



კოალიცია  
დამოუკიდებელი  
და გამჭვირვალე  
მართლმსაჯულებისთვის  
Coalition for  
an Independent and  
Transparent Judiciary

## Opinion on the Legislative Package Drafted for Reforming the Code of Administrative Violations

First of all, we would like to note that the Coalition welcomes and supports this significant reform. In the event of its successful and adequate completion, it will be one of the most successful and critical reforms carried out in recent years. By implementing it Georgia will finally reject the outdated Soviet Code of Administrative Violations, the existence of which, in this form, not only grossly violates human rights and freedoms but also represents a normative act inconsistent with the current Georgian legal framework.

The flaws of the Code of Administrative Violations, and, in particular, inadequate procedural guarantees and imperfect fulfillment of the right to fair trial, were repeatedly addressed both at [the national and international levels](#). That is why we believe that the steps taken by the state for elaboration of the legislation in this area are meaningful and positive, and hope that the current reform will be soon completed successfully.

We also welcome the fact that the authors of the initiative have selected the only correct option for implementing the reform by proposing to move offences with criminal nature to the Criminal Code and introducing procedural guarantees that are essential for fulfilling the right to fair trial. Implementation of the reform in any other possible direction would have been an insufficient and unsuccessful attempt for the purposes of improving the justice system. Such attempts were made in Georgia as well as in the other countries in the past.

Once again, we express our readiness to fully engage in the future discussions on this reform and would like to share our position on various significant issues below.

Given the special importance of the reform and the character of the legislative novelties, we hereby present an opinion on the legislative package, consideration of which will strengthen the process and facilitate implementation of the reform in the right direction. More specifically:

- a) **Draft Law of Georgia on Amendments to the Criminal Code of Georgia:**

### Coalition Members:

Article 42 of the Constitution  
Multinational Georgia  
Georgia Small and Medium  
Enterprise Association  
Civil Integration Foundation  
Georgian Lawyers for  
Independent Profession  
Liberal  
Center for Protection of  
Constitutional Rights  
International Society for Fair  
Elections and Democracy  
The Union "21 Century"  
Georgian Young Lawyer's  
Association Human Right  
Center  
Transparency International  
Union of Meskhetian Democrats  
Liberty Institute  
Georgian Bar Association  
Civil Development Agency  
United Nations Association of  
Georgia  
The European Law Students'  
Association  
Civil Society Institute  
Open Society Georgia  
Foundation  
Institute of Democracy  
American Chamber of  
Commerce  
Eurasia Partnership Foundation  
Institute of Development of  
Freedom of Information  
Human Rights Priority  
Tbilisi Media Club  
Human Rights Education and  
Monitoring Centre  
Foundation for the Support of  
Legal Education  
Institute of Civil Engagement  
Association of law firms of  
Georgia  
Association of Young  
Economists of Georgia  
European Choice of Georgia  
Liberal Academy Georgia  
Partnership for Human Rights  
Georgian Human Rights  
Network  
Georgian Democratic Initiative  
Sapari Union

**Punishable criminal offence** - the Criminal law represents the last possible course of action for protection of social order, the objective of which is fighting socially dangerous crimes to ensure obedience to the law. Respectively, separate groups of acts shall be allocated in the special part of the criminal law according to such feature.

We have considered significant legal and procedural guarantees to be achieved by extension of criminal law mechanisms to certain violations, and came to the conclusion that from five administrative violations, which according to the draft law will be qualified as misdemeanors, violations of the provisions provided for in Articles 9, 11 and 11<sup>1</sup> of the *Law of Georgia on Assemblage and Manifestations*, deserve special attention. In our opinion, the question of whether incrimination of such acts as crossing the perimeter (Article 9 of the Law), and, partial or full blockage of the traffic by assemblage and manifestation participants (Article 11<sup>1</sup> of the Law) is wise, should become the subject of further discussion. Although a misdemeanor by its content and regulation differs from the other crime categories and does not provide for criminal record and the term of imprisonment is shorter, qualifying such offences as criminal offences may have a substantially negative impact on unimpeded fulfillment of the right to expression.

