Contemporary Readings in Law and Social Justice
ISSN: 1948-9137, e-ISSN: 2162-2752
Vol 15 (02), 2023
pp. 780 - 793

The legislator's goals in establishing quasi-judicial authorities in municipalities

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Abstract

Quasi-judicial authorities, technical information and specialized knowledge play a significant role in resolving disputes. Supervisory authorities in municipalities are quasi-judicial commissions that are formed in order to achieve the interests of municipalities more quickly and to supervise the principles of urban planning, construction, architecture and urban texture, prevent non-compliance with urban regulations and collect urban revenues and legal fees. Accordingly, examining the causal relationship between the goals of quasi-judicial authorities of municipalities and specific strategies, including codified policymaking and integrated design of laws, the existence of judicial, supervisory and cultural thinking and planning, indicates the organizational excellence of municipalities, which leads to the results of improving the quality of commissions and promoting satisfaction. As an innovation, it should be stated that, given the challenges raised, it seems that attaching municipal commissions to judicial authorities is closer to the right in every respect; Because in this way, the benefits of the commissions and their patronage are preserved and the judicial, supervisory, etc. challenges are also eliminated. In such a way that the courts of law have the ability to intervene in these cases as arbitration or to ensure the rights of the people in the commissions by employing an expert or experts in this field. On the other hand, the municipality is a quasi-governmental institution and faces problems in reviewing the objections with its votes in the Administrative Court of Justice. Also, the municipality can also choose arbitration as a compromise between the parties or alternative methods of resolving disputes, including conciliation, mediation, etc., which also have a jurisprudential background; a process that we witness in Iranian arbitration and international law. In addition to this, the issue of objections to votes and, in addition, the interference of civil liability of individuals, which can be raised in courts of justice, and the liability of the municipality in dilapidated places, which in some cases causes the courts of justice and quasi-judicial authorities to be in the same channel (Article 122 of the Civil Code, Article 55 of the Municipal Law, Article 333 of the Civil Code), is eliminated. It should be noted that assuming the acceptance of the theory in the thesis, the civil liability of the government for the violations of employees and their liability in the Article 5 Commission will not be relevant. In addition, disputes related to other municipal transactions, which are not the subject of the amended Article 38 of the Tehran Municipal Transactions Regulations, as well as disputes related to the validity or effects after the termination and cancellation of the contract, which are the jurisdiction of general courts of law, are equalized by filing claims in the judiciary. Of course, it is necessary to mention that the author does not accept the institution of conciliation and mediation outside the jurisdiction of the court. Rather, the intention is to attach these terms to judicial arbitration and the binding nature of the decisions. Of course, if the actions of the commission are attached to judicial authorities, the possibility of realizing a guarantee of criminal enforcement for serious construction violations is also conceivable.

Keywords: Judicial authorities, quasi-judicial, municipal commissions, Iranian public law

Received: 1 November 2023 Revised: 21 December 2023 Accepted: 26 December 2023

1- Introduction

The intervention of governments in affairs and the establishment of numerous administrative organizations created new relationships in legal and social relations that require technical information and specialized knowledge from various aspects in the nature and resolution of the claims arising from them, and on the other hand, resolving the resulting dispute requires speed of action and decision-making, and caused the emergence of quasi-judicial authorities. Among these quasi-judicial authorities are the mayors' commissions. Supervisory authorities in municipalities are quasi-judicial commissions that are formed in order to achieve the interests of municipalities more quickly and easily and defend their interests and are formed in order to supervise the principles of urban planning, construction, architecture and urban fabric, prevent non-compliance with urban regulations and collect urban revenues and legal fees. The scope of Iranian public law limits the quasi-judicial authorities of municipalities in cases such as the Commission of Article 77 of the Municipal Law, Commission 100 of the Municipal Law, and the Dispute Resolution Board of Article 38. It should be stated that the cognitive analysis of the diversity of municipal commissions affiliated with quasi-judicial authorities, along with organizational goals and functions, urban order, promotion of social rights, etc., is of outstanding importance and demonstrates the effectiveness of the goals of such commissions, rationality, legality, purposefulness, and the function of de-judicialization as structural goals. These commissions, along with positive goals and functions, have challenges. An analysis of the challenges existing in quasi-judicial authorities of municipalities, focusing on semantic, judicial, managerial, supervisory challenges, etc., confirms the failure to fully realize the goals of the aforementioned authorities. To overcome such challenges, special strategies can be drawn for the future prospects of such commissions. Accordingly, a causal investigation of the relationship between the goals of quasi-judicial authorities of municipalities and special strategies, including codified policymaking and integrated design of laws, the existence of thinking and planning, indicates the organizational excellence of municipalities, which leads to the results of improving the quality of commissions and improving satisfaction.

2-Theoretical approach

Definition of quasi-judicial authorities: Special administrative authorities or quasi-judicial authorities are authorities that are established by law and are responsible for handling complaints and objections from the public about administrative actions and violations of government units or their officials or violations of relevant rules and regulations by non-governmental entities, or handling disputes between individuals (Mulabigi, 2019, p. 59/Arai, 2021, p. 106). In another definition, Iranian legal scholars have stated in their definition of specific administrative authorities: “Administrative courts and commissions and boards are authorities that are established in organizations by specific laws outside the country’s judicial organization but in relation to various administrative and executive duties of the government, and their duties are to handle disputes and complaints that usually arise between the government and individuals in the implementation of laws such as the Municipalities Law, Labor Law, Income Tax Law, Urban Lands Law, National Inspection Law, National Forests and Rangelands Nationalization Law, and National Employment Law” (Tabatabai Moatamani, 1374, p. 452/Abolhamad, 1370, p. 473/Nejabet Khah, 1396, p. 202/Sharifi Ashkazari, 1400, p. 129). Considering the subject of the thesis, it should be stated that there is no single definition of quasi-judicial authorities in the laws of our beloved country. It is inevitable that experts have defined quasi-judicial authorities based on their scientific and legal insights and, of course, using legal provisions. It seems that, considering the existing definitions and the administrative courts stipulated in the law, at least quasi-judicial authorities in the Municipalities Law can be defined as follows: Quasi-judicial authorities in municipalities are authorities that are established pursuant to the Municipalities Law, and each of them has a specific authority and operates independently of the judiciary and the municipality. The aforementioned authorities have the authority to prevent all types of violations set forth in the law, pursue, investigate, and issue decisions within the framework of the types of decisions determined in the law, and have been realized in the form of boards, commissions, etc. (Qasemi, 2019, p. 40/Haq Panahian, 2020, p. 830).

