



LAWS GOVERNING THE PROCESS OF BUILDING VIOLATIONS' TRIAL IN ARTICLE 99 COMMISSION OF MUNICIPALITIES LAWS IN IRAN

Leis que regem o processo de julgamento de violações de construção no Artigo 99 da Comissão de Leis de Municípios no Irã

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ABSTRACT

Constructions in the village limits is within the jurisdiction of the rural municipalities according to paragraph 11 of article 78 of the law on the formations, duties and elections of the country's Islamic city councils; outside the city limits and frontages, it is the responsibility of the authority that is appointed by the civil reconstruction coordination vice chancellorship of the provincial governorship as ruled in article 10 of the procedures of land use, building construction and installations' placement outside the limits of the cities and villages (passed on 23rd of December, 2013 by the board of ministers). Based on the emphasis made by the ministry of interior, this authority is currently rural governorship. In conjunction with this process, the authority qualified for trying the violations occurred in the aforementioned domains is the commission established according to note 2, paragraph 3, article 99 of the municipalities law which is comprised of the representative of ministry of interior, representative of the justice department and representative of the ministry of roads and urban planning; it is known as article 99 commission. The aforesaid law has not expressed the process and method of trying the building violations. Due to the same reason, the interior minister has offered the process of building violations' trial based on the direction no.112096 issued on 16th of November, 2015. Although the direction has met a substantial part of the extant shortfalls, there are still flaws in the trial of building violations occurred in the abovementioned domains. The commission's decision can be eradication of the building or specifying sums of money. One of the challenges that the rural governorship has been always faced with in the affairs related to the constructions is the method of calculating the building fees, building fines and method of collecting such sums. Due to the legal gaps in the aforementioned areas, various methods have been implemented during the past years. Meanwhile elaborating the processes, shortages and the corresponding legal gaps, the present article adopts a new approach to such discussions.

Keywords: building violation, building violations' fines, rural municipality (Dehyari), rural governorship, article 99 commission

RESUMO

As construções nos limites da aldeia estão sob a jurisdição dos municípios rurais de acordo com o parágrafo 11 do artigo 78 da lei sobre as formações, funções e eleições dos conselhos municipais



islâmicos do país; fora dos limites e fachadas da cidade, é da responsabilidade da autoridade designada pela vice-chancelaria de coordenação da reconstrução civil do governo provincial, nos termos do artigo 10º dos procedimentos de uso do solo, construção civil e colocação de instalações fora dos limites das cidades e vilas (aprovada em 23 de dezembro de 2013 pelo conselho de ministros). Com base na ênfase dada pelo ministério do interior, essa autoridade é atualmente a governança rural. Em conjunto com este processo, a autoridade habilitada para julgar as infrações ocorridas nos referidos domínios é a comissão constituída nos termos da nota 2, parágrafo 3, artigo 99 da Lei de Municípios, que é composta pelo representante do Ministério do Interior, representante do Ministério da Justiça e representante do Ministério das Estradas e Urbanismo; é conhecido como comissão do artigo 99. A lei citada não expressou o processo e método de julgamento das violações de construção. Pelo mesmo motivo, o ministro do interior ofereceu o processo de julgamento de violações de construção com base na orientação nº 112096 emitida em 16 de novembro de 2015. Embora a direção tenha atendido uma parte substancial das deficiências existentes, ainda existem falhas no julgamento de infrações de construção ocorridas nos domínios acima mencionados. A decisão da comissão pode ser a erradicação do prédio ou especificar somas de dinheiro. Um dos desafios que a governança rural sempre enfrentou nos assuntos relacionados às obras é a forma de cálculo das taxas de construção, as multas imobiliárias e a forma de recolhimento dessas verbas. Devido às lacunas jurídicas nas áreas acima mencionadas, vários métodos foram implementados nos últimos anos. Ao mesmo tempo em que elabora os processos, faltas e as lacunas jurídicas correspondentes, o presente artigo adota uma nova abordagem para tais discussões.

Palavras-chave: violação de construção, multas de violação de construção, município rural (Dehyari), governo rural, comissão do artigo 99



INTRODUCTION

As one of the most essential needs of the mankind, housing has always been and will be the major concern of the people and officials in every political system. Part of the society's psychological security depends on the supply of proper housing. Constructions are made based on global standards as well as country-specific criteria. The corresponding criteria are considered in respect to the climatic and cultural conditions in every country's corresponding rules and regulations. Besides stemming from the culture, history and geography of every country, the formation of urban and rural residential and non-residential textures is also influenced by the new national and universal regulations and order in an effective and undeniable way. The first urban engineering legislation came about for necessity of preserving the general territories and preventing the individuals' abuses to the network of roads (Bastie and Dezer, 1993, p.414). After the Islamic revolution, the villages' management was confronted with the legal gaps due to the essential evolutions that had been brought about in the country's political system. Thus, the main duty of rural management was assigned following the enactment of numerous regulations to the Islamic councils of the villages (however, the role of the agricultural jihad that took measures in line with the establishment of local councils in the villages when the councils' law was yet to be widely implemented as well as the role of the Housing Foundation (Bonyad-e-Maskan) in the rural reconstructions should not be neglected). The turning point of the activities related to rural management after the revolution pertained is "the law of the formations, duties and elections of the country's Islamic councils, passed on 21st of May, 1996 (with its later reformations)". This law stipulated the appointment of executive manager (rural mayor) for the first time after the Islamic Revolution and it was by doing so that all the unspecified matters of the villages' executive managers were clarified (former article 69 and current article 78 which is related to the duties and authorities of the rural mayor). "The law on the establishment of self-adequate rural municipalities in the country's villages (passed on 5th of July 1998)" has been the essential measure taken in the villages parallel to the establishment of rural municipality (Dehyari) organizations (public nongovernmental institution). Moreover, regulations like "the rural municipalities' financial procedures", "rural municipalities' recruitment procedures", "charter of the rural municipalities' formations and organizations" gradually set the grounds for the establishment of this newly emerging executive institution (despite the great many of the shortcomings) in the villages. The constructions without permits and not based on criteria in the margins and/or inside the cities and/or inside and outside the villages have always been one of the problems of the urban and rural managers as well as political



officials. There are observed legal gaps in confronting the building violations as well as in the method of enforcing the corresponding commission's verdicts, especially the commission established based on note 2, paragraph 3, article 99 of the municipalities law that is devoted to the trial and sentence issuance regarding the building violations within the limits of villages and outside the margins and limits of the cities. However, the most important part of the enforcement of the sentences by the aforesaid commission is the method of collecting the fines; it is currently performed based on various methods due to the non-clarity of the related regulations. Considering the fact that the action domain of the municipality (Shahrdari) law's article 99 commission is controlled by two authorities that issue construction licenses, the criteria of the constructions will be scrutinized and investigated in separate in regard of each of the two proctor institutions' areas of action.

1. AUTHORITY ISSUING BUILDING CONSTRUCTION LICENSE IN THE VILLAGE LIMITS:

Within the village limits, the rural mayor was responsible for compiling building license files and its referral to the rural governorship for the issuance of the building construction license until before the appending of paragraph 11 to the former article 69 (currently 78) of "the law on the formations, duties and elections of the country's Islamic councils and mayors' appointment". However, it was with the appending of this paragraph to the aforesaid legal article that the rural municipality (Dehyari) became the authority qualified for the issuance of the building construction license within the village limits. Of course, before that, paragraph 33 of article 10 of "the charter, formations and organization of rural municipalities (passed on 10th of February, 2002 by board of ministers)", as well, recognized rural mayor as the authority qualified for the issuance of building license within the village limits and suspended it on the observation of regulations inserted in "the procedures related to the use of the lands, building construction and installations' placement outside the legal limits and frontages of the cities as introduced in the enactment no.4940, passed on 12th of May, 1976 by the board of ministers" as well as an array of other regulations. Such an authority of the rural municipality (Dehyari) was enforced until the appending of paragraph 10 to article 69 of the aforesaid law (28th of September, 2003). However, since date (08/28/2003) until 18th of November, 2007, at which time paragraph 11 was added to the aforesaid article, the rural municipality (Dehyari)'s duty was just compiling building files and referral of them to the rural governorship for the issuance of the building construction license and land separation (Saremi Noori, 2016, p.41). But, after the appending of



paragraph 11 to the aforementioned article, the rural municipality (Dehyari)'s authority of issuing building licenses within the village limits was stabilized.

