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## **Construction-Legal Status of the Land**

*Purpose of the article is to clarify and define the land construction-legal status as one of the most significant issues of the construction law. The article provides discussion of the substance and significance of land, as the object, conditions of its use for performing of the construction activities and provides separate discussion of the land status in planning and construction, as well as the preconditions for adding legal status to the land.*

**Key words:** *construction law, construction planning, Land as an object, legal status of the land, zoning, Conditions of land use.*

### **1. Introduction**

Construction law is one of the sub-areas of administrative law. Regarding its nature, it is associated with the other areas of law as well, though as the states intervenes actively into this sphere and regulates number of relations the construction law is of more of public law nature.

In the construction sphere the main object is a land where construction activities are performed. While the main product of these activities is a completed building and/or structure used for various purposes and providing certain benefits, with respect of legal regulation the legal status of land is no less significant. Goal of this work is to clarify and determine the construction-law status of the land as one of the significant issues of the construction law.

Work will provide discussion of the substance and significance of the land as an object, terms and conditions of its use for performing of construction activities, also examine separately the legal status of land with respect of planning and with respect of construction, as well as the preconditions of awarding of the legal status to the land.

Work applies the methods of analysis, deduction and comparative-legal research methods.

### **2. Land as an Object**

#### **2.1. Land – Object for Strategic Purposes**

Land is the unique resource. People are interested in it for a long time. From the ancient period, ownership of the land was regarded as the guarantee of power and stability. Those, having their own land took advantage of relatively high social status in the society.

High interest to the land is not characteristic for the private persons only. It is an object of the state significance. Historically, mankind's way to recognition of private property was not either sort or easy. As a rule, the state was regarded as an unconditional and sole owner of the land.

One of the main signs of the state is existence of the territory. Though the territory is clearly regarded as the state's possession, this does not limit private property rights. There is the opinion in

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the theory that the state is in charge of making decisions related to the land use issues of global significance. In addition, private ownership of land is derived from the state ownership<sup>1</sup>. Though, the state interest is regarded as superior over the private interests in many cases and irrespective of liberal approach, the state reserves the right to determine the key directions of land use independently from the private owners and this may result in restriction of the owners' interests<sup>2</sup>.

Land purpose and significance has dramatically changed after so called industrial revolution<sup>3</sup>, when the companies emerged and started to use the land for various private entrepreneurship purposes. This was one of the causes of regulation of the land use at legal level.

The land cannot be propagated and it is unchanged<sup>4</sup>. There is as much land as is and such as is and this property causes the necessity of introduction of its special regulation.

There are various definitions of the land substance. The land is a natural formation with certain physical data, comprising the part of Earth. Though, there are wider definitions, for example, the land is all in touch with and attached/ related to the land (the house and its fundament, plants etc.)<sup>5</sup>. According to the other view, not only closely related things should be regarded as the land, but rather all lawful property and interest in the land could be regarded as the „land” in legal respect<sup>6</sup>.

Overall, the land is the object whereon all processes take place and which is the subject of special regulation, regarding its special significance.

## 2.2. Land: Object of Special Legal Regulation

In legal respect, the land is the subject of civil turnover, implying that the agreements related to it can be concluded freely and it can be subjected to different legal regimes. Though, naturally, the land is not a subject of civil legal turnover only. Number of law sectors and spheres are applicable to it.

In this respect, the approach accepted in Germany is of interest. In relation to one of the cases, German Federal Constitutional Court provided explanation: The fact that the land is not replaceable and it cannot be replicated, prohibits its full entrusting to the unpredictable play of the free powers and views of certain individuals; fair legal and social system requires, in relation to the land, that more emphasis was made on taking into consideration and expression of the public interests than in case of the other properties. The land cannot be automatically equalized with the other properties and values, either from the economic point of view or regarding its social significance; and it cannot be regarded and accepted into legal turnover as movable goods<sup>7</sup>.

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<sup>1</sup> *Tsiklauri B.*, Urban Construction (Construction Planning) in the Construction Law, Journal *Sarchevi*, №1(2), Tbilisi, 2011, 34, Citation: *Turabelidze N.*, Land Law of Georgia, Tbilisi, 2002, 58 (in Georgian).

<sup>2</sup> *Tsiklauri B.*, Urban Construction (Construction Planning) in the Construction Law, Journal “*Sarchevi*”, №1(2), Tbilisi, 2011, 34 (in Georgian).

<sup>3</sup> *McFarlane B., Hopkins N., Nield S.*, Land Law: Text, Cases, and Materials, Oxford University Press, 2012, 5.

<sup>4</sup> *Tsiklauri B.*, Urban Construction (Construction Planning) in the Construction Law, Journal “*Sarchevi*”, №1(2), Tbilisi, 2011, 34, Citation: *Brenner M.*, Baurecht, 2. Neu Bearbeitete Auflage, Heidelberg, 2006, 14 (in Georgian).

<sup>5</sup> *MacKenzie J.A., Phillips M.*, Textbook on Land Law, Oxford University Press, 2014, 10.

<sup>6</sup> *Ibid*, It is Interesting that in the Monarchies (e.g. in UK) only Monarch is Regarded as the Land Owner and the other Landowners are Regarded as the Holders of the Specific Estates or Persons with Private Interests in the Land. See *MacKenzie J.A., Phillips M.*, Textbook on Land Law, Oxford University Press, 2014, 10.

<sup>7</sup> *Schwabe I.*, Decisions of German Federal Constitution Court, (GIZ), 2011, 252, <<http://lawlibrary.info/ge/books/giz2011-ge-BVerfGE.pdf>>.

As the land is a multifunctional asset, the issue of its legal use covers various social relations. As the land is the source of various natural resources, it is subject to the regulation of their distribution. The land is a part of environment and therefore, environmental law is applicable to it. This is expressed in issuance of the environmental permits and generally, environment protection control via various legal mechanisms.

The land is a single object for construction activities and it cannot be replaced by anything else. This is the nature of land that causes existence of various construction regulations. As mentioned, the land is non-renewable resource of quite limited quantity and therefore, it is necessary to state the conditions for its legal and logical use and this is provided by the construction law.

Concept of the real property established by the civil legislation implies the land together with the fossils therein and buildings and structures attached thereto<sup>8</sup>. Using grammar definition of this norm, only land should be regarded as the immovable property, as the buildings and structures thereon and the fossils therein could be regarded as the immovable property only provided that they are immovably attached to the land. In case of their separation from the land, they lose the status of „immovable”. Civil legislation provides much stricter and more precise regulations for the immovable properties than for the movable ones. A person can be regarded as an owner of the immovable property (land) only after his/her registration with the Public Registry. In addition, registration with the Public Registry entitles a person to dispose of the immovable property. The rights and obligations associated to the land and other immovable property are registered here as well. All this evidences particular interest of the state to legal regulation of the land issues.

The land, regarding its functional purpose, is awarded different legal statuses. At the legislative level, separate law regulates the issues of agricultural land disposal and other related legal issues. Agricultural land, similar to any land, is an object of strategic significance for the state as economic development of the country heavily depends thereon. Naturally, regarding such significance, special legal regulations are adopted in relation to disposal of the land. Constitutional Court of Georgia has discussed this issue at a time of consideration of the constitutional claim stating that imposition of additional obligations on the foreign citizens and legal entities in case of sale of the agricultural land to them does not comply with the Constitution. Detailed discussion of this decision is not within our interest<sup>9</sup> though it is significant to note that the defendant (Parliament of Georgia) relied on the argument that „agricultural lands are of strategic significance for the country’s security, environment protection, economics and health care”<sup>10</sup>. The Constitutional Court has upheld the claim in part and now the agricultural lands may be sold to the foreigners without any additional obligations. This is not reasonable, as the land should not be regarded as a subject of free turnover and it should not be freely sold / disposed off where this results in „unsound distribution of the land”<sup>11</sup>.

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<sup>8</sup> See Georgian Law Civil Code of Georgia, Georgian Legislation Bulletin, Adopted on 26 June 11997, Article 149 (in Georgian).

