

# **The role of the Algerian council of State in interpreting the rules of development and Reconstruction: an applied analytical study**

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## **Summary:**

This study shed light on the explanatory role of the administrative judge within the rules of development and reconstruction, given the importance that the subject of reconstruction has become, despite its modernity, but in its content it combines two topics, one of which is old related to property rights in general and another related to public order in the field of development and reconstruction, which requires maintaining the traditional elements of Public Order – Public Health, tranquility and public security - in addition to not conflicting with the urban and aesthetic system of cities, the construction process must comply with the engineering, architectural and legal rules required to preserve the appearance aesthetics of cities, environmental protection and agricultural lands.

**Key words:** administrative, judge, development, reconstruction.

## **Introduction:**

Many jurists of administrative law proceed from the idea of considering the latter as an uncodified law in which the judge plays a prominent role in establishing the legal base, but this idea is on the way to extinction, in front of the codification of most of the rules and subjects of administrative law, which are mostly previous jurisprudence of administrative justice, and among the codified rules in this: 90/29 issued on December 01, 1990, however, the issuance of legal texts in the field of reconstruction is still plagued by other forms, represented by the ambiguity of some of these texts, or their acceptance of many interpretations, in addition to the abundance of partial legal texts, on the other hand, which requires the intervention

of the administrative judge in the process of interpreting these texts through annulment lawsuits or full court cases filed before him, hence we raise the question **of the extent to which the Algerian Council of state interferes in the interpretation of the rules of rehabilitation and reconstruction through the administrative lawsuits considered by it?**

**To answer this problem, the intervention was divided into two axes:**

**The first axis: conceptual rooting of the study**

**The second axis: judicial applications of the interpretative role of the Algerian State Council for the rules of development and reconstruction.**

**The first axis: conceptual rooting of the study**

The advantage of the judicial origin of administrative law has made the Administrative Judiciary go beyond being an applied judge only, his task is manifested in the establishment, creation and creation, he resorts to the interpretation of texts in case of their ambiguity and to complement them in case of their lack or absence, and this is done by diligence and research in order to derive applied solutions to the facts at issue by inventing and establishing theories from those facts and from the contemporary circumstances of the dispute before him, in the case of an explicit and clear legal text, the role of the administrative judge is limited to its application, in the sense of pronouncing public law, but if the text is ambiguous, the administrative judge will take over the task of interpreting it, stating its content and determining its intent, deriving appropriate solutions to resolve The dispute in question.<sup>1</sup>

Through this study, we have decided to shed light on the explanatory role of the administrative judge on the rules of development and reconstruction, given the importance that the subject of reconstruction has become, despite its modernity, but in its content it combines two topics, one of which is related to the right of ownership in general and another related to public order in the field of development and reconstruction, which requires the preservation of the traditional elements of Public Order – Public Health, tranquility and Public Security- In addition to not conflicting with the urban and aesthetic system of cities, the construction process must comply with the engineering, architectural and legal rules required to preserve the aesthetic appearance of cities and protect the environment and agricultural lands, all these conditions and controls are set by the

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<sup>1</sup> Ouchen Soumya, the administrative judge's interpretation of legal texts and its impact on bridging the shortcomings in Administrative Law, Journal of legal and Political Sciences, January 17, 2018, P.596

law on development and reconstruction No. 90/29<sup>2</sup> and some applied decrees, through the imposition of a set of restrictions on the right of ownership, represented by urban licenses, which are the most effective administrative means of controlling and controlling individual activity, and then exercising administrative control over construction operations and preventing regulatory issues related to reconstruction.<sup>3</sup>

To take note of the conceptual framework of this study, we address the concept of the explanatory role of the administrative judge (first) and the concept of the rules of preparation and reconstruction (second)

### **First: the concept of the explanatory role of the administrative judge**

The administrative judge, through his task of interpreting legal texts, fills the gaps in the rules of legislation without violating them, and the interpretation process is not a mechanical process that is carried out automatically without effort by the administrative judge, it is a complex and laborious process, showing the extent of the role that the administrative judge contributes to determining a certain content of the text.<sup>4</sup>

We will try to clarify the concept of the interpretative role of the administrative judge through the definition of judicial interpretation and its types in administrative law, along with exposure to the claim of interpretation as the original way of the judicial interpretation process.

