

Settling buildings in violation of the building permit according to the Executive Decree No. 22-55

تسوية المباني المخالفة لرخصة البناء عملا بأحكام المرسوم التنفيذي رقم 22-55

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Abstract:

Numerous individuals violate the building permits issued to them when they construct their buildings. So, it become difficult to the properties owners to occupy or utilize their properties legally without getting a building conformity. This prompted the Algerian legislator to issue Executive Decree No. 22-55 to resolve the circumstances regarding these buildings. an amended building permit is required for the under constructed buildings. And if the building has been already completed the owner need a certificate of conformity as a matter of settlement in accordance with the decree's defined procedures requirements.

Keywords: Building permit, certificate of conformity, executive decree no 22-55, settlement, amended Executive Decree No. 15-19, The Algerian legislator.

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introduction

The right to construct is a crucial manifestation of real estate ownership, granting the owner the authority to utilize, exploit, and dispose of their property. The requirement imposed by Algerian law to obtain a building permit prior to starting any construction work serves as evidence that this right is subject to legal restrictions. This measure is intended to ensure compliance with the provisions of the preparation and reconstruction tools or the general rules for planning and reconstruction, thereby safeguarding both the public interest in urban development and the private interest of the property owner.

Regrettably, despite the compulsory regulations pertaining to the issuance of building permits, encompassing the requirement to acquire them prior to any construction activity and to adhere to their stipulations throughout the process, numerous individuals contravene the aforementioned guidelines whilst erecting their edifices. The non-conformance of buildings to the issued building permit renders them legally non-exploitable by their owners, as obtaining a certificate of conformity post-construction becomes impossible. This issue has led the Algerian legislator to address the matter through the issuance of Executive Decree No. 22-55, which encompasses a series of legal provisions aimed at resolving the status of buildings that do not comply with the issued building permit. The decree enables owners to obtain an amended building permit during the construction phase or a certificate of conformity upon completion, thereby settling the issue at hand. The subsequent inquiry:

Does the settlement of disorderly structures that fail to comply with the building permit as stipulated in Executive Decree No. 22-55 suffice for their eradication?

To address this matter, we have opted to bifurcate this manuscript into two parts. The first part elucidates the overarching stipulations of Executive Decree No. 22-55, while the second part expounds upon the measures undertaken in compliance with said decree to ameliorate the circumstances of the buildings impacted by it.

Firstly: The general provisions stipulated in Executive Decree No. 22-55

Prior to delving into the determination of requisite procedures for the settlement process of non-compliant buildings under Executive Decree No. 22-55, it is imperative to first examine the general provisions outlined within the decree, along with the associated concepts.

1. The scope of application of the provisions of Executive Decree No 22-55

The adoption of Law No. 15-08, which contained several provisions outlining the requirements for achieving building compliance and finalization, came before the issuance of Executive Decree No. 22-55. The Algerian legislative body has implemented multiple pieces of legislation aimed at standardizing the legal status of unauthorized constructions, indicating that this is not a novel or singular occurrence.¹

The temporary nature of the law is evident in Article 94, which specifies that the efficacy of the measures taken to ensure the compliance and finalization of building projects will lapse after a period of 5 years from the date of its official publication in

the Official Gazette, namely August 3, 2013.² According to Article 79 of the Finance Law for the year 2014, the provisions of the law were extended twice, with the first extension lasting until August 2016. Subsequently, the Prime Minister issued an instruction under No. 445 on November 6, 2016, which did not specify the expiration date of the law. As a result, the law remained in effect until the issuance of the Finance Law in 2020. Article 102 specifies that the impact of the measures taken to verify the compliance of constructions and their finalization shall be limited to a period of three years, commencing on August 3, 2019, and concluding on August 3, 2022.³

It is noteworthy that Law No. 15-08 had the objective of addressing the circumstances surrounding completed or ongoing construction projects. This was applicable even before the publication of the law in the Official Gazette. The law pertained to situations where the building owner had obtained a building license that had expired prior to the completion of the construction work or after its completion. It also applied to buildings that were still in progress, where the owner had not obtained a building permit in the first place, or where the owner had obtained a building permit that did not comply with the permit's provisions⁴, while we find that Executive Decree No. 22-55 came to settle the conditions of buildings that do not comply with the building permit issued only in accordance with the terms and conditions that differ from those in Law 08-15.

