The Practice of Administrative Arrest in Georgia and Its Soviet Roots

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Introduction

It is symbolic that one of the primary tools for recent Soviet-style repressions in Georgia, and a cornerstone thereof, is the Administrative Offences Code of Georgia, originally adopted during the Soviet era.

Two of the most "flexible" articles within the Administrative Offences Code of Georgia have been applied to arrest hundreds of individuals who protested against the Russian Law or expressed dissatisfaction in various form with elected MPs.[2] These articles, petty hooliganism (Article 166) and disobedience towards the orders of law enforcement officers (Article 173), are characterized by their vagueness. Due to the lack of procedural guarantees, courts can easily and swiftly apply these articles in various situations (sometimes based merely on hearsay reported by a police officer or seen on television).

While both offenses and dozens of others carry penalties such as fines or administrative arrest as an alternative form of punishment, it is true that the court mainly limited itself to imposing an arrest in the abovementioned cases. However, given the nature of the offenses, the potential for arrest as a punishment mechanism imbues them with a criminal characteristic. Therefore, these solid repressive measures' increasing trend and application warrant significant attention.

This analysis underscores that these mechanisms are not innovations but legacies of the Soviet era. It highlights the peculiarities of such administrative offenses and the systemic issues within Georgia's Administrative Offences Code, which ensure their instrumentalization.

Soviet Roots

After the collapse of the Soviet Union, unlike the former allied republics, including Russia, Georgia has not formally abolished the Administrative Offences Code adopted by the Presidium of the Supreme Council of the Georgian SSR in 1984. To date, 544 amendments have been made to the Code, which has mainly added chaos and ambiguity to this legislative act. The Soviet foundation, logic, and primary pillar of the Code have remained intact, leading to its misuse.

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[2] “8 NGOs issue a statement regarding the “problematic trends” revealed in the process of protecting the rights of persons arrested at the rallies”. IPN InterPressNews, 10.05.2024. https://www.interpressnews.ge/ka/article/798793-8-arasamtavrobo-organizacia-akciebze-dakavebuli-pirebis-uplebebis-dacvis-processhi-gamovlenil-problemur-tendenciebtan-dakavshirebit-gancxadebas-avrcelebs/

The original 1984 version of the Code introduced the heaviest administrative penalty, up to fifteen days of administrative arrest for individual offenses in exceptional cases. Initially, only two offenses were punishable by arrest: petty hooligan actions (Article 166) and malicious disobedience to lawful orders or demands of police officers or militiamen (Article 173). Later, before independence was restored, three more articles were added to the Code. These included offenses such as drinking alcoholic beverages or being in a drunken state in public places by a person who had received an administrative fine twice during the year for this offense (Article 171) and for the illegal purchase or possession of small amounts of narcotic drugs, or using narcotic drugs without a doctor's prescription (Article 45). Finally, amendments enacted on March 22, 1988, added violations of established rules for organizing or holding meetings, rallies, street marches, and demonstrations by organizers or persons who had received an administrative fine for this offense during the year (Article 174^1).

It is important to highlight that during the Soviet period, each of the articles, except the last added Article 174^1, strictly stipulated that the use of administrative arrest was permissible only when other lighter measures were considered insufficient, based on the circumstances of the case and the personality of the violator. The decision to impose administrative arrest was the exclusive authority of the court. However, due to the lack of proper procedural guarantees, ambiguity in the norms themselves, and the possibility of broad interpretation—where the court was not an independent institution of justice but an obedient institution, often referred to as the notary of the Communist Party—administrative arrest in the Soviet Union was frequently misused as a tool for punishing and politically repressing critics of the party.

Creating More Repressive Instrument than Soviet Original

Since the restoration of independence, the Administrative Offences Code has not undergone fundamental changes. However, through periodic amendments, the number of offenses allowing for the imposition of administrative arrest has increased. Today, it can be asserted that the current consolidated version of the Code includes provisions for administrative arrest in the highest number of violations over its forty-year existence. Whereas the Soviet-era version allowed for this penalty in a maximum of four cases, today there are 43 instances.

