RIGHT TO A FAIR TRIAL IN CASES OF ADMINISTRATIVE OFFENSES

Problem Analysis

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HUMAN RIGHTS CENTER

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GENERAL OVERVIEW

The State is obliged to establish an effective legal framework and a system of justice within which among other procedural rights the right to a fair trial will be guaranteed to the extent possible. The above goals may be achieved through the development of the legislation oriented on human rights and large-scale reforms of the judiciary which would include the establishment of guarantees for the independence of judges, as well as the establishment of an effective investigation and prosecution system.

At the time being Georgia applies the Code of Administrative Offenses inherited from the Soviet period adopted in 1984 failing to meet the requirements of fair trial standards, and being used to unlawfully restrict the right to peaceful assembly and freedom of expression. The Administrative Code provides for much fewer procedural safeguards than a person would have when she/he is accused of committing a criminal offense, for the Administrative Code does not provide for the standard of proof 'beyond a reasonable doubt', neither for the presumption of innocence, and other many procedural rights, etc. Moreover, the Administrative Code envisages some severe penalties such as administrative detention for certain administrative offenses.

Georgian law enforcement officers continue to actively use the mechanisms provided by the Code of Administrative Offenses against protesters in violation of the right to assemblies and demonstrations. The court hearings monitored by HRC reveal that the participants of peaceful assemblies were mainly arrested under Article 166 (petty hooliganism), Article 173 (disobedience to a lawful order of a police officer), and Article 150 (defacement of the image of the self-governing unit) of the Code of Administrative Offenses. During recent years, human rights organizations including HRC managed to document the cases of restricting the right to assembly and freedom of expression through the mentioned articles of the Code.

The State acknowledges the urgent need to reform the legislation of Georgia governing administrative offenses. For this purpose, on July 9, 2014, the Government of Georgia approved the Action Plan for the Protection of Human Rights in Georgia (2014-2015) envisaging as one of the goals to systematically review the legislation on administrative offenses[1]. The Governmental Action Plan for the Protection of Human Rights for 2016-2017 also mentions that a new Code of Administrative Offenses would be initiated in line with international standards[2]. A draft of the new Code has been already developed[3], however, the Parliament of Georgia has not adopted it yet.

The present document identifies and assesses the problems revealed by HRC during the monitoring of court proceedings of the cases of administrative offense with alleged political motives.

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[1] See Decree N445 by the Government of Georgia from July 9, 2014.
http://myrights.gov.ge/uploads/files/docs/2063HRAP_2014-2015.pdf

[2] See The Governmental Action Plan for the Protection of Human Rights for 2016-2017:
http://myrights.gov.ge/ka/plan/action%20plan%202016-2017

[3] see the information about the process of initiating the new Code of Administrative Offenses of Georgia.
http://hrm.org.ge/ge/activity/sakartvelos-administratsiul-samartaldarghvevata-kodeksis-initsireba

CASES UNDER MONITORING

Several cases of administrative offense with alleged political motives have been monitored by HRC since February 2020, the hearings of some of which are currently closed with the courts.

1. The case of Giorgi Mumladze:

(*detention in an administrative and criminal manner*): Giorgi Mumladze, a civil activist, is accused of committing an illegal act under Article 353(1) of the Criminal Code of Georgia implying a resistance towards a police officer, a special penitentiary officer or other government officials with an aim to interfere in his/her activities of maintaining public order, to cease or alter his/her activities, further to coerce an officer to a manifestly unlawful act committed with violence or threat of violence. The case is still pending with Tbilisi City Court.

2. The case of Malkhaz Machalikashvili:

On July 6, 2021, Malkhaz Machalikashvili was arrested by the police during a rally on Rustaveli Avenue. According to the defense counsel, Machalikashvili was present at the protest rally For Freedom and was expressing his protest. Violent groups active on the other side recognized Malkhaz Machalikashvili, verbally abused him, and physically assaulted him as the group was trying to cross the fence and create threats to Machalikashvili. Machalikashvili was taken away from the scene by the police and as it turned out he was consequently arrested for disobeying the order of the police and for violating the public order, the offense –under Articles 166 and 173 of the Code of Administrative Offenses. On July 7, the defense filed a motion with the court to suspend the hearing of the case on the merits, so the defense could study the case files and obtain additional evidence.

Despite the evidence presented by the defense proofing the innocence of Machalikashvili, on July 30, 2021, Tbilisi City Court announced the decision mentioning only the operative part of the verdict. In particular, the case was dismissed in connection with Article 173 of the Code of Administrative Offenses, while Machalikashvili was held liable under Article 166(1) and Article 174(4) of the same Code and was fined with GEL 500.

3. The case of Beka Papashvili, Zurab Berdzenishvili, Paata Kharatishvili, and Tite Gedenidze:

HRC monitored the court proceedings against four civil activists: Beka Papashvili, Zurab Berdzenishvili, Paata Kharatishvili, and Tite Gedenidze, arrested on June 3, 2021, in front of the premises of the General Prosecutor's Office where a protest rally was taking place in connection with the events in Ninotsminda Children's Boarding School. The activists were detained under Article 173 of the Code of Administrative Offenses of Georgia envisaging disobedience to a lawful order of the law enforcement officer. In accordance with Articles 173, 232, 264, 266, 268, 271, 273 of the Code of Administrative Offenses of Georgia, the court ruled to cease the administrative proceedings against Beka Papashvili initiated under Article 173(1) of the Code of Administrative Offenses

of Georgia as the court found no case of administrative offense taking place While Tite Gedenidze, Paata Kharatishvili and Zurab Berdzenishvili were held as offenders for the actions envisaged under Article 173(1) of the Code of Administrative Offenses of Georgia and were fined GEL 2,000 each.

4. The case of civil activists:

HRC monitored the court proceedings against 7 activists (Irakli Pavlenishvili, Givi Tsintsadze, Parnavaz Grigolia, Vano Magalashvili, Nikoloz Kvitatiani, Nikoloz Narsia, and Davit Digmelashvili) arrested during the protest rally of January 16, 2021. The activists were detained under Articles 166 and 173 of the Code of Administrative Offenses of Georgia envisaging petty hooliganism and disobedience to a lawful order of a law enforcement officer. The court ceased the administrative proceedings in the part of Article 166 while holding the activists as offenders in the part of Article 173 and imposed on each of them a fine of GEL 1,200.

5. HRC observed the court hearing of the administrative case against Nodar Rukhadze

An activist of the movement *Shame* arrested on February 23. The law enforcement officers detained him under Article 173 of the Code of Administrative Offenses of Georgia. The judge held Nodar Rukhadze as an offender and imposed on him a fine of GEL 2,000. The case was not appealed to a higher court.

6. The case of citizens detained near the premises of Isani District Election Commission.

HRC observed the administrative legal proceedings against 7 persons detained on November 4, 2020 at a protest rally in front of the premises of Isani District Election Commission under articles 166 and 173 of the Code of Administrative Offenses. According to the decision by the judge, the proceedings against only one of the 7 detainees were ceased. Only 3 persons were found to have committed offenses under article 173 of the Code, and 3 for both: articles 166 and 173 of the Code. One of them was subject to a sanction of 5-days administrative detention, and the other 5 were subject to 3-days detention.

7. The case of Lasha Chkhartishvili:

On June 20, 2020, Tbilisi City Court found one of the leaders of *the Labor Party*, Lasha Chkhartishvili as an administrative offender under article 173 of the Code of Administrative Offenses and imposed on him a fine of GEL 3,500. Judge Manuchar Tsatsua rendered the judgment in three court sessions. In his turn, Chkhartishvili appealed against the judgment to Tbilisi Court of Appeals, but the appeal was dismissed.

8. The administrative case of Aleksi Machavariani, Nodar Rukhadze, and Giorgi Mzhavanadze:

Aleksi Machavariani was detained by the police for an offense under Article 173(1) of the Code of Administrative Offenses envisaging disobedience to a lawful order or request of a law enforcement officer, or committing any other wrongful action against the officer. Nodar Rukhadze and Giorgi Mzhavanadze were detained by the police for the offense under Article 166(1) of the Code of

Administrative Offenses (petty hooliganism: cursing in public places, chasing on citizens in an assaulting manner, and other such acts that violate public order) and also for the offense under Article 173(1) of the Code of Administrative Offenses envisaging disobedience to a lawful order or request of an officer of a law enforcement body, or committing other wrongful actions against the officer. Both cases were joined into one case during the hearing of the case in the court of first instance holding all three detainees liable of committing offenses under the relevant articles of the Code of Administrative Offenses of Georgia. Aleksi Machavariani was fined GEL 1,000, Nodar Rukhadze with GEL 1,500, and Giorgi Mzhavanadze was sanctioned to 3 days of administrative detention. The judgment was appealed in appellate proceedings.

9. The case of Sophio Basiladze:

On November 30, 2020, the police held civil activist Sophio Basiladze as an offender and fined her under Article 42^{11} of the Code of Administrative Offenses envisaging sanctions for violating the rule of wearing a mask outdoors. When she finished smoking a cigarette, Basiladze put on the mask and thus obeyed the request of the police. Nevertheless, the law enforcer issued the citation which Basiladze tore down as she considered that the police officer was acting in an unfair manner. According to her, the police officer started talking aggressively and mockingly telling her that the remaining of the citation had to be cycled into the trash basket. All this affected Sophio Basiladze's psycho-emotional state and she uttered an insulting phrase addressed to the law enforcer. Due to this action, the police officer called several crews of the patrol police to the spot and the police officers jointly tried to detain Sophio Basiladze. However, due to the intervention of the citizens standing by and Basiladze's friends, the police officers failed to do so.

On May 17, 2021, by the judgment of Kutaisi City Court, the fine for violating the rule of wearing a mask outdoors was revoked. The judge considered the fine illegal and canceled the citation of GEL 20 issued to Basiladze.

As what the issue of disobedience to a lawful request by a police officer concerns, Kutaisi City Court by the judgment from February 16, 2021 held Sophio Basiladze an offender for the action provided for by Article 173 of the Code of Administrative Offenses of Georgia and imposed an administrative fine of GEL 1,000.

The case was continued in Kutaisi Court of Appeals with an appeal prepared by a lawyer of HRC. On August 27, 2021, Kutaisi Court of Appeals declared null and void the report of administrative offense issued against Sophio Basiladze (Article 173 of the Code of Administrative Offenses). Accordingly, the fine of GEL 1000 imposed on the civil activist was also revoked.

STATISTICAL ANALYSIS OF CASES HEARD BY GENERAL COURTS OF GEORGIA IN 2020-2021

HRC studied 12 cases of administrative offenses under Article 166 (petty hooliganism), Article 173 (disobedience to a lawful request or order of a police officer), and Article 174[1] of the Code of Administrative Offenses of Georgia which were heard by Tbilisi and Kutaisi City Courts in 2020-2021. In all of the cases, administrative detentions took place. Out of 12 studied cases, the proceedings only in 5 cases were ceased in part due to the lack of an offense. However, the violations of other articles were still found; In the rest of the cases, the fact of offense was established and the courts applied the following: In 2 cases, verbal reprimands, in 11 cases, fines, and in 2 cases, detentions.

In the above cases, it was identified that the general courts in hearing the cases have violated the right guaranteed by the Constitution, which is primarily due to the normative content of the standards of the Code of Administrative Offenses of Georgia.

ISSUES BROUGHT FORWARD IN THE REPORTS OF HUMAN RIGHTS CENTER

In the reports prepared by HRC[4], the following issues have been identified over the years when hearing the cases of administrative offenses: The failure of the Code to provide a specific standard of proof and that of the burden of proof for holding a person liable for an offense results in holding persons as offenders based only on the report of the offense and statements of the police officer who has drawn up the report; The most of the court judgments are unsubstantiated and are drafted in 'one size fits all' manner; In particular, the courts fail to provide subsumption of the action of the person vis-a-vis the offense described in the norm, and thus the courts refer only to the data of the reports on detention and offense and to the explanatory statements at the court hearing of the law enforcement officer who drew up the report. All evidence is obtained by one agency/person and the body of evidence exists only formally[5].

Due to the lack of a certain standard for the burden of proof in the Code of Administrative Offenses of Georgia, in adjudicating the cases monitored by HRC the court assumed that the information provided by the law enforcement officer was true. The administrative body does not bear the burden of proof. Consequently, in the absence of a rule for the distribution of the burden of proof and the standards of proof, only the correctness of the legal form of the reports is verified, without

[4] 1) Monitoring the Court Proceedings of the Cases with alleged Political Motives: Interim Report, Human Rights Center, 2020: https://bit.ly/2JZ0eZh; 2) Monitoring the Court Proceedings of the Cases with Alleged Political Motives: Final Report, Human Rights Center, 2020: https://bit.ly/2X54qNc; 3) Monitoring the Court Proceedings of the Cases with Alleged Political Motives: Final Report, Human Rights Center, 2021: https://bit.ly/3AS7xWX; 4) Monitoring the Protest Demonstrations: Interim Report. Human Rights Center, 2020: https://bit.ly/3CvhLP7; 5) The Results of Monitoring the Protest Demonstrations , Human Rights Center, 2020: https://bit.ly/3jaTSEw. Monitoring the Protest Demonstrations: Interim Report. Human Rights Center, 2021.: https://bit.ly/3DT0Dmu; 6) Administrative Error under the shadow of Georgian Legislation, Human Rights Center, 2021. http://www.hrc.ge/files/108administraciuli%20samartaldargveva.geo..pdf

[5]Monitoring the Court Proceedings of the Cases with Alleged Political Motives: Final Report, Human Rights Center, 2021. P. 41. https://bit.ly/3AS7xWX.

reference to the admitted or rejected evidence. Another serious problem is that the court does not make inquiries into the possible fact of the offense as written in the report.

The problem is the subsumption of the action where the person does not obey the lawful request of the police officer and continues some unlawful actions. Article 35 of the Code of Administrative Offenses[6] provides for the aggravating circumstances of liability where a person continues an unlawful behavior notwithstanding the request of the authorized persons. In accordance with Article 173 of the Code of Administrative Offenses[7], disobedience to a lawful order or request of a law enforcement officer is a separate offense. Because the special norms and aggravating circumstances[8] are identical in fact, the judges apply Article 173 of the Code of Administrative Offenses without any argumentations – instead of aggravating the liability for a certain offense. Due to the above practice, instead of being held liable under one article of the Code of Administrative Offenses, a person is usually held liable under two articles of the Code and, consequently, the sum of the administrative penalty is increased.

The court judgments are also unreasonable in terms of the application of the penalties. In particular, the monitoring revealed that the court judgments are limited to mentioning the aggravating or mitigating circumstances of the liability failing to provide the reasons and grounds for the application of the penalty. From the studied cases, it is impossible to determine under what circumstances judges use the possibility provided for by Article 22 of the Code of Administrative Offenses.[9] Such a problem of foreseeability makes a feature to every case HRC studied.

The general rules for imposing a penalty for administrative offenses are given in Chapter 4 of the Code of Administrative Offenses of Georgia. It is usually noted by the judges that the court has assessed the circumstances provided for in the second sentence of Article 33 of the Code[10], however, such notes are of a formal nature and do not contain a reference to specific circumstances.

In terms of evidence when hearing the cases of administrative offenses, there are significant gaps identified in the use of the body camera recordings of the police. During the exercise of the special police control measures, the police officer must be equipped with the operating body camera attached to the uniform[11]. According to the assessments by HRC, in the absence of video recording as neutral evidence and the absence of a standard of proof, the Code of Administrative Offenses of Georgia does not serve the means of primarily protecting the legitimate interests of citizens.

[6]see Article 35 of the Administrative Offenses Code of Georgia.
https://matsne.gov.ge/ka/document/view/28216?publication=482
[7]see Article 173 of the Administrative Offenses Code of Georgia.
https://matsne.gov.ge/ka/document/view/28216?publication=482
[8] **Note**: Articles 35 and 173 of the Code of Administrative Offenses of Georgia are meant here.
https://matsne.gov.ge/ka/document/view/28216?publication=482
[9]see Article 22 of the Administrative Offenses Code of Georgia.
https://matsne.gov.ge/ka/document/view/28216?publication=482
[10]see Article 33 of the Administrative Offenses Code of Georgia.
https://matsne.gov.ge/ka/document/view/28216?publication=482
[11]see Article 24(5) of the Law of Georgia on Police:https://bit.ly/3aPX6Zz.

The Public Defender of Georgia also points out the problem[12]. Further, holding a person liable without neutral evidence imposes a burden of proof on the person in breach of the right to a fair trial. In the vast majority of cases, the courts ignore the constitutional principle that no one is obligated to prove their innocence. However, during detaining individuals when exercising special police control measures under Articles 166 and 173 of the Code of Administrative Offenses, the police officers do not fulfill the obligation directly provided for by the law and do not capture the arrest process with body or other sorts of video cameras.

Holding a person liable without neutral evidence imposes a burden of proof on the person in violation of the right to a fair trial. As a result, the violation of a direct requirement of the law remains ignored while the judgment relies solely on the testimony of police officers.

EXAMINATION OF EVIDENCE AND CASE PROCEEDINGS

Article 264 of the Code of Administrative Offenses of Georgia provides for the following facts to be established in a mandatory manner during the hearing of cases: The fact of committing an offense, delinquency, mitigating and aggravating circumstances of the liability. Moreover, there is no obligation to examine the evidence.

Most of the administrative proceedings under the monitoring of HRC were conducted in a superficial and formalistic manner: The examination of the evidence never happens at the court hearings with the police officer, the author of the report of the offense verbally stating the content of the report. And shortly after such a procedure, the judge announces the penalty imposed on the person. The formalistic nature of the hearing is also confirmed by the length of the hearing often lasting only for a few minutes.

Article 236(1) of the Code of Administrative Offenses of Georgia[13] defines the concept of evidence. Under Article 236(1), evidence in the cases of an administrative offense is all factual data based on which an administrative body (official) shall in accordance with the legislation of Georgia determine the existence or absence of an administrative offense, as well as the delinquency of the person in committing the offense and other facts which are significant for resolving the case in a right manner. The second paragraph of the same article enlists the types of evidence, namely: A report of an administrative offense, an explanatory statement of the person held administratively liable, a testimony of the victim and witness, an expert report, results of alcohol, drug, or psychotropic examinations (tests), a video or photograph, material evidence, report on seizing an item or a document. However, the Code does not specify the procedure for evaluating evidence[14] as this is the case with the criminal proceedings[15]; the AO Code only mentions that evidence must be assessed out of the inner conviction of the judge, through a thorough, complete, and objective

[12]see The Report of the Public Defender of Georgia for 2015 Report, pp.466-467
[13]see Paragraph 1 of Article 236 of the Code of Administrative Offenses of Georgia: https://matsne.gov.ge/ka/document/view/28216?publication=482
[14] See https://constcourt.ge/ka/judicial-acts?legal=1936
[15] Here are meant the admissibility, relevance, authenticity.

examination of all the facts of the case in their totality[16].

The monitoring by HRC revealed that as evidence at the court proceedings mainly stand the reports on administrative offenses and on detentions, the personal report of a police officer or a verbal statement by him/her which repeats the data recorded in the report on administrative offense. In seldom cases, the written statements of witnesses are brought as evidence, mainly that of other police officer witnesses. In exceptional cases, there is neutral evidence i.e. video recordings taken from body cameras. In the latter cases, the information on the video often did not reflect the real facts as except the few cases it was impossible to identify the persons and identify the fact of an offense. Further, as witnesses were questioned the police officers who did not take part in deterring the offense and detaining the persons.

