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**GEORGIAN LEGISLATION ON ADMINISTRATIVE VIOLATIONS  
AND CONCEPTUAL ISSUES OF ITS REFORM**

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## Introduction

The legislation of Georgia on administrative violations is traditionally related to the administrative law as a field of law, and it was considered as one of the branches of the administrative law. This implies the system of the soviet law and that of the independent state of Georgia and the theory of law that were dominant in Georgia before the adoption of the new Constitution (August 24, 1995), then the General Administrative Code of Georgia (June 25, 1999) and the Administrative Procedures Code of Georgia (July 23, 1999). At the present moment, radical reforms have been made in all the fields of the Georgian law, and, consequently, it approached the modern standards of the developed legal systems. The legislation of Georgia on administrative violations is one of the fields of the Georgian law, which has not been influenced by the "powerful wave" of progressive transformations up to now.<sup>1</sup> It is "the last of the mohicans" of the Soviet law, and its existence is prolonged due to the fact that the final, substantiated opinion on its essence, place in the system of law and relationship with other fields of law is established neither in the Georgian legal science nor within the practical legal groups.

Such a situation is not extraordinary at all, as the legislation on the administrative violations is a product of the soviet law that has no analogues in any other legal systems in the light of both past and modern time. In the textbooks and monographs on the administrative law, the scientists touched upon the field of administrative violations and the relevant legislation only in general. As a rule, such reviews were brief and sketchy, and it is quite natural, as the subject of research was vague, because the researchers had to deal with a legal hybrid in the labyrinths of which it was difficult to find a way out by means of common and proven scientific legal methods.

The terms – "The legislation on administrative violations" and "Administrative Violations Code" are related to two aspects. The first one is that the violations specified in the said Code infringe upon legal relations regulated by relevant normative acts issued in the field of the administrative government. Due to this reason, it was allocated to the Administrative Law, however, such a solution of the issue looks doubtful from the theoretical viewpoint, as in the Criminal Law there are many actions, which infringe upon the same legal relations. The second aspect is that by means of creation of the legislation on administrative violations the Soviet State tried to conceal the huge repressive system, to extenuate to a certain extent the real face of the severe system before the international democratic society.

Actually, the legislation on administrative violations was an artificial institution created in the system of the soviet socialist law by the totalitarian state that was a powerful instrument for the suppression of the free will of citizens. It was one of the vivid expressions of the principal doctrine of the socialist law theory, according to which the law (especially the fields of law such as the Criminal Law and the legislation on administrative violations) was treated as an instrument of the state policy, i.e. of the ruling power directed at elimination of any (actual or potential) disapproval or resistance.

In law the soviet absolutism was based on the principle – everything that is not specially authorized by law is prohibited, and self-restriction of the state power by law, namely, through recognition of the human rights and providing legal guarantees for securing these

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<sup>1</sup> Another "frozen" field of legislation is the Code of Labour Legislation of Georgia

rights, was absolutely unknown and unacceptable.<sup>2</sup> The legislation on administrative violations was always loyal and obedient to the said principle, therefore, the legal norms acting in this field are in absolute disharmony and inconsistency not only with the fundamental principles of the modern Georgian law but also with the international legal acts on universally recognized human rights that are currently in force. There is no doubt that its reform, correct determination of its essence and place in the system of law is a very urgent task to be accomplished to eliminate violation of the rights of persons (natural and legal persons) in the process of administration of the jurisdiction in the given field. However, elimination of the above-mentioned problem under the conditions of the current legislation on administrative violations is actually impossible.

It is obvious that the present study cannot be an exhaustive and comprehensive research. It expresses the opinion of the author on principal issues as well as the future of the legislation on administrative violations, its possible reform – a modest attempt to realize possible ways and direction of the changes that can become a basis for initiation of wide discussions on the above-mentioned important issues, and the time for this process has already come.

The author would like to thank Doctor of Law, Mr. Merab Turava and Mr. Zurab Adeishvili for their valuable advice. Furthermore, I would be grateful to accept and take into account all reasonable remarks that will facilitate timely and proper solution of the problem.

## **Chapter I. System of the legislation of Georgia on administrative violations**

Before consideration of the system of the current legislation of Georgia on administrative violations, its structure and separate elements of the system, we should discuss the current legislation on administrative violations in general. This issue is related to the recent period, namely, to the situation that existed in Georgia during the post-communist period before the adoption of the new Constitution, when in various fields of law, in addition to the Code, existence of other laws and sub-laws regulating the responsibility sanctions for committing corresponding offences was admissible. The above-mentioned is confirmed by Article 2 of the Administrative Violations Code of Georgia according to which "The legislation of Georgia on administrative violations consists of the Administrative Violations Code and other legal acts of Georgia". Article 5 of the same Code states: according to the Georgian legislation, in the field of legislation on administrative violations, the competences of the Abkhazian and Ajarian Autonomous Republics are as follows: establishment of the administrative responsibility on the issues of public order in case they are not regulated by the present Code, as well as establishment of rules for the fight with natural disasters and epidemics, violation of which causes imposition of the administrative responsibility specified in Article 86, Article 102 and Article 148. The above-mentioned Articles provide for administrative responsibility for the violation of the rules for hunting, fishing and other rules for the use of animal objects (Article 86), animals quarantine rules and other veterinary-sanitary rules (Article 102), rules for development of the territory of towns and other settlements (Article 148).

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<sup>2</sup> With respect to this issue also see: Z. Adeishvili, G. Winter, D. Kitoshvili, Comment to the General Administrative Code of Georgia, Tbilisi, 2002, pp. 18-19.

After the adoption and enactment of the new Constitution of Georgia, the legislation was completely changed in all the fields of law, the competences in the field of promulgation of the legislation were separated, the new legislation was brought to conformity with the requirements of international legal acts, international conventions and other treaties signed by Georgia.

According to Article 3, paragraph 1, sub-paragraph "p" of the Constitution of Georgia, adoption and promulgation of the legislation on trade law, criminal law, civil law, administrative law and labour law, penitentiary and procedures legislation only falls within the exclusive competence of higher state bodies of Georgia. Thus, after the enactment of the Constitution, no state agency (including the supreme state body of the Autonomous Republics) except the Parliament of Georgia is authorized to adopt laws in the field of the administrative law. It should be noted that no legal acts on the administrative violations were adopted and published in the Autonomous Republics that would establish responsibility for various violations.

In addition to the above-mentioned, we should pay attention to the fact that according to the "Law of Georgia on Normative Acts", if in the process of adoption of a new law, violation of the norms provided for in this law provokes legal responsibility, the corresponding amendment should be made to the law (code) providing for specific sanctions and their application rules for the given field of law (Article 30). In the last decade, this principle was used in the field of administrative government when specific responsibility measures for the violation of certain legal relations or rules were included in the current Administrative Violations Code by means of codification. Furthermore, there are certain exceptions from this rule, which means that in addition to the Code, there is a law adopted for the regulation of the legal relations existing in a certain field of the administrative government containing a special Article with a disposition and a sanction providing for responsibility measures for administrative violations made in the given field. We can give the following example: Article 5 of the "Law of Georgian on state supervision over architectural and construction activities" (official gazette "Parlamentis Utskebani" # 46, 03.12.1997); Articles 26, 27, 28 of the "Law of Georgia on press and other mass media" (official gazette "Parlamentis Utskebani" # 44, 29.10.1997).

Thus, it can be said that for the present moment, the current legislation of Georgia related to responsibility for making administrative violations consists of one codified legal act, the Administrative Violations Code of Georgia of December 21, 1984 with the changes and amendments made to it several times, as well as other laws, which define the responsibility for various administrative violations and can be considered as continuation of the special part of Section Two of the above-mentioned Code, therefore, we will not consider them specifically.

As to the system of the Administrative Violations Code and the structure of the parts of this system, it should be noted that in this respect, the said Code is rather different from the Codes in the fields of law where, as a rule, separate codification is envisaged for the substantive norms defining the contents of the relevant legal relations, the indicators of the actions violating these relations, responsibility for such actions in the form of corresponding sanctions, rules and limits of their imposition and procedural norms defining and regulating the procedural aspect of the proceedings related to the application of the substantive legal norms. In such fields of law, separate codification is also envisaged for the norms defining general rules and conditions of proceedings related to execution of

procedural decisions adopted based on legal proceedings carried out while applying a substantive legal norm. The examples of such laws are: the Criminal Code of Georgia and the Criminal Procedures Code of Georgia as well as current laws on execution of criminal punishments imposed under court decisions.

Unlike the above-mentioned acts, the Administrative Violations Code of Georgia is a legal act, which comprises not only substantive and procedural legal norms, but also legal norms regulating proceedings related to execution of the decisions on administrative violations. This is one of the most serious faults of the above-mentioned legal act, which mixes the principle of independent codification of substantive and procedural norms. Such a system is unacceptable not only for the purpose of practical use of substantive and procedural norms of the Code, but also in the light of their scientific examination. This fact was pointed out quite reasonably in the Georgian legal literature.<sup>3</sup>

Furthermore, the following fact should be mentioned as well: Articles of Chapter I of Section One regulate issues, which are directly related to the general part of the substantive norms of the Code (Section Two, Chapter II), however, they are still separated that is quite incomprehensible. The same can be said about the fact that jurisdiction of such cases is given in the Administrative Violations Code of Georgia (Section Three, Chapters XV and XVI) separately from the general procedural norms (Section Four, Chapters XVII and XXII), though jurisdiction of cases is a procedural institution.

Thus, the systematic composition of the Administrative Violations Code of Georgia looks like an incorporated act due to its structure rather than a commonly codified legal act, which is not composed based on any definite principle. It consists of five sections and 31 chapters. We have already considered the first section, which consists of one chapter and will not concentrate on it any longer.

First, I would like to point out the structure of the Administrative Violations Code of Georgia, which is as follows:

Section One  
General Provisions

Chapter I. General Provisions

Section Two  
Administrative violation and administrative responsibility

I. General Part

Chapter II. Administrative violation and administrative responsibility

Chapter III. Administrative punishment

Chapter IV. Imposition of an administrative punishment

II. Special Part

Chapters V-XIV

Section Three  
Agencies authorized to consider cases on administrative violations

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<sup>3</sup> Prof. Valeri Loria, Administrative Law of Georgia, publishing house "Tsoetne", Tbilisi, 2000, p. 60.

Chapter XV. General Provisions  
Chapter XVI. Jurisdiction of cases on administrative violations

Section Four  
Proceedings of cases on administrative violations

Chapter XVII. General Provisions  
Chapter XVIII. Administrative violation report  
Chapter XIX. Administrative detention, search of property, seizure of things and documents  
Chapter XX. Persons participating in administrative violation proceedings  
Chapter XXI. Consideration of cases on administrative violations  
Chapter XXII. Appeal of a resolution made on an administrative violation

Section Five  
Execution of resolutions on imposition of administrative punishments

Chapters XXIII-XXXI

The main elements of the said system will be considered in this Chapter of the study.

§ 1. Brief description of general and special parts of Section Two of the Administrative Violations Code of Georgia

Section Two, Chapters II-XIV of the Code comprise substantive legal norms defining general and special issues related to administrative violations and administrative responsibility for committing these violations. Consequently, Section Two is divided into general and special parts. The general part comprises Chapters II, III and IV of the said Section. The norms of Chapter II define what actions according to this Code will be considered administrative violations, and in what cases and under what circumstances the person who has committed such a violation will be imposed the administrative responsibility. In particular, Article 10 gives the definition of an administrative violation, which by its content is very similar and is only slightly different from the definition of crime given in the Criminal Code.