Defining the types of quasi-judicial authorities of municipalities from the perspective of Iranian public law:

It should be stated that defining the types of quasi-judicial authorities of municipalities from the perspective of Iranian public law includes cases such as the Commission of Article 100, the Commission of Article 77, the Commission of Note 2 of Article 99 of the Municipalities Law, the Commission of Article 8 of the Urban Renovation and Development Law, the Commission of Article 14 of the Executive Regulations of the Bill on the Preservation and Expansion of Green Space in Cities, the Technical Commission of the Hadi Shahr Project, the Commission of Article 5 of the Law on the Establishment of the Supreme Council of Urban Planning and Architecture of Iran, the Provincial Technical Commission, the Excavation Commission, the Commission of Paragraph (2) of Article 8 of the Regulations on the Use of Land and the Construction of Buildings and Facilities Outside the Legal and Privacy Areas of Cities, the Commission of the Note to Article 96 of the Municipal Law, the Commission of Article 13, the Supervision Commission of Article 48 of the Guild System Law, the Commission of Article 26 of the Public Places Regulations, the Commission of Article 18 of the Regulations on the Procedure for Transferring Real Estate, Companies and Institutions and Conditions for Termination of Contracts, the Commission of Paragraph A of Article 7 of the Executive Regulations of Article 30 of the Renovation and Development Law The Municipalities, the Commission for the Delivery of Article 11 of the Municipalities Regulations, the Supreme Board of Municipal Transactions, Article 6 of the Municipalities Financial Regulations, the Commission for the Note under Article 20 of Article 55.

Ariaei, Masoud, (1401 AH), in a study titled Analysis of the Dispute Resolution Board for Violations of Article 38 of the Law Amending and Extending the Tehran Municipality Transactions Regulations to Metropolitan Cities and Monitoring Its Votes, attempts to state that according to Article 38 of the Law Amending and Extending the Tehran Municipality Transactions Regulations to Metropolitan Cities, disputes arising from transactions subject to this regulation can be heard in a Dispute Resolution Board with the membership of one judge of justice elected by the head of the judiciary, one member of the Islamic City Council elected by the aforementioned council, a representative of the municipality elected by the mayor, a representative of the prefect or governor, as the case may be, and a legal representative of the contracting party, and the ruling issued by the judge of the session is binding on the parties. Although this research has some similarities in the subject of Article 38 of the Law on Amendment and Extension of the Municipal Transactions Regulations with the subject of the dissertation as one of the examples of quasi-judicial authority commissions, due to the generality of the examples of the dissertation and in addition, the examination of the challenges and special strategies to achieve the goals of the aforementioned authorities, they have a research difference.

Sharifi Ashkazari, Sudabeh, (1400), in a research entitled Objection to Municipal Fees, intends to state that one of the commissions to review municipal fees is Article 77. This research, like other aforementioned studies, also has a commonality in the type of commission with the dissertation in question, while the processing of other commissions and the explanation of the challenges and special strategies to achieve the goals of the aforementioned authorities have a research difference.

Haqpanahian, Abbas, (1400), in a study titled The Position of Quasi-Judicial Authorities in the Iranian Legal System, intends to state that today, due to the abundance of laws, regulations, and legal rules, the diversity of lawsuits, the breadth of topics, and the diversity of lawsuits on the one hand, and the necessity of addressing different issues, as well as the large number of cases under review on the other, it has led to the creation of authorities called quasi-judicial authorities. This study only shares the generality of quasi-judicial authorities in Iranian law with the previous thesis. However, the thematic processing of the thesis focuses on the goals of specialized authorities in municipalities, which is a fundamental difference from the aforementioned study.

3. Realizing the Legislator's Goals with a Look at Quasi-Judicial Authorities in Municipalities

❖ **Goals of Preventing Dangerous and Harmful Operations**

One of the goals of preventing dangerous and harmful operations of commissions affiliated with quasi-judicial authorities is to prevent nuisance to residents. One of the goals of quasi-judicial municipal commissions is to prevent nuisance to residents. Based on Article 55, Paragraph 20 of the Municipalities Law, it states one of the service-welfare duties of the municipality: Preventing the creation and establishment of all places that in any way cause nuisance to residents (Qasemi, 2019, p. 42/Ayini, 2008, p. 45/Sharifi-Eskazari, 2019, p. 130). Therefore, in case of disturbance to the residents of adjacent buildings and passers-by, it is one of the most important undesirable effects of these types of buildings on the environment that prevents the municipality from such activities (Behrouzi, 2001, p. 80). Also, the documentation of this issue can be seen in Note 1 of Article 100 of the Municipality Law. Therefore, the adjacent neighbor who is affected by the property subject to the decision of the Commission of Article 100 of the Municipality Law can be identified as a beneficiary and has the right to file a complaint with the Administrative Court of Justice to request the annulment of the decision of the Commission of Article 100 of the Municipality Law. Documentation: Judgment No. 115 dated 23/02/1392 of the General Board of the Administrative Court of Justice, in case the three principles of urban planning, health and technical in the addition of a commercial or residential building are not observed, it is mandatory to issue a demolition order. It should be noted that if some of the disturbing cases occurred before the approval of this law (11/27/1345), the municipality will be obliged to close them or move them outside the city (Qasemi, 2019, p. 42).

