

საკონსტიტუციო სასამართლოს  
განმარტებით სათანადო დასაბუთების  
გარეშე ადმინისტრაციული დაკავების  
მაქსიმალური ვადის გამოყენება  
უკანონოა



საქართველოს  
ახალგაზრდა  
იურისტთა  
ასოციაცია

## According to the Constitutional Court, it is Illegal to Use the Maximum Period of Administrative Detention Without Proper Justification

On December 26, the Constitutional Court of Georgia did not consider GYLA's case - "Vasil Zhizhiashvili and Giorgi Gotsiridze v. the Parliament of Georgia", for hearing on merits, however, the court made an important explanation in its ruling. According to the Constitutional Court, it is illegal to use the maximum period of administrative detention without proper justification. Therefore, when there are no longer grounds for detention, the detainee must be released immediately, regardless of whether or not the maximum period of detention has expired.

Within this case, Article 247 of the Code of Administrative Offenses, which defines the general terms for administrative detention, was disputed. In particular, it is established that the administrative detention period of an administrative violator

should not exceed 12 hours, and if the period of administrative detention coincides with non-working time, the person may be detained and placed in a temporary detention isolator by an authorized body before the case is heard, in which case the total period of detention of the person shall not exceed 48 hours.

The first paragraph of Article 244 of the Code of Administrative Offenses of Georgia defines the purposes for which the administrative detention of a person is allowed. These purposes include: a) prevention of administrative offenses when other sanctions have been exhausted; b) identification of a person; c) drawing up a report on administrative offenses if it is necessary to draw up a report, but it is impossible to draw it up on the spot; d) timely and correct consideration of the administrative offense case and ensuring the execution of the ruling on the administrative offense case.

In practice, there are frequent cases when the grounds for detention of a person are exhausted, however, since the maximum period of detention has not expired, the authorized body does not release the detained person. Based on this practice, GYLA considered that the normative content of Article 247 of the Code of Administrative Offenses, which for the purposes of drawing up a report and identifying a person, allows the body authorized to detain, to use the maximum period of detention provided for in article 247 as the maximum period of detention, contradicted the first paragraph of Article 13 of the Constitution of Georgia (human rights) and shall have been declared unconstitutional.

Although the Constitutional Court did not consider the claim for hearing on merits, the explanation given on the case is fully consistent with the aims of the claim. The Constitutional Court clarified that: **"The purposes set forth [in Article 244 of the Code of Administrative Offenses] give legitimacy to the administrative detention of a person not only at the moment of arrest but also during the full period of restriction on liberty. Therefore, in order for administrative detention of a person to meet the requirement of legality, it is necessary that the purpose provided by the law of administrative detention exist from the moment of the person's arrest until his/her release. Restriction of freedom of a person after achieving the defined purpose, until the expiration of the maximum period established by law for administrative detention, is of an arbitrary nature."**

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA hopes that the Constitutional Court's explanation will help to eliminate the practice of arbitrary detention and that administrative detention will no longer be used unreasonably for a maximum period of time.

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