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Construction Permit Administrative Proceedings as a Mechanism for Implementing Construction Safety

The article reviews one of the most important institutes of construction law – construction permit, and construction safety issues arising within permit issuing administrative proceedings. According to the article construction permit issuing proceeding is considered as basic mechanism and way of ensuring construction safety. There is underlined that permit issuing administrative proceeding is the best stage for achieving construction safety because of its functions and instruments. For this purpose, we discuss functions of administrative proceeding and the problems and characteristics of participation of interested parties in the proceedings. The article also refers to an unsolved problem of qualification of the persons submitting the construction documents and the officers authorized to examine these documents. We provide the best examples of foreign countries herein and offer some ways of solving the problems. Another issue discussed in the article is protection of neighbors' interests for the purpose of achieving construction safety and the importance of their involvement in administrative proceedings. Also, we argue that accelerated proceedings and formal character of examination of submitted documents are significant threats in the process of issuing a construction permit. Finally, we mention exceptional and simplified permits and the “ugly” practice of their issuance in Georgia which also lead to increasing risks.

We used comparative-law method and analysis and offered concrete recommendations and ways of improving legislation for the purpose of solving the above problem.

We hope the present article will contribute to improving construction safety issue and generally, to the construction law science.

Key words: *Construction, construction permit administrative proceeding, construction safety.*

1. Introduction

The importance of the issue of construction safety in Georgia has grown due to the speed up of construction process on the one hand, and the necessity of protecting health and safety of the people involved, on the other hand. Besides, construction safety has direct impact on the health and safety of those people who are indirectly related to the construction and may suffer irreparable damages caused by unsafe construction. Accordingly, studying the issue of construction safety has become even more relevant. The goal of the present article is to highlight the problem of considering construction safety

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issues in construction permit issuing process; analyzing applicable legislation and practical problems and finding possible solutions. The article aims to emphasize the administrative procedures of permit issuance as the main instrument of ensuring construction safety and prove that the stage of the proceedings can effectively prevent the risks and danger caused by construction.

For this purpose, the best solutions should be found in adequate understanding and implementation of the functions of administrative proceeding; also, the essence of permit issuance procedures and its characteristics and instruments. In the course of the administrative procedures there should be checked whether the planned activities are in compliance with the general and specific construction legislation requirements and especially, with the safety concept. Permit issuance procedures shall become a tool for ensuring construction safety, which will contribute to protecting the rights of all persons directly or indirectly related to the process provided that it will not contradict the principles and rules of free construction and entrepreneurship.

2. Functions of Administrative Proceeding

Administrative proceeding is the activity of an administrative body aimed at drafting, issuing and executing administrative legal act, solving administrative claims and drafting, concluding and cancelling administrative agreements.¹ Administrative proceeding is the activity of an administrative body, which is focused on making a decision. Legal regulation of the procedures contributes to simplifying governance. Going through the preliminarily determined standard steps excludes (or minimizes) the possibility of a mistake in decision-making process.² Broad understanding of administrative proceeding includes the activities of an administrative body conducted for exercising public law authorities. For the GACG purposes the legislator offers narrow understanding of administrative proceeding, which is based on two criteria: 1) it comprises administrative body activities which have external impact i.e. internal organizational activities are not conducted within the scopes of the administrative proceedings and 2) it is used for issuing administrative legal act or concluding an administrative agreement i.e. administrative real act, private law agreement and informal government do not fall within the narrow understanding of administrative proceeding.³

Administrative proceeding comprises only those areas of the administrative body's activities which are related to making specific decisions (issuing administrative acts; concluding agreements) on the basis of public (administrative) law and have so-called "external impact" (Außenwirkung). Accordingly, the internal organization activities of and administrative body which are not related to establishing any rights and obligations of citizens or regulating any legal relationship, are not considered as administrative proceedings (Articles 16-26 and other provisions of GACG are not

¹ General Administrative Code of Georgia (GACG), paragraph "j", clause 1, article 2, Georgian Legislative Herald 32 (39) 15/07/1999.

² *Turava P.*, Fair Administrative Proceeding as a Basic Constitutional Right and its Institutional Guarantee, Compilation of Articles, Human rights Protection: Legislation and Practice, *Korkelia K. (Ed.)*, Tbilisi, 2018, 250 (in Georgian).

³ *Turava P., Pirtskhalaishvili A; Kardava E.*, Administrative Proceedings in Public Service, Tbilisi, 2020, 135 (in Georgian).

applied in such case). Nevertheless, broad understanding of administrative procedures includes all areas of administrative body's activities (administrative proceedings in narrow understanding; informal governing; conclusion of private-law agreements; internal organizational relationships, etc.).⁴ Administrative proceeding is only a part of public administration which is conducted by a public law or a private law organization using public administration instruments and the product of which is delivered in the form of an administrative-legal act or an administrative agreement.⁵

While discussing administrative proceeding as a function – one of the most strictly prescribed activity of public administration, it is important to have a clear understanding of its principles. Principles of administrative proceedings are the ideas, which have to be considered in the process of public administration by all administrative bodies/officials, and their contents expressed in various norms should be adequately observed and followed. Whereas the principles of administrative law are the guidelines which have to be absorbed in the whole governing process, they have to be applied not only to the activities within the scopes of administrative proceedings in an administrative body, but also their contents have to be reflected in all administrative activities which are conducted within the scopes of public administration in the form of an activity either by the persons with the public officer's status or private-law entities.⁶ The central point in administrative proceedings is to ensure the truth. The concept of the "truth" is broader than compliance with law and also includes the aspects of demands and interests which were not consolidated with the legal standards. The above wider goal corresponds with the ideal-typical doubtless character of the proceeding from the point of view of the decision made by the administrative body and with the important structuring authority of an administrative body that conducts the proceeding. The functions of the administrative proceedings are: gathering and processing the information related with the proceedings which serves as basis for ensuring accuracy; transparency as a general requirement for procedure configuration and effectiveness as a link between the goal and the ways of achieving it, which is mainly focused on decreasing the procedure costs. Besides effectiveness of a decision is a function which stands as another issue to ensure accuracy. The effectiveness and acceptability of a decision is stressed from the point of view of the decision compliance. And finally, the administrative proceedings are aimed at legal protection.⁷

The variety of the functions and their implementation defines the effectiveness, accuracy and lawfulness of the decisions to be made as a result of administrative proceedings.

2.1. Ensuring Function of Administrative Proceedings

Lawfulness, fairness and subjective accuracy of administrative decision requires that the essence of the presented case be completely researched, appropriate legal norms be found and adequately

⁴ Maurer H., *Allgemeines Verwaltungsrecht*, Munchen, 2011, § 19, Rn. 1 f.

⁵ Turava P., *Pirtskhalaishvili A; Kardava E.*, *Administrative Proceedings in Public Service*, Tbilisi, 2020, 36 (in Georgian).