#### **1 / definition of judicial interpretation and its cases**

The concept of interpretation of law-in general-according to jurisprudence is divided into two directions:

##### **- The narrow concept of interpretation:**

which is intended to remove the ambiguity of the text and clarify the most vague of its provisions, and accordingly, the interpretation falls only in the case of ambiguity of the text, and the interpretation has nothing to do with the lack of texts or shortcomings or conflicting parts of the law, because these matters

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<sup>2</sup> Law No. 90/29 of December 01, 1990 on development and reconstruction, official gazette No. 52, amended and supplemented by law 04/05 of August 14, 2004, Official Gazette No. 51.

<sup>3</sup> Bala Abdelali, the brief explanation of the reconstruction law, new university publication, Tlemcen, Algeria 2021, P. 05.

<sup>4</sup> Ouchen Soumya, op. cit., p. 597.

according to this direction are the competence of the legislator and not the competence of the interpreter.<sup>5</sup>

### **- The broad concept of interpretation:**

which, according to the point of view of this trend, is intended to clarify the ambiguities of the legal texts, correct their shortcomings, complete the missing provisions of the law and reconcile its conflicting parts, and interpretation in this way accompanies the application of the law, whether the text is ambiguous or clear.<sup>6</sup>

The process of interpreting the rules of law in general and legal actions in particular is carried out by multiple and different parties, it may be carried out by men of jurisprudence and is called Fiqh interpretation, it may be handled by the legislative authority and is called legislative interpretation, and it may be carried out by the executive authority as a government or as administrative authorities and is called regulatory interpretation or administrative interpretation and this process may be carried out by the judicial authority by carrying out the function of considering and adjudicating disputes and various lawsuits, and the interpretation here is called judicial interpretation<sup>7</sup>, and the latter is the focus of our study, so we will try to define it along with identifying its cases.

### **A / definition of judicial interpretation:**

Judicial interpretation is of great importance from both scientific and applied points of view. interpretation is exercised by the trial court judge with his legal authority granted to him by the laws to resolve disputes before him. judicial jurisprudence is an essential element for applying the legal norm to the reality of the dispute before the judge, in addition to the importance of judicial interpretation in the practical aspect, as the judge is the guarantor of the application of laws, which sometimes requires the interpretation of legislative texts and pointing out flaws or shortcomings in those texts.<sup>8</sup>

Judicial interpretation can be defined as: "**the interpretation that judges make while they are adjudicating cases before them, so that they embody the rule of law on the facts in their hands and do this work without the need for**

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<sup>5</sup> Ammar Boudiaf, introduction to legal Sciences, General Theory of law and its applications in Algerian legislation, Rihanna publishing, Algeria, 2000, p.192.

<sup>6</sup> Ouchen Soumya, op. cit., p. 598.

<sup>7</sup> Ammar awabdi, the interpretation of administrative law, fifth edition, Dar Houma for printing, publishing and distribution, Algeria 2006, p. 6

<sup>8</sup> Ouchen Soumya, op. cit., p. 601.

**opponents to ask them to do so, because interpretation is the core of the judges' work."**<sup>9</sup>

Through the foregoing, it becomes clear to us that the role of a judge is broader and more precise than the work of the legislator himself, because the competent authority to legislate, when enacting a legal norm, sets it without considering special cases and practical facts, and this is normal, legislation should take into account generality and abstraction, while the judge, while adjudicating disputes before him, faces special facts and practical situations that differ in their subject matter and may be similar and he is required to adjudicate them as approved by the rules of law.<sup>10</sup>

### **B / cases of judicial interpretation:**

The cases that require the intervention of the administrative judge and his implementation of his interpretative function of the legal texts to be applied to the dispute before him can be summarized as follows: <sup>11</sup>

#### **B1 / material error:**

It is intended that a letter or a word is added in excess or a word is accidentally dropped from it, so that the meaning is stabilized only by stating this material error using the preparatory works, the historical source of the text, the wisdom of legislation and linguistic rules.

#### **B2 / legal error:**

This is an obvious unintentional error that is indicated by the general rules, and there is no doubt that it must be corrected.

#### **B3 / imperfection and ambiguity:**

The ambiguity of the text may come from the lack that prevails, and this is either due to the omission of a word in the text so that the judgment is not straight without it, and the ambiguity may be a defect in the wording, it may come as a result of drafting skill, that is, the ambiguity is intentional, required by legislative policy, the nature of the subject may require that the legislator develop a general rule and leave to the judge the detail of the particulars to confer a measure of justice when applied.

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<sup>9</sup> Ammar Boudiaf, reference in administrative disputes, Section II, first edition, jussour publishing and distribution, Algeria, 2013, p.165.