The above-mentioned means that the responsibility established for committing an administrative violation is actually based on the same principle as criminal responsibility established for committing a crime. This fact is confirmed even by the titles of other Articles of Section Two, Chapter II of the Code – "Intentional committing of an administrative violation" (Article 11), "Negligent committing of an administrative violation" (Article 12), "Age upon attainment of which administrative responsibility is imposed" (Article 13), "Responsibility of aliens and stateless persons (Article 17), "Extreme necessity" (Article 18), "Necessary defense" (Article 19), "Insanity" (Article 20). Furthermore, the definitions of legal categories given in these Articles are similar to the definitions of the corresponding categories given in the Criminal Code.

There is another feature that makes even more similar the Administrative Violations Code and the Criminal Code, in particular, the above-mentioned Article 22 of Chapter II, which provides for the possibility of release of an offender from the administrative responsibility in case of committing a minor violation. Everyone who is familiar to a certain extent with

the general part of the Criminal Code, knows very well that the latter code contains a similar norm, which in the same way releases from the criminal responsibility a person who committed an unlawful action specified in the Criminal Code, which is a minor criminal offence (See Article 7, paragraph 2 of the Criminal code of Georgia).

The provisions given in Section Two, Chapter III of the Administrative Violations Code of Georgia define sanctions for an administrative violation, namely, kinds and contents of punishment, i.e. the form of each of them. Article 24 of the said Chapter provides for the following administrative punishments: a warning, a fine, paid seizure of a thing, which was used as the instrument, object or tool of committing a violation; confiscation of such an object, deprivation of a special right conferred to a person (e.g. deprivation of a driving license), correctional labour and the most strict administrative punishment – administration arrest for a 30-day term.

In the above enumeration there are several measures that are specified in the Criminal Code as well, namely, a fine, deprivation of a special right, correctional labour and confiscation, i.e. unpaid seizure of an object used as an instrument for committing a crime, and one more measure – administrative arrest is different from the criminal punishment such as jailing only by terms (See Article 40 of the Criminal Code).

Another similarity with the criminal law is that the Administrative Violations Code provides for division of punishments into principle and supplementary ones (See Article 25), as the criminal punishments are also divided into principle and supplementary ones.

The provisions of Section Two, Chapter IV of the Administrative Violations Code of Georgia define general and special rules for imposition of an administrative punishment to a person who has committed an administrative violation and is imposed the administrative responsibility. It should be noted that in this respect, the Administrative Violations Code is also similar to the general part of the Criminal Code that is confirmed by the following: Article 33 of the Administrative Violations Code defines general grounds for imposition of an administrative punishment, Article 34 and 35 – circumstances extenuating and aggravating the administrative responsibility, Article 36 – the rules for imposition of a punishment in case of cumulative administrative violations, Article 38 – limitation periods for imposition of an administrative punishment, Article 39 – the term for extinction of the administrative conviction, etc. The similarity is quite obvious.

It is well-known in the legal literature that in the field of law where strictly codified acts establish responsibility for a violation made in this field, the provisions of the general part of the code express its real essence and nature reflecting the purpose and activity rules of the given field of law or legislation, its compatibility and grounds for independent existence. If we assess the provisions of the General Part of Section Two of the Administrative Violations Code of Georgia in this light, it will be rather difficult to find justification and grounds for its independent existence.

The provisions of the Special Part of Section Two of the Administrative Violations Code of Georgia comprising Chapters V-XIV define categories of specific administrative violations and the corresponding sanctions with the indication to the relevant measures of the administrative punishment and the limits of their application. The provisions given in various Chapters of the Special Part define the responsibility for violations in different fields of social life or activities. Chapter X – "Administrative violations in the field of

transport, road economy and communications" or Chapter XII – "Administrative violations in the field of trade and finances", etc. can be given as examples.

A great number of the dispositional provisions of the Special Part of Section Two of the Code are blanket rules, i.e. they do not directly describe the composition of a prohibited action, but indicate to the violation of the rules regulating certain relations provided for in another normative act, and in this case, the elements of the *corpus delicti* are established by the contents of the said rules. For example, Article 128<sup>1</sup> of the Administrative Violations Code provided for responsibility for the violation of standard technical rules of transportation of dangerous loads by railway. It is obvious that in this case, existence or absence of *corpus delicti* completely depends on the content of the said rules, which are established for the railway and should be observed by everyone.

Some Articles of the Special Part of Section Two of the Administrative Violations Code have remarks specifying the *corpus delicti* of the violation given in the Article, its content. Though, such remarks are only given in several Articles, they are one of the necessary grounds for the responsibility provided for in these Articles. The examples of such Articles are as follows: paragraph 1 of Article 155<sup>1</sup> provides for responsibility for the violations of the rules for realization, transportation and maintenance of light, medium and heavy oil distillates. Paragraphs 2 and 3 of the same Article provide for increased responsibility for the same action if it is committed in large and especially large quantities. The said Article has a remark defining that for the purposes of this Article, large quantity is oil distillates with the capacity of more than 300 liters and especially large amounts – of more than 2,000 liters.

The disposition of some Articles of the special part is simple, naming only one action. For example, Article 133<sup>4</sup> provides for the administrative responsibility solely for the action such as "failure to meet the request of the Public Defender". Majority of the Articles have alternative dispositions providing for not one but two, three or more actions, and committing even one of them is sufficient for imposition of the administrative responsibility. For example, the disposition of Article 180, paragraph 1 provides for responsibility for an action such as purchase, keeping, transfer to another person or sale of a hunting gun by a citizen without a permission of Ministry of the Interior.

In the Special Part there are also Articles with specific dispositions that provide for so called cumulative *corpus delicti*, when simultaneous existence of two or more features is required for the imposition of the administrative responsibility. For example, the disposition of Article 172<sup>2</sup> provides for responsibility for a violation such as "impediment to manifestation with abuse of official position", i.e. in this case, there should be two necessary features of violation composition – "impediment" and "abuse of official position". Sometimes, in the Special Part there are Articles in the disposition of which the *corpus delicti* is defined by estimating features in addition to factual ones. For example, Article 166 provides for responsibility for minor hooliganism, and under the disposition of this Article, one of such actions is "abusive bothering of citizens". In this context the word "abusive" is the estimating element of the *corpus delicti* establishment of which is carried out by the court by means of the estimating criteria.

Sometimes, the responsibility is only imposed if an action caused an unlawful result that is directly indicated in the *corpus delicti*. For example, Article 132, paragraph 2 provides for responsibility for damage to the containers in the air transport. However, sometimes,

endangering property protected by law by an action is sufficient for the imposition of the responsibility. These are so called specific threat delicts. For example, Article 144<sup>4</sup> provides for responsibility for dismantling in residential areas of radio-electronic facilities, which do not meet the technical exploitation norms and are dangerous for health.

We should briefly discuss the issue of the sanctions provided for the offenders in the Administrative Violations Code of Georgia. The sanctions given in the provisions of Section Two of the Code are divided into three categories: a) alternative sanctions, when a certain Article provides for two or more administrative punishments for an administrative violation any of which can be imposed for the violations. For example, Article 107, paragraph 4 of the Administrative Violations Code provides for responsibility for smoking in prohibited places in the carriage of a passenger train that causes a warning or a fine as administrative punishments; b) relatively definite sanctions, which can be of two categories – 1. When only the maximal limit of an administrative punishment is established. For example, the sanction for causing damage to railway specified in Article 106, paragraph 2 provides for as an administrative punishment a fine in the amount up to fivefold minimal compensation of work. 2. When both the minimal and maximal limits of punishment are defined. For example, the sanction for the evasion from the payment of natural resources use tax specified in Article 165<sup>2</sup> provides for as an administrative punishment a fine from 800 up to 1,000 lari; c) absolutely definite sanctions, when committing a violation causes imposition of one administrative punishment in the strictly established amount. For example, under Article 173<sup>8</sup>, failure to present a property declaration causes imposition of a fine in the amount of hundredfold minimal compensation of work; d) cumulative sanctions, when two or more administrative punishments must be used against a person who has committed an administrative violation. For example, the sanction of Article 142 provides for a fine and confiscation of the facility at the same time for the unauthorized use of radio transmission facilities. According to the sanction of Article 183<sup>1</sup>, for the violation of the rules of registration of underwater harpoon gun, a citizen will be imposed a fine with or without confiscation of the gun; e) non-typical sanctions, when an administrative punishment is determined in a special form taking into account the specific nature of the violation. For example, according to Article 193, paragraph 4, sub-paragraph 4 of the Administrative Violations Code, the violation of the inspection terms by an authorized state official before the transportation provided for by the agreement made between the State and the person authorized to carry out the inspection, causes administrative punishment in the form of a fine in the amount of 6 % of the customs value of the goods but not less than 1,000 lari.

The General and Special Parts of the Administrative Violations Code by their structure and the elements of the norms are so similar to the Criminal Code that there is an impression that the Administrative Violations Code is a kind of a supplement or addition to the Criminal Code.<sup>4</sup>

## § 2. Jurisdiction and proceedings of cases related to administrative violations

Jurisdiction of cases on administrative violations and the rules of proceedings of such cases are related to the procedural aspect, they should realize whatever is determined by the

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<sup>4</sup> With respect to the relationship between the legislation on administrative violations and the criminal legislation, see the above-mentioned work of Pr. V. Loria, p.36.

norms of the substantive law. Therefore, they should be considered in conjunction in spite of the fact that they are presented in different Sections of the Code.

Section Three, Chapter XV of the Administrative Violations Code contains general provisions with respect to consideration of the cases on administrative violations establishing separation of competences of the relevant state agencies and officials and their limits, the right of the offender to be tried in court of his own will if he does not agree with the decision of the authorized administrative agency or official.

Section Three, Chapter XVI of the Code defines specific state agencies and state officials representing these agencies, their authority to consider and decide the categories of the administrative violations conferred to their competence by law, which are directly indicated in the corresponding Articles of this Chapter. Such state agencies are as follows: district and city courts (Article 208), bodies of the Ministry of Interior (Article 209), Securities Commissions (Article 209<sup>2</sup>), state fire inspection bodies (Article 110), railway transport agencies (Article 211), sea transport agencies (Article 212), air transport agencies (Article 213), road transport and electric transport agencies (Article 214), state labour inspections (Article 215), bodies of the Ministry of Finance (former Ministry of Tax Revenues, Article 219), bodies of the Ministry of Defense (Article 220), state bodies of sanitary inspection (Article 221), state bodies of land managements (Article 222), state bodies of veterinary inspection (Article 223), bodies of inspection of small ships (Article 225<sup>1</sup>), National Regulatory Commission in the field of communications and post (Article 228), state statistics agencies (Article 229), measure control agencies (Article 229<sup>1</sup>), Department of energy inspection and oil quality of the Ministry of Fuel and Energy (Article 229<sup>2</sup>), State Agency for regulation of oil and gas resources of Georgia (Article 229<sup>3</sup>).

Chapters XVIII-XXII of Section Four of the Code regulate issues related to proceedings of the cases on administrative violations. Chapter XVIII contains general provisions defining the issues that should be taken into account in the process of consideration of any case on an administrative violation. For example, Article 232 specifies circumstances excluding proceedings of a case on an administrative violation. This norm is worth interest, as it actually repeats similar circumstances excluding criminal responsibility provided for in the criminal law. Articles 233 and 234 of the Administrative Violations Code provide for the principle of equality of citizens in the process consideration of the case and the principle of an open hearing, Article 236 and 237 give the definition, categories of evidence and its estimation criteria. The same Chapter of the Code also regulates other general issues related to the proceedings of cases on administrative violations.

