urban space and regulating construction activities and land use.

Although the Algerian legislator did not explicitly refer to public order within the Law on Spatial Planning and Urban Development, its substance has nonetheless been established through a set of mandatory rules aimed at protecting the fundamental interests of society, foremost among them safety, health, and the well-being of residents. Consequently, classical public order represents a necessary starting point for understanding the evolution of urban regulatory control.

First: Public Security in the Field of Spatial Planning and Urban Development

Given the multiple risks inherent in urban activity that may affect the safety of individuals and property, the legislator has deemed it necessary to subject spatial planning and urban development operations to precise legal regulations, foremost among which is the principle of safeguarding public security as one of the fundamental bases for administrative intervention in this field.

1. The Concept of Public Security and Its Administrative Basis

Public security refers to the set of measures adopted by the administration to protect individuals and their property from dangers and accidents, whether actual or potential, through the adoption of preventive mechanisms that anticipate risks before they occur[1]. In this sense, public security falls within the administrative function of the state, representing one of the traditional pillars that justify administrative intervention in various fields of administrative

[1] Ammar Boudiaf, Administrative Law: Part One – The Administrative System, University Press Office, Algiers, 2009, p. 31 et seq.

regulation, particularly in the area of spatial planning and urban development, given the potential risks inherent in urban activity that may affect public safety.

2. The Institutionalization of the Preventive Dimension of Public Security in Urban Legislation

The Algerian legislator has reinforced the protection of public security in the field of spatial planning and urban development by subjecting construction and subdivision activities to a set of mandatory rules that enable the administration to refuse the granting of building or subdivision permits whenever constructions, by virtue of their location, size, or intended use, are likely to undermine public security[2]. Some of the principal manifestations of this preventive approach include, in particular, the following:

– Prohibiting construction on land exposed to natural hazards such as floods, erosion, landslides, or subsidence, unless the specific construction regulations applicable to such areas are respected, based on technical studies conducted by the competent authorities[3].

– Refusing to grant building permits for residential buildings or building complexes that do not meet the required accessibility conditions or lack the necessary access routes that would allow effective intervention by civil protection services, particularly in firefighting operations.

– The possibility of refusing to grant building permits for buildings or building complexes that are not served by public or private roads, or that do not provide adequate access conditions and approach routes enabling effective intervention by civil protection services, particularly in firefighting situations. Such permits may also be refused when access points pose a risk to the safety of road users or to users of the surrounding area in general[4]. In order to enhance the safety of road users and residents, the legislator has required the observance of specific safety distances between buildings and road axes, which vary according to the nature and use of the construction[5].

– The obligation to ensure the rapid drainage of rainwater without stagnation in order to prevent the severe damages that may result from flooding, as demonstrated by practical experience in Algeria, particularly during the Bab El Oued floods of 2001[6].

– The requirement to comply with general urban planning regulations and construction standards applicable to seismic zones as part of the prevention of natural hazards[7].

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[2] Article 02 of Executive Decree No. 91-175 dated May 28, 1991, defining the general rules of planning, urban development, and construction, Official Journal No. 26, June 1, 1991, amended and supplemented.

[3] Article 03 of Executive Decree No. 91-175, supra.

[4] Id., Article 08.

[5] Id., Article 10.

[6] Id., Article 17; The article stipulates the effective drainage of rainwater to prevent stagnation or accumulation, by requiring that courtyard surfaces be sufficiently sloped and engineered according to a geometric design that allows for rapid water runoff. This regulation aims to avert serious risks that may result from slow water flow within drainage channels or their blockage, which could lead to material and human damage reaching the level of natural disasters. A striking example is the Bab El Oued floods in Algiers on November 10, 2001, which caused more than nine hundred deaths and disappearances, thereby highlighting the direct impact of violating planning and urban development rules on public safety.

[7] Following the Boumerdes earthquake in 2003, Executive Decree No. 03-324 dated October 10, 2003, concerning measures for earthquake hazard prevention, was issued, requiring that all projects be submitted for review by the Technical Study Office (CTC) prior to the issuance of a building permit, thereby implementing the

– Subjecting installations intended for professional and industrial use to specific conditions ensuring that polluted waste or harmful emissions are not discharged beyond legally permissible limits, with the possibility of making the granting of a building permit conditional upon the installation of equipment for the treatment of smoke and gases harmful to public health[8].

Second: Public Health in the Field of Spatial Planning and Urban Development

We begin by defining public health and then explain its relationship with spatial planning and urban development.

1 – Definition of Public Health

Public health constitutes one of the fundamental elements of traditional public order, as it aims to protect the health of individuals and ensure decent living conditions by preventing anything that may harm physical integrity or contribute to the spread of diseases. Administrative doctrine has consistently regarded the protection of public health as an essential component of public order due to its close connection with the human right to life and physical safety[9]. This gives the rules governing it a mandatory character that prevails over considerations of individual freedom whenever the two come into conflict[10].