2. BUILDING CONSTRUCTION LICENSE ISSUANCE AUTHORITY OUTSIDE THE CITIES' LIMITS AND FRONTAGES AND OUTSIDE THE VILLAGES' LIMITS:

License issuance and supervision of the constructions outside the limits and frontages of the cities and outside the villages' limits are beyond the area of the rural and urban municipalities' actions in every county; according to article 10 of "the procedures of using lands, constructing buildings and placing installations outside the legal limits and frontages of the cities (passed on 29th of April, 2012 by the board of ministers), the building construction license is issued by the authority that is appointed by the urban and rural reconstruction affairs vice chancellorship of every province. (Of course, there was previously a set of procedures under the same title that had been passed on 17th of May, 1976, and formed the basis of actions; but, it was annulled following the enactment of the current procedures.) For the time being, the ministry of interior's procedure is that the civil reconstruction deputies of the provincial and rural governorships are appointed as the authorities qualified for issuing licenses of constructions outside the cities' limits and frontages as well as outside villages' limits.

3. SUPERVISION ON THE CONSTRUCTIONS WITHIN THE VILLAGES' LIMITS:

Urban engineering laws are comprised of the set of regulations, rules, institutions, judicial procedures and legal theories pertinent to the reconstruction, development and organization of urban spaces (Kamiyar, 2018, p.19). In order to ensure the observance of the set of rules and regulations governing the constructions and also to pay attention and remain bound to the laws of the building users, the authority qualified for building construction license as well as the supervising engineers are obliged to supervise building constructions in accordance with their legally assigned duties. The authority qualified for the issuance of the building license is obliged according to its inherent construction-related duties to warn the constructors about any sort of building violations by the owners or constructor companies and simultaneously mention them in article 99 commission of the municipalities' laws. It is necessary to supervise and control the license holder's performance of the construction or urban engineering operations in adherence to the conditions and specifications inserted in the approved license and map; in case that such a supervision and control is not properly



enforced, the issuance of the building license would be useless (Hashemi, 1993, p.62). “The law of building engineering and control system (passed on 12th of March, 2001)” and the relevant procedures have determined the duties of the authorities qualified for issuance of the building license and the supervisors of the building constructions. On the other hand, “national building regulations” that includes a set of technical principles and regulations and the order of controlling and enforcing them (that should be used as the criteria of action in designing, calculating, implementing, exploiting and maintaining the buildings in line with safeguarding of safety, sanitation, proper use, comfort, cost-effectiveness, protection, environment and energy savings as well as national capitals’ protection) is amongst the other instruments and regulations governing the standard and rule-based constructions¹.

Based on article 21 of the “procedures of article 33 of the building engineering and control law”, the supervisor is a legal or real person having professional license for working in one of the field subjects of the law on building control and engineering system; she is obliged to supervise the correct enforcement of the building operation within the jurisdiction specified in his or her professional license. The supervisors are also to supervise the building construction operations in terms of their adherence to the specifications inserted in the license, maps and attached technical calculations and certify the building construction operation’s match with the related specifications in the end of the work. The supervisors are obliged in the end of each of the primary stages of the building construction operations to offer the related report to the authority issuing the license; these stages are laying foundation, construction of the skeleton, construction of hard exterior surfaces (rough framing), construction of fine interior surfaces (drywall and interior textures) and task accomplishment permit. Furthermore, upon being faced with violations in the course of the implementation of the building operations, the cases should be announced to the authority issuing the building construction license and the construction engineering organization and/or the representative offices of that organization. Supervisor’s falling short of making such declarations is per se a sort of violation (Kamiyar, 2018, p.303). Supervisor is appointed by the organization of building engineering system during the issuance of the building license and s/he is subsequently introduced to the authority qualified for the license issuance.

Municipalities and other authorities qualified for the issuance of building license, estate-construction license and urban engineering license as well as other permits for the initiation of the construction operation and controlling and supervising of such plans in the regions and cities are included by the rulings of the fourth article of the engineering system and building construction and control law in regard of the issuance of the license and other permits; so , they should accept the maps

¹ Article 22 of the procedures of article 33 of the law on building engineering and control system



endorsed by the real and legal persons having professional license within their jurisdiction; they should also act within their jurisdiction for controlling and supervising these individuals' services². Therefore, one of the duties of the supervisors, real or legal, is controlling and supervising the maps offered by the owners and employers.

Besides the supervisors, the supervision of the constructions and their control in terms of being in accordance to the building license (issued by the qualified authority) is within the jurisdiction of the other executive organs and organizations like ministry of road and urban planning, Housing Foundation (Bonyad-e-Maskan), authority qualified for the issuance of the building construction license and building engineering organization. Municipalities and other authorities qualified for the issuance of the building license are obliged to inform, in written form, the ministry of road and urban planning or the provincial building engineering system's organization about the occurrence of the building violations as soon as possible; having notified the supervisor, these authorities subsequently issue orders for the correction of the building flaws and prevent the continuation of the building construction operation till they are met³. Issuance of work completion certificate is suspended on the correction of the flaws declared by the abovementioned authorities. Considering the fact that note 2, under paragraph 3, in article 99 of the municipalities' law realizes the sentences made by the commission that is established based on this same law as being authentic for trying the unauthorized constructions as well as the building violations outside the cities' limits, it is following the declaration of the building violations in a report by the aforementioned authorities that the aforesaid commission is obliged to investigate the delivered reports and make normal and expedient decisions.

4. SUPERVISION ON THE CONSTRUCTIONS WITHIN THE ACTION DOMAIN OF ARTICLE 99 COMMISSION (BASED ON INTERIOR MINISTER'S CIRCULAR) (INSIDE AND OUTSIDE THE LIMITS OF VILLAGES AND OUTSIDE THE LIMITS AND FRONTAGES OF THE CITIES):

In order to organize the process of trying the building violations within the action domain of article 99 commission (inside the villages' limits and outside the cities' limits and frontages), interior minister had declared a direction under the title of "the guidelines on the method of treating the building violations in the villages and lands outside the cities' limits (numbered 112096 and issued on 16th of November, 2015) to the provincial governors countrywide in line with note 2 of article 99 in municipalities law, paragraph 11 in article 69 (former, presently 78) of the "law on the formations,

² Article 30 of the law on building engineering and control system

³ Article 27 of the procedures of article 33 of the law on building control and engineering system



duties and elections of the country's Islamic councils and mayors' appointment (passed on 21st of May, 1996 with its later amendments", article 3 of "the procedures of the law on the definition of the villages and cities and estates' limits and frontages and method of their determination passed in 2006", "procedures of land use, building construction and installations' placement outside the frontages of the cities and limits of villages (passed on 29th of April, 2012 by board of ministers)" and the "law of building control and engineering system (passed on 12th of March, 1996)". According to paragraph 1 of the direction, the authorities qualified for the issuance of the building license in the villages (rural municipalities) and lands outside the limits and frontages of the cities and outside the villages' limits (rural governorship) are obliged to inform the building violation cases, including constructions without permits and constructions contradictory to the permits within a writ of warning to the interested parties or their legal representatives and subsequently prevent the continuation of building construction and immediately reflect the violations along with minutes and documents (image or film) to the secretariat of article 99 commission for the adoption of a proper decision.

