

Author: Nona Kurdovanidze



GERMAN FOUNDATION
FOR INTERNATIONAL LEGAL
COOPERATION



REFORM OF THE ADMINISTRATIVE OFFENSES CODE

WHAT GEORGIA SHOULD DO TO SATISFY THE PRECONDITIONS FOR THE ACCESSION TO EUROPEAN UNION

This document was prepared by the **Georgian Young Lawyers' Association** (GYLA) with support from the **German Foundation for International Legal Cooperation** and the **USAID Rule of Law Program** implemented by the **East-West Management Institute** (EWMI) with funding from the **United States Agency for International Development** (USAID). GYLA assumes full responsibility for the content, and the views expressed do not necessarily reflect those of the German Foundation for International Legal Cooperation, USAID, or EWMI.

1. EXISTING SITUATION

In Georgia, the Administrative Offenses Code, which is incompatible with fundamental human rights, was adopted during the soviet times and is still in force. Due to the substantive incompatibility with the Constitution of Georgia and international standards, the Code cannot be ameliorated by adopting minor amendments. Accordingly, it is essential to carry out a systemic reform of the Code.

The Code, adopted in 1984 has been amended more than 500 times over the years. However, the amendments did not cover fundamental issues that created the basis for the instrumentalization of the Code. The Code fails to satisfy the due process requirements. Even though, the Code envisions

grave sanctions for certain offenses, including administrative detention, the procedural guarantees are significantly weaker than those applied to a defendant charged with the offense under the criminal law; The Code does not set out the requirement of presumption of innocence; and it does not require the Judge to apply the standard of “beyond reasonable doubt.” The condensed procedures for reviewing a case and applying sanctions fail to ensure effective representation.

The application of the Administrative Offenses Code in its current form results in a daily violation of fundamental human rights and international commitments undertaken by Georgia. Human rights violations ensuing from the application of the Code over the years have been documented by the Georgian Young Lawyers Association (GYLA), other local and international organizations and the reports of the Public Defender’s Office.¹ The practice of violation of fundamental human rights through the application of the Administrative Offenses Code was evident throughout the year 2024 as well, especially toward the participants in the demonstrations held alongside the adoption of Russian-style Law “on Transparency of Foreign Influence.” Hundreds of participants of peaceful demonstrations were charged with administrative offenses without any foundation, in the absence of neutral evidence, based merely on the testimonies of the police officers.² As a response, although the State acknowledges the need for reform, without the political will, the Code is retained until today.

¹ See for example GYLA report - „Georgia in 2023“, available at - <https://shorturl.at/f1hqN> accessed: 29.09.2024; GYLA report „Beyond the Lost Eye (legal assessment of the events of 20-21 June)“, available at - <https://shorturl.at/a5jYE> accessed: 29.09.2024; Gyla Report „Protest considered as an offense“, available at - <https://shorturl.at/q8Ovf> accessed: 29.09.2024]. Human Rights Watch, Administrative Error: Georgia’s Flawed System of Administrative Justice, January 2012, available at: <https://shorturl.at/ZBMK2> accessed: 29.09.2024; „How to stop the unconstitutional application of the legislation on Administrative Offenses by Georgia“, The Judicial Independence and Legal Empowerment Project (JILEP), 2013. available at: <https://shorturl.at/xKfH2> accessed: 29.09.2024; Human Rights Committee Concluding observations on the fifth periodic report of Georgia, 2022. Available at: <https://shorturl.at/Dha1H>, accessed: 29.09.2024.

² The statistics collected by the legal aid team of the Civil Society Organizations. available at: <https://shorturl.at/4FaFF>, accessed: 29.09.2024.

2. WHAT IS THE PRECONDITION SET OUT BY THE EUROPEAN UNION

Due to the incompatibility of the Administrative Offenses Code with Fundamental rights, the European Commission has set out the preconditions Georgia should meet in the context of the ninth step regarding Georgia, in order to become a European Union Member State.³

According to step nine, Georgia should enhance the protection of Human Rights by way of fulfilling the rights of freedom of assembly and expression.⁴ Pursuant to the documents published in the framework of the 2023 enlargement package, to implement the above step, the European Union expects Georgia to start working on the systemic review of the Administrative Offenses Code by ensuring wide stakeholder involvement. While amending the Code, the standards established by the European Court of Human Rights should be taken into consideration. This should be done, amongst others, by improving the inadequate guarantees for the protection of the rights of administrative detainees, strengthening the standard of proof so that the detainees do not have to prove their innocence, and existence of an effective legal mechanism for reviewing the lawfulness of administrative arrests.⁵

³ 2023 report of the European Commission on enlargement regarding Georgia, available at: <https://t.ly/dcMWP>, accessed: 29.09.2024.

⁴ Ibid.

⁵ Ibid, 29-30, 38.

3. FAILED ATTEMPTS OF REFORMING THE ADMINISTRATIVE OFFENSES CODE

The work on reforming the legislation on Administrative Offenses has commenced multiple times in recent years. However, in the absence of political will, none of these attempts have yielded any results.

The draft elaborated by the State Commission

On November 3, 2014, by resolution #1981, the Government of Georgia created a State Commission in support of the reform of the system of offenses, which drafted a reform project.⁶ According to the reform model elaborated by the State Commission:

- A new category - “a misdemeanour” was to be added to the Criminal Code of Georgia. This category comprised the wrongdoings that, given their criminal nature, would be moved from the Administrative Offenses Code to the Criminal Code (e. g. minor hooliganism and disobedience to the lawful orders of the police). In addition, committing a misdemeanor would not appear in a person’s criminal record;
- Rules of criminal procedural law were to apply to the offenses categorized as misdemeanours (the charges would be brought by the Prosecutor’s Office), ensuring a higher standard of proof and stronger procedural guarantees;
- The remaining wrongdoings in the Administrative Offenses Code were to be administered by the relevant administrative bodies according to the substantive jurisdiction. Their decisions were to be subjected to a full judicial review in compliance with the due process standards;
- Administrative detention was to be removed from the list of sanctions for administrative wrongs;
- The mechanism of administrative arrest was to be abolished.

⁶ Brief of GYLA - „Legislation on Administrative Offenses”, 2021. available at: <https://t.ly/XoGiL>; accessed: 29.09.2024.

The draft elaborated by the Ministry of Internal Affairs of Georgia

On January 16, 2019, the Ministry of Internal Affairs of Georgia announced the commencement of the work on the reform of the Administrative Offenses Code, which was to result in the preparation of the draft law by July 2019. The Ministry of Internal Affairs of Georgia finalised the draft in June 2019. However, it has not been presented to the stakeholders. Consequently, the content of the model for reforming the Administrative Offenses Code elaborated by the Ministry of Internal Affairs of Georgia is unknown.

Plan by the Parliamentary Committee on Legal Affairs

After two failed attempts of the reforms announced in past years, the commitment to start working on this issue was undertaken by the Parliamentary Committee on Legal Affairs. Pursuant to the 2021, 2022, 2023 and 2024 action plans of the Committee on Legal Affairs, the working draft of the new Administrative Offenses Code was to be prepared.⁷ However, as the work of the tenth Convocation of the Parliament is coming to an end, not even a working draft has been presented to the Stakeholders interested in the subject.

⁷ 2021 Action Plan of the Parliamentary Committee on Legal Affairs, available at: <https://shorturl.at/djVfS>; 2022 Action Plan of the Parliamentary Committee on Legal Affairs, available at: <https://shorturl.at/elogl>; 2023 Action Plan of the Parliamentary Committee on Legal Affairs, available at: <https://shorturl.at/cePUx>; 2024 Action Plan of the Parliamentary Committee on Legal Affairs, available at: <https://shorturl.at/TQgcm>.

4. STRATEGIC LITIGATION BEFORE THE CONSTITUTIONAL COURT

In order to suspend the unconstitutional application of the Administrative Offenses Code, the Georgian Young Lawyers Association commenced strategic litigation in 2015. As of October 2024, the organisation has submitted **17 complaints** to the Constitutional Court regarding certain provisions of the Administrative Offenses Code, **seven of which have been satisfied**⁸ at this point. Even though the Court **found 4 complaints inadmissible**, it made important clarifications in its rulings.⁹ Six complaints are currently under review.¹⁰

Litigation conducted by GYLA has revealed the fundamental problems of the Administrative Offenses Code even more. The distinction of grave wrongs from other offenses was first made in the Constitutional Court Judgment regarding the case submitted by GYLA. The Constitutional Court considered grave offenses to be the wrongs for which administrative detention could be applied as a sanction. However, the Court has not excluded that similar to the administrative detention, other sanctions envisioned under the Administrative Offenses Code also attained the level of intensity of the limitation of the right that would suffice for it to be qualified as a grave offense.¹¹

Notably, the Constitutional Court has not yet reviewed those cases submitted by GYLA that, given the comprehensiveness of the issues complained of, are capable of prompting the reform of the Administrative Offenses Code. These cases were admitted for substantive review by the Constitutional Court on December 17, 2019. However, no hearing for substantive review has been appointed in the period of almost five years.¹²

