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The Proceeding of Case of Administrative Offences in Connection with the Appeal

This article is devoted to the peculiarities of the proceeding of case of administrative offences in connection with the appeal. It is not a novelty that the current Administrative Offences Code of Georgia, which was adopted in 1984, fails to meet modern standards in the field of human rights protection, which is also reflected in a number of shortcomings in the rules of proceeding related to the appeal. The rules and conditions for appealing the acts issued by administrative bodies should be properly formulated in the national legislation. This will contribute to the realization of transparency, listening to the parties, expressing one's own views and other fundamental human rights. For this purpose, taking into account the peculiarities of the field of administrative offences, this article discusses the requirements of the legislation in force to appeal the decisions on administrative offences. New mechanisms have been proposed to improve the existing process. The explanations of Constitutional Court of Georgia regarding the problematic issues are listed, with approaches the German legislation, which represents one of the leading countries in this field.

Key words: *administrative offence, Administrative Offences Code, proceeding in connection with the appeal, the appeal of the resolution adopted on the case of administrative offence, examination of administrative appeal, grounds for cancellation of the resolution.*

1. Introduction

The legal system of the modern state must establish the proper procedure for appealing administrative decisions on cases of administrative offence (including during examination at the scene of the offence). Proper determination of the right to appeal acts issued by an administrative body plays a very important role in the legal system of a democratic state and it should be considered as one of the key means of restoring of human right that was violated. The existence of a justified mechanism for appealing the decision imposing an administrative penalty is not only one of the safeguards for the protection of basic human rights, but it also represents a means of control of the superior body, and finally, the ability to control the person who is authorized by the state to impose an administrative penalty, in order not to exceed his duties and / or misuse his official powers. An appropriate opportunity to appeal a decision is a guarantee of lawful conduct of the proceeding of case of administrative offences, because in the event of an appeal, the superior administrative body shall verify its formal and material lawfulness, and If it is found that the proceeding of the case was conducted in violation of the requirements of the legislation, there may be grounds for imposing disciplinary sanctions on the person concerned.

In order to properly determine the mechanism for appealing a decision on an administrative offence case, it is important that the Administrative Offences Code be properly worded as to who has the right to appeal the decision, what types of decisions are subject to appeal, the timeframe for filing an appeal, and the timeframes for its review, the grounds for revocation of the decision and other important matters relating to the proceedings discussed in this paper.

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2. Persons Authorized to Appeal

According to Article 271 of the Administrative Offences Code of Georgia, the order issued in administrative proceedings, also the decision made after hearing an administrative case at the scene according to the procedure laid down by Article 234[1] of this Code[1], may be appealed by the person against whom the order is issued, or by the victim or the preparer of the administrative offence report.

Considering that the applicable Administrative Offences Code does not specify the notion of the interested party and therefore neither his rights, It is advisable to consider such a concept in the new Code. Whereas the administrative resolution may, in addition to the persons referred to in Article 271 of the Code, also affect other persons, it is desirable that the interested party have the power to appeal a resolution on the basis of relevant amendments, which also includes the persons referred to in the above-mentioned Article.

It is noteworthy that there is a similar approach in Germany, where pursuant to Article 67 of The Administrative Offences Act, an interested party may appeal against a resolution on an administrative offence case.

3. The Appeal of the Resolution Adopted on the Case of Administrative Offence

Usually, the purpose of filing an administrative appeal is to protect a person's rights and exercise self-control, and not the supervision of the legality of publication of the act, or repeated verification of the legality of all stages of the act's publication. [2]

According to Article 272 of the Administrative Offences Code of Georgia, In the case of an administrative offence:

a) The order of an agency (official), also the decision imposing an administrative fine and issued after hearing an administrative case at the scene according to the procedure defined by Article 2341 of this Code, may be appealed to a superior body (superior official) or to the district (city) court, the decision of which shall be final; the decision imposing other types of administrative penalty may be appealed to the superior body (superior official), after which an appeal may be filed with the district (city) court, the decision of which shall be final; the order concurrently imposing the main administrative penalty and an additional administrative penalty may be appealed, if the appellant desires, according to the procedure for appealing main or additional penalties;

b) An order of a body (official) of internal affairs imposing an administrative penalty in the form of a warning, and which is registered without preparing a report at the scene of the administrative offence may be appealed to a superior body (superior official);

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1 Administrative Offences Code of Georgia, article 234[1], https://matsne.gov.ge/ka/document/view/28216?-publication=445, 15/12/1984, [03.11.2019].