It should be noted that Executive Decree No. 22-55 doesn't have a temporary nature, as the Algerian legislator didn't specify the date for the end of the latter's work. Perhaps the reason for this, from our point of view, is to avoid falling into the inevitability of extending its implementation every time if many citizens don't regularize the conditions of their buildings, as it happened with Law No. 15.-08, which was extended three times, as previously mentioned.

However, although the Algerian legislator didn't specify a date for the end of the implementation of the provisions of Executive Decree No. 22-55, he did stipulate that buildings belong to the provisions of the latter, whether completed or in progress before it's publish in the Official Gazette, meaning that this decree applies to what was before it and not after it, in order to close the door to manipulating people and their violation of the provisions of the building permit, as the situation will be settled later in accordance with Executive Decree No. 22-55 where it's not subject to any settlement after the issuance of the aforementioned decree, and therefore the demolition takes place as a punishment imposed⁵ on it. The Algerian legislator aims to settle the conditions of the buildings that existed before the publication of this decree and not to create new violations related to the lack of respect for what was stated in the building permit granted to the concerned person, thus underestimating the importance of this compulsory license.

2. The status of buildings concerned with the settlement according to Executive Decree No. 22-55

Executive Decree No. 22-55 was enacted to settle the situation of buildings that don't conform to the building permit issued only and which would have been in a legal position if not for the owner's violation of the latter. We conclude from this that the place of construction belongs to the owner if he may obtain a building permit to build on it. This is based on the text of Article 50 of Law No. 90-29 related to planning and reconstruction, which states: "The right to build is linked to the ownership of the land and is exercised with strict respect for the legal and regulatory provisions related to the use of the land."⁶

This contrasts with what was stated in Law No. 08-15, which includes the settlement of the status of buildings whose owner obtained a building permit or didn't in the first place according to special conditions and procedures, as the process of achieving conformity based on the latter extends from the settlement of incomplete buildings or buildings that don't comply with the permit to the settlement of real estate, where the settlement of the building depends on the settlement of the real estate over which it was built.⁷

In addition, we find that the Algerian legislator, even if he stipulated the possibility of settling the status of buildings in violation of the provisions of the building permit issued before the date of publication of Executive Decree No. 22-55, stipulated to respect the general rules of reconstruction, which he defined according to Article 2 of the same decree as: "The legal and regulatory rules that regulate the neighbourhoods, especially with regard to the closeness of buildings, the facade openings, the inclusions of the land, and its size."

This relates to⁸:

- Trespassing on retreat space within the property.
- Opening facades that are not authorized in the building permit issued.
- Raising floors without a permit.
- exceed the land area.

In addition to requiring respect for the general rules of construction, the legislator also stipulated that the buildings concerned respect construction and security standards, which he also defined in the text of Article 2 of Executive Decree 22-55 as: "technical rights and duties that ensure respect for construction rules for the stability and security of the project against all kinds of potential dangers."⁹

And so, the Algerian legislator, through the provisions of Executive Decree No22-55, aims to settle the conditions of buildings in violation of the building permit issued; however, this must be done considering the rules of construction as well as security standards. The Algerian legislator stipulated accordingly which violations were subject to settlement and which were not.

2. 1. Settleable violations under Executive Decree No. 22-55

The Algerian legislator provided four separable violations under Executive Decree No. 22-55 through the first paragraphs of Articles 14, 15, 16, and 17 thereof, namely:

violation related to encroaching on the retreat space inside the property.

violation related to the completed opening facades that are not stipulated in the issued building permit and *don't* affect the neighbourhood directly.

violation related to the extra floors that are not stipulated in the building permit issued and don't violate the general building rules, building standards, or security.

violation related to exceeding the area of occupying the land in a way that doesn't conflict with the general rules of building, especially the standards of neighborhoods, construction, and security.

2.2. Violations that are not subject to settlement under Executive Decree No. 22-55

These are the violations stipulated in the second paragraphs of Articles 14, 15, 16, and 17 of Executive Decree No. 22-55 and are as follows:

- Violations related to encroaching on the space of others, whether it is public or private property,

- Violations related to the completed opening facades that are not stipulated in the building permit issued and that affect the neighborhood in direct confrontation.

