

## Means of Controlling Urbanization- Certificate of Reconstruction Model-

وسائل ضبط العمران - شهادة التعمير أنموذجاً -

Zebda Nouredine

\* زبدة نور الدين

University Mohamed Boudiaf, Msila, Algeria

nouredine.zebda@univ-msila.dz

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### Abstract:

One of the greatest developments that human civilizations have seen throughout the ages is urbanisation, that's why man has created legal rules organizing it, and laws to regulate urban activity and guarantee individuals the rights to build their real estate. However, the building rights, in these laws, have not been left absolute, but are restricted by law with controls so as not to be in disorder, including the regulations made by the urban legislator in the field of reconstruction, the certificate of construction provided under the law 90/29 of 01/12/1990 which deals with the land-use and planning modified and complemented, as well as the executive decree 19/15 of January 25, 2015, which sets out how to prepare and deliver urbanisation contracts, and what is stated in the law 03/10 of 19/07/2003 on the protection of the environment in the context of sustainable development, rational management and the rational real estate wealth within the scope of preserving the environment in all its components poses the greatest challenge in the construction and expansion of cities. Therefore, the urban legislator has established legal and technical foundations to ensure the control of the construction process in a way that ensures the preservation of the environment as a natural medium that the human must preserve, according to the tools made by the legislator, which provide for the preparation of reconstruction. It also shows the right to be used to provide housing for the beneficiary, in

\* Zebda Nouredine: noureddine.zebda@univ-msila.dz

accordance with legally licensed architectural conditions and standards that mainly take into account the conditions and requirements of protecting the environment from industrial and technological risks, or natural disasters within the framework of the requirements of sustainable development.

**Keywords:** Certificate - Construction - Land - Reconstruction - Urbanization.

**ملخص:**

يعتبر العمران أحد أعظم أوجه التطور التي شهدتها الحضارات الإنسانية على مر العصور، لهذا ابتكر الإنسان قواعد قانونية تنظمه، فتم إيجاد قوانين العمران التي تنظم النشاط العمراني وتكفل للأفراد حقوق بناء ملكياتهم العقارية، لكن حقوق البناء في هذه القوانين لم تترك مطلقة بل قيدها القانون بضوابط حتى لا تستعمل بصفة تعسفية وفوضوية، ومن بين هذه الضوابط التي نظم بها المشرع العمراني مجال البناء وتعمير الأرض شهادة التعمير المنصوص عليها بموجب القانون 29/90 المؤرخ في 1990/12/01 المتعلق بالتهيئة والتعمير المعدل والمتمم، وكذا المرسوم التنفيذي 19/15 المؤرخ في 25 يناير 2015 الذي يحدد كفايات تحضير عقود التعمير وتسليمها، وما جاء به القانون 10/03 المؤرخ في 2003/07/19 المتعلق بحماية البيئة في إطار التنمية المستدامة، فالتسيير العقلاني والرشد للثروة العقارية ضمن نطاق الحفاظ على البيئة بكل مكوناتها يشكل التحدي الأكبر في انشاء المدن وتوسيعها، لذلك بادر المشرع العمراني إلى وضع أسس قانونية وفنية تضمن رقابة عملية البناء والتشييد بشكل يضمن الحفاظ على البيئة كوسط طبيعي يجب على الإنسان المحافظة عليه، وذلك وفق أدوات وضعها المشرع منها شهادة التعمير التي توضح وتبين أحكام التهيئة والتعمير المطبقة على القطعة الأرضية محل شهادة التعمير، كما تبين حقوق البناء والارتفاقات التي تقع على العقار وبذلك تظهر أهميتها من خلال أنها تحمي من الأخطار التي يمكن أن تمس الموقع المعني، أو تلك الأخطار التكنولوجية التي تشكلها المؤسسات الصناعية الخطرة، أو قنوات نقل البترول والغاز وخطوط نقل الطاقة، ومنه نستنتج أن هذه الشهادة تشكل وسيلة رقابة قبلية للإدارة تمكنها من مسيطرة حركة البناء، إذ تسمح للبلدية من ضبط التوسع العمراني حسب الشروط والمقاييس المعمارية المرخص بها قانونا والتي تراعي أساسا شروط ومقتضيات حماية البيئة من المخاطر التكنولوجية الصناعية، أو الكوارث الطبيعية في إطار مقتضيات التنمية المستدامة.

