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## **FEATURES OF THE ACTIVITIES OF EXECUTIVE GOVERNMENT BODIES WITH AUTHORITIES IN THE FIELD OF CONSTRUCTION IN UKRAINE**

### **ABSTRACT**

The purpose of the article is a comprehensive analysis of the main aspects of the activities of executive authorities in the field of construction. In order to carry out a full-fledged analysis of the main aspects of the activities of the executive authorities in the field of construction, a complex of general scientific, special and legal methods was used, which ultimately allowed the authors to form relevant conclusions and proposals. It has been proven that the concept of subjects of permitting activity in the field of urban planning covers primarily subjects of legal relations, the object of which is the issuance of a permit document. On the other hand, the subject of urban planning activity (individual or legal entity) participates in such legal relations. The authors consider

such a concept of the subjects of the specified legal relations to be narrow, since the specified legal relations constitute only one element of the system of legal relations, thanks to which the permission activity is carried out. It was concluded that the current state of administrative and legal regulation of the permit system is characterized by a gradual weakening of bureaucratic procedures by public administration entities, and this, in turn, contributes to the reduction of manifestations of corruption in the field of construction. The results of this study can be used for further analysis of the entire urban planning system in the context of administrative and legal regulation, as well as for revision by the legislative body in the process of making changes to the current legislation.

**KEYWORDS:** administrative procedure; bureaucracy; permit system; public administration; urban planning.

**INDEX:** 1. Introduction. - 2. Methodological framework. -2.1. Research methods. - 2.2. Stages of research. - 3. Results and Discussion. - 3.1. General characteristics of the permit and design system in construction. - 3.2. Entities implementing the permitting and design system in construction. - 3.3. Current state and trends in the development of administrative and legal regulation of the permit system in construction. - 4. Conclusion. 5. References.

## **1. Introduction**

Construction is recognized as one of the important areas of the national economy. At the same time, this industry provides a significant range of social, household and other needs of the population. Taking into account the great economic and social importance of the construction industry, legislators paid attention to the administrative and legal regulation of social relations in it. Since the independence of Ukraine, the legislative and executive bodies have adopted a significant number of laws and regulations relating to economic and industrial relations, engineering, investment in construction, capital construction at public expense, those liable for violations of urban planning legislation, etc.

Despite some attention of scientists to the issue of ensuring the legality of permitting activities in urban planning and related categories (primarily the provision of administrative services in this area), special central categories,

such as supervision, are currently virtually unexplored. In addition, the issue of administrative and legal regulation of the permitting system of urban planning has recently undergone significant changes. Also deserves a separate analysis of the creation of the Portal of electronic services in urban planning, including the renewal of public administration entities in this area, as well as the relationship between them and other public administration entities that have relevant functions and tasks for the implementation of permitting activities in a particular area.

It should be noted that from 2011 to the present there is an administrative reform aimed at including the permitting system in construction. During this period, bureaucratic procedures for obtaining permits and submitting construction projects by economic entities were significantly reduced. Key actors in the public administration in the field of urban planning have also been reformed. Namely, the State Architectural and Construction Inspectorate was liquidated and the State Inspectorate for Architecture and Urban Planning was established in order to reduce corruption in the field of urban planning.

Due to the fact that obtaining a building permit is an administrative service, the role and importance of administrative and legal regulation is growing. Thus, the need to improve the construction and urban planning of an important part of Ukraine's economy, as well as the many conflicts that arise between developers and the active community, allow scientists to explore ways to improve the situation to improve the state policy and legislation in construction and urban planning, by means of administrative and legal regulation.

Administrative and legal regulation of the permit system in construction has not been considered separately by domestic scientists. However, it is worth noting the works that objectively analyzed the administrative and legal regulation of the construction industry as a whole. These are the works by Miroshnychenko et al. (2013), Myronets (2012), Korol et al. (2022), Rezvorynych (2016), Semenko (2011), Dubinina et al. (2019), and other scientists.

It is worth noting the work by Rezvorovych (2016), “Administrative and legal support for the implementation of state policy in the field of construction,” which identified key elements of state policy in the field of construction. Analyzed the main features of administrative and legal relations in the field of construction. The scientist researched the administrative and legal mechanism for ensuring the state policy of the construction industry. In addition, Rezvorovych (2016) formulated her own definition of “administrative and legal mechanism for ensuring state policy in the construction industry.”

