

The Legal Consequences OF Violating THE Provisions OF THE Building Permit IN THE Jordanian Legislation: A Comparative Study

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Abstract:

The building permit and the provisions governing it represent a great importance in regulating construction work in light of the technical and aesthetic progress that life is witnessing at the present time in order to achieve the private interest of the owner of the building and at the same time to achieve the public interest represented in regulating the rights and obligations of neighbors among themselves and facing the public road.

For all this, this study dealt with the legal impact of violating the provisions of the building permit according to the Jordanian legislation, and through three topics. The first topic dealt with: the definition of the building permit and its parties, while the scope of the building permit was discussed in the second topic. As for the third topic, it dealt with the obligations of the licensee and the legal impact of violating the provisions of the building permit.

The study reached a number of conclusions and recommendations, the most important of which was the recommendation to the Jordanian legislator to include the following text in the provisions:

“The owner or his representative, whether a government agency or legal or natural persons, must obtain a building permit when constructing a new building, expanding it, or maintaining it if the maintenance affects the structural elements of the building. The competent authority shall decide on the issue of the permit within thirty days from the date of submission of the application. If the

committee does not decide on the application for the permit, this shall be deemed acceptance by it of the building permit, with the owner bearing all responsibilities for any violation of the building conditions. With regard to government projects and investment projects, they are decided upon through a specialized committee.”

We recommend the Jordanian legislator to take into account the position of both the French and Algerian legislators in determining the right of the tenant to apply for a building permit, with the condition that he obtains the owner’s approval before that.

Introduction:

Article No. 1018 of the Jordanian Civil Code No. 43 of 1976 defines the right of ownership as:

1. The owner's authority to dispose of his property in an absolute manner, for benefit or exploitation.
2. The owner of the thing alone has the right to benefit from the property owned, its yield, its fruits, and its production, and to dispose of it in all legally permissible dispositions.

It can be said that the text of Article No. 1018 has highlighted what the right of ownership is in terms of the fact that it gives the owner authority over his property represented in using the place of this right, exploiting it, and disposing of it in all forms of legally permissible disposals.

It is noted in the text of Article (1018) of the Jordanian Civil Code that the legislator used the term "absolute" when describing the right of ownership, despite his realization in the second paragraph of the text of the same article that the restriction of the authority of the owner’s disposal in the place of the right of ownership with legally permissible disposals.

Legally permissible behaviors are regulated by the legislator in order to achieve the public interest at times and to protect private interests at other times. The legislators have regulated these behaviors through special laws and their legal systems. Among the most important of these behaviors and material facts that are related to real estate ownership is the construction, expansion, dependencies/out-building, or restoration of buildings, where the legislator intervenes to organize these operations through the permits and licenses for construction issued by competent authorities such as municipalities, where this permit is governed by a number of legal requirements and conditions, such as indicating the minimum area on which the building is based, the distance between the building whose construction is required to be licensed and the neighboring buildings,

and what is related to overlooks and skylights. These conditions differ according to the type and classification of the property as well as the nature of its use. The licensee for the construction must comply with the limits, scope, and conditions of this license in order to avoid the effects that may result from non-compliance with it, which may deprive him of using and exploiting the building that violates these conditions, as the legislator requires after obtaining the license and completing the construction work to obtain a building occupancy permit, which the licensee may be prohibited from obtaining if he violates the provisions of the building permit granted to him.

Problem of Study:

The problem of this study lies in the culture prevalent in societies in general and in Jordanian society in particular with the possibility of violating the provisions of the building permit in order to achieve the greatest possible benefit from the area of the land on which buildings are built by creating a building area larger than that authorized or violating the design of the use of the building. The prevailing belief is that the completion of construction works in violation makes the violation a fait accompli that imposes itself, which was reflected negatively on reality, as the number of buildings that were not completed in its final form as a result of violating the provisions of the building permit is increasing. At a time when the legislator imposes, through the Law of Organizing Cities, Villages, and Buildings, special provisions and conditions for the building permit, and others related to the procedures that are imposed when its provisions are violated. In addition to the absence or procrastination in making the decisions of the committees and court rulings that decide to remove the violation and aggression due to societal necessities and economic conditions.

Importance of Study:

The building permit, with the terms and conditions that it includes, represents a high importance in regulating construction work and achieving the general benefit of society, especially with the technical and aesthetic development and environmental requirements in construction work due to the great expansion in this field. Also, shedding light on the building permit and its provisions finds its importance in developing residential neighborhoods, industrial, commercial and tourist projects, and new cities, which contributes to building a new culture based on respecting the conditions of the building permit and not violating them in order to achieve the public benefit.

Methodology of Study:

The comparative analytical approach will be relied upon, through analyzing the texts of Jordanian legislation and comparative legislation, comparing jurisprudential opinions and analyzing relevant judicial rulings.

Plan of Study:

- The first topic: the definition of building permit and its parties.
 - o The first theme: the definition of a building permit.
 - o The second theme: the parties to the building permit.
- The second topic: the scope of the building permit.
 - o The first theme: the date range of the building permit.
 - o The second theme: the subject scope of the building permit.
- The third topic: Obligations of the licensee and the legal impact of violating the provisions of the building permit.
 - o The first theme: Obligations of the building licensee.
 - o The second theme: The legal impact of violating the provisions of the building permit.
- Conclusion
- Results and recommendations.
- References.

The first topic:

The definition of building permit and its parties.

