GEORGIAN YOUNG LAWYERS' ASSOCIATION

BRIEFLY ABOUT THE LEGISLATION ON ADMINISTRATIVE OFFENCES

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INTRODUCTION

The Administrative Offences Code, adopted during the Soviet era and incompatible with basic human rights, is still used in Georgia. The Action Plan for 2022 approved by the Legal Affairs Committee of the Parliament of Georgia intends to reform the Code, as one of the priority issues. According to the plan, by the end of 2022, a draft bill should be prepared, which will make it possible to *systematically regulate the current provisions of the law and develop unambiguous rules governing the relevant legal relations. In addition, all this must be carried out in full compliance with international standards for the protection of human rights*.[1] However, over the past ten years, this has been already the third attempt to start work on the reform of the Administrative Offences Code.[2]

Against the background of the unimplemented reform efforts, the current legislation is the daily cause of the violation of fundamental rights:

- The Code provides for severe punishment, including administrative imprisonment, for committing a specific administrative offence and envisages far fewer procedural safeguards for individuals charged with a criminal crime;
- The absence of a prosecutor when considering a criminal offence violates the principle of impartiality and independence of the court since in fact the role of the prosecutor in such cases is assumed by the judge;
- The Code does not require the presumption of innocence;
- The current legislation obliges a person brought to administrative responsibility to present evidence and prove that he/she did not commit an administrative offence;

1 Action plan of the Legal Affairs Committee of the Parliament of Georgia, 2022. Available at: https://bit.ly/3clqKnG, verified: 31.07.2022.

[2] «Legislation on administrative offenses», GYLA, 2021. Available at: https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/2021/GetFileAttachment-2.pdf, verified: 01.08.2022.

- The judge hearing an administrative case does not examine the lawfulness of the arrest. The existing mechanism for challenging the lawfulness of detention is ineffective and inconsistent with the Constitution;
- The judge considering a case does not explore the legitimacy of a police officer's request.

ADMINISTRATIVE DETENTION

The Administrative Offences Code provides for the possibility of detaining a person under administrative charges, which poses threat to the freedom and security of an individual as well as the right to a fair trial. Prior to the 2021 amendments, the maximum period of detention was 12 hours; however, if the detention coincided with a non-working day, it could have been extended up to 48 hours. In the spring of 2021, the Parliament of Georgia, with the view to enforcing the decision of the Constitutional Court, tightened the detention rules and increased the period of detention in all cases from 12 hours to 24, which can be further extended by 24 hours (in total 48 hours).

Since the introduction of the amendments, the police have shown a tendency to increase the detention term up to 48 hours on formulaic grounds. For example, the Ministry of Internal Affairs prolonged the period of administrative detention up to 48 hours in one of the cases litigated by the Georgian Young Lawyers' Association, citing the necessity to obtain some additional evidence. However, after the expiration of the period, the body did not present such evidence to the court. In another case, the police stretched the term of administrative detention to 48 hours on the grounds that they were "waiting" for a criminal record certificate and the information on the application of an administrative penalty from the Information and Analytical Department of the Ministry of Internal Affairs.

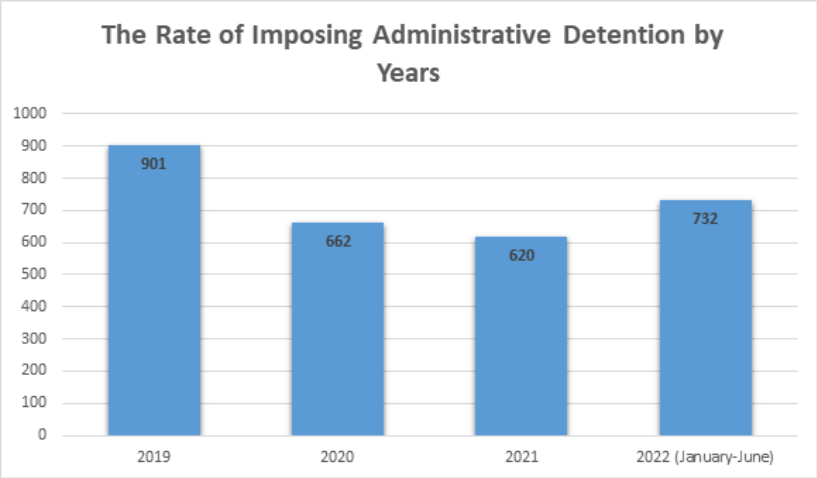
The problem is exacerbated by the fact that the current legislation does not provide an effective tool for inspecting the lawfulness of detention. A decision of a police officer ordering administrative detention never falls within the supervision of a judge considering a case. In such cases, the lawfulness of the detention is impossible to effec-

tively examine, which is why the requirements of the Constitution and the European Convention - the court must promptly examine the lawfulness of the detention - remain unfulfilled.[3]

STATISTICS

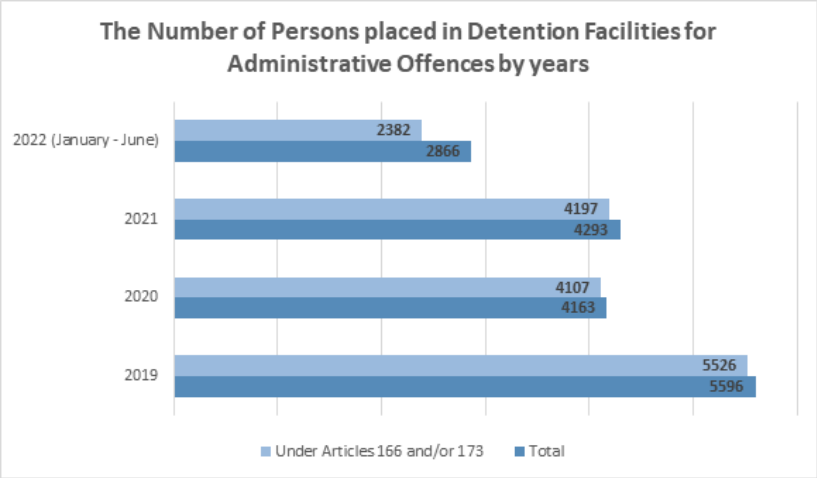
The rate of imposing administrative detention and imprisonment remains high every year. Although the Ministry of Internal Affairs does not maintain a detailed record of these cases, at least the number of individuals arrested can be established based on the statistics of persons placed in detention facilities. It is noteworthy that the vast majority of persons placed in the administrative detention facilities were charged with petty hooliganism and/or disobedience to a lawful order of a police officer.

Annex 1.



[3] See the constitutional claim of the Georgian Young Lawyers' Association on the case «Davit Nebieridze v. the Parliament of Georgia».

Annex 2.


The Number of Persons placed in Detention Facilities for Administrative Offences by years
2022 (January - June)
2382
2866
2021
4197
4293
2020
4107
4163
2019
5526
5596
Under Articles 166 and/or 173
Total