Neborsky (2019) studied the methods of activity of subjects of administrative and legal relations in the field of urban planning. The scientist came to the conclusion that the urban sphere should have the appropriate administrative tools. The scientist also defined the system of principles of activity of subjects of administrative and legal relations in the field of urban planning in two planes, namely general and special, which are important for construction legislation.

Among the many representatives of administrative law who addressed the issue of administrative regulation of urban planning and construction is worth noting the monograph by Stukalenko (2017), “Administrative and legal support of the construction industry: theoretical and legal principles.” This work was, in fact, the first comprehensive scientific analysis of construction and urban planning, key areas for administrative and legal regulation of the construction sector, taking into account international standards and positive international experience of European Union member states.

## **2. Methodological Framework**

### **2.1. Research methods**

In order to carry out a full analysis of the administrative and legal regulation of permitting and design systems in construction, a set of general scientific, special and special legal methods was used, which ultimately provided the

opportunity to form appropriate conclusions and proposals. In particular, the dialectical method, which is the methodological basis of the study, allowed students to learn the general patterns of development and regulatory regulation of relations in the field of administrative and legal regulation of the permit system in construction.

The method of system analysis helped to determine the place and role of the state and to clarify the legal nature of the administrative and legal regulation of the permit system in construction. With the help of the method of synthesis the place of administrative and legal norms regulating the relations of the permitting system in construction in the system of administrative law is established. Thanks to the formal-logical method, the conceptual and terminological apparatus of the research is formulated, in particular, the definition of the concept of “permit system”, “permit”, “administrative service”, “public administration”, etc.

The structural-logical method was used during the elucidation of the system of subjects of administrative and legal support of the permit system in construction, identifying features of their administrative and legal status. The formal-legal method made it possible to reveal in construction. Modeling and forecasting methods were used to clarify ways to improve the administrative and legal regulation of the permit system in construction and ways to improve public policy and administrative legislation in this area.

## **2.2. Stages of research**

The analysis of administrative and legal regulation of the permitting and design system in construction was carried out in three interrelated and following one by one stages. At the first stage, a general description of the permitting and design system in construction was provided. The definitions of “permit system”, “permit”, “administrative service”, “permit document” are formulated. The role and significance of permits for the construction industry of Ukraine are determined.

In the second stage, a general description of the entities involved in the construction permit system was provided. The main normative legal acts that determine the legal status of the subjects of the permitting and design systems in construction are analyzed. The classification model is formulated in the form of a separate table of entities that have the authority to issue building permits.

At the third stage, the administrative and legal regulation of the permitting system in construction was analyzed. The role and importance of the administrative component in issuing building permits are determined. The main ways to improve the administrative and legal regulation of the permitting system in construction are outlined and specific proposals are given, taking into account the latest legislative changes.

### **3. Results and Discussion**

#### **3.1. General characteristics of the permit and design system in construction**

The norms of guaranteeing and ensuring human rights and freedoms declared in the national constitutional provisions are the main responsibility of the state, as they are transformed into a highly effective human rights mechanism throughout the civilized world, determining the content and direction of public administration. At the same time, in Ukrainian society, there are stable tendencies to the perception of the authorities in the perspective of the bureaucracy, which mainly focuses on the development of restrictions, permits, prohibitions, prosecution and more.

Some scholars define the permit system in a broad and narrow sense. Accordingly, the broad concept should describe the special procedure for the competent authorities to take certain actions that require special permission. In a narrow sense, the permitting system applies only to facilities defined by the Regulations on the permit system (Bandurka, 2017). According to Likhachev (2001), narrow understanding of the permit system is defined as a kind of spe-

cial administrative activity, a broad understanding should describe the permit system, which is similar in type to licensing.

Karabut and Tkachenko (2007) broadly describe both a narrow understanding of the permitting system and a broad understanding of the studied category. Thus, a narrow understanding is the activities of law enforcement agencies and other specially authorized bodies (officials) to issue permits to individuals or legal entities to carry out relevant activities (actions) in the field of circulation of specially designated items, materials and substances, opening, operation, suspension and termination of certain enterprises, workshops and laboratories; supervision of their activities, as well as the application of measures of administrative coercion for violation of the rules established by this administrative institution.” In broad understanding, it is a regulated by administrative law the procedure for obtaining natural or legal persons in executive bodies or specially authorized executive bodies economic activity, as well as other actions (types of activity), which in accordance with the current legislation of Ukraine provide for the mandatory receipt of permits by individuals and legal entities for their implementation within the prescribed period provided they comply with certain rules ”(Karabut & Tkachenko, 2007). Thus, we see that most scientists always give definitions in two planes, namely wide and narrow.

