Appeal of the *Coalition for an Independent and Transparent Judiciary* to Council of Europe Experts Regarding Draft Code of Administrative Offences of Georgia

Esteemed Experts,

As we are aware a draft law initiated in the Parliament of Georgia within the scope of reform in the field of administrative offenses has been sent to the Council of Europe experts for legal expertise. Taking this opportunity, the *Coalition for an Independent and Transparent Judiciary* would like to provide its opinion about the most problematic issues in the draft law, including administrative detention and administrative imprisonment, and request Council of Europe experts to focus their attention on several key topics.

Under Georgian law, a person can be imprisoned for up to 90 days for administrative offenses - the lengthiest term of punishment among those countries which still practice imprisonment for such offenses. Moreover, administrative imprisonment, which amounts to a criminal sanction in its severity, is applied to such types of misdemeanor that cannot be qualified as criminal offense. All that raises questions about the expedience and relevance of using administrative imprisonment as a sanction and calls for its revision in the longer-term perspective. Opinion of the European Court of Human Rights should also be taken into account, which deliberated on a similar mechanism in a number of its decisions and under various circumstances established facts of infringement of the European Convention on Human Rights. Armenia, which took into consideration the Court opinion after being a defendant in cases heard by the ECHR, dropped administrative imprisonment since 2005.

In addition to the above noted issue, the regulation of administrative imprisonment remains a problem, in general, both in the current Code and proposed draft law. The law fails to observe key requirements of human rights, including:

* Right to legal counsel is not guaranteed; the draft law does not provide for adequate time and facilities to prepare a defense; moreover, the issue of access to materials needed for a defense is not clear;
* Issue of evaluation of evidences is not determined; the draft law does not mention at all the notions of legal and illegal evidence;
* Standard of proof on which a court must base its decision is not explained, thus enabling judges to take a decision on imprisonment relying on motions and explanations of police officers alone; vagueness of this issue affects substantiations of court rulings;
* Rule of appealing court decisions is problematic because admissibility criteria are not established, which may infringe the right to appeal. Moreover, the draft law does not specify the timeframe for the delivery of court decision and minutes of a sitting to a party.

Along with the above listed shortcomings, the draft law provides for plea bargaining in cases of administrative offense, allowing the adjustment of length of administrative imprisonment on the basis of an agreement. Even though the agreement is authorized by the court, it is not clear what standard of proof is applied by the court in that case.

It should also be noted that according to both the current Code and the draft law administrative detention is a necessary stage before imposing an administrative imprisonment. Grounds of administrative detention provided in the draft law indicate that existence of a motion for administrative imprisonment of a person automatically entails administrative detention of that person, which does not require additional corroboration. Such an approach runs counter to the standard established by Article 5 of the European Convention on Human Rights, according to which detention shall not be applied automatically but only in exceptional cases taking into account individual characteristics. With regard to administrative detention, the issue of informing a detainee of his/her rights is of great importance. Neither the current Code nor the draft law provides for responsibility of relevant persons to explain to the detainee, upon detention and in a simple and clear language, the reason for his/her arrest; or allow the person to contact a lawyer or notify family members immediately and to inform about his/her right to challenge the legality of his detention. One should also take into account that the draft law does not provide a list of bodies authorized for detaining, which further complicates the mechanism of administrative detention.

Given all the above said, we believe that the proposed regulation of administrative detention and administrative imprisonment requires significant revision in order to bring it in line with basic human rights standards, including, to observe requirements provided in Articles 5 and 6 of the Convention.

We hope that experts of the Council of Europe will find opinions provided herein interesting during a legal analysis of the draft law.