

BUILDING DENSITY AND ITS CONFLICT WITH PRIVATE RIGHTS OF INDIVIDUALS, WITH AN EMPHASIS ON THE PRINCIPLE OF NO HARM

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Abstract

Many duties and authorities have been predicted in different rules for municipality. Detailed analytical review of all of duties and authorities of municipality and their various effects and why and how these rules are legislated are very time consuming and beyond the scope of our discussion. However, with regard to the purposes of this paper which discusses the legal principles governing the duties and authorities of the municipality in the realm of private law, we inevitably have to consider this discussion and draw conclusions regarding identification of municipal authorities and duties and investigation of law principles governing duties and individuals' private rights. In one side, identifying the duties and authorities of a municipality and its concept and nature and instances are discussed what the nature of the titles and duties is, what the purpose of forming a municipal council rules is and what criteria there are for the establishment of municipal and doing duties assigned, and what has been predicted for the protection of public rights and welfare of the citizens, and what losses and risks failure to perform the duties causes, in order to check the functions of the municipality, there are three important and useful functions influencing public and private rights of individuals including building permit, building density, and building use. This is an attempt to evaluate building density category as one of the important functions of the municipality and its conflict with individuals' private rights including jurisprudence - legal principle of no harm.

Keywords: Municipality, Building Density, Individuals' Private Rights, Jurisprudence - Legal Principle of No Harm

Introduction

Under the law, individuals have the right and duty. Relations between citizens and municipal and their rights and duties towards each other and principles and goals and duties and the way to perform their duties as well as how to manage the city and maintain privacy rights of individuals and quality of municipal supervision on harmonious and symphonic development and implementation of approved projects in urban and providing public and welfare facilities for citizens are issues which are taken into account in today's urban life and lack of attention to them make problems and difficulties which are borne sometimes impossibly. In this paper we seek to check the building density of urban construction land as one of the most important functions of municipality and existing

conflict on it with the individuals' private rights that jurisprudence - legal principle of no harm can be considered as its instances, and at the end, we express the proposed conflict resolution.

Building density

Discussion of issues related to municipal duties is density of buildings built in the city, the height of the building and rate of constructions are discussed which are related to public and social issues to citizens' rights and proprietary rights of real and juridical persons.

Density definition

The density means accumulating, aggregating and overlapping. Implementing regulations of Tehran Comprehensive Plan define the density: Building Density is the ratio of total building infrastructure percentage to constructed land area. This word has two meanings for urbanity term:

1. Population density: is the ratio of population per area unit and its scale of urban studies in country is a person per hectare. Of most applications of the density to urbanity is to determine residential densities and is calculated both net and gross forms.

A) Gross residential density: is to calculate ratio of habitant population measurement to the total area of a urban area or whole city which includes urban residential lands and other urban uses.

B) Net residential density: is the ratio of the number of people living in an area of residential lands in an urban area or the whole city.

2. Building density: is the ratio of the area of building infrastructure (in all floors) to the total residential land expressed as a percentage.

In comprehensive, detailed and approved plans, the number or, so to speak, the population density of existing buildings in a city is one the factors to be considered. In comprehensive plans, the maximum size of population is determined and in detailed plans, the population size of each area and region of the city is characterized.

Considering the structure and limits of a city, experts and specialists are considering several factors to determining the density, including: local climatic conditions, inhabitants' social and cultural characteristics, household income, rate of population growth, mental and physical health, energy consumption, the risk of natural disasters, land supply, land price, type and the level of construction materials in place, policies and mega projects, with regard to these factors, limits are created for populating in a city and its zones, amount of building and construction can be made up in a certain amount of land are limited, due to the existing limitations, accordingly, regulations in relation to the allowed number of building of urbanity design will become evident, so the owner are prohibited to construct in excess of the relevant permissions.