Also, permissive legal relations in the field of the permitting system are important. Thus, Siverin (2010) believes that the licensing relationship should be considered in two perspectives: in the first - as the relationship between the state and the subjects of licensing services for the organization and control of such activities; in the second - as a relationship between permitting authorities and recipients of relevant services. Supporting the outlined position, Dzharova (2015) states that the permit-service relationship is an administrative-legal relationship that arises between public administration bodies, individuals

and legal entities to provide opportunities to implement certain rights in compliance with mandatory requirements.

In their entirety, these relations are realized through the permitting process, the characteristic features of which, according to Lysko (2013), include the following: a set of actions performed by an administrative body; mandatory sequence of such actions; all actions taken relate to resolving the issue of ensuring the realization of the right and legitimate interests of persons to perform certain actions or engage in certain activities; the result of such proceedings is the receipt by the applicant of a permit or refusal to issue it. Thus, the permitting procedure involves a set of actions taken by the permitting authorities during the approval or execution, consideration or issuance of opinions, etc., which should precede the receipt of the permit.

Having outlined in general the understanding of domestic scientists of the permitting system and permitting relations, it is now possible to consider them in the context of construction and regulatory understanding. Thus, Part 1 Art. 1 of the Law of Ukraine "On the permit system in the field of economic activity" is a set of relations regulated by law, which arise between permitting authorities, administrators and business entities in connection with the issuance of permits, reissuance, cancellation permitting documents" (Verkhovna Rada of Ukraine, 2005).

The same law defines the concept of a permit, which should be understood - "permit, opinion, decision, approval, certificate, other document in electronic form (record of the permit, conclusion, decision, approval, certificate, other document in the Unified State register of legal entities, natural persons - entrepreneurs and public formations), which the permitting body is obliged to issue to the business entity in case of granting it the right to carry out certain actions related to economic activity or types of economic activity and / or without which the entity management cannot implement certain actions re-



lated to the implementation of economic activity or types of economic activity” (Verkhovna Rada of Ukraine, 2005).

Based on the provisions of the Law of Ukraine “On the List of permits in the field of economic activity,” the main permits in construction are permit for construction work, certificate of commissioning of the completed facility (Verkhovna Rada of Ukraine, 2011b). According to Order No. 523-r, “On the List of Administrative Services of Executive Bodies Provided Through the Center for the Provision of Administrative Services” (Cabinet of Ministers of Ukraine, 2014), the issuance of permits in the construction industry is included in the list of administrative services. That is why this process is regulated, *inter alia*, by the Law of Ukraine “On Administrative Services” (Verkhovna Rada of Ukraine, 2012) and other relevant regulations.

It is worth noting that in recent years there has been an active reform of the entire construction system, including the permit system. Thus, the Resolution of the Cabinet of Ministers of Ukraine “Some Issues of Ensuring the Functioning of the Unified State Electronic System in the Field of Construction” was recently adopted consideration, storage, protection, accounting and provision of information in the field of construction, as well as electronic interaction between legal entities and individuals, local governments and centers of administrative services in obtaining / providing administrative services and other services in the field of construction provided by this Procedure, implementation of measures for architectural and construction control and supervision (Cabinet of Ministers of Ukraine, 2021).

It is worth agreeing with the position of Galunko et al. (2018), who note that the purpose of permitting procedures is to prevent possible harm to the interests of individual citizens or state interests as a result of certain, special activities that may have such consequences. Other goals of permitting procedures include: creating opportunities for the exercise of subjective rights in ca-

ses specified by law; exercising control over certain activities. Thus, it is the legal form of permitting activity that takes the form of a permitting document.

One of the main legal acts regulating the permitting system in Ukraine is the Law of Ukraine “On Regulation of Urban Development.” In particular, the customer has the right to perform construction work after:

- Submission by the customer of the notice of commencement of construction works to the relevant body of the state architectural and construction control - in respect of construction objects, which according to the class of consequences (responsibility) belong to objects with insignificant consequences (CC1), and in respect of objects carried out on the basis of a construction passport and which do not require a permit to perform construction work in accordance with the list of construction projects approved by the Cabinet of Ministers of Ukraine. The Cabinet of Ministers of Ukraine shall determine the form of the notification on the commencement of construction works and the procedure for its submission;
- Issuance of a construction permit to the customer by the state architectural and construction control body - in respect of objects that by class of consequences (responsibility) belong to objects with medium (CC2) and significant (CC3) consequences or are subject to environmental impact assessment according to with the Law of Ukraine “On Environmental Impact Assessment.” Documents granting the right to perform construction work are valid until the completion of construction. The list of construction works that do not require documents entitling them to be performed, and after which the facility is not subject to commissioning, is approved by the Cabinet of Ministers of Ukraine” (Verkhovna Rada of Ukraine, 2011a).