As what the act of disobedience to the request or order of a police officer concerns, the reports on the offense do not read what was the request from the police officer towards the person, and neither the court assesses such requests. During the hearings, the courts do not examine the issue of legality/illegality of the request/order of the police officers only establishing the fact of disobedience of the person as provided by the reports on the offense, while assessing as petty hooliganism the facts of verbal assault, abusive language, obscene language towards the police or in general, screaming, talking loud in the street using bad language and such acts without the general courts adjudicating the issue whether the verbal abuse violated the public order. Rather in a biased manner, the court agrees with the content of the report on the offense without referring to any particular evidence and without assessing them[17]. The Court generally assumes that law enforcement officers act in good faith, thus the court fully agrees with the factual circumstances presented by the officers and with the explanatory statements of the summoned police officers, without evaluating the neutral evidence and information provided by the defense.

UNSUBSTANTIATED JUDGMENTS OF THE COURTS

As a result of the monitoring of the court proceedings, it was found out that the reports on administrative offenses do not describe the specific factual circumstances that were considered as offenses by the court. There is no reasoning provided in the court judgments about the nature and character of such acts. Without any assessments, the court holds that the person violated public order and disobeyed a lawful request from the police failing to assess and refer to the action in which the disobedience manifested itself.

Another trend identified during the monitoring was the cases when the courts applied the wrong subsumption in addition to the first one. In the vast majority of cases, the continued action of violating the public order despite the request on the part of the police would not be considered an aggravating circumstance but would be subsumed to an additional offense under Article 173 of the Code of

[16]The Criminal Code of Georgia, Article 237: https://matsne.gov.ge/ka/document/view/90034?publication=137

[17] The Public Defender of Georgia draws attention to such trends in the amicus curiae opinions :

https://constcourt.ge/ka/judicial-acts?legal=1936

Administrative Offenses. In general, Article 173 of the Code of Administrative Offenses implies disobedience to the police officer when the officer exercises his/her rights and duties, and if there are no sufficient factual and legal grounds in the case files to prove such disobedience to any particular legal request, this may not serve as the reason for imposing additional penalties. As for the continuation of the violation of the public order despite the request to stop the unlawful conduct, this is already an aggravating circumstance and does not constitute a basis for separate subsumption.

In most of the studied cases, Articles 166 and 173 of the Code of Administrative Offenses were jointly applied.

When applying an administrative penalty, in most cases, the court does not substantiate why it applies the penalty; neither does the court assess the aggravating or mitigating circumstances, and the personal characteristics of the offender. The court limits itself to the assessments of the factual circumstances in general terms. Moreover, the court does not assess what specific facts give rise to aggravating circumstances or what personality traits characterize the offender that would justify the application of the penalty. The court does not refer either to the specific evidence that the judgment of the court is based on.

Even where the court applies a verbal reprimand, the court refers to the following: *„[The court] enjoys broad discretions and is allowed to reach a conclusion on the adequacy of the sanction and the exemption from liability.*". However, the court does not substantiate the judgment with evidence in this case either.

Only in exceptional cases, the court provides justifications for applying a penalty or exempting from liability and such justifications are the following: Explanatory statements or confessions by the person concerned, non-existence of persons receiving any substantial damages. In some other cases, when imposing a penalty the court assesses the aggressiveness of the person concerned and the commission of the offense allegedly motivated by hate.

The right of a person to a fair trial, which is a key element of the rule of law and the principle of democracy, is by all means significant for the court proceedings of administrative offenses. The right to a fair trial has a complex nature substantively combining several interrelated rights. Among them is the principle of proportionality playing a crucial role in the process of imposing sanctions. The lack of proper procedural guarantees in the current Code of Administrative Offenses and the vicious court practice lead to the incomplete realization of the right to a fair trial serving as a reason for the unjustified interference in human rights through the Code.

CONCLUSIONS

The main problem with the court judgments on the cases of administrative offenses is the lack of substantiations and justifications. Most of the judgments under the HRC monitoring are fed with the information provided to the court by the person who drew up the offense report, while the judge does not assess the inquiries made into the fact of the alleged offense as recorded in the report of the offense.