5. THE COMMISSION ON NOTE 2, PARAGRAPH 3, ARTICLE 99 OF MUNICIPALITIES LAW (ARTICLE 99 COMMISSION):

The gap and shortages stemming from the nonexistence of a legal authority that can make decisions and investigate the building violations taking place inside the villages' limits and outside the cities' limits caused the commissioning of a commission comprised of the representatives of the ministry of interior, judicature and ministry of housing and urban engineering (based on note 2, paragraph 3 and known as article 99 commission) to the investigation and making decision regarding the unauthorized constructions and building violations by the force of the law on the appending of one paragraph and three notes altogether constituting a paragraph three to the article 99 of the municipalities' law (passed on 20th of February, 1994). The commission's sessions are held authentically with the presence of three members and sentences are issued based on the majority's agreement according to the same note (Mohammadi, 2019, p.96). Previously, the trial of the building violations in the abovementioned area was based on paragraph 1 of article 8 in the "procedures related to the land use, building construction and installations' placement outside the legal limits and frontages of the cities (passed on 17th of May, 1976 by the board of ministers)" and the responsibility of a delegation comprised of the representatives of provincial governorship, provincial association, general office of housing and urban engineering organization, general office of agriculture and natural



resources and general office of the industries and mines. In addition, the responsibility for taking care of and exerting supervision on the enforcement of the criteria and provisions specified in the aforesaid procedure hence the prevention of the building violations was the responsibility of the provincial governor and/or the supreme governor in every province through their use of their subordinate governmental organizations. On the other hand, paragraph 5 of the “guidelines on the issuance of building license and construction supervision outside the legal limits and frontages of the cities passed on 1977” pertained to the supervision on building construction and prevention of building violations in such a way that the pursuit of the violators was the duty of the license-issuing authorities in spots that were qualified, by the force of the aforesaid guideline’s paragraph 1, for the issuance of building license. The building supervisors, as well, were determined from amongst the government-qualified servants by the provincial governor. It was with the establishment of article 99 commission that the assembly subject of article 8 of the “procedure on the use of lands, construction of buildings and placement of the installations outside the legal limits and frontages of the cities (passed on 17th of May, 1976 by the board of ministers” was excluded from the trial of the building violations outside the limits and frontages of the cities. Of course, it was with the enactment of the “procedure of using land, constructing building and placing installations outside the limits and frontages of the cities and villages (passed on 22nd of December, 2012)” that the former procedure was revoked and another authority was not appointed for trying the building violations considering the existence of article 99 commission; it is still this same commission working as a quasi-judicial authority parallel to the trial of the building violations taking place outside the limits and frontages of the cities and inside the villages’ limits.

5.1. Article 99 Commission’s Area of Action (Commission’s Local Jurisdiction):

Based on note 2 of paragraph 3 in article 99 of the municipalities’ law, the goal of the establishment of the commission subject of this law is prevention of the unauthorized constructions and trial of the building violations outside the limits of the cities. Therefore, constructions outside the two authorities’ areas of action are within the jurisdiction of this commission; one of them is rural municipalities (that deals with the building violations taking place within the villages’ limits) and the other one is an authority that is selected based on article 10 of the “procedures on the land use, building construction and installations’ placement outside the limits of the cities and villages” passed on 22nd of December, 2012, by the provincial governorship’s civil reconstruction vice chancellorship. It is with the recommendations made by the ministry of interior to the provincial governorships that the



rural governorships are usually appointed as the authority qualified for issuing building construction license outside the cities' limits and frontages and outside the limits of the villages.

5.1.1. Villages' Limits:

Villages' limits are areas wherein the rural municipality (Dehyari) performs its assigned activities and services (Saremi Noori, 2016, p.35). Based on article 3 of the "law on the definition of the limits and frontages of the cities, villages and estates and method of their determination (passed on 4th of January, 2006)", the villages' limits include "an area incorporating the textures inside the villages and their future expansions on the course of the rural pilot plans that are prepared through observance of the higher level plans and approved by the corresponding legal authorities". Rural municipalities are responsible for controlling and supervising the construction of any building inside the villages' limits. The limits of every village are specified in the pilot plan's maps. Currently, the rural pilot plans are enacted in the course of a legal process in adherence to paragraph 5 of article 26 of the law on the sixth five-year economic, social and cultural development plan of Islamic Republic of Iran (2018-2023) passed on 3rd of May, 2016, by a committee composed of the head of provincial Islamic Revolution's Housing Foundation (Bonyad-e-Maskan) (as the head of committee), urban governor, rural governor of the intended rural section, representative of the provincial housing and urban engineering organization (road and urban engineering), head of the county's Islamic Revolution Housing Foundation (Bonyad-e-Maskan), representative of the provincial agricultural jihad, deputy of the provincial civil reconstruction vice chancellorship and the head of the village's Islamic council (as the supervisor). Besides demarcating the villages' limits, the rural pilot plans also serve other important functions in the villages' development and reconstruction, including the action criteria plan of the rural municipality (Dehyari) for issuing building license (based on the lands' corresponding uses). Additionally, rural land segmentation within the specified limits is carried out in the pilot plans and the village improvement is done in match with the rural plan's rules, criteria and maps. It was with the appending of paragraph 11 to article 69 (former, currently 78) of the "law on the formations, duties and elections of the country's Islamic councils and municipalities' election" that the rural municipality (Dehyari) was appointed as the authority qualified for the issuance of the building construction license in the villages. The stabilization of the rural municipality (Dehyari)'s authority for issuing the building construction licenses that this institution became responsible for supervising the building constructions and reporting of the building violations to the article 99 commission, as well.



5.1.2. Outside the Villages' Limits and Outside the Cities' Limits and Frontages:

The authority qualified for the issuance of building construction license outside the limits of the villages and outside the cities' limits was appointed in every region by provincial governorship in 1977 based on article 6 of the "procedure on the land use, building construction and installations' placement outside the legal limits and frontages of the cities (passed on 17th of May, 1976 by the board of ministers)". The authority qualified for the issuance of the license was also responsible for supervising the building construction operations. Of course, such supervision was not just limited to the authority qualified for license issuance as article 7 of the aforesaid procedure ruled that the prevention of building violations in every district of every province or general governorship domain was the duty of the general governor or provincial governor and such a duty was fulfilled through the governmental organizations situated in every district of every province. The area of every province is divided into a number of regions with the latter being divided into a number of districts; the supervision of the constructions was the duty of a district's local construction supervisor appointed by the governor. The quality of preventing the building violations was carried out based on paragraph 3-7 of the "guidelines on the issuance of building supervision license outside the legal limits and frontages of the cities passed in 1977" and according to article 8 of the aforementioned procedure and emphases had been made that assistance should be sought from the local gendarmerie for confronting with the building violations. Based on article 8 of the procedure, a delegation composed of the representatives of provincial governorship, provincial association, general office of housing and urban engineering, general office of agriculture and natural resources and the general office of the mines and industries was responsible for determining the way the building violations had to be treated. The procedure and the aforesaid guidelines were not clear on the delegation's process of trying and making decisions about the building violations, including eradication of the building, receiving fines and so forth.

However, it was with the enactment of the law on the appending of a paragraph and three notes known as paragraph 3 of article 99 of the municipalities' law (passed on 1st of March, 1994, that a commission comprised of the representatives of the ministry of interior, judicature and ministry of housing and urban engineering became responsible (based on note 2 in paragraph 3 known as article 99 commission) for preventing the unauthorized constructions and trying the building violations. Based on this law, the area and realm of the commission's action outside the enacted limits of the cities has been declared; thus, it is silent in regard of the building violations taking place within the limits of the



villages in the vicinity and frontages of the cities. However, it was with the enactment of the “law on the formations, duties and elections of the country’s Islamic councils and mayors’ election (passed on 21st of May, 1996)”, “the law on the establishment of the self-adequate rural municipalities in the country’s villages (passed on 5th of July, 1998)”, “the charter, formations and organization of the rural municipalities (passed on 10th of April, 2001 by the board of ministers)”, the “law on the definitions of the limits and frontages of the city, village and estate and the method of their determination (passed on 4th of January, 2006)” that the issues related to the constructions inside the limits of the villages in the cities’ frontages were clarified. The most distinct and the most important law that determines the status of the constructions inside the limits of the villages in the cities’ frontages is the note one to article three of the “law on the definitions of the limits and frontages of the city, village and estate and the method of their determination (passed on 4th of January, 2006)”. Based on this legal note, the villages situated within the cities’ frontages have independent limits and frontages according to the rural pilot plans and the municipality (Shahrdari) of the city has no right to interfere with the constructions and other affairs of the village. This way, meanwhile delimiting an independent limit for the village (corresponding to the rural pilot plan’s map), the constructions within this limit fall within the rural municipality (Dehyari)’s area of action hence the trial of the building violations taking place inside the limits of such a village is also within the jurisdiction of article 99 commission.