- Violations related to the floors that are not stipulated in the building permit issued and violate the general rules of building, especially the standards of neighborhoods, construction, and security.

- Violations related to exceeding the land area violate the general rules of construction, especially neighborhood, building standards, and security.

It is clear from the foregoing that the Algerian legislator, although he aims to settle the conditions of buildings that don't conform to the building permit issued, can't do this at the expense of others. Whether by encroaching on neighboring properties, public or private, or with a direct open view of neighboring properties, without Respecting the legal distance or violations related to security standards, as well as general building rules, especially those related to the neighborhood, where they are not subject to settlement and going to be demolished as a punishment imposed on those violations, is according to the principle of do no harm on the one hand.

On the other hand, even if the violations can be settled, the Algerian legislator stipulated that this can't be done before the person concerned pays a financial fine as a penalty for violating the provisions of the building permit issued to him, and this is to not allow people to violate the content of the building permit and get away with it even if the problem of their buildings is settled after that, according to executive decree No. 22-55.

Secondly. Procedures for settle the buildings concerned with Executive Decree No. 22-55

The person concerned with settling his illegal building seeks to obtain either an amended building permit if the building subject of the settlement request is still in progress or a certificate of conformity if the buildings are completed.

We can define a building permit as: "The decision issued by a legally competent administrative authority granting the right to a person to construct a new building or change an existing building before starting construction work, which must respect the rules of the Construction Law."¹⁰

While the conformity certificate is defined as "an administrative decision by which the competent administrative authority declares the compatibility of the construction works and the completed configuration with what is stated in the related building permit,"¹¹

Thus, if the building violates the building permit, its owner can't obtain a certificate of conformity, which prevents him from occupying or exploiting that building.

The first procedures for settling the situation of buildings that are not in conformity with the building permit issued start with depositing the concerned person with the application file for the amended building permit or the certificate of conformity as a way of settlement with the construction services of the municipality in which the building is located, in exchange for a receipt, which is handed over to the person concerned on the same day, after verifying the necessary documents stipulated according to Article 9 of Executive Decree No. 22-55¹², after which a series of legal procedures begin, which we discuss as follows:

1. File attached to the request:

The Algerian legislator specified the person with the eligibility to submit the amended building permit application file or the certificate of conformity as a means of settlement, and this is in Article 8 of Executive Decree No. 22-55. The matter relates to each owner, project owner, authorized project owner, or any concerned person.

Where we find that the concerned person who requests to obtain a certificate of conformity is the same as the beneficiary of the building permit and is represented by the owner, his agent, the tenant who has the legal permit, the authority assigned to him, or the organization that uses the piece of land or building¹³.

Considering that the amended building permit is only an extension of the originally issued building permit, with amendments related to the offense committed in terms of its meaning during construction, it was more appropriate for the Algerian legislator to make the person concerned request the amended building permit or certificate of conformity as a matter of settlement for the person concerned by requesting the specific building permit according to the text of Article 42 of the amended Executive Decree No. 15-19, which determines the methods to prepare and deliver construction contracts. The Algerian legislator specified a special form for the

application attached to Executive Decree No. 22-55 and stipulated that a copy of it should be attached to an electronic bond and a file of three copies for private buildings and five copies for other projects.

Regarding the documents contained in the file, the Algerian legislator distinguished between whether the application was related to a modified building permit for buildings under construction or a certificate of conformity as a matter of settlement for completed buildings, as follows:¹⁴

1.1 For buildings under construction that don't comply with the issued building permit:

A copy of the graphs and blueprints referred to in the issued building permit.

Documents and drawings written in accordance with the provisions of the amended Executive Decree No. 15-19, prepared by an accredited architect and civil engineer, clearly showing the parts that have been changed and the parts that are in the completion process, are attached to the following:

-A memorandum containing the descriptive and estimated list of the completed works that are in the process of being completed, specifying the value of the modified or added part.

- photo report.

The deadline for the completion of the work is determined by the architect.