Therefore, the permits for the start of construction work are the notice or the permit itself. Thus, it is possible to conclude that permitting administra-

tive procedures are rules regulated by the norms of administrative law and the procedure for the implementation of competent public authorities consistently performed procedural actions and decisions due to the specifics of their legal status, aimed at implementing management and public service functions, consideration and resolution of individual-specific administrative cases. In the construction industry, permitting procedures are aimed at ensuring that public authorities exercise the rights and interests of legal entities and individuals to engage in certain activities.

### **3.2. Entities implementing the permitting and design system in construction**

In general, in accordance with Art. 6 of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996), state power is exercised on the basis of its division into legislative, executive and judicial branches of power. It was this principle that became an alternative and replaced the totalitarianism of the party-state power. Most of these administrative and legal relations arise at the stages of preparatory work and construction. The subjects of interaction on the one hand are the state architectural and construction control bodies and other representatives of public authorities (providers of administrative services), on the other - customers, general contractors and contractors (recipients of administrative services). Thus, service on obtaining permits can be obtained through the centers of administrative services in the regions, which operate in accordance with the Model Regulations on the center of administrative services (Cabinet of Ministers of Ukraine, 2013). Administrative services are also provided directly by the subjects of administrative services or in electronic form through the Unified State Portal of Administrative Services, including through the information systems of public authorities integrated with it.

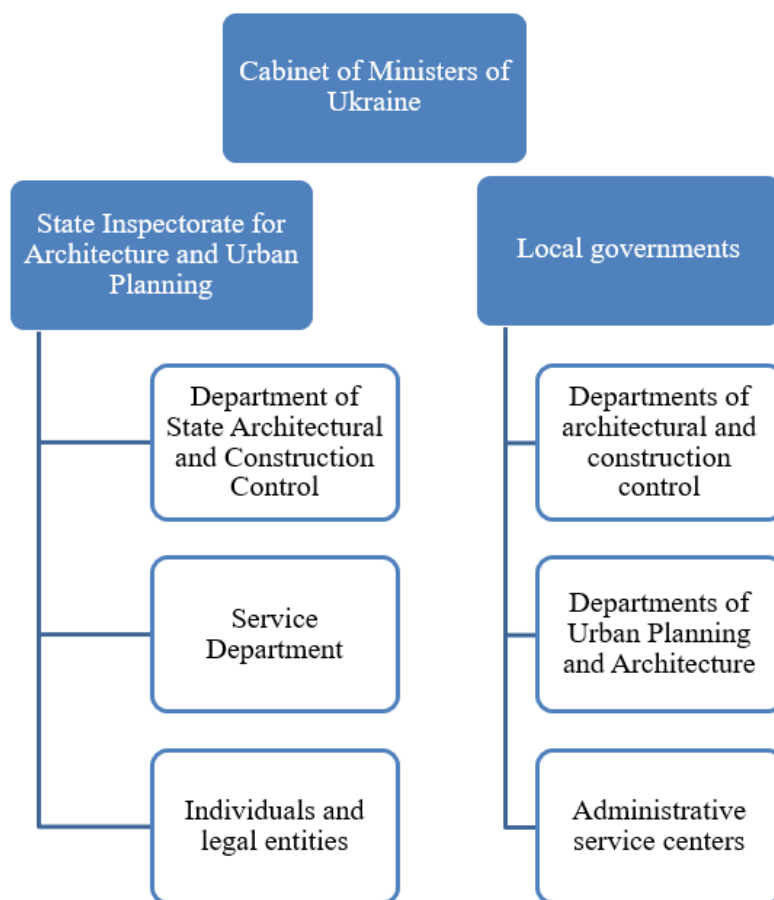
The leading role in the economy of any country, including in the field of construction, belongs to the state. The efficiency of construction management depends on the coordination of actions of regulatory bodies, determination of

their competence, and avoidance of duplication of functions. In addition, the clear organization of the activities of regulatory bodies helps to solve many problems related to the decentralization of the industry, compliance with construction legislation, combating corruption and more. It is possible to completely agree with the position of Belinsky (2012) who believes that it is more correct to divide the subjects of the permitting system into two groups, where there are recipients of permits - individuals and legal entities who, in accordance with applicable law, have expressed a desire to obtain, renew or revoke a permit.

