

Demolition Between the Administrative Penalty and the Licensing System in Algerian Legislation

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Received :18/05/2024

Accepted :10/10/2024

Published:31/12/2024

Abstract :

The Algerian legislator has incorporated the demolition process into construction contracts. When examining the demolition process in this framework, it is necessary to analyze it through two perspectives. The first perspective focuses on how the demolition system is handled when an administrative decision is issued. This decision is typically issued as an administrative sanction by the competent administrative authorities, specifically targeting the demolition of a particular building by the competent administrative authorities. The second aspect includes the treatment of the demolition system in the context of the building owner obtaining a license to exercise his guaranteed legal right after submitting an application before the competent administrative authorities.

Keywords : Administrative sanction; demolition; administrative decision; removal; rural development.

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1. Introduction:

The examination of the demolition law in the Algerian Planning and Construction Law no: 90/29 of December 01, 1990 and its associated regulations, particularly Executive Decree No. 15/19 of January 25, 2015, necessitates the division of the study into two aspects. The first aspect deals with the handling of demolition violations when an administrative decision is issued, specifically when the competent administrative authorities issue an administrative sanction that entails the demolition of a specific building. The second aspect addresses the treatment of demolition violations in cases where the building owner obtains a license after submitting an application to the competent administrative authorities.

In this context, the guarantee aimed at respecting the rules of demolition must be reconciled with respecting the building rules within the framework of the rights granted to the applicant of the building permit. In the event of a violation of the terms of the permit, the competent administrative authorities can impose an administrative sanction on the citizen by issuing a decision that includes the demolition of the building.

On this basis, the substantive treatment of the demolition law between the administrative penalty and the licensing law in Algerian legislation requires us to address the rules for handing over the building license and the extent to which the applicant respects the building rules, in order to be able to address the demolition process as a guaranteed and legitimate right for its owner on the one hand, and on the other hand to address the demolition process as an administrative penalty imposed by the competent administrative authorities. Given the above-mentioned statement, addressing the subject of our research requires us to raise the following issues:

What are the legal bases established by the Algerian legislature to transform the demolition process from a legitimate and guaranteed right of the applicant to an administrative sanction imposed by the competent administration?

The research topic necessitates the use of the analytical method, which involves analyzing legal texts to determine their adequacy or inadequacy. Additionally, it requires analyzing jurisprudential opinions and reconciling them with the legal texts to arrive at the desired results and recommendations of this research.

The descriptive technique will include providing a detailed account of all legal provisions pertaining to the study topic of the demolition process. Additionally, it will involve examining the legislative approach used by the Algerian legislator in addressing the demolition process.

In order to answer the question at hand, we address the topic of our research by dividing it into two axes:

The first axis focuses on the regulatory requirements for obtaining a demolition license as a legitimate entitlement of the owner. The second axis encompasses the demolition decision as an administrative penalty imposed by the administration on an individual who violates the legal regulations imposed on them in the building permit.

2. Regulatory provisions of the demolition permit as a legitimate right of the applicant:

Understanding the regulatory provisions of the demolition permit as a legitimate right of the applicant necessitates delving into the concept of the permit itself, outlining its characteristics and its scope of application (the first requirement). Next, we will delve into the legal measures imposed by the legislator on the administrative authorities responsible for enforcing the permit. These

measures ensure that the authorities exercise their control in accordance with the applicable laws and regulations. This is the second requirement.

2.1. Understanding the legal framework for obtaining a demolition license:

Before delving into the legal aspects of the demolition license, it is important to establish its conceptual framework (Section I) and then explore the regulatory controls outlined in Algerian legislation (Section II).

Section I: Understanding the conceptual framework of the demolition license:

In this section, I will discuss the linguistic concept of demolition, define its concept in jurisprudence and terminology, and explore whether it is defined by the Algerian legislator in the Development and Reconstruction Law and its associated regulations.

I: The linguistic concept of demolition:

It refers to the act of destroying, which can be carried out through physical means, such as demolishing a house and similar actions. This is typically done with the individual's consent, or it may be enforced against their will as a consequence of a violation of the law.

[1https://ar.wikipedia.org/wiki/](https://ar.wikipedia.org/wiki/)

II: The terminological concept of the demolition license:

Certain legal interpretations describe a demolition license as an administrative decision granted by a competent authority, allowing the recipient to fully or partially dismantle a building that is classified or undergoing classification. (Azri El-Zein, 2005).

Others describe it as a regulatory permit that is applied to works involving the demolition of a building, either in part or in its entirety, when it becomes unusable (Ben & Hamar Al-Ain, 2020).