- An experience report prepared by a certified civil engineer in the case of making changes to the building's supporting structure.

-An experience report approved by the National Authority for Technical Control of Buildings if it's related to buildings that receive the public, investment projects, or collective housing.

1.2.For completed buildings that don'tcomply with the issued building permit

- A copy of the plans shown in the building permit issued.

- Documents and drawings written in accordance with the provisions of the amended Executive Decree No. 15-19 showing the status of the completed building,

- prepared by a certified architect and civil engineer, attached to the following:

- A memorandum containing the descriptive and estimated list of the work performed, indicating the amount of the modified or added part.

- photo report.

- An experience report prepared by a certified civil engineer in the case of making changes to the protective structure of the building.

- An experience report approved by the National Authority for Technical Control of Buildings if it is related to buildings that receive public funding, investment projects, or social housing.

It should be noted here that the Algerian legislator obligated the person concerned to attach to the application a copy of the graphic documents and plans shown in the issued building permit, which we *don't* see as necessary since these documents were already in place. Re-requesting them to be attached to the

conformity certificate application file as a settlement or an amended building permit has no justification other than to increase the burdens on the citizen and is an absolute embodiment of the principle of bureaucracy.

2.Preparing the application

The application and the file attached to it shall be deposited with the building services in the municipality in which the building is located, as previously indicated, and after verifying that the file has all the required documents and according to the specified number of copies, it's sent to the only specialized entity for processing the files within a deadline not exceeding 48 hours from the date of deposit.¹⁵

Article No. 5 of Executive Decree No. 22-55 regarding defining the jurisdiction of offices referred to the provisions of Executive Decree No. 15-19, and accordingly, preparing the file falls within the scope of jurisdiction.¹⁶

The only office in the municipality, if the source of the issued building permit is the head of the Municipal People's Assembly,

The only office in the state where the source of the issued building permit is represented is that of the governor or minister in charge of construction.

The only office in the administrative region if the source of the building permit issued is represented by the authorized governor.

It should be noted here that the authority competent to hand over the building permit that was the subject of a violation by the person concerned is the same authority competent to issue the amended building permit or the certificate of conformity as a settlement order. On this basis, the office that prepares the application is determined, as is the establishment of the committee charged with studying the applications.

After the file reaches the only specialized office, it is submitted in turn to the head of the committee that was formed by a decision:

From the President of the Municipal Assembly if issuing a building permit falls within his competence.

- By the minister in charge of reconstruction, the delegated governor, or the governor if he is competent to issue the issued building permit.

The file is sent from the only specialized office to the head of the committee within 48 hours of receiving the request.¹⁷

Upon receipt of the file from the committee, the processing of the application commences. Pursuant to Article 7 of Executive Decree No. 22-55, the committee may conduct on-site visits to verify and validate the infractions. This is done to complete the file study card in accordance with the attached form of the decree. The committee members sign the card and provide their opinions on the settlement and the amount of the fine.

The committee is required to finalize the application process within a prescribed timeframe of 30 days from the date of file receipt. Subsequently, the prepared application along with the preparation card must be submitted to the designated specialized office. The office is allotted a period of 15 days to review the application

and provide a decision, which will include their opinion on the resolution of the building's status.¹⁸

3. Issuing the decision

The issuance of an amended building permit or certificate of conformity as a settlement is determined by the head of the Municipal Assembly, the governor, the delegated governor, or the minister responsible for construction. This decision is based on the opinion provided by the specialized office regarding the settlement request, which must fall within one of three specific cases. As per the provisions of Article 18 of Executive Decree No. 22-55, the President of the Municipal Assembly is required to communicate the opinion of the specialized office to the concerned individual within a maximum duration of 8 days from the date of notifying the specialized office of the decision. The opinion may either be approving, approving with restrictions, or disapproving.

3.1 Opinion approved

If the specialized office issues an approval, a decision incorporating the amended building permit, or a certificate of conformity settlement is formulated upon request of the relevant party. The concerned party is notified of the decision within a period not exceeding 8 days from the date of receipt of the fine payment receipt by the municipality.¹⁹

3.2 Opinion approved with restrictions

If the specialized office opinion is approved with conditions, the decision to grant an amended building permit or certificate of compliance as a form of settlement is not given to the person in question until the committee has reviewed its decision to lift the restrictions on the dates set forth by it and the person in question has paid the fine to the municipal treasury.