Chapters XVIII of Section Four of the Code regulates issues related to an administrative violation report, namely, the provisions of this Chapter define: which state body is authorized to draw up a report on an administrative violation (Article 239), what information should be included into the contents of the report on an administrative violation (Article 240), who and within what terms will send a report drawn up on an administrative violation (Article 241), in case of what administrative violation drawing up a report is not required and what are the rights of the offender in such a case.

In this case, it is worth interest that many different state agencies are authorized to draw up a report on an administrative violation, but not all of them are authorized to consider and resolve the case on the corresponding administrative violation. The following situation can

illustrate the above-mentioned: Article 56 and 57 of the Administrative Violations Code provide for responsibility for the action such as violation of the requirements for natural resources protection and those of conducting geological study work on natural resources. The administrative violation reports on the above-mentioned violations are drawn up by the authorized officials of the Ministry of Environment and Natural Resources of Georgia (Article 239, paragraph 35), and the cases of the said violations are considered by court (Article 208). Furthermore, a report on failure to meet a legitimate requirement of the Public Defender is drawn up by the Public Defender (Article 239, paragraph 20), however, the case on the said violation is considered by court (Article 208).

The provisions of Chapter XIX of the same Section define measures ensuring proceedings of the cases on administrative violations. According to Article 244 of the Code, appliance of such measures is admissible in the following cases: for the elimination of an administrative violation when other enforcement measures are exhausted; for the identification of the person who has committed an administrative violation; for drawing up of an administrative violation report; for timely and proper consideration of an administrative violation and for ensuring execution of a resolution made on the administrative violation case. The same Article defines such measures, which are as follows: administrative detention, personal search, search of belongings, confiscation of belongings and documents.

The provision given in the previous Chapter XVIII should be noted, namely, the part of Article 243 stating that when drawing up of an administrative violation report is necessary, but it is impossible to do it at the scene, for the identification of the offender, prevention of an administrative violation or drawing up of a violation report, the offender can be brought to police by a police officer or an authorized official of another state body specified in the said Article, for example, an employee of a state or departmental forestry, national parks and other protected territories. The said norm both by its purpose and by content is a measure of procedural enforcement, therefore, it is incomprehensible why it is not included in the list given in Article 244 of the Code.

One of the severest measures of ensuring proceedings of an administrative violation case is the administrative detention. In case of applying this measure, only a report is made with the indication of the identity of the detained person, factual circumstances and grounds of his detention, the official position of the person who detained the offender, etc. The following bodies or persons have the right within the limits of their competence to carry out detention: bodies of the Ministry of the Interior, frontier troops, high official of a militarized security service, financial police of the Ministry of Finance, customs bodies, tax agencies and officials of the military traffic inspection (Article 246).

Article 247 defines the terms of the administrative detention that are limited by 3 hours and are calculated from the moment of bringing the offender to the police station, and for a drunk person – from the moment he becomes sober. Furthermore, in special cases, the same Article provides for the detention terms, which evidently contradict the Constitution of Georgia. For example, a person who has violated the boundary regime can be detained for up to three days upon a written notification to the prosecutor sent within 24 hours from the detention and for up to 10 days upon the sanction of a prosecutor if the offender does have an identification document.

It can be said that at the present moment, the institution of the administrative detention actually requires legal regulation, as well as prosecutor's and court control that can result in a serious violation of the constitutional rights and freedoms of the detained person. Though, according to Article 235 of the Administrative Violations Code, a prosecutor's supervision is carried out over proceedings of administrative violations cases, and according to Article 251, application of the administrative detention and other provisional measures can be appealed with a higher body (official) or a prosecutor, under the new Constitution of Georgia, after the change of the functions and restriction of certain authorities of the prosecutor's office, such prosecutor's supervision is not carried out in fact.

The provisions specified in Chapter XX of Section Four of the Administrative Violations Code of Georgia define the participants to the case on an administrative violation, among which the person brought to the administrative responsibility is indicated first of all, his rights and obligations as well as circumstances when his attendance at the case consideration is required are specified (Article 252). It should be noted that the status of an administrative offender is similar to that of a defendant in criminal proceedings, however, the list of his rights is not so comprehensive and guaranteed as that of a defendant that creates a possibility for the violation of the rights of an administrative offender. Thus, it can be said that his rights are not well protected. The rights of victims or lawyers defending the interests of various parties participating in the proceedings are presented in this Chapter very briefly.

Articles of Section Four, Chapter XXI provide for the rules for preparation of an administrative violation case for consideration, the place, terms and rules for the consideration of a case, the circumstances to be established in the process of consideration, requisites of the minutes of the sitting of a collective body, categories of resolutions made on administrative violation cases, contents of such resolutions, the rules for announcement of a resolution and delivery of the resolution copies to the parties. It is interesting that the procedure for consideration of an administrative violation case is reduced and simplified. It would not be bad at all, if this simplification had not been carried out at the expense of considerable limitation of the rights of the parties participating in the consideration of the case. It is enough to mention that there is no indication to a required and alternative right of a party such as challenge of the official or judge as well as the grounds and procedure for such a challenge. Furthermore, there is no difference whether an administrative violation case is considered by an individual official or a collective administrative body – the procedure is still the same. Moreover, there are legally unjustified aspects, e.g. according to Article 265, paragraph 2 of the Code, the minutes of the sitting of a collective body set up for consideration of an administrative violation case are signed by the chairman and secretary of the sitting. Similarly to the above-mentioned, a resolution made on the case by a collective body is signed by the chairman and secretary! It turns out that in the process of consideration of an administrative violation case and making a decision the members of the collective body participating in making of a decision are not equal, moreover, they are not responsible for the decision made, and a technical employee – the secretary of the sitting is equal to a member of a collective body, to be exact, the rights of this employee exceed those of a member, as he/she signs the resolution.

The provisions of Section Four, Chapter XXII (Articles 271, 281) regulate issues related to the appeal of a resolution made on an administrative violation case. This once again shows that this Code is a typical example of an authoritarian legal system. According to Article 271, paragraph 1, the right to appeal against a resolution made on an administrative

violation case is vested in the person against whom the decision is made and also a victim. It is not indicated whether a lawyer defending the interests of a party or his authorized representative are entitled to file an appeal. According to Article 274, the prosecutor can file a complaint on the said resolution despite the fact in Chapter XX a prosecutor is not specified in the list of participants to the case at all. Only in Chapter XXI, Article 263 it is indicated on one occasion that if a prosecutor participates in the consideration of a case, his conclusion will be heard, however, it is not defined in what cases and on based on what grounds a prosecutor participates in the case and what are his rights in this case. Furthermore, according to the new Constitution and the "Organic Law of Georgia on Prosecutor's Office", filing a complaint is not a form of prosecutor's activities any longer, as it is related to the functions of general supervision, which is not within the competence of the prosecutor' office any more. It should be also noted that it is not defined what requirements should be met in the claim and complaint to be admitted to consideration.

It should be pointed out openly that in general, the system of appeal against a resolution made by an authorized official of a relevant administrative agency, a collective body or the court has many faults and even discrepancies both with respect to protection of human rights and freedoms and from purely legal viewpoint. The most obvious is the fact that the provisions of Chapter XXII of the Administrative Violations Code completely neglects the human right such as the right to a fair trial provided for by the international law and the Constitution of the country, as well as the organic laws, the principle of consideration of a case at two court levels at least. For example, according to Article 273, paragraph 1, if a person was imposed as an administrative punishment a measure other than a fine, a resolution made by the relevant state official should be first of all necessarily appealed in the superior administrative agency and only after that, the penalized person may appeal to the court. Furthermore, according to Article 271, paragraph 2, if an administrative violation case was considered directly by a district or city court that made the relevant decision, the corresponding decision is final and not subject to appeal. Though the law states: "except for the cases provided for by the legislative acts", there is no indication to the right and procedure of the appeal against the said court decision in any other legal act. For example, if a judge of a district court arrested a person because of an administrative violation, the person will not be able to appeal against such a decision that can be considered ridiculous.

In this respect, there are other norms in the Administrative Violations Code that directly contradict to Article 18 of the Constitution. For example, under Article 219, the cases of violations specified in Article 155<sup>2</sup> (production, keeping, realization or transportation of excise goods subject to marking without an excise stamp) and Article 157 (purchase of humanitarian assistance products that were intended for a free distribution) are considered and adjudicated not by the court but the agencies of the Ministry of Finance, namely, heads and deputy heads of the tax agencies, head and deputy head of the Financial Police, heads and deputy heads of the corresponding police departments and divisions, as well as head and deputy head of a regional sub-division, and in the sanctions specified in Articles 155<sup>2</sup> and 157 one of the administrative punishments is the administrative arrest for a term up to 30 days. It turns out that consideration of an administrative violation case is within the competence of an administrative agency and the right of application of a punishment envisaged for committing this violation is vested only in the court (see Article 32, paragraph 1). This blunder does not need any comment.

Articles of Chapter XXII regulate the procedure and terms for appeal of various resolutions made on an administrative violations case, the terms for consideration of the appeal,

however, nothing is said about the procedure for consideration of the appeal, participation of the parties in the consideration process and their rights. Therefore, it is incomprehensible what is the difference between the rules of consideration of such an appeal in an administrative agency and in court. In the above-mentioned Article nothing is said about a person's right to appeal against a decision made on his claim, moreover, under Article 280 of the Code, only the prosecutor is entitled to file a complaint (!). The contents of Article 279 should be considered separately, and it will be discussed later.

### § 3. Issues of execution of resolutions made on cases related to administrative violations

The whole Section Five of the Administrative Violations Code regulates the issues of execution of resolutions made on cases related to administrative violations under which the offenders are imposed an administrative punishment. Chapter XXIII of the said Section regulates general issues related to execution – rules for enforcement of the resolution (Article 283), rules for execution of resolutions on imposition of administrative punishments (Article 284), postponement and termination of execution of such a resolution (Articles 285 and 286), limitation of action on execution of resolutions on imposition of administrative punishments (Article 287).

The following Chapters (XXIV-XXXI) of Section Five regulate proceedings related to execution of specific administrative punishments. It is noteworthy that Chapter XXX regulating proceedings of execution of the administrative arrest is very scarce. It says almost nothing about the conditions in which the administrative imprisonment should be executed. Instead of this, it is mentioned that the administrative imprisonment is executed by the rule prescribed by law, and the penalized persons are confined in places determined by the Ministry of Interior. Such an attitude of law to this most serious punishment cannot be justified.

## **Chapter II. Basic principles of the substantive and procedural parts of the Administrative Violations Code of Georgia**

Another interesting subject of discussion is the issue of the principles that are the basis for the substantive and procedural parts of the Administrative Violations Code of Georgia. The substantive part defines what action should be considered an administrative violation, and what administrative punishment should be imposed upon the offender, the procedural part defines what are the rules for carrying out proceedings and administration of justice on cases of administrative violations. The principles of the Code will create the proper conception of its legal nature.

First of all, we should consider the main principles of the substantive part of the Administrative Violations Code. We will not discuss the general legal principles, which are common for all the fields of law (principles of democracy, humanism, fairness and others) and consider the specific principles determining immanent nature of the given field of law by which it is different from the other fields of law. In this respect, it should be noted that if specific principles characteristic to one field of law are equal to those characteristic to another field, the legislations of such fields are of the identical nature.

What are the main principles of the substantive part of the Administrative Violations Code of Georgia? Article 9, paragraph 1 of the Code states: "The person who has committed an administrative violation shall be responsible for his action based on the law acting at the time and place of committing the violation", and Article 10, paragraph 1 of the Code gives the definition of an administrative violation indicating to the features of the latter. Since neither these nor any other provisions say anything about the application of the law on administrative violations by analogy, we come to a conclusion that the following principle is acting in this field: - "There is no violation without a law." This means that a person may be imposed responsibility only if the action carried out by him is directly specified in the special part of Section Two of the Administrative Violations Code of Georgia as well as in the corresponding Article of another law adopted in the administrative field.