<sup>9</sup> Constitutional Claim Demanded Recognition of the Words “Foreigner And” in sections 1<sup>1</sup> and 1<sup>2</sup>, Section 1<sup>3</sup>, Article 4, as Unconstitutional in the Law of Georgia on Agricultural Land Ownership, as the Discriminating Term, in Relation with the Property Rights/ Constitutional Court has Upheld the Mentioned Claim in Relation with Article 21.

<sup>10</sup> Decision of the Constitutional Court of Georgia №3/1/512, 26 June 2012, §12 (in Georgian).

<sup>11</sup> *Schwabe I.*, Decisions of German Federal Constitution Court, (GIZ), Tbilisi, 2011, 250, <<http://lawlibrary.info/ge/books/giz2011-ge-BVerfGE.pdf>>.

### 3. Preconditions for Determination of the Land Construction-Legal Status

#### 3.1 General Definition of the Land Legal Status

We have already mentioned that the land is subject to special legal regulation. As the issue in question is associated with determination of the land status in the context of construction law, significance of land use for the construction purposes should be distinguished from its legal regime in the construction law.

There are number of views with respect of whether the construction law belongs to the private law or public law. This issue could be discussed and relevant arguments could be sought but one thing is undoubted: construction law has the signs characteristic for both sectors. In Germany there are distinguished „private construction law” and „public construction law”<sup>12</sup>. Each of them provides different regulation of the land.

##### a) Private Law Regulation

Subject of private construction law covers the private law relations emerged in the construction process and balancing of the private interests of the neighbors<sup>13</sup>. Private interests can imply wide range of issues, from personal economic interests of the parties<sup>14</sup> to any other interests that can be related to construction.

Possibility of making agreements between private persons in the process of construction on the land plot expresses private interests<sup>15</sup>.

In relation with the land status, in the private law context, the land should be regarded as the subject of civil legal turnover. Any civil law agreements could be made in relation to the land, provided that the rules established by the law are complied with. Regarding the purposes of the construction law, at a time of construction permit issuance, the legal regime applicable to the land shall be identified, in particular, whether the subject seeking construction permit is direct owner of the land or a holder only (based on the lease or any other agreement).

Construction law, as such, includes the entire spectrum of the neighborhood relations, regulated by the civil norms, in addition to the construction regulations. Relations between the neighbors are related to mutual respect to the different private interests, obligations of tolerance to the neighbors etc. Clearly, construction law attempts to avoid any risks but in case of collision of the private interests the dispute shall be resolved based on the civil law.

Though construction permit is issued to the specific person, this does not prevent him/her to dispose off the land parcel together with the building under construction thereon. Naturally, in such case all responsibilities and risks are transferred to the new owner, whose interests include studying and getting familiarized with the existing situation. In such cases, the legislator sees the state interests only where the issue is, e.g., who should improve the defects and pay the penalty. Here the issue

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<sup>12</sup> *Turava P.*, Key Concepts and Institutes of the Construction Law, Faculty of Law, TSU, “Journal of Law”, №2, 2009, 121 (in Georgian).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Gezenava D.*, Construction Law and Legal Nature, Journal “Sarchevi”, 2011, 29 (in Georgian).

<sup>15</sup> *Ibid.*

is solved very easily: the penalty shall be paid by the old owner and the defects shall be eliminated by the new one<sup>16</sup>. All other relations between the parties shall be regulated within the contract law.

### **b) Public Law Regulation**

Public construction law, as the specific part of administrative law, is the set of norms, regulating the issues of land parcel use for construction purposes, taking into consideration the public interests, in particular whether construction of the structures and buildings is acceptable, the construction process, necessary characteristics of the buildings and structures, legal regime for their use, modification and demolition, as well as public order regulations in the construction sector and scopes of land use for construction purposes<sup>17</sup>.

Public construction law is divided into two parts – public planning and public order law<sup>18</sup>. Such dividing is conditional but provides for substantially different regulations. Construction planning law regulates the land planning issues, its functional allocation and awarding of the specific legal status. While for the construction order law, land is of more private interest, as expressed by issuance of the construction permits to private persons, as well as exercising of state supervision over the ongoing constructions.

