



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

JUSTICE PROVIDED UNDER THE 1984 CODE

**QUARTERLY REVIEW
(APRIL - JUNE, 2023)**



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Tbilisi

2023

The quarterly review was prepared by the Georgian Young Lawyers' Association with the support of the USAID Rule of Law Program funded by the United States Agency for International Development (USAID) through the East-West Management Institute (EWMI).

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USAID სავაჭროდონ უზენაესობის პროგრამა
USAID RULE OF LAW PROGRAM

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INTRODUCTION



The Code of Administrative Offences, which was adopted in 1984 and is still in force in Georgia, is an important challenge in terms of human rights protection. Georgian Young Lawyers' Association (GYLA) presents a quarterly review of the period from April 1st to June 30, 2023, which covers the main events that occurred in the legislation and practice of administrative offences during this time.

In the period under review, particularly problematic were the arrests of human rights defenders at a peaceful demonstration in Tbilisi on June 2, 2023, based on the Code of Administrative Offenses, and the cases of administrative offenses against them.¹ On June, 3, this was followed by administrative detention of 6 persons (including two minors) at the rally, in Batumi, Era Square. They were protesting the events that took place in Tbilisi the previous day.²

Eduard Marikashvili was holding a blank sheet of paper at the rally, near the Georgian Parliament building, where several protestants were gathered. Lawyer Saba Brachveli and civil activist Nika Romanadze, who were at the same rally, had posters with the inscription "Iraqli"* (see the note). The police arrested all three of them. In the video footage of the arrest, the

¹ <https://gyla.ge/ge/post/samoqalaqo-sazogadoebis-organizaciebi-vekhmianebit-uflebadam-cvelebis-dakavebis-faqtebs> [last seen: 05.07.2023].

² <https://gyla.ge/ge/post/ukanono-administraciuli-dakavebebis-praqtika-batumshi-grdzeldeba> [last seen: 05.07.2023].

policeman is heard saying that no one has the right to insult the Prime Minister of the country. All three of them were transferred from the capital to the region, specifically, to the temporary detention cell in Telavi. They were released only after the maximum 48-hour period of administrative detention had expired. Public Defender applied to Tbilisi City Court with an amicus curiae on five cases, that were about protestants arrested on June, 2 (the cases of Saba Brachveli, Eduard Marikashvili, Nika Romanadze, Grigol Frangishvili and Nodar Sikharulidze). The public defender presented the court information about international standards, decisions of the European Court, and the practice of the Constitutional Court.³ As a result of the study of the cases, the public defender considered that the actions of the arrested persons were completely non-violent. They did not show aggression towards law enforcement officers or passers-by, did not obstruct the movement of transport or citizens, did not block the entrance to the building, etc. Thus, there was no reason for the court to consider these persons as administrative offenders.



³ <https://www.ombudsman.ge/geo/akhali-ambebi/sakhalkho-damtsvelma-2-ivniss-dakavebuli-aktsiis-monatsileebis-sakmeebze-sasamartlos-mimarta> [last seen: 05.07.2023].

*Note - „Iraqli” - this word, etymologically, combines the name of the Prime Minister and an obscene word, so it was perceived as an insult.

Statistical information

According to the data published by the Ministry of Internal Affairs of Georgia, in the second quarter of 2023, **1,775 cases** of violations under Articles 166 and 173 Administrative Offences Code were detected.⁴ Among them:

Offense provided for in Article 166 (disorderly conduct)	782
Offense provided for in Article 173 (non-compliance with a lawful order or demand of a law-enforcement officer)	993

In the second quarter of this year, **a total of 1,415 people** were placed in cells based on the Administrative Offences Code.⁵ Among them:

based on Articles 166-173 (disorderly conduct, non-compliance with a lawful order or demand of a law-enforcement officer)	656
only on the basis of Article 173 (non-compliance with a lawful order or demand of a law-enforcement officer)	351
based solely on Article 166 (disorderly conduct)	68

⁴ The statement published by the Ministry of Internal Affairs of Georgia, available at: https://info.police.ge/page?id=815&parent_id=771 [last seen: 18.07.2023].