3.3 Rejection opinion

In the case where the specialized office declines to approve the settlement of a particular building by denying the request for an amended building permit or certificate of conformity and after notifying the relevant individual, an appeal may be filed within the parameters outlined in the amended Executive Decree No. 15-19. This involves submitting an appeal and a deposit receipt to the state administrative district or relevant urbanization ministry within 15 days, with the expectation of receiving a justified response to the appeal within the specified timeframe.²⁰

Furthermore, the Algerian legislative body has designated the competent authority responsible for the issuance of building permits, which were found to be in violation of its provisions, to also be responsible for issuing amended building permits or certificates of conformity for the purpose of settlement. Consequently, the sole specialized office is determined.

It has been observed that the issuance of an amended building permit or certificate of conformity as a settlement is contingent upon the evaluation of the sole specialized office. Considering this, the Algerian legislature has mandated that the decision rendered by the specialized office be communicated to the concerned party,

who is also granted the right to appeal the decision. In contrast to the current practice of granting building permits or certificates of conformity in accordance with Executive Decree No. 15-19, the decision issued in this regard is subject to notification and appeal rather than relying solely on the opinion of a specialized office. The appeal process, as stipulated in Article 21 of Executive Decree No. 22–55, adheres to the formats outlined in Decree No. 15–19, as amended. Nevertheless, the lawmaker afforded the concerned party the chance to file an administrative appeal, commonly referred to as an administrative grievance, while withholding the authority to initiate legal proceedings in court.

Conclusion

The present analysis culminates in the determination that Executive Decree No. 22-55 was promulgated by the Algerian legislature with the aim of addressing the predicament of edifices whose possessors possess a construction permit yet fail to adhere to its stipulations. The acquisition of a certificate of conformity enables individuals to effectively utilize and derive benefits from the building in question.

The Algerian legislative body has delineated a set of violations that are exempt from settlement, as opposed to mandating that all structures failing to adhere to the issued building permit be subject to Executive Decree No. 22-55. These transgressions may affect neighboring property ownership, result in direct harm to them, or contravene the established security and construction regulations. Furthermore, it is observed that in the case of buildings that are subject to settlement, the concerned party is required to remit a fine to the municipal treasury of the property's location. This fine is regarded as a penalty for non-compliance with the conditions of the previously obtained building permit.

The Algerian legislative body took advantage of this occasion to explicate that Executive Decree No. 22–55 is not exclusively applicable within the designated time frame, as was previously suggested in Executive Decree No. 08–15. Rather, it was intended to be implemented in pre-existing structures as well. In contrast to Executive Decree No. 08-15, which was enacted with a specified expiration date, the present decree lacks such a provision. This measure was implemented to circumvent the frequent requirement for extensions.

Despite the reasonable nature of the deadlines stipulated in Executive Decree No. 22-55, the prescribed procedures necessitate the attachment of the settlement request with the previously submitted documents for the building permit application that was found to be in violation. This requirement is deemed unnecessary as the relevant authorities already possess the said documents on file, and the act of re-extracting and re-depositing them would result in additional costs.

Notwithstanding the Algerian legislator's efforts to legitimize non-conforming buildings through Executive Decree No. 22-55, it is arguable that enacting laws to settle such buildings diminishes the significance of building permits and their contents. Building permits are only granted to individuals after specific legal procedures have been followed, ensuring compliance with planning, and building laws as well as safety and security standards. Therefore, the delivery of building

permits is contingent upon adherence to these regulations. The citizen's perception of the legal framework governing planning and reconstruction is characterized by a sense of recklessness and a lack of seriousness. This perception is fueled by the belief that illegal situations will ultimately be resolved, thereby complicating the process of settling real estate conditions, particularly with respect to buildings. The legislative process and application of laws are viewed as arbitrary and lacking in seriousness, resulting in laws that are unclear and unstable. This state of affairs is attributed to the fact that laws are written in response to chaotic reality rather than being guided by the disciplinary objectives and real estate policies of the state.