The majority of these administrative violations, with a few exceptions, fall under the jurisdiction of district (city) courts for adjudication.[3] Regardless, only the district (city) court has the authority to impose administrative arrest on an individual.

As mentioned earlier, initially the Code stipulated that this penalty should be used exceptionally. Specifically, it could only be applied if, considering the circumstances and the personality of the offender, lighter measures were deemed insufficient. The current Code does not explicitly require such a provision across all articles. However, the general directive to use administrative arrest only in exceptional cases

[3] There are some exceptions, for instance Articles 121, 123, 157, 174^{18} and 177^1 of the Administrative Offences Code.

implies that its imposition by the court should be supported by argumentation backed by relevant evidence of its necessity and appropriateness.

Similarly to the original (Soviet) version of the Code, the current version specifies that the duration of arrest should not exceed 15 days. Therefore, it is the responsibility of the court to provide evidence-based reasoning when determining the length of arrest. In some cases, the Code itself sets a minimum duration for arrest. For instance, it may specify a range such as 10 to 15 days,[4] which somewhat limits the judge's discretion if they decide to impose this sentence. There is also an exceptional case where the law, instead of allowing up to 15 days at the judge's discretion, directly mandates 10 days of administrative arrest as an alternative administrative penalty,[5] or sets a lower maximum, such as 5 or 7 days of arrest.[6]

It is noteworthy that following the restoration of independence, the 15-day period of arrest was extended to 30 days by decree of the State Council of the Republic of Georgia on 3 August 1992. Subsequently, in 2009, this period was further increased threefold to a maximum of 90 days. Given the alarming frequency of administrative arrest usage during that period (refer to Chart 1), granting courts the authority to impose such a severe penalty, especially considering the systemic flaws in the Code discussed below, rightly drew significant criticism. [7]

The maximum arrest period was only reduced in the August 2014 amendments.[8] While this was a significant change, the overall landscape remained the same, given the Code's systemic shortcomings. This adjustment represents just a tiny part of the challenges posed by offenses within the Code involving arrest and criminal implications.

According to the criteria established by the European Court of Human Rights in the Engel case (known as the Engel criteria),[9] which have been repeatedly affirmed and clarified in practice, reclassifying an offense under the Administrative Offences Code does not alter its criminal nature for the European Convention (particularly under Article 6). Specifically, an offense's criminal nature may stem from its general applicability (applying to all individuals rather than a limited group)[10] and the punitive nature of its

[4] Article 116 (5, 6, 8(a, b), 9).
[5] Article 55 “Destruction or Damaging of a Boundary Sign or Arbitrary Change of Frontier”.
[6] Article 166^{2}(2), 153^{3}(2,5), 153^{6}(2,5).
[7] 2013 Report of the Public Defender of Georgia on The Situation of Human Rights and Freedoms in Georgia, p. 271. 271. https://drive.google.com/file/d/19AjSGIOHEQkzJ0HV-rxQ56sXgFx0E6d7/view
[8] Law of Georgia on Amendments to the Administrative Offences Code of Georgia” 2459-RS, website, 18/08/2014.
[9] According to the test established by the Court in this case, stemming from the purposes of Article 6 of the Convention, to consider it as a criminal charge, it is important: 1) the legal classification of the crime by the national legislation, in particular, whether it is regulated by the criminal law; 2) criminal nature of the crime; 3) degree of severity of potential punishment. Failure to meet the first criterion does not rule out the criminal nature of the crime. As for the second and third criteria, they are alternative and not necessarily cumulative conditions. Therefore, independently, the clear existence of each is considered sufficient, or they may even be complementary. See Engel and Others v. The Netherlands, Judgement of 8 June 1976, Series A no. 22, par. 82. https://hudoc.echr.coe.int/eng#{"itemid":["001-57479"]}
[10] Öztürk v. Germany, Judgement of 21 February 1984, Series A no. 73, par.53. https://hudoc.echr.coe.int/eng?i=001-57553;

sanctions. It may also derive from the possibility of imposing punishments typically associated with criminal law,[11] such as arrest (except in cases where the nature, duration, or execution method do not cause substantial harm).[12]

Therefore, according to established practice by the European Court, a relatively short period of detention[13] or the fact that an offense is regulated by the Administrative Offences Code instead of criminal legislation may not exclude its criminal nature. Hence, legal guarantees envisaged by the Code of Criminal Procedure must be provided to individuals.