<sup>10</sup> Ammar Boudiaf, op. cit., p. 166.

<sup>11</sup> See in detail: Ouchen Soumya, ibid., pp. 601 and 602.

## **B4 / Contradiction:**

In this case, the judge comes across two different provisions regulating the same issue, either in one legislation or between legislation and another. It should be noted that administrative law is based on the ideas of Public Authority, Public Utility and public interest, as these ideas are shrouded in ambiguity and ambiguity, which makes the rules and provisions of administrative law are always characterized by ambiguity and ambiguity, which makes the process of interpretation in administrative law more inevitable, accurate and difficult and makes the task of the competent judicial authority to interpret and apply important rules, difficult and complex, necessitating the application of a strong, effective and realistic methodology of interpretation.<sup>12</sup>

## **2 / the action for interpretation as a basic explanatory means of the administrative judge's exercise of the interpretative function:**

The administrative judge ensures the proper application of administrative decisions by interpreting organizational and individual administrative decisions that are vague and ambiguous using technical methods and means of interpretation and based on logic and reason<sup>13</sup>, and to take note of all aspects of this case, we will address its concept and ways of moving it, as well as the authority of the administrative judge in it.

### **A / the concept of the action for interpretation:**

We explain the action for interpretation of interpretation by defining it, as well as by specifying the conditions for its acceptance.

#### **A1 / definition of the action for interpretation:**

the action for interpretation finds its legal basis in the text of Article 09 Organic Law 98/01 on the competence of the Council of state<sup>14</sup>, as well as the text of articles 801 and 901 of the Code of Civil and Administrative Procedures<sup>15</sup>

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<sup>12</sup> Hussein Osman Mohamed Osman, the origins of Administrative Law, University Publishing House, Egypt, 2004, p.299.

<sup>13</sup> Mossadek Ali, the rulings of the interpretative case in the Algerian administrative judicial system, Journal of law and political science, issue IV, Central University of Nama, Algeria, June 2016, p.647.

<sup>14</sup> Organic Law No. 98/01, dated May 30, 1998, concerning the competence, organization and functioning of the state council, Cr No. 37, dated June 01, 1998.

<sup>15</sup> Law 08/09 of February 25, 2008, includes the code of civil and Administrative Procedure, C T No. 21, dated April 23, 2008.

The interpretation lawsuit is defined as: "an administrative lawsuit that moves and is filed by those with legal status and interest before the competent judicial authority, and in which the competent judicial authority is required to explain a vague and vague administrative legal act in order to determine the legal status and clarify individual rights and obligations."<sup>16</sup>

And there are those who also defined it as: "an administrative lawsuit under which the person concerned demands from the competent judiciary to give an explanation of the administrative decision subject to the interpretation suit in accordance with the legal conditions and procedures."<sup>17</sup>

And also that: "a lawsuit is filed before the Administrative Court in which the competent judge demands the interpretation of an administrative decision or a vague or vague legal act in order to determine the legal positions and clarify the rights and obligations, following specific practical approaches and methods to reach the true meaning of the administrative act."<sup>18</sup>

It is clear from these definitions that the subject of this lawsuit is limited to the interpretation of the vague phrases carried by the administrative decision, and therefore, the interpretation lawsuit is a means of judicial control exercised by the judge over the actions of the public administration in the state to protect the rights and freedoms of individuals in order to embody the principle of legality.<sup>19</sup>

## **A2 / condition for the application of the action for interpretation:**

In order for the action for interpretation to be accepted, a number of formal and substantive conditions must be met.<sup>2</sup>

### **1 / the formal requirements** are as follows::

#### **\* legal standing and interest:**

The applicant of the interpretation claim must have the status and interest that must exist, status, direct and legal in accordance with Article 13 of the code of civil and administrative procedures, and since the interpretation claim is one of the legitimate claims, the concept of the condition of interest and status in it

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<sup>16</sup> For more details, see: Ammar awabdi, Ibid., p. 92.

<sup>17</sup> Ammar Boudiaf, op. cit., p. 169.

<sup>18</sup> Mossadek Ali, op. cit., p. 649.

<sup>19</sup> Ibid., p. 649.

coincides with the provisions of the condition of status and interest in the annulment action<sup>20</sup>.

#### \* The requirement of jurisdiction:

Actions for the interpretation of administrative decisions are filed in accordance with the rules governing the distribution of jurisdiction between the administrative courts and the Council of State. The administrative courts are competent to hear interpretation claims pursuant to Article 801 of the Code of Civil and Administrative Procedure (CCAP) concerning decisions issued by the wilaya (province), municipality, or public institutions of an administrative nature.

