



# Autonomy and Regulation: Legal Regulation of Commercial Demolition

Cong-jun Jing<sup>(✉)</sup>

Mianyang Teachers' College, Mianyang, Sichuan, China  
455078616@qq.com

**Abstract.** Since the privatization of housing and the formation of paid land use system, commercial demolition has existed for a long time in China. However, there is no clear legal regulation on commercial demolition. In 2011, the regulations on housing expropriation and compensation on state owned land amended the abnormal system design of the original regulations on the administration of urban housing demolition, and commercial demolition has realized a return in form, that is, the acquisition of commercial land is solved through pure autonomy. However, the commercial demolition did not continue to be brilliant, but declined day by day. Based on its essence and practical difficulties, the regulation of commercial demolition should adhere to the value orientation of private law autonomy as the principle, supplemented by appropriate state intervention, and The legal rules of commercial demolition need to be reconstructed. On the premise of autonomy of both parties, on the one hand, we should supervise the entry and process of the demolishers; On the other hand, it is necessary to intervene in the excessive abuse of power by the relocated people, focusing on the balance of interests. The possible paths after its typology are as follows: in the types of commercial interests and public interests, autonomy is the principle and forced sale is the supplement; In the types of commercial interests and collective interests, autonomy is the principle and collective voting decision is the supplement; In other types, both parties are autonomous, and only the demolishers are supervised.

**Keywords:** Commercial demolition · legal regulation · autonomous · regulation

## 1 Introduction

With the progress of housing reform and land use system reform in the 1980s and 1990s, commercial demolition for non-public interests has existed for a long time in my country. However, there is no clear legal norm for the regulation of commercial demolition order, but the relevant laws and regulations are applied by analogy, and drawbacks are increasingly apparent. Academia generally believes that commercial demolition should be regulated by civil law norms, but the actual effect is greatly reduced, commercial demolition is unsustainable, and private capital has left. Commercial demolition has its existence value. Together with public welfare expropriation, a complete system of urban renewal and land use methods will be consitituted, which is conducive to activating the market and prospering the economy. Based on the status quo of legal regulation of

commercial demolition, this paper hopes to explore effective means of legal regulation of commercial demolition.

## 2 Status Quo of Legal Regulation of Commercial Demolition

Taking the regulations on the expropriation and compensation of houses on state owned land (hereinafter referred to as the “expropriation regulations”) issued by the State Council on January 21, 2011 as the boundary, the previous legal regulations on commercial demolition were mainly reflected in the regulations on the administration of urban housing demolition (hereinafter referred to as the “demolition regulations”) formulated by the State Council in 1991 and revised in 2001. Its biggest drawback is that it does not distinguish between public interests and commercial interests. Uniform rules apply to all demolition. The frequent use of coercive measures to arbitrarily deprive people of their private rights has led to constant conflicts, which has been questioned [1]. The Expropriation Regulations corrected the misunderstanding in the original Demolition Regulations, and clearly stipulated that it only applies to government expropriation and can only serve the public interest. It also defines the scope of public interest, and clarifies the implementation subject, specific procedures, and compensation and resettlement standards. As a result, demolition and relocation for the purpose of commercial interests are excluded, and can no longer be hidden in the government’s expropriation and continue to enjoy the dividends brought by the dislocation of the system. However, there are also obvious drawbacks. Normal commercial demolition is difficult to carry out due to the excessive rights protection of some people and even the expansion of selfish desires, which inhibits the enthusiasm of private capital to participate in urban transformation and construction, and the public’s desire to improve the living environment and share the results of the reform is also restricted.

In essence, commercial demolition should be a property transfer behavior between equal subjects, a way for land users to obtain construction land on the completed state-owned land through negotiation, and a special way to transfer construction land use rights. Formally, it is achieved by obtaining housing ownership through market behavior. It is the application of the principle of “integration of real estate and land”. The healthy operation of commercial demolition is conducive to expanding the path of obtaining commercial land and promoting the return of the collection system to the standard; it is helpful to activate the secondary land market, realize the efficient use of land resources, and reflect the spirit of making the best use of the property law; As a market-oriented means of obtaining construction land, commercial demolition can stimulate the enthusiasm of market subjects and encourage social capital to participate in urban renewal, so as to activate the market and prosper the economy.

The legal regulation of commercial demolition should focus on its essential attribute of equality and mutual benefit, and fully guarantee the autonomy of will in law. But at the same time, the relativity of multi interests and rights should be taken into account, and the commercial demolition should be appropriately supplemented by state intervention.

### **3 The Legal Regulation of Commercial Demolition Should Fully Reflect the Principle of Autonomy of Will, and Mainly Focus on Autonomy of Will**

Autonomy of will is the basic principle of civil law, which means that parties can decide various affairs in civil life according to their own will, and no one or organization may illegally interfere. It includes the following specific meanings: (1) the parties have the freedom to decide whether to participate in civil activities; (2) The parties have the freedom to choose the other party; (3) The parties have the freedom to decide the content of the act; (4) The parties have the freedom to decide the form of conduct; (5) The parties have the freedom to choose the way of dispute resolution [2]. The expression of autonomy of will in commercial demolition should be comprehensive, and legislation should fully guarantee the autonomy between equal subjects.