⁶ *Ibid*, 39

⁷ Siegel T., *Rechtsschutz vor Gericht und im Verwaltungsverfahren – wechselseitige Kompensationsmöglichkeiten?* *Zeitschrift für Umweltrecht*, № 9, 2017, 451.

interpreted and the case be correctly subsumed. Accordingly, the administrative body's decision will be complete (satisfactory) after all the substantial interests are proportionally balanced.⁸

Also, we should mention regulations of administrative procedures which contribute to making lawful and objective decisions. This is the main essence and function of administrative proceedings. It is a result of comprehensive research of the decision to be made.⁹

According to the theories set forth in German legal literature administrative proceedings have material law function when a decision is made within the scopes of final program or whenever the public administration conditions itself in the framework of general legal provisions. The proceedings have material-law function especially in the cases when a decision needs democratic legitimation or if it is made within the discretion. The inherent function of administrative proceedings is "service function". It serves correct application of material law provisions in administrative proceedings. Whereas the German administrative law dogmatics was (and is still) based on the principle of material law accuracy, while the competence of making final decision was vested in court, the administrative proceedings had secondary role. Effectiveness of requiring legal protection is essentially related to material law in the framework of strict and accurate law. If there is a procedural mistake, it does not play any role when administrative body is unable to make another decision on that case. It has different impact in the areas where administrative body has more space to act, especially in discretion, free space of evaluation and planning decision. Usually in such cases it is possible that different decision would have been made if there had not been procedural mistake, e.g. if a party had been heard incorrectly, the third party had not been appropriately involved or a decision had not been adequately justified. In the decisions with a space of evaluation the administrative proceedings show the function of ensuring accuracy.¹⁰

2.2. Proceedings to Serve Fairness

The key point of the concept of "proceedings to serve fairness" is deriving fairness from material value. The basic model of "material fairness theories" a priori comprehends this value and administrative proceedings' service function becomes its founder (service proceedings). The idea of fairness of "external", "ensuring", "instrumental" or "serving" proceedings is based on the understanding of material fairness. Classifying the fairness of the proceedings as an aspect was unsuccessful. According to this approach, fairness and legitimation were not applied directly within the proceedings; it was driven from essential goal which was beyond the proceedings.¹¹

From the perspective of decision-making administration, first of all it comprehends exercising of a material right, based on a law, which becomes a standard for fair decision. It does not matter whether it comes directly from legislative process because legislative process does not have any specific function in the fairness system of service proceedings. Thus, material right, arising from a law

⁸ *Held J.*, *Der Grundrechtsbezug des Verwaltungsverfahrens*, Berlin, 1984, (Schriften zum Öffentlichen Recht, Bd. 462), 37.

⁹ *Ibid.*

¹⁰ *Kopp F.O., Ramsauer U.*, *VwVfG Verwaltungsverfahrensgesetz Kommentar* 16. Aufl., München, 2015, 21.

¹¹ *Quabeck C.*, *Dienende Funktion des Verwaltungsverfahrens und Prozeduralisierung*, Osnabrück, 2010, 26.

is a result of administrative proceedings and provides concrete definition of the scopes of material fairness which already exists.¹²

A condition for such understanding of fairness of proceedings is that difference has to be made between the contents of a decision and its adoption. The task of the proceedings is to ensure that material fairness is structurally provided in the product of the proceedings. Accordingly, the decision maker has to be adequately informed; be impartial against factual circumstances and also be able to justify the administrative decision. Despite that, the above structures do not have fundamental impact on fairness. They are only “formal assistants” on the way of reaching “*res judicata*” material fairness by normative requirements.¹³

2.3. Other Functions of Administrative Proceedings

Along with the pure “service” function the administrative proceedings have other functions too which are independent from the material law accuracy and play important role in practice. At this stage they are still considered in the legal policy discussions but enough attention is not paid to them in the dogmatics of legal proceedings. Administrative proceedings also contribute to acceptability of administrative decisions with the help of interested person. A person who participated in the proceedings, heard the proceedings, was able to follow the decision-making process and receive clear justification, even if the decision is not made in his/her favor, has more confidence and acceptability to the proceedings than the one who sees that the decision lacks transparency and participation and causes doubts that it contradicts law. Besides, through the right process an administrative body can ensure fulfillment of important integrative obligations: the persons involved in the administrative proceedings should have the possibility to see fair functioning of administrative proceedings conducted by an administrative body and participate in implementation of the applicable legal norms.¹⁴

3. Construction Permit as the Institute of Construction Order Law

Before we start discussing the essence of construction permit as the main institute of Construction order, we should clarify some issues of construction order law itself. Construction order law is an important part of law and order, which regulates the issues of preventing the threats caused by construction activities for protecting the interests under law and order. Construction order law regulates the legal relationships at construction site. The general principles of law and order are also used in construction order.¹⁵

The interest protected by the construction order law is the legal order ensured by construction law norms, which contributes to protecting both a subject’s rights (person interested in construction; third party) and public safety.

¹² Ibid, 27.

¹³ Ibid.

¹⁴ *Kopp F.O., Ramsauer U.*, VwVfG *Verwaltungsverfahrensgesetz* Kommentar 16. Aufl., Munchen, 2015, 22.

¹⁵ *Turava P.*, in: *Turava P., Kalichava K.*, *Construction Law*, Tbilisi, 2020, 160 (in Georgian).

Construction order law is divided into preventive (construction permit law and supervision of construction) and repressive (finding violations and reacting) construction order laws. The interest to be protected by construction order law is safe urban construction.¹⁶

As it was already mentioned above, construction order aims to provide appropriate mechanisms for preventing danger i.e. ensuring safety. It includes provisions determining administrative procedures and restrictions in construction area to ensure public order and safety.¹⁷ Its key point is the danger. Danger is a central concept of law and order. Only if there is some danger the administrative body responsible for the order may take the measures for protecting the order and restrict some freedoms. Only if there is a danger it may determine the obligations of responsible persons in connection with some actions or inactions.¹⁸

Construction permit is the preventive tool for avoiding threats. By going through certain procedures it contributes to preventing the harm caused by construction activities.¹⁹

It is also interesting in which part of construction order law should construction permit be included because the construction order law itself is also divided into formal and material order laws. Formal construction order law comprises organizational structure and authority of the entities executing law and order, also the decision-making procedures (types of administrative proceedings and rules of conducting the procedures). The subject of its regulation is the criteria of formal lawfulness of the decisions made in construction order area. The material construction law comprises material legal norms regulating construction activities, which are the basis for issuing individual administrative legal act.²⁰

Construction is subject to obligatory permit and preventive restriction of construction contributes to creating mechanisms for preventing threats. By issuing construction permit those restrictions are removed when correspondence with the construction law requirements is determined as a result of comprehensive examination of the intended construction activities. If the intended construction activities comply with the construction Code requirements the administrative body has to issue a construction permit. Such compliance is checked within the administrative proceedings. Construction permit is a legal document reflecting a specific case of the right to construction guaranteed by the Constitution of Georgia and construction legislation. It is not the initial source of the right to construction but it is based on existence of such right and is consequently issued.²¹

The direct definition of construction permit – the main concept of construction order law, is not given in any of the legislative acts. Generally, it is conceived to be a legal basis for conducting construction activities; it is an individual legal act issued for this purpose.

According to the opinions expressed in legal literature construction permit consists of recognizing and regulatory parts. The recognizing part of the act determines material lawfulness of the

¹⁶ Ibid, 160.

¹⁷ *Turava P.*, The Basic Concepts and Institutes of Construction Law, “Law Journal”, №2, 2009, 122.

¹⁸ *Turava P.*, in: *Turava P., Kalichava K*, Construction Law, Tbilisi, 2020, 161 (in Georgian).

¹⁹ Ibid, 163.

²⁰ Ibid, 165.