III: The legislative concept of the demolition license:

The Algerian legislator regulated the substantive provisions of the demolition license in Chapter 5 of Law 90/29 on Planning and Construction, while the procedures for obtaining and granting it were addressed in Executive Decree No. 91/176 on the procedures for granting and obtaining building, retail, demolition and construction licenses, which was repealed in 2015 by Executive Decree No. 15/19 on construction contracts.

The demolition license lacks clear legislative definitions, as the legislation typically only addresses its application and the procedures for obtaining it. However, it can be described as the administrative decision that authorizes the execution of any work aimed at deconstructing a building or a portion of it (Tounsi, 2018).

In this context, it can be noted that the demolition license is part of the urban licenses. This inclusion was established by Executive Decree 91-176, followed by Executive Decree No. 15-19, and later approved by Law 90-29 in Article 60. Since the demolition license is an administrative decision, it can be legally contested before the appropriate authority. This can involve questioning various aspects of the administrative decision, such as jurisdiction, procedures, form, and other elements specified in the relevant regulations and legislation (Hamdi & Zerrougui, 2013).

It is important to highlight that the President of the Municipal Popular Council has the authority to order the demolition of dilapidated buildings, following the specific procedures outlined in Article 75 et seq. of Executive Decree No. 91-176. This responsibility falls on the municipality to ensure the safety and security of individuals.

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3. Administrative sanctions associated with the demolition permit

In this section, we discuss the concept of the administrative penalty linked to the demolition permit as a valid authority of the competent administrative bodies (the first requirement). Subsequently, we examine the legal procedures mandated by the legislator for issuing a removal decision, which encompasses a broader scope than the term demolition in practice (the second requirement).

First Perquisite: What is an Administrative Sanction?

Administrative sanctions in certain countries have evolved into separate laws that empower administrative authorities to impose penalties, even without infringing upon the principle of separation of powers. The success of administrative sanctions lies in their ability to address two fundamental concepts: gradually reducing the necessity of resorting to the judiciary to resolve certain disputes, and limiting the authority of criminal judges to impose punishments.

Section I: Understanding administrative sanctions

Our study in this requirement focuses on providing a definition of administrative sanctions and establishing the conceptual framework for them. We begin by examining the jurisprudential definition in the first section, followed by the legal definition in the second section.

First: Jurisprudential definition of administrative sanctions

According to Dr. Abdulaziz Khalifa, the administrative sanction is described as a punitive decision made by the administration to address violations of legal obligations or individual decisions made by the public authority. These sanctions are carried out in accordance with the prescribed laws and procedures, with the aim of ensuring that individual activities align with the public interest (Khalifa, 2000).

Eduardo Garcia-Intrea provides a definition of an administrative penalty as the consequence imposed by the administration on an individual due to their unlawful actions (Saad Fouda, 2008).

Regarding the French Constitutional Council, the administrative penalty is described as the penalty imposed by an administrative authority, which utilizes its public authority privileges to accomplish its objectives while considering the legal provisions for safeguarding constitutionally guaranteed rights and freedoms (Saad Fouda, 2008).

II: Legal definition of administrative sanction

Administrative sanction is defined: "It is a form of punishment characterized as an alternative methodology to penalties for decriminalization according to criminal law in the field of criminal policy with regard to crimes of minor gravity, and its follow-up by the administrative apparatus, which is considered more effective, and this branch of repressive law has developed and has become known as administrative criminal law." (Khalifa, 2000).

Administrative crimes are organizational crimes that fall on administrative systems, and the enforcement of administrative penalties decided by the administration is not limited to countries that operate the administrative penal code system as an independent and codified legal system, as is the case in Germany and Italy, but also other countries that have the authority to determine administrative sanctions without the need to resort to the judiciary, without having an integrated system of administrative crimes, as is the case in France and Algeria (Ghannam, 1994).

Section II: Advantages of Administrative Sanctions

Since administrative sanctions are considered a new idea, this makes them enjoy several features that distinguish them from others, which are represented in the two characteristics of generality in the first section, and the feature of deterrence in the second section.

1. The general characteristic of administrative sanctions

The administrative sanction is characterized by generality, meaning that it is not limited to a specific category of citizens, but rather the authority of the administration extends by signing it on all individuals who violate the legal text and those addressed to it, or the decision related to them, as its signing does not depend on a special bond or a specific relationship between the administration and the individuals subject to it. The imposition of the penalty is not linked to the penalized person's affiliation with a specific entity, as in the case of contractual penalties, or his entry into a certain class, such as disciplinary penalties, which presuppose the existence of a functional relationship between the violator and the administration.