❖ **Objectives of preventing and opposing health principles**

One of the objectives of the quasi-judicial municipal commissions is to prevent and oppose health principles. In this regard, based on Article 55, Paragraph 20 of the Municipalities Law, as an expression of one of the service-welfare duties of the municipality, it states: Preventing the creation and establishment of all places that in any way cause inconvenience to residents or are contrary to the principles of hygiene in cities. The municipality is obliged to prevent the establishment of factories, workshops, and public garages, repair shops, shops and centers that manufacture flammable materials, livestock stables, livestock centers, and in general, all businesses and occupations that cause inconvenience and noise or produce smoke or infection or the accumulation of insects and animals. It shall take action to destroy brick, plaster, lime kilns, and public bathhouses that are contrary to hygiene. It shall prevent the pollution of the city's air by supervising and monitoring the condition of the chimneys of places, factories, and vehicles whose operation produces smoke. If the aforementioned facilities were established before the ratification of this law, it shall close them and, if necessary, move them outside the city. (Clause 20, Article 55 of the Municipalities Law).

❖ **Objectives of preventing and investigating construction violations**

Addition of an excessive building to the area of the infrastructure specified in the construction permit in the field of residential, commercial, industrial and administrative land use is documented in: Notes (2) and (3) of Article 100 of the Municipalities Law. Regarding construction violations and enforcement guarantees stipulated in the law as one of the objectives of preventing and investigating construction violations by the quasi-judicial commission under Note 2 of Article 100, it should be stated that the construction of an unauthorized building in excess of the density has been investigated in accordance with Note 2 of Article 100. Note 2 of Article 100 stipulates: In the case of an additional building over the area of the infrastructure stated in the building permit located in the area of residential land use, the Commission may, if the additional building is not necessary, considering the location of the property in terms of location (on main streets or side streets or dead-end alleys or dead-end streets), decide to impose a fine that is proportionate to the type of use of the created space and the type of building in terms of consumable materials, and the municipality is obliged to take action to collect the fine based on it (the fine must not be less than one-half and not more than three times the transaction value for each square meter of the additional building. If the beneficiary refuses to pay the fine, the municipality is obliged to refer the case to the same Commission again and request the issuance of a demolition decision. In this case, the Commission will take action to

issue a demolition decision. Note 3 of Article 100 In the case of an additional building over the area stated in the building permit located in the area of commercial, industrial and administrative land use, the Commission may, if the additional building is not necessary, considering the location of the property in terms of location (on main streets or side streets or dead-end alleys or dead-end alleys) Main streets or side streets or dead-end alleys or dead-end streets) shall determine a fine that is appropriate to the type of use of the created space and the type of building in terms of consumable materials, and the municipality shall be obliged to collect the fine based on it (the fine shall not be less than two times and shall not be more than four times the transaction value of the building for each square meter of additional building created).

Objectives to prevent the unusability of parking:

Not constructing a parking lot or making it unusable is mentioned in Note (5) of Article 100 of the Municipality Law (Qasemi, 2019, p. 45). Therefore, in relation to the violation related to the failure to construct a parking lot or the unusability of a parking lot as one of the objectives of the quasi-judicial commission, it should be stated that this type of violation occurs when the construction of a parking lot is mandatory according to the specifications stated in the permit, maps, and regulations of the local municipality, but the building owner refuses to construct a parking lot and does not build a parking lot for the resident first. If it is not possible to correct it, the commission can, according to Note 5 of Article 100 of the Municipality Law, issue a fine that is at least one and a maximum of two times the transaction value of the building for each square meter of parking space lost. In 1979, after the Islamic Revolution, and given that the way of dealing with construction violations had become one of the main axes of public dissatisfaction, Article 100 of the Municipality Law was once again amended. In this year, the Revolutionary Council amended Article 100 and added three notes to it. Based on this amendment, the Article 100 Commission was authorized to vote on imposing a fine in cases of construction violations instead of issuing a demolition order. The text of the above amendment, entitled the Bill to Amend the Notes to Article 100 of the Municipality Law and approved on 27/6/58, is as follows: Single Article: Notes 2, 3, 4, 5, 6, 7, and 8 of Article 100 of the Municipality Law are amended as follows, and Notes 5, 100, and 11 are added to the aforementioned article. Note 5: In the case of the lack of construction of a parking lot or its unusability and the impossibility of its correction, the commission may decide to impose a fine, taking into account the local situation and the type of use of the parking space (Jawan, 2016, p. 117). Note 6 of Article 100: In the case of buildings for which a building permit for residence was issued by the date of submission of the bill of this law (11/24/1335), but due to the conversion of the parking lot or basement into a residence by constructing a residential building in addition to the permit, a decision has been made to demolish them in accordance with Note 1 of Article 100 of the Municipality Law, or the matter has been referred to the Article 100 Commission, but no decision has been made, or the violation has not been referred to the Article 100 Commission by the aforementioned date, if the building in question has been transferred to another person. The municipality, upon receiving the parking fee approved by the city council in the amount stipulated on the date of submission of this bill, and provided that the building in question has not been transferred to another person and the ownership of the owner remains, except in the case of converting the parking lot into a residential area, provided that the construction of the parking lot foreseen in the plan and its re-conversion into a parking lot does not harm the original building, shall issue a certificate of completion of the building and refrain from demolishing the violation upon receiving twice the parking fee foreseen in the plan and its re-conversion into a parking lot for each square meter in question. If the aforementioned buildings have been transferred to another person, the transferee may claim the funds paid to the municipality in this regard from the violator.