**الكلمات المفتاحية:** الأرض-البناء-التعمير-العمران - شهادة.

**- Introduction:**

The art of organizing construction and urbanization means the intellectual development of individuals and the cultural and political maturity of states and societies. Thus, the level of awareness reached within the framework of the creation of urban legal systems development and orientation in order to balance the requirements of construction and reconstruction on the one hand, and to preserve the natural environment and ensure that this construction does not harm the environment in all its diversity on the other hand.

In order to maintain and control the process of urban movement in a way that guarantees the standards of environmental conservation within the framework of sustainable development and the preservation of the environment and its natural elements and in order to reduce illegal buildings that unfortunately have a negative impact on the cities, as well as the need to protect residential and urban communities from major threats and disasters, states have created legal means to control the expansion of urbanization and control its movement.

Among the technical means adopted by the Algerians to achieve the principle of rationalizing the use of land is the mechanism of the certificate of reconstruction stipulated under the law 90/29 of 01/12/1990 which deals with the land-use and planning modified and complemented, as well as the executive decree 15/19 specified for the preparation of the reconstruction certificate, and the law of 19/07/2003 on the protection of the environment in the framework of sustainable development.

We have used in this study a descriptive and an analytical methods.

The problematic that arises here is: What is the legal nature of the reconstruction certificate as a mechanism for urban control?

To answer this problematic, this paper research can be divided as follows :

### **1- The first requirement: The essence of the reconstruction certificate**

As part of the involvement of citizens in the implementation of the reconstruction policy in our country, the Algerian legislator set up the certificate of reconstruction, which was not known to the urbanization system before, in order to inform citizens who own or

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have the right to build. Therefore, this certificate is requested from any natural person intending to carry out work on his real estate property, so that his rights to build are permitted.

### **1.1- Definition of the Certificate of Reconstruction**

The legislator defined the certificate of reconstruction in article 51 of the law No. 90-29 which deals with preparation and urbanization: 'Every natural or moral person concerned before proceeding with studies can apply for a certificate of reconstruction that will specify his or her rights to build to which the land concerned is subject' (Law 90/29 on Preparation and Reconstruction, 1990).

As article 02 of Executive Decree 15/19 states: 'The reconstruction certificate is the document to be delivered at the request of each concerned person, whose rights to construction and accommodation shall be defined in all forms to which the land in question is subject.' (Executive Order 15/19 on the preparation of reconstruction contracts, 2015).

### **1-2- The Content and Characteristics of the Reconstruction Certificate**

The construction certificate is one of the legal means prior to the construction process, requested by the person concerned in order to know the building rights as well as the easements to which the land to be built, in order to ensure the technical, health and engineering viability of the buildings. The certificate of reconstruction according is considered a technical means prior to the construction process.

#### **1-2-1- The Content of the Reconstruction Certificate**

The Reconstruction Certificate is a document of information on the nature of the land involved in the construction works. (Adja Djilali et Drobinko Bernard.2007.p175.)

It is a means before initiating construction procedures and is requested to verify the allocation of the land for construction on the basis of two criteria:

1- The specific systems for the preparation and reconstruction applied to a land.

2-The easements that serve this property or make it difficult in accordance with the Article 02 of the Executive Decree 91/176, which is repealed under the article 04 of the Executive

Decree 19/15 of January 25, 2015, which sets out the preparation and delivery of reconstruction contracts mentioned earlier (Executive Decree 15/19 on the preparation of reconstruction contracts, 2015).

Some consider that this certificate is not an urban permit, as it does not prejudice the origin of the property recognized by the owner, because it is a formality other than the licenses (Shama, 2002, p. 217), although it is important as it determines the easements associated with the land in question, thus making the person fully aware of the rights of the property in question, as well as the easements that make it difficult.

In addition to the methods of linking this property to the networks of public base structures that exist or are expected to be located in the area of the occurrence of this property (Mahzoul, 2014, p.87). The Reconstruction Certificate identifies all natural and industrial dangers that may affect or threaten the location of the land to be built on.