²¹ Ibid, 165-166.

intended construction activities while the regulatory part provides for removing restriction and the contents of the allowed activities.²²

There is shared the same notion in the German scientific literature which states that construction permit is an administrative-legal act as defined in paragraph 35 of the Law on Administrative Procedures (VwVfG). It consists of recognizing (determining) and regulatory, consent parts. Recognizing part comprises determining the material lawfulness of construction project. The regulatory part includes the consent of the supervisory organ on implementing the construction project. Accordingly, construction activities may not be launched before receiving the permit.²³ The regulatory part of the construction permit is the main basis for conducting the construction and it removes all obstacles related to the construction restriction purposes.²⁴

It should be mentioned that defining the legal form of construction permit has legal importance:

– The material law function of the construction permit as an individual administrative-legal act is that it is an instrument for concretizing and individualizing general abstract regulation. The material right of construction cannot be used without this legal form. Using such form creates grounds for legal reliance of the addressee on the construction permit (stabilization function)

– processing a construction permit is a legal function; it becomes basis for beginning administrative proceedings. The rights determined against the addressee (active role) is related to this form of activity in administrative proceedings (principle of cooperation).

– Construction permit is included in the regulations of executing individual administrative-legal act provided in GACG and APCG. In the privilege of self-execution of the permit issuing body is expressed its legal executive function;

– procedural legal function of construction permit is that the legal instruments of protecting rights set forth in GACG and APCG are applied to it.²⁵

4. Form of Construction Permit and its Types

Construction permit shall be issued in written form. It is based on the character of construction activities. Legislation of Georgia, namely the GACG²⁶ states that individual-legal act may be issued both in writing and verbally. In the process of determining formal lawfulness of individual administrative-legal act its justification is especially important. Each individual administrative-legal act issued in writing should include written justification. It has to include legal and factual preconditions based on which the individual administrative-legal act was issued. If the administrative body exercises its discretion it is obligated to provide the conditions on which the decision was made, in the substantiation.²⁷ There is an interesting opinion expressed in regard with substantiation in

²² Ibid, 172.

²³ Brenner M., *Öffentliches Baurecht*, 3. Aufl., Heidelberg, 2009, 192.

²⁴ Hermes G., *The German Law and Planning: An Overview*, Journal European Public Law, Vol. 8, Issue 3, 2002, 379.

²⁵ See Turava P., in: Turava P., Kalichava K., *Construction Law*, Tbilisi, 2020, 172 (in Georgian).

²⁶ GACG, Article 51.

²⁷ Kalichava K., in: Turava P., Kalichava K., *Construction Law*, Tbilisi, 2020, 76 (in Georgian).

German practice, according to which construction permit needs substantiation only when a consent depends on the provisions protecting a neighbor and the neighbor does not agree with it.²⁸ It should also be mentioned that construction permit is issued without any harm to third party's private rights which means that the construction permit determines only compliance of a project with public law while it leaves private-law rights untouched. The permit issuing administrative body does not have to consider property or obligation or other private-law rights of any third party.²⁹ Construction permit should also include reference to legal means of protecting one's rights. It enters into force in the moment of delivering it to the permit seeker in accordance with law.³⁰ Construction permit is issued for a reasonable term defined in construction organization project. It contributes both to protecting the interested party's rights, who should be given enough time to accomplish what he/she has intended to do and to public interest which comprehends that the process should not last too long in order to avoid conflict with social interests (noise caused by construction works, pollution, facades).³¹ Along with the typical construction permit the legislation provides for other types of permits too. They have specific characteristics. In Georgian legislation we have typical construction permit; preliminary permit, so called fictitious permit and construction notification.

5. Types and Functions of Administrative Proceedings on Issuing Construction Permit

Construction permit is a hierarchical permit and consists of consecutive stages. There are separate administrative proceedings for each stage. Simple administrative proceeding is used for issuing a construction permit.

Simple administrative proceeding is one of the most important types of administrative proceedings. According to paragraph 2 of Article 72 of GACG if there is no necessity of other type of administrative proceedings determined in a law administrative body shall draft an individual administrative-legal act through simple administrative procedures. Simple administrative proceeding serves as the basis for other types of proceedings set forth in General Administrative Code of Georgia. Simple administrative proceeding is conducted in accordance with Chapter VI of GACG.³²

Administrative proceeding is designed for making a decision. It is a process of making a decision. It should be mentioned that before making a decision there should necessarily be defined the problem to be solved by it and the goal of the decision i.e. legal and non-legal scopes of the decision; also, possible alternatives of the decision should be researched and the legal and factual restrictions should be identified.³³

Importance of administrative proceedings and right use of its instruments is the basis for issuing fair and lawful final decision. For better understanding of this issue administrative procedure

²⁸ Brenner M., *Öffentliches Baurecht*, 3. Aufl., Heidelberg, 2009, 191.

²⁹ Ibid.

³⁰ Law of Georgia "Spatial Planning and Architectural and Construction Activities Code", LHG 313, 11, 20/07/2018.

³¹ See Turava P., in: Turava P., Kalichava K., *Construction Law*, Tbilisi, 2020, 177 (in Georgian).

³² Turava P., Tskepladze N., *Handbook of General Administrative Code*, Tbilisi, 2013, 178-179 (in Georgian).

³³ Turava P., Kharshiladze I., *Administrative Proceedings*, Tbilisi, 2006, 10-11 (in Georgian).

characteristics of permit issuing stages will be shortly discussed below. Besides, it is important to discuss the characteristics of administrative proceedings which shall be used for decreasing the risks arising from construction works.

6. Participation of Other Administrative Bodies as an Instrument for Decreasing Threats

Legislation of Georgia provides for the possibility of other administration organs' participation in the process of construction permit issuing. In some cases, it is related to construction works on special sites or buildings under special regulations.

Participation of other competent administrative bodies is another mechanism for ensuring lawful and substantially correct decision. Making a complex decision in which many social demands should be considered can be ensured by different administrative bodies. Accordingly, compliance of a project with public requirements can be determined with the help of several administrative organs with sectoral expertise. Cooperation of several specialized administrative organs is also important for "pluralistic administration" in order to use unified administrative expertise and come up with a right decision.³⁴

Along with the administrative organ authorized to issue the permit, other administrative organ is involved in the administrative proceeding on issuing construction permit in the terms set forth by article 84 of General Administrative Code of Georgia, on the basis of permit issuing agency's decision, for the purpose of participating in the procedures related to approving the conditions for using a piece of land for construction or/and agreeing architectural project (including but not limited to two-stage procedures)³⁵

The issue of the sites which are subject to ecological expertise and are related to decreasing the environmental harm, should be underlined herein. Current legislation determines the constructions on which construction permit may be issued only after conducting ecological expertise.³⁶ It should be mentioned that legal literature includes multiple interesting opinions in regard with ecological expertise.³⁷ There is stated that "in Georgian law the conclusion of ecological expertise has the meaning of "negative votum". Namely, a positive conclusion of an ecological expert is an obligatory precondition for receiving construction permit, otherwise a permit will not be issued. On the other hand, whereas the legislator does not determine the conditional (anticipatory) requirements, drafting an ecological expert conclusion is a result of broad discretion powers because of which construction permit automatically gains repressive character."³⁸ That is why there is a point of view that like some

³⁴ *Held J.*, *Der Grundrechtsbezug des Verwaltungsverfahrens*, Berlin,1984, (Schriften zum Öffentlichen Recht, Bd. 462), 39-40.

³⁵ *Turava P.*, in: *Turava P., Kalichava K.*, *Construction Law*, Tbilisi, 2020, 182 (in Georgian).

³⁶ The list of premises which are subject to ecological expertise and the rules of conducting the expertise are regulated by the Code of environmental Evaluation of Georgia.

³⁷ *Kalichava K.*, *Environmental Law*, Tbilisi, 2018, 186-197 (in Georgian).

³⁸ *Kalichava K.*, *Controle of Permissibility of Costruction Activities in Georgia (Necessity of Reform and Perspectives)*, "Administrative Law Journal", № 2, 2016, 96 (in Georgian).

developed countries (e.g. Germany) the role of ecological expertise first of all has to be procedural and related to the aspects of evaluating the impact on environment, rather than have the function of negative votum.³⁹

Of course, the above innovation contributes to minimizing negative ecological consequences but it is also important that such procedures be implemented by permit issuing agencies on the basis of comprehensive research of the issue when the presented documents are studied and evaluated by appropriate experts and the procedure is not only formally carried out. The first stage of permit issuing procedures was chosen as the best stage for ensuring prevention of ecological harm caused by construction and minimizing the risks.

Another issue which refers to involvement of other administrative body is fire safety. For the purpose of obtaining an assessment of the fire safety and ensuring observance of fire safety requirements in the premises under state fire safety supervision a permit issuing agency consults Emergency Management Service, a legal person of public law under the management of the Ministry of Internal Affairs of Georgia. It is a significant advancement of construction legislation. The practice showed that failure to observe the fire safety rules threatens not only those premises where fire may start but also it can become a source of increased threat for the lives and health of neighboring property owners. Participation of an authorized agency in the permit issuing process should be considered as an important measure of prevention.

Except the organs mentioned herein the legislation provides for the list of other agencies which participate in the construction permit issuing procedures.⁴⁰ Their involvement depends on the specific characteristics of a construction permit to be issued and the construction type. For example, if the permit issuing proceeding is conducted on protected territories the Agency of Protected Territories should be involved in the proceedings; if the permit issuing proceeding is conducted on the state water reserves' territory, water line or zone, the Ministry of Environment Protection and Agriculture should participate, etc. The above measure are designed to ensure involvement of appropriate authorized agencies and prevention of danger which may be caused by construction works.

7. Participation of Interested Parties in the Administrative Proceedings through the Prism of Danger Prevention

The General Administrative Code of Georgia defines the interested party as any physical or legal person or administrative organ to which the administrative act refers and whose legitimate interest is directly and immediately affected by administrative-legal act or an administrative body's action.⁴¹ The GACG provides for the party's right to be involved in administrative proceedings and in some cases determined by law, administrative body is obligated to ensure its participation in the administrative procedures. This obligation mostly refers to the cases when and individual

³⁹ Ibid, 96.

⁴⁰ Resolution of the Government of Georgia № 255 on "the Rules and Conditions of Issuing Construction Permit and Approving Validity of Building", Article 3.

⁴¹ GACG, Article 2, HLG, 32(39), 15/07/1999, 1

administrative-legal act may have negative impact on legal condition of an interested party. The right of an interested party to participate in administrative proceedings is especially important for exercising the rights of accessing proceeding materials and expressing his/her opinion which are set forth in GACG. The GACG provides for the possibility to restrict this important procedural right on the basis of administrative organ's substantiated decision if conducting the proceedings without interested party's participation is justified by protecting public and private interests. The justified decision of an administrative body should include explanation why certain private of public interest was given priority based on the proportionality principle.⁴²

Article 96 of GACG sets forth an administrative body's obligation to research all important circumstances of the case during the administrative proceedings and according to Article 97 any evidence and decision should be accepted based on their evaluation and correlation. This obligation of an administrative body underlines important procedural right of an interested party. Such procedural rights of an interested party guaranteed by GACG are important from the point of view of legal protection because it should be provided not only in the court but also in the process of decision-making by an administrative body.

At the stage of researching important case circumstances and obtaining evidence there can be provided better protection of an interested party's interests than in the process of correcting mistakes within the scopes of court hearing because the court has limited scopes for reviewing the decision made within administrative discretion (undefined concepts; free space of evaluation).⁴³

Considering that the decision is mostly related with citizen's behavior the essence of the case often depends on the circumstances which can be explained only by the citizen himself/herself. In most case the interested party is a "carrier of important knowledge". Accordingly, hearing the interested party is an essential tool to ensure that a decision is made on the basis of the true story and consequently be lawful.⁴⁴

Clearly the interested party's rights are important from the point of view of legal protection in order to prevent damages. Thus, in construction law immediate impact is directly related with the process of issuing a permit and participation of an interested party. Probability of causing danger should be determined with a high standard of proof. Besides the interested parties should be able to express their opinion before the real threat of violation of their rights occurs. Participation of an interested party in the permit issuing proceeding is an important factor for increasing legitimacy of the proceedings. Accordingly, it should be clear how difficult is the challenge for the administrative organ which has to ensure protection of the rights of all persons participating in the proceedings. The problems arising in practice and the great number of court disputes evidence that the construction legislation needs essential reforms in connection with the above issues.⁴⁵

⁴² *Turava P., Pirtskhalashvili A., Kardava E.*, Administrative Proceedings in Pulic Service, Tbilisi, 2020, 144 (in Georgian).

⁴³ *Ibid*, 145.

⁴⁴ *Held J.*, *Der Grundrechtsbezug des Verwaltungsverfahrens*, Berlin,1984, (Schriften zum Öffentlichen Recht, Bd. 462) 38.

⁴⁵ Statistics of the claims and disputes reviewed by Cassation Chamber in 2012-2017, See compilation: Homogenous practice of the Supreme Court of Georgia regarding disputes arising out of construction relations (2012-2017), *Jorbenadze S. (Ed.)*, Tbilisi, 2018, 17-19 (in Georgian).

7.1. The Problem of Lack of Information for Interested Party

Because of the potential threats arising from construction it is considered to be an activity in which accessibility of information for an interested party has essential importance. How can one get information about the construction which can cause great damages for him/her? The current legislation offers only the information board. However, the information board which is mandatory for the permit seeker to place at the first stage of permit-issuing proceedings⁴⁶ includes notification only about the fact that construction is planned on the piece of land and the permit-issuing administrative proceedings are conducted. At the first sight the information provided on the board may seem comprehensive but the applicable legislation does not set forth any limitations for the owner to correct the building included in the project, change its function, sizes or/ and exterior before or after starting the construction works while the interested party may not be able to find such information. The legislation which regulated this issue before the new Code entered into force, could not ensure appropriate measures of protection. Unfortunately, the new Construction Code does not provide for any effective instrument either. It does not include the obligation of keeping the information on the board accurate. Thus, the interested party is deprived the ability to use his/her protection instruments appropriately. There are still significant defects in respective provisions of the applicable legislation.⁴⁷

7.2. Importance of Neighbor's Participation in Construction Permit-Issuing Administrative Proceedings

One of the most important instruments for legitimation of the process of obtaining construction permit and avoiding disputes is participation of a neighbor in the permit-issuing administrative proceedings. Neighbor is a conditional concept, especially in Georgian reality. For the purposes of construction law neighbor should be defined as the owner of the piece of land bordering the construction site because the planned construction works may have some impact on the property of the bordering landowner or imply such risks.

The practice of some foreign countries in this area is interesting. The German literature includes clear reference that there is no general definition of neighbor, it depends on each specific case. For clarifications, the spatial and normative approaches and accordingly personal approaches may be used. According to the spatial approach a neighbor can be not only the person directly bordering the site but also any other person protected by law. The notion of a neighbor is based on material understanding rather than formal basis.⁴⁸ For example, if the spatial distance regulations are not observed in the construction process it usually has negative impact on bordering piece of land. On the other hand if the construction project implies emissions it will affect not only the bordering pieces of land but also some

⁴⁶ SPACACG, Article 110.

⁴⁷ Criticism of information board in details, see *Churghulia D.*, The Ways of Solving the Legislative and Practical Problems of Construction Permit in the Light of New Construction Code, "Law Journal", №1, 2019, 294-296.

⁴⁸ *Brohm W.*, Öffentliches Baurecht, §30 Rn. 9, § 31 Rn. 3, *Rieger W.*, in: *Schrödter H.*, BauGB, München, 2008, § 31 Rn. 45.

remote ones.⁴⁹ According to the personal approach the public construction law does not have personal character and it is focused on the piece of land. Thus, the neighbor should be defined only as a person who has subjective rights on the piece of land. It can be an owner in most cases. A neighbor should have the right to demand interference of a supervisory organ only if the public-law provisions of neighbor protection are violated by the project and at the same time the neighbor's interest to be protected is significant.⁵⁰

8. Formal Character of Examining Presented Documents as an Obstacle for Protecting Construction Safety

At the stage of construction permit-issuing administrative proceedings, for the purpose of protecting construction safety, special attention should be paid to determining accuracy of the documents submitted for getting construction permit and regulation of behavior of the persons responsible for the examination and their qualification requirements.

Nowadays permit issuing bodies are local municipal agencies, legal persons of public law founded by municipalities and in case of issuing V class construction permit, the authorized structural unit of the Ministry of Economy and Sustainable Development of Georgia. The persons employed in those agencies are appointed based on a competitive examination result. The Law of Georgia on Public Service regulates the special requirements and additional qualification requirements, also certification and qualified participation conditions. It should be mentioned that unlike the basic requirements determined for public officers which are defined by formal criteria, special requirements are focused on specific education and experience needed for professional activities. Special requirements are set forth for each hierarchic level of public officer's position. They specify and complete the general requirements.⁵¹ The officers to be appointed to fill vacant positions are selected in accordance with those regulations. However, the architectural- construction and other technical areas have special characteristics and accordingly, selection of the officers whose job activities are related to issuing construction permit and examination of architectural projects, schematic drawings, also construction evaluation and other technical documents drafted under various regulations, should be based on special rules and instructions. Drafting such regulations is an essential problem and still remains a big challenge for the construction sector.

Current practice is grounded on weak legislation in this direction and respectively, it is inconsistent. Actually, the documents submitted for getting construction permit are examined only for determining compliance with legislation, which means comparison of the documents with the provisions of law. Of course, it is a necessary procedure and helps to define whether the permit-seeker has submitted all required documents but examination and detailed analysis of the quality of the

⁴⁹ *Stollmann F.*, Öffentliches Baurecht § 20 Rn. 19, *Rieger W.*, in: *Schrödter H.*, BauGB, München, 2017, § 31 Rn. 45.

⁵⁰ *Muckel S., Ogorek M.*, Öffentliches Baurecht, 2. Aufl., München, 2014, 223.

⁵¹ *Turava P.*, Comments to the Law on Public Service of Georgia, group of authors, *Kardava E. (Ed.)*, Tbilisi, 2018, 125 (in Georgian).

submitted documents still remains an issue. Despite the fact that some provisions about drafting the rules of certification of architects and engineers/project makers have been included in the Construction Code no actual steps have been made for their implementation. Thus, only the person submitting the documents can be held responsible for accuracy of the documents and examination of those documents is still a formal procedure.

Examination and evaluation of submitted documents by qualified experts is necessary for each project or other technical documents at any stage of the proceedings but its importance is especially evident when the project documents for proving construction safety are presented. We should mention that in the technical regulation of safety approved by the Decree № 41 of the Government of Georgia there is not provided enough mechanisms for examining conclusions submitted to the permit issuing agency.⁵² Consequently there was determined that permit issuing agency does not examine the submitted documents in details and the responsibility lies upon the person who submits the documents. Simultaneously, the technical regulation of safety comprises codified systematization and its examination is pointless because of lack of information about construction materials and characteristics in the project documents. That is why the permit issuing agency's role in examination process is formal.

Another important issue is the expert assessments. According to the applicable legislation for some constructions appropriate expert assessment are mandatory and in case reasonable doubt arises against a positive expert assessment, a permit issuing agency can apply to agency/person which carried out the expertise or an alternative agency/person for clarifications. In case the expert conclusion is incorrect, the expert will be imposed responsibility in accordance with respective agreements and legislation of Georgia.⁵³

9. Certification of Architects and Engineer-Project Makers as a Mechanism for Ensuring Construction Safety

According to the current legislation of Georgia only an architect and engineer-constructor may draft and architectural sketch and project, construction or/and technological scheme or its part for II, III and IV class buildings. The person authorized to prepare permit documents is responsible for compliance of the documents drafted by him/her with the technical regulations.⁵⁴ These persons are also subject to mandatory certification. According to Article 140 of the Spatial Planning and Architectural and Construction Activities Code of Georgia (SPACACG) certification is mandatory for the following persons: the architect authorized to approve the architectural project; engineer constructor who is responsible for conducting construction works and approves construction project; expert of architectural project and construction project. Along with the certification provisions the

⁵² In Reference to Resolution 41, see the opinion of Koba Kalichava, Law Faculty Professor of Tbilisi State University and Academic Directors of the Institute of Administrative Sciences, <<https://bm.ge/ka/article/41-e-dadgenileba---reglamenti-romelic-msheneblobis-nebartvis-migebas-afexs/48160>> [03.02.2020]; <<https://bm.ge/ka/video/ratom-afexs-41-e-dadgenileba-msheneblobis-nebartvis/16826>> [06.02.2020].

⁵³ SPACACG, Article 107.

⁵⁴ SPACACG, Article 98.

obligation of adopting a subordinate normative act determining the rules of certification was also included in the Construction Code.

Before adopting the Code there was an essential lack of regulation of this issue in the legislation of Georgia. Any person had the right to draft both urban planning or permit documents.⁵⁵ Naturally, project and permit documents drafted by certified architect and engineer project maker, ensure quality of the planned construction and increase the responsibility of the authors of the documents, which is still not appropriately observed in construction sector yet. Unlike the case of Georgia in most European countries and the USA the persons responsible for drafting project documents at each stage are regulated by applicable legislation. The obligations are determined in laws.

