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Legislation on Administrative Offences in Georgia: Anticipating a Long Overdue Reform

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Introduction

Georgia continues to apply the unconstitutional Code of Administrative Offences – the only law inherited from the Soviet period (it was adopted in 1984) still in effect in the country today. Despite numerous promises, the government does not seem to be in a hurry to amend it.

The Code of Administrative Offences is a kind of anachronism that does not fit into the contemporary Georgian legal system. The Code of Administrative Offences establishes administrative sanctions, defines fining procedures for petty offences and is independent of the Criminal Code. Therefore, the positive amendments introduced in criminal legislation are not reflected in the treatment of administrative offences, which, due to their nature, should fall under the criminal legislative framework. The Code of Administrative Offences stipulates mechanisms that no longer exist: for example, an administrative offence case can be deliberated by a non-existent body – the so-called "community court", civil organizations or workers union. However, the main critique towards this practice is the non-existence of procedural guarantees. The lack of guarantees enables the government to abuse the Code of Administrative Offences and punish citizens. This might be the real reason behind the government's presumptive unwillingness to not adopt a genuine reform.

Reforming the Code of Administrative Offences is not directly indicated in the EU-Georgia Association Agenda for the period 2017-2020. However, it clearly indicates that Georgia must continue to improve its criminal legal procedures and ensure the rule of law. If Georgia maintains the Code of Administrative Offences in its current form, defendants on a number of criminal violations will be deprived of the necessary legal guarantees, and that excludes the possibility of comprehensive criminal reform and prevents the rule of law from being established.

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The reality of legislation on administrative offences in Georgia

The Code of Administrative Offences of Georgia establishes responsibility for administrative offences, which includes acts of a criminal nature. This is why it is important to apply all the standards of a due process to all of those cases.

Unfortunately, the existing legislation fails to provide such guarantees. The Code of Administrative offences stipulates heavy sanctions, including administrative imprisonment, which by its nature requires the application of procedural guarantees similar to criminal offences.[1] The existing legislation neglects the presumption of innocence and does not require a judge to apply "reasonable doubt" standards. The limited procedures of adjudication do not ensure an effective defence – in fact, according to the existing practices, adjudication lasts about 10-15 minutes per case. Furthermore, in adjudicating offences, the court does not examine the legality of the detention. Thus, the application of the existing Code of Administrative Offences results in the violation of fundamental rights of Georgian citizens and is a breach of the obligations undertaken by Georgia as a party to relevant international agreements.[2]

The scale of the problem

Each year, courts across Georgia examine around 30,000 cases related to administrative offences. Of these, about 60% result in administrative sanctions.[3] The administration of administrative offence cases is carried out by various state agencies. However, a large portion of administrative offences protocols, including offences related to assemblies and manifestations, is issued by the Ministry of Internal Affairs (MIA). According to information provided by the MIA, in 2016 administrative offence protocols were drawn up[4] against 7,910 individuals under Articles 166 and 173 alone[5] and against 6,744 persons in 2017. That same year, 5,656 detainees were charged with an administrative offence and 590 were sentenced to administrative imprisonment.[6]

The government's position

The incumbent government recognizes the need to reform the code. On July 9, 2014, the Georgian government adopted the National Plan on Human Rights Protection (2014-2015) which stipulated a systemic review of the administrative offences' legislation.[7] The same plan for the period of 2016-2017 called for bringing the administrative offences' legislation into line with international standards and starting the process to adopt a new administrative offences' code. At the same time, although the 2017-2020 EU-Georgia Association Agenda does not directly stipulate the reform of this legislation, this issue is directly related to the improvement of the criminal legislation/procedures, thus ensuring the supremacy of law. As already mentioned above, if Georgia maintains the Code of Administrative Offences in its current form, defendants accused of a number of violations of a

[1] See the statement of the Coalition for Independent Judiciary: http://coalition.ge/index.php?article_id=123&clang=1

[2] Public defender of Georgia – The situation in Human Rights and Freedoms in Georgia – 2017

[3] According to the Supreme Court statistics, in 2017, the courts examined 29,350 administrative cases, of which 17,897 resulted in administrative sanctions. The same figures for 2016 are: 30,755 cases examined, 18,367 cases resulting in administrative sanctions http://www.supreme-court.ge/files/upload-file/pdf/2017w-statistic-12.pdf. (In Georgian)

[4] According to the Code of Administrative offences, after a police officer drafts the protocol of offence based on those articles, the case is forwarded to the court. The court then establishes whether the person in question has committed a violation. The decision of the first instance court may be appealed in the Appellate Court, the decision of which is final and not subject to revision

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

[6] MIA letter sent to GYLA on February 1, 2018 #MIA 5 18 00 255531

[7] Decree of the government of Georgia, July 9, 2014 #445

criminal nature will be denied necessary legal guarantees, and that excludes the possibility of comprehensive criminal reform and prevents the rule of law from being established.

While the government has shown it recognises that the problem exists, it has not given any signs that it is ready to adopt the reform any time soon. The last attempt to introduce the reform was initiated in 2014 when a special commission was created to elaborate and bring about such a new bill.[8] The commission completed its work and presented the reform package to the inter-agency council in January 2016. However, the process was never completed and the draft bill was never debated in the parliament.

How to transform the administrative offences' legislation?

The model for the reform of the Code of Administrative Offences, developed by the commission in 2016, corresponded to the existing challenges and was supported by a large number of civil society networks.[9] The proposed initiative does in fact offer the best possible method to reform the legislation: the adoption of a new Code of Administrative Offences in addition to introducing amendments to Georgian criminal codes.[10]

According to the reform model:

- A new category, petty crimes, would be added to the Criminal Code. This category is suggested to cover offences, which, due to their criminal nature, will be moved from the administrative legislation to criminal legislation (for example, petty hooliganism, non-compliance with a lawful order of a law-enforcement officer, etc.). The category of petty crimes would also cover criminal proceedings, which would ensure higher standards of evidence and offer more procedural guarantees. A petty crimes conviction would not result in a criminal record;

- The offences that are not of a criminal nature would remain in the Code of Administrative Offences; For offences that remain in the Code of Administrative Offences, the administrative proceedings would be carried out by the administrative bodies (according to thematic applicability). Thus, the decisions of the administrative bodies would be subject to comprehensive judiciary control, in accordance with the standards of a fair trial;

- The administrative imprisonment sanction would be revoked.

[8] The Georgian Government created the governmental commission for the reform under the November 3, 2014 decree #1981

[9] See the statement of the Coalition for Independent Judiciary http://coalition.ge/index.php?article_id=123&clang=1

[10] 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

Conclusions and recommendations

Any other model (for example, introducing only amendments to the existing model, such as establishing the right to fair trial or revocation of administrative imprisonment) would be ineffective and insufficient, because the Code of Administrative Offences would merely repeat the procedures stipulated under the criminal procedural legislation. Also, the Code of Administrative Offences would lose its natural advantage, i.e. simple proceedings. Even though the sanctions for administrative offences would not involve imprisonment, the nature of those offences would remain in the criminal category (such as for petty hooliganism, non-compliance with a lawful order of a law-enforcement officer). Therefore, there would still be a need to ensure the defendant in question received all the legal guarantees related to criminal proceedings.[11] The administrative judges would have to perform quasi-criminal adjudication, while their actions would be different from the actual practices of criminal judges.

Resolving the existing problems requires the following actions:

- Georgia must start a reform of the Code of Administrative Offences, which would invalidate the existing legislation and replace it with a newly adopted code. The new code must be compliant with the constitution and international standards;

- Offences of criminal nature, covered under the Code of Administrative Offences, must be moved to the Criminal Code, which would ensure the application of criminal procedure guarantees for the defendants; petty crimes must not result in a criminal record;

- Administrative imprisonment, applied currently as a sanction for administrative offences, must be revoked;

- The EU can play a very important role to encourage Georgia to introduce the reform in a timely manner. The EU must convey to Georgia that rejection of this reform means rejection of comprehensive criminal reform and failure to ensure the rule of law.

[11] According to the practice of the European Human Rights Court, a "criminal charge" may exist even if an administrative imprisonment is not imposed as a penalty. A person is entitled to all procedural guarantees established for the accused in criminal proceedings if an offence is of a criminal nature or may be deemed as such based on the overall assessment of the nature of the offence and the penalties provided for the commission of such offence. For instance, see Öztürk v. Germany; also, Ziliberberg v. Moldova