### **1-2-2- The Characteristics of the Reconstruction Certificate**

The reconstruction certificate helps the concerned person to see his or her rights in construction, as this certificate is an administrative decision and his job is to inform the applicant of the status of the property to be built upon, issued by the legally qualified authority, and generally the characteristics of the reconstruction certificate can be summed up in the following points:

1. The reconstruction certificate is an administrative document received from the municipality, agreed by the governor and the interests of preparation and reconstruction, and it is also an optional administrative procedure that is handed over to each natural or moral person, and at his request, and is not mandatory, because the legislator did not arrange any penalty for not requesting it.
2. It is a media and disclosure document, as the owner of the property originally has the right to use a property, but it is this document that explains to him the ways and manners of use. The Reconstruction Certificate is a pre-construction legal information tool that shows the owners how to build their property (Hamdi Basha, 2018, p.61).

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**3-** It is an official application produced for its legal effects, which is to inform the person, the status of the property under the certificate of reconstruction, and this certificate is extracted in the name of the student, the owner of the property or the legal agent, since in the event of his death after the heirs are asked to reapply in their name.

**4-** The reconstruction certificate is a control tool for urban expansion in the municipality, and there is no doubt that this certificate has a practical benefit that helps to provide a homogeneous urban environment through the control of construction projects, which is a fixed-term legal basis. The legislator has specified the validity of this certificate one year, which will take effect from the date of inform. (Iqlouli Ould Rabah, 2015, p.134).

### **2- The Second Requirement: procedures for preparing and delivering the reconstruction certificate**

The reconstruction certificate is one of the most prominent means of control before construction process, as it gives individuals information about their rights to build the land in question and shows administrative restrictions on the right to property.

#### **2.1- Application for a Certificate of Reconstruction**

The application for the certificate of reconstruction is prepared by the owner or his client, as the law made it clear that every natural or moral person before the start of studies on the construction project can apply for the construction certificate, as this application is filed in front of the headquarters of the municipal people's council competent regionally in two versions and this request is compulsory attached to the following data:

- The subject of the application.
- The name of the owner of the land in question.
- Address, area, and spatial references.
- Design around the position.
- A design of the earth prepared according to the appropriate shape.

These last two designs are prepared by the Study Office for an architect or certified real estate expert (Hamdi Basha, 2018, p.63).

#### **2-2- Preparing the Reconstruction Certificate**

After completing the application file by the concerned person with the certificate of reconstruction or his legal representative, this application is filed with the documents attached to it at the headquarters of the municipal council, in exchange for two copies of a deposit receipt delivered on the same day, and the method of studying the application in accordance with the provisions relating to the preparation of the building permit, if the real estate or property in question is located in an area where the land occupancy scheme is located, the study of the certificate and its delivery by the president of the Municipal People's Council, whether the real estate or property vessel is subject to the property. A request in an area where the land occupancy scheme is not permitted or non-existent, the president of the Municipal People's Council returns to the governor in charge (Mahzoul, 2014, p.89-90).

### **2-3- Decision to Grant the Certificate of Reconstruction**

After the request for the reconstruction certificate has been completed with the mentioned conditions and documents above, and is examined by the department in charge of reconstruction at the municipal level of the property in question, the President of the Municipal People's Council, as the legal specialist, issues an administrative decision to hand over this certificate to its applicant in the period specified by the legislator in article 49 of executive decree 15/19, which is 15 days following the date of filling the application file for this certificate.

The authority of the President of the Municipal People's Assembly is restricted, as the law has defined the content of the decision to be taken with certain legal conditions, as the reference in the decision issued by this latter in this regard is the urban plans (Mahzoul, 2014, p.89).

It should be noted that the validity of the reconstruction certificate was a full year, calculated from the date of notification or delivery, but the Executive Decree 15/19 amended this period to be linked to the validity of the applicable land occupancy scheme or the preparatory and reconstruction guideline in the municipality.

A person who has obtained a reconstruction certificate can build within the validity of the land occupancy scheme, and in the absence of it, we take the validity of the planning and reconstruction guideline (Hamdi Basha, 2018, p.64)

### **3- The effects of the reconstruction certificate and its role in protecting the environment**

The importance of the Building Certificate for both management and individuals is demonstrated by the fact that it is a media tool for individuals that gives them information on building rules and their rights to their properties, and a management control tool through the main aim of enabling administrators to control the land's building ability, informing individuals of this, and demonstrating the role of the Building Certificate by regulating the exploitation of built and non-built properties, as well as the rational management of real estate wealth within the scope of effective environmental conservation, by establishing legal and technical foundations to ensure the control of the construction process.