Some influence of European, namely, German legislation can be noticed in the new Construction Code of Georgia. There is offered the German model of regulating the issues related to the qualification of applicant and the authors and executors of a project.⁵⁶

According to the German construction order the author of the project is the person who is able to make the construction project based on his/her sectoral knowledge and experience. He/she is responsible for validity and completeness of the project, which is his/her main obligation. It is also the obligation of the project author to ensure compliance of the project with public law regulations. Authors of the projects are architects and engineers. The responsibility on lawful comprehensive project lays upon the author.⁵⁷ Moreover, directives on ensuring specific features of the construction under project including steadiness and protection from fire, noise, heat and vibration should be fulfilled only by the engineer constructor or the architect who has at least 3 years professional experience.⁵⁸

Participation of architects and project makers may be divided into phases and only the person with appropriate certificate may participate in the process of drafting projects for different works (e.g. works connected with the piece of land, engineer communication, design, etc.). The responsibility of architects is not limited to making a project only, they also advise the construction owner through the whole process of construction works and are actively involved in selecting construction methods and implementation of technological procedures.⁵⁹

In the USA there are even more detailed regulations for this issue. In the process of drafting an architectural process together with the architect different consultants are involved, including but not limited to consultant expert of construction codes; safety expert, technological equipment expert, project maker and consultant of communication; landscape and interior project maker and designer; heating and ventilation system project maker; consultant of fire resistance of the building; consultant of protection from noise, etc. Their participation and certification are mandatory. Function of a

⁵⁵ *Kalichava K.*, The Impact of Construction Law Reform on Freedom of Business, Forum Materials of The Institute of Administrative Sciences of Tbilisi State University, Book 2, Tbilisi, 2016 38-39 (in Georgian).

⁵⁶ *Hoppe W., Bönker C., Grotefls S.*, Öffentliches Baurecht, 4. Aufl., Munchen, 2010, 456-457.

⁵⁷ *Brenner M.*, Öffentliches Baurecht, 3. Aufl., Heidelberg, 2009, 198.

⁵⁸ *Ibid*, 208.

⁵⁹ *Altman R. J.*, Participants in the design and construction process, Construction Law, *Allensworth W., Altman R. J., Overcash A., Patterson C. J. (Ed.)*, Forum on Construction Law, American Bar Association, Chicago, Illinois, 2009, 20-21.

building is another important point based on which the number of people to be involved in the project drafting process is defined.⁶⁰ Of course, participation of all above mentioned persons and involvement of the experts with specialized knowledge and qualification ensure more safety of the project and the construction. Participation of a certified specialist in in each part of project-making significantly increases quality and safety of the construction.

Certification of architects and engineer-project makers is especially important for construction safety. At the stage of issuing construction permit the permit issuing agency relies on the submitted project documents and examines their compliance with applicable legislation but still it is not guaranteed that the drafted documents correspond with safety standards.

Except the general legislation there are also special technical regulations but determining compliance of the project documents with those regulations is also limited to the process of submitting the documents approved by private law persons.

It should also be mentioned that the act of permit includes a note that the person submitting the documents carries responsibility on the accuracy of the documents. The permit act unanimously implies that responsibility on the accuracy of the construction documents lays on the customer and the person who drafted the documents. The agency approving the project takes responsibility on compliance of the documents approved by it, with the applicable legislation only.⁶¹

The reference in the permit act that the agency approving the project takes no responsibility on accuracy of the submitted documents is caused by the fact that there is no rule of certifying architects and engineer-project makers adopted yet. Before the above normative regulation is adopted the accuracy of the project documents completely depends on the good faith of the authors of the documents. Accuracy of project documents is one of the most important components for ensuring construction safety and lack of regulations for this issue implies high risks.

The qualification of the persons examining the documents drafted by the architects and engineer project makers is another issue. There is no mechanism of checking the qualification and special knowledge of the staff in the permit issuing agency offered by the law. The architectural construction activities require special knowledge and accordingly, the issue of examining the submitted documents has to be clarified in the legislation.

In summary we should mention that there are some favorable changes in legislation with regard to certification of architects and engineer-project makers and their qualification because the construction code introduced the necessity of regulating this issue but the delay of adopting subordinate normative acts prevents the progress. Along with the fact that the author of the project will have to undertake more responsibility on the document drafted by him/her, another valuable achievement will be the improvement of quality and safety of the construction project documents. Thus, mandatory certification of project makers and other regulations related to approving their qualification will significantly increase construction safety.

⁶⁰ Hess S. A., Melton L. C., *The Design Undertaking, Construction Law, Allensworth W., Altman R. J., Overcash A., Patterson C. J. (Ed.)*, Forum on Construction Law, American Bar Association, Chicago, Illinois, 2009, 131-135.

⁶¹ For example, see: <<http://tas.ge/?p=publicpage&documentId=742273>> [22.05.2020].

10. Accelerated Proceeding and its Problems in Relation to Construction Safety

Construction permit is an individual administrative-legal act and it is issued in written form. The General Administrative Code determines the rules of drafting and issuing the act. The construction permit seeker shall apply to the authorized permit issuing agency. The administrative body shall make a decision on issuing or rejecting an individual administrative-legal act within a month after receiving the application.⁶² Whereas construction permit is a hierarchical document and usually it is not issued as one document, the stages and terms of its issuance are regulated by special legislation. According to SPACACG the first stage of permit issuing procedures – approving the conditions of using a piece of land as a construction site, should be completed within 10 working days. If there is a project to be approved another 20 working days are needed for receiving a construction permit. In the last decades the construction sector investments and construction volumes have had significant role in total investments and domestic products of the country.⁶³ Accordingly, consideration of the investors' interests became an important challenge especially in the capital and other big cities. For the purpose of providing quick and effective services by the companies operating in construction sector there were introduced accelerated service rules and respective prices for the municipality of Tbilisi.⁶⁴ It contributed to the interests of construction permit seekers and the activities of the administrative organs seemed to become more effective on the one hand but on the other hand there appeared a risk that the construction permit issued within one or three days might not be based on comprehensive examination of all important circumstances of the case, especially when it referred to III and IV class buildings of high risk.

Through the prism of the key concept of this article, when all issues related to the construction permit-issuing administrative proceedings and construction safety are reviewed in details, it is impossible to prove that in the cases of determining the conditions of using piece of land within one day and issuing a construction permit within the same term there can be ensured appropriate examination of project documents; providing information to all interested parties; analysis of expert and engineer documents and minimizing all risks. Accordingly, the existing regulation of accelerated proceeding which is established for the capital city implies significant risks because the threats related with construction safety can barely be revealed and removed through such procedures at the permit-issuing stage.

11. Simplified and Exceptional Permits as the Basis for Risks

According to the current legislation of Georgia construction permit can also be issued through simplified proceedings. Such procedure is used to allow an authorized state agency or municipality to

⁶² GACG, Article 100.

⁶³ About the number of investments made in construction sector, see the data of the National Bureau of Statistics: <<https://www.geostat.ge/ka/modules/categories/80/mshenebloba>> [22.05.2020].

⁶⁴ See Resolution №17.01.580 of the Government of the City of Tbilisi on “Approving the Rules of Accelerated Services provided by the Architecture Service of the City of Tbilisi and Paying the Service Price“.

conduct construction works before receiving a permit in the cases of extreme necessity (natural disasters; technological or/and other force-majeur situations). Those administrative agencies should submit substantiated applications to the permit issuing administrative body during the construction works or after its completion and request issuing a construction permit. The legislation also provides for similar proceeding when a permit is issued in free economical, industrial and touristic zones. Such procedure may also be allowed in case of approving architectural sketch when the permit seeker needs a consent only on the exterior of the construction (sketch drawing).⁶⁵ Another type of the simplified proceeding is the process of issuing a permit for I class buildings when the works to be conducted are approved but no construction permit certificate is issued. Simplified proceeding is also applied for the construction sites, which are subject to detailed notification. However, unlike other cases above, for the I class buildings and the constructions which are subject to detailed notification a construction permit is not issued after completing the construction works.