Article 8, paragraph 1 of the Code states: "No one shall be imposed a punishment for an administrative violation based on any grounds and rules other than those prescribed by law." Another important principle is given in this provision as well – "There shall no administrative punishment for committing an administrative violation without a law". In other words, in case of committing an administrative violation, only the kind of the administrative punishment that is provided by the Code or another law for committing directly this violation and no other kind of punishment should be imposed.

As we have already mentioned above, Article 10, paragraph I of the Code gives the definition of an administrative violation according to which "An administrative violation (offence) is ... unlawful, culpable (intentional or negligent) action or inaction, which causes imposition of the administrative responsibility". The wording of this legal definition points out two important fundamental principles – "There is no administrative violation without action or inaction the *corpus delicti* of which is defined in the disposition of the specific Article of the special part of the section containing substantive norms (Section Two of the Code)". This means that it is considered that a person has committed an administrative violation only if he has revealed his intention or negligence by an unlawful action or refraining from an action obligatory under the law, i.e. by inaction. Otherwise, action of a person is beyond the jurisdiction of the Administrative Violations Code, the responsibility cannot be imposed upon the person, and, therefore, he cannot be imposed an administrative punishment.

Three functions of the *corpus delicti* of the action defining the specific administrative violation given in the disposition of the corresponding Article of the Code are based on the above-mentioned principle: the first one is establishment of the administrative responsibility; the second principle is a distinguishing one that is expressed in the following: a) on the one hand, generally, it distinguishes an administrative violation from another kind of violation, e.g. from a crime, b) on the other hand, it distinguishes one kind of an administrative violation from another kind of administrative violation, e.g. fraudulent travel from hooliganism, etc.; the third and the most important is the guarantee function, namely, a person is secured from imposition of the administrative responsibility when he has not committed any actions provided for in the special part of Section Two of the Administrative Violations Code.

The following important principle that proceeds from the legislative definition of the administrative violation is the principle of culpable responsibility, which means that an offender is responsible only if while committing the violation his conduct was culpable. However, in various Articles of the special part of Section Two of the Administrative

Violations Code, the violation subject is not a natural but a legal person. For example, Article 159<sup>1</sup> provides for the responsibility of a legal person for placement of an improper advertisement, and in this case, there is no guilt and culpable responsibility. The same can be said about Article 165<sup>1</sup> of the Code, which establishes responsibility of a state tax agency for incorrect imposition of taxes and thus, causing damage to the taxpayer. Thus, despite the clause given in Article 10, paragraph 1, the special part of Section Two of the Administrative Violations Code still provides for responsibility without guilt that is the result of misunderstanding the concept of guilt.

Now we should consider the principles related to imposition of the responsibility for committing an administrative violation. In this respect, first of all, we should mention the territorial and extraterritorial principles. According to the territorial principle specified in Article 17 of the Administrative Violations Code, the administrative responsibility is equally imposed upon the citizens of Georgia, aliens and stateless persons if they committed an offence provided for in the Code on the territory of Georgia. Thus, under the law, the decisive factor is not the citizenship but the place of committing an offence. The same Article 17 of the Code also provides for the so called extraterritorial principle under which the issue of responsibility for the administrative violations committed on the territory of Georgia by the aliens enjoying the immunity against the administrative jurisdiction of Georgia is resolved by the diplomatic means.

Another principle that should be taken into consideration while imposition of an administrative punishment for committing an administrative violation is the principle of individualization of the responsibility, which is expressed in the following provision of Article 33, paragraph 2 of the Administrative Violations Code: "While imposition of a punishment the following factors shall be taken into consideration: the nature of the violation, the identity of the offender, his guilt, material condition, circumstances extenuating and aggravating the responsibility". This means that taking into account the said factors, in case of committing the same violations against various persons, different decisions can be made while imposition of administrative responsibility punishments.

Now we will discuss the principles that should be applied by an administrative agency, state official or court using the procedural norms of the Administrative Violations Code. The majority of these principles are directly indicated in the Code. Some of the principles are not indicated directly, however, they are derived on the contents of the procedural norms regulating proceedings of an administrative violation case.

Article 233 of the Administrative Violations Code states that an administrative violation case should be considered before the law and the body considering the case based on the principle of equality of citizens. This principle is applied to both Georgian citizens and aliens.

Article 234 of the same Code establishes the principle of open hearing of an administrative violation case, however, the Code only declares the principle and does not provide for specific legal mechanisms that will ensure the actual appliance of this principle, for example, during the consideration and resolution of a violation case in an administrative agency. Furthermore, it should be noted that the Code does not provide for full or partial closing of the proceedings of an administrative violation case, in spite of the fact that in the process of consideration of such cases it is possible that there will be circumstances that should not be made public and, therefore, the proceedings should be closed.

Article 237 contains two following principles: a) estimation of evidences by personal confidence that means that while making a decision on an administrative violation case, an administrative agency or the court should be guided by the law and impartially established facts the accuracy of which does not raise any doubts in them; b) comprehensive and impartial examination of all the circumstances of the case that means that the body in charge of proceedings should pay equal attention to establishment of both accusatory and justificatory or extenuating circumstances.

The following principle provided for by the procedural part of the Administrative Violations Code is the principle of securing the offender with the right to defense. Article 252, paragraph 1 states that a person who has been brought to the administrative responsibility is entitled to have legal assistance of a lawyer. Furthermore, it is incomprehensible why the Code does not mention the right of a victim to have a defender to protect his legitimate interests (See Article 253).

The procedural part of the Code also provides for the principles of directness and publicity, which are not directly specified but are certainly implied in the rules for considering a violation case specified in Article 263, paragraph 2 stating that the parties participating in the case proceedings should be explained their rights and obligations, and an administrative violation report should be publicly read to them, they can listen to the persons participating in the consideration of the case, establish evidences and present solicitations. Furthermore, Article 252, paragraph 1 states that an administrative violation case is considered in the presence of the person brought to the administrative responsibility, except for the cases prescribed by law.

Considering the above-mentioned, it should be noted that the fundamental principles provided for in the procedural part of the Administrative Violations Code (Section Four, Chapters XVII-XXII) are rather brief. The above-mentioned is confirmed by the fact that there are several important principles, which are not provided for in it, e.g. the principles of inviolability of a person and his private life. Furthermore, the Code does not specify whether the above-mentioned hearing of a case in court is competitive or inquisitive. Moreover, it is not specified what is the official language of the proceedings on administrative violation cases, however, Article 252, paragraph 1 entitles a person whose case is being considered to speak his native language or have the assistance of an interpreter. The above-mentioned circumstances confirm once again how far the Administrative Violations Code of Georgia is from elementary requirements that should be met by a modern civilized legal act.

The Code also provides for other principles such as the right of an interested party (the sentenced and the victim) to appeal a decision made on an administrative violation case, however, this principle has so many restrictions and faults that it seriously violates all the modern standards existing in this field (See Chapter XXII).

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As to the issues related to execution of a resolution made on an administrative violation case, it can be said that the Code does not provide for any fundamental principles and there is a real vacuum in this respect.

### **Chapter III. Practice of applying the legislation on administrative violations, its relationship with the criminal and new administrative legislation**

The practice of applying the legislation on administrative violations is rather extensive in Georgia. Basically, it is related to the wide range of people's activities the major part of which is regulated by the administrative acts. Therefore, it is natural that the great majority of the substantive legal norms of the legislation on administrative violations are related to violation of the rules and requirements established by the administrative acts. Furthermore, in certain cases, the substantive and procedural norms of the said legislation have relation to the spheres that can hardly be called fields of the administrative regulation. As an example we can indicate to Article 173<sup>4</sup>, which establishes responsibility for the failure to meet a lawful requirement of the Public Defender or Article 174<sup>3</sup>, which establishes responsibility for intervention in the work of the Electoral Commission in the process of holding elections, a referendum or a plebiscite. Furthermore, some substantive norms of the Administrative Violations Code are related to actions, which by their nature, are actually identical to the classical criminal delict. For example, Article 50 of the Administrative Violations Code (minor theft of the state or public property by means of stealing, misappropriation, abuse of the official position or fraud), Article 166 (minor hooliganism); Article 174 (unauthorized act), etc. Considering the above-mentioned, one of the interesting aspects of the legislation on administrative violations is its relation to the new administrative legislation and criminal legislation of Georgia.

Before the consideration of the said issues, we should discuss certain faults contained in the main parts of the Administrative Violations Code, which cause certain problems with respect to application of this legislation.

#### § 1. Faults in the legislation of Georgia on administrative violations and problems related to its application

In this paragraph, we will consider the faults existing in the substantive and procedural parts of the legislation on administrative violations, which provoke or may provoke certain problems in the process of applying the said legislation.

As it is mentioned in Article 10, paragraph 1 of the Code, one of the obligatory features of the above-mentioned administrative violation is guilt, i.e. culpable commission of an action. We will not consider the issue of the essence of guilt, as this discussion is not the purpose of our study in this case, however, it is a very interesting issue in itself. We would like to consider the issue whether the principle of culpable responsibility is always provided for in the Administrative Violations Code of Georgia established by the said Article 10. I think that it is not, as there are Articles in the Code where the subject of an administrative violation is not a natural but a legal person, and discussion of the issue of guilt of a legal person would be a nonsense. For example, Article 159<sup>1</sup> provides for the responsibility of legal persons and establishments for placement and dissemination of the improper advertisement. It is obvious that consideration of such a case will cause a problem to the court, in particular, it will face a dilemma – how it should decide the issue of guilt and whether a violation actually exists in this case in general.

Furthermore, the Administrative Violation Code admits imposition of responsibility for another person's guilt. For example, if a 17 years and six months old minor commits a violation, such as application of narcotics without a prescription of a doctor or takes

alcoholic drinks, this will result in imposition of an administrative punishment upon the parents or the persons substituting the parents (Article 172, paragraph 1). The same consequences will be caused by hooliganism committed by a minor from 14 to 16 years of age (Article 172, paragraph 2), however, if such a minor committed a more serious crime, namely, a premeditated murder, his parents are not responsible by the administrative rule (?!).

The following problematic issue is related to the uncertainty in the issue of the subject of the administrative violation, namely, in some cases such a subject is the "official", and in some – "a responsible person of an establishment or an organization". The problem is that the Code does not define the term "official", and according to the laws acting in the administrative field ("Law of Georgia on public service"), an official is a public employee. However, if we go in this direction, the responsibility for commitment of the majority of the administrative violations cannot be imposed upon the head of the legal person, though in fact the relevant administrative violation can be committed only by the head and not public employee (official). For example, Article 164<sup>3</sup>, paragraph 1 of the Administrative Violations Code establishes responsibility for concealment of profit and states that this violation will result in imposition of a fine upon an official in the amount of ten-fold minimal compensation of work. The question is whether the Court is authorized to define while considering such a case the term "official" and thus decide the issue of imposition of and release from the responsibility. We face a similar problem when the Code denotes "a responsible person of an establishment or an organization" as a subject of an administrative violation. For example, Article 159<sup>8</sup>, providing that a responsible person of a purchasing organization will be penalized for the failure to comply with the requirements of the State Procurement Agency. Who can be such a person – the head of the organization (director, department head, minister, their deputies or all of them)? This issue may become disputable in the practice of this Law, and it will be quite logical. Similar problems may arise because of denoting in some Articles a vague term of an "economic subject" as a subject of an administrative violation. For example, Article 164, paragraph 2 states provides for the responsibility of an "economic subject" for the performance of trade operations and services in case of suspension of his activities.