The Council of State, on the other hand, has jurisdiction over the interpretation of administrative decisions issued by the central administrative authority, national public bodies, and national professional organizations, in accordance with Article 9 of Organic Law No. 98-01 and Article 901 of the CCAP. In addition to this, the Council of State is competent to adjudicate appeals and cassation petitions against judgments issued by the administrative courts in matters related to interpretation claims.

#### Time Limit Requirement:

Contrary to annulment actions, which must be filed within a specific time period (Article 829 of the Code of Civil and Administrative Procedure), an action for interpretation is not subject to any time limit. This is because its purpose is to obtain judicial clarification of an administrative decision, without the existence of a dispute that directly affects the rights of another party.<sup>21</sup>

#### Attaching the Previous Administrative Decision:

As is the case with annulment actions, the admissibility of an action for interpretation requires attaching the administrative decision in question to the statement of claim. This requirement is confirmed by **Article 819 of the Code of Civil and Administrative Procedure (CCAP)**, which states:"The petition seeking annulment, interpretation, or assessment of the legality of an administrative decision must be accompanied, under penalty of inadmissibility, by the contested administrative decision, unless a justified impediment exists..."

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<sup>20</sup> Mossadek Ali, op. cit., p. 650.

<sup>21</sup> Baali Muhammad Al-Saghir, Ibid., p. 191.

In addition to this condition, legal representation by a **lawyer is mandatory** before both the administrative courts and the Council of State in interpretation actions. This is governed by the provisions of **Articles 826 and 827 CCAP**. Moreover, the introductory petition in an interpretation claim must comply with the requirements of **Article 816 CCAP**, which stipulates the same formal content required for petitions in annulment actions.

## 2. Substantive Conditions:

These are as follows:

- **Ambiguity and Obscurity:**  
The administrative decision subject to interpretation must be ambiguous or unclear. Clear and unambiguous decisions **cannot be challenged** through an interpretation action.<sup>22</sup>
- **Existence of a Serious, Ongoing Dispute Regarding the Meaning of the Ambiguous Act:**  
This condition requires the presence of a concrete and current legal dispute concerning a legal status, legal relationship, or legal obligation between the parties. The ambiguity in question must be such that it seriously <sup>23</sup>affects the legal positions of the disputing parties. Therefore, an interpretation claim is inadmissible if the parties have already reached a settlement, or if the decision whose meaning is disputed has already been annulled, amended, or withdrawn through administrative or judicial means.<sup>24</sup>

## B. Initiation of the Interpretation Claim and the Authority of the Administrative Judge

We will examine the methods of initiating an interpretation action, followed by the powers of the administrative judge in such actions.

### B1. Initiating an Interpretation Claim:

In order for an **interpretation claim** to be initiated and validly established, legal doctrine and jurisprudence have recognized **two methods**:

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<sup>22</sup> Baali Muhammad Al-Saghir, *Ibid.*, p. 190.

<sup>23</sup> Mosaddek Ali, *op. cit.*, p. 652.

<sup>24</sup> Boumran Adel, *lessons in administrative disputes*, Dar El Hoda, Algeria, 2014, p.652.

- Either through the **direct route**, by filing the claim before the competent judicial authority;
- Or through the **indirect route**, by means of **judicial referral**.

#### \* **Direct route**

A lawsuit for the interpretation of administrative decisions is convened and filed directly before the competent judicial authority by those with the capacity and interest within the scope of the legal conditions established for its filing, like the rest of the administrative lawsuits<sup>25</sup>, to interpret the actions and actions of administrative authorities, where The judicial request is limited to giving the real and correct meaning of the administrative legal work, and this method of moving and filing a claim for interpretation is considered very modern, as the comparative administrative judiciary refused to accept the claim of interpretation directly submitted to it, on the grounds that the administrative judiciary is not an advisory administrative body<sup>26</sup>, but the Algerian administrative judiciary more correctly accepted the direct claim of interpretation as an original and independent lawsuit, along with the judicial referral in accordance with the conditions and legal procedures prescribed by law. <sup>27</sup>

#### \* **Indirect route**

In the case of consideration and adjudication of an original lawsuit before the ordinary judicial body ( civil, criminal, commercial), and it happens that during the proceedings by one of the opponents ambiguously pushes an administrative decision related to the subject matter of the original ordinary lawsuit, and the answer to this argument and determining the true meaning of the administrative act is a crucial issue for the judicial resolution of the subject matter of the original ordinary lawsuit pending before the ordinary judicial body, the judge competent in the ordinary case stops adjudicating it and refers the issue of interpretation of the administrative act motivated by ambiguity to the competent administrative judicial body for interpretation where he orders Judge parties to the lawsuit They should file an interpretation lawsuit before the competent administrative judicial authorities to extract the true and correct meaning of the

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<sup>25</sup> Ammar awabdi,, op. cit, p. 140.