#### **3.1- Reconstruction Certificate Effects**

On the one hand, the reconstruction certificate is an information and explanatory document on, and on the other hand, a means that enables the administration to monitor and control the urbanization of the municipality, and the reconstruction certificate contains the various administrative information and shows:

Reconstruction preparation systems applied to the piece of land.

- The easements of the piece of land relating to the restrictions on construction provided for in some legal texts.
- Service of the piece of land with existing and anticipated networks of public base structures (Haj Jaballah, 2014, p.134).

The administrative decision containing the reconstruction certificate applies for a full period of one year from the date of notification of this decision to the concerned person, but by exceeding this period, his building rights under the reconstruction certificate will be subject to changes imposed by the municipal urban plans (Mahzoul, 2014, p.93).

This certificate also determines the value of the land and therefore makes it easier to determine the value of registration, but the thing that is that all real estate transactions do



not require this certificate, is it due to the long period of the procedures or the circumvention of the law and avoiding of registration fees (Doua and Ramoul, 2009, p.20).

### **3-2- The Role of the Reconstruction Certificate in Environmental Protection**

The reconstruction certificate shows the provisions of the preparation and reconstruction applied to the piece of land, as well as the construction rights and the easements that fall on the property, thus showing its importance in the field of environmental protection through several axes we arrange as follows:

1/ Protection from hazards that may affect the site in question, or those that are technologically posed by hazardous industrial enterprises, oil and gas transmission channels, power transmission lines, and all threatened lands mentioned in Article 10 of Law 04/20 on the prevention of Major hazards and the management of disasters in the context of sustainable development, such as industrial and energy hazards, as well as radiation and nuclear hazards and risks from forms of pollution (Law 04/20 on the prevention of major threats and the management of disasters within the framework of sustainable development 2004).

2/ The Reconstruction Certificate has a role in protecting some areas, not building on them, for this purpose they create easements in order to protect forests, coast, barns, and natural oceans (Shama, 2002, p.262)

When examining the provisions of article 23 of the Law 90/29 on preparation and reconstruction, the non-reconstructed sectors include protected areas such as high-fertility agricultural land, mining exploitative land (Law 90/29 on Preparation and Reconstruction, 1990).

3/ The Reconstruction Certificate protects areas and land that is not suitable for them because of their natural, cultural or tourist advantage or because of the threat to these lands from floods, earthquakes and natural disasters, and prevents reconstruction at sites of historical importance and within the cultural heritage of the nation (Law 98/04 on the Protection of Cultural Heritage, 1998).

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4/ The disordered construction buildings near the coast are considered as a threat to this type of real estate wealth, so the Algerian legislator emphasized under Law 02/02 on the protection of the coast and valued the need to protect sites of an ecological, natural, cultural or touristic nature. Coastal areas are protected from these kinds of buildings, so the construction processes within them are restricted and specific in proportion to the nature of the land (Law 02/02 on the protection of the coast, 2002).

It is clear that the rational and deliberate control of the construction and the expansion of the urban fabric must take into account the optimal exploitation of real estate wealth as a natural resource, and taking into consideration the protection of the environment.

### **CONCLUSION**

The reconstruction certificate is a first control tool, allowing the municipality to control and accompany urbanization, and shows the role of the Reconstruction Certificate in environmental protection by studying the potential impact on the environment. The role of this certificate is a preventive method, and the control enables the competent authorities to know projects and facilities that can adversely affect the environment.

This certificate is an informational and indicative document because it defines the building rights on the property under the construction certificate, such as mortgages on the property and other technical provisions that protect the environment from industrial hazards, or natural disasters that may restrict building rights.

The certificate of reconstruction, as we have seen, has an active role in controlling the movement of construction, because urbanization through this certificate undoubtedly limits the random methods of construction, because it is carried out in accordance with studies, scientific and technical foundations, which determines what urbanization should be at the municipal level, by respecting the healthy and well conditions, as well as protecting the agricultural land and green spaces that make up the environment suitable and fit to live.

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