



Ivane Javakhishvili Tbilisi State University

Faculty of Law

Journal of Law

№2, 2017

The following issue is dedicated to the bright memory of the prominent representative of Georgian legal science, Professor Emeritus Guram Nachkebia



უნივერსიტეტის
გამომცემლობა

UDC(uak) 34(051.2)
s-216

Editor-in-Chief
Irakli Burduli (Prof.,TSU)

Editorial Board:

Prof. Dr. Levan Alexidze - TSU

Prof. Dr. Lado Chanturia - TSU

Prof. Dr. Giorgi Davitashvili - TSU

Prof. Dr. Avtandil Demetrashvili - TSU

Prof. Dr. Giorgi Khubua - TSU

Prof. Dr. Tevdore Ninidze - TSU

Prof. Dr. Nugzar Surguladze - TSU

Prof. Dr. Besarion Zoidze - TSU

Prof. Dr. Paata Turava - TSU

Assoc. Prof. Dr. Lela Janashvili - TSU

Assoc. Prof. Dr. Natia Chitashvili - TSU

Dr. Lasha Bregvadze - T. Tsereteli Institute of State and Law, Director

Prof. Dr. Gunther Teubner - Goethe University Frankfurt

Prof. Dr. Bernd Schünemann - Ludwig Maximilian University of Munich

Prof. Dr. Jan Lieder, LL.M. (Harvard) - University of Freiburg

Prof. Dr. José-Antonio Seoane - University of A Coruña

Prof. Dr. Carmen Garcimartin - University of A Coruña

Prof. Dr. Artak Mkrtichyan - University of A Coruña

Published by the decision of Ivane Javakhishvili Tbilisi State University Publishing Board

© Ivane Javakhishvili Tbilisi State University Press, 2018

ISSN 2233-3746

Davit Churghulia*

Problematic Issues of Protection of the Rights of Owners of Neighboring Property in Issuing Construction Permits and Construction Planning

The article deals with the issues related to the protection of the property rights of neighboring property while construction planning and issuing construction permits. The mentioned issue is one of the cornerstones of the construction law. The importance of the issue is due to a significant increase in construction activity in recent years and issues of protection of the rights of persons participating in this process as well as the issues of protection of the rights of those who are directly or indirectly related to civil work. In addition, it should be emphasized that the growth of architectural-building activities is directly related to the improvement and development of the legislation in this sphere; therefore an important challenge is the analysis of the applicable legislation and the study of the probabilistic issues identified during its practical use. The article focuses on the basic concepts of the construction law and its constitutional-legal basis, the rules and stages for issuing building permits, peculiarities of administrative proceedings, participation of persons interested in production and protection of their interests. It also reviews the legal status of the owners of the neighboring property while building the construction, which is necessary for the effective protection of their rights. In addition, the shortcomings existing in practice, specific positions related to the matter are reviewed and the specific ways of elimination of deficiencies are discussed, which hopefully will make its modest contribution to the development of the relevant field.

Key Words: *Construction Law, Construction, Construction permit, Development Regulation Plan, Urban Planning document, neighboring building.*

1. Introduction

One of the most advanced places in the fields developed in recent years in Georgia takes the construction activities, and therefore a significant challenge is the correct and consistent legal regulation of the sector. Construction law is one of the disciplines regulated by the special part of administrative law. Despite its actuality, construction law is less studied in legal science.

As it is known, for the legislative regulation of the construction activities it was necessary to make relevant amendments to the number of laws or regulations, the new regulatory acts have been adopted and important procedures have been issued, However, existing legislation requires a number of important issues to be developed and clarified to ensure that all directions of the field to be encompassed within the right legal frame. The legislative innovations adopted have demonstrated in practice many shortcomings and issue, which requires not only the amendments and perfection but also the new approaches and harmonization with the international norms.

One of the most important issues is the specification of issuing construction planning and construction permits and implementation of measures to protect the rights of owners of neighboring property. In internal organs of state control agencies, as well as in the higher administrative authorities and court the number of applications, lawsuits and appeals has increased dramatically; the plaintiffs or the interested persons are asking to

* Doctoral Student at Ivane Javakhishvili Tbilisi State University Faculty of Law. Visiting Lecturer at National University of Georgia.

study the facts of violation of their rights by the nearby building owners and protection of their infringed rights. In practice, the number of neighboring disputes has been raised mainly due to the consequences resulted in the enforcement of the acts issued by the administrative organs.

That is why the focus is made on the analysis and study the correctness of the measures carried out for using the land plots for construction, the shortcomings relating to the construction planning, specific legal forms of the activities of the administrative bodies in the field of construction permitting process, participation by the acts issuing agencies, the guaranteed rights of the owners of the properties in the vicinity of the planned construction, protection of their interests, practice gaps and searching for the ways to solve the mentioned.

2. Basic Concepts of Construction Law and its Constitutional Legal Basis

“Construction law includes both public and private construction law. The subject of private construction law is the private legal relationship arisen in the construction process and balancing the private interests of neighbors. Public construction law, as a special part of the administrative law, is the combination of the norms that - taking into account the public interests - regulate the issues of using the land plots for construction, namely: the admissibility of the construction of a building, the construction process, the necessary characteristics of a building, the legal regime for its use, change and dismantling; also it establishes the norms for protection of law order in the construction field and the scopes for the use of land for construction purposes.

Construction Law is a complex area that has been constantly growing in recent decades. This is due to the growth of the construction process as well as the lack of land plots for construction purposes. As far as the overuse of the territories for the construction may lead to the violation of the rights of third parties, as well as public interests, it is clear that there is the need to subordinate the use of the land plots for construction and other purposes to the certain rules and restrictions, which provides regulated usage of the land.”¹

According to legal nature, there is also an opinion that the construction law is a hybrid field of law, since it includes both public and private elements.² As noted above, the construction law is divided into two parts - public and private construction law; the public construction law - the subject of this research – in turn is divided into the construction planning and construction order law. “Construction planning law is related to the territory. It belongs to the territory planning law and includes the issues related to the use and arrangement of the territory within the territorial units (town development). The town development law, in turn, is divided into general and private parts. The general part incorporates the issues such as a general plan of city planning (for example, “General Plan for Prospective Development of Capital City”), use of the territory for construction and other purpose, land plots utilization and the environmental protection measures. The general part establishes the legal and contextual preconditions for development of the utility urban planning. The norms of the special part regulate the problematic issues such as urban construction rehabilitations works and renovation, as well as promotion, protection and maintenance of city building.

Construction order law is linked to the construction object and sets the legal requirements applicable to the buildings that are to be constructed.”³ “Given the scope of the regulation, construction order law includes the norms establishing the administrative proceedings and restrictions in the construction field for ensuring public order and safety, maintenance of the sustainability of the buildings, also setting the obligation for elimination of any illegal and dangerous conditions.”⁴

¹ Turava P., Basic Concepts and Institutions of Construction Law, Legal Journal №2, 2009, 121 (in Georgian).

² See Details for the Legal Nature of the Construction Law: *Gegenava D.*, Construction Law and its Legal Nature, Legal Journal “Sarchevi”, 1(2), Tbilisi, 2011, 24-32, (in Georgian).

³ Turava P., Basic Concepts and Institutions of Construction Law, Legal Journal, №2, 2009, 122 (in Georgian).

⁴ Ibid,122.

It is impossible to talk about the construction law, its legal nature, basic principles, other problematic issues and not to pay attention to the right to property. The Constitutional legal basis of the constitutional law is the right to property. The constitutional grounds of the construction law are also derived from Article 1012 of the Constitution of Georgia that ensures guarantees of local self-government, guarantee of local authority within the exclusive authority.

“When studying the constitutional-legal basis of the construction law, special attention must be paid to the constitutional right of property. Property rights recognized by the Article 21 of the Constitution of Georgia (hereinafter referred to as “CG”) is, on the one hand, a guarantee of ownership as an institution and, on the other hand, the right of a person to the property. The essence of the institute for property rights is the protection of private property as an objective value and the real ensure of its existence, which is primarily aimed at legislation; the legislator cannot publish such norms that would challenge the private property as an institution. The Constitution of Georgia recognizes the basic rights as the directly applicable law, which limits all three branches of government. The guarantee of the property as a right of a person serves to protect the legal status of the owner, in particular his/her personal right to a certain property. All of these grant individuals the freedom in the property field and, thus, the ability to independently determine his/her own life.

The social embrace of property rights takes into account the reality that the land is not multiplied, at the same time, in many ways, is indispensable. In this regard, it is limited to its free use. Socially legal and public order stipulates that the public interest in property ownership should be exposed clearer than the other property rights. In other words, land in legal relations cannot be considered as a case of movable item. In determining the contents and scope of property rights on the land, the legislator is strongly committed to the need for socially fair use than in other objects of ownership. The social function of the property on land (social bound) stipulates the exclusive limitation of owner to the property other than the property. Ownership right, on the one hand, is the guarantee of the ownership as an institution and, on the other hand, the guarantee of the right to ownership of a person, which means the freedom of construction.

Along with other opportunities of land use, the content of the property determines the possibility of using it for construction. This follows from the fact that the constitutionally protected property is characterized by the possibility of private use, especially the property to land, which, without the possibility of its use and harvesting, would not have been any value. The use of land and its cost increase subjects to the constitutional right of property. In this case the conversation will not affect the possibility of a simple profit, hopes and predictions of the future, which are not subject to constitutional right to property protection. The possibility of use of land for the construction is the essential component of ownership rights. The constitutional right of property in general and the possibility of use of land for construction purposes may be restricted by law. The norms of the construction law establish the limitation of this right under Article 21 of the Constitution and within it.⁵

As noted above, in this case the property right cannot be understood solely as the right to property, the institution, on the one hand, as on the other hand it implies property rights as a person’s right to freedom of construction. Although the owner of the land plot has the freedom to implement the construction under the applicable legislation of Georgia, this freedom is fulfilled where the legal rights and interests of others begin. Therefore legal acts regulating architectural-building activities determine the limitation of this right, naturally based on the Constitution and within its scopes. As it is known, the right to ownership is not an absolute right; the Article 21 of the CG provides for the restriction of property rights. Naturally, in this case, it does not mean the forms of restriction of property rights in general; the goal of this research is to discuss the problem of restricting the right to property rights in legal-building terms. As it was noted, the protection of the rights of the owner of the building is completed where the threat of violation of the rights of others is threatened. In this case, it is noteworthy to

⁵ *Turava P.*, Basic Concepts and Institutions of Construction Law, Legal Journal №2, 2009, 123, (in Georgian).

protect the rights of other property owners around them in the vicinity of the construction companies.

While reviewing the constitutional legal principles of construction, it should be taken into consideration that the measures of protection of the right to property guaranteed by the Constitution and its principles are applicable until the owner of the property acts on the basis of the principle of legitimate, proportionate use of its property. “Along with the objective-legal provision of property, the first sentence of Article 21 of the Constitution protects the property of each individual.”⁶ The constitution’s record, which clearly states that the property is recognized and inviolable, should be considered in the context of the issue in respect of property rights for each person, in terms of its purposeful use, the protection of ensuring this usage. In accordance with the construction law, taking into account the diversity of subjects directly or indirectly involved in the construction process, protection of property rights is a cornerstone of construction law.

3. Construction Planning

3.1 Concept, Significance and Place of Construction Planning in Construction Law

Construction planning is a crucial step in the process of construction, further development of areas dependent specifically on its accuracy. The basis for construction planning is envisaged by the law of Georgia on “Spatial Arrangement and Basis for Urban Construction”. This law is a significant achievement in terms of state planning activities and private activities to be implemented by private individuals. If look at the scopes of regulation of the law, one can have a clear vision that for the country’s sustainable development and population’s healthy and safe and creative environment this law regulates the spatial arrangement and urban construction process, including settlement, infrastructure development – taking into account the environmental and cultural heritage and sets the rights and obligations of the national authorities, natural persons and legal entities. This law establishes the subject of spatial arrangement and urban planning, principles, priorities, goals and tasks, forms and role of spatial-territorial planning and planning documents in the development of Georgian territory. Consequently, it is clear that its importance is not expressed only in the proper way of landing, but it also provides the conditions of life in a safe and healthy environment⁷.

“Successful solutions of the problems faced by modern major cities depend largely on the perfection of city spatial organization, which, above all, means rational use of the territory. In modern complex using of the land resources it is necessary to remember that its waste and loss cannot be compensated, so it is necessary to study its quantitative and qualitative sides in detail.”⁸ Therefore, it is necessary to develop the general plan of the city land use plan properly, tailored with the real situation. The main plan of land use is the main component of urban planning. Urban planning is, according to the “Local Self-Government Code”, the discretionary authority of the local self-government, more precisely, the municipalities have the power to determine the need for planning urban settlement. Construction planning is related to the architectural plans to be implemented by the local municipalities, in particular the urban planning policy and the planning of the construction of certain territories by private individuals. A brief overview of both of the issues and the need to discuss the problem is related to the issues of third parties’ rights protection in planning. The discretionary authority of local self-government does not imply that urban planning is being carried out in general in the space empty of legal requirements. “There are following criteria for the legality of the plan:

⁶ *Izoria L., Korkelia K., Kublashvili K., Khubua G.*, Comments to the Constitution of Georgia, Human Fundamental Rights and Freedom, Tbilisi, 2005, 146 (in Georgian).

⁷ See the law of Georgia on “Spatial Arrangement and Basis for Urban Construction”, article 1, [24.06.2005] (in Georgian).

⁸ *Tsiklauri B.*, Urban Construction (Construction Planning) in Construction Law, Journal “Sarchevi”, Tbilisi, 2011, 39 (in Georgian).

- • Criteria of material legality that imply the compliance of the construction of urban plans with basic human rights, planning guidelines, field requirements, compatibility principles, etc.
- • Formal lawful criteria that involve the obligation of the type of administrative proceeding, the participation of the public and the stakeholders and other preconditions.
- These criteria of legitimizing urban planning are fully compatible with the requirements of the legal and democratic state.⁹

3.2 Rights of Owners of Neighboring Property at Construction Planning and Review of the Existing Problematic Issues

Urban planning in Georgia is carried out in accordance with the Law of Georgia on “Spatial Arrangement and Basis for Urban Construction”. According to the law, planning is carried out through the Land Use Plan and Development Regulation Plan. This is referred to as a two-stage system.¹⁰

Legal definition of urban land use master plan is a document that defines the use of urban areas (land use) and the development of the basic parameters of environment and cultural heritage of spatial conditions, transport, engineering and social infrastructure, economic development and the spatial aspects of accommodation territorial issues. The urban development regulation plan is a document that sets out the land use zones for urban areas (sub-zones) and/or specifies the characteristics of individual units, development planning and architectural features of the spatial volume, placement of buildings, including the planning parameters, also specifies heritage protection and urban development characteristics, the relief organization, accomplishment and green areas, engineering and transportation infrastructure¹¹.

Realization of the right to construction guaranteed by the Constitution is significantly depended on the General Plan of Land Use and the development plan, since the plan is one of the key reasons for approving a construction permit. Nevertheless, it is necessary to note that in both cases the lawful interests of third parties, together with the realization of the right of construction, are legitimate interests. In order to better understand both of them, it is necessary to briefly describe the threats that may be arisen during preparation of the general land use plan and its implementation (local authorities) to the legitimate interests of individuals as well as the dangers and risk to the lawful interests of private regulation plan development and its approval process. It should be noted that although the regulation plan is elaborated by an interested persons, but it is approved by the local government, accordingly, in case of the development activities to be carried out by the government or an individual, the values to be protected is the individual’s guaranteed right.

“The general plan of land use has a preparatory function: it establishes general area zones and / or construction subzones within the framework of which the regulating plan for the lower level determines the prerequisites for the issue of a construction permit (the type of use, the specific parameters of the planting and other). In this case, the general plan of land use is not the basis for decision making. At the same time, the general plan of land use, except for general data, includes the coefficients of development, its intensity and planting, so in such case it is the basis for decision on construction permit and therefore it is obligatory to individuals. Unlike the general plan of land use, the development regulation plan establishes legal obligatory provisions that accurately determine the type and volume of the construction of a specific land plot, which is the basis for making a decision on issuing a construction permit.”¹²

⁹ Kalichava K., Construction Law, *Khubua G., Sommermann K.P.*, Legal Grounds for Public Governance, TSU Administrative Sciences Publication, Tbilisi, 2016, Vol. 3, 270 (in Georgian).

¹⁰ Two-stage planning details are available in *Kalichava K.*, Construction Law, *Khubua G., Sommermann K.P.*, Legal Grounds for Public Governance, TSU, Administrative Sciences Publication, Tbilisi, 2016, Vol. 3, 270-272 (in Georgian).

¹¹ See the law of Georgia on “Spatial Arrangement and Basis for Urban Construction”, article 1 [24.06.2005].

¹² *Kalichava K.*, Construction Law, *Khubua G., Sommermann K-P.*, Legal Grounds for Public Governance, TSU Admin-

Development of a land use plan is naturally important but it should be noted that it is still a document setting the general regulations. The most important document for the subject of the research is the development regulation plan, its order and its contents. “The content of the development regulation plan determines the legal nature, which it has - it is the basis for making a decision on issuance of a permit. In conclusion, it includes:

- • Type of use of land for building
- • Parameters of use of land for building
- • Placement of buildings on the land plot
- • Other information. ¹³

The main thing in this case is the information on the development regulation plan. As the plan determines the type of use of land for the construction, this implies that the development of a plan for regulating the development of the property of the existing construction site should not be limited to the use of the property.

Therefore, when developing the development regulatory plan, it is necessary to follow the principles of Law of Georgia on “Spatial Arrangement and Basis for Urban Construction”. If issues are explained in the above-mentioned order, it should be noted that building of the premises on the land plot and its parameters (dimensions) shall gain great importance. It shall be naturally meaningless unreasonable development planning in the unified environment, therefore, if a building regulation plan determines the land area of the building for the installation conditions and the dimensions of the property in such manner that the owners of adjusting properties subject to harmful influence on their stability and strength, naturally the third persons interests shall not be protected. That is why it is important to note that in the realization of the city’s architectural-development development and construction rights, the primacy is the protection of the rights and interests of the persons whose living environment is reflected in the design. It is necessary to protect the guidelines defined by the Law of Georgia on “Spatial Arrangement and Basis for Urban Construction“. Article 5 of the Law strictly sets out the principles that directly lay the basis for human rights and the protection of private property protected by the Constitution of Georgia, the right to secure a safe and healthy environment in relation to the protection of the environment and the recreational areas and the protection of cultural heritage.

According to the above, in the form of a resume, it can be said that the construction planning (urban construction) place in the construction law system is of utmost importance and can be reflected in both private construction and public law. Consequently, the role of construction planning in public construction law is large, since taking into consideration the public interest in placing the land plot is a necessary precondition; these requirements are set out in the regulatory legislative acts. Building planning measures should be taken so that the risk of violation of fundamental human rights violations does not lead to harmful consequences of their interests, since human rights protection is one of the most important institutions of the construction law.

4. Construction Permit

4.1 Rule and Stages of Issuing Construction Permits

The rule and terms of issuing a construction permit in accordance with the applicable legislation of Georgia are regulated by the Law of Georgia on “Licenses and Permits“, as well as the Resolution №57 of March 24, 2009 of the Government of Georgia on the Rules of Issue of Construction Permit and Construction Conditions (hereinafter referred to as “Resolution”). The first article of the Resolution states that this Resolution includes

Administrative Sciences Publication, Tbilisi, 2016, Vol. 3, 272-273(in Georgian).

¹³ Ibid, 272-273.

the sphere of regulation of legal public relations relating to the construction permit on the territory of Georgia. Namely, it regulates the process of issuance of construction permit on the territory of Georgia, implementation of permit conditions and the process of putting the buildings into operation.¹⁴

The significant achievements of the Resolution are the principles on the basis of which the construction permit is issued and the construction conditions are determined. These principles are:

- Life and health security;
- Ensuring safe environment;
- Protection and maintenance of cultural heritage;
- Protection of property rights and realization;
- Publicity;
- Etc.

In accordance with the requirements of the Georgian legislation, the construction permit is issued in three stages:

I stage – establishment of urban construction conditions (approval of the terms of use the land plot for the construction)

II stage – agreement of the architectural-construction project

III stage – issue of construction permit

Individual administrative proceedings are underway at each stage. Of course the administrative-legal acts related to the stages must be in compliance with the requirements set forth in the Chapter IV of the General Administrative Code of Georgia (hereinafter referred to as “GACG”). Positive completion of administrative proceedings envisaged in the previous stage is a guarantee that the permit seeker will be given the opportunity to start the procedures provided by the next stage. The construction permit shall be issued by the simple administrative proceedings established by the Chapter VI of the General Administrative Code of Georgia and in accordance with the Law of Georgia on Licenses and Permits.

While reviewing the construction permit and its issuing rule, we have to focus on the important issues such as classes of buildings. Buildings are divided into 5 classes:

- I class – buildings, which do not require construction permits;
- II class – buildings with low risk factor;
- III Class – buildings with a medium risk factor;
- IV class – buildings with high risk factor;
- V Class – building with excessive risk factor (buildings of special significance)¹⁵.

It is necessary to interpret the construction permit before reviewing the peculiarities of the stages, its participant subjects, the rights of the third parties and their guarantees, and the gaps in practice; also it is necessary to determine the conditions for using the land plot for the construction and agreement of the architectural design.

Conditions for the use of the land plot according to the Resolution are the conditions which are necessary to be fulfilled for the construction activities on a particular construction land plot. Based on these conditions, the construction documents are drawn up. The conditions determined for the use of the land plot should reflect the mandatory requirements set forth by the legislation, including this Resolution, which are necessary for drafting

¹⁴ Resolution №57 of March 24, 2009 of the Government of Georgia on the Rules of Issue of Construction Permit and Construction Conditions, article 1.

¹⁵ Resolution №57 of March 24, 2009 of the Government of Georgia on the Rules of Issue of Construction Permit and Construction Conditions.

the documents.

As for the next stage, the agreement of the architectural and construction design, it should be noted that the legislation gives the opportunity to unite the second and third stage with the request of the permit seeker. This option is related to the great interest of construction and the willingness to start construction in the timeframe by the investors. The possibility of the agreement of the architectural-building design may have the permit seeker only after determining the terms of the use of the land plot.

The issuance of a construction permit is the last, third stage of the administrative proceeding and after its completion there shall be issued an individual-legal act, which is the legal basis for the construction.

Each of the above described stages is characterized by certain peculiarities. The number of subjects participating in them makes them interesting and diverse.

4.2 Peculiarities of Administrative Proceedings for Issuing Construction Permits and Participation of Interested Persons

A brief overview of the procedure for issuing the construction permits should be discussed in order to better understand the legal relations arising in the issuance of construction permits, it is also necessary to review the acts used in the issuance of a permit, as well as to analyze the entities and their rights and obligations.

The administrative proceedings for issuing a construction permit shall be in compliance with the rules and conditions of administrative procedure set forth in Chapter VI of the GACG. Construction permits are issued through simple administrative proceedings. The exception is the first stage – establishment of the urban construction conditions (approval of the terms of use of the land plot for the construction). It is somewhat characterized by the peculiarities, in particular the legislator has determined that the decision on approval of the terms of the use of the land plot is made by the administrative body issuing the construction permit in the form of public administrative procedure established under Chapter IX of the GACG. This is a very important reservation in the legislation and it is firstly related to the publication of information on implementation of the planned construction in the territory to any interested person.

The condition that the first stage is managed through the public administrative proceedings was not envisaged by the initial edition of the Resolution №57, so the neighboring landowner received information about the construction of the building only when a construction permit had been issued and on that basis of that permit certain types of works had been commenced, so the review of the first stage through the public administrative proceedings should be considered as an important achievement in terms of the rights of the person concerned.

While discussing the construction relations in terms of the administrative context, the concept of the stakeholders was also noted. According to the GACG, the interested party is any natural or legal person, an administrative body, for which the administrative legal act is issued and the legal interests of which is directly subjected to the actions carried out by the administrative body or an administrative legal act.¹⁶ “It is possible that a particular interested party does not participate in the activities related to the issuance of construction permits. In what way do we put such a person’s interest in this case? If the permit seeker is involved in the event, even in silence, the third person whose legitimate interest may be limited by any form of activity may be in more serious conditions.”¹⁷

Here we face a major problem relating to the realization of those owners’ rights and neglect of their interests, who are the owners of the property located in the vicinity of the construction; their living conditions, the right to live in healthy environment, is strengthened by the Constitution and other legislative acts. “What pro-

¹⁶ General Administrative Code of Georgia, article 2.

¹⁷ *Tsiklauri I.*, Issues of Administrative Proceedings for Issuing Construction Permit, Davit Batonishvili Institute of Law, *Giorgadze L.(ed.)*, Tbilisi, 2013, 122-123 (in Georgian).

fects a person under the law, who does not participate in administrative proceedings related to the issuance of a construction permit, but is an interested party? In fact, he/she may only get information through the news board. Fortunately the resolution defines the obligation of placing the information on the board.¹⁸ In such cases, the legislation is quite weak and it is fairly indicated about the public-legal protection of the neighbor's interests in the legal literature.¹⁹ The neighbor, whose legitimate right and interest are damaged due to the ongoing and / or implemented construction on the plots nearby, unfortunately does not have real leverage. In such a case, the interested party or the neighbor may only request the study of lawfulness of the issuance of a permit or challenge the lawfulness of the issued act. The construction legislation does not include a clear and uniform reservation on the guarantee of the protection of the neighbor's interests.