The institute of simplified permit issuing proceeding originates from German legislation. So-called simplified proceeding aims to make the administrative procedures simpler. It is used for example for the houses which do not have more than 2 flats and the height does not exceed 7 meters. A supervisory body examines only legal permissibility of planning and requested incompliances with construction order and other public-law provisions, because it is impossible to solve the issue by issuing a construction permit in accordance with the public-law regulations. Unlike the regular proceeding, the scopes of examination are decreased in simplified proceedings. Firmness and protection from heat and noise are beyond the supervision. The results of simplified proceeding and the respective refusal of the supervisory administrative body to conduct examination is finally expressed in the construction supervisory and condition examination procedure (Bauzustandbesichtigung) which does not imply checking firmness and protection from noise and heat. Also, unlike regular proceeding there are no unidentified projects subjected to mandatory permit. It means that legal planning permissibility of the projects, which are directed to simplified proceedings, are released from undefined examination.⁶⁶ It is presumed that the simplified construction permit-issuing proceeding does not lead to incompliances with public-law regulations (Unbedenklichkeitserklärung) while the scopes of the construction owner's responsibility are increased. Despite the requirement of the simplified proceeding to increase the construction owner's responsibility supervisory authority is still exercised by an administrative body, especially with regard to the powers based on the comprehensive clause (Generalklausel) of construction law. Thus, despite the narrowed examination scopes of administrative body the above powers remain untouchable.⁶⁷

The risk of simplified permit issuing proceeding in relation to construction safety is especially obvious when a permit is issued on a completed construction. In such cases there is no possibility of using any of the construction safety check instruments which are created by administrative functions. The persons directly or indirectly related to such constructions can apply to the expertise as the only remaining instrument for ensuring protection of their health safety. In the situation when there are no

⁶⁵ SPACACG, Articles 32-34.

⁶⁶ Brenner M., *Öffentliches Baurecht*, 3. Aufl., Heidelberg, 2009, 208.

⁶⁷ *Ibid*, 209.

regulations in Georgian legislation for determining the experts' qualification and appropriate knowledge one can easily guess that reliability and quality of such expert assessments are also doubtful.

As refers to exceptional permits they are issued based on the territory use and urban planning regulations. The planning documents include the preconditions that may later become the basis for conducting exceptional construction activities, which differ from allowed types or have increased parameters. Exceptional construction shall be allowed if its location, spatial planning, volume and function is in compliance with the sub-zone characteristics, existing urban planning or/and the principle of protecting neighbors' interests.⁶⁸ The construction legislation provides for exceptional cases of so-called "privileged constructions" (Article 68 of SPACACG). Namely, "on the piece of land which is located beyond the developed construction planning system and which is not included in the detailed plan of urban construction, a construction permit may be issued only for the purpose of constructing a building conditioned with the territory function, in accordance with the applicable spatial planning, urban construction planning (if it exists) and general provisions, provided that it does not contradict social interests". Thus, in order to have a permit issued for a privileged construction there must exist the following preconditions 1) unplanned territory without constructions; 2) so called privileged construction with functional condition; 3) the planned construction should not contradict the current spatial planning and urban construction plans; 4) the planned construction should not contradict the fundamental provisions (i.e. the requirements of the Decree #261); 5) the planned construction should not contradict public interests.⁶⁹

Naturally, all determined preconditions are important but the principle of compliance with public interest is worth mentioning separately. Observance of this principle is greatly important for construction safety. Public interest is main governing factor for exceptional permits. This factor is also underlined in German federal legislation. If there are no preconditions for issuing a construction permit an administrative body may allow deviations, exceptions and releases. The above terminology is not unified in construction regulations of Lands. Some of the Lands use the concepts of exceptions and releases in their construction orders in accordance with the construction code systematics⁷⁰ and refers to each difference between construction order and concrete project as a deviation. The authorized organs of the Lands may allow exceptions and releases in accordance with the construction order provisions. A consent on deviations, exceptions and releases has to be issued in written form and be substantiated respectively. Exception is allowed when it complies with social demands and this is a provision that provides for allowing deviation (Sollvorschrift). Social demands comprise all the goals determined by construction order provided that it does not threat life and health. Making a decision is the administrative body's discretion. Exceptions are allowed when such deviation is necessary for

⁶⁸ Resolution № 261 of the Government of Georgia on "the Fundamental Provisions of Using Territories and Regulating Urban Construction" Article 20, Clause 22.

⁶⁹ Kalichava K., See in Turava P., Kalichava K., Construction Law, Tbilisi, 2020, 150-151 (in Georgian).

⁷⁰ Brenner M., Öffentliches Baurecht, 3. Aufl., Heidelberg, 2009, 203-204.

social favor or if implementation is difficult in concrete case and the deviation complies with social demands.⁷¹

Before adoption of a new Construction Code a bad example of compliance of exceptions and deviations with social demands was known as so called special zonal institute in Georgian construction legislation. This “ugly” practice served as basis for many disputable decisions especially in the capital of Georgia. Such understanding of exceptional permit caused a situation when excessively increased construction intensity coefficients were allowed and permits were issued on constructions with incompatible function height. Finally, the number of construction permits issued on the basis of special (zonal) agreements was reflected on disproportionate, chaotic construction in the capital of Georgia. There proportionally increased the number of claims of the citizens demanding review of lawfulness of such permits and they applied to court for protection of their rights. The court practice on the cases where the special (zonal) agreement used as a basis for issuing a permit were disputed, clarified that using special zonal agreement is justified only if special social need exists.

In this direction, the court practice unambiguously supports high standard of proving the necessity of exceeding the coefficients and appropriate compensation. The court ruled that exceeding the maximum coefficients should be allowed only provided that appropriate conditions exist and they are clearly determined in the legislative/subordinated acts regulating the specific institute or construction activities in general. Thus, when discussing the issue of exceeding the coefficients, an administrative body shall research whether such changes are needed for spatial-territorial planning of a certain district or its architectural development or other particular reasons related to the territorial development. The administrative body should also consider if the changes could be compensated and balanced with any other measures which could be taken to ensure prevention of affecting healthy living, working conditions and environment, also, transportation and engineering infrastructure and if there was any other conflict with public interests.⁷² The court decision states that individual construction parameters should be based on consideration of possibility of effective use of the territory and should not contradict the interests of owners and society.⁷³

It should also be mentioned that the Georgian model of special (zone) agreement implies monetary compensation.⁷⁴ Naturally, it cannot counterbalance the architectural, construction and planning compensation that consequently causes imperfect, unequal living and working conditions.

Allowing the exceptional permits has threatened consideration of construction safety in the construction permit issuing process. That was the reason of increasing court disputes because along with the violation of property and other rights of bordering landowners, the risk of depriving the rights of health and life protection became an issue. The need for breaking changes in this incorrect practice led to introducing appropriate provisions in the new Construction Code. We hope the future practice will show that the steps taken in this direction were justified.

⁷¹ Ibid, 203-204.

⁷² Decision of April 20, 2017 № BS-930-922 (2k-16), The Supreme Court of Georgia.

⁷³ Decision of November 1, 2016 №BS-289-287 (2k-16), The Supreme Court of Georgia.

