

Towards new environmental ethics that ensure the improvement of environmental conditions in future contracts

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Abstract:

This research paper focuses on the Algerian legislature's strategy aimed at preserving the beauty of cities and enhancing urban development, recognizing it as a crucial aspect of public interest.

It seeks to elucidate the concept of the general aesthetic system concerning the environment and urbanism, while also delving into the influence of building permits and subdivision on the aesthetic quality of the environment and urban spaces. Furthermore, the paper aims to advocate for the integration of aesthetic considerations within urban planning and development initiatives.

Keywords: *aesthetic taste; planning and development tools; environment; urbanism.*

Introduction:

Throughout different ages, societies have sought to develop their communities and protect their identity and essential components for their existence and continuity. As customs, traditions, and patterns of construction and housing are among these components, societies have relied on philosophical and legal ideas to establish principles and foundations for their prosperity and preservation, safeguarding their elements of existence. One of these ideas is the concept of the general order, which represents a set of necessary principles and values for protecting the community and

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ensuring its continuity. However, the flexibility and universality of the concept of the general order, on one hand, and the development of contemporary urban life, on the other hand, have led to the emergence of other interests worthy of protection, represented in the public interest.

One of the modern goals of regulatory authorities is to preserve the general aesthetic order of the environment and urbanism, as it has become one of the prioritized legislative and regulatory areas in the national urban policy of the state. The administrative law has allocated a specialized authority, represented by the urban administrative control authority with the assistance of the urban and environmental police, indicating the legislator's strategy in preserving the beauty of cities and promoting urban development as one of the crucial components of the public interest in the state.

Furthermore, planning and development tools contribute to embodying the aesthetics of the environment and urbanism through the means introduced by the Algerian legislature, indirectly impacting the general aesthetic order.

This research paper aims to shed light on the concept of the general aesthetic order of the environment and urbanism, as well as to explore the reflections of building permits and subdivision on the aesthetic taste of the environment and urbanism. Additionally, it seeks to incorporate the aesthetic dimension of the environment and urbanism within planning and development schemes.

The following plan will be followed to address the following issue: To what extent can planning and development tools contribute to embodying the aesthetic taste of the environment and urbanism.

First: The concept of the general aesthetic order of the environment and urbanism.

1. The emergence of the concept of the general aesthetic order of the environment and urbanism.
2. The content of the concept of the general aesthetic order of the environment and urbanism.

Second: The implications of building permits and subdivision on the aesthetic taste of the environment and urbanism.

1. The role of building permits.
2. The role of subdivision permits.

Third: Incorporating the aesthetic dimension of the environment and urbanism within planning and development schemes.

1. Including the aesthetic dimension of the environment and urbanism in the guiding plan for planning and development.
2. Including the aesthetic dimension of the environment and urbanism in the land occupation plan.

First: The Concept of the General Aesthetic Order of the Environment and Urbanism.

The concept of the general aesthetic system for the environment and urbanism is based on achieving a balance between urban development and environmental protection, as well as the overall beauty of cities and regions. This system aims to achieve integration between the environmental and urban components of societies, ensuring that urban development is organized in a way that preserves natural resources, enhances the quality of human life, and promotes the overall beauty of both the built and natural environment.

1. The Emergence of the concept of the general aesthetic order of the environment and urbanism.

Can be traced back to the ancient existence of human beings. This is evident in the drawings and decorations found in caves and architectural relics of ancient civilizations. Islamic religion encouraged mastery of craftsmanship and its beautification under the responsibility of religious duty. It also emphasized adornment, cleanliness, purity, and the protection of the environment, as well as caring for Islamic aesthetics.

The concept of aesthetics emerged in various aspects of life. However, the interaction with civilizations and the evolution of transportation methods

have influenced the modification of the urban system of the Islamic city and altered the architectural features, which have transformed into clusters of structures erected along roads that have become the lifeline carrying social and economic relationships in the city¹.

Modern urban planning has focused on preparing the territory for constructing buildings with open facades directly facing the roads or surrounding gardens. Thus, the priority shifted from external order to the beauty and splendor of the urban landscape, becoming a function of the regulatory authority. Governmental interest in architectural facades and external gardens increased, while internal architecture received less attention, particularly in the context of the housing crisis².

There is no doubt that every human settlement recognizes the need for order and social regulation. Therefore, it is said that regulatory facilities were the first public facilities established in history. This means that maintaining order was one of the state's priorities from its inception, and it is a social necessity evident in all modern societies and organizations. Thus, the concept of the general order is linked to the idea of regulation and the law in terms of their joint efforts to achieve the public interest. In this regard" André de Laubadère" a French administrative law jurist, states that the objective of administrative regulation is to ensure good order, safety, and public health³. These functions necessitated strict preventive interventions in the field of construction, housing, and properties to preserve the sustainable general order in society, represented by the aesthetic, environmental, and cultural aspects⁴.