Density determination

Given regulations about making urban in the different areas of every city that type of land use in the region is different from other regions, there are differences in the volume and height of buildings. Volume of buildings or in other words infrastructure size as well as interconnected by the height is connected by the percentage of land occupied. Planners of architectural and urbanity criteria have considered the specified and certain purposes when designing and approving plans particularly in building height and volume and are trying to achieve. The purpose and imposing restrictions is based on the observation of social interests and therefore in some cases causes actually expropriation or significant restrictions for owners' and possessors' ownership rights in their property. Note that these

restrictions are anticipated by the designers have had superior goals which for instance, we can prepare desired quality of life in the city in terms of population control of different areas, favorite light and air and relaxation of residents and enough space for children to play and recreation areas for adults, reduction of traffic and the ability to help natural disasters such as earthquake and flood and fire and ultimately a safe and secure environment for residents. To achieve these goals, for example, 40 percent of the constructed land is abandoned on the south side of the building as an open space until the building can utilize direct sunlight and air. The transgression to the open space led to extra building density and contrary to, reduction open space which is predicted. This action causes that suitable place for children to play which is imperious necessary to make their mind and think healthy becomes tight and inappropriate and deprives residents of required space to attempt to build a garden and of the benefits of having plants that cause air of elegance and its refinement. If the violation occurs in the context of the height, it adds to the created problems. Exceed of the height approved by map and permission and building several additional floors causes often to violate the rights of third parties especially neighbors, on the one hand, because the number of persons of the housing make restriction spontaneously and naturally to utilize predicted open space for the welfare of residents so that often prevents the light and the sun to the adjacent building to the north, also, the air flow does not occur desirable between buildings and also it eliminates neighbors' landscape and view, and the neighbors are deprived of the natural benefits and it can also create problems for urban and public dimension, for example, it could be harmful for the city's historic buildings or in areas close to the airport it would threaten flight safety. Percentage of the infrastructure in developed countries varies in proportion by situation of the city and its size how to be large and small as well as other factors. But the overall standard is for residential areas to be maximum 80%, for center commercial areas to be maximum 160%, and for industrial areas to be maximum 100% given that in recent years the buildings and halls in factories and workshops are a one-floor building.

One of the criteria related to volume which is common in some American cities is to determine buildings space in terms of cubic meters to land area. The main purpose of this standard is to provide public health and mental health, but it should be noted that in this method, the number of persons living in each dwelling unit must be taken into consideration as one of the factors and this may not be so easy to control.

Additional density and legal rules

Violation of additional density in suburb and area of cities

Violation of additional density has a long history whether the building is built by or without permission and it is not new. Violation of the provisions and plans and making construction more than employment level allowed and approved by permission or exceed the approved height and building one or more additional floors or created additional terraces and balconies and jut and transgression to public passage spaces are affairs that unfortunately, are famous words due to excessive frequency, and most people are familiar with the terminologies and procedures, but not aware of whether to be legal or not and its consequences and effects, or that they are not considered important and passed easily. Despite of being the violation and offence, the social sensitivity is low towards it, perhaps we say it is seen as a positive violation, and in many cases also are welcomed, as if every building is purposed as a rectangular cubic geometry shape, adding to the value of the base dimensions or the height which includes increase in the interior space and structure