6. PROCESS OF BUILDING VIOLATIONS’ TRIAL IN ARTICLE 99 COMMISSION:

Note 2 to paragraph 3 appended to article 99 of the municipalities’ law does not express the details of the process of building violations’ trial as the subject of the foresaid article. Due to the same reason, in order to organize the process of trying the building violations within the jurisdiction of article 99 commission of the municipality (Shahrdari)’s law, the interior minister has declared within a guideline (numbered 112096 issued on 16th of November, 2016) the process of trying the building violations to the provincial governors of the whole country. Besides the authority qualified for issuing the building license that is responsible for reflecting the building violations to the secretariat of the article 99 commission, the building supervisors and the executive organs like the ministry of road and urban engineering and Housing Foundation (Bonyad-e-Maskan) are also obliged to announce any sort of building violations to the authority qualified for the issuance of building license so that it can offer the related reports in adherence to the specified criteria to the aforesaid commission. Immediately after observing any violation, the authority qualified for the issuance of the building license is obliged



to declare the cessation of the building operation within a writ of warning to the interested party or his or her legal representative and immediately reflect the cases of the building violation along with the minutes and relevant documents (image or film) to the secretariat of the commission for the adoption of the final decision. Upon receiving the report and file of the building violation, the secretariat of the commission declares it to the interested party or his or her legal representative that s/he has to deliver his or her explanations about the building violations by the authority qualified for the issuance of the building license within ten days to the commission's secretariat for the adoption of proper legal trial process. After the building violation case or cases were presented, the commission, if necessary or needed, can use the notions of the research group (which is, of course, advisory). The aforesaid guideline does not explain the quality of the research group's formation thus its composition is determined based on the idea and taste of the commission members and provincial governorship. Article 99 of the municipality (Shahrdari)'s law does not express the quality with which the commission's sessions are held in terms of the number of members that have to be present. But, the aforesaid guideline has realized the presence of all the commission members in the commission's sessions as being necessary for the authentication thereof. It has additionally announced that the majority's vote is the criterion of the commission's final decision and also that the members' notions should be mentioned in the minute.

6.1. Inherent Jurisdiction of the Commission:

Adoption of decision by the commission pivots about two axes: 1) eradication of the building and 2) sentencing to fine payment (Mirza'ei, 2016, p.196). In the note 2 to paragraph 3 of article 99 of municipalities' law, the duty of the commission subject of this law is the trial and issuance of sentence for the destruction or fine equal to fifty to seventy percentage of the completed superstructure in a case-specific manner and in adherence to the comprehensive plan (if no comprehensive plan is enacted, in adherence to article 4 of the "procedures of building construction outside the limits and frontages of the cities passed in 1977"). It was with the enactment of the "procedure on the land use, building construction and installations' placement outside the frontages of the cities and inside the villages' limits passed on 29th of April, 2012", that the "procedure related to the land use, building construction and installations' placement outside the legal frontages and limits of the villages (passed on 17th of May, 1976, by board of ministers" was rescinded. Therefore, knowing this, the ministry of interior has announced it in the paragraph 7 of the aforementioned guideline that the non-observance



of the new procedure is to be enumerated amongst the cases of building violation outside the limits and frontages of the cities and outside the limits of the villages. Moreover, failing to comply with the criteria of land use, regulations of urban engineering, detailed and preparatory plans, national building rules, city-building principles and technical and sanitary standards and non-verification of the ownership are amongst the cases for which the commission is obliged to issue sentences in line with building eradication. In this case (issuance of the building's eradication sentence), the commission sets a suitable respite that would be no longer than two months for the enforcement of its sentence. Such a decision by the commission will be declared to the interested party or his or her legal representative to be enforced. If the interested party or his or her legal representative falls short of enforcing the commission's sentence, the authority qualified for issuing the building license takes measures in cooperation with the police forces for enforcing the building eradication sentence. But, if the building violations are found in the form of added parts, change of the enacted land use, violation of the city-building, technical and sanitary standards and other regulations including articles of the "procedure on the land use, building construction and installations' placement outside the limits of cities and limits of villages passed on 29th of April, 2012" and criteria of the rural pilot plan, the commission can take measures after acquiring confirmation from the building engineering system regarding the building's solidification in line with sentencing to fines' payment equal to 50 to 70 percent of the most recent price of the superstructure. In case that the interested party or his legal representative fail to pay the fine within the specified time, the authority issuing the license is obliged to again refer the file to the commission and request the issuance of the destruction sentence. Article 8 of the guideline does not determine the duty of the commission under such conditions (proposition of the commission's sentence non-performance by the interested party or his or her representative) and it has been left to the commission members' discretion.

6.2. Objection to the Sentences of Article 99 Commission:

Based on the note two to paragraph three of article 99 of municipalities' law, trial of the building violations in this commission is performed in one stage and its sentences are definitive and indispensable and there is not possibility of revisions therein. However, like the sentences issued by the other quasi-judicial commissions or delegations established in the executive and administrative organs, it is possible to object to article 99 commission's sentences in the divisions of the administrative justice court.



Based on paragraph two of article 10 in the law on the administrative justice court's formations and trial procedure that expresses part of the jurisdiction of the administrative justice court, the investigation of the objections to and complaints of the decisive sentences and decisions by the committees responsible for the trial of the administrative violations and such commissions as tax commissions, employer-employee dispute resolution committee, commission subject of article 100 of municipalities' law and others can be exclusively made for the cases of the rules and regulations' breach and contradiction as part of the administrative court's authorities. Due to the exemplary nature of the commissions whose names have been mentioned in the law's text, the complaints of and objections to the sentences made by article 99 commission are also investigated in the divisions of the administrative justice court.

7. BUILDING VIOLATIONS:

The building violations may include the breaches of the urban planning rules and regulations and violations of the architectural, technical and sanitary criteria of the constructions as well as non-compliance to the technical principles and regulations in designing, calculating, implementing and safeguarding the buildings and also violations of the criteria governing the comprehensive and detailed urban plans, violations of the rural pilot plans and other development plans, violation of the urban planning principles and constructing building without acquiring permit and/or construction of building against the contents of the building license as well as, finally, violations in the form of negligence of the national building regulations comprised of a set of technical principles and regulations. Building violations feature a special legal nature; the exclusive punishment properties are essentially not enforced for them but there are criteria like fine calculation based on the date of violation occurrence enforced exceptionally for them (Kamiyar, 2018, p.317). Building violation is always a challenge in the face of the rural and urban life and it is enumerated amongst the factors endangering the ecology of these residential spots in various terms. The transactional value of the properties differs from the transactional value of the building with article 64 of the law on direct taxes, passed on 23rd of April, 1987, being the first one's premise and note 11 to article 100 of the municipalities' law being the premise of the second (Kamiyar, 2018, p.329).



8. METHOD OF DETERMINING THE PRICE OF SUPERSTRUCTURE (CRITERION OF ACTION IN CALCULATING THE BUILDING VIOLATIONS' FINES):

Based on note 11 to article 100 of the municipalities' law, when calculating the fines for the building violations in the cities, the transactional value of the building is the criterion of action. The method of its determination has been expressed in the note 11 of this same legal article in such a way that municipality (Shahrdari) prepares the procedure of the buildings' transactional values and presents it to the Islamic council of the city for enactment. After the enactment of the procedure by the Islamic council and following the exertion of article 90, the "law on the formation, duties and elections of the country's Islamic councils and mayors' election" (exertion of the ideas by the committee responsible for the determination of the match in the enactments by the city's Islamic council-in case of their not being objected), the enacted procedure becomes the scale of assessment in the calculations of the fines for the building violations. In this procedure, in order to determine the transactional value of the buildings, the land price as well as the price of the masonry used in the construction of the building usually lay the foundation of the determination of the buildings' transactional value in various regions of the city. Therefore, it is through the implementation of this method that two buildings that are similar in shape and construction and masonry but situated in different parts of the city would be valued differently.