Leshchinsky (2020), researching the system of subjects of legal relations in relation to permitting activities in the field of urban planning, conditionally divided them into two groups: the first group - are persons who realize their rights and legitimate interests; the second group is the entities that assist the first group in the realization of their rights and legitimate interests. Thus, the first group includes entities that organize the activities of permitting bodies (for example, the Verkhovna Rada, the Cabinet of Ministers, the National Civil Service Agency, administrative service centers). Accordingly, the second should include entities whose functions and tasks are the direct implementation of permitting activities (e.g., State Inspectorate for Architecture and Urban Planning, relevant departments of urban planning or architecture of the executive bodies of local councils) (Leshchinsky, 2020). Given some changes and reforms in the system of public administration in matters of urban planning and architecture guidance, the system is already outdated.

According to Art. 7 of the Law of Ukraine “On the Basics of Urban Planning” (Verkhovna Rada of Ukraine, 1992), state regulation in the field of urban planning is carried out by the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada and the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, local formation of state policy in the field of urban planning, the central executive body

implementing state policy in the field of urban planning, the central executive body implementing state policy on state architectural and construction control, other bodies in the manner prescribed by law. Based on this, we offer a schematic representation of the entities involved in the permit system in construction (Figure 1).



**Figure 1.** Entities involved in the construction permit system

Given that the field of urban planning is essential for the economy of the state and socio-economic development of the state, the issuance of permits in the field of urban planning by public authorities is a common phenomenon. Thus, the subjects of permitting activities in the field of urban planning

should be understood as participants in public relations, whose powers are the issuance of permitting documents, in which, on the other hand, the subject of urban planning (legal or natural person).

### **3.3. Current state and trends in the development of administrative and legal regulation of the permit system in construction**

The current state of development of administrative and legal regulation of the permitting system in construction is characterized by the fact that urban planning activities are complex: its implementation has an impact on all spheres of public life. This explains the exercise of public power in this area by entities of different sectoral affiliation (not only the authorized entities in the field of urban planning and architecture, but also structural units of city administrations, local governments, other statutory entities. On the other hand, urban planning activities have their own industry and professional specifics, which necessitates the implementation of appropriate control and supervision activities by a competent public authority.

According to the results of processing the positions of Stukalenko (2017), Dzhafarova (2015), and some other researchers of legal relations arising in connection with the implementation of permitting activities or the provision of administrative services in urban planning can indicate the full compliance of permitting relations in this area with such inherent features of permitting activities as a direction of public authority; variety of subjects and objects; focus on ensuring the safety of life, national interests, the environment; the public authority is a mandatory entity; focus on ensuring the rights of an indefinite number of people.

A key problem in the administrative and legal regulation of the building permit system is the existence of a large number of bureaucratic procedures, which ultimately often provoke corruption. It is possible to agree with scholars who believe that citizens who apply for services to public authorities should be exempt from bureaucratic actions by civil servants and officials. In this case, it

is necessary to introduce an international principle according to which, if civil servants are accused of corruption, they must be held accountable for their actions and be dismissed from office and never work again in similar positions in public authorities. Without ensuring openness and transparency of public authorities and creating an environment of intolerance, condemning any fact of corruption, it will be impossible to achieve a positive experience in the fight against corruption. In addition, in order to achieve effective results, it is necessary to unite and coordinate the actions of state bodies and civil society, adopt regulations, establish dialogue and interaction with the population (Lytvyn et al., 2021).

In addition, it is important to implement a coherent state policy in construction through administrative and procedural activities of the competent entity and by implementing organizational and legal principles aimed at construction efficiency, organization of its scientific, personnel, information and financial support, construction control and supervision (Stukalenko, 2017). It should be noted that the “manual” regime of these acts is now defined as a lack of legality of licensing activities in this area in the works of many researchers, it is almost universally accepted. Therefore, an important area of ensuring the legality of permitting activities in urban planning is the proper application of law in this area. Quite often Ukraine acquires certain skills and competencies in European countries, because in comparison you can find ways to solve problems faced not only by Ukraine (Artemenko et al., 2019). After all, the new reform in construction, the elimination of State Architectural and Construction Inspectorate and the launch of State Inspectorate for Architecture and Urban Planning with the appropriate new powers is the result of the development of the best foreign world practices in the regulation of urban planning.