2 – The Relationship Between Public Health and Spatial Planning and Urban Development

Within the framework of the state's administrative function, public health represents a key justification for administrative intervention, particularly in the field of spatial planning and urban development, given the close relationship between housing and urban conditions on the one hand and the health status of the population on the other[11].

In this context, the Algerian legislator has not treated public health as an independent objective but has rather employed it as a preventive element for regulating urban activity and controlling land use and construction. This has been reflected in subjecting construction projects to a set of technical and health-related standards aimed at ensuring adequate ventilation, appropriate lighting, and limiting excessive urban density, in addition to providing sanitation

principle of urban safety; Executive Decree No. 22-55 dated February 2, 2022, concerning the general rules for urban planning and construction standards in seismic areas, Official Journal of the People's Democratic Republic of Algeria, 2022, Article 04.

[8] Article 18, Law No. 90-29 dated December 1, 1990, concerning planning and urban development, Official Journal No. 52, December 2, 1990, amended and supplemented; Article 08, Executive Decree No. 91-175 dated May 28, 1991, defining the general rules of planning, urban development, and construction, Official Journal No. 26, June 1, 1991, amended and supplemented, *op. cit.*.

[9] Constitution of the World Health Organization, adopted at the International Health Conference, New York, June 19 – July 22, 1946. The Preamble defines health as: *"a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity,"* and affirms that the enjoyment of the highest attainable standard of health is a fundamental right of every human being without distinction.

[10] Ammar Aouabdi, *Administrative Law*, Part II, University Publications Office, Algeria, 2010, pp. 213–214.

[11] Frijat Ismail, Sabah Hamaiti, "The Role of Local Administrative Control in Protecting Public Health Order," *Journal of Jurisprudential and Judicial Studies*, Vol. 7, No. 2, December 31, 2021, p. 197.

networks and water drainage systems, thereby preventing the emergence of unhealthy urban environments[12].

The protection of public health in the Law on Spatial Planning and Urban Development can be illustrated through several practical applications, including the following:

A – The Role of Spatial Planning and Urban Development Instruments in Promoting Public Health

Spatial planning instruments, particularly the Master Plan for Spatial Planning and Urban Development (PDAU) and the Land Use Plan (POS), constitute among the most important legal mechanisms adopted by the legislator to achieve this objective. These instruments enable the administration to regulate the distribution of urban structures, determine land occupation ratios and building heights, and separate residential areas from zones designated for industrial or polluting activities[13]. This regulatory framework aims to prevent urban overcrowding and its negative consequences on public health, such as poor ventilation, the spread of humidity, and the deterioration of sanitary living conditions.

The urban reality in Algeria further confirms the importance of this health dimension. Certain informal residential settlements—commonly referred to as unauthorized or informal housing—developed outside the legal framework of spatial planning and urban development, have produced serious health problems due to the lack of ventilation, inadequate drainage systems, and the overlap of land uses. This situation justifies administrative intervention not only from a regulatory perspective but also from the standpoint of protecting public health as an essential element of public order[14].

B – Preventive Regulation Through Building Permits

The legislator's concern for the protection of public health is also reflected in granting the administration the authority to refuse building permits whenever the proposed project is likely to undermine sanitary conditions, whether due to its location, nature, or intended use. This reflects the preventive character of urban regulatory control[15]. This concern also extends to installations intended for professional or industrial use, which the legislator requires to be designed and constructed according to standards that prevent the emission of harmful gases or the discharge of polluting waste that could affect the health of residents[16].

It can therefore be concluded that public health, although traditionally considered an element of public order, has played a pivotal role in expanding the scope of administrative intervention in urban matters and has paved the way, alongside public security, for the transition

[12] Abdelkader Addou, *Planning and Urban Development Law*, Houma Publishing and Distribution, Algeria, 2016, p. 87.
[13] Articles relating to planning and development instruments from Law No. 90-29 dated December 1, 1990, concerning planning and urban development, Official Journal No. 52, December 2, 1990, amended and supplemented: – *PDAU*, Articles 16 et seq. – *POS*, Articles 31 et seq.
[14] Boulamiz Hussein, Sadeq Qarfiya, "Regularization of Informal Housing in Tebessa under Law 15-08: Reality and Challenges after a Decade of Implementation," *Algerian Journal of Human Security*, 2022, p. 22.
[15] Article 02 of Executive Decree No. 91-175 concerning the general rules of planning and urban development, Official Journal No. 26, May 29, 1991.
[16] Article 18 of Executive Decree No. 91-175, *op. cit.*; Article 08 of Law No. 90-29, *op. cit.*.

toward modern considerations of public order, including the quality of the living environment and the aesthetic dimension of urban space.

Third: Public Tranquility in the Field of Spatial Planning and Urban Development

Administrative intervention in the field of spatial planning and urban development is not limited to protecting the physical safety and security of individuals; it also extends to ensuring public tranquility as one of the traditional elements of public order. Unregulated urban activities may generate disturbances that affect the comfort and peace of residents, thereby justifying their subjection to legal rules aimed at achieving a balance between the requirements of urban development and the right of individuals to live in a calm and stable environment.