Regarding whether the Administrative Offences Code provides similar guarantees for offenses that, at least in terms of administrative arrest, may be considered criminal in nature, the answer is unequivocally negative. For over a decade, the Public Defender of Georgia and human rights organizations both domestically and internationally have criticized the Administrative Offences Code. They highlight its systemic deficiencies and argue that the only solution is to abolish the current Code entirely and adopt a new one aligned with international human rights standards.[14]

Specifically, the Public Defender has repeatedly emphasized that the Code contains vague provisions and lacks systematic organization. It inadequately addresses procedural aspects of administrative offense proceedings, fails to fully uphold the right to a fair trial, and lacks rules for the collection, examination, and evaluation of evidence. This is particularly problematic for offenses that entail administrative arrest as a fine. According to the Public Defender, these systemic flaws adversely affect the adjudication of administrative offense cases in Georgia's courts and represent a significant practical challenge.

A detailed analysis of administrative offense cases handled by general courts reveals a persistent challenge during the evidence examination stage. Based on cases reviewed by the Office of the Public Defender over

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Ziliberberg v. Moldova, Judgement of 1 February 2005, No. 61821/00, par. 32-33. https://hudoc.echr.coe.int/eng-?i=001-68119

[11] The European Court of Human Rights focuses on the severity of the possible punishment and not on the actual punishment. Therefore, when discussing this criterion, it is important what is at stake and what the potential punishment could be. See Balsyte-Lideikiene v. Lithuania, Judgement of 4 November 2008, No. 72596/01, par. 59. https://hudoc.echr.coe.int/eng?i=001-89307

[12] Engel and Others v. The Netherlands, par. 82.

[13] In the case of Galstyan v. Armenia, although the term of detention for the plaintiff was equal to three days, due to the fact that the offense provided for a maximum of 15 days of detention (similar to the majority of the relevant articles of the Administrative Offenses Code of Georgia), the European Court ruled that the crime, which the plaintiff was accused of committing, to be criminal for the purposes of the Convention. See Galstyan v. Armenia, Judgement of 15 November 2007, No. 26986/03, par.59. https://hudoc.echr.coe.int/eng?i=001-83297

[14] Parliamentary Reports of the Public Defender of Georgia: second half of 2009, pp. 144-153; 2010, pp. 285-290; 2011, pp. 115-116; 2012, pp. 448-450; 2013, pp. 271-277; 2014, pp. 397-405, 2015, pp. 462-470; 2017, p. 114. 2018, . 132-136. 2019, pp. 157-159; 2020, pp. 145-146; 2021, pp. 118, 189. 2022, pp. 10, 101; 2023, pp. 11, 111, 130. Additionally, see Human Rights Watch, "Administrative Error – Georgia's Flawed System for Administrative Detention," January 2012. https://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf, "How stop Georgia's unconstitutional use of administrative offences legislation" Judicial Independence and Legal Empowerment Project (JILEP), 2013.
https://csogeorgia.org/storage/app/uploads/public/614/091/432/6140914329a65080232496.pdf

the years, it becomes evident that all evidence typically originates from a single entity or person, and the collection of evidence often exists only nominally. Consequently, judges frequently base their decisions solely on offense and arrest reports, as well as the interpretations provided by law enforcement officers. Furthermore, according to observations made by the Office of the Public Defender, many court judgments on administrative violations lack substantiation and are formulaic, differing only in the details of the accused while echoing the general wording of offense reports.