⁵ The statement published by the Ministry of Internal Affairs of Georgia, available at: https://info.police.ge/page?id=770&parent_id=233 [last seen: 18.07.2023].

Statistics show that the number of detected cases of administrative offences and the number of administratively detained people does not decrease compared to the previous reporting period.

In the second quarter of 2023, persons placed in temporary detention cell with injuries and claims

In the second quarter of 2023, the number of persons placed in temporary detention cell with injuries and complaints, who received injuries at various stages of interaction with representatives of law enforcement agencies (during arrest, after arrest, before arrest and during arrest, before arrest and after arrest, during arrest and after arrest, before arrest, during arrest and after arrest), is 129.⁶

⁶ The statement published by the Ministry of Internal Affairs of Georgia, available at: https://info.police.ge/page?id=770&parent_id=233 [last seen: 18.07.2023].

ACTIVITIES IN PARLIAMENT



The letter of the Parliament of Georgia dated May 30, 2023 states that "Working on the new Code of Administrative Offenses of Georgia is defined as one of the priority tasks according to the 2023 action plan of the Legal Issues Committee of the Parliament of Georgia." With the new Code of Administrative Offenses, the existing legal norms will be systemically adjusted and new clear norms will be developed to regulate the relevant legal relations. Moreover, all this will be carried out taking into account the relevant standards of human rights protection.

Currently, the Legal Issues Committee of the Parliament of Georgia is intensively working on the mentioned issue. Professors of the Law Faculty of Ivane Javakhishvili Tbilisi State University are actively participating in the above-mentioned work together with the members of the committee and public servants of the committee's office.⁷

The first issue of the 2023 action plan of the Legal Issues Committee, like the previous year's plan, concerns the work on the new Administrative

⁷ The letter of the Parliament of Georgia dated May 30, 2023, N3986/2-7/23.

Offences Code. According to the plan, the working version of the bill should be developed in 2023.⁸

Despite the request, information about specific activities carried out during the year was not provided to GYLA.



⁸ 2023 Action Plan of the Legal Issues Committee of the Parliament of Georgia, available at: https://web-api.parliament.ge/storage/files/shares/Komitetebi/iuridiuli/samoqmg-gegm/iuridiuli_samoqmedo-2023.pdf [last seen: 22.05.2023].

REVIEW OF CASES



▶▶ THE DECISION OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASE "CHKHARTISHVILI V. GEORGIA"

On May 11, 2023, the European Court of Human Rights announced the decision in the case "Chkhartishvili v. Georgia". The Court found that Article 11 (freedom of assembly) in conjunction with Article 10 (freedom of expression) of the Convention had been violated.

According to the factual circumstances of the case, on November 29, 2019, in the morning, Chkhartishvili took part in a rally held in front of the public library in Tbilisi, where the Minister of Justice was scheduled to deliver a speech. The demonstration, attended by several hundred protesters, was a continuation of the cycle of protests triggered by the failure of the parliament to approve the electoral reform. Video footage of the event shows police telling protesters not to block the road and entrance to the building. Chkhartishvili is also seen throwing beans at the police and shouting that beans used to be "slave porridge".

As a result, the complainant was immediately arrested and taken to the Tbilisi Police Department for the act provided for by two articles of the Code of Administrative Offenses. According to the administrative offense report, the applicant blocked the road, violated public order, insulted the police, and disobeyed their orders.

The Tbilisi City Court recognized the appellant as an administrative offender and sentenced him to eight days of administrative imprisonment as a sanction. The court pointed out that referring to police officers as "slaves" was insulting, and humiliating, and Georgian legislation provided for liability for this. The national court ruled that such actions cannot be considered a form of protest.

