ADMINISTRATIVE ERROR

UNDER THE SHADOW OF GEORGIAN LAWMAKING

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HUMAN RIGHTS CENTER

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INTRODUCTION

On April 29, 2021, the Parliament of Georgia passed in the third hearing two draft laws on making amendments to the Code of Administrative Offenses. The amendments under the draft laws envisage toughening up-to-date existing sanctions for petty hooliganism and disobedience to police orders and extending the terms of administrative detention. The amendments were approved on April 29 in an expedited manner against the background of the criticism from civil society organizations[1].

The purpose of the Document is to provide the reader with information about the changes adopted and to assess the need and expediency of these changes through a general assessment of the Code of Administrative Offenses of Georgia, an analysis of a specific judgment of the Constitutional Court and a review of the lawmaking process bound with human rights. The Document also reviews the possible chilly effect of the adopted changes on the realization of fundamental human rights and its possible negative impact on the observance of the general standard of human rights protection in the country.

AMENDMENTS MADE TO ARTICLES 166 AND 173 OF THE CODE OF ADMINISTRATIVE OFFENSES

In accordance with the first draft law on Making Amendments to the Code of Administrative Offenses of Georgia, the second paragraph was added to Article 166 of the Code stipulating that the repeated commission of the same administrative offense by a person hold of petty hooliganism shall carry a fine of GEL 1,500 to GEL 2,000 or an administrative imprisonment from 7 up to 15 days[2].

Further, Article 173 of the Code of Administrative Offenses was reformulated into a new wording, according to which one-time disobedience to a lawful order or request of a law enforcement officer or other appropriate representative of the state authorities when the officer is fulfilling the official duties, or a one-time verbal abuse of the officer or committing other assaultive acts against the officer shall carry a fine for the offender from GEL 2000 up to GEL 3000 or an administrative imprisonment up to 15 days; while committing the act repeatedly shall carry a fine for the offender from GEL 3500 up to GEL 4500 or an administrative imprisonment from 10 up to 15 days.

[1] See: The Resolution of the Parliament of Georgia on Making Amendments to the Code of Administrative Offenses of Georgia (Registration № 07-3/45/10, Resolution of the Parliament of Georgia) https://info.parliament.ge/file/1/BillReviewContent/274009

[2] The Draft Law of Georgia on Making Amendments to the Code of Administrative Offenses of Georgia (Registration № 07-3/45/10 originally initiated version, draft law). https://info.parliament.ge/file/1/BillReviewContent/273230?

A GENERAL PROBLEM WITH THE CODE OF ADMINISTRATIVE OFFENSES

The current Code of Administrative Offenses is one of the most repressive legislative acts in force in the country from the Soviet Union times, which entered into force on December 15, 1984 approved by the signatures of the Chairman of the Presidium of the Supreme Soviet of the Georgian Soviet Socialist Republic P. Gilashvili and the Secretary of the Presidium of the same Supreme Soviet T. Lashkarashvili.

The Code comes from the times when individual human rights were not on the agenda of the public policy at all. Thus, the Code does not offer a person charged with administrative liabilities the procedural rights guaranteed by the current Constitution of Georgia and the fundamental right of a fair trial recognized by international human rights law. Due to insufficient procedural guarantees, the Code fails to protect citizens from the arbitrary actions on the part of law enforcement officials. The court decisions in most of the cases are made in violation of the standards of proof, only on the basis of the testimony of a police officer excluding and disregarding the right of the defense to a fair trial.

In practice, Articles 166 and 173 of the Code of Administrative Offenses are most often used when citizens exercise their right to assembly and demonstration[3]. Due to various reasons, the detention of the protesters by law enforcement officers takes place under these articles. Over the years, in the court hearings of the cases of dozens of activists defended by Human Rights Center within the free legal aid program, there has been consistently encountered a variety of problems which are due to the inconsistency of the Code with the current Constitution. In most of the cases, judges make the decisions only on the basis of police testimonies which in the most cases are of a blanket nature. Often, the uniform testimony of a single police officer is the only evidence for dozens of people to be held as offenders[4].