In view of these arguments we believe that violation of provisions, provided for in the Articles 9 and 11<sup>1</sup>, should be maintained in the category of administrative offences and should not be transferred to the Criminal Code.

**Term of Imprisonment** – the July 2014 amendments reduced the term of administrative punishment from 90 days to 15 days were positively assessed. The maximum term of imprisonment for minor crimes, including administrative offences, which are subject to transfer to the Criminal Code, is increased to 3 months under the Draft Law. By subjecting some articles to the Criminal Code the situation with respect to procedure guarantees clearly gets improved, however the increase in imprisonment term requires compelling justification.

We believe that for the purposes of demonstrating many positive aspects of the reform and its effective implementation, it is recommended to use a differentiated approach (gradation), according to which the term of imprisonment will be defined based on the type and nature of the act, instead of a uniform increase of imprisonment term for all cases up to 3 months.

**Fine as a type of punishment** – according to the presented draft, the regulation provided for fines will be applied to misdemeanors without

change. Respectively, the minimum fine should not be less than GEL 500. It would be advisable to set a relatively lower minimum threshold as well as define the maximum limit. This would unconditionally<sup>1</sup> exclude the possibility of applying unjustified high fines against crimes of the similar categories. It is appropriate for the submitted draft law to uphold the approach of the provisions of the Code of Administrative Violations in this regard.

**b) Draft Law of Georgia on Amendments to the Criminal Procedure Code of Georgia:**

**Imposing imprisonment as a preventive measure** – pursuant to the proposed draft, *imprisonment should not be imposed on a defendant for misdemeanors except for cases directly specified by the Code*. We believe that since imprisonment represents the ultimate measure under the Criminal Procedure Code, given the nature of a misdemeanor the legislator's will should be explicitly directed towards a liberal approach and provide for far lighter regulation than the general one.

**c) Draft Law on Amendments to the Code of Administrative Violations of Georgia:**

**State fee** – according to the draft, a state fee shall not be paid upon appealing the decision, which imposes an administrative punishment. However, since the proposed changes differentiate two forms of the decision made as a result of the case review – an order (individual administrative-legal act issued in writing by an authorized administrative body on the case after its review) and a decision (decision made by the court after case hearing), we believe that the exemption from the state fee should be equally applied to both cases. The same applies to an administrative legal act, which imposes an interest.

The current Code of Administrative Violations provides for the similar approach.

**Procedure for compensating a damage to the property** – pursuant to the amendments, *if an administrative offender inflicts damage on the state or/and self-government body property, the interested body is entitled to issue an administrative-legal act on compensation of damages after ascertaining the amount of damages*. In order to ensure foreseeability of the provision, in our opinion, it is essential to clearly define at the

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<sup>1</sup> At this stage, according to Article 42(3) of the Criminal Code of Georgia, court shall determine the amount of a fine according to the gravity of the crime committed and the material status of the convicted person. The material status shall be determined based on the person's property, income and other circumstances.

statutory level, the stage, at which an interested body can issue an act, The stage has to be related to the enforcement of the decision made as a result of the case review.

**Types of penalties** – according to the proposed amendments, one of the punishments is *deprivation of the special right granted to the person (right to drive a vehicle, carry arms, pursue an activity and etc.)*; given the wide scope and vague nature of the noted provision, we believe that such regulation does not meet the foreseeability requirements and need to be defined more clearly. In particular, from the Article's disposition perspective, it is not clear which other special rights are subject to deprivation and how widely the right to pursue an activity can be interpreted in practice. Therefore, in order to avoid various interpretations and potential corruption risks, it would be desirable to introduce a more narrow definition.

**Lawyer's authority** – in our opinion, the provisions provided in the Code of Administrative Violations with respect to a lawyer, are vague and require additional clarifications, in view of the court practice and effective norms.