volume consists of the excessive density. According to the mentioned subject, it rarely occurs the building to be constructed in excess of the approved volume and density and yet it is not joined along with violations like transgression to passages or their spaces or height and open space of owner's land. Violation of additional density might can be inquired primarily as a violation of the urbanity principles and some when violation of technical regulations and maybe health ones, accordance with urbanity regulations and for proper settlement and distribution of population for city areas and maintaining the beauty of the city and avoiding to disturb cultural heritage buildings landscape and traffic flowing and reduction of air pollution and protecting the environment etc. it is necessary that building volume is limited to approvals, though in case of violation of the approved volume, buildings are faced to downfall and fall risk due to lack of strength of the porter parts is considered as a violation of the technical regulations. If additional density is due to occupying open space of land, it is proposed a violation of the principles of health (e.g. mental), and other structural irregularities occur in practice, it is worth mentioning that among the various structural irregularities, additional density violation is just one that can include various states in violation of underlying principles of the law. In Note 2 and 3 of Article 100 of the Municipal Act on violation of excessive additional structure on area inserted in the permission, it has been legislated for some regions of residential and commercial-office and industrial use, respectively. These Notes with respect to some provisions determine residential use to be fined minimum one second and maximum three times the transactional value of the structure and 2 to 4 times the same value per square meter of commercial-office and industrial areas. The provisions are preceded include: Preceded by obtaining permission the constructed building-no need to eliminate buildings, the minimum and maximum mentioned penalties with respect to criteria such as the location of the property besides main or sub-main streets and cul-de-sac or alley, the type of materials used in the building and the utilization type of created space. What must be considered is that the mayor should issue Work Completion Certificate documented by Note 4 after getting penalty. That is, either municipality enforces verdict to payment fine or the owner accepting the precept attempts to payment the fine, its effects are to recognize that the additional parts of the building are legitimate before becoming illegal. Moreover, retention of excess building is an exception and in principle must be demolished, while mentioned notes also consider that it is possible to determine getting fine in the case of non-necessity of elimination. If the Commission of judgment recognizes the need to adapt the destruction, it must exercise in accordance with clear and direct interpretation of Note 1 of Article 100 or in accordance with Notes 2 and 3.

Is other case imagined other than these two cases?

This question seems to be yes, because in diagnosis of need for eliminating additional building, change and reform are hidden, and if there is a possibility to modify the building so that after the reform, there is no need to eliminate and it can be issued to pay fine for additional density by acquisitions of criteria and conditions, it is not necessary Commission determine to demolish and remove parts associated with additional density. Importantly, in the case of non-payment of fine determined by the beneficiary, the case will be referred back to the Commission and this time the Commission is required to issue a sentence of demolition. Extra additional building on allowed density may be in the buildings without permission, what may come to mind is that this violation is complained by municipality exclusively when the building is permitted, and density size is listed on it,

the but this belief is not true in case of non-permitted one, exceed of the maximum density regulation equivalent to the final section of Note 4 whose main issue is the construction of the building without permission, in terms of the sentence, is presented subject to Notes 2 and 3, otherwise next one will be corrupted more, it will be a good solution for offenders to build a building without permission and they don't believe when commit to the violations of additional density to be subject to the law and commit a violation without any lawful enforcement which causes many adverse social and public effects, and basically the violation is not considered lawful and restriction rules on ownership are determined for the prevention of such behavior's adverse effects, unfortunately, especially municipalities are looking at the violation in the economic and income acquisition viewpoint and disregard cause and reason to legislate such laws and this assertion is reasoned through failure to do duties and to prevent violation by municipalities, because the municipality not doing its primary task of preventing construction without permission or contrary and over permission allow people who ignore the regulations and criteria the approved city plans because of completely economic approach to invade people's private and public realm and in the end municipality gets fine and finally engages in income. Obtaining judgment for getting fine, mentioned earlier as an exceptional penalty on principle, is possible when there is no another solution to sentence change and reform or demolition. Otherwise, the Commission cannot and should not determine for paying the fine and maintaining the buildings, especially the violation of additional density of building is usually associated with other titles of violations and in conflict with individuals' public and private rights. For example, if the additional density is made by transgression to passages and their area or violation of approved rules for the peak height of land or elimination of open space in constructed land of building, especially when additional density blocks sunlight and causes neighbor's complaint synchronously, or building is not standard in terms of strength as well as additional, Commission cannot determine to pay a fine. It is worthy to note that practically Commission related to Article 100 makes additional density, irrational and non-systematic relevance by not observing reforms and legislates out of all underlying regulations. Thus, approved building setbacks are postponed to the following reconstruction.

