



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

JUSTICE PROVIDED UNDER THE 1984 CODE

**QUARTERLY REVIEW
(JENUARY-MARCH 2023)**



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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) represents a quarterly review of the period from January 1st to March 31, 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 cases and arrests of peaceful demonstrators in March based on the Code of Administrative Offenses. According to the information disseminated by the Ministry of Internal Affairs of Georgia, only on March 7, 2023, at the protest action taking place on Rustaveli Avenue, in the vicinity of the Parliament building, in Tbilisi, in accordance with Articles 166 and 173 of the Administrative Offences Code, 66 people were arrested on the grounds of disorderly conduct and non-compliance with a lawful order or demand of a law-enforcement officer.¹ Among other matters, determining the locations of the arrestees by family members and lawyers remained problematic. The representative of the Public Defender's Office also mentioned about this.² In this regard, the Public Defender also submitted a written statement to

¹ Statement published by the Ministry of Internal Affairs of Georgia, available at: <https://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/15699> [last seen: 22.05.2023].

² Podcast N5, Justice under the 1984 Code, available at: <https://www.facebook.com/GYLA.ge/videos/798698354947738> [last seen: 22.05.2023].

the temporary detention cell of the Ministry of Internal Affairs and Special Investigative Service.³ Arrestees whom representatives of the Ombudsman were able to visit indicated harsh forms of administrative arrests, and some of them had injuries. Regarding several arrestees, with their own wish and consent, the Office of Public Defender immediately applied to the Special Investigation Service with the request to start an investigation.⁴ In these days, 22 reports from citizens, journalists, non-governmental organizations and the Office of Public Defender have been submitted to the Special Investigation Service about possible excesses of force and injuries caused by law enforcement officers to the persons present at the March 7-8 demonstration.⁵



³ Letter of Public Defender, May 16, 2023, N24/4763.

⁴ Statement of Public Defender of Georgia, available at: <https://ombudsman.ge/geo/akhali-ambebi> [last seen: 22.05.2023].

⁵ Statement of Special Investigative Service, available at: <https://sis.gov.ge/ka/article/specialuri-sagamodziebo-samsaxuris-gancxadeba/303> [last seen: 22.05.2023].

Statistical information

According to the data published by the Ministry of Internal Affairs of Georgia, in the first quarter of 2023, 1729 cases of violations under Articles 166 and 173 Administrative Offences Code were detected.⁶ Among them:

Offense provided for in Article 166 (disorderly conduct)	720
Offense provided for in Article 173 (non-compliance with a lawful order or demand of a law-enforcement officer)	1009

Only in the first quarter of this year, a total of 1585 people were placed in cells based on Administrative Offences Code.⁷ Among them:

based on Articles 166-173 (disorderly conduct, non-compliance with a lawful order or demand of a law-enforcement officer)	662
only on the basis of Article 173 (non-compliance with a lawful order or demand of a law-enforcement officer)	420
based solely on Article 166 (disorderly conduct)	78

⁶ Statistical Information published by the Ministry of Internal Affairs of Georgia, available at: https://info.police.ge/page?id=772&parent_id=771 [last seen: 22.05.2023].

⁷ Statistical Information published by the Ministry of Internal Affairs of Georgia, available at: https://info.police.ge/page?id=770&parent_id=233 [last seen: 22.05.2023].

ACTIVITIES IN PARLIAMENT

According to the 2022 action plan of the Legal Issues Committee of the Parliament of Georgia, a working version of the new Administrative Offences Code should have been developed during the past year.⁸ Despite of this, in 2022, the working version of the draft law was not presented to the interested parties. Instead of developing the project of a new code and starting the necessary procedures for its adoption, according to the 2022 activity report of the Legal Issues Committee, a number of non-essential changes were made in the existing code at the initiative of the committee. Among them, the sanctions established for some administrative offenses were tightened, and the content of some of them were clarified. For example, such changes affected parking regulations, carrying of cold weapons, violations of traffic regulations, construction issues, etc.⁹

Among the changes is Article 238¹, which establishes the authority of the judge to apply to the investigative agency in the case of torture, humiliating and/or inhuman treatment or possible treatment of a person who has been held administratively liable.¹⁰

⁸ 2022 Action Plan of the Legal Issues Committee of the Parliament of Georgia, available at: <https://web-api.parliament.ge/storage/files-22.pdf> [last seen: 11.02.2023].

⁹ 2022 Activity Report of the Legal Issues Committee of the Parliament of Georgia, available at: <https://info.parliament.ge/file/1/OpenFile/6146>, [last seen: 22.05.2023].

¹⁰ <https://matsne.gov.ge/ka/document/view/5591359?publication=0#DOCUMENT:1> [last seen: 22.05.2023].

The first issue of the 2023 action plan of the Legal Issues Committee, like the previous year's plan, will concern the work on the new Administrative Offences Code. According to the plan, this time already in 2023, the working version of the bill should be developed.¹¹



¹¹ 2023 Action Plan of the Legal Issues Committee of the Parliament of Georgia, available at: <https://info.parliament.ge/file/1/OpenFile/6145>, [last seen: 22.05.2023].