Particular state interest in the construction planning area is conditioned by its strategic significance. Country's economic, social, cultural, agricultural, touristic development etc. depends on the adequate and effective planning of the country's entire territory, as well as of the districts and specific cities (settlements/villages). Further we shall examine this issue more carefully.

Within the construction order law, the land acquires specific significance, in particular, giving the specific status (zone) to one or another land parcel determines the type of construction acceptable on this land and hence, the type of the construction permit.

In any case, active intervention of the state, as an administrative authority takes place. It participates in the relations as a regulating subject and, based on the subordination principle, it is at the highest level of the hierarchy. Any actions of the administrative authority, as such, is dictated by the high public interest and this makes any actions of the state even more significant<sup>19</sup>.

## **3.2 Determination of the Construction Legal Status**

To determine the land construction legal status the construction planning and the construction activities should be considered separately, as the parts of construction order.

### **a) Land as the Planning Object**

Planning is a significant process. It determines the future prospects of the land use from the outset. Adequate area planning is of great significance as the land is not an inexhaustible resource and its purposeless planning and use may result in negative outcomes.

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<sup>16</sup> Georgian Law Code of Products Safety and Free Circulation, Georgian Legislation Bulletin, adopted on 8 May 2012, Section 5, Article 26 (in Georgian).

<sup>17</sup> *Turava P.*, Key Concepts and Institutes of the Construction Law, Faculty of Law, TSU, "Journal of Law" №2, 2009, 121 (in Georgian).

<sup>18</sup> *Gegenava D.*, Construction Law and Legal Nature, Journal "Sarchevi", 2011, 30 (in Georgian).

<sup>19</sup> *Ibid*, 31.

Georgian Law on Space Management and Urban Construction Principles is applicable to planning. This Law provides definitions of such concepts as space-territorial planning. According to the Law, „space-territorial planning – activity regulating use of the settlements’ territories, land use, construction and development, protection of environment and immovable cultural heritage, space-territorial conditions of recreation, transport, engineering and social infrastructure, as well as spatial aspects of economic development and territorial issues of renovation”<sup>20</sup>. The same Article provides definitions of the other terms related with the planning, e.g. land use plan, development regulation plan etc. Analyzing of the substance of any of them clarifies the fact that construction planning allows influencing the land in various ways.

With respect of territories’ planning the land is classified as the planned land, for which the planning document is developed and specific legal status thereof is set and the land beyond planning, i.e. unplanned territory where no relevant legal document is adopted.

**Planned land** implies awarding of the specific status. In accordance with the Law, planning determines the structure of territories including, for example, the urbanized territory, village territory, natural-landscape territory, special territories. In addition, the recreation and health resort territories, protected territories, agricultural development territories, forest conservation and development territories, the territories intended for national defense and the territories intended for the other public purposes etc. are distinguished<sup>21</sup>.

Awarding of one or another status is not provided randomly but rather in compliance with the strict criteria that are established as a result of scientific researches where the knowledge of the professionals of the relevant field is invaluable. Planning exercise relies on these researches to provide planning of the territories. Though, in addition to the scientific reasonability, there is also the strategic development policy that can make significant corrections at the planning stage. If certain territory is of significance for economic, social or cultural development of any segment, planning is influenced by these interests and this is finally reflected in the main plans.

Territories planning and awarding of the specific status to the land is such a significant process that in some countries, to modify the plans and change the land status, the whole set of procedures shall be performed. For example, in the USA, to make amendment or change to the planning map, modifying the land use regime, local negotiations shall be conducted with local population and in some cases even the referendum shall be arranged<sup>22</sup>.

As planning is provided by the state, at central and local levels, it acts based on the state and public interests and in many cases this is for the detriment of the private interests. A land may be private property of a person but construction-legal (planning) status of this land is determined independently from such person. Thus, it is possible that status of e.g. agricultural land owned by the person was unilaterally changed by the state and it was included into some other category of land. In such cases, according to the law, the natural persons and legal entities, whose lawful interests were

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<sup>20</sup> Georgian Law on Spatial Arrangement and Urban Construction adopted on 2 June 2005, As of January 2005, Section “c”, Article 2 (in Georgian).

<sup>21</sup> Ibid, Section 4, Article 18 (in Georgian).