It is worth mentioning that there is a difference in the cities between the properties' transactional value and the buildings' transactional value with article 64 of the law on direct taxes, passed on 23rd of April, 1987, being the first one's premise and note 11 to article 100 of the municipalities' law being the premise of the second (Kamiyar, 2018, p.329). In order to determine the basis for the calculation of fines for building violations in article 99 of municipalities' law, the legislator has used the spot price of the superstructure instead of using the expression the building's transactional value. Such a change of approach plus the legal gaps in regard of the methods of determining the spot price of the superstructure for calculating the fines for the building violations have caused the ministry of interior to assign the duty of determining the spot price of the structure to the article 99 commission as stated in the abovementioned guideline (article 9) in such a way that a committee comprised of the justice department's authorized expert suggests the spot price of the superstructure in separate for the villages and sectors in every county to the commission and it is after the confirmation of their suggestion by the commission that this "superstructure pricing" becomes the basis of calculating the fines for the building violations. As it is observed, the pricing of the extra constructions differs in the articles 99 and 100 commissions' areas of action in such a way that the



transactional value of the building in the cities is composed of the calculation of the superstructure and substructure's prices while only the spot price of the superstructure is the criterion of article 99 commission's action parallel to the determination of fines for building violations. The criterion for the calculation of fine is the transactional value of the year in which violation has occurred (Kamiyar, 2018, p.327). On the other hand, article 100 commission of the municipalities' law has no role in the determination of the buildings' transactional value; contrarily, article 99 commission determines the spot price of the superstructure. Article 99 commission is a quasi-judicial commission whose sentences are decisive and indispensable (one-stage trial) and it is only through the judgment by the administrative justice court that its decision can be violated. In this guideline (article 9), there is not mentioned a legal proof for the delegation of jurisdiction or duty of determining the superstructure's price to this commission. It is clearly evident that this decision of the ministry of interior is against the principle of the various institutions' authorities and duties separation. It is clear that the best method for determining the spot price of the superstructure is the unity of action criterion for the determination of the building's transactional value in the municipality (Shahrdari) in such a way that the rural mayor suggests the price of the buildings' superstructures in the villages and, after it was enacted by the villages' Islamic councils or, if necessary, by the sectorial Islamic council, it will be used in the form of procedures that is least prone to the individual taste's exertion as the criterion for the calculation of the building violations' fines.

9. PROCESS OF ENACTING AND COLLECTING FEES FOR THE ISSUANCE OF BUILDING CONSTRUCTION LICENSE IN THE VILLAGES' LIMITS:

The Arabic term "Awarez" [fees] is the plural form of "Arezeh". It has been defined in the dictionaries as incident, event, abrupt bad happening and tribute and levy. In relation to the duties and authorities of the government and municipalities, it commonly means the sum of money these organs receive from the people for the services they offer or not. Municipalities' fees are essentially received for the offering of services from the citizens and they can be collected under the title of local fees with the suggestion of municipalities and enactment of the Islamic council and enforcement of article 90 of the councils' law and, eventually, confirmation of ministry of interior 9or provincial governorship depending on the case) at the time of providing service. There is, of course, another word synonymous to fees but it does not have an independent meaning and it is indeed fees per services offered (Rasulzadeh et al, 2018, p.1). The type and amount of the



governmental fees are determined and received based on the Islamic Consultative Assembly's enactment and it is not necessary for them to be collected at the time of offering the services; besides aiming at supplying income to the government, the fees are often used for social and economic purposes, including encouragement of exports (at the time of reducing the exports' customs fees) and/or reduction of the fees on certain goods for encouraging their consumption and use. The levying and collection of the fees are based on criteria in the urban and rural municipalities; however, there are various shortages and gaps in terms of procedures and areas of actions for the authority qualified for the issuance of building construction license outside the limits and frontages of the cities and outside the limits of the villages.

9.1. Levying and collection of Building Fees in the Rural Municipalities' Area of Action (within Villages' Limits):

Fees' collection has always been underlined by the legislator as one of the most substantial sources of income for the rural municipalities; in between, the collecting of the fees for the issuance of building license is amongst the most important types of the local fees. Paragraph 10 of article 10 of the rural municipalities' charter has realized the collecting of the fees enacted by the legal authorities and their consumption for the specified uses as one of the duties of the rural municipalities. Article 13 of this same charter, as well, that counts the income sources of the rural municipalities considers the fees collected when issuing building license (in adherence to the procedures of the levying and collection of fees by the cities, sectors and estates' Islamic councils introduced in the law on the formations, duties and elections of the country's Islamic councils passed in 1997 as well as in enactment number 21823t/32495 made on 1st of November, 1999) amongst the primary income sources of the rural municipality (Dehyari). Article 39 of the procedures of the rural municipalities' finance (passed on 10th of August, 2002 by board of ministers) that pertains to the rural municipalities' income and resources, as well, considers the fees collection as the primary income source of the rural municipalities.

Until before the amendment made on 18th of November, 2007, to the law on the formations, duties and elections of the country's Islamic councils and mayors' election, article 77 (former) of the foresaid law was the legal document for the enactment of the fees. However, afterwards and with the amendments made and also with the elimination of the phrase "sectorial Islamic council from the text of the law", the enactment of the rural fees was left unidentified. It was after the approval of the law



of the tax on value-added (2009) that the note one of this legal article specified the conditions and qualities of fees' enactment by the sectorial and urban Islamic councils in such a way that the aforesaid Islamic councils were obliged in line with the enactment of new local fees the statuses of which are yet to be determined in the law (law of tax on added value) to enact the fees at most until 15th of February in every year for implementation in the next year and declare it publically through rural or urban municipality (Shahrdari) in a case-specific manner. Based on article 37 of the rural municipalities' financial procedures, each rural municipality (Dehyari) has certain tariffs for setting all sorts of fees and prices of services as well as other incomes that are to be received and collected in adherence to the relevant regulations. Since the sectorial Islamic councils like the other Islamic councils have certain jurisdiction for making decisions and exercising supervision, they cannot individually set fees rather, like the fees set in the cities, the rural municipalities offer their suggestions about the enactment of the fees as the executive organs to the Islamic councils and it is following the approval of the rural municipalities' suggestions by the Islamic councils that the enactments are reflected to the sectorial councils for the determination of their final status. In the next stage, the turn comes to the enforcement of the verdict of article 90 of the Islamic councils' law by the sectorial match-evaluation delegation. In case that this delegation makes no objection to the enactments by the sectorial councils and following the final approval of the enactments, rural municipality (Dehyari) is obliged to collect fees at the time of offering services and fulfilling responsibilities.

9.2. Levying and collection of Building Fees within the Sectorial Governorship's Area of Action:

Sectorial governorship is a governmental institution and a subdivision of county governorship, provincial governorship and ministry of interior. Until before the amendment on 11th of July, 2017, in the "law on the formations, duties and elections of the country's Islamic council and mayors' election (passed on 21st of May, 1996 with its later reformations)", this institution was the reference authority for investigating objection or no objection to the enactments of the rural and sectorial Islamic councils; however, after the amendment and by the force of article 90 of the aforesaid law and following the establishment of a delegation for evaluating the match in the enactments by the Islamic councils of villages within a sector, this delegation became the reference source of the objections or no objections to the enactments by the Islamic councils (the head of the aforesaid delegation is the sectorial governor). According to the fact that the sectorial governor is considered as the highest governmental rank in a sector, the duties and authorities of this position and sectorial governorship are essentially



comprised inter alia of the coordination between the executive organs in the sector and supreme supervision on the other executive governmental organizations. However, there duties specified for this organ in the procedures, circulars and even regulations that have transformed it from a supervisory institution to an executive institution in some of the cases. For example, in the law of the waste residues, the issues related to the waste materials outside the cities' limits and frontages and outside the villages' limits have been practically placed on the shoulder of the sectorial governorship. In line with this, based on article six of "the procedures related to the land use, building construction and installations' placement outside the legal limits and frontages of the cities (passed on 17th of May, 1976)", sectorial governorship is often appointed by the provincial governors as the authority qualified for issuing the building construction license outside the limits and frontages of the cities and outside the limits of the villages. Based on article 6 of the "guidelines of the issuance of building license and supervision outside the legal limits and frontages of the cities passed in 1977 (enacted by the ministry of housing and city-building and ministry of interior)", the enactment of the fees for the issuance of the building license was suspended on the provincial governors' suggestion of the county and provincial associations and their subsequent confirmation as ruled in articles 51, 53 and 57 of the "law on the formation of the county and provincial associations". The acquired oncomes were spent according to the article six of this guideline on the costs of building construction license issuance, construction supervision and salaries and wages of all or some of the technicians and engineers who had been hired for doing so.