First of all, whether to demolish and who will demolish need the autonomy of both sides. In practice, most of the demolishers are voluntary, and the demolished are not necessarily voluntary (or behave involuntarily for the sake of game). The original “Demolition Regulations” neither solicited the opinions of the demolished and removed persons nor informed the demolished and removed persons of the planned demolition plan, but made the demolition decision before it was made public. The purpose of the announcement is to inform the relevant personnel that they must obey the demolition decision, and the demolition person does not have the right to decide whether to demolish or not. After the introduction of the “Expropriation Regulations”, the situation has completely be changed. Some developers took the initiative to issue invitations, and some owners took the initiative to invite developers to intervene after reaching a consensus. The new legislation should confirm both parties’ right to self-government.

Secondly, the methods and standards of demolition compensation and resettlement should be autonomous by both parties. Whether it is property rights exchange, monetary compensation, or a combination of the two, cannot be decided by the developer. The same is true for compensation and resettlement standards. This is the core focus of the conflict. In the past, the violent demolition or violent resistance to demolition was mostly caused by Rationality of compensation, and the current demolition deadlock is also formed because of this. Autonomy must be two-way, not the will of either party. Legislation should fully ensure the rational autonomy of the two sides, and it is possible to consider formulating guiding rules to guide the two sides to form a consensus as soon as possible.

Finally, the resolution of demolition disputes should also follow the civil dispute resolution mechanism. Civil dispute resolution mechanism refers to the general term of various methods and systems that can resolve and eliminate civil disputes, including extra-litigation dispute resolution mechanism and litigation mechanism. Specifically, it includes settlement, mediation, arbitration, litigation and other dispute resolution methods. Regardless of the method, the premise of equality between the two parties must be followed, The principle of autonomy should be implemented and the administrative adjudication method and the implementation of compulsory demolition in the original “Demolition Regulations” must be eliminated.

#### **4 The Legal Regulation of Commercial Demolition Should Involve Moderate Government Intervention, Supplemented by Government Regulation**

Based on the practical difficulties faced by commercial demolition and the requirements of socialization of rights [3], necessary interventions should also be made in the behavior of the demolition people according to different situations. But the premise is to ensure the equality of both parties, to ensure the autonomy of private rights, and to be unshakable. In a nutshell, the regulation of commercial demolition should adhere to the value orientation of giving priority to the autonomy of private law, supplemented by appropriate state control.

First of all, the behavior of the demolishers should be regulated as necessary. The regulation on the demolishers is not to interfere with their normal business activities, but to prevent them from abusing their dominant positions, disrupting the market, and infringing on private rights. The focus is on regulation. It should start from two aspects: First, the planning department should examine whether the development plan of the demolisher conforms to the national economic and social development plan, urban and rural planning and overall land use plan, and the demolisher should obtain a planning permit. Second, the industry management department should require the demolisher to issue a letter of commitment not to take any illegal means such as water interruption, power outage, threats, intimidation, violence. In case of violation, the business management department shall take corresponding punishment measures, such as warning, fine, order to suspend business for rectification, ban, etc. (it will not affect the civil, administrative and even criminal responsibilities of the demolisher for the implementation of infringement).

Secondly, Necessary intervention should be given to the behavior of the demolished person according to different situations. The necessary intervention for the demolished person is not to limit their private autonomy, but to intervene in their excessive abuse of ownership based on the requirements of socialization of rights. The focus is on the balance of interests: the balance between individual interests and the interests of others, collective interests and social public interests. According to the common practice of countries around the world, the necessary restrictions on private rights are only sufficient to justify when they interfere with the public interest. My country's "Constitution" and "Land Management Law", "Civil Code" and "Real Estate Management Law" also have similar provisions. Generally speaking, only in the case of expropriation, it is legitimate and legitimate to make necessary restrictions or coercion on private rights. Then, in the case of commercial demolition, how is the intervention and restriction of private rights possible? What is the legal basis for the intervention and restriction of private rights?

In many demolition projects, although there are few pure public welfare projects, the projects intertwined with public welfare and non-public welfare account for a considerable proportion. In most cases, the commercial interests of developers are intertwined with the public interests of the reconstruction of dilapidated houses and shanty towns represented by the government. According to the standard of whether commercial demolition and social public interest are directly consistent, it can be divided into two types: the first type: commercial demolition which is directly consistent with public interest;

The second type: commercial demolition that does not directly conform to the public interest.

The first type, according to the definition of public interest in Article 8 of the collection regulations and previous experience, the vast majority of commercial demolition is directly in line with public interest, such as a large number of demolition due to commercial housing development, which is accompanied by the public interest of rebuilding old urban areas in areas with backward infrastructure or dangerous houses. For this type of regulation, we should first adopt the mode of private law autonomy; If it cannot be dismantled, it can appropriately intervene in limited state intervention because of its public interest factors. In this regard, the Hong Kong SAR and Shenzhen in the mainland have mature experience, which is worth learning from.