The existence of the absolutely definite sanctions in the Administrative Violations Code is not justified either, moreover, the relevant sanction is very strict that restricts too much the court or another body considering the case in the view of the principles of individualization and fairness of the administrative responsibility. For example, Article 197<sup>1</sup> of the Code provides for a fine in the amount of 2,500 lari as an administrative sanction for the failure to appear at the obligatory military service recruiting commission, and Article 165<sup>6</sup>, paragraph 1 provides for a fine in the amount of 5,000 lari as an administrative sanction for performance of unlicensed operations at the security market.

The fact that suspension of the flow of the limitation period for imposition of an administrative punishment is not provided for by the substantive provisions of the Administrative Violations Code is another shortcoming. Though the Code provides for reduced terms for consideration of an administrative violation case, in some cases the two months' limitation period for imposition of a punishment specified in Article 38 may be insufficient for completion of the proceedings on an administrative violation. This is quite possible when the case proceedings have three levels – imposition of an administrative punishment in an administrative agency, then – in district or city court and after that – at the chairman of the higher court in cases provided for in Article 279 of the Code, when the

latter may repeal all the decisions and return the case for reconsideration to the same administrative agency, however, the case should be terminated because of the expiration of the two months' limitation period for imposition of an administrative punishment. There were many cases of that kind in the court practice.

We should also discuss Article 279 of the Code itself, which is not repealed yet and is used in the court practice during consideration of the administrative violation cases despite the fact that it is absolutely inconsistent with the modern legal principles. As we have already mentioned above, according to Article 271 and 272 a resolution made by a district or city on an administrative violation case is final and not subject to appeal, both when the punishment was imposed by the court and when the court considered and resolved a claim filed with respect to a punishment imposed by an administrative agency or official. It is obvious that such a situation is a serious violation of a party's right to appeal, as consideration of a case in at least two court levels is a universally acknowledged principle.

In spite of the above-mentioned, Article 279, paragraph 1 of the Code states that a resolution of a judge on an administrative violation case can be repealed or changed ... by the chairman of a higher court notwithstanding whether a claim is filed or not. The situation is worsened by the fact (making the realization of the norm problematic) that the Law does not establish any terms for the review of a case by this rule, review of a case without a claim is possible upon the initiative of the chairman of a higher court (!), no procedure is provided for personal review of the case by the chairman of a higher court, the rights and obligations of the parties are not specified either, and the most important thing is that even if an interested party applied to the court with an application or a complaint on the decision of the lower court, review of the case is the "exclusive" right of the chairman of the court, i.e. under the law he is not obliged to review the case (?!).

There are other faults in the Administrative Violations Code impeding the proceedings of an administrative violation case, e.g. the fact that the procedure for filing a complaint to a district court is not defined, nothing is said about the basic principles of the execution proceedings of such cases intended for the protection of the interests of the sentenced person. Furthermore, under Article 40 of the Code, in addition to the administrative punishment, the court is authorized to impose upon a person charged with an administrative violation compensation of the material damage (despite the extent of the damage) caused to a natural or legal person by his action. However, the procedure for consideration of such an issue is not defined, namely, whether it should be realized through filing of a claim or another way. Nothing is said whether a person who was brought to the administrative responsibility groundlessly and unlawfully and was imposed an administrative punishment has the right to rehabilitation and the right to request the compensation of moral and material damage caused to him. There are some other issues but we will not concentrate on them any longer.

## § 2. Relationship of the legislation of Georgia on administrative violations with the criminal as well as general and procedural administrative legislation

I have already mentioned several times during the consideration of the institutions presented in the substantive and procedural norms of the legislation of Georgia on administrative violations that these institutions are very similar to the corresponding institutions of the criminal legislation. Furthermore, these two systems of law are based on

the same principles, their general concepts are similar, e.g. equal solution of the issue of retroactivity of a law, the notion of a crime and an administrative violation, the notions of intentional and negligent action, notions of the circumstances excluding guilt and insanity, similarity of administrative and criminal punishments (a fine, deprivation of a right to a certain activity, correctional labour), circumstances extenuating and aggravating guilt and their similarity, existence of limitation periods of the responsibility for the committed actions, existence of terms for the extinction of a conviction for committing a crime and an administrative violation and existence of other similar characteristic institutions.

Their similarity is not limited only by the institutions of the general part, but there is a substantial similarity between the institutions of the special parts of the said legislations as well. The following fact can be indicated as a general characteristic feature: Articles of the special part of Section II of the Administrative Violations Code of Georgia defining specific administrative violations as well as the punishment measures that are imposed upon the offenders and Articles of the special part of the Criminal Code of Georgia defining specific crimes and punishments in the majority cases are almost equal in the view of their structure and the elements constituting this structure, namely, they contain only a disposition and a sanction.

We have already discussed the issues of classification of the categories of dispositions and sanctions in the norms of the special part of the Administrative Violations Code (See the first chapter of the study, § 1), which are identical to the categories of dispositions and sanctions in the norms of the special part of the Criminal Code that once again confirms the close relation between the said legislations. Moreover, similar discrepancies are characteristic to both of them, which are rather frequent. In order to confirm this, we can give only a few examples: Article 45 of the Administrative Violations Code provides for responsibility for the unlawful purchase and keeping of the drugs in small quantities without the intention of their selling as well as taking of drugs without a prescription of a doctor, however, a remark to the same Article states that a person who voluntarily gives away drugs of a small quantity unlawfully purchased or kept by him without the intention of their selling, will be released from the administrative responsibility. Similarly to the above-mentioned, Article 273 of the Criminal Code of Georgia provides for responsibility for the unlawful production, purchase and keeping of the drugs in small quantities for the purpose of personal application as well as for the unlawful taking of drugs without a prescription of a doctor with a difference that the offender was already punished by the administrative rule for the same action. Article 260 of the Code, which is applied in case provided for in Article 273 as well, releases a person from the criminal responsibility if he voluntarily gives away the drugs unlawfully kept by him; Article 299 of the Criminal Code provides for the responsibility for the unlawful use of the natural resources that resulted in a serious damage, and Article 57<sup>1</sup> of the Administrative Violations Code provides for responsibility for the unauthorized use of the natural resources or for the use of the natural resources without the relevant state registration, which is also an illegal use of the natural resources; Article 174 of the Administrative Violations Code provides for responsibility for an unauthorized action that did not result in a serious damage, and Article 360 of the Criminal Code provides for responsibility for an unauthorized action that resulted in a serious damage, and the notion of an unauthorized action in the both above-mentioned laws is defined identically.

Considering the above-mentioned, it is not a coincidence that when criminalization or decriminalization of certain actions takes place, the lawmaker tries to bring this process to

conformity with the administrative Violations Code to avoid the identity of the responsibility grounds or other legal discrepancies that confirms and stresses the direct relationship existing between the above-mentioned two legislative systems. Failure to take this circumstance into account or its improper treatment may result in circumstances that will provoke certain problems. In order to confirm this we should recall one of the above-mentioned cases: as we have already mentioned, Article 273 of the Criminal Code provides for responsibility for the unlawful production, purchase and keeping of the drugs in small quantities for the purpose of personal application if any of the said actions was committed after imposition of an administrative punishment for the same action. Article 45 of the Administrative Violations Code provides for responsibility for the unlawful purchase and keeping of the drugs in small quantities without the intention of their selling but not for production, for the incrimination of which an administrative prejudgment is required that does not actually exist taking into account the contents of Article 45. Thus, because of inconsistency between the said two codes a person can be punished for production of drugs in small quantities for personal consumption neither by administrative not the criminal rule, unless the term "purchase" is interpreted broadly and implies production of drugs as well that will be application of the analogy of the administrative violations law, which is not known to this legislation and, therefore, it will absolutely unjustified. This inconsistency is apparent, as the unlawful production of drugs in small quantities by its content and importance is a more serious offence than purchase and keeping of drugs in small quantities.

Considering all the above-mentioned, we can come to the following conclusion: the current version of Section Two of the Administrative Violations Code of Georgia is in fact a kind of continuation of the Criminal Code of Georgia. Such a conclusion is confirmed by the Administrative Violations Code itself, Article 10, paragraph 2 of which states: "The administrative responsibility for the violations provided for in the Code is imposed if these violations by their character do not entail criminal responsibility in accordance with the current legislation".

As to Sections Three and Four of the Administrative Violations Code of Georgia, the procedural norms of which regulate the proceedings initiated on an administrative violation fact, as we have already mentioned above, they are based on the fundamental principles that are similar for the procedural legislation. Similar procedural institutions are characteristic to them, e.g. existence of circumstances excluding proceedings and similarity of these circumstances, composition of the participants of the proceedings, identical measures of procedural enforcement (forced bringing of the offender, detention of the offender), jurisdiction of cases, etc. However, there are some differences as well that seem to separate these two legislative fields, nevertheless, we cannot speak about their complete disintegration.

After we have discussed the relationship of the legislation of Georgia on administrative violations with the criminal legislation, we should also consider its relationship with the general administrative and procedural legislation. It may seem that taking into consideration the name, the relationship of the administrative legislation with the said legislations should be much closer and more direct than with the criminal one. In fact, it turns out that by its content it is much closer to the latter than to the general administrative law and its procedural aspect. It is rather different from them not only by the system, structure of the norms and activity principles but its purpose as well. The field of the administrative law is presented not only by the General Administrative Law but also many

other laws regulating various relations in the field of the administrative government, namely, relations between natural or legal persons and the state, citizens and administrative agencies, such as the Tax Code of Georgia, the Customs Code of Georgia, the Law of Georgia on the Structure and Activity Rules of the Executive Power, Law of Georgia on Registration and Identification of the Georgian citizens and Aliens residing in Georgia, etc.

This field of law regulates the rules and procedures, which are the basis for the activities of legal persons of private and public law as well as the activities of the state authorities related to them. Unlike the said field, the legislation of Georgia on administrative violations has the function of protection against an unlawful violation of the above-mentioned relations when this field is based on almost the same principles as the criminal legislation, which has the similar function. This circumstance conditioned the fact that the legislation on administrative violations and general or procedural administrative legislations have completely different institutions. If the first of them protects the state agencies from the violations made by the citizens, the second one, on the contrary, protects the rights and legitimate interests of the state agencies from possible negative effect.

The contents of the first Articles of general part of the two legislations give us a reliable and clear impression on the above-mentioned. According to Article 1, paragraph 1 of the General Administrative Code of Georgia, this Code defines the rules for adoption and enactment of an administrative legal act by the administrative agencies, consideration of an administrative complaint or application, preparation, signing and performance of an administrative transaction. According to paragraph 2 of the same Article, the purpose of this Code is ensuring protection of human rights and freedoms, public interests and the rule of law by the administrative agencies. In contrast to the above-mentioned, Article 1 of the Administrative Violations Code determines that the purpose of this legislation is protection of property, rights, freedoms and legitimate interests of citizens and legal persons from unlawful violations as well as prevention of offences and education of citizens in the manner of protection of the requirements of law, respect to the rules of coexistence and performance of the undertaken duties. According to paragraph 2 of the same Article, this Code defines what action is considered an administrative violation, what administrative punishment by which body and under what procedure is imposed upon the offender.

Thus, as we can see, the main object of application of the norms of the General Administrative Code is the state administration, activities of its bodies and officials with respect to citizens and legal persons. However, as we have already mentioned above, in addition to the General Administrative Code, there are other special laws regulating besides the issue of the state bodies and officials, the rights and obligations of citizens and legal persons with respect to the state agencies. For example, Article 1, paragraph 3 of the Customs Code of Georgia defines rights and obligations of the customs and other state bodies, natural and legal persons in the process of implementation of the customs policy. Considering this, under Article 52 of the said Code, processing of goods outside the customs territory of Georgia by the natural or legal persons is carried out on the basis of a decision of the Customs Department if such processing of goods does not damage the interests of the Georgian economy. Furthermore, a citizen has the right and possibility to protect himself by means of the General Administrative Code (Chapter XIII) from an administrative act on an unlawful refusal of the Department to issue a permission through its appeal.