1 – Definition of Public Tranquility as an Element of Public Order

Public tranquility constitutes one of the traditional elements of public order alongside security and health. It refers to the state of calm and stability that should prevail within society, ensuring that individuals can enjoy psychological and physical comfort free from all forms of abnormal disturbance or nuisance, whether originating from individuals, activities, or the improper organization of urban space[17].

Public tranquility also falls within the preventive function of administrative policing, since its protection does not require the actual occurrence of a disturbance. The mere likelihood of affecting public calm is sufficient to justify administrative intervention and the adoption of necessary measures to prevent it[18].

2 – The Relationship Between Public Tranquility and Spatial Planning and Urban Development

Public tranquility holds particular importance in the field of spatial planning and urban development, given that unbalanced urban organization, overlapping land uses within the urban fabric, or the absence of prior planning may generate permanent sources of disturbance that affect the comfort and stability of residents.

Spatial planning and urban development do not aim solely at organizing space from a physical perspective; they also seek **to improve the living environment and ensure appropriate housing conditions**. This makes public tranquility one of the fundamental considerations guiding administrative intervention in this field[19].

Accordingly, regulating urban land uses, determining residential, professional, and industrial zones, and maintaining functional coherence within the city are all legal mechanisms that contribute indirectly to the protection of public tranquility.

Article 04 of Executive Decree No. 91-175 constitutes one of the clearest legislative applications for the protection of public tranquility in the field of spatial planning and urban development. It authorizes the administration to refuse or restrict a building permit when the location of the construction is likely to expose it to serious harm, particularly that resulting from

[17] Ammar Boudiaf, *Concise Administrative Law*, Dar Jusoor for Publishing and Distribution, Algeria, 2010, p.81.
[18] Ammar Aouabdi, *op. cit*, p. 211.
[19] Mohamed El-Saghir Baali, *Planning and Urban Development Law*, Houma Publishing House, Algeria, 2014, p. 101.

noise. This provision reflects the legislator's awareness of noise disturbance as a form of disruption to public tranquility and confirms the preventive nature of administrative intervention in urban matters by enabling authorities to act before actual damage occurs[20].

Accordingly, the protection of public tranquility within the Law on Spatial Planning and Urban Development is manifested through several practical applications, including the following:

A – Refusal of Building Permits Due to the Nature of Use

The administration may refuse to grant a building permit when the proposed project, by virtue of its location within a residential area, is likely to expose the building or its surroundings to serious disturbances caused by noise, particularly when the intended use involves industrial, professional, or commercial activities incompatible with the residential character of the area. Noise, traffic congestion, or continuous disturbance resulting from such uses constitute an infringement of public tranquility as a fundamental element of public order[21]. This refusal is based on Article 04 of Executive Decree No. 91-175, which authorizes the administration to refuse or restrict a building permit when the location of the construction may expose it to serious harm, especially that caused by noise.

For example, an application for a building permit may be considered incompatible with the residential character of a neighborhood when the permit is requested for the construction of an industrial workshop, a storage facility, or a large commercial establishment within a residential district. In such cases, the administration assesses whether the project may produce negative effects on the urban environment, such as excessive noise, traffic congestion, or frequent truck movement that would disturb the public tranquility of residents[22]. On this basis, a decision is made either to grant or to refuse the building permit.

B – Separation of Urban Land Uses

The adoption of urban planning instruments, particularly the Master Plan for Spatial Planning and Urban Development (PDAU) and the Land Use Plan (POS), contributes to organizing urban space in a manner that ensures a rational distribution of activities within the urban fabric, thereby limiting the overlap between disturbing activities and residential areas[23].

This prior planning reduces sources of noise, congestion, and disturbance generated by industrial, professional, or commercial activities. Consequently, it positively contributes to public tranquility and ensures the stability of residents' daily life, reflecting the preventive character of urban regulatory control in the field of spatial planning and urban development. This includes rules requiring buildings to be constructed as far as possible from highways and other major traffic routes[24].

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[20] Article 04 of Executive Decree No. 91-175, *op. cit.*.

[21] Ammar Boudiaf, *Concise Administrative Law*, *op. cit*, p. 89.

[22] Executive Decree No. 93-184 dated July 27, 1993, concerning maximum limits of noise emissions, Official Journal No. 50, July 27, 1993.

[23] *Considering that the plans aim to regulate land use, allocate urban functions (residential, industrial, commercial, services, etc.), and control urban expansion; Articles 16 to 33 of Law No. 90-29 (urban planning instruments).*

[24] Article 10 of Executive Decree No. 91-175, *op. cit.*

Section 2: Modern Public Order in the Field of Spatial Planning and Urban Development

The concept of public order in the urban field has undergone significant development. Initially, it was limited to the protection of public security, public health, and public tranquility through regulatory rules aimed at preventing material risks and ensuring the safety of individuals and property. Among the most prominent of these rules are the prohibition of construction in areas exposed to natural hazards, the requirement to respect safe distances from public roads, and the regulation of building density, sanitation networks, and ventilation in order to safeguard public health[25].

