



**International Covenant on
Civil and Political Rights**

Distr.: General
15 August 2017

English only

Human Rights Committee

**Concluding observations on the fourth periodic report of
Georgia**

Addendum

**Information received from Georgia on follow-up to the
concluding observations***


[Date received: 18 July 2017]

* The present document is being issued without formal editing.

GE.17-13953(E)



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Paragraph 13: Administrative Detention

Information

1. Code of Administrative Offences of Georgia envisages the number of administrative offences which can be subject to the following different types of administrative penalties (alternatives): a warning, a fine, confiscation, corrective labor and administrative detention. Due to the legislation, administrative detention shall not be imposed on pregnant women or on women who have children less than twelve years of age, to persons who have not attained 18 years of age, or on the first and second categories of disabled persons.
2. As for Court Statistics in 2014 year since August, after the legislative amendments came into force, 16542 people were charged with administrative offenses. 740 administrative proceedings were terminated and 2959 verbal remarks were given.
3. In other cases, the different types of administrative penalties were imposed: 54 warnings, 12120 fines, 2 correctional labor, 667 administrative detention.
4. In 2015 year, 33300 people were charged with administrative offences. 1574 administrative proceedings were terminated and 7668 verbal remarks were given. In other cases, the different types of administrative penalties were imposed: 135 warnings, 22649 fines, 2 confiscation, 5 correctional labor, 1267 administrative detention.
5. In 2016 year, 30755 people were charged with administrative offences. 2433 administrative proceedings were terminated and 9954 verbal remarks were given. In other cases the different types of administrative penalties were imposed: 242 warnings, 17327 fines, 1 confiscation, 4 correctional labor, 793 administrative detention.
6. According to the statistics, the imposition of administrative detention by courts decreases annually, in 2016 year it amounted to 4.3 %, while in previous years the use of administrative detention exceeded 5%.¹
7. All the administrative detainees serve their full term custody only in TDIs of the Ministry of Internal Affairs. Within the isolators, they are fully segregated from any other categories of detainees.
8. The Ministry of Internal Affairs of Georgia carried out significant works in order to develop the facilities and consequently, improve conditions for persons under administrative custody. For the past couple of years, full reconstruction works took place in more than half of Temporary Detention Isolators (TDIs) of the Ministry of Internal Affairs (The total number of TDIs throughout Georgia is 31). This included installation and repairing works of existing ventilation and heating systems in TDIs.
9. Lately, all legal documents concerning functioning of TDIs have been reviewed and new ministerial orders have been adopted. The new regulations are based on international standards concerning police detention. Persons who are sentenced under administrative custody are provided with set of rights, more specifically:
 - Receive the personal hygiene tools and items;
 - Access to shower;
 - Access to everyday outdoor exercises (minimum one hour);
 - Visits, twice for whole custody period;
 - Right to make telephone calls;
 - Right to conduct a religious rituals and the right to meet a representative of any officially registered religious organization;
 - The right to send and receive correspondence;
 - Have an opportunity to continue education.

¹ See Appendix.

10. The persons under administrative custody are also provided with the journals, newspapers and books. Detainees with special needs receive necessary assistance. For this purpose, two TDIs were already adapted for persons with special needs.

11. In order to improve the quality of medical services in the TDIs, medical service unit was created in the Temporary Detention Department of the Ministry of Internal Affairs of Georgia. Medical staff carry their duties in 8 (eight) regional TDIs and provide 24-hour medical care for detainees, in accordance with the health care standards established in the country. In all other TDIs, ambulance teams provide medical services. If the person requires any special medical treatment, which cannot be provided in the isolator, he/she will be transferred to the medical institution and receive necessary medical service. The procedure within the duration of custody imposed is fully funded by the Ministry itself.

12. The Ministry of the Internal Affairs of Georgia is working on a new project, which implies the additional services for the persons under administrative custody. More specifically, they will be visited by social worker and psychologist in isolators and will have an opportunity to receive all the necessary help if needed. In addition, it must be noted that the number of persons who are sentenced administrative custody as well as an average length of sentence decreased for last couple of years.

Paragraph 14: Jury trials

Information

13. The draft amendments were adopted by the Parliament in June, 2016 and entered into force on 1 January 2017.

14. Based on the abovementioned draft law, hearing of the selection of jurors is open and judge may close it in few cases determined by Article 182 of the Criminal Procedural Code of Georgia (protection of personal or commercial data; safety of the party and/or family member of the party; interests of the victim of sexual crime, trafficking and/or domestic crime; discussing private correspondence).