Unlike the above-mentioned laws, the legislation on administrative violations, namely, substantive legal norms, never regulate the rights and obligations of either state agencies or citizens and legal persons, but protect, similarly to the criminal law, the established regulations from infringement or violation through relevant sanctions. Therefore, the relations between the administrative agencies and a citizen, administrative proceedings, etc. established by the General Administrative Code are based on absolutely different special principles. The following principles are implied in this case: activities of an administrative agency only within the limits authorized by law, including exercising of the discretionary power; proportionality of private and public interests; the right of a legitimate confidence of a citizen and a legal person, etc.

Unlike the general and special administrative legislation, the substantive norms of the Administrative Violations Code very rarely, only in exceptional cases apply punishment measures to a state administrative agency or a public employee because of the abuse of the official authorities by the said persons against private or public interests. For example, Article 165<sup>1</sup> of the Administrative Violations Code provides for a sanction for an incorrect imposition of taxes upon a taxpayer and causing damage to the latter by the state tax agencies.

The same relationship, i.e. essential difference between the said two legislative fields exists with respect to not only substantive legal norms, but their procedural parts as well that is clearly expressed in both the basic principles and the contents of the procedural relations. The legal proceedings related to the relations provided for by the General Administrative Code and other special administrative laws, which are carried out in court, are performed based on the principles of the civil proceedings, unlike the basic principles of the proceedings performed on an administrative violation case that are similar to the principles of criminal proceedings.

Considering all the above-mentioned, we can conclude that the offences provided for by the Administrative Violations Code were regarded as “administrative” only due to the fact that they are related to a violation of the regulations existing in the field of the administrative government (moreover, not always), as in this respect, many of them are almost identical to various offences provided for by the criminal Code, however, we do not call them administrative offences (furthermore, sometimes, due to the lawmaker’s negligence, there are identical *corpus delicti* in the Administrative Violations Code and the Criminal Code and, therefore, it is not clear whether a person should be punished for the committed offence by the administrative or criminal rule. For example, Article 174<sup>2</sup> of the Administrative Violations Code of Georgia and Article 161, paragraph 1 of the Criminal Code provide for responsibility for the actions, such as illegitimate impediment using official authority to the right of meetings and manifestations as well as the right to participate in them).

Thus, the issue of assigning a law or a legislative act to a certain field of law cannot and should not be solved by conferment of the name of the field to it. Attention should be paid to their immanent nature and the essential qualitative links with the relevant field. In this respect, it is obvious that the issue of belonging of the legislation on administrative violations to a certain field of law requires further examination and specification.

## **Chapter IV. Brief description of the new Draft of the Administrative Violations Code of Georgia**

In this Chapter, we will briefly discuss the Draft of the Administrative Violations Code prepared by the sub-commission on elaboration of the draft of the Administrative Violations Code and reforming other administrative legislation of the State Commission of Legal Reform of Georgia.

As a general remark, we can say that the given Draft is not a substantial and radical substitute of the current Code. The main difference with respect to system is the fact that in the Draft there is no special section<sup>5</sup> on execution of a resolution on imposition of an administrative punishment, but in the explanatory note attached to the Draft nothing is said about the issues of execution of the enforced decisions made on administrative violations.

There is another novelty in the system of the Draft code, namely, as we have already mentioned above, the first chapter of the current Code – “General Provisions” has been separated due to unclear reasons from the general part of the substantive norms of the Code, and it is an independent section, however, it regulates issues, which evidently belong to the general part by the content and purpose. In the draft this fault has been eliminated – the said “general provisions” of the draft code are included in the first book of the code.

Another novelty with respect to the system is the fact that instead of five sections of the current Code there are four books in the new code. The first book comprises norms of the general part of the substantive law. The second book – norms of the special part of the substantive law; the third book – norms defining bodies authorized to consider administrative violation cases and jurisdiction of such cases; the fourth book – the rules for carrying out administrative proceedings, appeal of resolutions made on administrative violation cases as well as the rules for consideration and resolution of such appeals. In this respect, it should be noted that if in the current Code the general and special parts of the substantive legal norms were united in one section (Section Two) and this reflected their unity, in the Draft, these parts are separated and given in different books of the Code.

With respect to the system, another novelty of the Draft is that a new chapter is added to the special part of the substantive norms of the Code providing for the administrative responsibility for various administrative violations directed against the freedom and dignity of an individual. This chapter begins the special part (the second book).

There are not any other novelties in the view of development and improvement of the system of the Code, even in the titles of the parts and chapters of the Code.

Certain parts of the Draft contain some novelties, and first of all, we will consider the ones given in the first and second chapters of the general part (the first book). Article 1, paragraph 2 specifies the principles of the legislation on administrative violations among which was “imposition of an administrative punishment”. We consider that imposition of a punishment is a legal result of committing an offence and not a legislative principle. Article 6 (Chapter II) gives a definition of an administrative violation, which no longer has a necessary feature such as unlawfulness of the committed action. We should also pay attention to the fact that under this definition, a culpable action is considered to be an

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<sup>5</sup> One of the novelties of the draft is that the main parts of the Code are called “books” and not “sections”.

administrative violation if does not have the features of a crime. Naturally, there is a suspicion that the authors of the Draft consider that unlawfulness is a feature of crime only.

It is not clear what was the purpose of inclusion of a definition of ongoing administrative violation in Article 6, paragraph 2, and its relation to the definition given in the first paragraph of the said Article. It is incomprehensible, as an ongoing violation is one of the categories of an administrative violation as an intentional or negligent administrative violation. Furthermore, an administrative violation can be not only ongoing but renewable as well, however, the draft does not say anything about it.

The content of Article 7 regulating the issues related to the subject of an administrative violation also raises some questions. The first paragraph of this Article specifies that such a subject is a Georgian citizen who has attained the age of sixteen, an alien and a stateless person who committed an action on the territory of Georgia, i.e. a natural person. The second paragraph of the same Article regulating the issue of the administrative responsibility of an official, states “Instead of an official the administrative responsibility may be imposed upon the legal person where he works.” This provision is in direct conflict with the principle of culpable responsibility given in Article 6 of the draft, i.e. guilt is an obligatory feature of any administrative violation, and when the responsibility is imposed upon a legal person for an action committed by another person, culpable responsibility is excluded. Furthermore, the said provision does not have any criteria to determine in what cases, based on what grounds it is possible to impose responsibility upon a legal person.

We should also pay attention to the clause given in Article 7, paragraph 3 stating that imposition of the administrative responsibility upon a legal person in the form of a fine does not release the guilty official from the administrative responsibility that can be imposed upon him within one year (?!). If under the law the responsibility is imposed upon the legal person instead of the official, why the latter is punished as well, and if the official can be still punished, why the responsibility for the violation committed by him is imposed upon the legal person that is not guilty in committing the action? Furthermore, it is not clear in the second paragraph of Article 7 who is considered to be an official, and this issue is not solved with respect to other legislative acts of Georgia defining this notion.

Another novelties in the general part of the draft are given in Articles 14, 15 and 16, which give definitions of an attempted commission of an administrative violation, voluntary refusal to commit an administrative violation and complicity in an administrative violation that are actually identical to the corresponding definitions given in the general part of the criminal legislation. The above-mentioned draws the administrative and criminal legislation even closer. This tendency is confirmed by the introduction of the so-called ongoing administrative violation in the draft.

There are some novelties in the list of the types of the administrative punishments (Article 19), namely, unlike the current Code (Article 29), the following punishments are deleted: paid seizure of the object or instrument of the administrative violation, confiscation of such an object, correctional labour.

A type of an administrative punishment such as a fine is presented more extensively in the draft, in particular its minimal and maximal limits are established, a possibility of substitution of a fine with an administrative arrest and the rules for such substitution as well as the procedure for payment of a fine are provided for.

We should pay attention to the fact that neither the current Code nor the draft of a new code defines where and under what conditions a person serves a serious punishment such as the administrative imprisonment, no guarantees are provided for protection of the rights and freedoms of a person during the imprisonment.

A novelty of the Draft is the fact that the circumstances extenuating and aggravating the administrative responsibility are expanded (Article 31 and Article 32).

Other discrepancies and faults of the norms of the general part of the current Code (Section Two) that were already discussed above are still included in the general part of the Draft of the new code. Therefore, we will not consider them any more. The same can be said about the special part of the Draft, which repeats the faults of the current Code.

In comparison to the current Code, Article 317 provides for extension of the detention terms up to 8 hours instead of current 3 hours (Article 247, paragraph 1). However, at the same time, there is a positive aspect, namely, the current Code has a general indication that other terms can be established by law, and in the Draft the “other terms” are limited to 24 hours. Furthermore, the 3-day detention term for violation of the boundary regime provided for in the current Code (Article 247, paragraph II) is reduced to 2 days in the draft, moreover, under the Draft, a court sanction is necessary for detention for this term. The Draft repeated the fault of the current Code related to the detention, namely, according to Article 247, paragraph 3, in case of a minor hooliganism, violation of the rules for holding meetings and other similar measures, a person may be detained until the consideration of the administrative violation case in court. Under the law, the court has 15 days to consider such a case, however, detention for this term is inadmissible. In general, it should be said that the concept of the administrative detention requires serious and comprehensive review with the relevant regulation.

In addition to the institution of appeal of a resolution made on an administrative violation case, the Draft of the code introduces a novelty such as a recommendation of the public defender of Georgia (Article 346 of the Draft). Though no procedural rules for its consideration and making a relevant decision are provided for, we can assume based on the contents of Articles 347-350 of the draft that it is considered by the rules established for a complaint. It is not specified in the Code what body is authorized to review an enforced decision made by court on an administrative violation case and change it based on a recommendation of the public defender.

Article 348 of the draft reduces to five days the term for consideration of a complaint filed on a resolution made on an administrative violation case instead of the 10-day term provided for by Article 276 of the current Code. On the one hand, this will cause acceleration of the proceedings on the administrative violation case, but on the other hand, due to the fact that the number of such complaints is likely to increase, this may result in making superfluous and unreasoned decisions.

This Chapter of the Code (XXIII) regulating issues related to consideration of a complaint filed on a resolution made on administrative violation case, leaves the impression of an incomplete system. For example, nothing is said about the procedural rules for consideration and solution of a complaint in court; Article 351 of the said chapter defines that a court resolution made on an administrative violation case may be cancelled or

changed by the court itself or by a higher court by the rule prescribed by law. The problem of this provision is the fact that the Draft of the code is not supplemented by a draft of another law defining the said rule. Probably, such a rule should be provided for in the following Article. Furthermore, it is not clear whether the authors of the draft imply appellate rules or something else in this case. In fact, Article 351 of the Draft is a repetition of Article 279 of the current Code with some additional negative aspects, which have been already discussed above.

In the view of proceedings of the administrative violations cases, the draft repeats the main faults of the current Code, however, in comparison to the latter it has some positive aspects as well, namely, Articles 305, 324 and 341 of the Administrative Violations Code. Unlike the current Code, Article 305 of the Draft of the new code provides for a list of principles of proceedings of an administrative violation case that should be the basis for an administrative agency and the court during consideration of a case to ensure a timely, effective, legitimate and fair consideration of the case. Article 324 of the Draft defines (rather peculiarly) the grounds for the challenge of an authorized body or official during consideration of an administrative violation case. The thing is that according to the first paragraph of the said Article, a challenge of a body or an official considering a case is inadmissible, however, the preamble of the second paragraph of the same Article states that an official is obliged to make self-withdrawal in case of existence of the circumstances specified therein, and the challenge is carried out by a superior body or official. At the same time, nothing is said about the situation when the person to be challenged does not make self-withdrawal. Furthermore, the said Article of the draft does not say anything about the right to challenge a judge.