With the urban and social transformations experienced in Algeria, the limitations of traditional public order in ensuring quality of life became apparent. It thus became necessary to pay attention to the aesthetic dimension of the urban environment and urban harmony. This development led to the emergence of the idea of modern public order, often referred to as aesthetic public order, which aims to protect the general appearance of urban spaces, improve the quality of the living environment, and preserve architectural and urban heritage. This concept represents a functional extension of traditional public order and reflects the preventive and regulatory role of urban administration[26].

This new concept reflects the need for construction and development activities to conform to urban planning and its instruments in order to address distortions and imbalances in the urban environment. In this context, the Algerian legislator has established an integrated legal framework regulating the rules of spatial planning and urban development. The legislator has adopted a clear legal system defining the planning instruments that must be followed, particularly through the Master Plan for Spatial Planning and Urban Development (PDAU) and the Land Use Plan (POS), accompanied by a system of permits and urban planning certificates issued by the competent administrative authorities. In addition, other laws have been enacted with the objective of preserving aesthetic public order. The manifestations of this development will be examined and analyzed through the following elements:

First: The Concept of Aesthetic Public Order

The idea of aesthetic public order appeared early in French administrative doctrine, which considered the preservation of beauty, elegance, and aesthetic harmony as elements falling within the scope of public order, thereby justifying the adoption of regulatory and preventive measures by administrative authorities to protect them. However, this doctrinal position did not enjoy unanimous support, as a scholarly debate emerged regarding whether administrative intervention to protect urban beauty must necessarily coincide with one of the traditional elements of public order (security, health, or tranquility), or whether it constitutes an independent element within the modern concept of public order. We will first examine the foundations of aesthetic public order before addressing its definition.

1 – Foundations of the Concept of Aesthetic Public Order

[25] Articles 02, 10, and 17, Executive Decree No. 91-175, op. cit

[26] Tebina Hakim, "The Role of Urban Police in Preserving Aesthetic Public Order," Arab Journal for Research and Studies in the Humanities and Social Sciences, Vol. 12, No. 4, October 2020. p. 171.

In order to establish the legal foundations of aesthetic public order and demonstrate its legitimacy, it is necessary to examine the positions of both legal doctrine and jurisprudence regarding this concept[27], as they collectively contributed to the gradual transition from the traditional concept of public order to its modern form linked to the quality of the living environment and urban aesthetics.

A – The Position of Legal Doctrine on Aesthetic Public Order

Administrative legal doctrine, particularly in France, was the first to raise the issue of preserving the beauty of cities and the general aesthetic appearance of urban spaces, and whether this objective could be considered a public interest justifying the intervention of administrative police authorities. This issue generated a clear doctrinal debate, in which scholars were divided into two main trends.

The first trend adopted a restrictive approach linking aesthetic considerations to the traditional elements of public order. According to this view, aesthetic considerations must coincide with one of the traditional elements of public order—security, health, or tranquility. Proponents of this approach argue that beauty is, in itself, a relative and subjective value that cannot rise to the level of an imperative public interest unless it is supported by objective considerations related to the protection of traditional public order[28].

Supporters of this view often cite the example of requiring the owner of an abandoned plot of land to enclose it with a fence. Such a measure is not justified solely by the desire to preserve aesthetic appearance, but also by the need to prevent the dispersal of dust and waste by the wind, which could result in environmental pollution harmful to public health. In this case, the aesthetic consideration coincides with a health-related element of public order[29].

The second trend, which has gained increasing support in modern French doctrine, recognizes the independence of aesthetic considerations as a modern element of public order. According to this view, preserving the beauty of cities, streets, and public spaces falls within the core responsibilities of the contemporary state.

Advocates of this perspective argue that the responsibility of administrative authorities is not limited to protecting the lives and physical safety of individuals, but also extends to safeguarding their feelings, psychological comfort, and the collective sense of urban harmony[30].

[27] We address the concept in French doctrine and jurisprudence, as they were the first to introduce it.
[28] Maurice Hauriou, *Précis of Administrative Law and Public Law*, Sirey, Paris (classic edition), p. 510.
[29] Jean Rivero, *Administrative Law*, Dalloz, Paris, p. 389.
[30] Georges Vedel, *Administrative Law*, Volume I, Dalloz, Paris, 1994, p. 421.

Recognition of Aesthetic Public Order in Legal Doctrine

With the evolution of the concept of public order and the changing role of the state, the majority of French legal doctrine has come to recognize the preservation of aesthetic appearance and urban harmony as part of the elements of public order. According to this view, harm to aesthetic values and the general appearance of urban spaces can be as harmful as material disturbances, as it threatens social order itself. This is particularly relevant given that the modern state is no longer merely a policing state but rather seeks to ensure quality of life and improve the living environment[31].