- **Objectives of preventing change of use**

Change of land use, meaning a change in the type of land use, which necessarily changes the land surface, but also includes a change in land density and management. This change is the result of complex interactions of multiple factors such as management policy, economy, culture, and human behavior of the environment. In our country, one of the pillars of urban management that can control users is the Article 5 Commission (Rezvani, 2010, p. 1). Also, unauthorized change of use can be seen in the document of paragraph 24 of Article 55 of the Municipality Law. This type of violation occurs when the construction of

a parking lot is mandatory according to the specifications stated in the permit and maps and regulations of the local municipality, but the building owner refuses to build a parking lot and does not build a parking lot for the resident first. If it is not possible to notify it, the Commission can, considering the local situation and the type of use of the parking space, decide to impose a fine that is at least one and a maximum of two times the transaction value of the building for each square meter of parking space lost. Also, according to the note under Article 55, Clause 24 of the Municipality Law, such a violation occurs when a place of business, profession or trade is established in a non-commercial area contrary to the contents of the building permit. In the case of this violation, the municipality, after being informed, shall submit the case to the Article 100 Commission, and the Commission, after ascertaining the violation, shall make a decision within a reasonable period of time, which shall not exceed two months, on the closure of the place of business, profession or trade within one month. The implementation of this decision shall be with the municipal officials. Anyone who knowingly uses the said place for business, profession or trade after it has been closed shall be sentenced to a misdemeanor imprisonment of 6 months to two years and a fine of five thousand and one to ten thousand rials, and the place of business shall be closed again. It should be noted that the establishment of a law firm, office, marriage and divorce notary office, newspaper, magazine and engineering office by the owner shall not be considered commercial use under this law.

Eliminating the risk of collapse of buildings and developments overlooking public thoroughfares

The most important factor in the vulnerability of urban structures during an earthquake is physical characteristics such as the age of the buildings, materials, number of floors, width of the passage, and degree of vulnerability (Dadbood, 2010, p. 271). Considering that according to Article 14 of the Municipalities Law, eliminating the risk from buildings and developments overlooking public passages that, due to wear and tear, lack of stability, and the possibility of collapse or falling debris, pose a risk to life or money for citizens is one of the inherent duties of municipalities. Sometimes it is observed that the buildings mentioned in the municipalities have commercial and business records, and for this reason, the municipality of the location of the property has issued a certificate of occupancy. Now, considering the above-mentioned specific obligation and in the event of the owner's refusal to demolish after legal notification of the situation and the elimination of the risk by the municipality, which is often accompanied by the complete destruction and demolition of the building, is the owner entitled to receive damages or compensation for the aforementioned records? It seems that based on the appearance of the aforementioned legal text, Article 55, Paragraph 14, the aforementioned obligation as a force majeure measure by the municipality, which acts on behalf of the owner and in the protection of public rights and the defense of the lives and property of citizens, cannot give rise to a claim by the owner based on the collection of compensation or damages. Because even the note to the aforementioned paragraph states that if the danger is eliminated by the relevant municipality, even the damages and costs of destruction plus 15 percent will be collected from the owner. Which itself is an indication of the lack of need to pay compensation to the owner. In addition, this was initially the owner's obligation, which was subsequently and subsequently implemented by the municipality due to the refusal and necessity to protect the lives and property of citizens. Advisory opinion of the General Legal Department of the Judiciary: First, the obligation of the owner of a building facing deterioration to eliminate the danger or destroy the building is a general provision that, in addition to Article 14 of the Municipal Law of 1334 (1955), with subsequent amendments and additions and an additional note to it (11/27/1966), is also foreseen in Article 122 of the Civil Code. Secondly, regarding Article 14 of the aforementioned Article 55, the legislator has obliged the municipality to first issue and send a notification with a reasonable period of time to the owners of dilapidated buildings and structures at risk of collapse or falling debris to eliminate the danger, and in the event of failure to implement the order, the municipality has been obliged to eliminate the danger, which can be accompanied by partial or total destruction of the building, if necessary. This provision has been foreseen as an inherent duty of the municipality and with the aim of eliminating and preventing physical and financial dangers to citizens. Thirdly, the legislator has stipulated in the last part of the supplementary note that the cost incurred plus fifteen percent of the damages will be collected from the owner or the property owner. This penalty is due to the negligence of the owner or the building owner in removing the danger from the property and disregarding the municipality's notification. Fourthly, the destruction of property does not

mean the total destruction of the leased property; because in immovable property, the leased property includes the land and the property, and in some cases the land can be used even without reconstruction. In cases where the tenant has the right to engage in business, profession or trade in the leased property or the right to goodwill, it seems that the destruction of property does not destroy the said right (at least to the extent of priority in using the leased property) and in case of doubt, the survival of this right is assumed; as the insistent decision No. 6-1377 of the General Legal Board of the Supreme Court was issued on this basis. Based on the above, and regardless of the last-mentioned clause, the municipality is not obligated to pay the tenant's alleged rights, including goodwill or the right to engage in business, profession, or trade.

- **Objectives of preventing encroachment on the streets**

One of the goals of the quasi-judicial municipal commissions is to prevent encroachment on streets. Accordingly, one of the examples of construction violations is encroachment on city streets, which is under the jurisdiction of the municipal Article 100 Commission. Encroachment on city streets occurs in two ways: as part of urban development plans and as a result of property setbacks, and as a result of encroachment on streets in a straightforward manner. Examples of encroachment on city streets include:

1- Failure to retreat during property renovation is one of the examples of encroachment on city streets. In one case, the violation of encroachment on city streets, mentioned in Note 6, Article 100 of the Municipality Law, is related to when the owner, during renovation, begins to build a new property contrary to or without a permit and without complying with the approved corrective measures, or in some way encroaches on his former property and the current property of the municipality. In this case, in fact, the person who is recognized as a violator under the title of encroachment on city streets, was initially the owner's resident and in fact encroached on his former property, but subsequently the said property is located in whole or in part in the approved plans.

2- Another example of encroachment on city streets is construction and carrying out any construction operations in places that were part of streets before the construction of the building, which is a type of seizure of state land and is called street usurpation or street usurpation. Also, in accordance with Article 46 of the Municipal Finance Regulations, it is the responsibility of the municipality to protect the public property of the municipalities and prepare and make it available for public use and prevent encroachment and seizure by individuals. In any case, encroachment on city streets is also subject to criminal titles such as aggressive seizure, the subject of Article 690 of the Penal Code, Section of the Penal Code of the Islamic Penal Code approved in 1375.