2 *Adeishvili Z., Vardiashvili K., Izoria L., Kalandadze N., Kopaleishvili M., Skhirtladze N., Turava P., Kitoshvili D.,* General Administrative Law Handbook, Tbilisi, 2005, 299 (in Georgia).

c) An order of an agency (official) of internal affairs replacing an administrative penalty with another administrative penalty may be appealed to the superior body (superior official) or to the district (city) court, the decision of which shall be final;

d) An order of an agency (official) of internal affairs on the imposition of a surcharge may be appealed to a superior body (superior official) or to the district (city) court, the decision of which shall be final;

e) An order of an official of a Military Traffic Inspectorate imposing an administrative penalty in the form of a warning, and which is registered without preparing a report at the scene of the administrative offence may be appealed to a superior body (superior official).

It is noteworthy that according to Article 31 of the Constitution of Georgia, every person has the right to apply to a court to defend his/her rights. Based on the analysis of Article 272 of the Administrative Offences Code, it is clear that it contains deficiencies in the protection of a person's procedural rights, since it limits the ability to appeal to a higher authority when appealing a decision and sets out only a list of the types of decisions which may be appealed.

In this regard the decision №2 / 7/779 of 19 October 2018 of the Constitutional Court of Georgia should be taken into account. Relevant norms of the Constitution of Georgia make it clear that the right to a fair trial encompasses the possibility of protection of one's right through institutional guarantees of justice recognized by the Constitution of Georgia and through the common court system. This also implies appealing the decisions of the administrative body in the common court system and appealing the decisions of the court in the higher instance of that very system. Therefore, it is clear that the impugned words of Article 272 of the Administrative Offences Code of Georgia, which declare the decision of the first instance as the ultimate one, at the same time limit the person's procedural right protected by the Constitution of Georgia.

By the same decision of the Constitutional Court of Georgia, the following sections have been invalidated: The words of the first sentence of subparagraph (a) of paragraph 1 of the above-mentioned Article – "Whose decision is final"; The words of the second sentence - "Whose decision is final"; The words of the subparagraph (c) of the same paragraph - "Whose decision is final"; And the words of subparagraph (d) - "Whose decision is final".

Therefore, it is necessary to make such fundamental changes to the Administrative Offences Code, that primarily preclude the one-time appeal of the resolutions adopted on case of administrative offences and that clearly establish the possibility of appealing in subsequent instances for the purpose of properly protecting a person's procedural rights, and completely eliminating the risks of error or of resolving the case incorrectly. At the same time, the same amendments should make it possible to appeal against all decisions / resolutions made in cases of administrative offences and not just against some of them, as stated in the current edition.

4. Preconditions for the Examination of Administrative Appeal, Admissibility of Appeal

According to the second part of Article 272 of the Administrative Offences Code of Georgia, an appeal shall be filed with the agency (official) that issued the order in the administrative case, unless otherwise provided for by the legislation of Georgia. Within three days, the appeal, along with the case files, shall be sent to the body (official) that is addressed in the appeal and that is authorized under this article to hear the appeal.

It is advisable to refine this procedure and to take the experience of Germany into account when making appropriate changes. Namely, according to the Administrative Offences Act, an appeal is made to the administrative body issuing the resolution, irrespective of whether the issuance of the act was within the jurisdiction of that administrative body. If the appeal was filed with another administrative body, it shall become effective only after it has been transmitted to the body authorized for its consideration, that is mainly the responsibility of the state agencies. However, it should be borne in mind that the risk of extending the time limit for filing an appeal increases, if that appeal is filed with administrative body that does not have the appropriate jurisdiction over that appeal. If the time limit for filing an appeal expires even at the time when it is submitted to the competent authority, it must be considered that the statute of limitation for that appeal has expired. In this case, the defect can be eliminated by granting a procedural date recovery status, which is only allowed when an appeal is lodged with an unauthorized body without the person's fault.[3]

In order to quickly prosecute the cases of administrative offences and protect the interests of citizens, it is appropriate to establish that an administrative appeal is lodged with that administrative authority, which issued a resolution on the offence. When submitting an appeal to an unauthorized body, it should be obliged by the Code that on its own initiative within three days an appeal is sent to the competent authority for a review of the case.

For the admissibility of the appeal the name of the request specified in the document is not essential and it is not obligatory to refer to it as an appeal – in practice it is often referred as rescission. It is sufficient to establish the applicant's will that he wishes to file an appeal against the resolution and by that he wants to get it revised and / or cancelled. An appeal is better to be substantiated, however, its complete legal justification is not required either. [4]

Appeal of the resolution restores the proceeding of case of administrative offences to the initial stage before the issuance of resolution. At that time, the competent authority should also check whether the form and timeframe for filing an appeal is respected. [5] If it is found that the form and time limit for filing an appeal have been violated, the proceedings should not commence, since an appeal does not meet the admissibility requirements. In such case the ruling imposing an administrative penalty shall not

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3 *Bohnert J., Bülte J.,* Ordnungswidrigkeitenrecht. 5. Auflage, München, 2016, 116.

4 Ibid, 117.

5 Administrative Offences Act of Germany, 19/02/1987, article 69, <https://www.gesetze-im-internet.de/englisch_owig/> [03/11/2019].

be canceled and shall remain in force. [6] However it should be noted that in such case the interested party has the opportunity to appeal the decision to the court.[7]

5. Grounds for the Initiation of Proceedings Related to an Administrative Appeal

There are certain peculiarities in the commencement of proceedings related to an administrative appeal, as it is obligatory to refer to the request recorded in the appeal developed by the party in compliance with the appropriate form, with respect to a particular resolution. Proceedings related to the appeal are initiated by the interested party, on the basis of the proper filing of an administrative appeal.

5. 1.The Form of an Appeal

Given that the applicable Administrative Offences Code does not establish the form and details of an appeal, it is advisable to share the standard set by the General Administrative Code of Georgia and its proper form should be prescribed by reference to certain mandatory requirements. Accordingly, the content of the administrative appeal under Article 181 of the same Code should be taken into account, in accordance with the peculiarities of the proceeding of case of administrative offences. According to that article, an administrative complaint must include:

- The name of the administrative body to which the administrative complaint is filed;
- The identity and address of the person filing the administrative complaint;
- The name of the administrative body whose administrative act or action is appealed;
- The name of the appealed administrative act;
- The claim;
- The circumstances on which the claim is based;
- A list of documents attached to the administrative complaint, if any.

With regards to compiling an written administrative appeal it is noteworthy that over time new technical tools are constantly evolving and certain documents can be compiled in various forms. Earlier appeals were allowed via telegram and fax, however nowadays, when electronic case proceeding systems are introduced, appeal may also be filed electronically. If a person wishes to appeal the resolution by telephone, naturally, written form cannot be maintained, but the notification received by telephone may be made in writing by the state authority and it may thus respond to the obligatory written form for filing a complaint. [8]

Therefore, it is advisable for the new Administrative Offences Code to consider the possibility of filing an appeal both in material and in a properly protected electronic forms.

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6 Administrative Offences Act of Germany, article 69; <https://www.gesetze-im-internet.de/englisch_owig/>, 19/02/1987, [03/11/2019].

7 Ibid, article 62

8 *Bohnert J., Bülte J.,* Ordnungswidrigkeitenrecht. 5. Auflage. 2016, 117.