B – The Position of the Judiciary on Aesthetic Public Order

French administrative jurisprudence has followed this doctrinal evolution and has affirmed the concept of aesthetic public order in its case law, particularly in the decision of the French Council of State delivered on 3 June 1936 in the Renault Factories case.

In this case, a prefect issued a regulatory order prohibiting the distribution of advertisements and leaflets on public roads in order to prevent them from being discarded after reading, which would disfigure the appearance of streets and public gardens. A professional association challenged this order, arguing that the administrative authority had exceeded the legitimate objectives of administrative policing.

However, the Council of State rejected the challenge and upheld the legality of the regulation, affirming that the protection of the aesthetic appearance of streets and public spaces falls within the objectives of administrative policing. The court confirmed that the competent authorities have the power to adopt regulatory measures aimed at preserving the beauty of public spaces[32].

This decision is considered one of the foundational rulings that established the principle of recognizing aesthetic considerations as an element of public order and paved the way for the expansion of administrative intervention in urban matters based on aesthetic grounds[33].

2 – Definition of Aesthetic Public Order

Aesthetic public order refers to the modern dimension of public order aimed at protecting the general appearance of urban spaces and ensuring the harmony of the urban landscape and the quality of the living environment. It is achieved through the regulation of the external aspects of buildings and the use of urban spaces in a manner that preserves the aesthetic character of cities and safeguards architectural and urban heritage.

This form of public order represents a functional extension of traditional public order and reflects the transformation of administrative policing from merely preventing material risks to protecting shared aesthetic values as an element of the public interest and a factor contributing to social stability and urban balance[34].

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[31] Roger Bonnard, *Public Order in Administrative Law*, Dalloz, Paris, 2001, p. 198.
[32] Conseil d'État (France), June 3, 1936, *Syndicat des fabricants de papiers et cartons de Paris v. Préfet de la Seine* (known as the Renault case), *Recueil Lebon*, 1936, p. 541.
[33] Hakim Tabina, *The Role of Urban Police in Preserving Public Aesthetic Order*, *Arab Journal of Research and Studies in Human and Social Sciences*, Vol. 12, No. 4, October 2020, p. 171.
[34] Georges Vedel, *op. cit.*, p. 421; Jean Rivero, *op. cit.*, Paris, p. 390.

Second: The Legal Basis of Aesthetic Public Order in Algerian Legislation

Aesthetic public order in Algerian legislation constitutes a functional extension of traditional public order. It aims to protect the general appearance of the city and ensure the harmony of buildings with their urban surroundings through several fundamental dimensions:

1 – The General Appearance and Urban Landscape

The Algerian legislator has given particular attention to the protection of the general appearance and urban landscape as an element of urban public order by subjecting construction activities to rules intended to ensure the aesthetic harmony of urban space. Articles 16, 17, and 18 of Executive Decree No. 91-175 require respect for the architectural harmony of buildings, the organization of urban spaces, and the integration of green areas within the urban fabric in a manner that guarantees a balance between built structures and open spaces and limits visual disorder[35].

Legal doctrine confirms in this regard that the protection of the general appearance and the urban landscape represents a modern extension of the concept of public order, and that spatial planning and urban development regulations constitute a legal instrument for regulating the aesthetic standards of urban space. Any alteration of the urban landscape is therefore considered an infringement upon a collective public interest that justifies administrative intervention for its protection[36].

2 – The Environment and the Quality of the Living Environment

Urban planning is not merely a process of organizing construction but also a means of protecting the environment. Article 3 of Law No. 90-29 states that one of the objectives of spatial planning is the "protection of the environment and surroundings." Furthermore, Law No. 03-10 of 2003 on environmental protection within the framework of sustainable development requires the preparation of an environmental impact assessment for any urban project likely to have environmental effects[37].

Legal doctrine therefore considers that modern spatial planning embodies the proactive intervention of the state aimed at limiting the negative impacts of urban expansion on the natural environment. This is achieved through the integration of environmental considerations into urban planning instruments, such as master plans and land use plans, and by requiring prior environmental assessments before authorizing major urban development projects. Consequently, the environmental function of spatial planning represents one of the principal manifestations of the incorporation of the concept of sustainable development into urban legislation, thereby guaranteeing the right of present and future generations to a healthy environment[38].

[35] Executive Decree No. 91-175, establishing the general rules of planning and urban development, *op. cit.*, Articles 16, 17, and 18.
[36] Ammar Aouabdi, *op. cit.*, p. 233.
[37] Article 2 of Law No. 03-10 dated July 19, 2003, relating to environmental protection within the framework of sustainable development, Official Journal No. 43, July 20, 2003.
[38] Ammar Boudiaf, *The Legal System of Planning and Urban Development in Algeria*, *op. cit.*, p. 78.