The vast majority of the court judgments repeat the provision of the norm of the law failing to subsume the action committed by the person with the offense described in the norm. The court only mentions that - ***"[it] applies administrative detention taking into account the aggravating circumstances typical of the action and the personality of the offender"***, admitting in some of the cases that - ***"imposition of a fine would not ensure the implementation of the objectives of the penalty"***. It can be argued that, in practice, the reasoning by the courts is relatively satisfactory in terms of meeting the requirements for the justification of judgments where the court absolves the person from liability or applies a less severe penalty than it was requested.

Further, the main reason for the problem is the reliance of the courts on the reports of the offense, especially when in the vast majority of cases the body of evidence exists only formally with all the evidence collected by the same law enforcement officers.

The acute problem is that the judges take preconceived opinions about the reports drawn up by the law enforcers holding them as true and so the judges throughout the process until a judgment is rendered are guided by such attitudes.

As the monitoring of the court proceedings revealed, in most cases, the judges do not trust the explanatory statements by the person against whom the administrative offense proceedings are carried out. The approach of the courts shows that the information provided by the person who allegedly committed the administrative offense and thus is a person directly concerned with the outcome of the case is regarded as that to be intended to cover up the offense, avoid expected liability, or be due to some base motives. Such an approach is contrary to the principle of a fair trial. Accordingly, in any administrative offense case, the available evidence must be compared against the existing facts and not by the prejudice of distrust and bias towards the alleged perpetrator of the administrative offense and the information provided by him/her.

Moreover, according to the case-law of the European Court of Human Rights[18], an administrative offense for which a person may be sanctioned to detention should be regarded as a 'criminal charge' within the meaning of Article 6 of the European Convention, regardless of how short the term of possible detention may be.

In the case *Gradinger v. Austria*[19], the European Court of Human Rights held that

[18]see Judgment of February 1, 2005 in the case *Ziliberberg v. Moldova* , application # 61821/00 (2005); Judgment of November 15, 2007 in the case *Galstyan v. Armenia*", application # 26986/03; Judgment of the Grand Chamber of February 10, 2009 in the case *Sergey Zolotukhin v. Russia* application # 14939/03.

[19]see *Gradinger v. Austria*, application no. 15963/90, Judgment of the European Court of Human Rights of 23 October 1995,

this or that offense and sanction when considering the nature of the offense and the severity of the sanction imposed may be regarded as a criminal offense and a criminal penalty, despite being categorized as an administrative violation and an administrative penalty. Accordingly, administrative proceedings must be regarded as criminal proceedings and must be subject to the provisions of Article 6 of the European Convention on Human Rights (right to a fair trial).

Therefore, taking into account the legal problems/gaps identified as a result of court monitorings of the proceedings of the cases of administrative offenses, HRC believes that in the cases of administrative offenses bearing a criminal nature (Articles 166 and 173 of the Code of Administrative Offenses of Georgia) the normative base of the Code of Administrative Offenses fails to meet the standards of the right to a fair trial as guaranteed by the Constitution of Georgia. Moreover, the developed practice of the general courts does not ensure the adoption of the judgments based on the conclusive evidence and does not reverse the burden of proof on the body/person having drawn up the report, thus failing to allow the courts to make reasoned judgments and grossly violating the rights and freedoms of individuals.

RECOMMENDATIONS

The Parliament of Georgia:

- To immediately adopt the new Code of Administrative Offenses of Georgia, which will guarantee the protection of human rights and the administration of effective justice.

The General Courts:

- To ensure that cases of administrative offenses are heard in observation of the principle of equality of arms and impartiality of the court;
- Ensure improvements in the quality of substantiation of the judgments rendered by the judges in the cases of administrative offenses;
- To ensure the proper distribution of the burden of proof in the court hearings of the cases of administrative offenses without prioritizing the value of the evidence presented by any party and with examining the evidence thoroughly and in a right manner;
- To assess the evidence presented at the court hearings and assess the issue of the legality of obtaining the evidence.

paragraphs 35-36.