If we consider foreign experience, the general characteristics of the construction management system in European countries are similar. Projects must

be prepared and submitted to the authority, which confirms their compliance with zoning requirements and building regulations. During construction, on-site inspections ensure that the structure is built according to the design and complies with building codes. If the construction is completed, a final inspection is carried out and a certificate of completion or a permit for use is issued. However, there are some differences between countries regarding the procedural aspects of building control (Pedro et al., 2011).

Control of planning requirements (i.e., aspects related to the use and location of construction works) and technical requirements of the building and site can be carried out in separate or combined procedures. In approximately half of the EU countries (Czech Republic, Cyprus, Ireland, Lithuania, Latvia, Sweden, Great Britain - Northern Ireland, - Scotland) there is a combined procedure for obtaining permission for planning requirements and technical requirements. In these countries, a building permit is not required before applying for a building permit. Preliminary consultations and step-by-step procedures can be used to obtain detailed information on planning and reaching informal agreements. In the other half of the EU countries, there is a separate procedure for obtaining permission for planning requirements and technical requirements. A building permit is the basis for project development, but it does not oblige the building authority to issue a building permit, as it only states that the designs submitted at this stage meet the planning requirements. A building permit does not give the right to start construction work. (Meijer & Visscher, 2008).

In almost all EU countries, there is a preliminary consultation in the processes of issuing permit documentation. This is regulated by law, happens frequently, and usually involves discussion of the tasks and responsibilities of the parties involved, planning requirements, as well as aesthetic and technical requirements. In some EU countries, local authorities adhere to agreements or information provided during prior consultations (e.g., Belgium, Cyprus, Hungary,



Italy, Latvia, Portugal and Sweden). In other EU countries, the information provided during the preliminary consultation is accurate and objective. Although advice and opinions on the merits of the proposal are given in good faith, they are not binding on the local authority or the applicant (e.g., Austria, Denmark, France, Malta, the Netherlands and England and Wales) (Pedro et al., 2010).

It should be noted that the Law of Ukraine “Law of Ukraine “On the Introduction of Changes to Some Legislative Acts of Ukraine Regarding the Reform of the Field of Urban Planning” (Verkhovna Rada of Ukraine, 2022), adopted but not yet signed by the President of Ukraine, concerns the reduction of bureaucratic procedures, which generally meet European requirements in the field of permit documentation construction). Thus, it is worth summarizing that the administrative-legal component in the regulation of the permit system is an important component for the functioning of the entire construction system. At the same time, it is necessary to continue to reduce the number of bureaucratic procedures in the permit system at both the central and local levels, which are actively being implemented by the member states of the European Union.

#### **4. Conclusion**

Every year, Ukraine takes an active position on further European integration, which in turn necessitates legal reforms in all spheres of public relations. Therefore, today we can talk about active processes of reforming the system of urban planning and construction, which takes place in two main directions, namely: decentralization, i.e., transfer of powers from the central executive body in urban planning (State Inspectorate for Architecture and Urban Development of Ukraine) to local executive bodies and local governments; introduction of state architectural and construction supervision; minimization of permitting and registration procedures, including reduction of their time; personification of responsibility of subjects of town-planning activity, etc.

It was determined that the current state of administrative and legal regulation of the permitting system is characterized by a gradual weakening of bureaucratic procedures on the part of public administration entities, which in turn helps to reduce corruption in the construction sector. It is proved that the State Inspectorate of Architecture and Urban Planning of Ukraine has a wide range of powers compared to the liquidated State Architectural and Construction Inspectorate. However, the powers in general concern the expansion of the range of control and supervisory functions, without affecting the permitting functions of the newly created body.

Despite the reform of urban planning, the unresolved issues that need to be reviewed by the legislative and executive authorities remain issues: inconsistency of some legislative acts in the field of urban planning; the lack of a single unified mechanism for defining the concepts contained in various regulations; limited access to public information on urban planning; low level of involvement of the active community in the decision-making processes of public authorities in the field of urban planning.

Such shortcomings are the consequences of a large number of violations committed by urban planning entities in the field of urban planning legislation, building codes, rules and standards for the development of territories and settlements, design, planning and development, construction of new urban development activities, restoration and preservation of cultural heritage sites, etc.

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