<sup>26</sup> J. Auby, Traite du contentieux administratif, L.G.D.J, Paris, p117.

<sup>27</sup> Mosaddek Ali, op. cit., p. 650.

administrative act motivated by ambiguity and remove its thumb by a judicial ruling.<sup>28</sup>

To accept the claim of interpretation by referral, the following is required:  
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- The existence of a judicial decision issued by the competent ordinary judicial authority in the original ordinary case, in respect of which the payment was carried out by the ambiguity or ambiguity of the administrative work.
- The original lawsuit must be in existence and status.
- Match the content of the request for interpretation by judicial referral on a copy of the referral judgment.
- And it is accepted only from one of the parties to the original lawsuit in respect of which the defense was vague and the judicial referral ruling was made.

## **B2 / the authority of the administrative judge in the action for interpretation**

The authority of the administrative judge in the action of interpretation is bound and determined by giving the true and correct meaning of the contested decision, removing ambiguity and ambiguity from it in accordance with the prevailing technical and technical rules in the field of interpretation of the law, and therefore, the interpretation judge has no authority to search for the legality of the contested decision, nor has he Operation Consideration and adjudication of the original case with adherence to the operative part of the decision of the administrative court or the State Council on the interpretation of the referred decision.<sup>30</sup>

## **Second: the concept of configuration and reconstruction rules**

The reconstruction rules are a set of procedures that involve the legal, technical, economic and social aspects, as they serve to provide the needs of the population of buildings, administrative facilities, and services...Etc.<sup>31</sup> Urban development was defined as: "the public will to organize the human geographical and economic manifestations in the center to achieve a balance between places and a holistic organization directed to the happiness of the population, and provide employment, housing and public services to them through the completion of the required

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<sup>28</sup> Mosaddek Ali, ibid., pp. 652 and 653.

<sup>29</sup> Ibid., p. 653.

<sup>30</sup> Baali Muhammad Al-Saghir, the brief on administrative disputes, op. cit, p. 192.

<sup>31</sup> Bala Abdul Aali, op. cit., p. 09.

structures and the exploitation of the natural resources available to preserve the historical heritage in a clean ecological environment."<sup>32</sup>

To take a closer look at the concept of the rules of development and reconstruction, we define the reconstruction law and indicate its characteristics, then we are exposed to its sources and objectives.

### **1 / definition of the reconstruction law and its characteristics:**

We define it and then deduce its properties

#### **A / definition of the law of development and reconstruction:**

Referring to the Algerian legislation and specifically to the law 90/29 on development and reconstruction, we note that the legislator did not address the definition of reconstruction, but only mentioned the purpose of this law in the text of its first article: "this law aims to define the rules aimed at regulating the production of land for reconstruction, the formation and modification of the building in the framework of the economic management of land and the balance between the function of housing, agriculture and industry, as well as the protection of the ocean, natural environment, landscape and cultural and historical heritage on the basis of respect for the principles and objectives of the national policy of development and reconstruction."

Thus, the law of development and reconstruction can be defined as: "**a set of legal texts that show the mechanisms and how to regulate the areas of urban development, construction and the environment.**"<sup>33</sup>

#### **B / characteristics of the reconstruction law:**

Through the presented definition, it is possible to derive a number of features of the law of initialization and reconstruction, among which we mention:<sup>34</sup>

##### **\* Reconstruction law is a branch of Public Law:**

the law of development and reconstruction is mainly related to administrative law, because its provisions are adapted to the idea of public interest, it is one of the rules of administrative control, and on the other hand, its provisions are considered a mix between public and private, it is one of the private laws as it regulates issues related to private individual property, and from public

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<sup>32</sup> Bashir Tijani, urbanization and Urban Development in Algeria, university publications Bureau, Algeria, 2000, p.84.

<sup>33</sup> Bala Abdul Aali, op. cit., p. 10.

<sup>34</sup> Ibid., pp. 11 and 12.

laws as the role and areas of intervention of public administrative bodies in the field of urbanization.