The second type is commercial demolition that does not directly conform to the public interest. As mentioned above, most commercial demolition will have a direct connection with the public interest, but it does not rule out the existence of types that do not have a direct connection. For example, the development of industrial projects, commercial trade, tourism, entertainment and other projects may not be in direct connection with the public interest of rebuilding old cities in areas such as the concentration of dilapidated buildings and the backwardness of infrastructure (it may be indirect). Moreover, it is controversial to define the transformation of dilapidated houses as public interest [4, 5], so it is necessary to distinguish this type. Based on the number of people involved in demolition, this type can also be divided into commercial demolition that conforms to the collective interests and commercial demolition that does not conform to the collective interests.

In commercial demolition that is in line with collective interests, how to coordinate the conflict of interests between the majority and the minority within the collective, or whether private rights can be restricted by collective interests, the current law really has no basis. The task of legal research is to find the deficiencies of the current law and put forward countermeasures, which is the purpose of this paper. Because of its lack of “public interest” factors, it can not be directly introduced into the national compulsion, but in many relocated people are willing to transform, but because of the opposition of a few people, even one or two families, it is stranded, and how much legitimacy. Modern society is different from the early agricultural society. A single family can live and die without contact; In modern cities, with dense population and concentrated buildings, the owners in a community or a lot are related in all aspects. They can't be separated at all and go their own way. In particular, the differentiated ownership enjoyed by a large number of owners is interdependent. You have me and you have me. As urbanization continues, the degree of concentration will only become higher and higher. If we still turn a blind eye to this great change, it will only aggravate social contradictions and damage the interests of the majority due to the excessive protection of individual abuse of power. So all demolition households in the planned demolition area can be regarded as a special “collective”, and certain voting procedures can be designed in legislation to confirm that this collective interest is greater than that of all individuals to be demolished. The sum of interests, the individual interests of the demolished people should be subordinated to the collective interests to a certain extent. Human equality and freedom are limited,

and legal rights must not be abused—the individual exercise of rights by the demolished cannot be based on harming the collective interests [6].

In order to prevent the “collective interests” from being magnified and infringing on the interests of a small number of demolished people, the proportion of voting decisions should be clearly specified (it can be determined to be no less than 90%). At the same time, certain remedies should be prescribed to ensure that the private rights of the minority who do not agree will not be substantially damaged [7].

In this type of state intervention, it is mainly reflected in the supervision of the demolishers and the approval of the collective voting decision method. It does not mean that the state directly interferes with private rights.

In commercial demolition that is not in line with collective interests (nor directly in line with public interests), there is neither the possibility of moderately restricting private rights due to public interests, nor the space to apply the collective voting decision mode due to collective interests. Only by mutual autonomy. In this type of state intervention is mainly reflected in the supervision of the demolishers.

## 5 Conclusion

To sum up, based on the nature of commercial demolition, the value of existence, practical difficulties, and the consideration of the interests of the society and all parties, commercial demolition should be effectively regulated, and the regulation of commercial demolition should adhere to the value orientation of private law autonomy, supplemented by appropriate state intervention and regulation. Under the premise of the autonomy of private law, the demolishers shall be supervised respectively, and the demolished people shall be appropriately supervised according to the situation. The possible paths after typifying the projects involved are as follows: in projects where commercial interests and public interests are in line, autonomy is the mainstay, and compulsory sales are supplemented; in projects in which commercial interests and collective interests are in line, autonomy is the mainstay and collective voting Decisions are secondary; in other types, both parties are autonomous, and only the demolishers shall be supervised.

**Acknowledgements.** The work is supported by: The 2017 project of the Social Development and Social Risk Control Research Center of the Key Research Base of Philosophy and Social Sciences in Sichuan Province “Research on the Legal Regulation of Expropriation and Demolition Risks in Urban Development” (SR17A08).

## References

1. Zhong, C. (2019). Research on administrative levy in the Market-oriented Urban Renewal of Shenzhen. *Shenzhen Social Sciences*, (04), 134–142+159.
2. Liu, X. (2009). *Civil law* (p. 16). Science Press.
3. Jing, C., & Guo, L. (2017). Analysis on the necessity of intermediary of commercial demolition into national compulsion – a review based on the limitation of private autonomy model. *Journal of Mianyang Normal University*, 36(06), 25–29.

4. Lv, G. (2010, March 25). Is the renovation of dilapidated houses a public interest. *Xinhua Daily Telegraph* (003).
5. Wan, J. (2011, February 21). Reconstruction of old city by local government, aerial danger and old. *Legal Daily* (6).
6. Zhao, H. (2011). Interpretation of individual interests, collective interests and public interests in the demolition Reform – limited to the analysis of the reconstruction of old urban areas. *Law*, (8), 115.
7. Wu, G. (2011). Dissimilation and return of expropriation system in China. *Legal Research*, (3), 66.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