All of this led to the search for strict regulations upon which the administrative authority responsible for protecting the higher interests of the

¹ Afeef Al-Bahnsi, *Lectures on the Objectives of Sharia*, (Cairo, 1st edition,,: Dar Al-Salam, 2009), p 191.

² Afeef Al-Bahnsi, *Arab Architecture*, (Cairo, National Council for Arab Culture, Rabat, 1990), p 22.

³ De Laubadere, *Treatise on Administrative Law*, (Paris, L.G.D.J, 10th edition,), p 643.

⁴ Nasser Labad, *Administrative Law, Part Two*, 2nd edition, Labad Printing Press, 2004, p 08.

state, including the public interest in urbanism, could rely. Thus, The concept of the general aesthetic order was embraced as one of the elements of the guiding general order, serving as a legal tool in urban administrative control as a restriction on real estate and urban activities, as a preventive form of control to avoid the increasing risks of urban chaos resulting from non-compliance with laws and regulatory provisions¹.

2.The Content of the concept of the general aesthetic order of the environment and urbanism.

Is highly innovative and has only recently been embedded in administrative law. This is due to its connection to the development and evolution of the city. It is impossible to talk about the beauty of appearance and scenery when individuals are struggling with housing crisis, poverty, and deprivation. However, there have been judicial, legislative, and regulatory applications aimed at preserving the artistic and aesthetic aspect of public streets frequented by pedestrians, as part of their responsibility for protecting their lives and safety. Individuals have the right to protect the feelings of art and beauty among passersby, as part of their responsibility for protecting their lives and safety. Additionally, individuals have the right to protect their literary, cultural, and spiritual lives, in addition to their material existence, as all of these aspects are essential for holistic human existence².

The urban problem represents one of the most significant challenges in contemporary society due to its detrimental effects on the environment and the aesthetic and touristic aspects of cities. Algerian cities, for instance, have been marked by distortion resulting from violations of urban laws and lax enforcement, leading to the proliferation of unauthorized and unlicensed constructions due to weak urban control and non-compliance with technical requirements. This has led to the collapse of numerous buildings, prompting

¹ Maziani Farida, "The Role of Real Estate in Local Development", Policy and Law Notebooks, No. 06, University of Ouargla, (January 2012), p49.

² Mahmoud Atef Al-Banna, " *Limits of Administrative Control Authority* ", Law and Economy Journal, Faculty of Law, Cairo University, No. 03, (1978), p 549.

the pursuit of the idea of regulating the general aesthetic order of the environment and urbanism.

Second: The Impacts of Building and Subdivision Permits on the Aesthetic Taste of the Environment and Urbanism.

The Algerian legislature has subjected all development and urbanization activities to a set of permits and administrative certificates, which serve as regulatory mechanisms exercised by the administration over urban activities. This is stipulated in various planning and development laws, including Law 90-29 on planning and development, amended and supplemented by Law 04-05¹, as well as Executive Decree 91-176 regarding the procedures for preparing permits and certificates, amended and supplemented by Decree 09-307².

These permits and certificates are a collection of administrative documents and paperwork issued by the competent administrative authorities.

1.The Role of a building permit .

As is customary with the Algerian legislature, it avoids defining legal terms to avoid criticism. This is also evident in the case of the building permit, which is not defined in the urban legal arsenal. However, it can be defined as the administrative decision issued by the competent authority, granting a natural or legal person the right to construct a new building or make changes to an existing one before commencing the intended construction work³.

¹ Law No. 90-29 concerning Planning and Development, amended and supplemented by Law 04-05, dated 01December 1990, Official Gazette No. 52, dated 02 December 1990.

² Executive Decree No. 91-176 regarding the Procedures for Preparing Licenses and Certificates, amended and supplemented by Decree 09-307, dated 28 May 1991, Official Gazette No. 26, dated 01June 1991.

³ Azri Zain, “ *Issuing Building and Demolition Decisions in Algerian Legislation* ”, Al-Fikr Journal, University of Biskra, No.03, Algeria, (2008), p 12.

This permit plays a crucial and effective role in preserving the aesthetic appearance of the city and protecting the environment. This is evident through the preliminary and protective studies carried out by technical services. While environmental laws primarily focus on protecting natural areas, the planning and development laws also emphasize the protection of certain areas due to their ecological value. Therefore, the legislature intervenes to require the administration to consider certain considerations related to the location of buildings when preparing building permits.