The Code of Administrative Offenses has been criticized by civil society organizations for years, and the reform of the Code remains an unchanged demand[5]. Numerous international governmental and non-governmental organizations speak about the non-compliance of the Code with the human rights protection standards[6]. The severity of the problem and its scale are reflected in numerous reports of the Public Defender of Georgia[7].

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[3] See; Article by Human Rights Center: A judge fined the activists with GEL 1200, 02.04.2021 http://www.hrc.ge/162/geo/

[4] Ibid.

[5] See: Statement of the Georgian Young Lawyers Association January 18, 2018: The law of administrative offenses violates fundamental rights.
https://gyla.ge/ge/post/administraciul-samartaldarghvevata-kanonmdebloba-arghvevs-fundamentur-uflebebs

[6] See: "Administrative Error - Georgia's Flawed System for Administrative Detention", Human Rights Watch, 01/2012
https://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf
Further see: Report of the Working Group on Arbitrary Detention, the UN General Assembly, Human Rights Council, 2012
https://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.57.Add.2_en.pdf

[7] See: The Report of the Public Defender of Georgia "on the Situation of Protection of Human Rights and Freedoms in Georgia", 2020. https://ombudsman.ge/res/docs/2021040110573948397.pdf
Further see: Statements of the Public Defender: https://bit.ly/3vPDi0C ; https://bit.ly/3d2bD5S

In response to the problems, the Georgian government has declared the need to reform the Code. In order to carry out the reform, in accordance with the Decree N1981 of the Government of Georgia of November 3, 2014[8], a governmental commission was set up which has developed the draft Code of Administrative Offenses of Georgia in accordance with the regulation approved by the same decree[9]. In 2015, under the amendments to the Decree, the Public Defender of Georgia became a member to the commission[10]. The beginning of the reform wave was welcomed by non-governmental organizations expressing their support to the government in this process[11].

Nevertheless, the initiated reform was limited to certain changes made in the current versions of the Code clearly allowing us to say that the reform of the systematic revision of the Code of Administrative Offenses has failed. Despite some positive changes that have increased the degree of the protection of the rights guaranteed by the Constitution, and in some cases facilitating the legislation to be brought closer to the international standard[12], still these changes cannot be considered as a systematic revision of the Code.

The next attempt of the reform took place in 2019. In particular, on January 16, 2019, the Ministry of Internal Affairs announced a beginning of the work to reform the Code of Administrative Offenses. According to the Ministry, the work on the reform should have been completed by July 2019 with a draft law as an output. According to the available information, the Ministry of Internal Affairs completed the work on the draft in June 2019, but it was not presented to the persons concerned[13]. Further, up to the date no systemic changes to the Code have been made that could have eliminated the existing problems. Consequently, this attempt of the reforms also proved unsuccessful.

The challenges, however, given the recent repressive policy of the Georgian Dream government meaning the second time tightening the most problematic articles of the Code (Articles 166 and 173 that are of a criminal law nature)[14], are even more increasing the risks of unlawful interference with human rights when taking into account the lack of procedural safeguards available in the Code.

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[8] See: The first letter from the Government to GDI about the Code of Administrative Offenses, 2017 https://bit.ly/3qoLh3p

[9] See: Draft Code of Administrative Offenses of Georgia https://bit.ly/2TULm2S

[10] See: The decree on making the amendments to Decree N1981 Government of Georgia of November 3, 2014 on the Establishment of the Government Commission Supporting the Reform of the Administrative Offenses System of Georgia http://gov.ge/files/410_49837_238635_121511.06.15.pdf

[11] See: Opinions on the legislative package for the reform of the Code of Administrative Offenses, Coalition for an Independent and Transparent Judiciary, April 04, 2016 https://bit.ly/3gLtYqa

[12] Here are meant the reduction of 90-day term of administrative detention to 15 days.

[13] See: "Law of Administrative Offenses: Endless Attempts of the Reform and Successful Strategic Proceedings," Georgian Young Lawyers Association, p. 5 https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/2021/GetFileAttachment-2.pdf

[14] Initially, the Georgian Dream authorities amended the mentioned articles in February 2018, as a result of which the amount of the fines in the most problematic Articles 166 and 173 were increased respectively (1) from GEL 100-500 to GEL 1000 and (2) from GEL 250-2000 to GEL 2000-4000.

CRIMINAL LAW NATURE OF ARTICLES 166 AND 173 OF THE CODE OF ADMINISTRATIVE OFFENSES

Every year hundreds of people in Georgia are found guilty and punished with fines or administrative imprisonment so that they do not have access to the guarantees of a fair trial[15]. This is done by accusing a person of committing an "administrative violation" under the Code of Administrative Offenses and imposing on him/her a fine.

In the justice system of Georgia, administrative offenses are not considered a criminal act because they do not lead to a conviction. Nevertheless, there are still articles in the Code that are of a criminal law nature. Examples of such norms are Articles 166 and 173 of the Code for which the punishment is quite severe equaling to a criminal punishment. Similar actions in the common law countries are considered as *misdemeanors*, and in the most countries of the continental system as *delicts*. Precise and adequate legislative regulation is essential for observing the principle of the rule of law and at the same time is of great practical importance for the protection of human rights.

During the hearings of cases of administrative offense, less procedural safeguards are available for persons than these are available in the hearings of criminal cases. Notwithstanding the severity of the sanction for an administrative offense, the Code of Administrative Offenses does not require the law enforcement agencies to substantiate the existence of the grounds for applying custody, does not require them to observe the presumption of innocence, does not oblige law enforcement agencies to immediately explain to the detainee his/her rights. As for the judges, the Code does not oblige the trial judge to use the standard of beyond a reasonable doubt as a standard of proof and to substantiate the decision rendered. Thus, the simplified nature of proving the guilt and imposing the sanctions leaves almost no room for effective representation and/or an effective appellate remedy. Further, the Code of Administrate Offenses does not determine who bears the burden of proof in the cases of administrative offense. In accordance with the current Code of Administrative Offenses, the courts along with the cases of administrative offenses do not hear the issues of legality of the detentions. In according with Article 251 of the Code, the persons concerned may appeal the administrative detentions with superior bodies (officials) or prosecutors. In the cases where there are no appeals lodged, the legality of the detention shall not be reviewed. Such a provision deprives the court hearing the case of the administrative offense to assess the legality of the detention of the person charged with administrative offense, on one hand, and the provision contradicts the principle of rapid and effective justice, on the other hand, as several judges have to hear the facts of the same case. This issue is also relevant in relation to the normative text of Article 173 of the Code, because in this

[15] Only under Article 166 of the Code 4452 persons were held offenders in 2018, while 5175 persons in 2019. Whereas in 2020, 3452 persons were recognized as administrative offenders. For Article 173, the data are as follows: 4761 cases in 2018, 5801 in 2019, and 4201 in 2020.

case, the judges hearing the case of the offense do not examine the legality of the order of a police officer.

The lack of procedural guarantees in such cases jeopardizes the standard of human rights and, at the same time, often becomes a lever for exercising repressions and pressure in the hands of the authorities. In the recent history of Georgia, the flawed practice of arbitrary use of the Code of Administrative Offenses against the persons and oftentimes against the political activists involved in the protests and demonstrations has been actively criticized both inside and outside the country. In 2012, a Report of the Working Group on Arbitrary Detention was published by the Human Rights Council of the UN General Assembly[16]. According to the Report, "[Administrative] court judgments on administrative cases were often decided hastily in a process that often saw judgments being "copied and pasted", and most decisions were rubber stamped without proper consideration for individual cases." In 2013, the authoritative international non-governmental organization Human Rights Watch (HRW) published a report on the subject - "Administrative Error: Georgia's Flawed System for Administrative Detention" describing in detail a number of bad aspects of the system and strongly criticizing the existing legislation as well as the practice[17]. Years later, also in 2021 the challenge remains due to systemic gaps of the Code, despite two attempts by the Georgian Dream government to take systemic reforms of the Code of Administrative Offenses, and despite a few positive changes in some areas. Against this background, the tightening of the sanction under Articles 166 and 173 of the Code for the second time should be considered as an attempt by the current government, like in the case of the previous government, to use the gaps of the Code to achieve its own political goals.

The current practice of applying a number of articles of the Code of Administrative Offenses, including Articles 166 and 173, contradicts the current Constitution of Georgia and international legal norms. Procedural rights are guaranteed by Article 31 of the Constitution of Georgia[18]. Paragraphs 5, 6 and 7 of this Article provide the accused with the presumption of innocence and the right to a fair trial. In addition, the Article provides for the burden of proof that if not identical but at least similar to beyond the reasonable doubt standard. Article 31 of the Constitution of Georgia grants a person the right to defence. Paragraph 4 of this Article gives the accused the right to request the examination and questioning of his/her witnesses under the same conditions as the witnesses of the prosecution. Nevertheless, the current version of the Code of Administrative Offenses leaves the accused without procedural guarantees, as the simplified procedure of bringing administrative charges and imposing a penalty deprives the accused of the right to enjoy the privileges under Article 31 of the Constitution.

[16] UN General Assembly, Human Rights Council, Report of the Working Group on Arbitrary Detention, 13A/HRC/19/57 /Add.2, January 27, 2012, paragraph 66.
[17] See: Human Rights Watch, Administrative Error: Georgia's Flawed System of Administrative Justice, 2013.
[18] Opinion of a friend of the court (amicus curiae): Author: -Public Defender of Georgia, N ac1361, June 10, 2019 https://constcourt.ge/ka/judicial-acts?legal=1936

In addition to the Constitution of Georgia, Georgia has ratified the European Convention on Human Rights, the provisions of which are also of an imperative nature. Article 5 of the European Convention prohibits arbitrary detentions, while Article 6 entitles a person to a fair trial. The case law developed by the European Convention on Human Rights and the European Court of Human Rights, comprises under the right to a fair trial such guarantees as the right to have sufficient time and resources to prepare a defense, access to a defense counsel and the right to question witnesses.

Despite the fact that the right to a fair trial concerns the persons charged with criminal offenses, according to the practice of the European Court of Human Rights, the administrative offense for committing of which a person may be sentenced to imprisonment must be considered "as criminal charges" under the meaning of Article 6 of the ECHR irrespective of the term of the imprisonment[19]. Further, according to the interpretation of the European Court, the administrative offense may be considered as a criminal offense only stemming from its substance or may be considered as such given its content and possible sanction.[20]

EXPLANATORY NOTE: JUSTIFICATION OF THE CHANGES

In the explanatory note to the draft law on Amendments to the Code of Administrative Offenses of Georgia, the authors refer to the growing trend in offenses under Articles 166 and 173 of the Code as the main reason for the changes[21]. To support this argument, the authors of the draft law refer to the data from 2018-2020. Although the number of offenses under Articles 166 and 173 of the Code has been reduced in 2020 compared to the previous year, the authors explain this fact by reducing the presence of citizens in public places in 2020 due to the mass spread of COVID-19. Even when this is so, the erroneousness of the mentioned logic can be shown when comparing the data from 2018 with that of 2017. Initially, the Georgian Dream government tightened the sanctions of Articles 166 and 173 of the Code with the amendments adopted in 2018. In this case, it is reasonable to assume that if the logic of the initiators of the draft law regarding the correlation of tightening the sanction with the commission of offenses is correct, then by tightening the sanction in 2018, the rate of offenses should have been reduced compared to 2017. The data published on the official website of the Ministry of Internal Affairs of Georgia, to which the initiators refer, makes us believe the opposite opinion. If, in 2017, the number of offenses under Article 166 of the Criminal Code was 4384[22], the same figure has increased in 2018 and stands at

[19] See: Ziliberberg v. Moldova, Application N 61821/00 (2005) https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-68119%22]} (Last seen: 16/06/2021)

[20] See: Galstyan v. Armenia, Application N 26986/03 (2007) https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83297%22]} (Last seen: 23/06/2021)

[21] See: Explanatory note to the Draft Law of Georgia on Amendments to the Code of Administrative Offenses of Georgia, p. 1 https://info.parliament.ge/file/1/BillReviewContent/273232 (Last seen: 23/06/2021)

[22] See: Statistical data available in the Statistics and Data Management Division of the Information Center of the Information and Analytical Department of the Ministry of Internal Affairs on the number of violations under Articles 45, 166, 173, 181[1] of the Code of Administrative Offenses in 2017 (by regions) https://info.police.ge/uploads/5ad088fe792f8.pdf

4452[23]. In the explanatory note, in order to substantiate their argument, the initiators of the draft law deliberately ignore the data from 2017 and, by manipulating the information, refer only to the data of the last three years suitable to support their argument. Further, without bringing additional arguments, they explain the reduced statistics in 2020 by the spread of the coronavirus.

The second argument addresses the character and nature of the body of the offenses under Articles 166 and 173 of the Code, which are considered by the authors to be more dangerous, which is also supported by the possibility of using administrative imprisonment as a penalty for committing the offenses under the articles[24]. Thus, the authors believe that the state should create a more effective legislative framework to prevent the commission of the offenses. It is true that the legislature may have a legitimate aim in toughening the penalty, but in a context where the Code ignores procedural safeguards, the approach of the authors from the beginning contradicts the spirit of the judgment of the Constitutional Court[25]. Moreover, while the authors themselves argue in favor of the severity of the penalty in the explanatory note, they are unequivocally disregarding the standard established by the Constitution of Georgia and the European Convention on Human Rights[26]. The tightening of the sanction could have been appropriate only if, on the one hand, such a need had been substantiated, and, on the other hand, the person accused of the offense would have been able to fully enjoy the procedural guarantees granted by the Constitution.

Thus, the argument by the authors referring to the experience of other countries in the explanatory note, in order to emphasize the availability of stricter sanctions for such actions, is incorrect from the outset. In this case, not the severity of the sanction, but the enjoyment of the procedural guarantees by the person accused of the offense is disputable as the guarantees are provided to the persons in the examples indicated in the explanatory note.

CHANGES TO ARTICLE 247 OF THE ADMINISTRATIVE OFFENSES CODE

According to the second draft law, Article 247 of the Code of Administrative Offenses of Georgia was amended and it was established that a person detained in an administrative manner shall be brought to court as soon as possible, however not later than 48 hours. Where the detainee is not brought before the court within that hours, he or she should be released immediately. Prior to

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[23] See: Statistical data available in Information Center of the Information-Analytical Department of the Ministry of Internal Affairs on the number of violations under Articles 45, 166, 173, 181[1] of the Code of Administrative Offenses in 2018 (by regions). https://info.police.ge/uploads/5c94b5b5907d4.pdf
Judgment N2/7/779 of the Constitutional Court of Georgia from October 19, 2018 on the case *Davit Malania v Parliament of Georgia* (II-35). See: https://constcourt.ge/ka/judicial-acts?legal=1134 (Last seen: 16/06/2021)

[25] Ibid:

[26] See: The cases of the European Court of Human Rights: Ziliberberg v. Moldova, Application N 61821/00 (2005). See: Galstyan v. Armenia, Application N 26986/03 (2007).
Further see: Opinion of the Grand Chamber of the European Court: Judgment of the Grand Chamber of 10 February 2009 in the case of Sergey Zolotukhin v. Russian Federation, application N 14939/03.

bringing before the court, the detained person may be placed in a temporary detention isolator by an authorized body.

According to the explanatory note, the reason of the authors of the draft law to amend Article 247 of the Code of Administrative Offenses was, on one hand, the declaration of the Article unconstitutional by the Constitutional Court of Georgia (judgment N2/4/1412 of December 20, 2020) and, on the other hand, the intention to change the discriminatory content of the Article with a non-discriminatory content. The above amendment came into force on June 1, 2021, in accordance with the deadline set by the judgment of the Constitutional Court.

THE ESSENCE AND PRECONDITIONS OF THE AMENDMENT TO ARTICLE 247 OF THE CODE

On December 20, 2020, in the case *Irakli Jugheli v. Parliament of Georgia*, the Constitutional Court held that paragraph 2 of Article 247 of the Code of Administrative Offenses was unconstitutional in relation to paragraph 1 of Article 11 of the Constitution of Georgia. Before the amendment, the impugned norm consisted of two paragraphs. The disposition of the first paragraph provided for a maximum term of administrative detention of 12 hours. While the second paragraph provided for the exceptional cases to the rule stipulated in the first paragraph setting a different term for the detention. In particular, where the administrative detention of a person took place during non-working hours, paragraph 2 allowed for the extension of the administrative detention of the person and, in such cases, set the maximum term of administrative detention at 48 hours before bringing him/her to court. In practice, extending the term of administrative detention to 48 hours could be very easily enforced by legal officials ending in many cases in violation of the rights of a person accused of an administrative offense.

The appeal by the plaintiff to the Constitutional Court against this norm was grounded in the differentiated approach towards the persons according to the time of administrative detention. According to the challenged regulation, the maximum period of detention of the persons detained during non-working hours is 48 hours, while, the period of detention of the persons detained during working hours, as a general rule, should not exceed 12 hours. Thus, the group of comparable persons is, on the one hand, the persons who were detained during working hours and, on the other hand, the persons who were detained during non-working hours. Further, the applicant cited the term of administrative detention as a possible sign of differentiation[27]. In particular, where the expiration of the general 12-hour period for administrative detention comes on non-working hours, in this case, it was possible under the disputed norm to restrict the person's liberty for a period of 48 hours.

[27] See: Judgment of the Constitutional Court of Georgia, the reasoning part. 2.1 Differentiation of comparable persons, paragraph 5.

The Constitutional Court agreed with the position of the plaintiff and, in relation to Article 11 of the Constitution of Georgia, declared unconstitutional paragraph 2 of Article 247 of the Code of Administrative Offenses of Georgia, which set the maximum term of administrative detention at 48 hours.

Taking into account the arguments of the parties and the evidence presented at the court hearing, the court reasoning as given in the reasoning part concerned the maximum period of the administrative detention as provided by the norm besides the reasoning on the differentiation of persons.

The judgment reads as follows: "Even in the case where the expiration of the 12-hour period of the detention comes on non-working hours of the court (e.g. the detention of a person took place at 18:00 and the 12-hour period of his/her detention expires at 06:00 that is non-working hours of the court), clearly, the next 12 hours of the detention of the person (period from 06:00 to 18:00) by all means include the period of the time when the court / judge on duty exercises the authorities and can hear the case. Therefore, evidently, the 24-hour period of the detention of a person necessarily covers one working day of the court / judge on duty, regardless of the period of time during which he/she is detained. Consequently, the possibility of extending the administrative detention to 48 hours cannot be explained by non-working hours of courts[28]".

Thus, the spirit of the Constitutional Court, not only limited itself to establishing the differentiation, but also foresaw the imposition of a 24-hour limit as a means for overcoming the situation. In general, the reasoning in the reasoning part of the judgment by the Constitutional Court serves as an orientation for the legislature to adopt relevant changes. The reasoning part is an integral part of a court decision and only the operative part is often not enough to fully comprehend the court judgment. Thus, it is almost impossible to make the right conclusions without the reasoning part.

CONTENT OF THE ADOPTED CHANGE

The Parliament of Georgia justified the rapidly made amendments to Article 247 of the Code of Administrative Offenses by the need to enforce the above-mentioned judgment N2/4/1412 of the Constitutional Court of Georgia.

Following the amendment, the general term of administrative detention was increased from 12 to 24 hours. Paragraph 1 of Article 247 in the new wording: "A person hold under an administrative detention shall be brought to court as soon as possible, but not later than 24 hours." Whereas, according to the new wording of paragraph 2: "For the purposes of obtaining evidence, the term provided for in the first paragraph of this Article may be extended one-timely with maximum of 24 hours. In such a case, the officer in charge at the competent authorities shall justify in writing the expediency of extending the term of the administrative detention."