<sup>22</sup> Selmi D.P., Reconsidering the Use of Direct Democracy in Making Land Use Decisions, Journal of Environmental Law, Vol. 19:293, 2002, 303.

prejudiced within the scopes of planning activities, shall be entitled to apply to the court<sup>23</sup>. Here we imply repayment or compensation of damages. It is unlikely that the interests of private person have impacted the planning as a whole.

Finally, at the construction planning stage, the issue of awarding status to the land shall be resolved so that the main goals were achieved: creation of healthy and safe living and working environment for the population, improvement of the country's competitiveness and economic growth, protection and improvement of cultural heritage and natural resources, proper integration into Caucasian, European and global systems and structures<sup>24</sup>.

As for the **unplanned land**, this is the territory not covered by the planning activities and no plans were developed for such territories<sup>25</sup>. Usually, such lands are called the lands beyond the development. No any specific status was awarded to them and the terms and conditions of use of such lands are specified. Thus, use of such lands and implementation of any construction activities thereupon shall be provided through individual regulation or on the basis of some relevant document.

#### **b) Land as the Object of Construction Activities**

Land is the main object of construction activities. Everything, related to the construction is simultaneously related to the land as well. Moreover, land condition and status determine the type of construction activities.

At the stage of construction activities, land use conditions and issues shall be as per the Resolution of the government of Georgia, Primarily, the definition of the term „land parcel” shall be provided. For the purposes of the said Resolution, this term could be defined as the „object of the property right, limited by single uninterrupted line, being the cadastre unit and could be used for construction activities in accordance with this Resolution”<sup>26</sup>.

With respect of possibility of land use for the construction activities the parcels are classified as: construction land parcel, land parcel of the limited use for construction activities and land parcel unsuitable for construction activities<sup>27</sup>. Each of these types is determined with due consideration of both, the natural characteristics of the land and certain priorities.

**Construction land parcel** is the main type intended for construction purposes. Such land parcels are separated from one another by zoning. We shall discuss it below in details. Determination that the land parcel is suitable for construction implies that it is allowed to perform construction activities on such land, in general. For the zone of each category specific construction terms and conditions are provided, based on the characteristics of the land parcel and construction types, allowed for the certain zones.

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<sup>23</sup> Georgian Law on Spatial Arrangement and Urban Construction adopted on 2 June 2005, As of January 2005, Section 5, Article 27 (in Georgian).

<sup>24</sup> Ibid, Section 1, Article 4 (in Georgian).

<sup>25</sup> Such Things Occur where Planning of the Country's Territory is Provided Inconsistently, Partially.

<sup>26</sup> Resolution № 57 of 24 March 2009 of the Government of Georgia on Issuance of Construction Permits and Permit Conditions, Section 33, Article 3 (in Georgian).

<sup>27</sup> Ibid, Section 3, Article 5.

Land parcel intended for construction shall be provided with the engineering and transport infrastructure, minimal condition is presence of at least one access to the site after completion of construction, among them, via servitude<sup>28</sup>.

Status of the **land parcels for limited construction** is determined based on the specific zone characteristics. In some cases the construction may be limited in certain territories, e.g. in the landscape-recreation zones. In such cases it is implied that construction types allowed for such land parcels are strictly determined.

**Land parcels** may become **unsuitable for construction** in cases specified by the law<sup>29</sup>. No specific explanation is provided of what term „unsuitable” implies. This may include any natural conditions, permanent or temporary unsuitability, actually preventing any type of construction activities on such land parcels.

Development of the land parcels with the mentioned status is possible only after elimination of unsuitability<sup>30</sup>.

### **3.3. Zoning of the Land Parcels as the Instrument for Determination of the Construction-Law Status**

Land zoning implies dividing of the specific settled territory in the functional zones, in the process of urban development. Each of the land parcels is within certain zone, determining the terms and conditions for its use and development.

Zoning is of critical significance in the process of performing of the construction activities. The type of zone dictates to the subject seeking construction the types of construction activities allowed in such territory. In addition, zoning ensures adequate and purposeful development of the settled territory, ensuring more or less uniform development of the entire country.

