

The competence of the urban Police to protect the environment in Algerian legislation

اختصاص شرطة العمران لحماية البيئة في التشريعات الجزائرية

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Abstract:

Contemporary countries at the international level have increased interest in the problems of different urbanism, in view of the seriousness they pose on the ocean and the global environment, as we find Algeria has endeavored to keep pace with these developments as it has established a comprehensive legislative and environmental system, in order to address the various problems of urbanization, and has also established monitoring and field monitoring bodies to protect The Environment and Urbanism, which includes qualified agents to search in various violations of preparation and construction, among them the urban police teams that embody laws in the field and contribute with the rest of the agencies in preserving the environment, where they inspect violations in the field of construction and investigate Lecturer on them, and sent by the competent judicial system in proving sanctions and follow-up of various violations of reconstruction.

Key words : The Urban Planning Police, environment, Administrative control, Environmental responsibility, urban violations.

المخلص:

ازداد اهتمام الدول المعاصرة على المستوى الدولي بمشاكل العمران المختلفة، نظرا للخطورة التي تشكلها على المحيط والبيئة العالمية، كما نجد الجزائر قد سعت لمواكبة هذه التطورات حيث أرست منظومة تشريعية وتنظيمية بيئية شاملة، قصد التصدي لمختلف مشاكل العمران، كما قامت بإنشاء أجهزة المراقبة والمتابعة الميدانية لحماية البيئة والعمران، تضم أعوان مؤهلين للبحث في مختلف مخالفات التهيئة والتعمير، ومن بينها فرق شرطة العمران التي تقوم بتجسيد القوانين ميدانيا والمساهمة مع باقي الأجهزة في المحافظة على البيئة، حيث تقوم بمعاينة المخالفات في مجال العمران وتحرر محاضر بشأنها، وترسلها للجهاز القضائي المختص في إثبات ومتابعة جزاءات مخالفات التعمير المختلفة.

الكلمات المفتاحية: شرطة العمران، البيئة، الضبط الإداري، المخالفات العمرانية، المسؤولية

البيئية.

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Introduction:

Urbanism is considered a cultural aspect in the history of peoples and countries alike, and reflects the extent of development and urbanization of society or not, as the problems of different urbanization reflect the manifestations of underdevelopment of peoples, because the lack of completion of buildings has become the distinctive character of the majority of urban neighborhoods, especially in major cities, in addition to inconsistency in the nature Urban in one place, where we find contiguous buildings between them, some of which are completed consisting of several floors, while others are incomplete, formed from one ground floor, in addition to a phenomenon that has recently spread related to the newly completed buildings, which we find intertwined with the road pavements as it ruins the urban taste of the place and contradicts c All laws and regulations in force in the field of urban development, in addition to the fact that they hinder a lot of movement of people and vehicles in their daily work.

Contemporary countries have increased their international interest in this problem, in an attempt to find solutions to reduce pollution and preserve the environment and the environment together.

We also find that Algeria has endeavored to keep pace with these international developments, with the aim of reducing the severity of pollution and improving the livelihood framework, especially after the economic changes that the country witnessed in the period of the eighties of the last century left it, as Algeria then focused on the industrialization policy and the concentration of economic establishments in major cities, and the resultant From severe rural displacement, which caused numerous environmental problems such as random urban expansion at the expense of agricultural and agricultural lands, as well as the large number of tin homes, the spread of dirt, and various wastes without supervision and tight management.

In order to rectify and reduce these problems, Algeria has moved to establish a comprehensive environmental legislative and regulatory system, based on modern rules inspired by global legal systems, and from various measures approved by international agreements, to which Algeria has organized, in addition to establishing monitoring, follow-up and coordination bodies, and in this regard On the one hand, the Algerian legislator worked to identify qualified agents to search for various violations of development and reconstruction, and on the other hand, the General Directorate of National Security created teams to protect the environment and urbanism, its mission to embody laws in the field, and to contribute with all agencies The other in the preservation of the environment.

Here we raise the following problem: How effective are the powers legally granted to the officers of the urban police to protect the environment in Algeria?

The descriptive and analytical approach was adopted in this study, and the following general division of the plan was adopted.

Section I: Conceptual framework of the Urban Police

A) the concept of the urban police

B) the stages of the development of the urban police

Section II: The field of urban police jurisdiction in controlling urban plans

A) Urban violations related to urban plans

B) Evaluation of records of proving construction and reconstruction violations

Conclusion.