[28] Ibid:

For the purposes of the Code of Administrative Offenses, obtaining the evidence may include identification of a person, or drawing up a report of an administrative offense. Thus, the changes make it possible for law enforcement officials to increase the period of administrative detention of a person up to 48 hours in a blanket manner. Detaining a person for 48 hours, especially when the judgment of the Constitutional Court also explicitly emphasizes the adequacy of the 24-hour time frame for the purpose of bringing an alleged offender to the court, should be considered as an intensive and disproportionate interference. This issue is even more critical given the lack of procedural guarantees in the Code and the minimum standard of evidence sufficient to impose a penalty.

Further, the European Court of Human Rights assesses the reasonableness of the detention period by looking into the grounds of the detention. According to the standard of the Constitutional Court of Georgia, the legality of administrative detention is linked to the existence of a lawful purpose from the moment of detention until the release of the person[29]. According to paragraph of Article 247 of the Code in the new wording, "where the detained person is not brought before the court within the period provided for in paragraphs 1 or 2 of this Article, he/she shall be released immediately." Such an entry, does not and cannot provide for an obligation to immediately free the person provided there are no lawful purposes for his/her detention. This, in turn, increases the risk that a flawed practice, when despite the exhaustion of the grounds for the detention under Article 244 of the Code persons are still held in custody, would be even more strengthened and under the condition of sever sanction would even more harm the human rights.

CONCLUSIONS

Due to systemic shortcomings, the current Code of Administrative Offenses fails to meet the requirements arising from the right to a fair trial enshrined in the Constitution of Georgia and international normative acts.

On the one hand, the Code provides for severe penalties like administrative imprisonment and heavy fines for committing some of the administrative offenses. While, on the other hand, when imposing such penalties the Code fails to provide sufficient procedural guarantees to the persons concerned. Unlike the criminal proceedings, the Code of Administrative Offenses fails to provide for a number of procedural rights, does not provide for a standard of proof beyond reasonable doubt, does not require the observance of the presumption of innocence etc.

Furthermore, the obligation to revise the Code of Administrative Offenses of Georgia, already envisaged in the human rights action plan for 2014-2015 as well as in the reform strategies of the criminal law for 2016 and 2017 still remains unfulfilled. The recommendations made by the

[29] See: Judgment N2/15/1484 of the Constitutional Court from December 11, 2020.

Public Defender of Georgia in the parliamentary reports[30] of different years as well as by international organizations calling for systemic reforms of the Code also remain unfulfilled[31].

In such circumstances, the second time tightening of the penalties for one of the most problematic and controversial norms of the Code of Administrative Offenses as undertaken by the current government of Georgia is alarming and damages the human rights standards. With the changes, the Code has become even more repressive, leaving the risks of using it for narrow political purposes and acting as a mechanism for controlling and restricting civil space in the hands of the authorities. At the same time, the content of Articles 166 and 173 of the Code is unconstitutional from the very beginning, while the amendments to Article 247 of the Code were adopted in circumvention of the spirit of the judgment of the Constitutional Court of Georgia, thus deteriorating the human rights standards. Moreover, the amendments to the Code were made without proper justification, in an expedited manner, in overload complicating the involvement and to some extent excluding of the public in the discussion of the draft law.

The current situation, once again, underscores the need for systemic reform of the Code of Administrative Offenses and for the reception of the constitutional and international legal standard for the protection of human rights.

[30] In the parliamentary reports of 2013, 2014, 2015 and 2017, the Public Defender of Georgia attached special importance to the amendment of the Code of Administrative Offenses and also indicated the need to adopt a new Code.
See: Report of the Public Defender of Georgia. 2013. P. 273. the Parliamentary Report of the Public Defender of Georgia. 2014. P. 399. the Parliamentary Report of the Public Defender of Georgia. 2015. P. 462-469. The Parliamentary Report of Public Defender of Georgia. 2017. Report. P. 117.

[31] Georgia's Flawed System for Administrative Detention, Human Rights Watch, 2012.