The administrative authorities are prohibited from granting a building permit if it threatens the aesthetic appearance of the environment and urbanism or encroaches upon green spaces. Thus, a building permit serves as a means and mechanism for the administration to exercise control over the urban space¹.

2. The Role of subdivision permits.

According to Article 57 of Law 90-29, as amended by Law 04-05, and Executive Decree 15-19, a subdivision permit is required for every process of dividing two or more plots within a single property or multiple properties, regardless of their location. If the resulting plot from this division is intended for constructing a building, then a subdivision permit is necessary when the owner or their representative intends to divide the land into two or more plots for the purpose of constructing a specific building².

The subdivision permit is an administrative decision issued by the competent administrative authority, granting permission to the owner of an undeveloped real estate unit to divide their land into two or more plots, which will be used for constructing a building, enabling them to undertake new construction³.

¹ Al-Fadl Khemar, Crimes Related to Real Estate, (Algeria, Dar Huma, 1st edition, 2006), p 105.

² Jamal Boushnaka, Real Estate Transactions in Algerian Legislation, (Algeria, Dar Al-Khalidonia, 2006), p 107.

³ Mansouri Nora, Rules of Planning and Development according to Algerian Legislation, (Algeria, Dar Al-Huda 2010) , pp 59- 58

Similar to a building permit, a subdivision permit also contributes to the protection of the ecological system by restricting the procedures for obtaining and issuing the permit, based on a prior study that encompasses technical, environmental, and aesthetic aspects. It is a legal means to define the fundamental directions of land use and the guiding plan for planning and development, which involve balancing the functions of housing, agriculture, and the aesthetic aspects of urban development. It aims to optimize the use of spaces, protect the surroundings and natural environment, and work towards achieving the principles of sustainable development.

If the subdivision permit impacts the natural beauty, archaeological sites, cultural areas, or historical locations, the legislature prohibits granting such permits. Additionally, subdivision permits are not issued in agricultural areas or areas not covered by land use and planning schemes. Furthermore, a subdivision permit requires the obligation of the applicant to carry out the necessary works to make the subdivided land usable, including the inclusion of green spaces and recreational areas.

Similar to a building permit, a subdivision permit also requires a preliminary technical and environmental study that examines the impact of the construction or site on the environment and the surroundings¹.

Given the sensitivity of the subdivision process as a preliminary step before initiating construction and property development for various building purposes, which has been regulated to allow for a balance between individual rights and the public interest, particularly in achieving the general environmental system, the study of the provisions of this permit indicates its role in environmental protection. This means that a subdivision permit can be denied for reasons that may negatively impact the environmental condition. Examples of such cases include:

- When subdivision is carried out for the purpose of constructing buildings that have adverse future consequences on the environment due to their location, purpose, or size.

¹ Opp.cit, p 52.

- When the subdivision permit affects the natural coastal areas.
- When the subdivision permit impacts fully protected natural reserves¹.

Within these and other restrictions, the subdivision permit has modestly contributed to the protection of the environment from urban expansion.

Third: Incorporating the aesthetic dimension of the environment and urbanism within planning and development schemes.

Environment and urbanism are two essential components that urban planning and sustainable development deal with. Including the aesthetic dimension of the environment and urbanism within development and redevelopment schemes is of paramount importance. By adopting an approach that considers aesthetics in city and urban area planning, numerous benefits are achieved for society and the environment.

1. Including the aesthetic dimension of the environment and urbanism in the guiding plan for planning and development.

The Algerian legislature introduced the Guidance and Development Plan (PDAU) under Law No. 90-29, which pertains to amended and complementary urban planning and development. In Article 16, it defines the PDAU as a tool for spatial planning and urban management. It works to determine the fundamental guidelines for urban development in municipalities, taking into account development designs and plans, while establishing reference formats for land occupation plans.

This plan has been designed to outline and define future prospects for expansion at the regional level. It also aims to organize urban agglomerations within the environmental and natural framework while regulating relationships with neighboring urban centers.

The PDAU aims to achieve a range of stated objectives, including urban and environmental aspects. This means that it seeks to regulate urban

development by identifying areas suitable for development based on urban fabric requirements. Conversely, it aims to protect the environment and prevent risks associated with construction and development by designating and safeguarding areas such as agricultural lands, forests, and areas with cultural and historical heritage. It works towards preventing and combating any form of pollution or harm, as urban development necessitates striking a necessary balance between the requirements of economic growth, environmental protection, and the preservation of residents' living conditions. Thus, the environmental aspect of the Guidance and Development Plan emerges as a crucial dimension².