According to the effective legal regulations, currently, the land parcel intended for construction may be within fifteen main zones<sup>31</sup>. In addition, the zones may be divided into the sub-zones. These issues are regulated by the Resolution of the Government of Georgia on Approval of Technical Regulations – Key Provisions for Regulation of the Use and Development of the Territories of Settlements<sup>32</sup>.

This Resolution covers both, general and specific functional zones (sub-zones). For example, general functional zone is the housing zone, further divided into six types of the housing sub-zones. Transport zone is divided into two sub-zones etc. This Resolution provides description of the substance of each zone/sub-zone and specifies the categories of buildings and structures allowed for them.

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<sup>28</sup> Ibid, Section 2, Article 6.

<sup>29</sup> Ibid, Section 1, Article 9.

<sup>30</sup> Ibid, Section 2, Article 9.

<sup>31</sup> Ibid, Section 1, Article 6.

<sup>32</sup> Resolution of the Government of Georgia № 59, 15 January 2014, on Approval of the Key Provisions of Technical Regulations – Regulation of Use of the Settlements Territories and Development (in Georgian).



### **a) Zoning Preconditions**

As zoning is a significance process, the zoning preconditions shall be clearly stated.

Awarding of the specific zone status to the land parcel depends on the number of factors. Primarily, the natural properties of the land parcel shall be taken into consideration. Landscape-recreation zone, logically covers the territory, where the climatic conditions allow adding of such functional load to the land. The same could be said about the agricultural land and any other land.

As the term „functional zone” is used in zoning, this implies adding of certain function to the land parcel, showing the purpose for which such land may be used. Of the settled territory requires detailed urban development, the territory is divided into more zones regarding the functional purposes required for the said territory. For example, if there is clearly determined housing zone, necessity of identification of the transport zone, zone for public activities and other zones is associated with it. Thus, in many cases, the zoning map depends on the functional load of the territory in question.

In addition, the zoning structure clarifies the state policies and strategic development priorities, with respect of the land use. Zoning of the territory heavily depends on the country’s economic, cultural and other priorities. Where attention is focused on agriculture development, at the planning stage, the state attempts to load as much territory as possible and award the status of agricultural land to it. If the development priority is support to industry, in zoning, the industrial zones are give preference etc. Thus, planning policy is basic precondition for zoning.

Based on the needs the zones may be changed. In such cases the zone changes are accomplished through amendment of the urban development documents and this requires performing of the procedures similar to those performed for their approval<sup>33</sup>. It is significant that the zones were changed upon necessity, with relevant justification. In addition, the Resolution imposes limitations on transformation of one type of zone into the other type<sup>34</sup>.

### **b) Parameters for Establishment of the Land Use Conditions**

Zoning implies setting of the land use conditions in the specific zone, regarding its functional purpose.

The document of specific rights’ zoning document should state: a) key parameters of regulation of construction land parcels development in zone territory and their acceptable characteristics; b) for the zone territories the list of sites unacceptable for placing there may be developed<sup>35</sup>. Hence, for any construction land, within the relevant zone, the following parameters shall be set: maximal percentage of the land parcel development, maximal percentage of development intensity, minimal percentage of green plantations<sup>36</sup>. More detailed parameters may be stated as well, like maximal number of floors / height, max. volume, min and max dimensions of the land parcels, so called red and blue

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<sup>33</sup> Ibid, Section 1, Article 14.

<sup>34</sup> See *ibid*, Sections 2 and 3, Article 14.

<sup>35</sup> *Ibid*. Section 1, Article 7.

<sup>36</sup> Here so Called K-1, K-2 and K3 Coefficients are Implied.

lines, number of parking areas, as well as spatial-planning conditions of development and any other parameters that may be significant for certain zone<sup>37</sup>.

In addition to these parameters, for each of the zones the types of acceptable and unacceptable buildings/structures are stated. Usually, the functional purpose of such buildings / structures shall correspond to the functional load of the zone. For example, in the housing zone, construction of the dwelling shall be allowed, as well as construction of the public buildings<sup>38</sup> (schools, kindergartens, medical facilities etc.); in the health resort/recreation zones the health facilities, buildings and structures intended for sports, leisure may be constructed<sup>39</sup> etc.