2. Deterrence in administrative sanctions

In this characteristic, we note that there is an overlap between the administrative sanction and the criminal sanction because both are characterized by the characteristic of deterrence and restraint that falls on all non-criminal or criminal behavior, and the behavior that is the result of an attack on an interest protected by the law, regardless of its nature (Al-Shawa, 1996).

Section II: Procedures for issuing a removal decision

By reviewing Articles 76 bis 3, 76 bis 4 and 76 bis 5 of Law No. 90-29, as amended and supplemented, we note that the legislator strengthened the role of the administrative authority in the case of building construction without a license by giving it the power to issue a demolition decision without the need to obtain a ruling from the criminal judiciary, unlike the case of building construction that does not meet the specifications of the building permit, where the power to demolish as a deterrent measure remained with the criminal judiciary, which is a kind of retreat from the direct enforcement authority that became available to the administration after the amendment of the Development and Construction Law under Law No. 04-05.

In order for the administration (the municipality as a general principle) to issue a removal (demolition) decision as a deterrent administrative measure without resorting to the judiciary, the following legal procedures must be followed:

First requirement: Inspection procedure

This is the inspection stipulated in Articles 73, 76 bis 2 and 76 bis 3 of Law No. 90-29, as amended and supplemented, provided that this inspection must be included and formulated in a report drawn up by legally qualified officers. In the case of construction without a license, the legally qualified officer must draw up a violation report and send it to the president of the municipal people's council and the competent governor within a period not exceeding 72 hours (Article 76 bis 4) so that the administration can take appropriate preventive action, although the previous article clarifies that this procedure is carried out subject to criminal follow-up, and we wonder who implements this follow-up based on the inspection report?

With reference to the provisions of Article 17 of Executive Decree No. 06-55, we note that it did not remedy the matter and merely repeated the same provisions of Article 76 bis 4. As long as the aforementioned articles do not stipulate how to contact the public prosecutor in the case of construction without a license, what is practically applied is that the qualified officer sends the

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violation report with a dispatch schedule signed by the president of the concerned municipal popular council to the competent judicial authority to decide on criminal prosecution.

Second requirement: Taking preventive measures

After proving the existence of the violation by means of an inspection report, the administration must take preventive measures by ordering the cessation of the violating works or ordering correction and conformity and communicating it to the owner of the violating building.

Section I: Order to stop the offending construction work:

This procedure is one of the measures and procedures taken by the administrative authority in order to stop the works that violate the law, regulation and the content of the building permit issued to the builder, and the fact that this type of procedures and measures fall at the same time in the system of subsequent and continuous control, as they intervene in the period of time between the start of construction work and before its completion, with the aim of putting an end to the errors and violations committed before they become worse and correcting what cannot be easily corrected with an acceptable technical result if the entire construction project is implemented and is therefore a precautionary preventive measure, which was clarified by the last phrase of Article 2/50 of the Municipality "It is also an order to stop the works". This means that the taking of such a measure by the administrative authority has become optional, so that it proceeds directly to the other measure, which is the order to achieve conformity, as it becomes a matter of fact that the inspection report of the violation committed by the builder includes an explicit or implicit order to suspend the violating works or the part of them that violates the law and building permit, to reconsider them again and make them conform to the applicable law and regulations and the specifications of the building permit granted (This is despite the fact that Law No. 90-29, as amended and supplemented, does not explicitly provide for the suspension of works, unlike the situation before the amendment (Article 76) and Legislative Decree No. 94-07 in its repealed Articles 52 and 53, as well as Law No. 08-15, which in turn referred to the procedure for stopping offending construction works in Articles 3/24 and 1/73), to be followed by another deterrent measure, which is the decision to administratively demolish the violating building without having to resort to the judiciary (Azari, 2007), which is understood from the provisions Articles 76 bis 2 and 76 bis 3 of Law No. 90-29 on Planning and Urbanization, as amended and supplemented.

Section II: Correction and conformity order

The order to correct and achieve conformity is defined as clearing the building of defects that occurred during implementation and making it conform to the provisions of the building law and the specifications of the building permit granted, but not on the initiative of the project owner himself who holds the building permit as is the case when requesting a certificate of conformity, but at the instigation and order of the administrative authority as an administrative control authority, entrusted by the legislator with the task of ensuring the proper application of the laws regulating construction, and in particular working to ensure that the completed construction works are in accordance with the content of the building permit as a legal document regulating a specific case, namely the exercise of the right of construction by a specific person on a specific property or land plot in a specific time and in a specific area and time. "When the beneficiary of the license does not file the declaration of completion of the works according to the conditions and within the required time limits, in the absence of which the date of completion of the works can be based on the expected completion date in the building license, a conformity process shall be conducted at the initiative of the President of the Municipal People's Council."