REVIEW OF CASES



During the reporting period, the court considered several interesting cases. The content of the aforementioned rulings and the standards applied by the courts are problematic and, mostly, are in conflict with freedom of speech and expression:

○ **Recognizing a person as an administrative offender based on a video published on the Tik-Tok platform**

Courier I.M. by the resolution of Tbilisi City Court, March 10, 2023, was recognized as an administrative offender due to the content of the video posted on the Tik-Tok platform. A fine of 2,000 GEL was determined as the form and size of the sanction.¹²

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 Tik-Tok 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. The protest is aimed at the people who allow themselves to drive in the lane designated specially for public transport (the so-called BusLine), where it is forbidden for any person,

¹² Resolution of Tbilisi City Court March 10, 2023, case number N4/456-23.

regardless of his position, to move/drive. He also severely criticizes and curses those policemen who selectively fine citizens, while employees of state agencies and persons close to them are not responsible for violations.

According to the court's explanation, Tik-Tok is considered as a public space and place defined by Article 166 of the Administrative Offenses Code. In addition to this, the social network, including Tik-Tok, which is accessible to a large part of society, belongs to the place of public gathering, and any person posting information on this platform has the obligation to follow the norms of ethics and morality accepted by society. In court's point of view, the content of the published video went beyond the scope of freedom of speech and expression. The court did not discuss the nature of the social network and did not justify in what way the public order and peace of other citizens were violated.

Regarding the offense under Article 173 of the same case, the court determined that: "The action committed by I.M. on December 10, 2022, in particular, the verbal abuse of law enforcement officers depicted in the video posted on the social network, covers the action determined by the disposition of first part of Article 173 of the Administrative Offenses Code of Georgia. The court draws attention to the fact that the mentioned video contains verbal abuse of the employees of the law enforcement agency based on the exercise of their official authority. This video was seen on the social network by a particular police officer and he perceived it as an insult, which resulted in the corresponding result - drawing up a report of the administrative offence against the person who violated the law."

The abovementioned decision can be considered as a rather dangerous precedent, which contradicts the existing standards of freedom of speech and expression.

○ Recognizing a person as an administrative offender based on a post published on Facebook

According to the resolution of Kutaisi Court of Appeals, March 23, 2023, the resolution of Batumi City Court remained in force, according which the citizen, due to the post published on his personal profile on Facebook, was recognized as an administrative offender based on the first part of Article 173 of Administrative Offences Code and a fine of 2 500 GEL in the favor of state budget was determined as the penalty.¹³

According to the factual circumstances of the case, the person recognized as an administrative offender, has published the post on his personal page on Facebook and has intentionally insulted the police officers with humiliating, unquotable words, disgracing their honor and dignity.

Regarding the Article 166, the court noted that “social network, including Facebook, is a place of public gathering and every person has an obligation to follow the norms of ethics and morals, accepted by society, as for the public order, the Chamber of Appeals indicated that, this is a set of relations between society members, which guarantees the peace of this society and is expressed in the dignified behavior of citizens in the places of public gatherings. Liability imposed by the Article 166 of Administrative Offences Code of Georgia also serves the purpose of public order.”

According to the court’s assessment: “one of the (if not the only) and most comfortable places for public communication and gathering is social network and in order for the society to become an eyewitness of disorderly conduct, it is not necessary at all to witness the fact physically, when the

¹³ Resolution of Kutaisi Court of Appeals, March 23, 2023, case number: N4/ს-182-23.

actions carried out by a certain person in social network manifests all the characteristic of administrative offence defined by the law.”

When it comes to the administrative offence defined by the Article 173, the court indicated that, “the time of performance of the official duties of the employee of the law enforcement body is not limited only to the period when he/she reveals the fact of offence, crime or other fact of illegal nature and performs various procedural actions of proceedings on the spot, but within this period the implementation of the subsequent procedures of the administrative offence and/or criminal proceedings and any actions of the employee of law enforcement body, official status, which is related to the proceedings of a specific case, is also included. The performance of an official duty means any form of activity, within the scope of one’s competence, on a subject assigned to one’s authority. Accordingly, the legal provision in the form of insulting a police officer does not necessarily refer only to the illegal behavior that occurs directly at the place of committing/detecting the offense or taking any procedural action.” Thus, in this case, the time and circumstances of insulting the police officer are not important for the qualification of the action.

○ **Setting up a tent in a public space as an administrative offence**

Senaki District Court considered the case of arbitrary alteration of the appearance of territory within the administrative boundaries of a municipality and the ongoing administrative offence case on this fact (Parts 3 and 4 of Article 150¹, Part 2² of Article 150 of Administrative Offences Code). The court recognized the person as an administrative offender and

set a fine of 5000 GEL as a form and size of the sanction.¹⁴ The decision was upheld by the resolution of Kutaisi Court of Appeals, March 23, 2023.¹⁵

According to the factual circumstances of the case, In Senaki, on Chavchavadze Street, near the Khorava State Theatre, a citizen has arbitrarily placed a light construction (a tent), which is why an administrative offense report was drawn up against him. During the discussion, the citizen explained that he has not committed an administrative offense by setting up the tent, because as a civil activist, he protested against the employees of Senaki City Hall. The court's resolution did not provide any specific reasoning on the issue of the tent, instead it only limited itself with the reasoning that the appearance of the city has changed with the placement of this construction.

It must be indicated, that on the issue of setting up a tent, in 2016, actions performed by the Tbilisi City Hall, by which the plaintiffs were restricted in their right to a peaceful assembly and were not given the opportunity to pitch a tent, were recognized as illegal by the decision of Tbilisi City Court. In this case, according to the court's decision, the state was ordered to allow the plaintiffs to set up a tent in front of Tbilisi Municipality City Hall building, at the place chosen by the plaintiffs.

¹⁴ Resolution of Senaki District Court, October 24, 2022, case number: N4/179-4/180.

¹⁵ Resolution of Kutaisi Court of Appeals, 23 March, 2023, case number: N4/ს-182-23.