5.2.Term for Submitting an Appeal

The Georgian legislation is not consistent in defining the time limits for appealing acts issued by the state. According to the General Administrative Code of Georgia, an administrative complaint must be filed within one month after publication or becoming officially familiar with the administrative act, unless otherwise provided for by law. [9] The Administrative Offences Code of Georgia sets a 10-day term for appealing the decision. This reservation is likely to derive from the peculiarities of expedited review of administrative offences cases, but the limitation of these terms should be aimed at safeguarding the best interests of citizens by administrative authorities and not limiting their rights.

It is noteworthy that in its decision №1 / 3/1263 from 18 April 2019 the Constitutional Court of Georgia ruled as unconstitutional the normative content of article 273 of the Administrative Offences Code, according to which the court's ruling on an administrative offence case can be appealed within 10 days of its issuance. This unconstitutional norm has been invalidated since July 1, 2019.

The Constitutional Court has ruled the impugned norm unconstitutional on the ground that, since the term of appeal is counted from the date of the resolution, in case of failure to deliver the reasoned resolution on time, person's ability to file a reasoned appeal is disproportionately limited. Herewith if the impugned norm is immediately invalidated, there will be no time limit for appealing a court resolution. Therefore the party will have the opportunity to appeal the court's resolution at any time.[10]

The timeframe for appealing a court decision on administrative offences is of great importance, because this very expiration is often associated with important issues such as: the entry into force of a court resolution, its legal consequences and so on. If the disputed norm is immediately invalidated, a significant legitimate interest may be damaged. [11]

As a result of the issues discussed in this chapter, it is clear that it is necessary for the Administrative Offences Code to extend the term for appealing the decision on the case. If in the process of reviewing the new term for appealing administrative-legal resolutions, standard set by the General Administrative Code – the opportunity to appeal an administrative act within one month, consequent from the purposes of Administrative Offences Code,

Will be considered as an extended period, then it is possible to consider the German experience as discussed below.

In particular, under German law an appeal against a resolution on an administrative offence can be filed within two weeks, its counting commences on the day of delivery of the resolution to the offender or his representative. [12] This means that the expiry date shall commence from the moment of ending of the day when the resolution was delivered and ends after two weeks by the end of the day of delivery. For example, if a resolution is delivered to the person on Wednesday, its term of appeal expires in two weeks,

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9 General Administrative Code of Georgia, 25/06/1999, article 180. <https://matsne.gov.ge/ka/document/view/16270?publication=33> [03/11/2019].

10 The decision of the Constitutional Court on the case Irakli Khvedelidze v. Parliament of Georgia, <https://matsne.gov.ge/ka/document/view/4544474?publication=0#DOCUMENT:1;> [03/11/2019].

11 Ibid.

12 Administrative Offences Act of Germany, article 50.

with the end of Wednesday. If Wednesday is an official holiday, the deadline expires the following day – Thursday. A similar rule applies on Saturdays and Sundays.[13]

5.3. The Force of an Appeal Against the Legal Effects of a Resolution

When appealing a resolution, the Administrative Offences Code sets a different procedure for its enforcement, given the nature of the resolution and the administrative penalty imposed. According to the article 272 of the Code, if an order issued in an administrative case is appealed to a court, the order issued by the court shall be enforced upon its issuance. Appealing the order shall not suspend its enforcement unless otherwise determined by this Code and other legislative acts of Georgia.

Regarding the operation of the resolution, different approaches are used when different administrative penalties are applied. Namely, according to article 275 of the Code, if an appeal is filed within the defined time limit, it shall suspend the enforcement of orders that impose an administrative penalty, or that replace an administrative penalty with another administrative penalty, or that impose a surcharge, or orders that are issued after hearing the case of an administrative offence at the scene according to the procedure defined by Article 2341 of this Code, except for the orders that impose the penalties provided for in Articles 26 and 32 of this Code, or except for the cases described in paragraph 11 of this article, or except for cases where a fine is imposed and collected from a person at the scene of an administrative offence.