4.3. Problems Related to the Protection of the Rights of Owners of Neighboring Property as a Result of Issuing Construction Permits - General Review of Legislation and Existing Practice

The Resolution №57 of March 29, 2009 of the Government of Georgia on the on the Rules of Issue of Construction Permit and Construction Conditions can only be related as a thesis to the interests of owners of neighboring property at issuing the construction permit. The article 35 of the Resolution states that in the course of the new construction and the reconstruction existing building facilities, the impact assessment on the existing building should be carried out. In the event that planned constructions may influence their sustainability, the construction of this building-structure should be investigated. Though the resolution determines that it is necessary to assess the impact of the building on the adjacent plot, it will not be enough to ensure the security mechanisms. The problem here is that the rule of issuing a construction permit is regulated by the abovementioned Resolution, but the regulation of the construction prior to issuing construction permits is set forth by the Law of Georgia on "Spatial Arrangement and the Basis for Urban Construction" and the relevant act(s) of the local municipal representative body.

In case of Tbilisi city - the №14-39 Resolution of May 24, 2016 of the Tbilisi City Council on Approval of the Rules of Regulation of the Use and Development of Tbilisi Municipality Territories²⁰. It is possible to provide one example that clearly shows that between the rule of issuing a construction permit and the regulation of the development is an important obstacle that will be significant obstacle when practicing in real life. The Resolution №14-39 indicates that the door, window, cellar and other open parts in the walls arranged in the neighboring border cannot be used to block the construction of the new building in the adjoining land. In accordance with this Resolution, the building or part thereof located within the zone of the land plot shall be the one, which is less than 3.0 meters away from the neighborhood²¹.

Naturally, after these regulations it is difficult to talk about any kind of expert assessment and protection mechanisms. Although the 35.5th clause of the Resolution №57 indicates that during the civil works in the conditions limited to the established development the customer, designer and builder must ensure all the necessary measures to eliminate the deformation and damage to the building constructions by their reasons, the customer shall be obliged during confirmation of this fact: at his own expense to repair the damage and deformation to the building and construction in the land adjacent only in the event when such deformation and damage cannot

¹⁸ Ibid.

¹⁹ See in Details: *Kalichava K.*, Control of Admissibility of Construction Activities in Georgia (Reforms Need and Prospectives), Administrative Law, Scientific Journal. *Kopaleishvili M.* (ed.), Vol. 2, Tbilisi, 2016, 93-104 (in Georgian).

²⁰ The mentioned regulation concerns the capital and the example is provided within the regulations set forth for Tbilisi.

²¹ See №14-39 Resolution of May 24, 2016 of the Tbilisi City Council on Approval of the Rules of Regulation of the Use and Development of Tbilisi Municipality Territories, article 30.

be corrected and make compensation on the basis of the agreement with the owner of the adjusted damaged building.

Despite these records the practice shows that as a result of the approved urban development plans and the permits the referral to the court by the neighboring property owners has been sharply increased with the claim of building damage, violation of their rights and living conditions or the sharp deterioration of their conditions.

The various works and articles of construction law researchers also focus on this issue and express their opinion that the protection of rights is difficult for construction permits and existing legislation requires significant reform. “The right to protection against building permits includes both the permit seeker’s and the neighbor’s rights, which implies the protection of two opposing interests in practice.”²² The legal leverage in respect of the issue of the rights of owners of the neighboring plot is not so effective. “The neighbor, whose legitimate rights and interests are damaged due to the construction in the neighboring land, can apply for the protection of the rights to the court on the basis of the article 22 or 24 of the GACG. At the same time, it is important in the neighbor’s notion not only the plot configuration but also the real threat arising from that plot and threatening the owner of a neighboring plot.”²³

The practice of the Supreme Court of Georgia has been established in this type of cases in the manner that the issue of deteriorating of the existing property and protection of owners’ rights gains the great importance. The Court explicitly indicates that the construction activities are so versatile and difficult that only on the basis of the expert’s report can be determine the impact on the adjacent property²⁴. The number of disputes and court practice shows that the legislation has to be improved in this regard and more attention be should given to the expertise to ensure human rights protection in construction. Although the quality of expertise, licensing of expert activities and other related legislative acts does not exist at all, or those which are applicable are not functioning effectively, it is necessary to maintain the existing minimum regulations in order to avoid deplorable results.