⁸ Edisher Goduadze v. the Minister of Internal Affairs of Georgia (26.01.2015, №622); Davit Malania v. the Parliament of Georgia (20.06.2016, N1756); Irakli Khvedelidze v. the Parliament of Georgia (03.10.2017, №1263); Besik Katamadze, Davit Mzhavanadze and Ilia Malazonia v. the Parliament of Georgia (04.07.2019, №1271); Irakli Jugheli v. the Parliament of Georgia (15.02.2019, №1412); “Beknasi” Ltd v. the Parliament of Georgia (30.12.2019, N1475); Giorgi Gotsiridze v. the Parliament of Georgian (30.12.2019, №1476);

⁹ Natalia Pheradze and Konstantine Guruli v. the Parliament of Georgia (22.09.2017, №1730); Vasil Zhizhiahvili and Giorgi Gotsiridze v. the Parliament of Georgia (14.02.2020, №1623); Davit Nebieridze v. the Parliament of Georgia (21.04.2021, №1768); Tatia Nikolashvili v. the Parliament of Georgia (18.08.2023, №1791).

¹⁰ Konstantine Chachanidze v. the Parliament of Georgia (20.11.2018, №1367); Zurab Girchi Japaridze and Konstantine Chkheidze v. the Parliament of Georgia (30.10.2018, №1361 and 09.06.2020, №1510); Bondo Tevdoradze, Anzor Gubaevi, and Khatuna Beridze the Parliament of Georgia (10.06.2020, №1511); Vasil Zhizhiahvili and Giorgi Phutkaradze v. the Ministry of Internal Affairs of Georgia (16.12.2021, №1666); Natalia Pheradze v. the Parliament of Georgia (January 22, 2024); Davit Nebieridze v. the Parliament of Georgia (04.09.2029, №1838).

¹¹ Davit Malania v. the Parliament of Georgia (20.06.2016, N1756).

¹² Zurab Girchi Japaridze and Konstantine Chkheidze v. the Parliament of Georgia (30.10.2018, N1361 and 09.06.2020, N1510).

5. SOLUTION

After the evaluation of the results of the 2024 Parliamentary elections, the newly elected Parliament should carry out a systemic reform of the Administrative Offenses Code. For this purpose:

- The Committee on Legal Affairs of the 11th Convocation of the Parliament should create a working group with the wide involvement of the relevant stakeholders aimed at preparing a draft reform of the Administrative Offenses Code. The reform should reflect the standards established by the European Court of Human Rights, amongst others, improved standard of proof for administrative offense cases, guarantees for the protection of the rights of the persons charged with administrative offenses, and legal mechanism for reviewing the lawfulness of administrative arrests.
- The 11th Convocation of the Parliament of Georgia should adopt a package of draft laws in the framework of the reform of the Administrative Offenses Code at the 2025 spring session.

Having regard to the existing legislation, in order to eliminate/mitigate the practice of rights violations resulting from the application of the current Administrative Offenses Code, during the transition period, until the reform is completed:

The Parliament of Georgia

- The 11th Convocation of the Parliament of Georgia should utilize the supervisory mechanisms, and create a thematic review group to study the practice of human rights violations resulting from the application of the Administrative Offenses Code in the system of the Ministry of Internal Affairs of Georgia and the Courts. Amongst others, study the issue of the application of the standards established by the European Court of Human Rights by the Common Courts in cases regarding the administrative offenses.

Ministry of Internal Affairs of Georgia

- Take steps to inform a detainee in an adequate and perceivable manner regarding the right to a lawyer. In addition, eliminate artificial barriers for lawyers and allow them to meet the detainees promptly. Establish the practice of videotaping this process of explanation of the above rights;
- Make arrangements for the confidential meeting between a detainee and his/her lawyer at the police station, including by creating an adequate infrastructure, if necessary. Ensure proper documentation of the notification of a family member or a lawyer by detainee at the police stations by way of drafting relevant protocols;
- Provide the possibility for a lawyer and/or a family member to receive information regarding the detainee's whereabouts at any time, through telephone communication, in a centralized manner. Allow the detainee to meet a lawyer even before going through the admission procedures at the police station or temporary detention facility;
- Eliminate the unlawful practice of limiting the right to a call guaranteed by the legislation during the detention. The detainee should be able to resort to this right at the temporary detention facility as well. In case of refusal to use this right, a relevant written record (protocol) should be drafted, which should be signed by the detainee himself/herself;
- Ensure the entry of a lawyer without a special permit to visit a detainee at any administrative premises of the Ministry of Internal Affairs of Georgia regardless of the working day/time;
- Eliminate the practice of keeping the detainees in police cars for an unreasonable time and ensure their prompt transfer to the nearest facility of the police or other law-enforcement body.



Common Courts

- During the review of the cases regarding administrative offenses, apply the standards established by the European Court of Human Rights.

Constitutional Court

- Prioritize and promptly review the complaints submitted in relation to the Administrative Offenses Code.