



საკონსტიტუციო სასამართლო ადმინისტრაციულ  
სამართალდარღვევათა კოდექსის  
პროცესუალურ გაუმართაობას შეამოწმებს

## The Constitutional Court to examine the procedural malfunction of the Code of Administrative Offenses

On December 17th, 2019, the Constitutional Court of Georgia took Zurab Girchi Japaridze's constitutional claim for essential consideration in the part concerning the constitutionality of Article 266 of the Code of Administrative Offenses of Georgia.

According to the disputed norm, after adjudication of an administrative offense case, the court issues a resolution in the mentioned case, but as a rule, the resolutions in the administrative offense cases are ungrounded. **In the aforementioned lawsuit, GYLA argues that under the existing Code, criminal offenses by its essence are examined and resolved without proper procedural guarantees. For example, the punishment provided by the articles of petty hooliganism and disobedience to a law enforcement official is severe and equates to a criminal sentence, though a person has less procedural safeguards when dealing with an administrative offense. The burden of proof is incorrectly distributed, at the same time, it does not require the law enforcement authorities to substantiate the grounds for imprisonment. The Code also fails to recognize the principles of presumption of innocence, adversarial and equality of arms, and the obligation to make decisions beyond a**

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## **reasonable doubt standard.**

The appealed norm does not put onus on the judge to substantiate his or her decision, which implies that the court's resolution does not usually contain a relevant justification as to why the court shares the incriminating evidence against the person being investigated under administrative offence and denies the other.

After consideration of the case on merit, the Constitutional Court shall determine whether the appealed article violates the right to a fair trial, and whether the appealed article contravenes paragraph 6 of the Article 31 of the Constitution of Georgia (no one shall be obliged to prove his/her innocence. The burden of proof shall rest with the prosecution) and paragraph 7 (resolution to commit an accused for trial should be based on a reasonable doubt, and the conviction on the proof beyond a reasonable doubt. Any suspicion that cannot be proved in accordance with the rules established by law shall be resolved in favor of the accused).

In case the claim is satisfied, it will be possible to substantially revise the 1984 Code of Administrative Offenses.

The Georgian Young Lawyers' Association is carrying the case with the support of USAID / PROLoG.