It was with the enactment of the "procedure on the land use, building construction and installations' placement outside the cities' frontages and villages' limits (passed on 29th of April, 2012)" and emphasis made in article 11 indicating the annulment of "the procedure related to the land use, building construction and installations outside the legal limits and frontages of the cities (passed on 17th of May, 1976 by the board of ministers)" that the instructions of license issuance and building supervision outside the legal limits and frontages of the cities, passed on 1976 (by the interior minister and housing and urban engineering minister) was naturally rendered devoid of any effect hence revoked. Resultantly, the status of the levying and collection of the fees is not certain for the issuance of building construction license outside the limits and frontages of the cities and outside the villages' limits. Paragraph 16 of article 80 as well as article 85 of "the law on the formations, duties and elections of the country's Islamic councils and mayors' elections (passed on 21st of May, 1996 with its later amendments)" is dedicated to the jurisdiction and duty of the cities' Islamic councils for levying or annulling the fees. Note 1 to article 50 of the law of tax on added value, as well, grants the qualification



of levying local fees to the cities and sectors' Islamic councils in the limits of the cities and villages. But, the method of levying fees that entails legislator's prescription is faced with legal gaps (Islamic Consultative Assembly's enactment) outside the limits and frontages of the cities and outside the limits of the villages.

During the recent years, the legislator has obliged the ministry of interior (provincial governorship) within the regulations pertinent to the country's annual budget to collect the fees for constructions and building violations' fees outside the limits of cities and outside the villages' limits as ruled in article 99 of municipalities' law and deposit the obtained sums to the general income account of the country's general treasury office. For instance, paragraph (h) of the note 6 of the entire country's 2018 budget law has stipulated this same verdict. This article explicitly realizes the collecting of fees and building violations' fines as the duty of the ministry of interior. However, there is no legal document (Islamic Consultative Assembly's enactment or board of ministers' enactment) regarding the process of collecting fees in this area.

9.3. Collecting Building Fees Plus Receiving Building Violations' Fine:

Simultaneous demanding of fine and fee is enumerated amongst the controversial issues of the financial urban laws (Kamiyar, 2017, p.250). The judicial control of the governmental regulations includes the delegation of jurisdiction for definitive resolution of the disputes stemming from the administrative interventions and decisions to an institute independent from the political and administrative powers. The employees of the public services are deployed against the employees of the administrative services (Emami and Ostowar Sangari, 2012, p.88). Simultaneous payment of the building violation fine by the owner or an interested party has always been objected by the owners and shareholders and the enforcement of the process intended by the municipalities has been confronted with challenges in this regard. During the recent years, the authorities qualified for issuing building license have been of the belief that the building violators should pay both the license fees and the building violation fines. This issue has been repeatedly posited in the general assembly of the administrative justice court. The followings are several examples of the related sentences:

A) Sentences that do not realize the simultaneous collecting of license fees and violation fees as being legal and authorized:

1) Verdict nos.354-358 issued on 3rd of February, 2002, by the general assembly of the administrative justice court that invalidated the circular no. 13831 issued on 16th of October, 2000, by



the urban engineering and architecture vice chancellorship of Tehran's municipality (Shahrdari) that realized it necessary to collect fees (for substructure, subscription, added density and use change in a case-specific manner) from the violating buildings based on the reasoning that "... the enactment of imperative rules for acquiring any sort of sums, including municipality (Shahrdari) fees and building violation fines, is the duty of the legislature and it is the legislator that has specified the authorities capable of determining the aforesaid fees and quality of the computation of building violation fines and their collection ..." and it invalidated the circular believing in the idea that the aforesaid circular entails enactment of imperative rules hence outside the limits of the legal authorities of the aforesaid organization.

2) Verdict no.242 issued on 21st of June, 2016, by the general assembly of the administrative justice court recognized the levying of the fees plus the fines specified by the article 100 commission of the municipalities' law as being contradictory to the law considering the verdicts nos.354-358 issued on 3rd of February, 2002, and in the position of enforcing article 92 of the law on the formations and trial procedures of the administrative justice court passed in 2013.

B) Sentences that realize the collecting of fees and building violation fines as being against the law:

1) Judgment no.587 made on 13th of February, 2005, by the general assembly of the administrative justice court; the plaintiff demanded the invalidation of circulars no.3/2415, issued on 19th of February, 1991, and no.34/1/10740 issued on 26th of August, 1992, by the ministry of interior for their prescribing of the possibility of simultaneous collecting of fees and building violation fines.

2) Judgment no.786, issued on 31st of October, 2017, by the general assembly of the administrative justice court:

Meanwhile invalidating the sentence no.242 issued on 21st of June, 2016, this verdict announced that since the nature of the crimes presented in article 100 commission and the enacted fees differ, enactment by the session held on 18th of January, 2015, in the Islamic Council of Karaj for levying legal fees in addition to the fines set for the crimes specified in article 100 commission of municipalities' law is recognized as being not revocable.

At present, according to the last will of the legislator and recent sentences issued by the general assembly of the administrative justice court, the collecting of construction fees plus the building violation fees is the current process implemented in the authorities qualified for issuing the building construction license.



10. BUILDING VIOLATION FINES IN THE ARTICLE 99 COMMISSION'S AREA OF FUNCTION:

Fine is the sum of money paid to the aforementioned authorities by the violator for not observing the regulations governing the constructions based on the decision by the qualified authorities, including Article 100 and Article 99 Commissions of municipalities' laws. The fine determined by the article 100 commission is not the pecuniary punishment in the Islamic Penal Code of Law rather it is a sum of money to the payment of which the building's shareholder is sentenced for a building violation; this sum is to be deposited to the municipalities' account (Kamiyar, 2018, p.326). The method of calculating the fines for the building violations is specified by the legislator. The aforementioned commissions take measures in line with sentencing fines' payment for the building violations in which the constructed building is found not being in need of eradication otherwise and in case of the non-observance of the technical, sanitary and urban engineering principles and also if the building is found not solid enough, it has to be normally destroyed.

In the cities, there are various methods offered for specifying fines to the building violations by the article 100 commission based on the notes to the article 100 of municipalities' law. Note 2 to paragraph three of article 99 in municipalities' law has expressed the method of determining building violation fines in one style, i.e. fifty to seventy percent of the spot price of the constructed building's superstructure as the fine that has to be paid to article 99 commission.

Based on this same legal note, when issuing sentences related to the building violations, article 99 commission is required to observe article 4 of the "procedure pertinent to the land use, building construction and installations outside the legal limits and frontages of the cities, passed on 17th of May, 1976, by the board of ministers". This article of the procedure encompasses requirements that have to be observed by the authority qualified for the issuance of building construction license when doing so. Frontages, development plans and regulations related to them are amongst the cases that should be necessarily taken into account when issuing building construction licenses. However, it was with the enactment of the "procedure on the land use, building construction and installations outside the cities and villages' limits (passed on 29th of April, 2012 by the board of ministers)" and the revocation of the 1976's procedure that the only scale that can be incumbently used when issuing licenses for building construction outside the limits and frontages of the cities is the article 4 of the procedure passed on 29th of April, 2012. This article of the foresaid procedure, like its antecedent, expresses the requirements and criteria for the method of issuing licenses for building construction outside the limits of the cities; so, currently, the referral of note 2 in paragraph 3 of article 99 of municipalities' law to



this procedure (passed on 29th of April, 2012) is also relevant when article 99 commission is making decisions about and trying the building violations. On the other hand, the commission's decision regarding the determination of the building violation fee or eradication of the building is suspended on the considerations of the comprehensive plan. It seems that the intended plan is currently the comprehensive county plan and the other higher-level plans, including the urban system plan.