15. The legislative changes also apply to the right of the parties to revoke the jurors: the motions to revoke the jurors may be reasoned or unreasoned. The number of the reasoned motions are unlimited while the number of the unreasoned motions are limited. Crimes which shall be decided by the court with the participation of jurors have been listed. Issues which shall be explained to the jurors by the judge have been expanded and together with other questions, the judge shall also explain the necessity to be proven that the convicted person has committed the action for which s/he is charged; that conviction in all objective elements of the crime shall be proven; sense and importance of the intent and negligence; circumstances excluding the criminality of an action and a charge; standard of reasonable doubt. The initial time for the jurors to make anonymous decision has changed from three to four hours.

16. As for the provisions for appeal of jury verdicts, according to the Article 266 of the Criminal Procedural Code of Georgia the verdict made by the jury trial can be appealed in the following circumstances:

(a) The presiding judge made an unlawful decision on the admissibility of evidence;

(b) The presiding judge made an unlawful decision regarding a motion filed by a party, which substantially violated the adversarial principle;

(c) The presiding judge made a substantial mistake before the jurors retired to the deliberation room;

(d) When rendering the judgement, the presiding judge did not, in full or part, rely on the verdict delivered by the jurors;

(e) When rendering the judgement, the presiding judge relied on the verdict delivered in violation of the requirements of the Criminal Procedural Code;

(f) The sentence is unlawful and/or clearly unfounded;

(g) The presiding judge did not take into account the recommendation for mitigation or aggravation of a sentence made by the jury.

17. The authority to change the sentence determined by the jurors is no longer the chair of the hearing but the appellate court. If in the cases provided in the paragraphs (a) to (e) the high court adopts the decision in favour of the appellant the case is transferred to the new composition of the jury trial for consideration. When the decision of jury trial is appealed based on paragraphs (f) and (g) the appellate court determines the sentence, in such a case the decision of the appellate court is final.

18. As regards the case whether the amendments fully comply with Article 14 of the Covenant on Civil and Political rights, it needs to be mentioned that based on the Article 292 of the Criminal Procedural Code of Georgia general grounds for appealing the decision of first instance courts are: a) the decision is unlawful, b) the decision is unreasoned. Based on the fact that the jurors don't have to reason their verdict, technically, the decision of the jury trial cannot be appealed based on the ground that it is unreasoned. As for the lawfulness of the court decision, Article 259 of the Code defines lawfulness of the court decision in the following manner: a court decision is lawful if it has been made in accordance with the requirements of the Constitution of Georgia, the Criminal Procedural Code and other legal acts, the provisions of which were applied in the criminal proceedings.

19. In respect with the decision of jury trial, abovementioned Article 266 lists all those issues on which the judge has to make a decision during the process and the violation of any item from the list gives the right to the person to appeal the guilty verdict on its merits. It also needs to be mentioned that the jury verdict can be overturned by the presiding judge if the verdict manifestly contradicts with the evidences provided or is groundless. This is additional mechanism to guarantee the judicial control over the guilty verdict made by the jurors.

20. Therefore, the jury trial verdict is balanced by the judicial control and the accused person's right to appeal it if s/he considers that the decision is unlawful.

Annex

Utilized administrative penalties

| <i>Types of penalties</i> | <i>From August 1, 2014 to December 31, 2016</i> | | <i>2015</i> | | <i>2016</i> | |
|--|---|----------|-----------------|----------|-----------------|----------|
| | <i>Quantity</i> | <i>%</i> | <i>Quantity</i> | <i>%</i> | <i>Quantity</i> | <i>%</i> |
| Number of persons charged among them: | 16 542 | | 33 300 | | 30 755 | |
| terminated | 740 | 4.5 | 1 574 | 4.7 | 2 433 | 7.9 |
| verbal remark | 2 959 | 17.9 | 7 668 | 23.0 | 9 954 | 32.4 |
| with administrative responsibility among them: | 12 843 | 77.6 | 24 058 | 72.2 | 18 367 | 59.7 |
| warning | 54 | 0.4 | 135 | 0.6 | 242 | 1.3 |
| fine | 12 120 | 94.4 | 22 649 | 94.1 | 17 327 | 94.3 |
| confiscation | | | 2 | 0.01 | 1 | 0.01 |
| correctional labor | 2 | 0.02 | 5 | 0.02 | 4 | 0.02 |
| administrative detention | 667 | 5.2 | 1 267 | 5.3 | 793 | 4.3 |