**\* The rules of the reconstruction law are mandatory provisions:**

its rules are characterized by being of Public Order and are deterrent rules that impose penalties for violating them, as the intervention of the administration is necessary to impose its restrictions through the sum of individual and organizational decisions issued by it in the framework of controlling and organizing the construction and reconstruction process, as individuals are obliged to respect all the conditions and rules of reconstruction.

**\* The reconstruction law works to achieve a balance between the private interest and the public interest:**

through its provisions, private individuals exercise their real estate actions to satisfy their housing needs on the one hand and to achieve the reconstruction goals of organizing the urban, agricultural and tourist sphere...On the other hand, it is what represents the urban public interest.

## **2 / sources and objectives of the reconstruction law**

We discuss the sources of the law of development and reconstruction and then indicate its objectives

### **A / sources of the law of preparation and reconstruction**

Like other laws, the sources of the reconstruction law are represented in original and other secondary sources<sup>35</sup>

#### **A1 / the original sources** are as follows::

**\* Constitution:**

the Constitution is the primary source of all laws, including the law of development and reconstruction, despite the lack of constitutional texts included in the amended constitutional document in 2020<sup>36</sup>, where Article 59 of it enshrined the principle of protection of private property, "**private property is guaranteed.**" As well as **Article 83**, which obliges the citizen to protect public

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<sup>35</sup> See in detail in this: Bale Abd al-Aali ibid., pp. 21 and 22.

<sup>36</sup> Presidential Decree No. 20/442, dated December 30, 2020, concerning the promulgation of the constitutional amendment, official gazette No. 82, dated December 30, 2020.

property and the interests of the national group and respect the property of others, as authorized by Article 139 paragraph 19 of the Constitution

The parliament has the authority to set rules related to the environment, the living framework and Urban Development.

**\* Treaties:**

Algeria has concluded and ratified many conventions, including Convention No. 167 on safety and health in construction, adopted in Geneva on June 20, 1988, ratified by Algeria by Decree No. 06/60 of February 11, 2006.<sup>37</sup>

**\* Laws:** there are many legal texts that are a reference and source for the reconstruction law, including the real estate directive Law No. 90/25, Law No. 90/30 on National Property, Law No. 02/08 on the conditions for the establishment and development of new cities, Law No. 01/20 on the establishment and sustainable development of the territory, Law No. 08/15 on achieving the conformity of buildings and completing their completion.

**\* Regulatory Decrees:** including Executive Decree No. 91/175, which defines the general rules for construction, reconstruction and construction,<sup>38</sup> and Executive Decree No. 91/176, which defines how to prepare a certificate of construction, retail license, zoning certificate, building license, certificate of conformity and demolition license, which was canceled by Executive Decree No. 15/19, which defines Executive decrees 91/177 and 91/178, which specify, respectively, the procedures for preparing and approving the master plan for the development and reconstruction and the Land Occupancy plan and the content of the documents related to them.

**A2 / Secondary sources of law** are as follows::

**\* Real estate judiciary:**

the multiplicity of legal and regulatory texts related to reconstruction, their inconsistency and ambiguity sometimes led to a large number of real estate disputes and made it mandatory for the judge to intervene to resolve these disputes through his judgments at his discretion whenever he finds a legal vacuum, confusion or lack of legal basis and issue judicial rulings and decisions that constitute a source of reconstruction law.

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<sup>37</sup> Official gazette No. 07 of 2006.

<sup>38</sup> Official gazette No. 26 of 1991.

**\* Custom:**

it refers to some practices in the urban field, which is a set of unwritten rules that arose as a result of the repeated practice of individuals active in the field of reconstruction with their sense of obligation over time.

**\* Jurisprudence:** the opinions of Jurists in the field of real estate are one of the sources relied on by the law of development and reconstruction, especially issues related to the definition of some of the terms contained in its provisions.