3 – Urban Heritage and Visual Identity

The Algerian legislator has recognized the protection of urban heritage and the visual identity of cities as fundamental pillars of urban public order with an aesthetic dimension. This is achieved by subjecting urban projects to prior administrative oversight. Article 69 of Law No. 90-29[39] on Spatial Planning and Urban Development requires consultation with the competent authorities before undertaking any construction or demolition that may affect natural, historical, or cultural heritage. This approach strengthens the protection of urban heritage and ensures the compatibility of new buildings with the aesthetic and cultural characteristics of the surrounding urban environment, thereby preserving the visual identity of cities. This protection is further reinforced by the provisions of Law No. 98-04 relating to the protection of cultural heritage, particularly with regard to protected sectors and historical monuments[40].

In this context, legal doctrine maintains that the protection of urban heritage constitutes a legal mechanism for safeguarding the visual identity of the city. Taking heritage considerations into account in modern development projects does not represent an unjustified restriction on the right to build but rather expresses a public interest aimed at preserving the urban memory and ensuring the continuity of the civilizational character of Algerian cities[41].

Third: The Unity of the Concept of Urban Public Order and the Diversity of Its Legislative Sources

In its modern conception, urban public order is no longer limited to the regulatory rules governing construction and land use contained in the Law on Spatial Planning and Urban Development (Law No. 90-29). Rather, it has become a complex concept encompassing functional, environmental, aesthetic, and social dimensions. Consequently, reducing urban public order to a single legislative text would strip it of its true substance, particularly since the Algerian legislator itself has adopted an integrated legislative approach through which the protection of urban public order is distributed across several specialized laws.

Thus, the establishment of aesthetic public order in Algerian legislation is not confined solely to the provisions of the Law on Spatial Planning and Urban Development and its implementing regulations. Instead, it extends to a broader legal framework reflecting the legislator's awareness of the importance of the aesthetic dimension in achieving urban quality of life and spatial stability. The legislator has therefore enacted a set of specialized legal texts which, alongside urban planning instruments, contribute to protecting the general urban landscape, improving the quality of the living environment, and preserving the architectural and heritage identity of the city. These mechanisms can be examined as follows:

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[39] Article 69 of Planning and Urban Development Law No. 90-29, *op. cit.*, provides that: *"No construction or demolition that may affect the natural, historical, or cultural heritage, or pose a danger, shall be authorized except after consultation with and approval by the competent authorities in this field, in accordance with the laws and regulations in force."*

[40] Law No. 98-04 dated June 15, 1998, relating to the protection of cultural heritage, Official Journal No. 44, issued on June 17, 1998; Articles 42–45.

[41] Afaf Habbah, *The Role of Building Permits in Protecting the Environment and Urban Development*, *Al-Fikr Journal*, University of Biskra, Issue 6, p. 330.

1 – Aesthetic Public Order in the Provisions of the Law on Spatial Planning and Urban Development

The consolidation of aesthetic public order in Algerian legislation is primarily embodied in the provisions of Law No. 90-29 on Spatial Planning and Urban Development and its implementing regulations, which constitute the principal legal framework governing urban space and regulating land use and construction. Legislative intervention in this field is not limited to safeguarding public security, health, and tranquility but also extends to aesthetic considerations aimed at protecting the general urban appearance, ensuring architectural harmony, and limiting visual disorder within urban environments.

In this context, the Algerian legislator has established a set of rules and restrictions subjecting construction and urban development activities to prior administrative supervision. These requirements impose respect for the architectural and urban characteristics of the surrounding environment, particularly in areas possessing aesthetic, historical, or cultural value. Such measures ensure the protection of the city's visual identity and reinforce the aesthetic dimension as a component of urban public order[42].

However, the effective protection of aesthetic public order is not achieved solely through general abstract rules; it is primarily realized through urban planning mechanisms, which constitute the practical and preventive tools for regulating urban space and guiding its development in a harmonious and balanced manner. Within this framework, urban planning schemes occupy a central role, particularly the Master Plan for Spatial Planning and Urban Development (PDAU) and the Land Use Plan (POS), which represent the primary legal instruments relied upon by the legislator to ensure compliance with aesthetic and architectural considerations in development and construction activities. Accordingly, this section focuses on the role of these two plans in preserving aesthetic public order.

A – The Master Plan for Spatial Planning and Urban Development (PDAU)

The Master Plan for Spatial Planning and Urban Development (PDAU) is a strategic planning instrument designed to define the general orientations for the development of urban space at the level of a municipality or a group of municipalities over the medium and long term. It does not merely regulate land use from a functional perspective; it also establishes a general framework that integrates the aesthetic, environmental, and urban dimensions of the city[43].

Within this framework, the PDAU contributes to the consolidation of aesthetic public order by defining the general structure of the urban fabric, identifying areas designated for urban expansion, protecting natural and green spaces, and determining the locations of major facilities and principal urban axes. This ensures the harmony of the urban landscape and maintains a balance between built structures and open spaces. Furthermore, the PDAU helps

[42] Yazid Abdelkader, *"The Extent to Which Planning and Urban Development Tools Contribute to Protecting Public Aesthetic Order in Algeria"*, *Journal of Urban Planning and Construction*, Vol. 2, No. 5, 2018, pp. 69–70.
[43] Article 16 of Law No. 90-29, as amended and supplemented, *op. cit.*

prevent uncontrolled urban expansion, which often leads to the deterioration of the general urban appearance and the loss of the city's architectural identity[44].

Accordingly, the PDAU constitutes the general framework upon which other detailed planning instruments are based and serves as a fundamental pillar of aesthetic public order through its preventive role in directing urban development toward respect for aesthetic harmony and rational spatial organization.

B – The Land Use Plan (POS)

The Land Use Plan (POS) represents the most precise operational instrument in the field of urban planning, translating the general orientations of the Master Plan for Spatial Planning and Urban Development into detailed and binding regulations directly applicable to construction, subdivision, and land use activities[45].

The POS plays a central role in consolidating aesthetic public order through the detailed rules it establishes regarding construction methods. These include determining building heights, land occupation ratios, setback distances, the nature of façades, and the requirement to respect the prevailing architectural character, in addition to regulating green areas and public open spaces. These rules constitute an effective legal mechanism for limiting visual distortions and ensuring the integration of new constructions with the existing urban environment[46].

Moreover, the Land Use Plan serves as an essential reference for administrative authorities when examining applications for building permits, enabling them to exercise effective control over the compliance of proposed projects with aesthetic and urban considerations. The administration may therefore refuse any project likely to harm the general urban appearance or undermine aesthetic public order. In this way, the POS plays a pivotal role as a practical mechanism for implementing aesthetic public order in reality[47].

2 – Legislative Integration Between the Law on Spatial Planning and Urban Development and Related Legislation

The establishment of aesthetic public order in Algerian legislation does not rely solely on the provisions of the Law on Spatial Planning and Urban Development and its implementing regulations. Rather, it forms part of a comprehensive legislative framework reflecting the legislator's awareness of the importance of the aesthetic dimension in regulating urban space and improving quality of life. The legislator has enacted specialized legal texts that, alongside urban planning instruments, contribute to protecting the general urban landscape, enhancing the living environment, and safeguarding the architectural and heritage identity of cities.

Consequently, the protection of urban space is no longer merely a matter of technical regulation of construction; it has become a comprehensive legal function aimed at achieving balance, harmony, and sustainability within the urban environment. This development is

[44] Mansour Mejaji, *Planning and Urban Development Tools as a Means of Urban Planning, Journal of Research and Scientific Studies*, University of Dr. Yahia Fares, Médéa, Issue 2, 2008, pp. 13–14.
[45] Articles 17 and 18 of Law No. 90-29, as amended and supplemented, *op. cit.*
[46] Mansour Mejaji, *op. cit.*, p. 16.
[47] *Ibid.*, p. 17

reflected in the multiplicity of laws governing this field and their integration in serving aesthetic public order. The most significant of these laws include the following:

A – Law No. 04-11 on Urban Promotion

This law constitutes a natural extension of the Law on Spatial Planning and Urban Development. It does not merely regulate land use but also aims to improve the quality of the built environment by requiring urban renewal and urban promotion operations to consider the aesthetic quality of the urban surroundings and the comfort of users. In this way, it clearly reflects the aesthetic and social dimension of urban public order[48].

B – Law No. 98-04 on the Protection of Cultural Heritage

Law No. 98-04 concerning the protection of cultural heritage provides for the protection of historical monuments and safeguarded sectors[49], allowing the administration to impose prior supervision over any urban intervention within these areas. Consequently, preserving visual harmony and the urban identity of the city becomes a legal obligation, and any infringement upon historical monuments or protected sectors constitutes a violation of aesthetic public order. This law therefore establishes a legal framework capable of preventing visual distortions and uncontrolled urban expansion while affirming aesthetic public order as a protected public interest.

C – Law No. 06-07 on the Management of Green Spaces

Law No. 06-07 relating to the management of green spaces constitutes a legal instrument for protecting aesthetic public order in cities[50]. This law contributes to urban public order from both environmental and aesthetic perspectives by making the integration of green spaces an essential requirement for maintaining the harmony of the urban fabric and ensuring balance between built structures and open spaces. It also enables the administration to exercise effective oversight over any urban intervention that may affect these spaces, thereby limiting uncontrolled expansion and guaranteeing the quality of the living environment and the visual identity of the city.

D – Law No. 06-06 Containing the Framework Law on the City

Law No. 06-06, which establishes the Framework Law on the City, provides a legal framework aimed at transforming the city from a mere urban agglomeration into a space for collective living[51]. This law establishes fundamental principles of urban and aesthetic public order, including urban harmony, improvement of the city's image, and the guarantee of the right to a balanced and aesthetically pleasing city.

It allows the administration to organize urban planning according to these principles, including the distribution of built structures and open spaces, the integration of green areas, and

[48] Article 08 of Law No. 11-04 dated February 17, 2011), the law defining the rules governing real estate development activity, Official Journal No. 14, issued on March 6, 2011; it required urban renewal operations to ensure *"the aesthetic quality of the built environment and the improvement of user comfort."*
[49] Law No. 98-04 relating to the protection of cultural heritage, *op. cit.*; in particular Articles 8, 23, and 38–43.
[50] Law No. 06-07 dated January 15, 2006, concerning the management of green spaces within cities, Official Journal No. 31, issued May 13, 2007; in particular Articles 2 and 14–23.
[51] Article 2 of Law No. 06-06 dated February 20, 2006, establishing the City Orientation Law, Official Journal No. 15, issued March 12, 2006.

the preservation of architectural and urban identity[52]. The law also encourages the participation of residents in projects aimed at improving the living environment, thereby reinforcing aesthetic considerations in urban decision-making and consolidating aesthetic public order as a protected public interest.

E – Law No. 01-20 on Spatial Planning and Sustainable Development

Law No. 01-20 of 12 December 2001 on spatial planning and sustainable development represents the first Algerian legislative text establishing the national policy for regional planning in accordance with the principles of sustainable development and defining the guiding rules for comprehensive and balanced development of the national territory[53].

This law does not focus solely on the optimal distribution of population and economic activities but also integrates environmental and aesthetic considerations into territorial planning, thereby providing aesthetic public order with strategic and legal foundations at the level of the entire territory.

Unlike the Law on Spatial Planning and Urban Development, which regulates urban interventions at the municipal level, Law No. 01-20 generalizes this policy at the national territorial level. It establishes the framework for preparing the National Spatial Planning and Sustainable Development Scheme (SNAT), which guides the balance between different regions and ensures the integration of economic, environmental, and social considerations[54]. Among the principal objectives that can be derived from this law are:

• Protecting the environment and natural elements, thereby contributing to the creation of harmonious urban spaces free from visual distortion.

• Achieving balanced development among regions through the management of different land uses, ensuring the coherence of the urban structure and the integration of green spaces and open areas within the urban fabric.

• Regulating urban expansion and directing it toward sustainable development so that it does not occur at the expense of the aesthetic character and visual identity of urban and rural environments.

In this way, aesthetic public order becomes one of the mechanisms for protecting the urban environment at the regional level, as aesthetic principles are translated into planning policies applicable within official development plans. This reflects the transition of the legislator from local regulation toward a strategic vision aimed at integrating urban development with environmental sustainability.

Conclusion:

This study concludes that the concept of urban public order in Algerian legislation is no longer a rigid notion in its traditional form, but has undergone a qualitative evolution imposed

[52] *Ibid.*, Article 17, concerning citizen participation in urban planning and the improvement of living environments

[53] Law No. 01-20 dated December 12, 2001, relating to regional planning and sustainable development, Official Journal No. 77, issued December 15, 2001.

[54] *Ibid.*, Article 3, which defines the objectives of the national policy for regional planning and sustainable development, and establishes the integration of environmental and urban considerations into regional planning.

by urban, social, and environmental transformations. Initially, administrative intervention in the field of planning and development relied on the classical elements of public order—public security, public health, and public tranquility—as the functional basis for justifying restrictions on freedom of construction and land use. The Algerian legislator indirectly enshrined this through the rules of planning and development law and its complementary regulations, thereby ensuring the preventive nature of urban administrative control.

However, the limitations of this traditional framework in addressing contemporary urban issues—such as the distortion of the urban landscape, the deterioration of public scenery, and the loss of architectural identity—led to an expanded meaning of urban public order by incorporating the aesthetic dimension as a modern element complementing the traditional ones. This reflects the shift in the role of the administration from merely preventing material risks to achieving quality of living environments and urban harmony.

The study also demonstrated that the establishment of aesthetic public order was not achieved through a single text, but rather through an integrated legislative system, spearheaded by planning and development rules and their planning instruments, alongside other related laws. This reflects the unity of the idea of urban public order despite the multiplicity of its sources, and confirms that aesthetic public order has become a legally protected public interest that justifies administrative intervention on objective and legal grounds.

Based on the findings, this study recommends the following:

1. Explicitly incorporating the aesthetic dimension of urban public order within the planning and development law, thereby providing greater conceptual clarity and legal certainty for administrative intervention in this field.
2. Strengthening the binding nature of architectural aesthetic rules contained in planning and development instruments, and linking them to effective monitoring mechanisms that ensure compliance in practice.
3. Working towards the unification and coordination of legal texts related to urbanism and urban aesthetics, in order to avoid fragmentation of provisions and conflicts of jurisdiction among different administrative bodies.
4. Supporting the training of administrative and technical staff responsible for evaluating urban projects, enabling them to assess the aesthetic and architectural dimensions of projects on scientific and objective grounds.
5. Encouraging citizen and civil society participation in protecting the urban landscape, since aesthetic public order is not achieved solely through legal regulation, but also through the establishment of a shared urban and aesthetic culture.