The applicant relied on Articles 6 (right to a fair trial), 10 (freedom of expression), and 11 (freedom of assembly) and claimed that his case had not been fairly tried by the court and that his arrest and detention constituted an unjustified interference with his rights. He also indicated that his administrative arrest and detention was illegal and arbitrary under Article 5, subsection 1(c) (right to liberty and security).

The European Court considered the applicant's claims solely based on Article 11 in conjunction with Article 10 and indicated that public officials acting in their official capacity are subject to wider limits of acceptable criticism than ordinary citizens. On the other hand, the court could not ignore the fact that Chkhartishvili publicly threw dried beans at the police officers while the officers were doing their jobs.

The European Court took into account the fact that the applicant was not a violent person, did not injure anyone, and did not cause an escalation of violence. It is important that the demonstration itself took place peacefully. The court pointed out that Article 10 protects not only the content of expressed ideas and information but also the form of their transmission. Therefore, even if the applicant's conduct might have justified intervention by the authorities, they should have been aware that the sanction of imprisonment had to be used in the context of a fundamental right, which required a particularly cautious approach.

In the opinion of the European Court, the applicant was sentenced to eight days of administrative detention mainly for expressing his views, not because he did not move out of the way. However, the reasoning of the national courts regarding the sanctioning of imprisonment did not address the wider context of the applicant's conduct. In addition, the Court considered that the grounds given in the national court's judgment were not, in themselves, sufficient to determine the proportionality of the sanction. In the absence of due reasoning, and in the context of freedom of expression and assembly, the imposition of a custodial sanction on the applicant's non-violent behavior was unjustified, even if that behavior was disturbing. Thus, the Court found a violation of Article 11 in conjunction with Article 10 of the Convention.⁹

▶▶ ASSESSMENT OF THE BURDEN OF PROOF IN ADMINISTRATIVE OFFENSE CASES

Sighnaghi District Court (Judge Lika Bokeria) heard the case of an administrative offense, which was about the persons arrested in May 2023 at the administrative building of the Sagarejo Police. The detainees were protesting the arrest of peaceful protesters at the rally taking place near Kvareli Lake on May 20. On the other hand, the protesters gathered because of the wedding of the son of a Russian politician in Kvareli and, in general, the state's policy towards Russia. According to the court's decision, before their arrest in Sagarejo, close to the populated area, the following phrases were shouted into the microphone: "You wretched people, slaves of Russia, beggars, Russia is the occupier" and "Long live Georgia".

⁹ Case of Chkhartishvili v. Georgia (application no. 31349/20, Available at: <https://hudoc.echr.coe.int/fre#{%22tabview%22:%22translation%22,%22itemid%22:%22001-224577%22}>) [Last seen: 14.08.2023].

According to the police, this action violated public order (Article 166), in addition, the detainees did not take into account the request of the law enforcement officers to stop the action and addressed them with obscene words (Article 173).

Sighnaghi District Court did not consider the arrested persons to be administrative offenders, therefore, the administrative offense case regarding both articles was dismissed. In the decision, the court evaluated the importance of the evidence, the role of the explanation of the representative of the law enforcement agency when recognizing a person as a lawbreaker, the issue of the distribution of the burden of proof between the parties and the need to assess the evidence in unity.

The court noted that in the process of proof, the circumstances recorded by the persons preventing the offense deserve attention since they are the most important source of evidence. The explanation of the public servant generally enjoys high credibility, which is important for the formation of the internal beliefs of the judge. However, despite this, to recognize a person as an administrative offender, the explanation of the representative of the law enforcement agency must be confirmed by other types of evidence. The court pointed out that to consider specific factual circumstances as obvious, it is necessary to evaluate them with other pieces of evidence in the case and the judge should make a decision based on their joint analysis.

According to the resolution, the legislator establishes a standard that implies a set of evidence. These pieces of evidence should be related to each other.

Thus, even though the law enforcement representative's explanation in the court confirmed the fact that the person had committed an offense, this

was not confirmed by the shoulder video camera record submitted by him and that became the basis for the dismissal of the case against the person.

►► **RECOGNIZING A PERSON AS AN ADMINISTRATIVE OFFENDER BASED ON A VIDEO PUBLISHED ON THE TIKTOK PLATFORM.**

In the quarterly review for the period of January-March 2023, the case related to the recognition of the courier as an administrative offender was described. He was declared an administrative offender based on the resolution of the Tbilisi City Court of March 10, 2023, due to the content of the video posted on TikTok.¹⁰

A person recognized by the court as an offender is a courier who has to move around the city on a moped. He posted a video on the social network TikTok with the title: "If you don't want to hear swearing, don't watch or listen." In the video, a person expresses a strong protest against Tbilisi's transport policy. He criticizes those people who abuse their official authority and enjoy a privileged position.

According to the decision of the Tbilisi Court of Appeals, the decision of the Court of First Instance was partially canceled. In particular, the Court of Appeals dismissed the case under Article 173 (1) (verbal abuse of a representative of a law enforcement body and/or carrying out other offensive actions against him). However, the decision of the court of first instance regarding considering a person as an offender for the

¹⁰ Resolution of Tbilisi City Court March 10, 2023, case number N4/456-23.

misdemeanor provided for by the first part of Article 166 (disorderly conduct) was left in force.¹¹

Although the Court of Appeals shared the position of the author of the appeal regarding the fact that the offense provided for in the first part of Article 173 (insulting a police officer) was not confirmed, however, the decision does not justify the dismissal of the case in this regard. Regarding the action provided for in the first part of Article 166, the Court of Appeal fully shared the reasoning of the appealed decision and considered that the video posted by a person on his social network goes beyond the scope of criticism, contradicts generally established norms, and violates public order.

According to the existing regulations, the decision of the Court of Appeals regarding the recognition of a person as an offender for the action provided for in Article 166 (1) of the Code of Administrative Offenses is no longer subject to appeal at the national level. The reasoning developed by the Court of Appeals in its decision on this issue is a very dangerous precedent and contradicts the existing standards of freedom of speech and expression.

▶▶ ILLEGAL PRACTICES OF THE MINISTRY OF INTERNAL AFFAIRS WITH PERSONAL DATA PROCESSING

The Personal Data Protection Service recognized the Ministry of Internal Affairs of Georgia as an administrative offender for violating the principle of personal data processing and imposed a fine of 500 GEL.¹²

¹¹ Resolution of Tbilisi Court of Appeals May 11, 2023, case number N4/s-487-23.

¹² The decision of the Personal Data Protection Service of June 8, 2023, Ng-1/126/2023.

The case concerns the persons arrested for allegedly violating Articles 166 (disorderly conduct) and 173 (disobedience to the lawful order of a police officer) of the Code of Administrative Offenses at the ongoing protest rally in front of the Parliament of Georgia on March 8, 2023, in the city of Tbilisi. In particular, at the stage of presenting the cases of these persons to the court by the Ministry of Internal Affairs, the case materials of each of them, as evidence, included a "notification", which indicated the personal data of 43 arrested persons - name, surname, year of birth and legal grounds for administrative detention. Therefore, even though the cases were considered individually, the files of all persons contained data about other detainees.

In its decision, the Personal Data Protection Service noted that "it was not necessary to process information about other detained persons within the framework of the ongoing proceedings against a specific person". Accordingly, placing information about other persons in the files of detainees in an open form is considered a violation of the Law of Georgia "On Personal Data Protection".

It should be noted that the Personal Data Protection Service has already made several decisions against the Ministry of Internal Affairs regarding the illegal processing of data. Despite this, the systematic solution for this issue and the change of administrative practices in the agency are still problematic.¹³



¹³ <https://gyla.ge/ge/post/shinagan-saqmeta-saministro-personalur-monacemeb-s-ukanonod-amushavebs> [Last seen: 15.08.2023].