11. METHOD OF ACQUIRING FINES RESULTING FROM THE BUILDING VIOLATIONS:

Rural municipality (Dehyari) is the authority qualified for acquiring building violations' fines in the villages. However, there are discrepancies regarding the method of acquiring building violation fines outside the limits and frontages of the cities and outside the villages' limits as well as regarding the quality of their being spent by the authority qualified for issuing building construction license (sectorial governorship) due to the legal conflicts, flaws and gaps (Saremi Noori, 2016, p.95).

CURRENT PERFORMANCE AND OBJECTIONS THERETO:

Ministry of interior has announced the quality of such fines' collection as explained beneath within the format of circular no.s/22372/1/3 passed on 13th of May, 2012:

Paragraph One: it declares the following words regarding the building violations taking place within the limits of villages having rural municipality (Dehyari): "the income stemming from the fines received according to note 4 if article 3 in the law on the definitions of the cities and villages' limits and frontages should be deposited to the rural municipalities' accounts as an income earned from the constructions and it has to be spent for the development and reconstruction; the sectoral Islamic council is the authority qualified for setting the related fees and rural municipality (Dehyari) is the authority qualified for receiving and collecting them"⁴.

Considering the rural municipalities' possession of authority for issuing building construction licenses in the villages and according to the recent sentences issued by the general assembly of the administrative justice court in the course of which the collecting of fees plus fines of building violations simultaneously has been declared illegal, this paragraph is in match with the regulations:

⁴ Note 4 to article 3 of the law on the definitions of the cities and villages' limits and frontages and method of their determination: "the income originating from the constructions and fees in the villages situated within the cities' frontages, including the villages for which pilot plans have been approved or not, should be deposited to the rural municipalities' account for further development and reconstruction".



Paragraph Two: regarding the villages that are situated in the frontages of the cities, it states that “in villages that are situated in the frontages of the cities and have pilot plans or contextual development criteria and also have Islamic village councils but lack rural municipality (Dehyari), the institute qualified for issuing license and supervising the constructions is determined by the provincial governorship (reconstruction affairs vice chancellorship) as ruled in the note 1 to article 3 of the law on the definitions of the cities and villages’ limits and frontages and method of their determination as well as in the procedures of land use, building construction and installations outside the limits and frontages of the cities. The building violations are tried in the article 99 commission of the municipalities’ law and the related fees are set by the sectoral Islamic councils with the incomes earned from the fines being deposited to the account of Islamic village council and spent in whole according to the instructions offered by the rural and urban municipalities’ organization for the villages’ development and reconstruction under the supervision of the sectoral governorship (Bakhshdari)”.

This paragraph of the circular has a lot of legal shortfalls as stated in the following section:

First of all, according to paragraph (m) of article 76 of the “law on the formations, duties and elections of the country’s Islamic councils and mayors’ election (passed on 21st of May, 1996, and its later amendments)”, the Islamic village council is qualified and necessarily required to appoint a person as the rural mayor for four years in the beginning of its activities; it is assumed in this circular that the village does not have a mayor whereas one of the most evident obligatory duties of the rural municipality (Dehyari) is the appointment of a rural mayor. The assumption that “lacking rural municipality (Dehyari)” means that the ministry of interior has not issued a permit for the establishment of rural municipality (Dehyari) is doubted in itself because if the legislator has ruled the appointment of an executive manager for the villages, the aforesaid ministry cannot derail this important executive institute from taking measures in line with the rural development; but, if it means that the Islamic village council is yet to appoint the rural mayor, it would be enumerated amongst the examples of the council’s violations hence the issue has to be posited to the provincial dispute resolution and Islamic councils’ complaint investigation committee for the status clarification. Therefore, considering the paragraph (m) of article 76 of the councils’ law, it is not accepted if a village is found lacking rural mayor and rural municipality (Dehyari). On the other hand, if a village lacks Islamic council, the sectoral Islamic council would take the place of the Islamic village council based on article 85 (former, currently 99) of the law of councils and it would be responsible for appointing an individual as a rural mayor.



Secondly, it is stated in this paragraph of the circular that the authority appointed by the provincial governorship's reconstruction affairs vice chancellorship is the authority qualified for issuing license in the villages that are situated in the cities' limits and have no rural municipality (Dehyari). This is while the provincial governorship's reconstruction vice chancellorship appoints the authority qualified for the issuance of license outside the limits and frontages of the cities and outside the limits of the villages as ruled in article 10 of the "procedure on the land use, building construction and installations outside the cities' frontages and outside villages' limits". It is in this way evident that the rural municipality (Dehyari) is the authority qualified for the issuance of building license within the villages' limits and, assuming that a village has no mayor, how and with what permit and legal document does the authority appointed by the reconstruction vice chancellorship of the provincial governorship have the qualification for entering an arena which is within the jurisdiction of the rural municipalities. Therefore, this part of the circular, as well, is in vivid conflict with the law so it cannot be enforced.

Thirdly, it is stated in part of this paragraph that "... building violations are investigated and tried in article 99 commission of the municipalities' law and the related fees set by the sectoral Islamic council as well as the incomes earned from the fines are deposited into the Islamic village council's account ...".

The circular emphasizes that the incomes stemming from the fees and fines are to be deposited in the account of Islamic village account. This is while the Islamic village council is a supervisory institute not an executive institute and the sums in the bank account of the aforesaid institute would be solely spent on the supply of the council's internal costs and not used for the executive and reconstruction affairs (this is in contradiction to the duties and authorities of the Islamic village council as ruled in article 76 of the councils' law).

Paragraph Three: it is stated in this paragraph that ""in villages that are situated in the frontages of the cities and have pilot plans or contextual development criteria and do not have Islamic village councils and rural municipality (Dehyari), the institute qualified for issuing license and supervising the constructions is determined by the provincial governorship (reconstruction affairs vice chancellorship) as ruled in the note 1 to article 3 of the law on the definitions of the cities and villages' limits and frontages and method of their determination as well as in the procedures of land use, building construction and installations outside the limits and frontages of the cities. The building violations are tried in the article 99 commission of the municipalities' law and the related fees are set by the sectoral Islamic councils with the incomes earned from the fines being deposited by the



authority qualified for the issuance of license into a separate account opened for the same purpose by the provincial governorship as the surrogate and spent on the rural reconstruction and development in the villages the Islamic councils of which have been dissolved and/or their elections have been ceased according to article 85 (former, currently 99) of the law on the formations, duties and elections of the country's Islamic councils and mayors' elections with the later amendments; in the other cases, the subject of this paragraph is delegated to the sectoral governors as the deputies of the surrogates in the Islamic village councils".

There are many legal objections made to this paragraph of the circular:

Firstly, the same objection that was made to the second paragraph in regard of the authority qualified for the issuance of the license also holds for this paragraph according to article 10 of the "procedure on the land use, building construction and installations outside the cities' frontages and villages' limits". That is because the reconstruction vice chancellorship of the provincial governorship is only authorized to determine the authority qualified for the issuance of the building license only outside the limits and frontages of the cities and outside the limits of the villages and not in the cities' limits; thus, this part of this paragraph is also in conflict with the regulations.

It is stated in another part of the paragraph that "... related fees and incomes resulting from the received fines should be deposited by the authority qualified for the issuance of license into a separate account opened for the same purpose by the provincial governorship as the surrogate and spent on the rural reconstruction and development in the villages the Islamic councils of which have been dissolved and/or their elections have been ceased according to article 85 (former, currently 99) of the "law on the formations, duties and elections of the country's Islamic councils and mayors' elections with the later amendments"

While substantiation has been made on the beginning of article 85 (former-currently 99) of the aforesaid law, the note two to the foresaid article announces that "the sectorial Islamic council is the surrogate of the rural Islamic council"; also, paragraph 7 of article 70 of the foresaid law based on which one of the duties of the sectoral Islamic council, i.e. "performing of duties of the Islamic village council on the independent farms, places, villages and green lands that lack Islamic village council for a reason or another", has been neglected. Therefore, provincial governor cannot be a surrogate to the head of the Islamic village council rather such surrogacy belongs to and is within the jurisdiction of the sectoral Islamic council. Moreover, according to paragraph six of article 79 of the councils' law, sectoral Islamic council is responsible for performing the duties of the Islamic village council on the independent farms, places, villages and green lands that lack Islamic village council for a reason or



another; based on the articles 30 and 31 of the procedures on the formations, internal elections and financial affairs of the sectoral Islamic councils (passed on 21st of January, 2000, by the board of ministers as well as its later amendments), sectoral Islamic council can open a bank account for depositing the people's gratuitous aids, fees collected from the villages, governmental aids (in case of allocation) for implementing reconstruction programs; it can also spend the other outlined receivables for the reconstruction and prosperity of the village according to the programs that have been previously enacted in the form of annual budget and within the format of reconstruction plans and/or current uses by the council in adherence to the related rules and regulations. In this way, the aforementioned procedure grants an executive role to the sectoral Islamic council. Thus, considering these descriptions and authorities given to the sectoral governorship (Bakhshdari), it seems that it is the sectoral Islamic council qualified for receiving and spending the incomes stemming from the collecting of the building violations' fines in the villages lacking Islamic council and rural municipality (Dehyari).