- **Objectives of preventing the building from becoming unstable**

One of these responsibilities that the municipality bears is the responsibility arising from the ownership and protection of buildings, which is foreseen in paragraph 14 of Article 55 of the Municipality Law approved in 1345. If the municipality is at fault in this regard, it will be responsible for the victims of dilapidated buildings, in addition, it should be explained and expanded on the conditions that must be met for the municipality to be held responsible for the owners of dilapidated buildings. Referring to Note 14 of Article 55 of the Municipality Law, he stated: This legal article should be examined from two perspectives.

First: Taking effective measures and necessary actions to protect the city from the risk of flooding and fire. In this regard, it should be said that this part of the law, which has a strategic aspect, is emphasized by municipalities, such as developing the structure, such as establishing a fire department, developing firefighting equipment and facilities, and providing credit, etc.

Second: What is meant by the term "risk elimination" in this article? What is certain is that the legislator has listed four examples exclusively in this article. These four examples are:

1- Eliminating the danger from broken and dangerous buildings and walls located in public passages, alleys, public places, and public and private corridors,

2- Covering and filling wells and holes located in passages,

3- Preventing the placement of any type of objects on balconies and porches overlooking and adjacent to public passages that could cause danger to passersby if they fall,

4- Preventing the installation of gutters and chimneys in buildings that cause inconvenience and damage to city residents. Of course, in this case, we can also refer to Article 333 of the Civil Code. Of course, in the case of collective and joint liability with the municipality, it can be invoked under certain conditions. This article stipulates that the owner of a wall, building, or factory is responsible for the damages caused by its destruction, provided that the damage is the result of a defect that the owner was aware of or was caused by his lack of care. In this case, if damage occurs, both the owner and the municipality can be considered guilty and responsible for causing the damages (Rezaei, 2019, p. 268).

- **Objectives of preventing violations of building landscape rules and regulations**

In the main examples of urban planning principles approved in the meeting dated 9/2/1370 of the Supreme Council of Urban Planning and Architecture of Iran, this issue is in Part 12 under the title of providing privacy for specific buildings that require privacy for security or health reasons, which should be determined in the approved city plans, and failure to comply with any of them will be considered a violation. In this regard, the judicial practice and Note 4 in Opinion No. 673/7 dated 3/3/1376 regarding the fact that in some properties where unauthorized construction is carried out, part of the construction is a residential building and part is a commercial building. In such cases, according to the notes of Article 100 of the Municipality Law, how much is the fine determined? The theory of the General Legal Department of the Judiciary is that, considering the clarity of Note 4 of Article 100 of the Municipality Law regarding the inquiry, a fine is determined and imposed in total for a residential building based on one-tenth of the transaction value and for a commercial building based on one-tenth of the transaction value or one-fifth of the goodwill (whichever is greater). In addition, based on the Commission of Article 5 of the Law on the Establishment of the Supreme Council of Urban Planning and Architecture of Iran, that part of the detailed plans that is approved by the city council will be binding on the mayor (Rezvani, 2010, p. 1). Changes to the detailed plans, if they are effective in the basis of the comprehensive urban plan, must be approved by the Supreme Council of Urban Planning. According to the amendment note approved by the Islamic Consultative Assembly on 25/9/65, the review and approval of detailed urban plans and their changes in the city of Tehran is the responsibility of a commission composed of representatives of the Ministers of Housing and Urban Planning, the Minister of State, the Minister of Energy (at the level of the relevant deputy), the Head of the Environmental Protection Organization, the Mayor of Tehran or his authorized representative, and the Chairman of the Tehran City Council. The secretariat of the commission shall be located in the municipality and its secretary shall be the mayor of Tehran or his authorized representative. The meetings of this commission shall be recognized with the presence of a majority of members and the decisions of the commission shall be valid with at least four affirmative votes. According to Article 7 of this law, municipalities are responsible for implementing the resolutions of the Supreme Council of Urban Planning and Architecture of Iran, and in cases of ambiguity, problems, and disagreements in the implementation of comprehensive and detailed urban plans, the matters shall be raised in the Supreme Council of Urban Planning and Architecture of Iran, and the opinion of the Council of Modernity shall be final and binding. **4. Developmental Goals:**

- **Obtaining a permit from the municipality before construction**

The Commission of Article 100 of the Municipality Law is one of the special and quasi-spatial institutions that was created to prevent construction violations. The municipality can prevent construction operations, buildings without a permit or contrary to the provisions of the permit by its officers, regardless of whether the building is located on enclosed or unenclosed land (Behboodi Khordgo, 1402 AH, p. 333). Article 100 of the Municipality Law requires owners of land and properties located within the city limits or boundaries to obtain a permit from the municipality before any development, land subdivision or construction of a building (construction operations), and if this obligation is not observed, the municipality can prevent construction operations. In the 11 notes of this article, the legislator has foreseen possible violations without obtaining a permit or contrary to the provisions of the construction permit and has assigned them

to a commission called the "Commission of Article 100 of the Municipal Law" to investigate them. The following section examines the composition, types of construction violations subject to investigation and the manner in which this commission investigates them. According to Note 4, the construction of a building without a permit, even in compliance with technical, sanitary and urban development principles, is subject to the penalty of construction without a permit. For each square meter of a building without a permit, one-tenth of the transaction value of that building or one-fifth of its goodwill value will be collected as a fine. Of course, between these two types of fines, the one with the higher amount will be selected. Regarding the requirement for government agencies to obtain a permit, it should be stated that in 1968, based on Note 4 under Article 26 of the Urban Renovation and Development Law (approved on 7/9/1968), government agencies were also required to obtain a permit from the municipality for the construction of buildings. The text of this note is as follows: Note 4: Ministries, government and government-affiliated institutions, and charitable institutions are required to obtain a building permit from the municipality to construct their institutions' buildings and comply with Article 100 of the Municipal Amendment Law approved in 1345 (1966) and other regulations mentioned in the Municipalities Law and this law regarding the construction of buildings." This note is an emphasis for government agencies and institutions on complying with Article 100 because in the text of Article 100, the word "owners" is stated in an absolute manner and includes all owners, including natural and legal persons (Mirzaei, 2019, p. 10). Based on the provisions of Article "100," owners of land and properties located within the boundaries and boundaries of cities are required to obtain a permit from the municipality before dividing the land, starting construction, and before any development activity. The municipality is also given the authority to prevent construction without a permit or contrary to the provisions of the permit and, in fact, to supervise construction operations. Municipalities are the implementers of urban development plans.