**The second axis: the applied framework of the explanatory role of the administrative judge in the framework of the rules of development and reconstruction**

The construction of any building in the urban environment or in a new area is subject to the obligation to comply with the standards and technical rules imposed by laws and regulations on the construction of buildings, and the legislator has granted the administration for this purpose a set of tribal legal mechanisms in this area, represented in the preparation of development and reconstruction plans, granting licenses in the field of reconstruction, in addition to granting certificates in the field of reconstruction, and the administrative judge has a major interpretative role for the various rules of the reconstruction law, previously referred to through the first axis of this study, and this role appears especially for disputes related to licenses construction, in addition to disputes related to demolition, a role in which we will try to shed light on it through the following judicial applications:

**First: the explanatory role of the administrative judge in disputes related to the building license**

**1-Compensation for the achieved damage only without probability in case of cancellation of the decision of illegal demolition** was considered by the State Council in a decision issued by it under the number: 060839 dated: 31/03/2011 in the case of (B, C) against the state of Annaba, and with it that the issuance of a decision to demolish a building completed with a building license and according to the approved scheme, is based on real damage and not potential damage, and the facts of the case are summarized in the fact that Mr. (B, a) benefited from a license for the construction of a tourism project, and the concerned has already begun the completion of this construction, but the municipality of Annaba issued a decision to demolish this project, and illegal demolition, on the grounds that the construction was carried out under a license and in accordance with the approved

scheme, and the State Council in this decision has diligently stated that the compensation of the victim of the demolition decision is on the basis of what was demolished. Indeed, as for the loss suffered by him as a result of the disruption of the completion of his tourism project, it is a potential damage that does not require compensation, which we can see from the merits of this decision, which stated that: "**as the State Council considered that the real damage is the demolition of what was built, so it decided to grant the reference this amount. The presumption presented that if the project is completed, the input will be at the value specified in the experience, this cannot be taken into account because the compensation is defined according to the estimate of the actual real damage**".<sup>39</sup>

This is the same trend confirmed by the Algerian Council of state through its decision No. 02358 issued on: 28/11/2007 on the right of the affected to: "fair compensation for the damage they suffered as a result of their disruption of the continuation of construction in accordance with the license granted to them in this regard... And that the compensation claimed must be commensurate with the damage caused to the appellants as a result of the municipality's arbitrariness in not respecting the procedures of the reconstruction law on achieving conformity, and that it cannot in any way extend to the probable damage that the appellants assumed occurred due to being deprived of building their housing and missing the opportunity for them".

## **2- The Case of a Decision Granting a Building Permit Followed by Its Revocation by the Administration:**

The text of Article 13 of Law No. 04/05 dated 14/08/2004, as amended and supplemented by Law No. 90/29 dated 01/12/1990 on development and reconstruction States: "in case of confirmation that the construction does not conform to the submitted building permit, the legally authorized assistant shall draw up the record of inspection of the violation and send it to the competent judicial authority, and also a copy of it shall be sent to the chairman of the municipal People's Council and the competent governor within no more than 72 hours.

In this case, the judicial authority that has been used to decide on the public lawsuit decides to either carry out the conformity of the building or demolish it partially or completely within a time limit determined by it.

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<sup>39</sup> Journal of the State Council, No. 11, 2013, p.168.

In case the violator does not comply with the judgment issued by the justice within the specified time limits, the chairman of the municipal People's Council or the competent governor will automatically carry out the prescribed works at the expense of the violator"

The text of the above-mentioned Article 13 set out a set of provisions that must be observed before demolishing a building built under a building permit and not respecting what is stated in it, where the Criminal Court decides on the extent of conformity of construction with the license granted or not, and this article did not specify the ruling in the case if the mayor has a violation of a meaning of the building license granted to him, whether he has the right to issue a decision to cancel this license or not, and in front of **the silence of the above-mentioned article**, the State Council performed its interpretative construction role, through a dispute submitted to him under the number: 123611 dated: 22/03/2018, in which he considered that the administrative decision issued by the chairman of the municipal People's council containing the building permit that he had previously issued is a decision tainted with the defect of external illegality that requires cancellation.

The reasoning of this decision states that: "**since the matter concerns the case of completion of works without respecting the obligations imposed by the building permit handed over in accordance with the above-mentioned legal text, which the criminal judge is competent to decide, and if in accordance with this law and the regulatory texts adopted in application thereof the mayor is competent to hand over the building permit, however, the legislation does not grant him the competence to cancel his decision containing the building permit, which is competent to consider the judge of exceeding authority alone**".<sup>40</sup>

In addition, the Algerian Council of State has restricted the governor's authority to cancel or amend the building permit by doing so during the judicial appeal period, i.e. 04 months scheduled for filing a cancellation claim before the administrative judge, which is a clear interpretative role of Law No. 9029 dated 01/12/1990 on the development and reconstruction amended and completed by Law No. 04/05 dated: 14/08/2004, we discern through the decision of the Council of State No. 124604 issued on: 24/05/2018 It stated that: "**as the state Decision No. 425 issued by the governor of Tizi Ouzou did not take into account the acquired rights, it also constitutes an arbitrariness and abuse of authority**,

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<sup>40</sup> Journal of the State Council, No. 16, 2016, P.122.