⁷⁴ Details on the issue, see. *Kalichava K.*, Control of Permissibility of Costruction Activities in Georgia (Necessity of Reform and Perspecytives), “Administrative Law Journal”, *Kopaleishvili M. (Ed.)*, Tbilisi, 2016, 101 (in Georgian).

12. Conclusion

The article reviewed the issue of construction safety at the stage of construction permit-issuing proceeding. It was concluded that based on analyzing the multilateral character of the administrative proceeding, creation of construction safety mechanisms is achievable at the stage of permit-issuing administrative proceeding. Moreover, it is the stage when the threats arising from a construction can be significantly decreased with the help of the persons participating in administrative proceedings and the information provided by them; also, by evaluation of the documents and facts obtained and examined during the proceeding. There was underlined that the permit-issuing proceeding itself provides actual mechanisms for ensuring construction safety preconditions at the permit issuing stage. This conclusion was grounded on the summarization of characteristics of construction permit-issuing administrative proceedings; deficiencies in legislation and the respective practice.

The issues discussed in the article proved that the goal of the article to contribute to creating fundamental instruments and mechanisms of ensuring construction safety at the stage of permit-issuing administrative proceeding, is achievable. We hope after improving construction legislation and adopting appropriate regulations based on sharing the experience of European countries there will be no need for repeated research of this issue.

Bibliography:

1. Organic Law General Administrative Code of Georgia, LHG 32(39), 1, 15/07/1999.
2. Local self-Government Code of Georgia, 19/02/2014.
3. The Code of environmental Evaluation of Georgia, 01/06/2017.
4. Law of Georgia “Code of Georgian Space Planning, Architectural and Construction Activities”, LHG, 3213, 20/07/2018.
5. Resolution of the Government of Georgia № 255 on “the Rules and Conditions of Issuing Construction Permit and Approving Validity of Building”, 31/05/2019.
6. Resolution № 261 of the Government of Georgia on “The Fundamental Provisions of Using Territories and Regulating Urban Construction” 03/06/2019.
7. Resolution № 17.01.580 of the Government of the City of Tbilisi on “Approving the Rules of Accelerated Services provided by the Architecture Service of the City of Tbilisi and Paying the Service Price” 30/06/2009.
8. *Altman R. J.*, Participants in the design and construction process, in: *Construction Law*, *Allensworth W., Altman R. J., Overcash A., Patterson C. J. (Ed.)*, Forum on Construction Law, American Bar Association, 2009, 20-21.
9. *Brenner M.*, Öffentliches Baurecht. 3, Aufl., Heidelberg., 2009, 192, 198, 203-204, 208-209.
10. *Brohm W.*, Öffentliches Baurecht, §30 Rn. 9, § 31 Rn. 3, *Rieger W.*, in: *Schrödter H.*, BauGB, § 31 Rn. 45.
11. *Churgulia D.*, The Ways of Solving the Legislative and Practical Problems of Construction Permit in the Light of New Construction Code, “Law Journal”, № 1, 2019, 294-296.
12. *Held J.*, Der Grundrechtsbezug des Verwaltungsverfahrens, Berlin, 1984, 37.
13. *Hermes G.*, The German Law and Planning: An Overview, *Journal European Public Law*, *Birkinshaw P. J. (Ed.)*, Vol. 8, Issue 3, 2002, 379.

14. *Hoppe W., Bönker C., Grotefls S.*, Öffentliches Baurecht, 4. Auflage, Munchen, 2010, 456-457.
15. *Kalichava K.*, Environmental Law, Tbilisi, 2018, 186, 197 (in Georgian).
16. *Khalichava K.*, Controle of Permissibility of Costruction Activities in Georgia (Necessity of Reform and Perspecytives), “Administrative Law Journal”, №2, 2016, 96-97, 101 (in Georgian).
17. *Kalichava K.*, The Impact of Construction Law Reform on Freedom of Business, Forum Materials of The Institute of Administrative Sciences of Tbilisi State University, Book 2, Tbilisi, 2016, 38-39 (In Georgian).
18. *Kopp F.O., Ramsauer U.*, Verwaltungsverfahrensgesetz Kommentar, 16. Aufl., Munchen, 2015, 21-22.
19. *Maurer H.*, Allgemeines Verwaltungsrecht, Munchen, 2011, § 19, Rn. 1 f.
20. *Muckel S., Ogorek M.*, Öffentliches Baurecht, 2. Aufl., Munchen, 2014, 223.
21. *Quabeck C.*, Dienende Funktion des Verwaltungsverfahrens und Prozeduralisierung, Osnabrück, 2010, 26.
22. *Siegel T.*, Rechtsschutz vor Gericht und im Verwaltungsverfahren–wechselseitige Kompensationsmöglichkeiten?, Zeitschrift für Umweltrecht, 2, 2017, 451.
23. *Hess S. A., Melton L. C.*, The Design Undertaking, Construction Law, Forum on Construction Law, American Bar Association, *Allensworth W., Altman R. J., Overcash A., Patterson C. J. (Eds.)*, Chicago, Illinois, 2009, 131, 135.
24. *Stollmann F.*, Öffentliches Baurecht § 20 Rn. 19, Schrödter, BauGB, § 31 Rn. 45, 317-318.
25. *Turava P., Pirtskhalaishvili A, Kardava E.*, Administrative Porceedings in Public Service, Tbilisi, 2020, 35-36, 139, 144-145 (in Georgian).
26. *Turava P., Kalichava K.*, Construction Law, Tbilisi, 2020, 76, 150-151, 160, 163, 165, 172, 177, 182 (in Georgian).
27. *Turava P.*, Fair Administrative Proceeding as a Basic Constitutional Right and its Institutional Guarantee, Compilation of Articles, Human rights Protection: Legislation and Practice, *Korkelia K. (Ed.)*, Tbilisi, 2018, 250 (in Georgian).
28. *Turava P.*, Comments to the Law on Public Service of Georgia, group of authors, *Kardava E. (Ed.)*, Tbilisi, 2018, 125 (in Georgian).
29. *Turava P., Tskepladze N.*, Handbook of General Administrative Code, Tbilisi, 2013, 178-179 (in Georgian).
30. *Turava P.*, The Basic Concepts and Institutes of Construction Law, “Law Journal“, № 2, 2009, 122.
31. *Turava p., Kharshiladze I.*, Administrative Proceedings, Tbilisi, 2006, 10-11.
32. Decision of November 1, 2016 №BS-289-287 (2k-16), The Supreme Court of Georgia.
33. Decision of April 20, 2017 №BS-930-922 (2k-16), The Supreme Court of Georgia.
34. Homogenous practice of the Supreme Court of Georgia regarding disputes arising out of construction relations (2012-2017), *Jorbenadze S. (Ed.)*, Tbilisi, 2018, 17-19 (in Georgian).
35. <<https://bm.ge/ka/article/41-e-dadgenileba---reglamenti-romelic-msheneblobis-nebartvis-migebas-afexs/48160>> [03.02.2020].
36. <<https://bm.ge/ka/video/ratom-afexs-41-e-dadgenileba-msheneblobis-nebartvis/16826>> [06.02.2020].
37. <<https://www.geostat.ge/ka/modules/categories/80/mshenebloba>> [07.02.2021].
38. <<http://tas.ge/?p=publicpage&documentId=742273>> [22.05.2020].