



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

JUSTICE PROVIDED UNDER THE 1984 CODE

**QUARTERLY REVIEW
(OCTOBER-DECEMBER 2022)**



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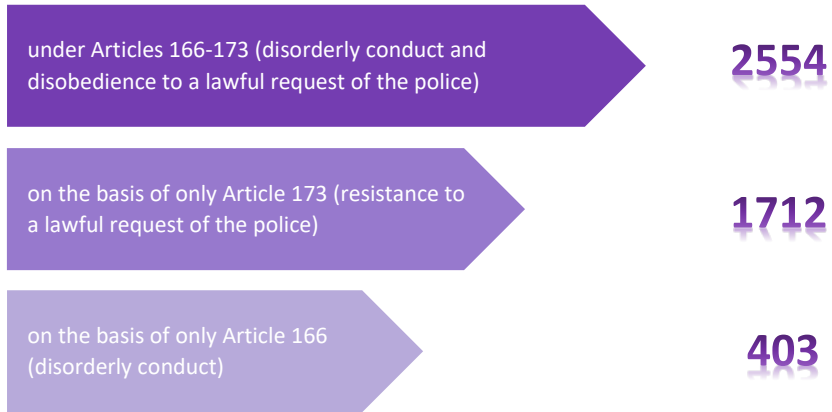
INTRODUCTION



The Code of Administrative Offenses, adopted in 1984, is still in force in Georgia, which creates significant problems in terms of protecting human rights. The Georgian Young Lawyers' Association (GYLA) hereby presents a quarterly review for the period from October 1 to December 31, 2022, focusing on the main events that took place in terms of the legislation and practice of administrative offenses. It should be noted that during the period, the Court of Human Rights delivered a judgment in the case "Peradze and Others v. Georgia", which combines the case of 7 activists who were administratively detained during a protest rally in 2015. The Court found that the right to assembly had been violated in the light of freedom of expression. In the same period, the Constitutional Court of Georgia passed a ruling unambiguously explaining that when considering a case based on Article 173 (resistance to a lawful request of a police officer), prior to pronouncing a person an offender, the courts of general jurisdiction shall examine the lawfulness of such a request or order of the law enforcement body, for the non-fulfillment of which the person is brought to administrative responsibility.

Statistical information

According to the data published by the Ministry of Internal Affairs of Georgia, in 2022, **a total of 5,945 individuals** were placed in detention facilities based on the Code of Administrative Offenses. Of them:



Throughout the year, **511 persons were subjected to administrative detentions**, of which the most frequent were:¹

- ▶▶ **5-day detentions - 204 persons**
- ▶▶ **10-day detentions - 175 persons**

¹ Statistical information published by the Ministry of Internal Affairs, available at: <https://info.police.ge/uploads/63dba84fc9f71.pdf>, last viewed: 11.02.2023.

ACTIVITIES OF THE PARLIAMENT



- According to the Action Plan 2022 of the Legal Cases Committee of the Parliament of Georgia, a working version of the draft law on the adoption of a new Code of Administrative Offences was to be developed during the year.² As of the end of 2022, the working version of the draft law has not yet been submitted to the stakeholders. Therefore, it is expected that the fulfillment of the commitment will be postponed to the next year and be included in the 2023 Action Plan.
- Mr. Levan Ioseliani, a Member of the Parliament of Georgia, used the mechanism provided for in the Rules of Procedure of the Georgian Parliament, and on December 12, 2022, sent an MP question to the Ministry of Internal Affairs. The question requested clarification on the practice of extending the term of administrative detention. In particular, with the amendments introduced in the spring of 2021, the Parliament of Georgia increased the term of administrative detention to 24 hours in all cases. Moreover, based on the changes, for the purposes of obtaining evidence, it became possible to extend the 24-hour time limit once, but no more than 24 hours, which in total amounts to 48 hours. In such a case, a police officer shall substantiate in writing the expediency of extending the period of administrative detention. The Deputy asked the

² Action Plan 2022 of the Legal Cases Committee of the Parliament of Georgia, available at: <https://web-api.parliament.ge/storage/files/shares/Komitetebi/iuridiuli/samoqmgem/iuridiuli-samoqmedo-gegma-22.pdf>, last viewed: 11.02.2023.

Ministry of Internal Affairs how many administrative detentions had taken place and how many of them had been extended for further 24 hours in the period from the introduction of the changes up until the moment the letter was sent.³ In response to the MP's question, the Ministry of Internal Affairs explained that the Ministry does not maintain such statistics.⁴

It should be noted that, in various cases, the GYLA has analyzed a number of cases of unjustified extension of the detention term by 24 hours.⁵ Against the background of the fact that the Ministry of Internal Affairs does not process the above statistics, it is literally impossible to find out to what extent the practice of prolonging the detention term is used. The Ministry of Internal Affairs should not only maintain relevant statistics but also monitor how correctly the Agency's employees use the practice of extending the term of administrative detention.