**because the governor may not cancel or amend a decision issued almost 11 months ago only<sup>41</sup> by resorting to the judiciary, and this is what the jurisprudence of the State Council has settled ... According to him, the State Council decides to cancel the appealed verdict and dismiss again by invalidating the decision issued by the governor".**

**3-it is not possible to file a lawsuit to oblige the administration to issue a building permit without appealing the explicit or implicit decision to refuse to hand it over:**

The Algerian Council of state considered that the full court case aimed at obliging the administration to grant the building permit is premature and that the applicant for the license must initially challenge the decision of explicit or implicit refusal to grant the license and then later request the license to be granted either in the same case or under an independent full court case. the Council of State has explicitly expressed its interpretative role through its decision No. 126516 dated: 19/09/2018, in which it was stated that: "**Since the State Council, for all the above-mentioned considerations and in line with its frequent jurisprudence in such cases, considers the appellant's claim to oblige the appellant to hand over the building permit, considers the appellant's claim to oblige the appellant to hand over the building permit without appealing against the refusal decisions, whether the explicit decision or the implicit decision, as a premature claim".<sup>42</sup>**

## **Secondly: The Interpretative Role of the Administrative Judge in Demolition Disputes**

disputes It is assumed that the construction of any building without a statutory license is doomed to automatic demolition by the administration and without the need to resort to the judiciary, and if a lawsuit is filed in this case, it is not a position to implement the demolition decision, as confirmed by Article 76 BIS 4 of the law 90/29 on the development and reconstruction amended and supplemented that if legally qualified assistance the date of receipt of the record of proof of the violation, and in case of insufficiency, the chairman of the municipal People's Council shall be replaced by the governor and the demolition decision shall be issued in order Not more than 30 days.

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<sup>41</sup> Journal of the State Council, No. 16, 2016, p.146.

<sup>42</sup> Journal of the State Council, No. 16, 2018, P.166.

Article 76 BIS 04 did not specify the provision for the mayor or governor to carry out demolition without issuing a previous demolition decision. accordingly, the State Council interpreted this ambiguity through its decision No. 118251 dated: 20/07/2017, through which it considered that the administration's demolition of a building without a license and without issuing a prior administrative decision to demolish and notify the concerned is considered an act of infringement that requires compensation, but this compensation is within the limits of the administrative infringement carried out by the administration and not on the basis of the losses suffered.

The reasons for this decision stated that: "**as the council already considers that the appellant constructed the cement columns and the roof above them without a building permit, however, the appellant proceeded with the demolition directly after inspecting the building and did not edit the demolition decision in this regard and did not inform the bidder .**

**The council considers that the actions of the municipality are flagrant acts of infringement due to the failure to follow the legal procedures mentioned.**

**The appellant's request for compensation is valid, but it should be within the limits of the administrative encroachment carried out by the municipality and not for the losses suffered by him as a result of the demolition of the building without a license."**

The Algerian Council of state has confirmed in another decision issued by it that the administration cannot demolish the building built without a license before resorting initially to the judiciary in order to determine the situation, which was decided by the Council of state through its decision No. 117 issued on: 27/02/2008 in the case of M.K. ain Samara municipality, in which it was stated that: "the appellant's municipality exceeded its authority when it demolished the appellant's building directly without taking into account the legislative provisions of the law of development and reconstruction... Even if the construction works started by the appellant are in violation of the building permit, they do not exempt the municipality from respecting the legislative guarantees to protect private property from administrative abuses by resorting to the judiciary to monitor the situation,".<sup>43</sup>

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<sup>43</sup> Hamdi Pasha Omar, reconstruction disputes, Dar Homa, 2007, p.239.

## **Conclusion:**

Through this study, we have found that the Algerian Council of State plays an important role in interpreting the vague and open to many interpretations the rules of development and reconstruction. this intervention focused on this interpretative role in building permit disputes, in addition to demolition disputes, a role that stems from the basic role of the administrative judge in establishing the rules of administrative law whenever there is no legalization.

We have found that the Algerian Council of state has succeeded in removing many ambiguities and ambiguities that included the rules of reconstruction, in addition to the many legal and regulatory texts regulating them, which requires the permanent intervention of a judge in order to interpret them, and then put an end to chaotic construction and irrational use of land, on the one hand, and put an end to the arbitrariness of the administration in using its discretion in granting licenses or certificates of reconstruction, on the other hand.