The definition of the building permit, its parties, its validity period, the reasons for considering it null and its objective scope are important in determining its legal nature, which is reflected in determining the legal effect that results from violating the provisions of this license, and this will be studied through the following themes:

- The first theme: the definition of the building permit and its parties.
- The second theme: the scope of the building permit.

The first theme: definition of building permit.

The two researchers will define the building permit in terms of legislation, jurisprudence and jurisprudence, through the following issues:

The first issue: the position of the legislator on defining the building permit idiomatically.

The Jordanian legislator did not define what is meant by the building permit in the Cities, Villages and Buildings Regulation Law No. (79) of (1966) ⁽¹⁾. However, the regulations issued according to it, such as the Building and Organization Regulations in the city of Amman, define the license as a written statement issued by the competent reference for

(¹) Published in the Official Gazette No. 1952 issued on 9/25/1966.

building.⁽¹⁾ The Regulation and Construction Licensing in Development Zones and Free Zones for the year (2019) defined the construction license/building permit as the permit issued by the competent committee approving the establishment and implementation of a reconstruction project in the region in accordance with the established planning scheme, construction provisions and engineering licensing schemes approved for this purpose.

There was no legislative definition of the building permit, either in Egypt or France ⁽²⁾. In all successive legislations to regulate the process of construction and reconstruction in both countries, where the legislator always leaves this task to jurisprudence and the judiciary ⁽³⁾. The same applies to the Iraqi legislation, which followed the same approach, and the Iraqi legislator did not provide a definition of the building permit in the Building Permits System No. 2 of 2016.⁽⁴⁾

While the Algerian legislator contented himself with a general definition of the building permit in Article (52) of Law No. (29/90) related to planning and reconstruction by defining it as an administrative permit that is received by a competent authority for the completion or construction of any new building.⁽⁵⁾ Whatever its type, including enclosing walls or any modification in a building related to the external appearance, without providing a comprehensive definition of the building permit.⁽⁶⁾

It is clear from the text mentioned by the Algerian legislator for the building permit that it must be issued through a specific body and that it is an administrative work for any construction work of a new building or internal or external modification of an existing building. It can be said that the law did not set a definition for the building permit, and sometimes the regulations defined the building permit, and the

(¹) Article (2) of Regulation No. (28) for the year (2018) Building and Planning Regulation in the City of Amman for the year 2018 and its amendments stipulated the “written permit issued by the authority concerned with the construction permit.”

(²) Egyptian Building Law No. (119) for the year 2008 and the French Urban Planning Law No. (31) for the year 1676

(³) Meshaal, Mohamed Ahmed Salama, The Legal System for Building Permits, “A Comparative Study between Egypt and France.” The Legal Journal, Egypt, Volume 10, Issue 8, 2021, p. 2248.

(⁴) Ismail Saasa Badri and Amin Rahim Al-Hijami, Legal Provisions for Building Permits, Al-Mohaqqiq Al-Hali Journal for Legal and Political Sciences, Faculty of Law, University of Babylon, Iraq, Third Issue, 2020, p. 52

(⁵) The Algerian legislator defined in Article No. (2) of Law No. (08-15) regarding defining the rules for matching buildings and completing their completion as “construction: every building or facility whose use is directed for housing, equipment, commercial activity, industrial and traditional production, or agricultural production or services.”

(⁶) This definition was referred to by Dib, Fatna - The legal system for the building permit in light of the executive decree (19/15), The Journal of Construction and Development, Ibn Khaldun University of Tiaret, Algeria, Volume (1) Issue (3), 2017, pg. 250.

regulations based their definition of the building permit on two axes, one of which is that the building permit is issued by a competent authority, and the second axis is that the permit represents a permit for construction, and thus legislation has left the door open to both judiciary and jurisprudence to define the building permit.

The second issue: the jurisprudence definition of the building permit.

Jurisprudence in defining a building permit was divided into several directions. Some of them defined it according to its legal nature as an administrative decision according to which the administration grants the right to a person to build after ensuring that the conditions required by the planning law are met in the place to be built. ⁽¹⁾

Another approach defines it as an administrative decision issued by a competent administrative authority at the request of a person who has the legal capacity, in order to carry out legally defined building works under this license, taking into account the provisions of the law in force. ⁽²⁾ Among the jurists who defined the building permit by highlighting the type of works and occupations that allow and among these definitions is that the building permit is one of the preventive measures that determine what the licensed building is, mention its specifications, and indicate its purpose, whether residential, service or commercial, and used by the administrative control authorities. In the state for the purpose of protecting all members of society from the harm that may result from the exercise of individual freedoms, and protecting the public and private interest ⁽³⁾.

Among the jurists who merged the legal nature of the building permit with the purpose of its existence, as some of them defined it as the administrative decision issued by a legally competent authority, according to which it grants the right to a person (natural or legal) to create a new building or change an existing building before starting construction work that must be respected building code rules ⁽⁴⁾.

The third issue: the judiciary's definition of a building permit.

(1) Musleh Mamdouh Al-Sarayrah, The legal system for building permits, a comparative study between French law and Jordanian law, Law Journal, Kuwait, Volume 25, Issue 04, for the year 2001, p.279 . This reference was referred to by Mohamed Ahmed Salama in his research on the legal system for building permits, "a comparative study between the law of Egypt and France."