5. Conclusion

It is clear that as a result of detailed review of the issues the number of important legislative or practical shortcomings have been identified that require improvement and regulation. Implementation of the above is very important in order to avoid chaotic architectural-building development after the urban planning and construction permit issue on the one hand and prevent any violation of universally recognized human rights guaranteed by the constitution of the country on the other hand.

It is necessary to eliminate the major deficiencies demonstrated on the basis of the issues reviewed above for the effective and comprehensive fulfillment of the functions assigned to them by the local self-government bodies.

While discussing a number of issues, the general picture of the current legislation was also demonstrated and the systemic shortcomings and gaps of the field were identified.

Among the existing deficiencies it should be emphasized the issue of absence of a uniform and regulated system of development and the powers confined to various commissions or working groups functioning under the self-government bodies. At the same time, there are significant contradictions in the regulating legislative basis. On the one hand, it is as if the rules for placement and separation of premises on the land plots are defined, but the in-depth study of existing practices and legislative acts demonstrate that the legislative provisions

²² Kalichava K., Construction Law, *Khubua G., Sommermann K-P.*, Legal Grounds for Public Governance, TSU Administrative Sciences Publication, Tbilisi, Vol. 3, 2016, 299 (in Georgian).

²³ Ibid.

²⁴ Decision of July 18, 2012, №bs-1015-1007-(k11), of the Supreme Court of Georgia (in Georgian).

themselves contradict the fundamental principles. The existing stipulation according to which this or that permit/consent should be obtained in compliance with the special rule contradicts the general principles; the mentioned situation fails to provide the comprehensive mechanisms securing the interests of citizens, which ultimately leads to the need for expertise, judicial disputes and other processes dragged on for too long.

In conclusion, it is necessary to make the number of amendments at the level of legislation in order to provide the resolution of the problematic and contentious issues indicated in this article, which may be managed on the basis of the fundamental reform, but at the same time it is necessary the relevant authorities to ensure the fulfillment of their assignments on the basis of the principle of legality before the implementation of the reform

Bibliography

1. Constitution of Georgia, 25/08/1995.
2. General Administrative Code of Georgia, 15/07/1999.
3. Law of Georgia on “Spatial Arrangement and Basis for Urban Construction”, 24/06/2005.
4. Law of Georgia on Licenses and Permits, 18/07/2005.
5. Resolution №57 of the Government of Georgia on the Rules of Issue of Construction Permit and Construction Conditions, 24/03/2009.
6. №14-39 Resolution of the Tbilisi City Council on Approval of the Rules of Regulation of the Use and Development of Tbilisi Municipality Territories, 24/06/2016.
7. Local self-government code of Georgia, 19/02/2014.
8. *Izoria L., Korkelia K., Kublashvili K., Khubua G.*, comments to the Constitution of Georgia, Human Fundamental Rights and Freedom, Tbilisi, 2005, 146.
9. *Turava P.*, Basic Concepts and Institutions of Construction Law, Legal Journal №2, 2009, 121,122, 123.
10. *Gegenava D.* Construction Law and its Legal Nature , legal journal “Sarchevi”, 1(2), Tbilisi, 2011, 24-32.
11. *Tsiklauri B.*, Urban Construction (Construction Planning) in Construction Law, Journal “Sarchevi”, Tbilisi, 2011, 39.
12. *Tsiklauri I.*, Issues of Administrative Proceedings for Issuing Construction Permit, Davit Batonishvili Institute of Law, *Giorgadze L. (ed.)*, Tbilisi, 2013, 122-123.
13. *Kalichava K.*, Construction Law, *Khubua G.(ed.)*, *Sommermann K.P.*, Legal Grounds for Public Governance. TSU Administrative Sciences Publication, Tbilisi, 2016. V.3. 270, 271, 272, 273, 299.
14. *Kalichava K.*, Control of admissibility of construction activities in Georgia (Reforms Need and Prospectives) Administrative Law, Scientific Journal, *Kopaleishvili M. (ed.)*, Vol.2, Tbilisi, 2016, 93-104.
15. Decision of the Supreme Court of Georgia over the case №bs-1015-1007-(k11) 18/07/2012.