Moreover, reports from the Public Defender highlight that these deficiencies in the Administrative Offenses Code foster abusive and arbitrary practices that undermine the rights to freedom of speech, expression, assembly, and demonstration. This framework serves as a punitive mechanism wielded by authorities. Particularly concerning are the frequent applications of Articles 166 (petty hooligan actions) and 173 (disobedience to law enforcement orders), which trace their origins to the Soviet era and remain largely unchanged despite their inherently criminal nature within the Administrative Offenses Code. Therefore, due to systemic flaws in the Code, the government circumvents European human rights and freedoms standards, enabling the easy deployment of these punitive measures and resulting in gross violations of human rights and freedoms.

Of particular interest is the constitutional lawsuit filed by Zurab Girchi Japaridze, a leader of the opposition, on 30 October 2019,[15] concerning the consideration of cases involving these two violations. The plaintiff specifically seeks to declare unconstitutional those provisions of the Administrative Offenses Code that allow offenses of a criminal nature to be adjudicated without proper procedural guarantees.

The lawsuit's comprehensive nature suggests that a favorable ruling from the Constitutional Court could significantly undermine the Soviet foundation of the Administrative Offenses Code and pressure the government to abolish it. Unfortunately, the Constitutional Court somewhat missed this crucial opportunity. While the first panel of the Constitutional Court accepted the lawsuit for review[16] on 17 December 2019 (regarding part of the claim) and conducted the review, nearly five years have passed since the lawsuit was filed, and a decision has yet to be announced.

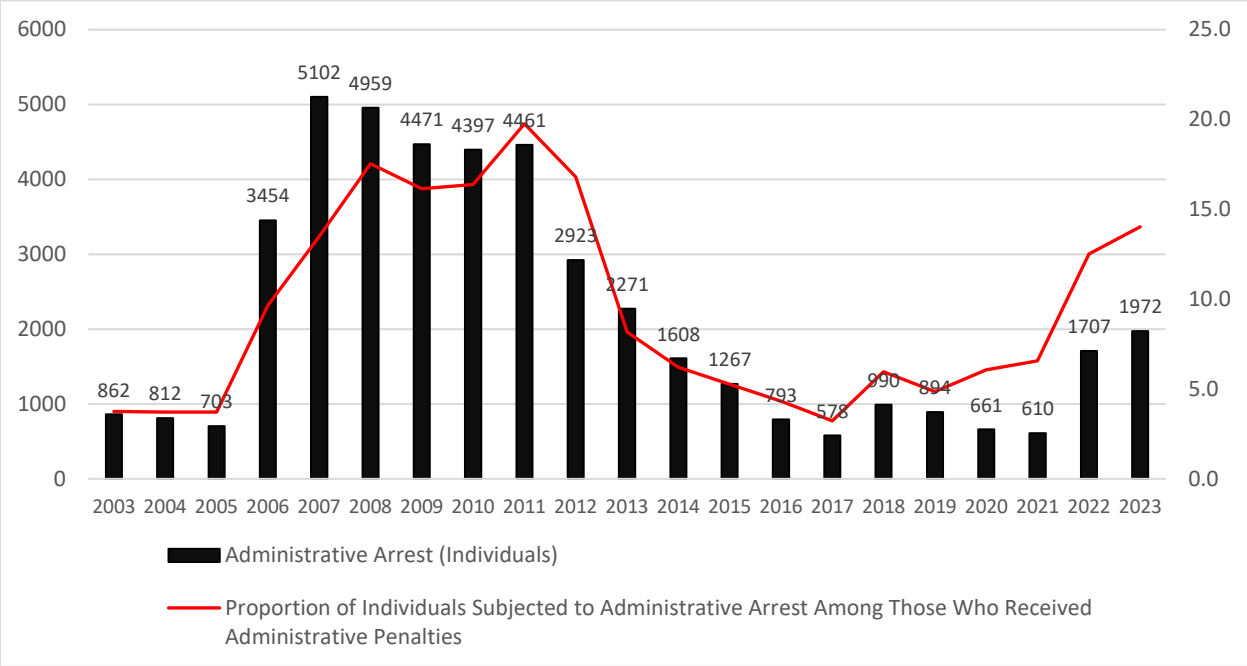
Dynamic of Administrative Arrest

Simultaneously with the silence of the Constitutional Court, as mentioned earlier, the number of those offences which envisage imposition of arrest as a penalty has increased as well as in the past few years there has been a tendency of growth of imposition arrest as an administrative penalty (see Chart 1).

[15] Constitutional Lawsuits N1361 of 30 October 2018 of the Constitutional Court of Georgia https://constcourt.ge/ka/judicial-acts?legal=1457

[16] Protocol record N1/11/1361 of 17 December 2019 of the Constitutional Court of Georgia on case Zurab Girchi Japaridze v Parliament of Georgia https://constcourt.ge/ka/judicial-acts?legal=2220

Chart 1: Number of Individuals sentenced to Administrative Arrest by the Courts of First Instance in 2003-2023 and the rate of arrest(%)



Source: *Chart is drawn by the author, based on data from the Supreme Court*

The chart clearly shows that during the initial years of UNM rule, administrative arrests' frequency and utilization rate were relatively low compared to subsequent periods. From 2006 to 2011, both indicators peaked, correlating directly with the repressive policies of that years. Following the Georgian Dream party's assumption of power, there was a gradual yet significant improvement in these statistics, often highlighted by party representatives as a significant achievement demonstrating enhanced justice and robust human rights protection.[17]

This narrative persisted predominantly until 2019, focusing mainly on data from 2017-18. However, a closer examination of the chart reveals a declining trend up to 2017, followed by a sharp increase in 2018. In 2020-2021, amid the COVID-19 pandemic and associated curfews limiting public movement, there was a slight decrease recorded. The notable surge in administrative arrests occurred in 2022-2023, which can be attributed to the government's growing intolerance towards dissenting voices and its shift towards authoritarianism. This authoritarian trend is starkly evident in the data from the first quarter of 2024 alone, where the number of administrative arrests (521 cases) nearly matches the figures from 2017 and closely approaches those from 2020-2021. It is essential to consider the repressive policies noted earlier in this article, observed since the second quarter of the current year, which are likely to impact future statistics.

[17] FactCheck "The number of administrative arrests has decreased three-fold 2019. https://factcheck.ge/ka/story/38081-samjer-shemcirda-administraciuli-patimrobis-machvenebeli

Therefore, against this backdrop of increasing use of such punitive measures and a rising number of offenses in the Code carrying detention penalties, the Constitutional Court's silence perpetuates longstanding harmful practices and egregious human rights violations.

Summary

To criticize the current Administrative Offenses Code of Georgia, it is often deemed sufficient to mention its Soviet roots. However, the present analysis extends beyond this argument. Despite hundreds of amendments intended to refine the legal act adopted forty years ago, the result is a version somewhat worse than the original. The amendments, characterized by vagueness and a lack of appropriate procedural guarantees, increase the risks of abuse.

The Administrative Offenses Code of Georgia has been expanding the number of offenses that warrant administrative arrest, a penalty with severe and often punitive implications, without ensuring proper procedural guarantees. This trend, coupled with the Code's inclusion of many offenses of a criminal nature, makes it clear that no amount of amendments can fundamentally improve it. The only viable solution is to abolish it and adopt a new Code that aligns with international human rights standards.

Unfortunately, over the past three decades, none of the governments have had the political will to discard the Administrative Offenses Code. This instrument, inherited from the Soviet Union, continues to silence critical voices effectively "when necessary."

Analyzing the dynamics of administrative arrest provides clear evidence of when authorities find it 'necessary' to employ this mechanism. It is important to note that a downward trend (if it happens) in the use of administrative arrest in the coming years should not be seen as a substantial improvement. The constitutionality of each case of administrative arrest will rely solely on the good faith and special resolve of individual judges unless systematic changes to the Administrative Offenses Code and the extension of criminal offense standards to offenses of a criminal nature are made.