Section I: Conceptual framework of the Urban Police

The protection of the environment and urbanism is a collective responsibility, and the state takes a large part of this responsibility as it is entrusted with providing safety and security for individuals, and therefore it has embodied this in the field by establishing its own body which is the Urban Police, and here the concept of the Urban Police (A- subtitle) will be addressed, then To the stages of the development of the urban Police Service (B- subtitle).

A) the concept of the urban police:

Algeria is experiencing several environmental problems, especially those related to urbanism. All of this has led to the development of new devices and mechanisms that eliminate these life-threatening problems and sustain resources, such as the Urban Police Service. Here, the definition of the Omran Police (the first branch) will be addressed, then to the tasks assigned to this device (the second branch).

1- Definition of the urban Police:

Several definitions have been received regarding the Omran Police, there are those who see it as an executive body that monitors the implementation of legal texts, which make some acts that are harmful to urbanism unlawful, and there are those who see it as a body that works to embody the legal texts of urbanism, and operates according to specific legal procedures¹.

It is derived from the foregoing that the urban police is that of the judicial police, which is entrusted with protecting the urban and environmental fabric, from all kinds of prejudice to it, and deterring illegal exploitation, whether in the

urban or environmental fabric, by applying all legislative and regulatory texts in Urban field.

2- Urban Police Tasks:

The duties of the urban Police include searching for violations committed and provided for by the laws, especially as stipulated in Article 73 of Law 29/29, it includes:

- Monitor the process of digging, demolishing and work that is harmful to health and housing.

- Halting unlawful actions on construction, that is, unauthorized administratively, with the use of public force if necessary, and referring violators to justice.

- Combating illegal urban expansion of all kinds.

- Monitor all changes in the urban fabric, especially the buildings being constructed.

- urban Police units are active in coordination with the competent departments (municipality, wilaya)².

In order for this device to perform its tasks, it is necessary to enable it to acquire technical knowledge through the intensification of training courses for its staff, in order to acquire basic practical knowledge and develop from its field work methods, and this will only be achieved through qualified and trained cadres capable of this sensitive task, as providing Qualified and trained cadres are the mainstay of the various institutions that underlie good governance³.

B) the stages of the development of the urban police:

The Omran Police Service has gone through several stages, in line with the conditions that Algeria was living in at every stage, where we will address the stage of the emergence of the Omran Police to the date of the freezing of its tasks (the first branch), then to the stage of reactivating the Omran police units (second branch).

1- the stage of the formation of the urban police until the freezing of its duties:

With the spread of illegal buildings and illegal housing gatherings above the fuel transmission channels and the electricity network, as well as near the gas and oil fields and next to the gasoline distribution stations, which reflected negatively on the Algerian citizen, which led to serious thinking in establishing an apparatus whose primary mission is to fight the crimes that occur On Urbanism, Here was the beginning of its appearance and its first tasks were, according to the canceled law No. 82/02 of February 06, 1982 related to the building permit and

the retail license for building lands. As an embodiment of it, Resolution No. 5078/83 of the General Directorate of National Security was issued on 05/09/1983⁴, where the urban police worked in 17 states.

However, despite the active role that the urban Police played in controlling the various violations that occurred in the field of urbanism and environmental protection, it froze its duties in 1991, and this is due to the threat that our country was experiencing.

As terrorism has sabotaged housing and public facilities of critical importance, such as schools and hospitals, which has led to the movement of citizens, especially rural residents, from their original residence to other safer and more stable areas, which has led to the widespread phenomenon of tin-structures around Algerian cities. On the one hand, this is on the one hand, and on the other hand, during this period, the urban Police staff were merged into the various security services, to support efforts to address the security situation, and this was one of the most important reasons that led to the freezing of the urban Police and Environment duties.

2- The reactivation phase of the urban Police Units:

In implementation of the instructions of the Ministry of the Interior, the plan to reactivate the Omran Police Units was launched by establishing the first platoon in 1997 in the capital and expanding it in 1999 on all of its departments beginning in April 2000, when these units were reactivated at the level of the major cities of the country: Oran, Constantine, Annaba, and we ended up generalizing these teams on the whole national territory, starting on 14/08/ 2000⁵.