Article 76 bis 2 of Law No. 90-29, as amended and supplemented, stipulates that upon inspection of the violation, the legally qualified officer shall draw up a report containing the facts of the violation, as well as the statements received from the violator.

The violation report is signed by the qualified officer and the violator, and if the violator refuses to sign, this is recorded in the report. In all cases, the report remains valid until proven otherwise.

Article 76 bis 3 of the same law adds: The violation shall result, depending on the case, in either conforming the completed building or demolishing it.

If the owner of the violating building continues the inspected works in violation of the order to stop them or refuses and refuses to fulfill the ordered conformity, the administration takes the deterrent measure of demolition, i.e. removal.

Section III: Issuance of the removal decision (demolition as a deterrent measure)

When the owner of the violating building continues the works despite the issuance of a conformity order or when they are completed without a building permit, the administrative authority represented by the president of the Municipal People's Council is legally authorized to issue a demolition decision within (8) days starting from the date of receipt of the report of the violation, without the need to resort to the judiciary, as he has original jurisdiction in the matter of taking the decision to demolish illegal buildings as a punitive deterrent measure.

If this eight-day period expires without issuing a demolition decision due to the negligence of the president of the Municipal People's Council, the regionally competent governor must replace him by issuing the said demolition decision within a period not exceeding thirty (30) days, this is one of the cases in which the governor replaces the president of the Municipal People's Council with the force of law, in addition to the cases stipulated in the municipal law when it concerns a subject related to public order in one of its traditional and modern forms and manifestations, especially the maintenance of the security and safety of individuals from the dangers posed by illegal construction.

Not only that, but the demolition work, as an effect or physical manifestation of the demolition decision, is carried out by the municipal authorities, and in the absence of their presence, the implementation is carried out by means harnessed by the governor, all at the expense of the violator, so that the head of the municipal popular council can collect the demolition costs by all legal methods, including administrative seizure, provided that the violator issued against him has the right to oppose this decision and challenge it before the competent judicial authority," the Algerian State Council affirmed in its decisions.

The Algerian Council of State has confirmed in several decisions issued by it the authority of the administration to demolish a building built without a building permit after the administration has taken the legally required measures to stop it or correct the defects and shortcomings of the building without resorting to a judicial decision, although initially the Council of State did not prevent the head of the municipal popular council from demanding judicial demolition, as stated in its decision dated 2005/10/18 as follows:" While the law empowers the mayor to demolish works carried out in violation of the building and construction law without recourse to the judiciary, it does not prevent him from claiming this judicially as long as he respects all legally prescribed procedures in the field of inspecting violations of the rules of architecture and construction."

However, the Council of State soon reversed this trend in subsequent decisions, arguing that the power to demolish informal buildings is a power granted by law to the administration as part of its administrative control and preservation powers, and as a result, the judge must refrain from

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responding to the administration's requests, which must use its powers and not delegate them to other bodies.

According to Articles 76 bis 4 and 76 bis 5 of Law No. 90-29, as amended and supplemented, the administrative judiciary has not become competent to consider such disputes, since demolition decisions in the case of buildings built without a license or in the event that the building does not conform to the license are the prerogative of the president of the municipal people's council or the governor of the state in case the former does not carry out the demolition process.

Conclusion

In conclusion, after thoroughly examining the demolition process in Algerian legislation, it becomes evident that the urban legislative system in Algeria encompasses two aspects of the demolition process. The first aspect deals with the demolition system when an administrative decision is issued as a penalty by the competent administrative authorities, specifically targeting the demolition of a particular building. On the other hand, the second aspect focuses on the demolition system within the context of obtaining a license for the building owner. This involves submitting an application to the competent administrative authorities.

After carefully examining the urban policy in Algeria and studying the legal protections in place, it becomes evident that the demolition process and the associated administrative penalties were implemented as part of a lenient urban policy. This means that the penalties, including the demolition of buildings, whether imposed by the administrative judge or as a supplementary penalty by the criminal judge, are consistently enforced. Given the current situation and the history of urban policy in Algeria, there is a concern that implementing administrative sanctions on citizens who reject them could potentially lead to chaos and social issues. This could even result in the state freezing or abolishing these sanctions altogether.

Consequently, the effective enforcement of administrative sanctions for demolishing residential buildings necessitates a series of well-defined and gradual legal mechanisms. These mechanisms should ensure that the implementation of such sanctions is both logical and feasible. Additionally, they should help Algeria's urban policy transition from a lenient approach to a more proactive one, facilitating the execution of administrative decisions that involve demolition as a penalty.

5. References: