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## BUILDING PERMIT: A CRITICAL REVIEW OF THE LEGALFRAMEWORK IN LEBANON

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# BUILDING PERMIT: A CRITICAL REVIEW OF THE LEGALFRAMEWORK IN LEBANON

## Abstract

The Building Permit (BP) is a required administrative authorization issued by public authorities. It ensures that the planned construction is abiding by the legal framework governing the construction works in the targeted area or zone. In Lebanon, the Construction Law, No.646/2004 regulates the issuance of BPs. The technical and legal procedures involve require the engagement of various administrative authorities. In this context, three institutions are involved. At first, the Order of Engineers and Architects (OEA), the General Directorate of Urban Planning (GDUP) and the relevant local authorities on the Municipal level. However, as of 2014, the Ministry of the Interior issued four circulars, supposedly, aiming at facilitating the issuance of the BP. As result, it allowed for the circumvent of the notification and mandatory verification by OEA and GDUP. This concentration of power within the direct executive local authorities was portrayed as a way to trim down the massive displacements towards urban centers. Moreover, it aimed at lowering the rate of illegal building plots the disadvantaged peripheries. This article intends is to investigate the legality of these circulars vis-à-vis the Lebanese Construction Law. It will be closely assessing the impact of the 2017 circulars on the urban and rural environment. Moreover, it will inquire on the potential risks due to the sidelining of the main technical institutions. It is aimed that this article will contribute to the overall national debate regarding the healthiness and the legality of executive decrees and their impact on the everyday life of the residents

## Keywords

Building Permit, Urban Planning, Construction Law, Urban development

# BUILDING PERMIT: A CRITICAL REVIEW OF THE LEGAL FRAMEWORK IN LEBANON

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## 1. INTRODUCTION

Building law consists of text, numbers and figures that draw the strict uncompromising line between the architecturally legal and illegal, the permissible and impermissible in space.

The current Lebanese Building Law was officially written in 1940 even though a 'modern' form of building legislation was already in practice since 1919. The initial writing of the current law occurred during the so-called French mandate period in Lebanon, and was based on the French model. Since then, the law has undergone several revisions mainly in 1954, 1971, 1983, and 1992. It is significant to mention here that these revisions, as it is obvious from their dates, did not occur in accordance with specific periodical procedure, instead the Directorate Generale du Urbanisme (DGU) sensing the need for change, would assign a committee of professionals to revise the law and present its recommendation. However, the directives, principles, guidelines, visions that were to structure the work of the committee have been particular to the sensibility and understanding of the members of the committee and interests of the approval agents, the DGU director and the current minister primarily. It is important to emphasize here that the numerical figures that are enacted as law are figures drawn out of the authors' specific spatial vision, related to an actual urban scheme that they have developed in the process.

The right to build is closely regulated by a set of texts, the purposes of which have varied (respect for hygiene and construction standards) and consist mainly in controlling:

- urban development,
- the balance between urban and agricultural areas, housing, jobs,
- the establishment and distribution of public facilities.

The building permit is a compulsory administrative authorization that allows any person (physical or moral, public or private) to build a building.

This article intends to investigate the legality of these circulars vis-à-vis the Lebanese Construction Law. It will be closely assessing the impact of the 2014 circulars on the urban and rural environment. Moreover, it will inquire on the potential risks due to the sidelining of the main technical institutions. It is aimed that this article will contribute to the overall national debate regarding the healthiness and the legality of executive degrees and their impact on the everyday life of the residents. To answer to this question we need first to understand the legal framework of construction and urban planning in Lebanon and the place of the building permit in it.

## 2. THE LEGAL FRAMEWORK OF CONSTRUCTION IN LEBANON

### 2.1 The Construction Law

The Lebanese Construction Law (646) dates from 2004 as a modification of the Decree-law no. 148, issued on September 16, 1983. The implementation decree was issued in 2005, and slightly modified in 2007. LBL 646 adopts a prescriptive approach. It is mainly concerned with micro urban set up and internal space dimensioning.

The Construction Law states that the construction of any building requires a construction permit. The process involves submitting property records, evidence of the consent of all property owners, full drawings certified by a registered architect and engineer, a recent plan of all projected and approved planning regulations in the area, and the payment of various fees. All planned buildings need to conform to the zoning and building regulations enforced in the country and area. The law stipulates that illegally constructed buildings must be destroyed. (Fawaz M., Saghiyeh N., Nammour K, 2014)

In reality, these conditions are often not met. In certain regions of the Lebanese territory, notably with respect to “non-classified lands” property is frequently co-owned by many people. (Non-classified lands are areas where no specific planning is yet done.) Often, the signatures do not represent the total number of shares (2,400) and in some cases the heirs are unidentifiable, often because RER records do not include up-to-date records of transactions. These challenges are also common in low-income neighborhoods where property registration is often incomplete. (Fawaz M., Saghiyeh N., Nammour K, 2014)

Building regulations specify the maximum allowed area for construction within a particular plot of land. (The total exploitation coefficient is a multiple of the whole plot of land that defines the maximum construction area on the site, whereas the ground exploitation coefficient is the maximum percentage footprint of a plot of land that a building can occupy. Both are regulated by the Lebanese law on Urban Planning (Decree-Law no. 69, issued on September 9th, 1983).

These limits have not always been respected, notably in non-classified lands. As an example, it had been noted in a 2008 report that due to the small total and ground exploitation coefficients (respectively 50% and 25%), as well as the inability to obtain the signatures of all co-owners on the construction permit many buildings have thus been illegally built; and consequently remained unregistered at the RER to this day. (N. and R. Saghih, 2008)

Again, while the letter of the law gives cause for concern, day-to-day practice generally proves otherwise. In reality, the law enforcement of regulations does provide some de facto, if uncertain, security of tenure, though it must also be recognized that wealthier and well-connected people are more likely to benefit from this de facto security. Experience suggests, however, that exceptions can be made to the law. Following the 2006 war with Israel, building and zoning regulations made it legally impossible to rebuild historic village cores. A policy was drafted to address this issue and, even if not officially adopted as law, the recommendations became established practice. In reality, local authorities have a significant level of discretion in enforcing building codes and regulations or allowing for flexibility in their interpretation. (Fawaz M., Saghiyeh N., Nammour K, 2014)

### 2.2 The Urban Law

As its name, the Urban Law is a branch of Lebanese public law by the very fact that it includes the rules governing relations between the State or its representatives and landowners. As such, its litigation procedure falls under administrative law.

It is legislation that tries to solve the problem of competition that exists throughout the territory and especially in cities for land use.

The legal framework for urban planning in Lebanon is grouped almost entirely in Decree-Law 69/83 of 9 September 1983. It is divided into three parts:

- Urban planning, that is, local planning plans and bylaws, whether direct or detailed;
- Urban planning operations, that is, the operational arrangements that the Administration may use when undertaking a development project;

- Planning authorizations, that is to say mainly building and subdivision permits, even if, contrary to French law, most of the provisions relating to building permits are inserted in the building code.

It was essentially in the 1960s, under the reformist era of President Fouad Chenab, that the institutional and administrative structure of urban planning in Lebanon was determined. In all, we can consider that institutionally Lebanon has 2 actors for which the Urban Law is a direct vocation (CSU and DGU), and 2 others are more indirectly involved (CDR and Municipalities).

#### 2.2.1 The Superior Council of Urbanism (CSU)

The CSU plays an arbitration role in the case of technical dispute between the Administration and the other actors concerned. It also gives an opinion on proposed laws or decrees relating to urban planning. His opinions are consistent and opposable. It also has the power to make changes to projects submitted to it and which the Administration is then required to follow. Its broad powers make it a leading player in urban planning in Lebanon. Section 2 of the Urban Law of 1983 confers on the CSU "all planning matters", its opinion being more particularly required with regard to:

- planning plans and regulations,
- draft modification of laws and planning regulations and building permit,
- any infrastructure project.

The CSU is also intended to deal with individuals' appeals against decisions relating to building and subdivision permits,

These broad powers thus give it a leading role in shaping the whole of urban policy in Lebanon.

#### 2.2.2 The General Direction of Urbanism (DGU)

The DGU depends on the Ministry of Public Works and Transport. Its creation dates from the 1960s, but its organization and operation are currently governed by the amended Decree of June 21, 1997.

In conclusion, it turns out that the specialized services of the DGU lack the means to ensure their prerogatives. During the civil war, it continued to manage current affairs as much as possible, but its work of regulating the territory was paralyzed by the numerous cuts between the central authority and its various services, as well as periods of vacancy of power or duplication of political power. Nevertheless, it managed to have the Council of Ministers approve seven successive plans during this period (Fawaz, 2005).

Today, the role of the DGU seems to be marginalized: instead of carrying out its planning mission, the planning section is more concerned with assisting the municipalities in their requests and entrusting the development to municipalities, private consulting firms. The creation in 1977 of the Council for Development and Reconstruction (CDR) also contributed to the marginalization of the DGU. This organization was indeed the main actor of the reconstruction.

The dividing line between planning and Construction Laws in Lebanon is unclear. In fact, if the scope of urban planning law covers urban planning plans, operations and authorizations, as stated above, at least in its main principles with regard to the latter, the construction Law for its part contains many provisions that are directly opposable to him:

- Building Permit Procedures (Section 2: Exempt Work, Section 3: Deposit, Section 4: Grant, Section 5: Certificate of Compliance);
- heights of buildings and number of floors, construction above existing, etc. (Article 11)
- Ground operating coefficient and total operating ratio (Article 4), in the absence of a master plan;
- Large complexes (Article 6);
- Additional car parks and collective car parks (Articles 9);

### 3. RELATIONS WITH THE DIFFERENT LEGISLATION ON LAND USE

A number of legislations related to urban planning have a significant impact on land use. The relationship between these laws also raises the question of the coordination and coherence of these laws and their application by their supervisory authorities.

#### 3.1 The code of the environment

If the promulgation in 2002 of the Environmental Code (Law No. 444-2002) came only late in relation to the ratification ten years earlier of the Rio Convention, the question of environmental impact studies has become today an area of primary importance, especially for urban planners.

However, well before the promulgation of the environmental code in 2002, the laws of urban planning and construction already provided that the public authority could refuse the granting of a building permit for environmental reasons or sanitary.

It is clear that the interactions between the environmental code and the urban planning laws are numerous, especially with regard to the principle of prior assessment: Article 21 of the Code of the environment states that "any person involved in the public and private sectors must, in principle, conduct an environmental assessment for projects that threaten the environment because of their size, nature, impact or activities".

This provision is not yet in force because all the implementing decrees necessary for its implementation have not been promulgated so far, but pilot attempts have already been initiated in various projects. In view of the full entry into force of the provisions on environmental assessment, it is clear that for planning operations that should be launched in the future, these would be subject to the evaluation procedure. because of their size, nature and impact, they would threaten the environment. The use of this evaluation could even be extended to the draft plans and planning regulations, which is not the case today except for a pilot attempt.

The principle of participation and environmental information has also been expressly laid down by the code, even if the implementing decrees have not been issued.

### 3.2 The coast

Decree 4810-1966 provides that the enjoyment of the public maritime domain is the responsibility of the public, which implies that no authorization to alienate part of this domain can be granted in favor of private interests.

However, this text provides an exception for the exploitation of the public domain for tourism and industrial purposes where a public interest is recognized. This recognition belongs to the Superior Council of Town Planning. The conditions of construction, subdivision and exploitation are nevertheless supervised: for example, a permit can be granted to the owner of the land contiguous to the public maritime domain only if its surface area is greater than 7500 m<sup>2</sup>, with at least 100 meters of frontage. on sea and 60 meters deep.

This decree was intended to further detail the legal regime of the public maritime domain laid for the first time by a decree of 1925, confirming the principles of inalienability. However, by opening a breach with a possibility of derogation justified by the public interest, this decree has in fact come to make the exception the rule.

### 3.3 The forest code

The Lebanese legal system has a forest code since 1949. It specifies the rules of exploitation to ensure the sustainability of forests. It imposes an authorization for the cutting of trees and conditions the marketing of timber and clearing to obtain a permit.

With the outbreak of the civil war, the provisions of this code ceased to be applied and the forests were cleared, in particular to open the way to urbanization.

### 3.4 Natural sites and monuments

The 1939 law, whose implementing decree dates back to March 28, 1942, has never been amended and is still in force. Article 1 entrusts the Ministry of Economy (transferred to the Ministry of the Environment in 1993) with a general inventory of natural sites and monuments, the preservation of which is from the point of view of art and urban planning. or tourism a public interest.

However, the Law 19 of 30 October 1990 came to approve Lebanon's accession to the 1972 UNESCO Convention on the Safeguarding of the Cultural and Natural Heritage. It is important to note also that the Qadicha Valley (North Lebanon) is a UNESCO World Heritage Site.

Once the sites are listed, they must be ranked if the Administration considers that only this procedure could prevent the degradation or disappearance of such sites. Article 13 specifies that the decree of classification must fix "exactly in each particular case the limits of the site or the natural monument to be classified" and possibly specify the special easements imposed for the protection of the site and which will not give rise to a payment compensation.

Article 12 provides the legal consequences of the classification: "in the perimeter of a building classified as a natural site or monument, no work of restoration, repair, construction, irrigation, installation of poles shall be undertaken, (...) and in general, no change in the appearance of the site or monument should be made without the permission of the Ministry of the Environment.

### 3.5 Historical monuments or antiques

The Order No. 166 of November 7 1933 still in force states that antiquities were defined as being "produced from human activity to some civilization to which they belong, prior to the year 1700". Antiquities are also considered to be real estate objects after the year 1700, the preservation of which is of historical and artistic interest and which will be included in the general inventory of historical monuments (art.1).

According to the same decree, antiques are divided into two categories: real estate and movables (art.2). Real estate antiques can also be called "historical monuments".

On the strict plan of town planning and to preserve the best antiques, Article 19 of the decree of 1933 has the need for approval of development plans by the competent departments of Antiquities (the Director General of Antiquities being also a member of the CSU), so much so that in predominantly archaeological areas, it is the architects of this department who develop the urban plans.

More generally, the decree provides that it is "forbidden to destroy, damage, mutilate an immovable or movable antiques, to trace or engrave any inscription whatsoever, to appropriate, to sell, to buy without authorization any materials belonging to or having belonged to ancient buildings (...)" .

### 3.6 Classified facilities

The decree of July 22nd, 1932 subjected to administrative control all the industrial and commercial establishments whatever the nature, since their activities imply a danger or nuisances as for the safety, the cleanliness of the air, the noise, smell, public health, or agriculture.

The text also stipulates that a distinction must be made between three categories of installations classified according to their degree of harmfulness, and the proximity or distance of dwellings is the decisive criterion:

- First class facilities are those that must be removed.
- second-class facilities are those that do not need to be removed from the home if nuisance mitigation measures are taken to permit their operation.
- Third category facilities must meet high standards of neighborhood and public health to not pose a threat.

The delivery of classified installations is now the responsibility of the Ministry of Industry, which has created five categories of classified installations. The opinion of the Ministry of the Environment is also required beforehand.

## 4. THE BUILDING PERMIT

As a part of construction and Urban Law, the right to build is closely regulated by a set of texts, the purposes of which have varied (respect for hygiene and construction standards) and consist mainly in controlling:

- urban development,
- the balance between urban and agricultural areas, housing, jobs,
- the establishment and distribution of public facilities.

The building permit or building permit is an administrative act that concerns the construction or modification of a building, according to its use (dwelling, shop, office, etc.) and according to the applicable planning rules. It is the licenses & permits required for the construction of the project, provided that the investment requires land and building. These documents are issued by the regional authorities where the investment will take place. Once completed, a Housing or Occupancy Permit will be needed for the new building to be used. (Ghandour M., 2001)

Anyone wishing to build a building of some importance must apply for a building permit from the administration. This approach is intended to verify that the project complies with the legislative and regulatory provisions relating to urban planning.

The building permit or building permit is an administrative act that concerns the construction or modification of a building, according to its use (dwelling, shop, office, etc.) and according to the applicable planning rules.

It allows, like the preliminary declaration, to verify that the envisaged construction respects the various rules resulting from the urban planning code governing the right to build, and in particular the applicable planning document, which determines the nature of the authorized or prohibited construction ( residential, commercial, industrial, agricultural ...) according to the character of the area, destinations (housing, commerce, hotel, office ...), location, service, height, aspect, construction, standards of parking, open spaces or green spaces

If the main principles relating to building permits are inserted in Chapter 4 (ie Article 25) of the Urban Law, the legal regime for building permits is governed Construction Law 646/2004 and by its implementing decree n° 15874 of December 5, 2005.

#### **4.1 General principles of the building permit**

Under the general principles of the building permit as provided for in Article 25 of the Urban Planning Law, the permit is granted to works in accordance with the Construction Law, the texts of application, the zoning of the locality where is the land and the particular texts concerning the easements, the dispositions land, the classified establishments, the protection of the environment and sites.

It should also be noted that the planning programs may include standards different from those laid down in the Construction Act. In this case, the building permit is granted only if the projected works correspond to the standards laid down in the urban plan of the locality in question - while considering that these standards must guarantee the public safety, the hygiene, the aesthetic, the environment and be at least equivalent to the provisions enacted by the building law in this area.

If the law on town planning is opposable to building permits as provided for in Article 25, it is interesting to note that the Construction Law may provide for certain exemptions. As stated above, Law 402 of 12 January 1995, as amended by Law 339 of 6 August 2001, provides that the construction of hotel establishments may derogate from the application of the provisions of the 1983 Act. they meet the specific legal requirements in this area and this with the aim of increasing the operating coefficients.

#### **4.2 Scope of the building permit**

The Construction Law clarified the scope of the building permit with regard to the petitioner's work first and then what types of persons were subject to it. Any operation for the construction, alteration, renovation or modernization of a building is subject to authorization.

However, Article 2 of the 2004 Law sets out a series of cases where works are exempt from building permits but subject to declaration:

- Normal maintenance, beautification and renovation work unrelated to the building's structures (a decree details the works thus referred to);
- The construction of fences, retaining walls - the height of which does not exceed 3.5 meters - and earthworks and demolition work;
- Interior work in the building: decoration, network change and sanitary, electrical, hydraulic, heating and air conditioning, tiling, etc.

It should be noted that this series of exemptions does not apply to transactions subject to the legal regime of Decree No 2791 of 15 October 1992, namely works for the purpose of maintenance, beautification, renovation and demolition. of classified historic buildings.

#### **4.3 Constitution of the file**

The building permit file must include the following:

- The actual demand of the building permit according to an imposed form,
- A general property certificate,
- A certificate of legal estimate of the selling price of the square meter of land subject to the building permit,
- Five copies of the construction plan and construction plans: orientation, boundaries, layout, plans, sections, elevations, additional equipment, etc., with the written commitment duly signed by the responsible architect,
- In case of request for reinforcement, renovation, modification of structures or construction of new floors in an already built building, are required in addition to the documents previously listed the building permit of the initial construction and the license to occupy.

In addition to these documents, the Administration reserves the right to request clarifications and additional explanatory plans from the builder to better situate the importance or details of the proposed construction. (The Investor's Guide to Licenses & Permits in Lebanon).

#### **4.4 Instruction of the file**

Once filed with the relevant departments of Urban Planning (the regional divisions of urbanism) or the technical services of the municipalities of Beirut and Tripoli, the application for the building permit against receipt given by the competent official is transmitted to the engineer responsible who should study

it in its entirety and lead the technical expertise in the field to verify the accuracy of the documents presented.

On the basis of the study carried out, the responsible chief engineer of section must deal with the request:

- In the event of approval, the building permit is transmitted to the competent municipality (or to the mohafez (prefect) or caïmacan (sub-prefect) in the event of non-existence of a municipality) for the notification of the applicant after collection of taxes due.

- In case of refusal, the request is forwarded to the competent municipality (or to the caïmacan in case of non-existence of a municipality) with the modifications and the justifications of the refusal. The latter must notify the applicant individually either directly or by registered post. (The Investor's Guide to Licenses & Permits in Lebanon)

#### 4.5 Decision of the Administration

The permit can be granted only if it appears from the instruction that the projected works meet the conditions mentioned in the master plan, or failing that in the national planning regulations and, if necessary, in the provisions contained in particular texts (easements, classified establishments, ...).

The law also provides that the permit application may be refused if the proposed operation is such as to compromise the safety, the environment or the aesthetics of the premises. It appears in practice that it is extremely rare for the Administration to base a refusal on subjective criteria.

The decision of the Administration implies the analysis of the conditions of competence and delay related to the granting of the building permit as well as the scope of this decision.

The granting of the building permit is the responsibility of the president of the municipality (and not of the Municipal Council) within the municipal framework and the mohafez or the caïmacan if there is no municipality, except in Beirut where the granting the permit falls under the Mohafez.

Article 4 of the Construction Law sets a 2-month investigation period in the case where the construction is to be built in an area approved by the urban plan and 6 months in the absence of a plan. The period runs from the transmission of the file to the president of the municipality by the instructors.

The silence of the competent authority is a tacit agreement and the petitioner will be authorized to carry out the work provided that it complies with the regulations and laws in force and to pay the taxes one month at the latest after the expiry of the delays granted, failing which he loses all his rights.

Any refusal by the Administration to issue a permit must be motivated.

According to Article 8 of the Construction Code, the decision must be notified individually to the applicant. The main contractor, however, is responsible for the smooth construction and maintenance of the safety conditions of the property and people before and during the work. In case of breach of its obligations, it is liable to penalties ranging from 6 months to 3 years of prohibition to practice, and a final judgment in case of recidivism.

The competent authority (president of municipality, mohafez) checks, before granting a permit, the conformity of the project with the rules and easements of town planning. But it is not required to verify whether the project respects the rules of private law (views and days, retreat, encroachment or non-respect of boundaries, deprivation of sunshine). It is up to the neighboring owners to check and act if their rights are attained. The building permit granted is valid for a period of 6 years' renewable once for a period of 2 years. The permit lapses in the event of total non-performance of the work during the time allowed. In the case of partial execution, the granting of a new permit is required. (The Investor's Guide to Licenses & Permits in Lebanon)

The exercise of the right of withdrawal of the license granted is articulated under the following three situations:

- In the case of a permit granted in accordance with the regulations: except in exceptional cases, the Administration cannot in principle reconsider its decision if the permit granted fulfills all the legal conditions required under penalty of compensation to the interested party in case execution of works.

- Case of commencement of work on a building permit that does not comply with legal provisions: the president of the municipality is held responsible for the non-compliance of the building permit with the provisions of the law and he can withdraw the permit granted within a period of 2 months, failing which the building permit granted can no longer be withdrawn, constituting an acquired right for the petitioner.

- If the building permit granted, while not in conformity with the legal provisions, has not had a start of execution: in this case the Administration reserves the right to withdraw it without time limit, because it is not acquired right before the start of work.

#### **4.6 The effects of the building permit**

Upon completion of the work authorized by the building permit, the owner must submit a request to the competent Administration to obtain a certificate of conformity (article 6 of the 2004 law).

In case of conformity, the certificate is granted, after technical expertise on the basis of the building permit file or after payment of the fines due for the higher surfaces built.

In case of non-compliance of all or part of the construction, the owner must resume, under the supervision of the supervisor, all the work necessary to regularize the construction.

The Administration has a period of one month to decide when it is submitted an application for a certificate of compliance.

The competent authorities must give reasons for their refusal and specify the nature and methods of the infringement.

Any delay is considered a tacit recognition granted to the applicant, which allows the applicant to live or rent or sell for habitation provided that the completed work is in accordance with the building permit granted and taxes are paid in a one-month delay.

On the basis of this document, the administrations and public services are authorized to connect the constructed building with the existing networks.

A 1992 decree provided for the possibility of the Administration, and before completion of the works, issuing a temporary residence certificate renewable annually and until the completion of the works, provided that the parties already completed comply with the building permit. To obtain such a certificate, it is mandatory that the structure of the building be completed, that sanitary facilities are already installed and that doors and windows are also mounted. This certificate entitles you to access a temporary subscription for water, electricity and telephone, for the duration of its validity.

#### **4.7 The litigation of the building permit**

The applicant who is refused a building permit or who is imposed a special regulation that he considers illegal, abusive or inadequate, has a contentious appeal before the Council of State of a deadline within a period of two months. The decision must be made public and must therefore be posted in principle to the municipality and the place where the work is planned.

If approved by the Administration, the permit is issued subject to the rights of third parties. This means in principle that anyone who is aggrieved by the issuance of a building permit, is entitled to appeal for annulment before the Council of State.

The Article 22 penalizes the irregularity of the construction in the absence of a building permit. If this is the case, a permit application must be submitted as soon as possible. In case of non-compliance, the builder must demolish the building. Fines and prison sentences may also be provided.

### **5. THE OBTAINING OF BUILDING PERMITS OUTSIDE THE MECHANISMS SPECIFIED BY THE CONSTRUCTION LAW**

#### **5.1 The circulars of the Ministry of Interior making exception to Construction Law**

Although the Construction Law detailed the procedures for obtaining the building permit, many exceptions to this procedure allowed it to be obtained outside the freeze fixed by law. In fact, in the last five years, the Ministry of the Interior has issued 4 circulars related to the Building Law, which allowed building construction outside the mechanisms specified by the Construction Law. It issued three circulars in 2014 (No. 613), 2015 (No. 770), 2016 (No. 735) and 2017 (352). The justification for the issuance of all circulars came after the Department's ability to monitor violations and ensure constructive engagement with them. Circulars were also justified in order to give the opportunity to those who could not obtain a permit to build on their properties, as well as to reduce rural migration and the widespread phenomenon of building violations without any controls.

Lately, in November 2017, Minister of the Interior and Municipalities issued circular No. 352 allowing the mayors and the mayor to issue building permits that interact with supporters and opponents. The circular issued allows the municipalities to grant building permits of 150 meters until 31 March 2018. This does not require them to pass through the regulatory mechanisms in the Construction Law, in terms of disclosure on the map by the technical offices of the organization Civil or municipal bodies. Thus, the owner of the property can build two floors in this area and can add a basement if the level of the property is below the level of the road adjacent to the facade of the building. Those who had benefited from a

similar circular in the past could build an additional floor above their home. In contrast, the task of monitoring the application of these permits to the security forces, where they should verify the validity of the conformity of the work of the declaration in accordance with the provisions of the circular.

For the ministry, this circular is justified by the willingness to facilitate the affairs of citizens and reduce rural migration on the one hand and the widespread phenomenon of building violations without any controls or standards and to treat them to a minimum. In fact, the administration considers that there are thousands of families who do not own real estate in areas that are surveyed, and this is a big problem in a number of areas, such as the northern Bekaa and Akkar.

## 5.2 The dangerous impact of these circulars

The main problem in this circular is that it contravenes the Construction Law and Urban Law especially the obtaining of Building permit. It is true that the mayor is the one who issues the building permit, but he issues it after passing through the technical office of the civil organization in the areas to monitor the compatibility of the license with the building conditions. This responsibility cannot be left to the municipalities alone without any control.

These circulars bypass legal frameworks and public institutions. Article 7 of the "Mechanism and Conditions for Granting Permission" states that it entrusts the competent security departments to carry out periodic inspection and to verify the correctness and conformity of the work of the declaration in accordance with the provisions of this circular, especially in terms of the number of floors and contents and the retreats. In villages where there are no municipalities to control all irregularities and to be notified to the Ministry of such violations as soon as they are verified by the competent department in the ministry ».