Additional density outside the lawful realm and area of city

Building violations have been considered and sensitized when committed outside of cities area like constructing without permission in prohibited lands or constructing besides roads' and rivers' and high-voltage electricity transmission lines', and gas transmission lines' privacy. And other structural irregularities are not considered seriously and particularly, Organization of Control and Inspection of Building generally are not established for suburb in a lot of provinces of country and problem of issuing permission for construction outside of the city, except industrial towns and settlements and public institutions, is not customary practice. In rural areas other than those in satellite urban areas, owners are authorized to build constructions and regulations to obtain permission are not raised and hence the issue of building violations is not considered and generally complaining about structural irregularities is petitioned to judicial authorities of justice whose most basis is neighbors' complaint who think their rights were abused, for example, the making a building by disrupts neighboring building light or window is overlooked on neighboring home or neighboring property was transgressed and the building was built on it. And if provisions relating to obtaining permission and inspections are considered and

implemented, these complaints will be statistically reduced. But by control and supervision and civil engineering works and applying technical and architectural and urbanized principles, we can reduce fatalities statistics due to natural disasters such as floods and earthquakes and storm etc. Of course, this does not mean that if structural violation occurs outside of suburb, it cannot be handled outside the judiciary unless the neighbor complains. But in each case of the building violations requiring permission from the authorities, when it violates from the rules and provisions of the permission and approved plan and map, it is addressed and made appropriate decisions, as the provisions are applied partly in the industrial towns and resorts and new cities which are manufactured under construction companies. Legal document of this case is Article 6 in bylaw related to land use, construction and facilities outside the legal boundaries of cities and suburb ratified on 1355/2/27 that is expressed: the authority who in each region is determined by the County would be responsible for permission issuance for building and enforcement of necessary supervision for constructing the building according to the specifications and provisions and conditions contained in the permission, and the criteria set out in Article 4 of this bylaw shall apply to them, which exist outside of the legal boundaries of cities and suburb. And adaption to paragraph 2 of Article 8 of the bylaw "including the structural operation has been terminated and used or not, or the building and facilities before being completed was stopped or prevented to be continued, a five-member committee will be responsible for decision making about the quality of behavior towards offender accordance with country's current laws and regulations and continuing the building or how to exploit. Thus, by using generality of term "quality of behavior according to the current laws and regulations of this country..."it is not a problem, if the board attribute their actions to the most existing comprehensive legal regulations in the field of structural violations i.e. Article 100 of the Municipal Act and its Notes to make decision, and given that there does not exist another relevant and suitable law of this context in current provisions of the country, decision making outside of the municipal is difficult to imagine, and the board also can decide for the additional density in the same manner as Commission of Article 100 use for the cities. Of course, there is an argument that applying Article 100 and its Notes is not applicable in the case of violations taking place outside of city's area because of being devoted it to cities' areas and realm. Given the clear mandate of paragraph 2 of Article 8 of bylaw it is weak and rejected easily. However, with regard to the current state of applying the provisions from bylaw is confined and restricted to certain areas and in rural areas, building regulations have not yet fully implemented and conductive plans in villages have recently been put on the agenda and in one hand, other organizations of control and inspection of building have not been formed in most provinces. Performance is very limited in this area; of course the enforcement of these regulations can be helpful, although it can be limited to be effective and preventive. However, with the given explanation, possibility of adhering to the provisions of Article 100 and its Notes, there are approved plans, when outside cities' area violations in additional density are available, provided fore-issued building permission.

The principle of no harm and fundamentals of public law primacy

Fundamentals and documents on "no harm" and types of capture

The right is born of the nature of community, individuals' life in society involves the right and every right creates the duty, and conflict and confrontation of individuals' legal relations make necessary to recourse to one of the two principles "absolute legal power of

owner to exercise control over property and no harm” is a very accurate point that it's easy to say and difficult to apply. Each proprietor is required a duty and each obligator owns a right, meeting point of two rights is the field of principle of “absolute legal power and no harm”. We can say that the two mentioned principles are twin and contemporary of modern urban man and is associated with periods of human social life. There are three conflicting legal relations:

1. Conflict between two individuals' right.
2. Conflict between individual's right and individuals' rights.
3. Conflict between individuals' rights and individuals' rights.