However, it should be borne in mind that appealing the orders issued in the administrative cases provided for in Articles 208 (Administrative cases falling within the jurisdiction of a district (city) court) and 208^2 (Hearing cases of administrative offences provided for by the Organic Law of Georgia on Political Associations of Citizens) of this Code shall not suspend the enforcement of orders that impose an administrative penalty, that replace an administrative penalty with another administrative penalty or that impose a surcharge. If the order is appealed and the appeal is granted, the amount of money paid by the person in the form of the fine and surcharge, also the compensation paid by him/her under this Code for material damages, shall be refunded to the person.

Consequently, it is clear that the current Code provides for a rather vague and complex mechanism for the enforcement of resolutions on administrative offences. Whereas the above-mentioned articles only refer to resolutions of elucidated content, the Code does not consider it admissible to suspend their validity when appealing against all kinds of resolutions.

The Administrative Offences Act of Germany provides us with a different regulation in this regard. It does not mention only a few types of resolutions whose appeal suspends their validity. According to the article 67 of this Act, an appeal suspends the legal force and prevents the entry into force of the resolution on penalties. Accordingly, if the final decision on an administrative offence case is appealed, Its action will stop regardless of its kind or content.

It is also desirable to change the results of appealing the resolution in the Administrative Offences Code of Georgia. In addition, the suspensory effect of the appeal must be taken into account and its ac-

[13] *Bohnert J., Bülte J.,* Ordnungswidrigkeitenrecht. 5. Auflage, München, 2016, 117.

tion should preferably be suspended by appealing the resolution. However, in view of the peculiarities of the resolution on case of administrative offences, it is desirable to define such exceptional cases, the existence of which will not stop its operation. For example, when an offender is imposed an administrative penalty that involves the suspension or deprivation of a special right granted to a person, the fine imposed may not be suspended.

5.4. Withdrawal of Appeal

According to article 67 of Administrative Offences Act of Germany the author of the complaint is entitled to reject the recorded claim and to withdraw the appeal after appealing the resolution. According to the second paragraph of the same article, partial withdrawal is also possible. At this time, a person has a right to request that some of the claims made in his appeal be dismissed without examination. The withdrawal of an appeal requires the same form as an appeal itself, it is not subject to cancellation and it is admissible until a final decision is made on the case.

Withdrawal of appeal may be preferable for the person during the main session, in order to avoid aggravating the decision made by the administrative body (Reformatio in peius).[14]

Reformatio in peius means change for the worse[15] - that is the actual deterioration of the claimant's situation. [16] Reformatio in peius is permitted in Georgia unless permitted by special law. In other cases, the superior administrative authority shall consider an administrative appeal only within the scope of the request.[17]

The existence of such possibility is necessary not only for the initiation of an administrative appeal, but also for the commencement of a simple administrative proceedings, at the later stage of submitting the application. The Administrative Offences Code of Georgia does not envisage these opportunities, but no practice it is often the case that the applicant no longer wishes to pursue proceedings on his request and to impose administrative penalty on a person, and with regard to the fact stated In the original statement (on the basis of which the proceeding commenced) authorized body reviewing the case is forced to investigate and examine all the facts of the case and to impose administrative responsibility on the offender in case of unlawful action contrary to the wishes of the initiator.

5.5. The Term of Proceeding

In accordance with the applicable Administrative Offences Code of Georgia, an appeal on the resolution on the case of administrative offence shall be heard by the authorized body (official) or a district (city) court within 30 days after its filing. [18]

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14 *Bohnert J., Bülte J.,* Ordnungswidrigkeitenrecht. 5. Auflage, München, 2016, 118.
15 *Jaroschek M.,* Die reformatio in peius im Widerspruchsverfahren, JA, 1997, 668.
16 *Kingreen T.,* Zur Zulässigkeit der reformatio in peius im Prüfungsrecht, DÖV, 2003, 2.
17 *Khoperia R.,* Admissibility of REFORMATIO IN PEIUS principle in German and Georgian Exam Laws, 2013/1, 66 (in Georgia).
18 First part of Article 276, Administrative Offences Code of Georgia.

Given that when examining an appeal, the superior administrative authority / court only examines the lawfulness of the decision taken by the person authorized to conduct simple cases of administrative offence, on the basis of the evidence already obtained by this person, it should be possible to reduce the 30-day time limit set for the examination of an appeal, and it must be possible to establish its exceptional nature for its full use. In particular, it is desirable that the relevant norm of the Code instruct the competent authority to consider an appeal on the case of administrative offence within 20 (twenty) calendar days. Where necessary, for a thorough examination of the circumstances of the case, extensions may be allowed for a single period of time, for an additional 10 (ten) calendar days, based on the reasoned decision of the authority examining the case.

5.6. The Peculiarity of the Results of the Examination of Administrative Appeal

Examination of an appeal regarding an administrative offence gives several possibilities to the competent body handling the case: First, to verify the decision made on its behalf it may conduct additional inquiry into unlawful conduct. If the examining authority shares the position stated in the resolution, it will it in force, but if upon examination of the matter it concludes that the resolution was adopted in breach of the requirements of the law, the resolution can be declared void.

In case of annulment of the resolution imposing administrative penalty, the body examining the appeal returns the process of proceeding to the pre-resolution stage, although it is necessary to take into account the time limit for imposing administrative responsibility. [19]After the revocation of the resolution the authorized body may re-impose administrative fine on the person with the new resolution with original content, or terminate the case for lack of prosecution perquisites and due to the absence of grounds for imposition of a fine. In case of re-imposition of a fine under the new resolution the offender can defend himself by re-filing an appeal.[20]

6. The Decision with Regard to Examination of an Appeal

According to Administrative Offences Code of Georgia, the proceeding of case of administrative offences related to the appeal is completed by the competent authority making a decision on the case. Unlike the simple proceeding of case of administrative offence, one of the following decisions with differing consequences is made in relation to the proceeding related to an appeal:

a) To leave the resolution unchanged and to dismiss an appeal or a protest;
b) To revoke the resolution and resend the case for renewed examination;
c) To annul the resolution and terminate the case;
d) To revoke the resolution adopted during examination at the scene of the offence and exemption of a person from administrative penalty, according to the rule established by article 234[1] of Administrative Offences Code.

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[19] Oberlandersgericht Stuttgart, Monatsschrift Für Deutsches Recht, 1985, 521.
[20] *Bohnert J., Bülte J.,* Ordnungswidrigkeitenrecht. 5. Auflage, München, 2016, 117.

e) To change the size of the penalty for an administrative offence within the limits provided by the Georgian legislation.

6.1. Grounds for Cancellation of the Resolution

The current Administrative Offences Code of Georgia does not specify the preconditions for cancellation of the resolution, except as provided in second part of article 278, according to which If it is established that the order was issued by an agency (official) that was not authorized to decide the case, then the order shall be reversed and the case shall be referred to the authorized body (official) for rehearing. In view of the above, it is appropriate to discuss the grounds for the cancellation of the resolution.

A resolution may be cancelled if it is defective:

1) In procedural terms; 2) With regard to the form of publication; 3) In content.[21]

6.1.1. Procedural Defect

A resolution is illegal if there is a procedural defect on which the resolution about the administrative penalty is based, and which would not have been published had the error not been made in the course of the proceedings. Procedural defect mainly exists when the resolution was made on the basis of the evidence obtained by breaching the law or it was adopted on the basis of inadmissible evidence. Prior to the issuance of a resolution and handing it over to the offender, the competent authority examining the case can correct a procedural defect during proceedings. It may replace illegal evidence with relevant legal evidence and issue an appropriate resolution. If the procedural defect cannot be eliminated, it is inadmissible to issue a resolution establishing illegal consequences.

It should be borne in mind that the basis for improving the procedural defect does not lie in filing an appeal with such demand by the interested party. This shall be carried out on the initiative of the competent authority itself.