These permits do not take into account the building conditions that are taken into account when issuing building permits, pointing out that these circulars are in violation of the legal frameworks that the state sets out from building laws to guidelines, pointing out that this building goes away from all these frameworks. Moreover, according to Fawaz, these circulars go beyond the roles of public institutions, abolish the role of the General Directorate of Civil Organization, by assigning the task of urban planning and construction to a non-competent ministry. These circulars expand the existing rift between citizens and law through exclusionary legislation and its enshrinement. (Fawaz M. 2017)

In this context, it is clear that this circular is very dangerous, because it perpetuates the urban chaos in the country. According to expert, this model of decisions is contrary to all the planning policies that the country needs to apply, in particular that it contradicts the Construction Law that distinguishes between the license and the authorization in Articles I and II of it. The role of the technical bodies entrusted with ensuring the conformity of the design file to the engineering assets, the first of which is the Engineers Union (responsible for the quality of the engineering file and its observance of engineering standards), the second is the technical offices of civil organization and the Union of Municipalities. The absence of control, has reduced the quality control sponsored by the registration of the transaction system in the Engineers union.

Based on this, the Engineers Union has been opposed to this circular. The president of the union in Beirut Jad Tabet, said that they union is going to challenge this circular. He also confirmed that the union may go to oblige engineers not to sign any map related to this decision considering that this circular contradicts the Construction Law with its most important minutes and the essence of its existence.

In fact, by issuing this circular, there is no longer any meaning to the citizen to follow the legal assets to require the prior license according to Article I of the Construction Law 646/2004 breaking the rule and dedicated exception. In terms of form, the buildings established under this circular are legally illegal regarding the role of engineers as it is mentioned in the Construction Law. In fact, as for this circular, it contradicts the Profession of the Engineering Profession (636/1997) and the system of registration of transactions which requires the participation of more than one engineer but also the basic role played by the Engineers Union to ensure compliance of construction projects of engineering assets to ensure public safety. On the other hand, the circular does not specify the competence of the engineer who signs the maps, so there is no guarantee that the engineer who signed the map. With the absence of the control of the Union, it is also possible that this situation will increase fraud.

Thus, there is a close link between the building law and the engineering profession law, which takes into account the performance of engineers and ensures public safety. Especially as the union follows the compliance of the Engineer with the laws and mechanisms in place to maintain the durability of the building. In the absence of this, this will lead to a construction that violate the public safety.

Over the course of five months, this circular has opened the door to the construction of thousands of illegal structures that need to be settled later. Otherwise, the owner of the property will not be able to

obtain a housing permit for his estate, and thus sell it or even inherit it, In Beirut and the Directorate General of Civil Organization. For now, the ministry does not plan to renew the circular, but there is no guarantee that it will not happen again in the next few years

## 6. CONCLUSION

The Construction Law that exists today is very backward, and all the amendments made to it were aimed only at increasing the rate of investment, which is mainly in the interest of construction traders. The fundamental problem in the Construction Law is that it is unified for all areas of Lebanon: the same law that applies in urban and rural zone. In rural areas, a building code that differs from that applied in the city must be applied. The Construction Law does not care about matters related to heritage, nor the city, but only the investment rates. In this sense, the current building law is creating a structural chaos.

The issues of Lebanese land planning in the era of sustainable development require the existence of a modern urban planning law, alive, effective, in line with the economic, social and environmental realities of the country.

However, the texts in force clearly do not have these qualities. The Construction Law has indeed gradually ossified, becoming more and more elusive and inaccessible to the general public. We will keep a few examples that will lead to some ideas for reflection:

- The generalization of the exception to the legal procedure of the obtaining of building permit and to end with the strategy of exception adopted by the administration during these last years.
- There is a real need to review the Construction Law and Urban Law: Lack of legibility of planning legislation: in addition to the overlapping of competences between CSU, DGU and CDR, since the entry into force of the law of 1983 a scattering of texts has occurred:
- the procedure governing building permits is incorporated into the Construction Law not with Urban Law.
- A virtually non-existent urban planning dispute: if the Council of State had very regularly to deal with planning issues until the outbreak of the civil war in 1975, the observation that can be drawn up today is that litigation has become considerably rarefied.
- Post-clearance of illegal situations has become an administrative practice that is quite common, thus preventing many contentious proceedings,
- The interest in acting by third parties and especially associations to contest an urban planning decision is extremely limited,

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