- **Judicial development and prevention of interference in vital administrative and executive affairs of the country**

In every political society, the institutions and organizations of the judiciary are of great importance and sensitivity in terms of protecting the fundamental rights and freedoms of citizens and the authority to determine duties and realize rights in various matters (Emami, 2004, p. 29); therefore, efforts are always made to ensure the independence of the judgment and action of judicial authorities, especially against the intricate networks of the administrative and executive branches of the country. Although in legal systems, the equality of individuals before the law is an accepted and sacred matter; this quality does not only refer to the necessity of following the rules governing society; in addition, individuals must also be equal before judicial authorities, and the objective manifestation of this principle is the unity of the country's judicial organization, and consequently, the creation of authorities outside this system, which causes duality and discrimination between individuals, is prohibited. Based on such an approach, the creation of quasi-judicial authorities, at first glance, is not consistent with the basic principles and rules. In Article 100 of the Municipality Law and its Amendment Notes 2, 3, 4, 5 and 6, the aforementioned acts are not considered crimes and the fines subject to those notes are not considered cash fines. However, after the Article 100 Commission has issued its decision and the beneficiary of the decision has requested a review in the Appeals Commission pursuant to Article 10 of the Article 100, and has not achieved his desire, that is, the realization of his legitimate rights, he can request a retrial pursuant to Article 13 of the Administrative Court of Justice Law approved in 1385 and the subsequent amendment. This investigation will be in terms of violating laws or regulations or opposing the final decisions of the Article 100 Commissions of the Municipality Law and nothing else. Therefore, public courts, whether civil or criminal, do not have the right to intervene and there is no specific time to complain about the decisions of the Article 100 Appeals Commission in the Court and the decision must only be final.

Development and stabilization of the country's public and administrative affairs

Regulation, shaping, adjustment and stabilization of the country's public and administrative affairs is one of the mandatory and fundamental competencies of the executive branch as the executive arm of the entire government, in order to ensure public life. In this regard, quasi-judicial institutions have emerged in various fields; so that naturally and generally, all quasi-judicial authorities can be considered on this basis

and in this regard, to the extent that it can be said that the title of this type of authority also confirms their nature and foundations (Emami, 2004, p. 99).

- **Development of specialized affairs**

First of all, it should be stated that a quasi-judicial authority is not a court or a judicial authority that must have a judge. However, one of the goals of establishing quasi-judicial authorities is to use the experiences and administrative expertise of experts in the field of administrative law and administrative laws and regulations, which generally do not have such administrative expertise and mastery over administrative laws and regulations (Arai, 2001, p. 109). Therefore, the composition of some specialized administrative authorities consists exclusively of experts in that field. In such authorities, with regard to their specialized scientific background and empirical background, experienced individuals are placed in these authorities to express specialized opinions. The advantage of this method is their specialization and familiarity with work-related issues (Nojabetkhah, 2017, p. 210/ Ghasemi, 2019, p. 40).

- **Development of public services**

Public services, as one of the fundamental concepts of administrative law, have always been influential in various fields, especially in France. The Constitution of the Islamic Republic of Iran, as the highest legal document of the country, has referred to clear examples of public services in various principles and has assigned the responsibility of providing them to the government, which, in the opinion of some, indicates the acceptance of this concept as the existential philosophy of the government and executive agencies. Therefore, examining public services in various fields and the extent of their effectiveness is of particular importance (Vaezhi, 2017, p. 9). These principles, today, have been given strict attention in the theories of contemporary scholars of administrative law and express the fundamental principles of the non-stopability of public services. These services and the administration of public affairs cannot be ignored under any title or in any way; therefore, entrusting the daily and non-stop issues of the administration of public and vital affairs of the country to the courts of justice is not consistent with the aforementioned principles, and in order to prevent the stagnation of these vital affairs, the issues and problems related to them must be examined and ruled on by special authorities. Authorities that, while being in the context of the administration of these affairs and fully familiar with the process, action and reactions, examine and adjudicate such issues. The independence of the opinions and actions of these authorities is one of the most central issues of attention in the type of quasi-judicial authorities (Emami, 2004, p. 107).

- **Development of the issue of separation of powers**

Independence or separation of powers (307/538 03 56027211010) is one of the fundamental concepts accepted and implemented in the macro-organization of many governmental systems in the world today. Today, there is less doubt about the necessity of this theory, but rather more discussions about how to implement it to prevent the concentration of power and increase the efficiency of governmental systems (Jafari Harandi, 1400, p. 71). Therefore, the existential philosophy of separation of powers is to break power between multiple parties in order to prevent the concentration of power in a single hand or in a single center (Amid Zanjani, 1380, p. 16). However, another goal of establishing these authorities is separation of powers, that is, based on the principle of separation of powers, administrative issues should be resolved in the administration and not in the court. Therefore, referring administrative issues and resolving disputes arising from administrative issues to the court is not justified and brings to mind the interference of the powers in each other's issues. Unfortunately, in most quasi-judicial bodies, administrative members only give opinions and the judge ultimately issues a verdict. This is contrary to the competence of administrative bodies and the competence of administrative employees, which is their expertise, and the expertise and experience of administrative members should be used to issue a correct and legal administrative ruling in this type of body (Arai, 1400 AH, p. 116).