There is no greater evidence than that the Algerian legislator had previously issued Executive Decree No. 08-15, which among its objectives was the regularization of buildings that didn't conform to the issued building permit but we find that this was not a deterrent to further violations of that permit, as it is renewed each time instead of applying its penalties, and then Executive Decree No. 22-55 that follows the example of its predecessor, Decree No. 15-08 in terms of the principle of leniency to settle the conditions of the violating buildings again, and then we see the need to find new mechanisms for the purpose of enforcing respect for the building permit issued as well as the text there are deterrent penalties for each violator instead of issuing executive decisions to regularize the conditions of these buildings and thus legitimizing these violations, especially since the violation of the provisions of the building permit is a deliberate violation committed by the person knowingly.

Margins:

¹Law No 08-15 dated 17 Rajab 1429 corresponding to 20 July 2008 specifying the rules for matching buildings and completing their completion, Official Gazette of the Republic of Algeria, Issue 44, issued on the first of Shaaban 1429. August 3, 2008, page. 19.

² Article 94 of Law No. 15-08, *ibid*.

³ Article 102 of Law No. 14-19 of Rabi' al-Thani 14, 1441, corresponding to December 11, 2019, includes the Finance Law for the year 2020, Official Gazette of the Republic of Algeria, No. 81, issued on Jumada al-Awal 3, 1441 corresponding to December 30, 2019, page 3.,

⁴ Article 15 of Law No. 08-15, from the previous reference

⁵ Article 3 of Executive Decree No. 22-55 dated 1 Rajab 1443 corresponding to February 2, 2022, setting the conditions for the settlement of buildings that do not conform to the issued building permit, Official Gazette of the Republic of Algeria, Issue 09, issued on 2 Rajab 1443 corresponding to February 3, 2022 page. 7.

⁶ Article 50 of Law No. 90-29 of Jumada Al-Awwal 14, 1411, corresponding to December 1, 1990, related to planning and reconstruction, Official Gazette of the Republic of Algeria, No. 51, issued on Jumada Al-Awal 15, 1411, page 1652.

⁷ Mansir Nasr Al-Din, Naima Daibya, previous reference, p. 178.

⁸ Article 4 of Executive Decree No. 22-55, previous reference

⁹ Article 2 of Executive Decree No. 22-55, previous reference

¹⁰ Badra Laour, The Role of New Construction Contracts in Enshrining the Algerian Urban Public System, Journal of Judicial Jurisprudence, Issue Twelve, September 2016, page. 130.

¹¹ Arabi Bey Yazid, Building Strategy in the Light of the Algerian Development and Reconstruction Law, a thesis submitted to obtain a Doctor of Science degree in Law, specializing in real estate law, Faculty of Law and Political Science, Haj Lakhdar University, Batna, 2014_2015, page 231

¹² Article 8 of Executive Decree No. 22-55, previous reference

¹³ Articles 42 and 63 of Executive Decree No. 15-19, amended and supplemented, dated Rabi' al-Thani 4, 1436 corresponding to January 25, 2015, specifying the modalities for preparing and delivering construction contracts, Official Gazette of the Republic of Algeria, Issue 07, issued on Rabi' al-Thani 22, 1436 corresponding to February 12, 2015, page. 4.

¹⁴ Article 9 of Executive Decree No. 22-55, previous reference

¹⁵ Article 10 of Executive Decree No. 22-55, previous reference

¹⁶ Article 2 of Executive Decree No. 20-342 of Rabi' al-Thani 6, 1442 corresponding to November 22, 2020 amends and supplements Executive Decree No. 19-15 of Rabi' al-Thani 4, 1436 corresponding to January 25, 2015, which determines the modalities for preparing construction contracts and Hand it over, Official Gazette of the Republic of Algeria, No. 71, issued on Rabi' al-Thani 16, 1442, corresponding to December 2, 2020, page 14.

¹⁷ Articles 5 and 10 of Executive Decree No. 22-55, previous reference

¹⁸ Article 11 of Executive Decree No. 22-55, previous reference.

¹⁹ Article 19 of Executive Decree No. 22-55, previous reference.

²⁰ Article 21 of Executive Decree No. 22-55, *ibid.*