As to Article 341 of the Draft, it provides for a list of grounds for cancellation and change of an administrative act made on an administrative violation case, which comprises 12 grounds. An important provision is given in the second paragraph of this Article under which an administrative act, which is essentially correct cannot be repealed due to formal faults, and under the third paragraph, an administrative act is repealed or changed through adoption of a new special administrative act.

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This is a brief description of the current legislation of Georgia on administrative violations and the Draft of the Administrative Violations Code elaborated by the State Commission of Legal Reform. The results of this analysis point out that in the modern changed circumstances they do not meet their purpose and, therefore, a substantial and radical reform of the said legislation is necessary to let the new legislation succeed in implementation of new more difficult tasks.

## **Chapter V. Conceptual versions of the reform of the legislation of Georgia on administrative violations**

Search of optimal ways for solution of the task of transformation of the current legislation of Georgia on administrative violations is one of the important issues for the further development of the modern Georgian law system. A review of the said legislation showed clearly that the whole complex of problems exists in it. These problems are related to the fields of substantive, procedural and executive legal proceedings as well as the field of human rights and freedoms. The most important and essential issue is the correct determination of its place and purpose in the system of the modern Georgian law, allocation to a certain field of law. This peculiar problem is the result of the fact that the legislation on administrative violations is an artificial product of the soviet law that was inherited by the law of the independent Georgia.

Elucidation of the said problem is interesting not only in the view of legal practice and legislative technique but also for theoretical and educational purposes. In this respect, we cannot avoid estimation of the specific principles and the nature of substantive or procedural legal norms that are included in the legislation on administrative violations (the Code and the corresponding Articles of other laws). The above review showed that presently, in the system of the Administrative Violations Code of Georgia the principles, norms and institutions of the criminal law prevail both in the substantive and procedural parts. We have already mentioned the examples confirming the above-mentioned, so we will not discuss this issue any more. At the same time, in addition to the said norms, there are ones, which by their nature can be directly allocated to the administrative law than to any other field. For example, Article 41 of the Administrative Violations Code states that imposition of an administrative punishment does not release the offender from the performance of the obligation, the failure to perform which obligation resulted in imposition of the administrative punishment upon him. Article 54 of the same Code provides for the administrative responsibility for the action such as deviation from the land use and protection project without the relevant permission, and according to Article 222, the corresponding administrative violation case is considered by the agencies of the State Department of Land Management of Georgia.

Despite such dualism of the legislation of Georgia on administrative violations there is a lack of norms in it necessary for a comprehensive operation of the proceedings related to administrative delicts in the relevant competent administrative agency, and therefore, in the course of administrative proceedings the rights and freedoms of the participants to the proceedings that are guaranteed by the international legal acts, the Constitution and the international agreements signed by Georgia are violated. The mess of the norms having different nature and purpose existing in the Administrative Violations Code is in direct contradiction with the principles of the civilized law systems, and such a situation is inadmissible.

Thus, a very serious issue is raised – how and in what directions the reform of the existing legislation on administrative violations should be carried out and further developed. In this light, a discussion of a possibility of establishment of a new field should be excluded immediately, as this idea is groundless, because we cannot get a new field of law through setting up a combination of substantive or procedural norms of various fields in one legal act. The result of such attempts that can be reflected in a law or a code frequently contains discrepancies and inconsistencies on the level of pure legal principles, and it is very

difficult to avoid them in such a legislative act. An obvious illustration of the above-mentioned is the Administrative Violations Code of Georgia. This implies an unsuccessful attempt of creation of a common legislative act from the norms of various fields of law and establishment of common institutions in such an act. Taking into consideration the above circumstances, the maintenance of the legislation on administrative violations (the Code and other laws) in its present system, even with a certain modification of some of the institutions and addition of some new ones (the way chosen by the State Commission of the Reform of the Georgian legislation) will not be justified and will not give us the desirable effect. Thus, we should reject the idea of development of the said legislation and its modification, as it will not justify its purpose taking into account the requirement of the modern law in the conditions of formation of a rule of law state.

What other ways and versions of reforming the legislation on administrative violations can exist and which of them can be most acceptable for Georgia? In order to answer this question appropriately, first of all, we should pay attention to the basic requirements a new legislation should meet and consideration of which requirements will be expedient and useful in the course of the reform: the most important one is that the new, reformed legislation should provide for guarantees for protection of universally recognized rights and freedoms, the standards established by the European conventions in this field. Another essential issue is that a new legislation by its content and nature should express its unambiguous belonging to the relevant field of law that will promote its improvement and development from the institutional point of view. Another important requirement, which should be met by a new legislation is that it should have an accurate and logically arranged system that will promote its functioning. Furthermore, the institutions and other elements constituting the new legislation should be consistent with its functional purpose. Moreover, the new legislation should reflect the positive results achieved by the legal development of the country and should enable a profitable use of these results. Finally, it should be effective, economic and comprehensible as much as possible.

The presented requirements can be achieved if in the process of formation of a new legislation we avoid artificial steps and take into account the natural state of things. Various conceptual versions of the reform of the legislation on administrative violations can be elaborated, however, the most optimal should be chosen both in the view of meeting the said requirements and taking into account the conditions existing in the Georgian legal environment as well as the prospects of its development.

First of all, we will briefly discuss some of the ways chosen by various states for the solution of this problem. We will give an example of the legislation of a post-soviet country and that of a country of classical legal culture such as Germany.

In this view, in the post soviet states the way chosen by Estonia is rather interesting. It solved this issue in a relatively easy way through transfer of the administrative violation delicts established by the soviet legislation to the criminal law field and their subordination to the principles of the latter. It may seem that such an approach simplifies the solution of the problem, but on the other hand, the question is whether a full incrimination of the delicts presented in the Administrative Violations Code is justified and expedient, even when a criminal nature in its pure legal meaning is not revealed in their content. We have already given the examples of the above-mentioned. Therefore, such a way and approach will not be reasonable with respect to both the accuracy and organization of the law system

and institutional and effective functioning despite the attractiveness of such a simple way for solution of the problem.

Taking into consideration the above facts, I am of the opinion that in this aspect such a way of reforming the Georgian legislation is not reasonable, as such an approach will not be useful in the view of the prospects of the development of the Georgian law system. An easy way of solution of a problem is not always the best one.

As to the German system, a common law regulating similar violations with a rather complex structure is in force (Gesetz über Ordnungswidrigkeiten). It can be said that by its content it is a criminal law act but, at the same time, it is different from other acts of criminal law, as violations of the rules established by it causes responsibility of legal persons in addition to natural ones, and the rules for consideration of an administrative violation case with respect to a legal person are provided for. The law separately defines the categories of sanctions that can be applied to legal persons. This means that this Law simultaneously provides for culpable responsibility (with respect to natural persons) and non-culpable responsibility (with respect to legal persons), as well as administrative and criminal procedural institutions.

Another peculiarity of the said legal act is that it regulates almost all the issues that can be related to the responsibility for commission of the said violation – from appeal against decisions to execution of decisions and rehabilitation of the punished persons.

We will not consider in detail other general and special legal institutions (the scope of the law, integral and multiple violations, limitation periods for criminal prosecution, pre-trial procedures, participation of the prosecutor's office in the proceedings, enactment of the decisions, proceedings due to the newly discovered facts, etc.). It should only be noted that at the end of the law there is a list of *corpus delicti* for specific violations with the relevant sanctions, which are imposed upon an offender based on this law. The said types of *corpus delicti* have criminal nature, and the violations, which belong to the administrative field, are defined not in the main law, but in special laws adopted with respect to the rules and procedures existing in various fields of the administrative government.

What can be said about the German variant of solving the problem? In my opinion, it is a complicated system comprising various institutions that are based on different grounds, principles and activity means. We can say that it is like living in one apartment of relatives having diametrically opposite tempers. The said law is based on a mixed system. In Germany, where there are long-term traditions and high level of the legal culture both in the legal world and in the whole society, such a system can be acceptable and it will not cause any problems in practice. However, we cannot say the same about Georgia where establishment of civilized legal relations has started just now and the society still has the influence of a legal nihilism. In such circumstances, functioning of a complicated legislative system cannot be effective and unproblematic. Therefore, I am of the opinion, that considering the theoretical and the practical aspects, the Georgian legislation should apply a relatively simple system.

After we have discussed the ways chosen by some foreign states with respect to determination of the responsibility for the violations of the rules established by legal acts adopted in various fields of government and realization of this responsibility, we can consider a conceptual version of solving this issue in Georgia.

The legislative version, which is closer to the German variant (Gesetz über Ordnungswidrigkeiten) has some advantages, namely, a common legislative act creates a better possibility for a citizen to get acquainted with this field of law, it will be easier for the employees of the government sphere to run the cases of the said category and apply sanctions to learn the legislation, without which knowledge it will be run the cases. Moreover, the parties will prepare for participation in the case proceedings easier and within less time.

I am of the opinion that despite the above-mentioned positive aspects, such a system will not be free from negative sides characteristic to the current legislation of Georgia on administrative violations. Still, there will be the difficulty of consistency of the responsibility grounds for natural and legal persons and principles of culpable and non-culpable responsibility in one legal act. The elimination of the problems and discrepancies created as a result of combination of institutions of different law fields in one legal act will still be unsolved that was already discussed above during the consideration of the current Georgian legislation. Furthermore, issues of theoretical and educational character arise in this respect, which are related to the clearness and flawlessness of the system as well as the necessity of protection of the requirements coming out of general legal principles and special principles of various fields. All the above-mentioned will evidently affect the legal practice and endanger the possibility of realization of the said requirements that has been already discussed by us in the introductory part of this chapter (Chapter V) of the study.

After all the above-mentioned, I will try to present a version of the reform the current legislation on administrative violations, which, in my opinion, will meet the said requirements, will be logical and complete in the view of the system, acceptable and comprehensible considering the general and specific legal principles.

As we have already mentioned above, such a legislative attempt can be successful if we manage to avoid artificial steps and take into account the actual nature of things. With respect to the latter, I imply the immanent nature of the corresponding legal institutions and their arrangement according to the belonging to a certain field. I think that consideration of the above-mentioned factors promotes the establishment of an accurate and logical system and will result in its simplicity and availability from the educational and practical viewpoint. Such an approach will facilitate solution of existing problems by the legislative body as well as the administrative agencies or courts charged with carrying out of the proceedings and execution of the decisions with respect to violations committed by natural and legal persons.

The system of the legislation of Georgia on administrative violations, which is currently in force, namely, a common code should be repealed: the delicts existing in this Code and other laws should be separated and divided into two groups. The delicts, which by their nature are administrative, should be allocated to the latter field, and the delicts themselves with the sanctions established for their commission should be transferred to the laws regulating legal relations existing in various fields of the state government in the form of the relevant substantive norms. The structure of such norms will be presented by a disposition and a sanction. Furthermore, a special legislative act should be adopted that will define general principles, grounds and rules for imposition of responsibility and appliance of administrative sanctions upon natural or legal persons for the violation of the relations or rules regulated by a specific law adopted in the administrative government

field; the circumstances to be taken into consideration while imposition of a specific punishment provided for by the administrative sanction; the limits of administrative measures used as an administrative sanction; grounds and case of release from the imposition of an administrative sanction; limitation terms for applying an administrative sanction and other important issues. Such a law can have the following title: “Law of Georgia on the grounds and rules for applying administrative sanctions”. An applied administrative sanction should be treated like a specific measure of the administrative enforcement, and a legal form for its application can be an administrative act, which should be adopted and published by the rules and procedures prescribed by the General Administrative Code of Georgia taking into account the peculiarities differentiating such an administrative act from other common administrative acts. Additional indications should be made in the said special law with respect to adoption of such an administrative act for filling up the gaps in the administrative regulations provided for by the General Administrative Code of Georgia, as the basic recommendations of the Council of Europe require granting additional guarantees to private persons in the process of application of administrative sanctions against them.

The Council of Europe gives in manual the following definition of an administrative sanction: An administrative sanction is an administrative act imposing upon a person a punishment for the violation of the existing regulations that can be expressed in a fine or another non-monetary repressive measure.” Furthermore, the Council of Europe defines the principles that should be obligatorily observed in the process of applying an administrative sanction for securing the human rights and freedoms. These principles are as follows:

- a) the burden of proof is on the administrative agency;
- b) any unfounded suspicion should be decided in favour of a private person;
- c) inadmissibility of imposition of a sanction for an action, which was not considered to be a violation at the moment of its commission;
- d) inadmissibility of conferment of a retroactive force to a stricter law and, on the contrary, conferment of a retroactive force to a less strict law;
- e) inadmissibility of the second imposition of the same sanction for the same unlawful action based on a similar norm protecting the same public interest.

Thus, the principles and forms of the administrative proceedings defining the rules and procedures for adoption of an administrative act in accordance with the General Administrative Code of Georgia are also applied to administrative sanctions. Such forms are as follows: simplified administrative proceedings and proceedings in a collective administrative agency. At the same time, it should be taken into account that the procedure for making a decision of application of an administrative sanction is similar to the court trial, therefore, in order to ensure a fair trial, additional guarantees should be used, except for a simplified procedure for consideration of some unimportant cases related to imposition of a small fine when the offender does not object to imposition of the sanction. However, in some cases, a simplified procedure can be applied if it is necessary for ensuring normal functioning of the administrative agency, even when the interested person is against the application of such a procedure.

The special law on the grounds and rules for applying administrative sanctions should have a special clause according to which the rules and procedures provided for by Chapter XIII of the General Administrative Code of Georgia (Administrative proceedings with respect to administrative complaints) should be applied for the appeal against decisions made by

the administrative agencies on imposition of administrative sanctions, taking into account that a person who was imposed an administrative sanction by an administrative agency can apply to the court directly for protection of his rights and freedoms without submitting a complaint to the relevant authorized administrative agency.

During the court proceedings related to a complaint the institutions of the Code of Administrative Procedure of Georgia should be applied, which ensure a fair trial, and for the creation of proper guarantees for a person the corresponding legislative clauses should be provided for by the Code of Administrative Procedure on the possibility of using additional procedural mechanisms and institutions to observe the requirements of the said trial in full. At the same time, it is necessary to ensure the right of a person to have a comprehensive consideration of the case in two court levels.

In my opinion, in this case, consideration of a case at the first level and at the appellate court will be sufficient, and the decision of the latter will be final. Furthermore, when the amount of a fine to be imposed upon a natural or legal person is especially large, the administrative proceedings on such a case can be conducted directly in court and not in the administrative agency.

As to the issue of execution of the decisions of this category of cases made as a result of the proceedings conducted in an administrative agency or in court after their enactment, it should be carried out based on the law on executive proceedings used in the process of execution of legitimate decisions based on the General Administrative Code and the Code of Administrative Procedures of Georgia.

In our opinion, after the reform, this will be the place of purely administrative delicts existing in the current legislation of Georgia on administrative violations in the system of law that, in my opinion, is in absolute conformity with their actual legal nature.

The second group of delicts provided for by the special part of the current Administrative Violations Code (Section Two, Chapters V-XIV) are evident criminal offences by their content. In other words, such delicts can be called “minor crimes” or “criminal misdemeanors”. It should be noted that the absolute majority of the administrative violations specified in the general part of the Administrative Violations Code of Georgia (Section Two, Chapters II-IV) are that kind of delicts, which have already been discussed by us above (See Chapter 1, § 1 of the study). It is obvious that the nature of such delicts will not be in conformity with the general institutions, which, in their turn, are required for solutions of the relations arising as a result of commission of a purely administrative violation and appliance of a sanction against the offender.

Considering the above-mentioned, the legal relations that arose due to commission of the said criminal delicts should be decided and regulated based on the principles of their allocation to the field of law, which actually corresponds to their real legal and qualitative nature. Considering the above-mentioned, for a correct and grounded solution of the said issues, it will be necessary to adopt a special codified legal act with general and special parts. Such a legislative act can be called “The Code of Georgia on Criminal Misdemeanors”. Certain similarity of such a Code with the Criminal Code is inevitable due to clear reasons. At the same time, its independent existence is absolutely justified due to its specific purpose proceeding out of less importance of a criminal violation in comparison to a crime with respect to unlawful results, and the task of conducting the

proceedings initiated on their commission quickly and by a simplified procedure. Naturally, the basic substantive and procedural legal guarantees for the person who committed a criminal misdemeanor should be preserved at the appropriate level.

The general part of the Criminal Misdemeanors Code of Georgia will not be so extensive as that of the Criminal Code, as it will contain the legal norms defining the required institutions expressing the peculiarity of a similar offence, and with respect to other important institutions, there will be so called "indicating norms", which will indicate to the relevant articles of the Criminal Code of Georgia. For example, the general part of the Criminal Misdemeanors Code of Georgia should give the definition of a misdemeanor and its features, the responsibility age, responsibility for commission of a misdemeanor abroad, categories and limits of punishments established for a misdemeanor, peculiarities of the conditions for imposition of and release from a punishment, peculiarity of the legal consequences of imposition of a punishment for a misdemeanor, peculiarity of responsibility for minor offenders, etc. The distinctive feature of the punishment system given in this legal act will be the fact that it will not provide for deprivation of liberty as a punishment, and the responsibility age for committing a criminal misdemeanor can become 16 instead of 14.

With respect to other general issues, such as terms and retroactive force of the law, casual link, intentional and negligent act, ongoing and renewable act, multiple crimes, misdemeanor stages, perpetration and complicity, unlawfulness, circumstances excluding guilt, etc., the indications to the corresponding Articles of the general part of the Criminal Code of Georgia will be made.

The issue of the special part of the Criminal Misdemeanors Code of Georgia should be discussed separately. Its structure will be established by several chapters depending on the field in which a misdemeanor is made. In this respect, I will concentrate on the following issue: the main constituent part of the special part of this code should be the delicts given in the special part of the Administrative Violations Code of Georgia, which are of a criminal character, however, at the same time, at the expense of this code, the special part of the current Criminal Code of Georgia should be relieved from evidently minor offences, which presently are considered to be less serious crimes. These are offences such as follows: minor damage to health; unlawful abortion if it has not provoked grave results, calumny, threat, violation of the freedom of expression; refusal to provide information, negligent damage to or destruction of another person's property that caused substantial damage; misappropriation of the copyright without aggravating circumstances, and other similar offences that are rather frequent in the special part of the Criminal Code and the strictest punishment for the commission of which is jailing and other less serious punishments – a fine, correctional labour, restriction of freedom, etc. Furthermore, several delicts that cause permanent disputes, commission of which causes imposition of the deprivation of liberty as an alternative punishment can be transferred from the special part of the Criminal Code to the special part of the Criminal Misdemeanors Code. For example, the action provided for by Article 273 of the Criminal Code of Georgia – illegal production, purchase, keeping or taking without doctor's prescription of small quantities of narcotics, their analogues or precursors for personal use, which is punishable by a fine or by social labour, jail or imprisonment for a term up to one year; the action provided for by Article 274 of the same Code – evasion of a coercive treatment in a special medical-prophylactic institution by a drug-abuser, which is punishable by an imprisonment for up to one year in length.

In addition to all the above-mentioned, we should pay attention to the following fact – there are many actions, which were previously punishable in Criminal Codes acting at various periods, however, later on they were withdrawn from the Criminal Codes, as application of the criminal punishments for the commission of these actions would be too strict, however, the punishment for their commission was not provided for by the Administrative Violations Code either. An example of such an action is illegal use of the emblem of the Red Cross and Red Half Moon, which was punishable by an imprisonment for a term up to one year or correctional labour for the same term that is completely withdrawn from the legislation now.

Furthermore, there are actions the nature and consequences of which require imposition of criminal pressure against the offenders. For example, neither the Criminal Code nor the Administrative Violations Code provide for responsibility for the action such as violation of the safety rules in driving, which resulted in a less serious damage to the health of one or several persons. The situation is even worse if such an action is committed by a drunk person.

I am of the opinion that a punishment for commission of the specified and other similar actions can be provided for by the special part of the Criminal Misdemeanors Code.

It is obvious that in the process of discussing substantive legal norms of a new legislation the issue of the procedural aspect arises as well, i.e. what kind of proceedings should be applied for the realization of the responsibility measures provided for by the Criminal Misdemeanors Code of Georgia. There are two options for solving this issue. The first option: a special procedural law can be adopted, which will provide for procedural institutions intended for ensuring short and rapid proceedings on the cases initiated on criminal misdemeanors, taking into account the peculiarities of the above-mentioned delicts. In this law, much more time will be devoted to the issues of timely administration of justice directly in court with respect to this category of cases rather than to the procedural actions carried out at early stages. I am of the opinion that conducting long-time investigation activities on similar cases will not be desirable, as they will evidently increase the procedural costs and impede the proceedings. It will be sufficient to conduct a short-time inquiry on a fact of a criminal misdemeanor and submit the case to the court as quickly as possible. Only in extraordinary cases prescribed by law, a preliminary investigation on a criminal misdemeanor can be conducted based on the prosecutor's reasoned request, and such an extraordinary circumstance can be great public importance of the fact or another circumstance.

In addition to the said procedural institutions, the Law can have, where necessary, indications to other institutions and norms provided for by the Criminal Procedure Code of Georgia for the purpose of ensuring additional procedural guarantees for the full realization of the rights and freedoms.

The second option of solving the procedural aspect can be addition of one more special chapter on the proceedings related to criminal misdemeanors to the current Criminal Procedure Code of Georgia in the same way as it was made with respect to proceedings of the cases on private charge, which will take into consideration the peculiarities of the proceedings on this category of cases. At the same time, the institutions of the general part of the Criminal Procedure Code of Georgian will be applied to it, and it will take a

complete form ensuring prompt and effective administration of justice that should be characteristic for a rule of law state

Thus, after the reform, the new system of the delicts presently considered as administrative violations will be as follows:

Law of Georgia on the grounds and rules for applying administrative sanctions

Relevant additions to the Administrative Violations Code of Georgia

Criminal Misdemeanors Code of Georgia

Law of Georgia on Proceedings of the criminal misdemeanor cases  
(as an option – a special chapter in the Criminal Procedure Code with the title "Proceedings of the criminal misdemeanor cases")

Amendments to executive legislation with respect to decisions made and enforced on the cases of the said category

According to our version, after the reform, the legislation on administrative violations in its present form will not exist any more, it will be separated and distributed between the fields of the administrative and criminal law, considering the natural position of its institutions from the legal point of view. I think that such an option we will give us a well-arranged and effective functional system ensuring highest level of protection of the human rights and freedoms as well as prompt and appropriate conducting of administrative and criminal proceedings and administration of justice.

Naturally, it is possible to determine other directions of the reform and elaborate absolutely different concept, but after certain considerations, taking into account the prospects, I consider that the presented conceptual version is relatively optimal. However, whether the modern juridical society will consider it as grounded and substantiated is another issue.

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