In all these circumstances, both principles are referred to resolve the conflict and no action can be taken out of the territory of these two principles. And just in terms of difference among time and place and circumstances of periods, there is difference or change in governance of two principles. In other words, the debate is which one of them is in favor of the government, the group believes in authenticity rights knows the “absolute legal power” to be preferred and followers of community originality prefers principle of no harm and in other side, fans of intermediate school who don't agree independent and separate community believe in principle of adjustment, as the right is a basically fixed matter, but because its stability and establishment is relative. Thus the time and place circumstances and customs and habits are changeable and transformable. Anecdote of no harm is quoted by different ways and to different forms and multiple documents and the most famous of them is that Samereh had a palm tree at the house yard belonged to one of the Ansari individual, and occasionally he entered to the Ansari's house without permission to watch, and he was annoying and disruptive habitants' comfort that this was disputed by Ansari individual and after Samereh's obduracy, Prophet said: there is no harm and prejudice in Islam. In Iran Constitution, principle of no harm has been the basis of Article 40 and it has been posed on the people's rights section is the most important part of every Constitution. Moreover, also in the ordinary laws as civil liability law, particularly its clause 1, prohibition and sanctity of harmfulness to others and the need to compensate for the damages have been explicitly mentioned. “Everyone without legal justification, intentionally or as a result of carelessness damaged to other's life or health or property or freedom or dignity or business reputation or any another right which was created by the law for people that Resulting in other physical or intellectual losses, she/he is charged compensation due to her/his action. Topped with Article 132 of the Civil Code in this regard has decreed: no one can possess oneself property so that involves neighbor's losses.

The documents of principle of no harm

To establish the principle of no harm, fourfold evidence should be used: scripture, tradition, consensus and reason.

Quran: There are several verses in the Quran that prove the principle of no harm we point out that some. That is, not the mother (because of a dispute with the father) has the right to harm the child, not the father. That is, never look women to harm and oppress. This verse forbids the men to refer to and hold up and not to divorce women because to harm them.

All the above verses are used that harmfulness to others is unlawful and illegal.

Traditions

Many traditions of the Infallible PBUH have been entered that are successive, despite of verbal differences to prophesy constant concept i.e. non-legitimate of harm to others. We will refer to some of them:

Prophet Muhammad (PBUH) in the theorem Samereh, Jound khattab's son, told him: "You cause harm to others and it is not permitted losses on the believer.

Imam Sadiq (AS) said Prophet Muhammad (PBUH) judged in the land and housing preemption discussion between partners and said: no harm and no prejudice. And he said when the land is marked down and ownership limitation was determined, there is no longer a pre-emptive. Preemption has been forged to prevent harm to the partner.

Consensus

Considering the implications of scripture and tradition on principle of no harm, consensus is not considered because consensus will be a document. However, although there is a dialogue among jurists about the sense of harm and causing a loss, but in general terms it means that there is consensus on the legitimacy of harm to others.

Reason and sapient persons' implications: One of the legal arguments in religious orders which can be invoked to warrant specific rules is spinet's judgment. The discussion on principle of no harm undoubtedly human reason does not admit harm to others and knows obscene. Sapient persons' implication is based on the principle and the general community implemented it and holy legislator rejected and prohibited it, and thereby the signature of the legislator is obtained.

Possession types: Principle of absolute legal power admits owner to possess on oneself property variously, even though making harm to others, based on the principle, people predominate and authorize of their properties. So owner can possess and benefit of her/his property what to want without anyone is entitled to prevent and disturb. Article 30 of the Civil Code is a clear interpretation of jurisprudence principle. In this article, the legislature has decreed every owner is entitled to possess and benefit of the property variously.

Obviously, such extensive principle may deal with friction in some cases to the principle of no harm and they may contact with each other. Because principle of no harm limits the proprietary authorities and liberties driven from principle of absolute legal power and conflict between them is natural and definitive. Undoubtedly, principle of absolute legal power doesn't have unlimited domain and owner cannot possess whatever to want just because of this principle. Applying these possessions should be based on the rules and principles and criteria. As if there was not principle of "no harm", owner had not been entitled to cause harm to the other about how to possess. Given that legal fundamentals of both principles have been reflected and predicted in our legal system explicitly and clearly, so it is essential to specify limit about each of them and solutions to resolve the collision as well as examining the respective provisions to them which impact on the relationships of individuals' private rights a lot and in a position to guarantee social justice and prevent conflict between people, its importance is crystallized and shown twice.

Possession without harm

However, if owner's possession doesn't harm anyone, principle of absolute legal power remains powerful and possession types are permitted. Abolished and cancelled possession by harming to others.

If owner's possession is abolished and doesn't have rational and logical benefit and harms to another person, such possession is prohibited and illegal in terms of principle of no harm. There are two possession kinds. One of them is without any customary benefits and

the other is a cancelled and abolished one. Although jurists have mentioned a third type of possession to be "strict abolition" and although in most cases there is no difference among two definitions in terms of result, however, different in nature, and it is better being separated to scrutinize the subject or avoid the wrong decision. Non- customary possession is that someone attempts to build aviculture at the urban residential neighborhood, or build a multi-floor apartment building or a tower at the neighborhood or a city that multi-floor building is not customary. Abolished possession is that someone in her/his own house for hours hit drums and/or fill oneself yard full of water so that the water damages surrounding houses and so forth, however, the person may intend to harm their neighbors due to non-customary or irrational possession or not, if so, no doubt that such possession is unauthorized, even if there is no intention to harm. There are no justified doubts such possession being permitted. When the owner's possession is cancelled and ensures that there are not any benefits, jurists believe that the type of possession is illegal, because it is not imagined rational benefit due to lack of possession by owner that its absence is accounted a loss for oneself. The principle of no harm is dominated over the principle of absolute legal power due to neighbor's loss. Others, on the assumption, not being permitted the owner's possession is for a reason that the owner's lien has been limited to rational possession, the owner wouldn't be entitled to any possession of oneself property what to want. So these possessions are not allowed not only neighbor's loss but also irrational. In case of non-customary possession but rational, it can be said that prohibiting the owner of such possessions is not detriment, if involving the harm to neighbor. Only prohibition of that possession is considered harm which is customary.

The possession for meeting need and removing the harm

If owner's possession is to remove harm and implementing ownership right makes harm to neighbors and surroundings, it is allowed that the neighbor suffers harm because owner's possession is the authorized and legitimate one, that is, it is abolished and principle of absolute legal power continues to be dominated and two other harms can be conflicted to principle context. According to famous theorem, therefore, considering situations and circumstances and measuring amount of harm received by sides, owner's possession must be justified to remove the harm to prevent imposing harm to neighbor, and nobody can possess of her/his property which involves harm to neighbor "this theorem is addressed in Article 132 of Civil Code" unless the possession is as much as customary and to remove harm of oneself.

Possessing for attraction of benefit

If owner's possession in order for attracting benefit and interest is along with and contemporary to neighbor's harm, principle of absolute legal power is preferred again, because the owner don't believe to endured harm for preventing the neighbor's harm. The late Sheikh Ansari is advocate for the theorem. However, opponents of this theorem argue that harm to owner and neighbor should be studied and assessed either both principle of no harm and principle of absolute legal power is preferred when its government makes less harm. Article 132 of the Civil Code is meant to attract the interest and benefit as much as customary albeit harm is not allowed (meeting the requirement is considered a kind of attracting benefit). About the meaning of concept of benefit and its meanings, recognition of custom and habit should be the criterion and lack of benefit appears to be some sort of harm when being potential.