On the other hand, considering the abovementioned substantiations, the sectoral Islamic council is obliged in the villages lacking the Islamic village council (inside and outside the cities' frontages) to appoint the rural mayor for such villages; therefore, none of the villages can lack rural mayor whether it has Islamic council or not. However, sectoral governors cannot become substitutes of the heads of Islamic village councils even with the delegation of duties by the provincial governors.

Paragraph Four: it states that "in the villages that are situated outside the frontages of the cities and have pilot plans or contextual development criteria, Islamic village council and rural municipality (Dehyari), the authority qualified for the issuance of building license and constructions' supervision is the corresponding rural municipality (Dehyari) and the building violations are to be tried in article 99 commission of the municipality (Shahrdari) law with the stipulated composition as ruled in the last part of the article three of the law on the definitions of the cities and villages' frontages and limits and method of their determination and also corresponding to the mechanism introduced in paragraph 11 that has been appended to article 69 (former, currently 78) of the law on the formations, duties and elections of the country's Islamic councils and mayors' appointment. The income acquired from the fines is deposited as the income stemming from the constructions into the village's municipality for reconstruction and development as stated in the note 4 of article 3 in the law on the definitions of the cities and villages' frontages and limits and method of their determination. The authority qualified for the levying of the related fees is the sectoral Islamic council with rural municipality (Dehyari) being responsible for receiving and collecting them."



This paragraph is in match with law; as it was mentioned before, the simultaneous collecting of the fees and building violations' fines is not faced with legal prohibitions considering the recent sentences made by the general assembly of the administrative justice court.

Paragraph Five: it is stated in this paragraph that “in villages that are situated in the frontages of the cities and have pilot plans or contextual development criteria and also have Islamic village councils but lack rural municipality (Dehyari), the authority qualified for issuing license and supervising the constructions is determined by the provincial governorship (reconstruction affairs vice chancellorship) as ruled in the aforementioned criteria as well as in the procedures of land use, building construction and installations outside the limits and frontages of the cities. The building violations are tried in the article 99 commission of the municipalities' law and the related fees are set by the sectoral Islamic councils with the incomes earned from the fines being deposited to the account of the Islamic village council and spent for the villages' development and reconstruction”.

This paragraph is also inflicted with legal contradictions and shortfalls that were explained about the other paragraphs, including the following⁵: the authority qualified for the issuance of license in the villages outside the frontages of the cities is the rural municipality (Dehyari) whether it has Islamic council or not. The Islamic village council is to necessarily take measures in line with the appointment of the rural mayor based on paragraph “m” (former, currently 77) of the “law on the formations, duties and elections of Islamic councils and mayors' appointment”; the other one is that the reconstruction affairs vice chancellorship of the provincial governorship cannot appoint the authority qualified for the issuance of building license for any of the villages because the legislator has declared that rural municipality (Dehyari) is responsible for issuing building construction license and no change can be made in the rulings of the law.

Paragraph six asserts that “measures should be taken as stated in the paragraph three in the villages that are situated outside the frontages of the villages and have pilot plan or contextual development criteria but lack Islamic village council and rural municipality (Dehyari)”.

The objections made to the third paragraph also hold for this same paragraph, as well.

Paragraph Seven: it states that “in order to adopt a unit procedure in the country's provinces, the reconstruction affairs vice chancellorship of the provincial governorship is obliged to appoint sectoral governorship (Bakhshdari) as the authority qualified for issuing license and supervising the constructions as introduced in the paragraphs 2, 3, 5 and 6 of this circular”.

⁵ Article 99 of the municipalities' law



The deputies of the provincial governorship's reconstruction affairs can appoint the authority qualified for the issuance of building license only outside the cities' limits and frontages and outside the villages' limits and that they cannot appoint any authority other than rural municipality (Dehyari) for the issuance of building license in the villages whether having rural municipality (Dehyari) or not. Considering the above-presented descriptions, this circular cannot cover the problems related to the method of collecting the building fines.

During the recent years, the annual budget law has been incorporative of requirements for the depositing of the incomes obtained from the collecting of fees and building violations' fines into the general income account of the country's general treasury (province's specific treasury) and its being spent by the ministry of interior (its subordinates, governorships). As an example, paragraph (h) of the note six to the country's 2017 budget law obliges the ministry of interior to collect the construction fees and building violation fines outside the limits and frontages of the cities and outside the villages' limits, as introduced in article 99 of the municipalities' law, up to four thousand billion rials and deposit into the general income account of the country's general treasury. Part of this income is apportioned in respect to every county's deposition quotient to the county's planning committee so as to be spent on the villages' improvement after enactment.

CONCLUSION

Population growth, change in lifestyle, movement towards the country's industrialization, change in the type of the constructional materials and so forth have caused the number and type of constructions and even the place of the new constructions to be different from what they have been in the past. Due to the same reason, it is necessary to keep pace with these changes and update the rules and regulations governing the constructions, especially the rules related to confrontation with the building violations; however, the system and process governing this issue is unfortunately currently faced with legal gaps outside the limits and frontages of the cities and inside the villages' limits in many of the cases. At present, the authority qualified for trying the building violations in the foresaid domain is the commission established based on note two to paragraph three in article 99 of municipality (Shahrdari) law (known as article 99 commission). The authority qualified for issuing building construction license in the action area of the aforesaid commission is rural municipality (Dehyari) in the villages' limits and sectoral governorship (Bakhshdari) outside the cities' limits and frontages and outside the villages' limits. The aforesaid authorities are obliged to report the building violations to the



article 99 commission as soon as possible meanwhile stopping the building construction operation and also enforce the sentences made by the commission. The commission's decision can be recrystallized in two forms: eradication of the building and/or specification of fines on the building violations. The collected fines are deposited by the rural municipality (Dehyari) to the rural municipality (Dehyari)'s bank account. But, considering the fact that the sectoral governorship (Bakhshdari) is considered as the governmental executive organ, the method of collecting building violations' fines by this institute is faced with legal challenges, including the fact that the sectoral governorship (Bakhshdari)s cannot presently personally receive the sums of money deposited into the bank accounts and spend them on the reconstruction and rendering prosperous the regions wherein the building violations have occurred. Ministry of interior has announced the quality of collecting the building violations' fines in the function domains of article 99 commission, rural municipality (Dehyari) and sectoral governorship (Bakhshdari) to the governors within the format of a circular no.s/22372/1/3 passed on 13th of May, 2012. Most of the paragraphs in this circular are afflicted with shortages in regard of the method of collecting fines, especially in respect to the sectoral governorship (Bakhshdari)s. The dedication of only one legal article to the trial of the building violations in the vast area outside the cities' limits and frontages and inside the villages' limits and falling short of determining the statuses of many of the necessary matters within an administrative and quasi-judicial process, including the quality of collecting fines in the villages lacking rural municipality (Dehyari), method of spending the incomes stemming from the building violations' fines by the sectoral governorship (Bakhshdari), lack of the required personnel for confronting the building violations and other matters, have all caused the confrontation with the building violations to be ineffective and inefficient within the action domain of article 99 commission. The legislation in this area in the style and method existent in the municipalities' law (related to the performance of the municipalities and article 100 commission) is amongst the most essential necessities in the area of constructions.

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