Section II: The field of urban police competence in controlling urban plans

Urban police officers in the field search for and inspect urban violations in accordance with their field of specialization legally defined (A), and accordingly, minutes are written about them and sent to the competent judicial authorities (B).

A) Urban violations related to urban plans:

The Algerian legislator has restricted legislative and regulatory violations in the field of preparation and reconstruction to a set of violations according to which some or all of the obligations of the construction laws and related regulations are ignored⁶, and in which jurisdiction is vested in the urban police.

Here, we will address the urban violations related to the tools of preparation and reconstruction (first branch), then the violations related to the construction contracts (second branch).

1-Urban violations related to the tools of preparation and construction:

In view of the prevalence of construction violations that affect the goals of the state in the field of urbanization, the laws came to regulate the use of lands stipulated under Law No. 90-29 amended and supplemented by Law 04-05⁷, which came up with strict provisions aimed at addressing the phenomenon of continued widespread violations of development and reconstruction, from Through touching on all forms of construction that constitute urban violations, therefore we find two types of violations, some of which relate to the directive scheme (first), and some of which relate to the Land exploitation scheme (second).

1-1 - Violations related to the planning and development guidelines

The Algerian legislator issued a set of laws that came to regulate lands through the tools of construction, especially the scheme of land occupation and the guideline for preparation and reconstruction⁸, but it is often the lack of respect for this scheme in the total of chaotic buildings, which were implemented in a manner contrary to the rules and provisions of this scheme, and among the most important These violations⁹, we find:

1- 1-1- Violation of the project site change:

Article 23 of Law 90-29 stipulates that violations related to changing the project site reflect the lack of respect by the owner of the instructions provided by the plan for preparation and reconstruction, Concerning completion and and transfer of construction to another place in the regional field, and it should be noted that every site of the region It has its own function, as determined by the plan of preparation and reconstruction¹⁰, as the breach of the site is considered to prejudice the protected lands, archaeological, historical, cultural and natural¹¹.

1-1-2- Violations of breaches of easements:

These Easements are divided into public and private Easements.

a) General Easements:

It is divided into general and industrial, Natural general Easements, It is the lands where construction is prohibited in any way, and that was identified within the non-reconstructionable areas¹². The general planning and development guidelines were considered normal public facilities, whether the latter exist within or outside the urban environment, It is present in lands at risk of landslides or floods, or is not solid and have weakly resistant, This ban came in Amendment No. 05/4, which specified the conditions for construction in such areas threatened by natural and technological disasters, and stipulated that these lands should be defined when preparing the preparation and construction tools, As for the general

industrial easements, they are located in the lands designated for the passage of natural gas and water channels for drinking and sanitation and the electricity network..

b) Special Easements:

These are the restrictions on the right of ownership, which stipulate that the owner is obliged to observe some rules, whether related to the public or private interest when using his right, and that he respect in particular the rules governing the right of traffic, and everything related to the right of neighborhood.

1-2 - Violations related to the the land exploitation scheme

And that irregularities related to the land exploitation scheme it is infringement of the framework not built, through the establishment of tin neighborhoods and the seizure of public spaces, or encroachment on the framework constructed by encroaching on the job of the land occupancy plan, by distorting some buildings, especially buildings, as well as seizing Surfaces.

2- Violations related to construction contracts:

Violations related to construction contracts are violations of building and demolition license (first) and violations related to ignoring obligations related to Segmentation license and partition certificat and construction fencing (second).

2-1 - Building and Demolition License Violations: These violations are as follows:

2-1-1- Building without a license:

Building is an administrative decision, granted or rejected, to achieve pre-tribal oversight of construction construction work and to ensure the urban public order ¹³, In view of this importance, the Algerian legislator was keen to make construction conditional on this license.

2-1-2- Non-conformity with the building permit:

Before starting construction work, the Algerian legislator stipulated obtaining a building permit, and upon completion of the works the owner of the project must adhere to the notice of the head of the Municipal People's Assembly, to receive a certificate of conformity of the completed works with the building permit, and the legislator aims from behind all this, to embody The rules of preparation and construction are a tangible material embodiment, and breach of this obligation is a violation according to Article 77 of the Law 90/29 ¹⁴.

2-1-3- Demolishing without a license:

Article 60 of the Law of Preparation and Reconstruction stipulates that (every complete or partial demolition of a building is subject to a demolition permit in the areas referred to in Article 46 above, or when required by technical

or security conditions) and this is stipulated in Article 70 of Executive Decree 15/19 (in application The provisions of Article 60 of Law 90/29). Therefore, breaching this obligation is considered a violation, and it is punishable by Article 77 of the Construction Law.

2-1-4- Failure to perform the declaration and publicity procedures:

Whereas, Article 83 of Executive Decree 15/19 stipulated that the beneficiary of the building permit must notify the head of the Municipal People's Assembly, who is regionally competent, on the date of opening the workshop in exchange for a receipt, in addition to placing a visible sign at the workshop for the purpose of advertising the works¹⁵.

2-2 - Violations related to ignoring obligations related to the segmentation license and the partition and Building fence certificate:

These violations are the implementation of the process of dividing the land without obtaining segmentation license, as well as the process of dividing the building without obtaining prior permission, as well as building a wall around the building without obtaining a license.

2-2-1- Retail Violations: It includes two types of violations:

a) Division of real estate property not built without a segmentation license:

Where Article 57 of the preparation and Reconstruction Law stipulates obtaining a segmentation license in every division, whether in one or more properties, in two or more plots of land, to use this division in the construction of a building, which is an obligation confirmed by Article 07 of Executive Decree 15/19 Therefore, any disregard for this obligation is considered a violation according to Article 77 of Law No. 90/29.

b)The division of real estate not built with a division not in conformity with segmentation license:

This is what is stipulated in Article 77 of the Construction Law, because the lack of conformity with the segmentation license it is ignoring the obligations imposed by this license. This violation is require the licence existence of the segmentation license and its validity.

2-2-2-Violations of the division certificate:

Article 33 of Executive Decree 15/19 stipulates that the division certificate is considered a document stating the conditions for dividing the built property ownership, She signs obligations for whoever seeks her, so the types of breach of the certificate of division are:

a) Dividing real estate property built without a division certificate:

Every division of real estate property built without a division certificate is a breach of an obligation imposed by the Law of Preparation and Construction under Article 59, Also, all division work estate building division works based on an expired division certificate are considered an urban violation.

b) Failure to complete physical barriers around construction and demolition work:

Here construction or demolition work should be adjacent to roads, footpaths, sidewalks, parking spaces, play areas, and public spaces, prior to that, the legitimacy of construction or demolition work is required according to Article 72 of the Construction Law¹⁶.

2-2-3-Fence building:

In the sixth chapter of the Reconstruction Act, entitled "building Fencing", the Algerian legislator mentioned two obligations:

– The necessity of establishing fences in the coastal areas and regions with a natural, historical, and cultural advantage of high and good return must be subject to a work permit delivered by the head of the Municipal People's Assembly or a qualified authority in accordance with the laws and regulations in force¹⁷.

– The necessity of achieving a physical barrier visible separation day and night between the demolition or construction works, between the roads edge, the footpaths of the sidewalks, sidewalks, parking spaces, play areas, and public spaces equipped or not equipped, with the need to maintain these barriers continuously, while ignoring these two obligations constitute two types of violation:

a) Violation of fencing construction without a work permit:

Where it is required for this violation to be the works of erecting the construction fence in specific areas exclusively according to what is stipulated in Article 70 of Law 90/29¹⁸.

b) Violation of non-completion of physical barriers around construction and demolition work:

Construction or demolition work must be adjacent to roads and footpaths, sidewalks, parking spaces, play areas, and public spaces. Prior to that, the legitimacy of construction or demolition work is required in accordance with Article 72 of Construction law¹⁹.

B) Estimating records of proving violations of preparation and reconstruction:

The officers assigned to search and inspect violations of preparation and Reconstruction write the records with certain specifications, It has implications for its editing (the first branch) so that the competent judicial authority that receives these minutes can later estimate its value (the second branch).

1- The effects of editing the records of urban violations:

The urban Police Officer, who is legally competent, shall prepare the minutes of the violation of the preparation and reconstruction, and send it directly to the Republic's competent representative regionally, without delay. This is what was stipulated by the legislator in the text of Article 18 of the Criminal Procedures Law. The report shall be sent within 72 hours to the head of the Municipal People's Assembly and the competent governor, for works that were carried out without a building permit, With regard to a violation of the lack of conformity with the building permit, it is the only violation in which the report is sent to the competent judicial authority, and a copy is sent to the governor and the head of the Municipal People's Assembly who are regionally competent, within a period not exceeding 72 hours, starting from the date of examining the violation, which is the period stipulated in Article 76 bis 5 from Law 29/90 related to the preparation and construction²⁰.

2- Evaluation of the minutes of violations for preparation and construction:

The basic principle in the minutes is that they are taken as a reason for inference unless the law stipulates otherwise, and accordingly, the authenticity of the minutes of violations of preparation and reconstruction varies according to the laws related to them. Article 76 bis 2 in its last paragraph (... in all cases, the record remains valid until the contrary is proven ...)²¹, And some of it is taken as a reasoning, as indicated by Law 4/98, as Article 105 stipulated it without mentioning its value and the extent of its authenticity²², Accordingly, it can be said that the minutes of inspecting the violations of preparation and reconstruction remain correct, especially as they are the only evidence of proof, Provided that it is written by an officer legally qualified aid, shows its quality and signs it from it, and sends it to the competent authority to follow up within the deadlines stipulated by the law, Especially when you are subject to nullity, as is the case with Article 38 of Law 02-02 related to the protection and valuation of the coast²³, It must also be written according to the form specified by the law, if the law specifies a specific model²⁴, as is the case in the records of inspecting

building violations without a license, non-conformance violations, and demolition violations without a license.

Conclusion:

The Algerian legislator has become very concerned with the problems of urbanization and the environment, in order to achieve a balance between urban growth and the preservation and protection of the environment, by adapting the planning and development plans to environmental standards, In order to create a harmonious urban network, that integrates the requirements of urban life and the requirements of environmental protection simultaneously.

After this study, we reached a set of results attached to some suggestions:

Results:

–The Algerian legislator made the laws of preparation and reconstruction regulated by safety, security and health conditions for citizens.

–The Algerian state, with its various powers, provided qualified and authorized agents to apply the rules of urban administrative control, but more than that it introduced the Urban Police Service to organize the construction and urbanization movement, and to prevent all forms of imbalance related to chaotic construction, and the resulting damage to the citizen and the environment together.

–The urban Police Service, as a mechanism for administrative control, faces several shortcomings, foremost of which is the lack of coordination with various technical service, in order to implement well the legislative and regulatory provisions in the field of urbanization.

–Absent the role of the urban police and environmental protection, at the municipal level, although they have a major role in stopping attacks on the environment, whether related to deterring various urban violations, or what is related to some non-urban behaviors that accompany construction work, where the rest of the construction and demolition in the valleys are thrown .

Suggestions:

–We suggest that the urban police report become compulsory, and that its authenticity remains valid until proven otherwise, especially since it is the only supporting evidence, as we propose to unify the legal deadline in which the Prosecutor is informed of these report, Mentioned in the special laws, with what was mentioned in Article 76 bis 5 of Law 90/29 related to the preparation and construction, Consequently. So we propose, for example, to modify article 38, paragraph 02 of law 02/02 relating to the protection and enhancement of the coastline as follows: "... the agent who examined the violation must send the

dossier within a period not exceeding 72 hours to the competent regional prosecutor of the Republic... ". As we suggest amend article 35, paragraph 03 of Law 03/03 relating to extension zones and tourist zones as follows: "... the dossier must be sent to the competent judicial authority within a period not exceeding 72 hours from the day of the survey. " The aim is to provide a legal system, with unified procedures, which will facilitate proper application and speed up the implementation of sanctions for violators, thus strengthening the deterrent side.

– We propose also, that the urban police become, one of the permanent members of the one-stop shop committee, at the municipal level, and we therefore propose to modify article 58, paragraph 01 of executive decree 15/19 of 25/01/2015, which includes definition of the methods of preparation and delivery of construction contracts, as follows: "the one-stop shop is made up..., the regional chief of the urban police, or his representative ... ". so that the urban police participate with the technical service, in monitoring the progress of the building and reconstruction permit surrender process, as well as inspecting the ground in various related violations, in particular during field visits, before precede the issuance of a certificate of compliance building permits, which strengthens the deterrent role and reduces these violations in the future, so as to allow integrated urban and environmental governance.

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