2. Including the aesthetic dimension of the environment and urbanism in the land occupation plan.

The Land Occupation Plan (POS) was introduced under Law No. 90-29 and Executive Decree No. 91-178, which amends and complements the aforementioned law. The POS is considered a detailed tool for land use and construction rights. It operates within the framework of respecting the provisions of the PDAU plan and higher-level plan directives. The POS delves into the finest details, serving as a link between the PDAU and the documents that define the urban composition of each sector. It covers the entire territory of each municipality for a period of five years.

The POS aims to achieve a set of objectives outlined in Article 31, paragraph 02 of Law 90-29. These objectives include determining the minimum and maximum amount of permissible construction, regulating rules related to the external appearance of buildings, defining alignments, neighborhoods, streets, and monuments. It also encompasses the identification, protection, rehabilitation, and designation of areas that need to be preserved, such as agricultural lands, green spaces, and locations

¹ Attounsi, Sabrina, “ *The Environmental Dimension of Urban Planning Law in Algeria* ”, Journal of the Research Professor for Legal and Political Studies, Vol.04, No.02, (2019), pp293- 292.

² Kedari Amel, “ *The Role of Planning and Development Tools in reconciling Environmental Protection Requirements* ”, Journal of Urban Planning and Construction Legislation, Issue 2, University of Ibn Khaldun, Tiaret, (2017, p103.

designated for public facilities. The POS must include a land occupation plan, as stipulated in Article 32 of Law No. 90-29 and Article 18 of Executive Decree No. 91-178, along with accompanying descriptive and reference documents¹.

Due to environmental destruction, resource depletion, and pollution, it has become necessary for land use planning to consider the environmental dimension. This involves preserving land, natural resources, and the quality of various environmental elements. Therefore, it has become essential to rely on plans related to environmental elements and media when developing the Land Occupation Plan. These plans serve as the fundamental database regarding the nature and characteristics of the environmental components within the designated area.

However, this does not negate the secondary role of the POS plan in environmental protection. It is manifested through the preservation of the aesthetic, urban, and environmental aspects. The POS plan identifies public spaces, green areas, sensitive areas, landscapes, and sites. Additionally, it designates agricultural lands that require protection to ensure environmental conservation. The Algerian legislature has also mandated that the President of the Municipal People's Council consult with the environmental department at the provincial level, aiming to protect the environment within the framework of sustainable development².

Conclusion :

In conclusion, the following results and recommendations have been reached:

Results:

¹ Wanas Yahia, "Legal Mechanisms for Environmental Protection in Algeria", PhD thesis in Public Law, University of Abou Bekr Belkaid, Tlemcen, July 2007, p 49.

² Opp.cit, p. 50.

- The primary goal of regulatory authorities is to preserve the overall aesthetic order of the environment and urban development, as it has become one of the most prioritized areas in the national urban policy of the state.
- The concept of the overall aesthetic order is a highly innovative idea that has only recently been incorporated into administrative law, given its association with urban development and progress. It is impossible to discuss the beauty of appearance and landscape when individuals are facing housing crises, poverty, and deprivation. Nevertheless, there are judicial, legislative, and regulatory applications aimed at preserving the artistic and aesthetic appearance of public streets frequented by pedestrians, as part of their responsibility to protect their lives and safety.
- The PDAU plan aims to achieve a set of outlined objectives, with some related to the urban aspect and others to the environmental aspect. The significance of the POS plan in protecting the concept of aesthetic character in the environment and urban areas is evident through preserving the urban and environmental aesthetic aspects, identifying public spaces, green areas, sensitive areas, landscapes, and sites. Additionally, it designates the location of agricultural lands that require protection to ensure the preservation of the environment and urban areas in a beautiful manner.
- When considering the sensitivity of the construction and subdivision processes, which have been regulated to strike a balance between individual rights and the public interest, especially regarding achieving the overall environmental and aesthetic order of urban development, it becomes apparent that these regulations play a role in protecting the aesthetic aspect of the environment and urban areas. Consequently, the approval of subdivision or construction permits can be denied for reasons that affect the aesthetic state of the environment and urban areas.
- The efforts made by legislators to incorporate the environmental and aesthetic dimensions into urban planning and development decisions

are ambitious and bold. However, they remain limited and insufficient at this level, given the rapid urban sprawl that forcefully imposes itself in many instances, driven by the pressing and increasing demand for housing, facilities, and various structures.

Recommendations:

- Reassess urban activities based on the environmental and aesthetic perspective of urban development, which requires a collaborative effort.
- Emphasize the importance of strict regulations in granting construction and subdivision permits to ensure they do not threaten the aesthetic beauty of the environment and urban landscape.