- Development of de-judicialization

Today, the accumulation of judicial cases in the courts of justice is considered one of the biggest challenges in the judicial system of our country. This has led to delays in proceedings, delays in the realization of rights,

and the failure to achieve a fair trial. For years, the judicial systems of countries around the world have sought to face this challenge and reduce the influx of judicial cases into the judiciary by relying on and using the historical, cultural, religious, and customary backgrounds of their societies. In the contemporary world of law, de-judicialization is considered one of the important principles and policies of legal systems, and each country, depending on its governance, legal, culture, customs, and beliefs, has established extrajudicial institutions and alternative methods of resolving disputes in this regard. These organizations can resolve non-litigious matters and minor and simple claims of individuals and ultimately accelerate the realization of rights in an easy, affordable and therefore fairer manner and, most importantly, reduce the heavy burden on the judicial system and reduce the density of incoming cases to the judiciary (Farhadi, 1400, p. 55).

- Developing the income of municipalities

Among the sources of income of the municipality is the collection of taxes from taxpayers. According to the unanimous decision of the Administrative Court of Justice No. 5/79/268 dated 114/1/138, the legislator has referred to the collection of taxes through law in order to cover part of the costs related to performing the duties stipulated in Article 55 of the Municipality Law. It should be noted that given that the main source of income of municipalities is the collection of taxes from citizens, which is imposed pursuant to laws approved by the Islamic Consultative Assembly or the approvals of the Islamic City Councils. Accordingly, the collection of taxes from taxpayers by the municipality increases the income of municipalities. In addition, the fees collected by the municipality for providing services to citizens are among the municipality's sources of income, and in this regard, the dispute between the taxpayer and the municipality regarding the payment of these fees and their installments is handled by the Municipality's Article 77 Commission. The Commission's decision is final and enforceable, but it may be objected to and complained about by legal and natural persons for legal reasons.

4- Dispute Resolution Objectives

In general, it should be stated that another objective of quasi-judicial authorities is to address quasi-legal disputes arising from the implementation of current laws of the country, one of the most important of which is resolving disputes between taxpayers and the municipality.

•Resolving disputes between taxpayers and the municipality

According to Article 77 of the Municipal Commission, the resolution of any dispute between taxpayers and the municipality regarding fees is referred to a commission composed of representatives of the Ministry of Interior and Justice and the City Association, and the decision of the said commission is final (Sharifi Ashkazari, 1400, p. 129). Debts that are determined according to the decision of this commission are recoverable by the registration office in accordance with the regulations on enforceable documents. The registration office is obliged to issue an executive order and collect the municipality's claim in accordance with the decision of the said commission. It should be noted that after the municipality notifies the taxpayer of the advance notice, if the taxpayer objects to the fees or service charges, the matter is raised in the commission of Article (77) of the Municipality Law, and the commission examines the matter in terms of compliance with legal regulations or approvals of the Islamic City Council and issues a decision based on the majority opinion (Sharzei, 2011, p. 18).

•Resolving disputes in transactions related to regulations

According to Article 38 of the Law on Amending and Extending the Regulations of the Tehran Municipality Transactions to Metropolitan Cities, disputes arising from transactions subject to this regulation can be heard in the Dispute Resolution Board, and the ruling issued by the judge of the session is binding on the parties. Two things can be deduced from the phrase “transactions subject to the regulations”. It may initially seem that the drafters of the Tehran Municipal Transactions Regulation and the Law Amending and Enforcing the Regulation only intended to cover the transactions included in the Tehran Municipal Transactions Regulation for metropolitan cities, such as the purchase, sale, rental of property, and purchase of services subject to Article 31 of this regulation and contract work contracts. On the other hand, it may not have been the intention of the drafters of the Tehran Municipal Transactions Regulation to exclude

some of the municipal transactions from the scope of their regulations and to exclude the enacted law from its comprehensiveness, thus becoming caught in a double policy. Therefore, they have chosen a general title that covers all transactions for the law. Therefore, the subject of this regulation cannot be considered an evasive and restrictive clause (Saidi, 2018, p. 145).

•Resolving the dispute between the owner and the municipality regarding the amount of debt on the property

Resolving the dispute between the owner and the municipality regarding the amount of debt on the property subject to the transaction, note under Article 74 of the Municipal Law. Accordingly, the owner is required to pay the fees determined by the municipality to the bank to enable the transaction to be carried out. If the owner objects to the municipality's decision, he will deposit the amount determined by the municipality in the registration fund, and the registration receipt will be considered as a separate account and the transaction will be carried out.

•Resolving disputes between all ministries, government and private institutions and the municipality

Resolving disputes between all ministries, government and private institutions and the municipality regarding the collection of the cost of repairing damage caused on the roads is done by the quasi-judicial commissions of the municipality. Accordingly (Addendum 1345/11/27) - All ministries and government and private institutions are required to comply with the comprehensive urban development plan before taking any action regarding construction works located in the areas listed in Articles 97 and 98, such as the construction of telephone, electricity, water and other facilities, as well as the connection of public and secondary roads. Such action must be taken with the written consent of the municipality, and the institution taking action is required to repair any damage and loss caused by the aforementioned actions to the pavement or the construction of public roads within a reasonable period that will be determined by the municipality, and restore it to its original condition. Otherwise, the municipality will repair the damage and loss and restore it to its original condition, and collect the cost plus 10% (ten percent) through the implementation of document registration "Article 103 of the Municipality Law". In addition, resolving disputes between all ministries, government or private institutions and municipalities regarding the repair of damage caused by them on the roads is within the jurisdiction of the Municipal Article 77 Commission.