Land use conditions and development parameters shall be set with due regard to the natural environment, as well as the functional purposes. It is possible that the geological conditions in the land parcel prevented construction of the high buildings or the objects with certain functions. Consequently, the relevant coefficients are stated to limit the unsuitable constructions and protect human life and health.

### **c) Effective Zoning Problem**

Zoning is an all-embracing process requiring consideration of various aspects. In many cases, the problem of effective zoning arises. How adequate and reasonable is functional zoning? What should be taken into consideration by the relevant authorities for awarding of certain zone status to a land parcel?

Primarily, it should be taken into consideration that the land is a limited natural resource, implying that any plan and strategy should be tailored to it. Zoning is effective where, based on the available data, regarding scarcity of the land, all resources are used fully and reasonably. Functional zones should be distributed so that to maximally correspond to the state and public interests, allow maximal development of the territory, with no harm to the ecology and natural environment, maintaining the cultural and historical heritage and at the same time, provide healthy and safe environment for the population (including the future residents)<sup>40</sup>. It is quite hard to achieve this goal but it is achievable only in case of accomplishment of the adequately planned process. For this, in addition to the professional competences, the adequate legal basis is required.

Zone types shall be reasonably planned. Lack of the types may result in the problems for placing of the number of significant sites as there are no functional zones suitable for them. On the other hand, excessive detailing of the zones may cause absolutely useless land parcels and restrictions that would prevent development and urbanization of the territories. According to the currently effective legislation, we face the latter problem. For example, if there are six sub-zones of the housing zone, not actually different from one another with their parameters and acceptable types, their dividing is artificial. As a result, some of them are not actually used. At the same time, construction of certain

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<sup>37</sup> Resolution of the Government of Georgia № 59, 15 January 2014, on Approval of the Key Provisions of Technical Regulations – Regulation of Use of the Settlements Territories and Development, Sections 2 and 3, Article 7 (in Georgian).

<sup>38</sup> Ibid Sections 7 and 12, Article 12.

<sup>39</sup> Ibid Sections 4 and 5, Article 12.

<sup>40</sup> See also *Bobrowski M.*, Handbook of Massachusetts Land Use and Planning Law, Aspen Publishers, 2002, 31.

buildings is prohibited in such zones by the only reason that they are not legally within the category of the given zone. Such approach could be explained by the fact that currently, in Georgia, the available planning documents and construction approaches, in general, are relatively conservative and do not correspond to the current European standards. The substance of modern approach is that the territories should be developed in simple and effective way, based on the economy principle, with environment protection and adjusted to the public needs to maximal extent possible. Thus, land zoning issue requires further improvement.

No less significant aspect, in the effectiveness context, is the issue of determining of the types of buildings and structures acceptable for the zone. The acceptable types shall functionally correspond to the zone function. For example, the industrial buildings shall not be placed in the housing or recreation zone. Though, on the other hand, the list should not be so limited that it prevented construction of a building in the zone by the only reason that it is not on the list while functionally it does not contradict to the zone type. Current legislation accepts existence of such exclusions in some form.

Effective zoning is a significant issue that must be taken into consideration by the state at the planning stage. It directly impacts determination of the reasonable legal status of land and prospects of its further use.

#### **4. Conclusion**

Work offers discussion of the land legal status in different aspects – both, generally and specifically, in the construction law context. The land legal regimes for the stage of construction planning and stage of implementation of construction activities were discussed separately.

Most significant issues of land zoning were discussed and related problems were formulated. Necessity of effective zoning is conditioned by limited land resources and their reasonable use. As the land is limited resource, its legal regulation shall be such that it finally ensured lawful, reasonable and effective use of the territories.

Considerations provided in the work showed that one and the same land parcel may be subjected to different legal regimes. At this point its natural characteristics, functional load, public interest, as well as the state strategic development policies are taken into consideration. Though, in this process, attention should be paid to the fact that the land is the part of the environment where the people live. Hence, they must deal with it with great care and attention and use it for different purposes to prevent any irreversible outcomes due to improper and thoughtless actions. And this proportionally impacts the life quality of both, current and future generations.