საქართველოს ახალგაზრდა იურისტთა ასოციაცია
GEORGIAN YOUNG LAWYERS' ASSOCIATION

Coalition communicates with the UN Special rapporteur on the rights to freedom of peaceful assembly and of association

To: Mr. Clement Nyaletsossi Voule,

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dear Mr. Clement,

On behalf of the Coalition for an Independent and Transparent Judiciary,[1] we would like to inform you about the legislation on administrative offences that is currently in force in Georgia and continues to restrict freedom of peaceful assembly and expression.

May 7, 2018

1. **The main challenges posed by the Georgian legislation on administrative offences**

The Criminal Code and Administrative Offence Code are two separate pieces of legislation in Georgia. The latter imposes administrative penalties and sentencing procedures for relatively minor misconduct. Positive changes in the criminal justice sphere have no impact on the sphere of the most commonly used offenses, which by their nature are cases suited to criminal law.

Georgia □□ Code of Administrative Offences is a Soviet inheritance dating back to 1984. The Code fails to meet the requirements of due process and it is frequently used to unjustifiably restrict the right to peaceful assembly and expression.

The current Code of Administrative offences envisages heavy penalties, including administrative imprisonment, which by its nature should require application of the procedural safeguards afforded to criminal offences, but fundamental safeguards are not fully in place. In particular, the Code ignores the presumption of innocence, and does not obligate the judge to follow the standard of evidence beyond a reasonable doubt. The tight timeframe for hearing the cases and application of sanctions fail to ensure effective representation (hearings may last 10-15 minutes). Accordingly, the Code of Administrative Offences, in its current form, violates fundamental human rights and Georgia's international commitments.[2]

According to the Supreme Court of Georgia, during 2017, Georgian courts heard 29,350 cases of administrative offences, imposing various forms of administrative liability on 17,897 individuals.[3] Administration of the administrative offence cases is carried out by various state agencies. However, a large part of the administrative offences protocols, including offences related to assemblies and manifestations, is issued by the Ministry of Internal Affairs (MIA). According to information provided by MIA, in 2016 administrative offence protocols were drawn up against 7,910 individuals under Articles 166 and 173 alone[4], and in 2017 against 6,744 persons.

The State acknowledges the need to reform the legislation on administrative offences. On July 9, 2014, the Government of Georgia approved the Governmental Action Plan for the Protection of Human Rights (for 2014-2015), and there one of the objectives was systemic revision of the legislation on administrative offences.[5] The Governmental Action Plan for the Protection of Human Rights for 2016-2017 also

indicated that the Government would bring the Code of Administrative Offences in line with international standards and initiate a new Code of Administrative Offences.

Pursuant to Decree No. 1981 of November 3, 2014, the Government of Georgia created the Governmental Commission on the Revision of the Code of Administrative Offences, and in January 2016, this Commission submitted a new draft Code of Administrative Offences to the Criminal Justice Reform Interagency Coordination Council. However, further discussions were stalled and the draft Code has yet to be initiated in the Parliament.

Considering the aforementioned, the only meaningful change of the Code of Administrative Offenses would be its systemic revision. However, the authorities are toughening sanctions for individual offenses without rectifying the procedural non-conformity of the Code with international standards. For example, the Parliament of Georgia is now examining a legislative package drafted by the Ministry of Internal Affairs[6] that considerably increases the amount of fines: from GEL 100 to GEL 500-1,000 for disorderly conduct, and from GEL 250-2,000 to GEL 1,000-4,000 for non-compliance with a lawful demand of a police officer or any other unlawful act against him/her. According to the explanatory note to the draft law, the amendments are aimed at increasing the level of obedience to law.

The Code of Administrative Offenses has a special article and sanction for violation of the rules for organizing or holding an assembly or manifestation. The administrative sanctions include pecuniary penalties and administrative imprisonment. However, in practice the police usually use not that special article, but the articles of petty hooliganism and disobedience against the participants of the assembly and manifestation. Thus, the above mentioned legislative changes related to hooliganism and disobedience substantially increase sanctions that directly influence the right to peaceful manifestation.

We believe that the considerable increase of the fines for individual offenses while the current Code of Administrative Offense remains in force will have a chilling effect on the unhindered realization of the freedom of assembly and expression.

1. **The practice of violating freedom of assembly and expression using the legislation on administrative offences**

The Code on Administrative Offences is actively used by the police against the right to

manifestation in Georgia. The participants of peaceful assemblies are mainly detained based on Articles 166 (petty hooliganism), 173 (non-compliance with a lawful order of a law-enforcement officer), and 150 (defacing the appearance of a self-governing unit) of the Code of Administrative Offences. Cases of violation of the right to assembly and expression by means of these articles have been documented for years in the reports of both local and international organizations, as well as in those of the Public Defender. [7]

- **Administrative detention and administrative imprisonment**

The Code of Administrative Offenses allows administrative detention and administrative imprisonment. Administrative detention is a provisional measure, while administrative imprisonment is the strictest penalty for committing an administrative infraction. Under the current Code of Administrative Offenses, both administrative detention and administrative imprisonment pose a threat to the freedom and security of individuals and to the protection of the right to a fair trial.

The Code of Administrative Offenses establishes 12 hours as the maximum period of administrative detention, although if an individual is detained outside working hours it is allowed to place him/her in a detention center for 48 hours. It is also a significant shortcoming that judges examining cases of administrative offenses are not obliged to verify the lawfulness of detention; in addition, as a rule the police do not indicate the specific grounds for detention in the detention protocol, which makes it difficult to verify the lawfulness of detention. In some cases, the maximum term of detention is applied without any substantiation. The police also apply detention in cases where the law does not prescribe detention. Yet another significant procedural violation is that detainees are not informed of their right to appeal the detention or the procedures for appeal.

As for administrative imprisonment, the current maximum period for administrative imprisonment is 15 days. At each stage of the proceedings related to administrative imprisonment, fundamental rights of individuals are violated and they are left without adequate legal safeguards.[8] We believe that administrative imprisonment is similar to a sanction characteristic of criminal justice. Accordingly, administrative offenses may not be punished by sanctions that require such intensive interference with an individual’s freedom.

- **Petty hooliganism (Article 166)**

Article 166 of the Code of Administrative Offences defines petty hooliganism as swearing in public places and harassment of citizens or similar actions that disrupt public order and peace of citizens.

The analysis of cases of persons detained on the basis of this article during peaceful assemblies and manifestations shows that when defining petty hooliganism, the courts interpret the provision very broadly to the detriment of freedom of speech and expression.[9] This enables the police to restrict forms of peaceful expression without justification and put them in the context of petty hooliganism.

- **Non-compliance with a lawful order of a law-enforcement officer (Article 173)**

Article 173 of the Code of Administrative Offences defines non-compliance with a lawful order or demand of a law-enforcement officer, military serviceman, an officer of a special state security service or enforcement police officer on duty as an administrative offence.

Case studies reveal that the courts confirm the commission of the offence without a determination of the lawfulness of the police officer action or the verification of lawfulness has only a formalistic character. In the latter cases, the courts limit themselves to establishing whether the police had the right to carry out a specific action, without deliberating on whether the police used the authority prescribed by law correctly. This practice enables police officers to restrict protesters right to choose the place and form of the protest without further justification.[10]

- **Defacing the appearance of a self-governing unit (Article 150)**

The Code of Administrative Offences (Article 150) defines defacing the appearance of a self-governing unit as making various types of inscriptions, drawings, or symbols on building facades, shop windows, fences, columns, trees without authorization, as well as putting up placards, slogans, or banners at places not allocated for this purpose.

The cases litigated on the basis of this article show that its application can restrict forms of expression the content of which is undesirable for the authorities. This norm fails to maintain the balance between the legitimate interest of protecting the aesthetic side of a city, on the one hand, and freedom of expression, on the other.[11]

Summary

The Coalition believes that the Code of Administrative Offences of Georgia needs fundamental revision to meet the standards set by Georgia □□ international agreements, as well as to safeguard that the Code is not used to illegitimately deprive individuals of their constitutional rights.

The State □□ inaction during the past two years makes us think that the State is in no hurry to implement the reform and that, in the form of the current Code of Administrative Offences, retains a strong mechanism for unjustified intervention into the right to peaceful assembly and expression.

For this reason, we request that you use the mechanisms provided for by your mandate and study and evaluate the practice of restriction of freedom of peaceful assembly and expression in Georgia by the means of the legislation on administrative offences. We think this would contribute significantly to the reform of the legislation on administrative offences. We stand ready to provide you with additional information in case of interest.

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[1] The Coalition for an Independent and Transparent Judiciary was created in 2011, and it currently unites 36 NGOs active in Georgia. The Coalition aims to unite the efforts of human rights organizations for creating an independent, transparent, and accountable system of justice. The main areas of the Coalition's activity are research and monitoring, development and advocacy of recommendations related to reforming the judicial system, and holding public discussions on pressing problems of the judicial system. http://www.coalition.ge/index.php?article_id=1&clang=1

[2] *How to End Georgia's Unconstitutional Use of its Administrative Offenses Regime*, Judicial Independence and Legal Empowerment Project (JILEP), October 15, 2013,

http://ewmi-prolog.org/images/files/5244Eng_Admin_Regime_JILEP_Report_Oct_30_final.pdf

[3] http://www.supremecourt.ge/files/upload-file/pdf/2017w-statistic-12.pdf

[4] Article 166 - petty hooliganism, Article 173 - non-compliance with a lawful order of a law-enforcement officer.

[5] Ordinance No. 445 of the Government of Georgia of July 9, 2014.

[6] The Coalition Calls on the Parliament Not to Aggravate Sanctions for Administrative Violations. March 1, 2008. http://coalition.ge/index.php?article_id=178&clang=1

[7] See, for example: a. Administrative Error: Georgia's Flawed System of Administrative Justice, Human Rights Watch, January 2013, https://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf

b. Report 26 May 2011: Analysis of Human Rights Violations During and Related to the Dispersal of the May 26 Assembly, GYLA, 2011, https://goo.gl/nKDmpz

c. Political Neutrality in the Police System, EMC, 2016, https://emc.org.ge/2016/09/07/emc-130/

d. Protests Considered to be an Offence, GYLA, 2017, https://goo.gl/ocENXL.

[8] See the Coalition's statement regarding administrative detention and imprisonment http://www.coalition.ge/index.php?article_id=123&clang=1

[9] *Protests Considered to be an Offence*, GYLA, 2017. This report overviews the administrative offence cases in 2015-2016 against persons who enjoyed the right to peaceful assembly and the freedom of expression. The report combines nine episodes administered by GYLA's Tbilisi and regional offices, which include administrative offence cases against 38 persons. https://goo.gl/ocENXL

[10] The normative content of the said article has been challenged in the Constitutional Court of Georgia. See GYLA's statement https://goo.gl/y9twWc

[11] The GYLA has filed a claim in the Constitutional Court of Georgia requesting to

find this article unconstitutional. See GYLA's statement https://goo.gl/f2yuy6