How possessing and priority of public law

Failure to possess

Whenever owner's lack of possession for her/his property causes harm to another one, famous comment is that the owner cannot be compelled to possess, because it conflicts with the principle of absolute legal power. Prerequisite for principle of absolute legal power is to be free in dealing with oneself property, which can be possessive or non-possessive, on the other hand, it is not consistent with principle of no harm to compel the owner, because compelling the owner to possess her/his property will be in favors of others and make harm to the owner. The researcher don has advocated for the theorem and believes that the owner never ever can be forced to possess the property. Articles 123, 128 and 115 of the Civil Code concern about the meanings that if a house or land is divided between two people, one of them cannot compel the other one that they wall between the two parts together. If owner's possession brings harm to society, the principle of no harm will govern, because the least harm should be accepted in comparison position, and it is natural that the harm to one is less than harm to population, and in such cases the harm is inflicted on the person rather than the general population of society. The legislator also would accept this view in many cases. Article 122 of the Civil Code expresses: if a wall is overlooked over other's property or its street or periphery which is adjacent to the failure, the owner will be compelled to destroy the wall. Article 110 of the Municipal Act states: the municipality by approval of city council can notice the owner because of the dilapidated and unsuitable land or buildings to location condition and/or semi-finished buildings located within the city area being the street or alley or square and incompatible with cleanliness and purity and beauty of the city or urbanity standards. But within two months the municipality must attempt to build a fence or wall or repair it which is compatible with the plans approved by the city council. If the owner denied or neglected, the municipality can take any action which deems necessary in order to provide comments and implement the project approved by the council in field of cleanliness and purity and beauty of the city at the expense of the owner.

How possessing harm to other's property

The discussion is divided into two parts: first, infringing a rightful person to adjacent right and inasmuch principle of no harm is governed absolutely. Article 130 of the Civil Code states: ((nobody entitles to make an exit from her/his house to neighbor's home space without neighbor's permission, if so, must remove the exit. The second part is a violation that it will make harm to neighbor because of the rightful person's action, in this case, the neighbor is entitled to take an action for removing the harm as well as principle of absolute legal power is preferred and the owner is allowed to possess oneself property. Article 133 of the Civil Code in concerned about this case. No one is allowed to make an exit from her/his house wall to the neighbor's home, although the wall belongs to her/his private property, but can open the aperture and mesh from her/his private property and the neighbor are not entitle to prohibit him/her, but neighbors also can build a wall in front of the aperture and mesh or hang a curtain blocks the seeing.

Principles of public law priority on private law

There are theories that their origin and status can be sought of west jurisprudential system, though they may be referred in Islamic jurisprudence. This discourse aims to justify the sovereignty of the general will on individual and private will of individuals. In accordance with these comments, either the sovereignty is monopolized a particular person, and he

could determine for the private rights of individuals, or regardless of being exclusive sovereignty but not, the community and public is authenticated versus person and private law, and social rights and public laws must be preferred for confrontation and conflict between community's and individual's rights.

Conclusions

As observed that municipality as a public institution has committed to duties and authorities, legislator according to various urban needs and welfare of citizens in the light of the various laws has considered duties and authorities, in this respect, the critical building density has been paid special attention as one of the most important duties of the municipality, and the reason of this attention and sensitivity seems to be arisen from various effects when affecting private and public law. The duty is that it is in conflict with individuals' privacy rights and proprietary rights of citizens and causes to restrict real and juridical persons' ownership rights and is in conflict with nature of individual and juridical principle "people are dominated on their property" and limits individuals to use space and land and how using of whatever they want and further securing their benefits. On the other hand, the better and more efficient use of ownership and private rights of citizens requires that every citizen decreases a portion of their rights and freedoms and allows general citizens to utilize who other citizens will have the necessary opportunity for the appropriate use of their right by following the procedure and this procedure is supported and considered by principle of "no harm and of prejudice in Islam". These two principles are based on the belief that for meeting the various needs of citizens and humans coexist in cities it is necessary that people traverse some of the rights and freedoms to prevent damage to others. And the citizens will face the society reaction if they do not follow procedures. Therefore, in order to prevent chaos in line with organizing and how combining individuals' public and private rights, municipality is responsible for determination and management and collection of both rights under these rules and regulations are available, and institution has been responsible for dealing with any lawlessness and violation of the urban approved laws and regulations and plans, and because any lawlessness of the citizens is important and affects adversely in these areas, measures are also considered the municipality is able to do the necessary preventive quickly and free of any jurisdictional and administrative bureaucratic. Consequently any person's action in contravention of the laws and regulations on urban and urbanity is considered a structural violation. And municipality in the area of its jurisdiction is required within framework of laws to prevent structural violation threatens public and private rights of citizens and it attempts to investigate and reverse the public right with the use of legal instruments when being committed the violation.

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