³ Member of Parliament Levan Yoseliyan's question to the Ministry of Internal Affairs, available at: <https://info.parliament.ge/file/1/MpQuestionContent/21492>, last viewed: 11.02.2023.

⁴ Reply of the Ministry of Internal Affairs of Georgia, available at: <https://info.parliament.ge/file/1/MpQuestionContent/22186>, last viewed: 11.02.2023.

⁵ "Briefly about the legislation of criminal offenses", GYLA, 2022, available at: <https://bit.ly/3YKeZz>, last viewed: 11.02.2023.



OVERVIEW OF CASES



During the reporting period, different courts considered several interesting cases, about which we would like to briefly inform you:

○ **Judgment of the European Court of Human Rights on the case "*Peradze and Others v. Georgia*"**

On December 15, 2022, the European Court of Human Rights announced its decision on the case "Peradze and Others v. Georgia". The Court found a violation of Article 11 (freedom of assembly and association) of the Convention and granted just satisfaction to the applicants (7 persons).

The case concerns the arrest of participants in a protest demonstration held on July 19, 2015, in front of the Tbilisi City Hall, protesting against the Panorama Tbilisi project, and their detention for disorderly conduct. In particular, several participants of the rally were holding a banner with the inscription "Panorama, my c*ck", because of which law enforcement officers detained 7 participants of the demonstration. Of the detainees, the male representatives were placed in the temporary detention center of the Ministry of Internal Affairs (MIA), where they were kept for about 20 hours, and the female representatives were restricted from their freedom for about 3 hours in the police vehicle parked in the yard of the Ministry of Internal Affairs. The reasons for the arrest were explained to the applicants only a few hours later. According to the offense reports, the detainees were holding

banners **with an obscene slogan and were chanting it loudly, which constitutes disorderly conduct. In addition, according to the protocols, two detainees did not obey the lawful order of the police.** By the decision of the domestic courts, 7 applicants were found guilty of disorderly conduct - holding a poster with the “lewd” slogan written on it. Each of them was fined 100 GEL. The Court did not find the commission of other actions by the applicants. According to the decision of the Tbilisi City Court, the said restriction served to protect public morals and the honor and dignity of a specific person. However, the Court did not specify the identity of that specific person whose honor and dignity was offended.

The European Court concluded that the above facts constituted an interference with the area protected by Article 11 of the Convention. The Court emphasizes in particular that the domestic courts failed to examine the factual circumstances of the case, namely they did not answer the question of the extent to which the holding of banners by the applicants was a violation of public order and thus did not assess the proportionality of the actions taken by the State against them, while the video footage presented to the Court clearly showed that the applicants’ actions were peaceful and passive. They were only holding banners in their hands and were not carrying out any aggressive actions. Moreover, the European Court explains that the words used were not directed at any institution or individual and therefore cannot be considered offensive. In the Court’s view, the lewd expression was used by the applicants as a stylistic tool for expressing the highest degree of their disapproval of the Panorama project, and even the controversial form that the applicants chose to express their attitudes on the matter of public interest was not sufficient to restrict the freedom of assembly and speech. The Court also draws attention to the fact that imposing a fine by the State against such expression has a chilling effect. Thus, taking into account all the above-mentioned considerations, and in particular, the domestic courts’ failure to assess a number of important aspects of the case, the Court found

a violation of Article 11 of the Convention in the light of Article 10 (freedom of expression).⁶

○ The Constitutional Court's Ruling

On December 23, 2022, the Constitutional Court of Georgia issued a ruling concerning the constitutionality of Article 173 of the Code of Administrative Offenses. In particular, in the case - "*Natalia Peradze and Konstantine Guruli v. the Parliament of Georgia*", the Constitutional Court dismissed the claim. However, the Court made an important clarification in the case. The ruling actually established the practice that the claimants sought to achieve with the complaint filed.⁷

The application requested to declare Article 173 of the Code of Administrative Offenses (resistance to a lawful request of the police) unconstitutional due to the fact that the courts of general jurisdiction, when declaring a person an offender, do not examine the lawfulness of the order/demand of law enforcement bodies, but only assess whether the police acted within the scope of its authority.

According to the interpretation offered by the Constitutional Court, *the composition of the administrative offense envisaged under Article 173 clearly indicates and expressis verbis declares punishable any disobedience to a law enforcement officer's order and demand that is lawful. [...] The courts of general jurisdiction are obliged, before recognizing a person as an offender, to examine the lawfulness of the demand or order of a law enforcement officer, for the non-compliance of which the person bears administrative*

⁶ CASE OF PERADZE AND OTHERS v. GEORGIA (Application no. 5631/16) <https://hudoc.echr.coe.int/fre?i=001-221542>, last viewed: 11.02.2023.

⁷ Decision of the Constitutional Court of Georgia on case №2/14/1730 <https://constcourt.ge/ka/judicial-acts?legal=14765>, last viewed: 11.02.2023.

responsibility." This clarification made by the Constitutional Court is important in order to avoid misinterpretation of this Article by common courts.