(2) Brahim Muwafaq, The Building Permit and its Role in Protecting the Internal and External Environment of the Building, The Journal of Construction and Building, Ibn Khaldun University of Tiaret, Algeria, Volume One, Issue Three, 2017, p. 275

(3) Deeb Fatna - The legal system for building permits in the light of Executive Decree (15/19) - The Journal of Construction and Building - Ibn Khaldun University of Tiaret- Algeria - Volume (1) - Issue (3) - 2017, p. 251

(4) Ezri El-Zein, The Legal System for Building Permits in Algerian Legislation, Journal of Human Sciences, 2016, University of Mohamed Khedir Biskra, No. 8, June 2055, pg. 5.

The Toulouse Criminal Court defined in its judgment issued on (02/07/1974) the building permit as an administrative permit and a procedure of administrative control. It means a license to work, i.e. permission to do work, and it has nothing to do with the right of ownership, that is, it does not grant a right to ownership, and it has no effect with regard to land ownership, nor is it among the things that can be sold.

As for the Egyptian judiciary, the Administrative Court, in its ruling issued in Case No. (1909) dated 01/08/1980, defined the building permit as:

A copy of the administrative control activity, which is the exercise of a discretionary power that narrows and widens as required by the laws and regulations regulating them in terms of restrictions and conditions ¹⁾ .

Thus, it is clear that the terminological definition of a building permit includes its legal nature, the purpose for which the permit was found, and the authority responsible for issuing it. Where we can say that the building permit is a written permission issued in the form of an administrative decision from the competent administrative authority such as the municipalities based on a request submitted by the owner of the building or his representative that includes specific conditions according to the organization of the real estate on which the existing building is or will be built.

The second theme: the parties to the building permit.

A building permit is issued at the request of the owner or his agent and by a competent authority and within a specified period of time. Who are the two parties to the building permit and what are the time periods related to the building permit? The building permit is issued through committees located in the municipalities and secretariats, based on a request from the owner, whether the owner is a natural or legal person, and government agencies are not excluded from this.

The first issue: the authorities authorized to grant the building permit.

First: The Jordanian legislator.

The Local Organizing Committee is the authority concerned with granting building permits according to Jordanian legislation, and this committee has enumerated its images ⁽²⁾:

- 1- The Municipal Council in the areas that have been organized into the center of the governorates and districts ⁽³⁾ .
- 2- The Municipal Council in the areas that have been organized other than the district centers (4)

(¹) Deeb Fatna, *ibid*, p. 250

(²) See Article (9/2) of the Cities, Villages and Buildings Organization Law.

(³) See Article (1/9/a) of the Jordanian Cities, Villages and Buildings Organization Law.

(⁴) See Article (1/9/c) of the Jordanian Cities, Villages and Buildings Organization Law.

- 3- The village council in any organizational area that includes a village council ⁽¹⁾.
- 4- A special committee formed in place of the local committee (2)
- 5- Or instead of the village committee (3) .
- 6- Within the city of Amman, the authority to obtain a license is one of the tasks of the Local Cities Organizing Committee ⁽⁴⁾.

It is clear that the Jordanian legislator assigned the task of deciding on the building permit to various committees in order to facilitate the task of obtaining a permit for its applicants, bearing in mind that he did not take into account the nature of the building to be licensed, the extent of its national or economic importance, and the nature of the entity requesting the permit.

Second: The Egyptian legislator.

With regard to the Egyptian legislator, he entrusted the task of issuing a building permit to the administrative authorities concerned with planning and organization ⁽⁵⁾, and they include :

- 1- New Urban Communities Authority for new urban communities.
- 2- The General Authority for Tourism Development for tourist areas.
- 3- The Public Authority for Industrial Development with regard to industrial zones.

Thus, the Egyptian legislator has taken into account the nature of the building to be licensed and entrusted the task of licensing to the technical authorities related to it.

Third: The Iraqi legislator.

With regard to the Iraqi legislator, he specified the competent authorities for issuing a residential building permit - the building permit as it is called - based on the building area or height, according to the following:

- 1- Municipalities affiliated to the Municipality, if the height of the building is less than ten floors, or the area of the plot of land is less than (2,000) square meters.
- 2- Contrary to the above paragraph, the issuance of the building permit shall be after obtaining approval from the Design Department affiliated to the Municipality of Baghdad, or the approval of the Directorate of Urban Planning in the governorate for municipal departments in the governorates ⁽⁶⁾.

(1) See Article (1/9/c) of the Jordanian Cities, Villages and Buildings Organization Law.

(2) See Article (1/9/d) of the Jordanian Cities, Villages and Buildings Organization Law.

(3) See Article (9/1/d) of the Jordanian Cities, Villages and Buildings Organization Law.

(4) See Article No. (56/a) of the Building and Organization Regulation for the City of Amman

(5) See Article 4 of the Egyptian Building Law No. 119 of 2008.

(6) See Article (3) of the Iraqi Building Permits Regulation No. (2) of 2016

It is clear that the Iraqi legislator has taken into account the nature and area of buildings during the licensing of buildings, making it less complicated for buildings in medium and small projects to obtain a building permit than those buildings in large projects.

Fourth: The Algerian legislator.

With regard to the Algerian legislator, he entrusted the task of issuing a building permit to several parties, namely:

- 1- The head of the Municipal People's Assembly as a representative of the municipality in the areas covered by the land occupation plan and as a representative of the state in the areas not covered by the land occupation plan ⁽¹⁾.
- 2- The governor, in the event that the license relates to buildings and establishments executed for the account of the state, the state and their public structures. Production facility, transportation, distribution and storage of energy as well as strategic materials. Buildings located in coasts and territories of outstanding natural and cultural advantage ⁽²⁾
- 3- The Minister in charge of reconstruction, if it relates to structured projects of national or republican interest.

It is clear from the foregoing that the Algerian legislator distributes competence in granting building permits between each of the President of the Municipal People's Assembly and the mayor and Minister in charge of reconstruction. It is a division that takes into account the intensity of urban activities and the principles of administrative decentralization in granting the competence to issue building permits to the President of the Municipal People's Assembly, and the competence gradually goes to the governor and then the minister in charge of reconstruction ⁽³⁾

The second issue: the authorized to submit a building permit application.

The construction and licensing of buildings is not limited to natural persons only, but extends to legal persons, especially to state institutions where their buildings and facilities are licensed, and it also includes buildings used by investors and companies.

Article (35/1) of the Jordanian Cities, Villages and Buildings Planning Law states that every person who wishes to carry out work that requires a license must submit an application ⁽⁴⁾. According to the provisions of the

⁽¹⁾ See Article (65) of the Algerian Planning and Reconstruction Law No. (90/29) of 1990.

⁽²⁾ See Article (66) of the Algerian Planning and Reconstruction Law No. (90/29).

⁽³⁾ Aziri El-Zein - Procedures for issuing construction and demolition decisions in Algerian legislation - Journal of Human Sciences, University of Mohamed Khediri, Biskra, Algeria, No. 3, pp. 15-16.

⁽⁴⁾ See Article (35/1) of the Jordanian Cities, Villages and Buildings Law .

Cities, Villages and Buildings Law, the application for a building permit can be submitted through any of the following agencies ⁽¹⁾:

- 1- Government departments, a local authority, or a public institution.
- 2- Private institutions or any person.

It is clear that the Jordanian legislator has mentioned the term person as a general matter, and this term includes the owners of the property, whether they are natural persons or legal persons. This has been stated in the executive regulations of the Egyptian Building Law that the owner or his representative must contract with an engineering office or engineer to carry out building permit work ⁽²⁾. The owner includes legal and natural persons. As for the Iraqi legislator, he authorized the submission of a building permit application for each of the following ⁽³⁾:

- 1- citizens and private institutions.
- 2- Investors
- 3- Governmental and private institutions.

With regard to the Algerian legislator, he did not make the building permit confined to the owner only, but rather specified the parties that can obtain the building permit as follows: ⁽⁴⁾

- 1- The owner and his agent.
- 2- The authorized tenant.
- 3- The body or institution to which the plot of land or building is allocated.
- 4- The holder ⁽⁵⁾.

It can be said that the parties to the building permit are represented by two parties, one of which is the applicant for the building permit and the other is the granting party. It is clear that the authorities authorized to apply for a building permit differ from one piece of legislation to another. But in general, it includes the owner of the building or real estate who intends to construct or modify a building, whether he is a natural person, a private legal person, or government institutions. The task of issuing a building permit is assigned to certain committees affiliated to the administrative divisions of the sites where a building permit is to be granted, as a matter of facilitation for the permit applicants.

Contrary to the Algerian legislator, none of the legislators in the laws subject to comparison allowed the licensed tenant to submit an application to obtain a building permit, whether the building was built without a license or the license to conduct any of the construction works for which the legislator requires obtaining a license, such as out-building

⁽¹⁾ See Article (3) of the Jordanian Cities, Villages and Buildings Law.

⁽²⁾ See Article (117) of the executive regulations of the Egyptian Building Law.

⁽³⁾ See Article No. (2/2) of the Iraqi Building Permits Regulation No. (2) of (2016).

⁽⁴⁾ See Article (34) of Executive Decree No. (176/91).

⁽⁵⁾ Samira Maachi - Building permit provisions in Algerian legislation and their impact on the environment - Journal of Judicial Jurisprudence - University of Mohamed Kheidar Biskra - Twelfth Issue - September 2002 - pp. 162-164

, dependencies or restoring the building. This position of the Algerian legislator was influenced by the position of the Council of State in France, which recognized the right of the tenant to request a building permit. However, in order to exercise this right, the tenant was required to obtain permission from the landlord, as without this permission he does not have the right to request a building permit ⁽¹⁾.

Second Topic:

Scope of Building Permit.

Through this topic, we will track the date range of the building permit, both in terms of the period during which this permit must be issued, and with regard to the reasons for its invalidity. We will also try to determine the objective scope of the building permit by defining what is meant by construction work in the legal legislation that is being compared in this study, as follows.

The first theme: the date range of the building permit.

The second theme: the subject scope of the building permit.

The first theme:

The Date Range of Building Permit.

The time factor is considered one of the most important factors influencing the construction and buildings sector for several reasons, the most important of which is the time period required for the implementation of construction works, which extends from the period of preparing plans, approving them, and issuing a building permit. And until securing the necessary financing to start the implementation of the construction works and until the completion of these works, taking into account the possibility of stopping the construction works for circumstances beyond the will of the licensee and the contractor, such as climatic conditions that may prevent the continuation of these works. Therefore, the legislator is keen to specify the period necessary for issuing the decision of the competent committee, either with approval or rejection. The legislator is also keen to stipulate the period of time during which the permit is considered invalid if the licensee does not proceed with the implementation of construction works. The legislator also specifies reasons that lead to the construction permit being considered null or not in line with the legal and material effects envisaged from it. Accordingly, and according to the provisions of Article (56) of the Building and Planning Regulations in the city of Amman, the committee must issue its written decision approving the license application, amending the application, or rejecting it within (30) days from the date of receiving the

(1) 1976 ,” Les Amis de l’île de Groix” , no 03164, Referred to in the research of Muhammad Ahmed Salama Mishaal, p. 48

license application, the decision shall be communicated to the owner by the means the Committee deems appropriate.

The Committee's decision to approve the license shall be deemed null and void in one of the following two cases:

1- If the owner does not start construction in accordance with the license within one year from the date of its issuance, with the exception of cases of dispute before the courts and the issuance of a judicial decision not to proceed with construction.

2- If the license applicant does not pay the construction fees due for the proposed building license within six months from the date of issuance of the relevant committee's decision ⁽¹⁾.

The Jordanian Cities, Villages and Buildings Law and the regulations issued by it did not include any legal text about the implied license - so that the applicant for the license is considered to have obtained it. In the event that the committee exceeds the period specified for issuing a building permit after receiving the completed application for all papers, plans and procedures, as is the case in the position of the Iraqi legislator and the Egyptian legislator, as we will come to it later.

Article (41) of the Egyptian Building Law No. (119) of 2008 stipulates the following: "The engineer or engineering office shall submit the drawings and documents attached to the license application, and issue a certificate of business validity for the license. The administrative authority concerned with planning and organizing affairs shall approve this certificate and issue the building permit within a period not exceeding thirty days from the date of receiving the works validity certificate from the engineer or the office conducting the preparation and ensure that the required documents are fulfilled." As the Egyptian legislator considered that the lapse of thirty days from submitting a license application to the administrative committee concerned with planning and organizing affairs, not to be decided by the committee as approval of the building permit ⁽²⁾.

And the Egyptian legislator decides that the failure of the licensee to start construction work within a period of one year from the date of receiving the building permit necessitates the issuance of a certificate from the administrative authority that issued the license stating the continuation of the license in the event of a desire to start construction work. The excavation works or the works of supporting the sides of the excavations necessary to protect the neighboring structures are not considered an commencement of the works ⁽³⁾. If construction stops for more than

⁽¹⁾ See Article (56) of Regulation No. (28) of (2018) Building and Organization Regulation in the City of Amman.

⁽²⁾ See Article (42) of Building Law No. (119) of 2008.

⁽³⁾ See Article (119) of the executive regulations of the Building Law.

three years, the approval of the competent administrative authority must be obtained to complete the construction works ⁽¹⁾.

It is noted that the Jordanian legislator did not follow in the footsteps of the Egyptian legislator in considering building permits valid after one year has passed, provided that the necessary approvals for their continuation are obtained from the concerned authorities. It is not conceivable that the building permit will be canceled within a year - as is the case by the Jordanian legislator - if implementation is not initiated, then there is no justification for that in terms of the process, in addition to the fact that the building permit will become a subject of dispute in the future. This is with regard to the licensing fees that are paid for obtaining a building permit ⁽²⁾.

While the Iraqi legislator distinguished between the application for building permit submitted for the purposes of residential use and the application submitted for the purposes of other uses, as the system for building permit in Iraq specifies that the competent municipality must decide on the application for building permit, whether by acceptance or rejection within (15) fifteen working days for residential use, and within (30) thirty working days for other uses, from the date of registering the permit application with the competent authority, and failure to decide on the application during the mentioned period is considered an acceptance of it.⁽³⁾ The Iraqi legislator did not explain in this system the effect of the failure of the person authorized to build to carry out or initiate the implementation of the construction. The Algerian legislator distinguished between the period during which the building permit must be issued, according to the competent authority in issuing the permit, as follows ⁽⁴⁾:

- 1- Within the three months following the date of filing the application for a building permit, when the issuance of a building permit is within the competence of the President of the Municipal People's Assembly as a representative of the municipality.
- 2- Within four months in all other cases.

With regard to the failure to start or complete construction work and its impact on the validity of the building permit, a certain period is specified in the building permit to complete the authorized building, and if the building is not completed within that period of time, the building permit is considered canceled. ⁽⁵⁾In all cases, if a year has passed since the permit was issued and construction has not started, the permit is considered invalid. ⁽⁶⁾ With regard to the

⁽¹⁾ See Article (149) of the executive regulations of the law.

⁽²⁾ See the decision of the Court of Cassation in its human rights capacity / Case No. 1986/756 dated 10/28/1986 published on the Qustas website.

⁽³⁾ See Article (4) in Regulation No. (2) of (2016).

⁽⁴⁾ See Article (43) of Executive Decree No. (9/176).

⁽⁵⁾ See Article (49) of Executive Decree No. (9/176).

⁽⁶⁾ See Article (6) of the Law No. (08-15).

silence of the concerned party regarding the response to the license application, it is considered a refusal ⁽¹⁾. It is clear that most of the Arab legislation considers (30) days a sufficient period for the authorities authorized to issue the building permit to decide on it.

The Second Theme:

The Subject Scope of Building Permit

The building permit is a restriction on the right of ownership, and it is an exception. The principle is that the property enjoys all its powers of use, exploitation, and disposal. Any exception to this rule must be carefully regulated, since the building permit is an exception to the original. The Jordanian Cities, Villages and Buildings Law did not permit the commencement of any construction or reconstruction works in the planning areas except after obtaining a license to do so from the concerned authorities. ⁽²⁾ With regard to the areas belonging to the Greater Amman Municipality, whoever intends to carry out any reconstruction project that requires a building permit must submit a request to the competent authority in the Greater Amman Municipality according to the form prepared for that. Provided that the application includes copies of the required plans and is within the required technical specifications for both the plans and the building ⁽³⁾. It is clear that the Jordanian legislator has linked the building permit to the term construction, so any reconstruction or building process needs a permit ⁽⁴⁾.

Article (39) of the Egyptian Building Law stipulates that: "The owner must obtain a building permit before proceeding with the construction of buildings or facilities, carrying out works in buildings or facilities, expanding, raising, modifying, supporting or restoring them, or demolishing buildings that are not subject to the demolition law of the buildings that are not fully or partially collapsible. Or make any external finishes according to the executive regulations of the Unified Building Law. The exterior finishes are covering the facades of the existing buildings, whether they overlook the public road or not, with different types of whitewash or various claddings, as well as the works of ornaments or cornices and paints."

It can be said that the scope of the building permit in the Egyptian legislation is somewhat clear, and the owner is obligated to obtain a building permit for external finishes, which may be stressful for the owner, and it would have been better to specify this situation in certain areas for the purposes of preserving its historical and archaeological character and not to be taken as an absolute, especially in modern cities.

⁽¹⁾ See Article (60) of the Law No. (29/90).

⁽²⁾ See Article (35-1) of the Cities, Villages and Buildings Law.

⁽³⁾ See Article (55-b) of the building and organization regulation in the city of Amman.

⁽⁴⁾ See Article (34-4) of the Cities, Villages and Buildings Law.

According to Iraqi legislation, any of the following works (1), submitting a building permit application for municipalities requires:

- 1- New construction.
- 2- Add a building.
- 3- Demolition.
- 4- Demolition and reconstruction.
- 5- Restoration.
- 6- Constructing fences.
- 7- Building exploitation
- 8- Changing the use of the building.

It is clear that the Iraqi legislator has shortened the citizen of the building permit in the works related to the construction of a new building, its modification, its removal, the modification of its use capacity, its restoration, or putting a fence on it. Perhaps it is as close as possible to practical reality.

In Algerian legislation, building permits are not limited to the mere construction of new buildings, but include the following:

- 1- Constructing new buildings.
- 2- Operations of change and improvement in existing buildings.

The Algerian legislator limited the building permit to the essential works of constructing a new building or modifying and improving an existing building without specifying the extent of improvement works that must require a building permit and improvement works that do not need a building permit. We can say that the objective scope of the building permit is very ambiguous in the Jordanian legislation and we need to define more clearly what works need a building permit, and perhaps the Iraqi legislation is more clear with regard to the works that need a building permit.

Finally, the process of constructing buildings, maintaining them, and adjusting their usage status is considered one of the most important engines of the economy and one of the motives for development in any country, and the developing countries and the developed countries are equal in that. This necessitates that legislation be more flexible in the event that it places restrictions on the owner's authority to exercise the power of use over the property. Especially if the owner is a governmental institution, and the time periods granted to the competent committees to decide on the building permit must be consistent with the purpose of the existence of projects that need a building permit and are also consistent with the impact of these projects on the development of the country and that the works that need a building permit be more clear and accurate What is the nature of business restrictions?

The Third Topic:

(¹) See Article No. (1) of Building Permits Regulation No. (2) of 2016.

Obligations of the licensee and the legal effect of violating the provisions of the building permit

The building permit is issued including provisions that agree with the position of the legislator, and these provisions constitute obligations on the licensee that must be adhered to. Since the violation of these provisions constitutes a breach on the part of the licensee, which raises his legal responsibility from the outset. The licensee is the responsible party before the licensing committees and administrative authorities for the obligation to implement the provisions of the building permit, and depends on his breach of its provisions or violation of its conditions, a number of legal effects that may lead to depriving him of construction work and its use. Accordingly, we will discuss these obligations and conditions and the impact of violating them, as follows:

The First Theme: Obligations of the licensee.

The Second Theme: the legal effect of violating the provisions of the building permit.

First theme:

Obligations of the licensee.

In this theme, we will try to determine the obligations that must be taken into account by the licensee, whether before starting construction work or during it, and until obtaining permission to occupy the property through the following issues:

The first issue: Obligations of the licensee in the pre-construction stage.

The legislator specified a number of obligations that fall on the licensee in the pre-construction stage, or what is called the time frame of the building permit.

Article (56/B/1.2) of the Building and Organization Regulations in the city of Amman specified the obligation of the licensee to carry out construction works, and paying the fees, as well as determining the penalty that the licensee may face upon breach of his commitment, as follows:

The committee's decision to approve the license is considered null and void in one of the following two cases:

- 1- If the owner did not proceed with construction according to the license within one year from the date of its issuance, with the exception of cases of dispute before the courts and the issuance of a judicial decision not to proceed with construction.
- 2- If the license applicant does not pay the construction fees due for the proposed building license within six months from the date of issuance of the relevant committee's decision. While the Egyptian legislator, when he decided that the failure of the licensee to start construction work within a period of one year from the date of

receiving the building permit, requires the issuance of a certificate from the administrative authority that issued the license stating the continuation of the license in the event of a desire to start construction work, and the excavation works or the works of blocking the sides of the excavations necessary to protect the neighboring facilities are not considered an commencement of executing the works⁽¹⁾, and if construction stops for more than three years, the approval of the administrative authority must be obtained. In this regard, we can say that the Egyptian legislator did not issue a direct ruling deeming the building permit to be invalid once a year has passed since the issuance of this permit when the licensee does not start construction work. Rather, it permitted the licensee to submit an application to obtain a certificate from the administrative authority issuing the license, which indicates the continuation of the license, provided that he wishes to proceed with construction works through preparatory work. No, rather he specified some of the works whose initiation is not considered construction work, and in the sense of the violation, he specified what is meant by construction work. We believe that the Egyptian legislator was successful in his judgment in this matter. We call on the Jordanian legislator to follow this path in this matter.

The Second Issue: Obligations of The Licensee During Construction Stage

The licensee must abide by all the conditions included in the building permit during the authorized construction works, whether with regard to the licensed area - the building area - or the permitted height or other conditions that constitute a restriction on the owner's authority in order to achieve the public interest or to prevent harm to the neighbors. The owner's transgression or breach of these conditions specified in the building permit constitutes a breach of what the laws and regulations impose in this regard, which raises the owner's legal responsibility, as we will explain later. The legislations classified buildings and real estate into multiple categories through a criterion based on the nature of use, whereby real estate and lands were classified according to their desired purpose. For example, residential areas are classified into organizational categories that are gradual according to the location and population density, or on the basis of the intended purpose, such as classifying real estate in the areas into commercial real estate and other areas for industrial and other tourism purposes. Therefore, building permits are issued with one condition for each area according to its classification and category, and the area on which the building can be built is determined from the total area of the piece of land that the licensee wishes to build

(¹) See Article (119) of the Executive Regulations of the Unified Egyptian Building Law No. (119) of 2008.

on. One of these conditions is related to the height of the building, as the building permit includes the permitted height, and thus the number of layers that the owner can build has been limited. The Jordanian legislator was not satisfied with mentioning the term height, but rather set a clear technical definition for it. As the height of the building is a difference between two levels, which are the average level of the road or the road adjacent to the plot of land and the surface level of the last floor, or from the average level if the layer is inclined ⁽¹⁾

The building permit also includes specifying the setbacks between the buildings. The setbacks mean the space that separates the building from the outer borders of the plot of land that distinguishes it from others, or from the road line adjacent to it. In other words, it is the yard in which it is not permitted to build and is located between the building line and the boundaries of the plot of land from all sides (2). The building permit also includes specific conditions for each category with regard to overlooks, skylights, and regulatory protrusions/ bulges to avoid damage to neighbors or overtaking on the public road (3) .

The Second Theme :

The legal effect of violating the provisions of the building permit.

By tracing what is meant by the building permit through a number of legislative, jurisprudential and judicial positions, it becomes clear to us that most of these positions and opinions agreed that the building permit is a permit or authorization issued by an administrative body or committee specialized in real estate planning. And that this permission or permit is nothing but a kind of legal restrictions on the owner's authority to benefit and exploit the property. And that these restrictions have a regulatory goal that seeks to achieve the public interest represented in the commitment of all applicants for building permits to one conditions directed to all. And that the commitment of the license applicant reflects positively on public life, whether such as facilitating the use of roads by not overtaking, as if his violation of the provisions of the license results in damages to neighboring people. Accordingly, the licensee's breach is considered a breach of a general legal duty, as the provisions and conditions specified in the building permit issued by the competent administrative and technical authority or committee agree in their provisions with the provisions and texts of laws and regulations. And that this breach may raise his legal responsibility, as this breach represents a harmful act on its part, according to the position of the Jordanian legislator in the general provisions of the civil law, and a tort according to the provisions of the French civil law and those who followed this

(1) See Article (2) of the Building and Planning Regulation for the City of Amman.

(2) Article (2) of the Jordanian Towns and Villages Organization Law

(3) Decision of the Greater Amman Municipality Court, Case No. (571/2023), issued on 31/1/2023

approach, such as the Egyptian legislator. And that this harmful act and non-compliance is sure to result in damage, which necessitates determining the appropriate legal ruling as an effect of this violation, through the following hypotheses:

First: Establishing or initiating construction without obtaining a permit.

It is expected that one of them will begin construction work without a building permit issued upon his request from the competent authority. Whether the construction works are the construction of a new building or an addition to a building, or any of the construction works specified in the text of Article (4/34) of the Jordanian Cities and Villages Planning Law ⁽¹⁾.

In this case, the provision of Article (38) of the same law applies, as the first paragraph of it stipulates that: "If it appears to the local committee or the regional planning committee that the reconstruction of any land or the construction of any building took place without a permit, or contrary to the content of the license or contrary to the regulations, orders and instructions in force, or contrary to any planned organization and/or reconstruction; Then the concerned committee, its chairman, or any employee authorized by it, issues a notice of implementation for that owner, its occupant, the contractor, and the builder."

This notice, by virtue of the sixth paragraph of the same article, is considered a final notice and is not subject to any method of appeal. The owner or occupants of the real estate shall initiate an application to obtain a building permit according to the period specified in the notice. According to the fifth paragraph, the committee may notify the owner of the removal of the violation

Second: Obtaining a building permit based on false and misleading information.

A building permit is issued, as we have repeatedly stated, in accordance with the provisions of the Cities and Villages Law, by a decision of the competent committee. And the owner and the contractor are obligated to implement its provisions under penalty prescribed by law. In the event that the permit is issued on the basis of false and misleading information,

⁽¹⁾ Article (35-1) of the Villages and Cities Law stipulates the following: "Any person who wishes to organize or build any land, or to conduct any construction process that requires a permit, must apply for a license issued by the Local Planning Committee or the Competent Planning Committee, as the case may be, in accordance with the regulations, terms and conditions established under this law."

Article (55-b) of Article (55-b) of the Building and Organization Regulations in the city of Amman stipulates the following: "Whoever intends to carry out any reconstruction project must submit an application to the committee on the relevant form to obtain a license to carry out these works. And the engineer's name is indicated therein, and this engineer must submit to the committee a hard copy and an electronic copy...."

the building permit according to Article (38/2) shall be considered void, and the committee sends a notice to the owner of the need to apply, within fifteen days from the date of notification, to obtain a building permit and to stop construction work directly.

Third: Violating the provisions of the building permit during residence.

In this case, the same previous procedures relating to notification of the owner to remove the violation shall be applied within the periods specified in the notification. If the period expires and the notified does not remove the violation, the committee may, in accordance with Article (38/5), enter the site either through its workers or through a contractor to remove all forms of building violations.⁽¹⁾

In addition to a financial fine of twenty dinars and five dinars for each day the violation continues without removal⁽²⁾.

Fourth: Violating the provisions of the building permit and causing damage to the neighbors.

A violation of the provisions of the building permit may occur without causing tangible harm to the neighbors, and here the damage is assumed once the violation of the provisions of the permit is proven; However, these terms and conditions included in the building permit are regulatory conditions aimed at protecting the public interest. But sometimes the violation may have caused harm to one or more of the neighbors, such as encroaching on his land or revealing the sanctity and privacy of his house through transgression in the building of skylights and overlooks. In this case, the elements of responsibility for the harmful act are available, which allows the harmed party to request removal of the violation in addition to claiming compensation after proving the damage incurred as a result of the violation in accordance with the general provisions.⁽³⁾

Results and recommendations

Results :

- a) The building permit represents a legal restriction on the right of the owner, so the owner must obtain a building permit before starting construction or when changing the capacity of use, and the owner or his representative has the right to present the building permit.
- b) b) The objective scope of the building permit in the Jordanian law was not clear, due to linking the building permit to the construction term according to the definition of the Cities, Villages and Buildings Law.
- c) The Jordanian legislation did not include a text dealing with the lapse of the period during which the building permit must be issued,

⁽¹⁾ In this regard, see the decision of the Greater Amman Municipality Court, Case No. (571/2023) dated 1/31/2023..

⁽²⁾ See Article (38/8) of the Jordanian Cities and Villages Planning Law

⁽³⁾ Decision No. (778/1985) Ordinary Commission, published on page 251 of Issue (6) of the Bar Magazine for the year 1988.

- nor did it specify if the lapse of this period without the issuance of the approval is a refusal to grant the permit or an implicit acceptance, given that the lapse of the period without the committee's report of acceptance or refusal to grant the permit gives him the right to consider that the approval has been achieved.
- d) The restrictions imposed by the legislator on the licensee in the building permit require him to fully comply with its provisions, and to obtain a permit to occupy the property, it is required that the building, after completion, comply with the terms and conditions of the permit.
 - e) The Jordanian legislator, unlike other laws under comparison in this study, considered the building permit null if the legal fees were not paid within six months from the date of its issuance. He considered the legally specified fees from public order, as failure to pay them leads to considering the permit null and at the same time authorized the authority issuing the building permit to decide to exempt some agencies from the fees.
 - f) The Jordanian legislator gives the owner of the building erected without a license in the planning areas an opportunity to license the building by submitting an application to the competent authorities.
 - g) The Jordanian legislator authorizes the committee issuing the license and its employees, or through the help of a contractor, to carry out the work of removing violations in buildings, whether during or after construction.
 - h) The building owner who violates the provisions of the building permit will be deprived of using or exploiting it. Obtaining the occupancy permit is issued only after ensuring that the building conforms to the provisions of the building permit.
 - i) The general rules allow the neighbors, in the event that the licensee's breach of the terms and conditions of the building permit resulted in damage to them, to demand the removal of the violation and compensation for the damage they suffered.

Recommendations

- We recommend that the Jordanian legislator define the scope of the building permit clearly in order to avoid the expansion contained in the term construction. And adopting a positive attitude towards keeping silent about the building permit, because of its positive impact on economic life. Giving projects with national priorities and projects resulting from investment a special look.
- We suggest the following text: "The owner or his representative, whether a government agency or legal or natural persons, must obtain a building permit when constructing a new building, expanding it, or maintaining it if the maintenance affects the structural elements of the building. The competent authority shall

decide on the issue of the license within thirty days from the date of submission of the application. If the committee does not decide on the permit request, this is considered acceptance of the building permit, with the owner bearing all responsibilities for any violation of the building conditions. With regard to government projects and investment projects, they are decided by a specialized committee.”

- We recommend the Jordanian legislator to take into account the position of both the French and Algerian legislators in determining the right of the tenant to apply for a building permit, with the condition that he obtain the approval of the landlord before that.

Conclusion

The building permit represents a restriction on the freedom of the owner to use with the established buildings or in the event of a desire to construct the building, but this restriction has its legal and practical justifications. There is no doubt that it protects the public interest or an interest that is more important to be protected.

The restrictions imposed on the building permit must be defined clearly and unambiguously, taking into consideration the public interest on the one hand and the economic and development interest on the other hand.

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