5. Conclusion

Quasi-judicial authorities, technical information and specialized knowledge play a significant role in resolving disputes. Supervisory authorities in municipalities are quasi-judicial commissions that are formed in order to achieve the interests of municipalities more quickly and to supervise the principles of urban planning, construction, architecture and urban texture, prevent non-compliance with urban regulations and collect urban revenues and legal fees. The scope of Iranian public law limits the quasi-judicial authorities of municipalities in cases such as the Commission of Article 77 of the Municipal Law, the Commission of 100 of the Municipal Law and the Dispute Resolution Board of Article 38, etc. It should be stated that the cognitive analysis of the diversity of municipal commissions subordinate to quasi-judicial authorities, along with organizational goals and functions, urban order, promotion of social rights, etc., is of outstanding importance and the effectiveness of the goals of such commissions demonstrates rationality, legality, purposefulness and the function of de-judicialization as structural goals. These commissions, along with their positive goals and functions, have semantic, judicial, managerial, supervisory, etc. challenges, which confirm the failure to fully realize the goals of the aforementioned authorities. The quasi-judicial municipal commissions have supportive, developmental, supervisory, etc. goals. Accordingly, one of the goals of the quasi-judicial municipal commissions is to prevent nuisance to residents. Based on Article 55, Paragraph 20 of the Municipalities Law, as an expression of one of the service-welfare duties of the municipality, it states: Preventing the creation and establishment of all places that in any way cause nuisance to residents. The addition of an unnecessary building to the area of the infrastructure stated in the building permit in the field of residential, commercial, industrial, and administrative land use is documented in Notes (2) and (3) of Article 100 of the Municipal Law. Also, the failure to construct a parking

lot or its inability to be used can be seen in Note (5) of Article 100 of the Municipal Law, which are considered prevention goals. The goals of preventing the building from becoming unstable, the goals of preventing violations of building landscape rules and regulations, etc. are among the other goals of municipal commissions. Development goals include obtaining a permit from the municipality before construction, judicial development, and preventing interference in vital administrative and executive affairs of the country, developing and stabilizing public and administrative affairs of the country, developing specialized affairs, developing public services, etc. The goals of resolving disputes of quasi-judicial municipal commissions also include resolving disputes between the taxpayer and the municipality, resolving disputes in transactions related to regulations, resolving disputes between the owner and the municipality regarding the amount of property debt, resolving disputes between all ministries, government and private institutions with the municipality, etc. Considering that another supervisory goal of quasi-judicial municipal commissions, focusing on supervising municipal contracts, is supervising the handling of proposed issues and votes, etc., which are reviewed by quasi-judicial municipal commissions. In addition, among the support objectives, we can mention support through compensation, support through handling the objections of land and property owners, support through handling the installments of taxpayers, support through compliance with the law in determining the amount of fees, support through objections of individuals regarding the cost of repair, reconstruction, and cleaning, etc. Explanation of the existing challenges to the failure to achieve the goals of quasi-judicial authorities of municipalities indicates semantic, supervisory, judicial, etc. challenges. Among the semantic challenges, we can mention the lack of a comprehensive and obstructive definition of quasi-judicial authorities, incompatibility with social justice, incompatibility of regulations with the realities of society, lack of transparency in laws. In addition, the judicial challenge of quasi-judicial municipal commissions is faced with issues such as non-objection and appeal in courts of justice, incompatibility with the principle of unity of the judiciary, incompatibility with the principle of equality of persons before judicial authorities, interference of the judiciary in administrative affairs, absence of a judge member in all municipal commissions, etc. The supervisory challenge of quasi-judicial municipal commissions is conceivable, centered on the lack of independent, direct, and effective supervision and the failure to state the conditions for the rejection of each member (such as in the case of the rejection of a judge). Babad stated that quasi-judicial municipal commissions face structural challenges such as the lack of a two-stage review process, the failure to properly implement fair trial principles, the lack of continuous training courses and programs, especially for variable members, the failure of members to comply with the qualifications of specific administrative authorities, the unnecessary proliferation of these authorities, the strong dependence of the selection of members of these authorities on political and administrative officials, the failure to set precise deadlines in some cases, etc.

The explanation of the strategies for achieving the goals of quasi-judicial authorities of municipalities shows structural strategies centered on freeing themselves from the trap of requirements and concealments of administrative policies, providing regulations for each commission, updating and amending the law, creating stronger enforcement guarantees, creating legal regulations governing construction violations, etc. Judicial strategies include focusing on expressing the opinion of the member judge and not issuing a verdict, changing the members of specialized commissions to experts in the presence of the judge, attaching municipal commissions to judicial authorities, and developing a unified and coherent administrative or judicial procedure. As an innovation, it should be stated that, considering the challenges raised, it seems that attaching municipal commissions to judicial authorities is closer to correct in every respect; because in this way, the benefits of the commissions and their patronage are preserved and judicial, supervisory, etc. challenges are also eliminated. In this way, the courts of justice can intervene in these cases as arbitration or by employing experts or experts in this field to ensure the rights of the people in the commissions. On the other hand, the municipality is a quasi-governmental institution and faces problems in reviewing the objection to its votes in the Administrative Court of Justice. Also, the municipality can choose arbitration as a compromise between the parties or alternative methods of resolving disputes, such as conciliation, mediation, etc., which also have a jurisprudential background, in the application of Article 38 and contracts; a process that we witness in Iranian arbitration and international law. In addition, the issue of objection to votes and, in addition, the interference of civil

liability of individuals, which can be raised in courts of justice, and the liability of the municipality in worn-out places, which in some cases causes the courts of justice and quasi-judicial authorities to be in the same channel (Article 122 of the Civil Code, Article 55 of the Municipal Law, Article 333 of the Civil Code), will be eliminated. It should be noted that assuming the theory in the thesis is accepted, the civil liability of the government for the violations of employees and their liability in the Article 5 Commission will not be relevant. In addition, disputes related to other municipal transactions that are not the subject of the amended Article 38 of the Tehran Municipal Transactions Regulations, as well as disputes related to the validity or effects after the termination and cancellation of the contract, which are the jurisdiction of general law courts, will be equalized by filing lawsuits in the judiciary. Of course, it is necessary to mention that the author does not accept the institution of conciliation and mediation outside the jurisdiction of the court. Rather, the inclusion of these terms in judicial arbitration and the binding nature of the decisions are intended. Of course, if the actions of the Commission are attached to the judicial authorities, the possibility of realizing a guarantee of criminal enforcement for serious construction violations is also conceivable.

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