If the examining authority does not remove the procedural defect and the interested party appeals the resolution, the competent authority shall invalidate it by indicating an error, or without such indication, since a fundamental error was made in the course of the proceedings, which influenced the final decision on the administrative offence case.

6.1.2. The Defect with Regard to the Form of Publication

There is a defect with the regard form of publication, when a resolution is issued in violation of a written form and / or it is impossible to identify its publishing authority. Error correction is only allowed when there is a writing error but it must not be fundamental. Given that the current Administrative Offences Code does not provide for the possibility for the issuing authority to correct technical and ac-

[21] *Bohnert J., Bülte J.,* Ordnungswidrigkeitenrecht. 5. Auflage, München, 2016, 111.

counting errors, the relevant provision in the new Code needs to be taken into account. This kind of inaccuracy in German law is called the substantive defect.

6.1.3. Defect in Content

Unlike a procedural defect, a defect content is not a ground for invalidating a resolution, as it does not impede the determination of the legal outcome. It is widely believed that some inaccuracies in the text of the document and / or incorrect reference to other less important data related to the person do not cause a great harm, since the specific wrongdoing and the identity of the perpetrator are unambiguously identifiable. [22] A similar rule applies to an inaccurate formulation of procedural action, when, in spite of error, it is obvious and allows for correct interpretation.[23]

Unlike minor inaccuracies, the grounds for invalidating the resolution are the fundamental errors made during the issuance of the legal act, which are evident in the reasonable assessment of all existing factual circumstances.[24]

Given that in some respects use of the preconditions for the invalidity of an administrative legal act, specified for the purposes of general administrative law is also permissible in law of administrative offences, for finding the resolutions illegal it is advisable[25] for the new Administrative Offences Code to envisage the following grounds for revocation of the resolution: Provisions defining the invalidity of an administrative legal act and provisions defining the invalidity of invalid administrative acts, that are given in articles 60 and 60^1 of the General Administrative Code of Georgia.

Illegal and inappropriate decisions must be separated from one another, as they are in General Administrative Code. It should be noted that by proceeding of an appeal the administrative body checks only the appropriateness and the court only checks the legality of the act.[26]

7. The Peculiarity of the Proceeding of Case of Administrative Offences in the Court with Regard to an Appeal

When a person disagrees with the decision of the relevant authority on administrative offences case, he is entitled to use several remedies for protection of his rights. Under current Georgian law, a person may file a lawsuit in court and demand that action be taken or refrained from acting. He is also entitled to lodge an appeal with both the administrative authority and the court, which in this case examines the appeal in the manner prescribed by the Administrative Offences Code.

While examining an appeal, the court does not verify whether it was permissible to issue the resolution on penalty in the particular case and makes an independent decision on the case. It defines a particular procedural action and it identifies the offender responsible. Moreover, the court does not provide

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22 *Kurz*, Karlsruher Kommentar zum OWiG, 2006, § 6, 49.
23 *Rebmann K., Roth W., Herrmann S.*, Gesetz über Ordnungswidrigkeiten, 2014, § 6, 25.
24 Maurer Allgemeines Verwaltungsrecht, 18. Aufl., 2011 § 10, 21.
25 *Göhler*, OWiG, Kommentar, 16. Aufl., 2012§ 66, 57.
26 *Turava P., Tskepladze N.,* General Administrative Law Handbook, Tbilisi, 2010, 132 (in Georgia).

a legal assessment of the action, which was implemented within the framework of a decision adopted by an administrative body imposing administrative penalties. The court makes a decision based on internal convictions, even If it reaches the same decision that was made at the initial hearing by the relevant authority. [27]

It is noteworthy that when dealing with cases of administrative offences, the Chamber of Administrative Cases of the Supreme Court of Georgia made an important statement on December 22, 2015, about the internal conviction of the court. As the court stated in the case #BS-497-490 (K-15), the court evaluates the evidence in its internal conviction, which must be based on a thorough, complete and objective examination of the evidence. It then draws a conclusion on the existence or absence of circumstances relevant to the case. The decision should reflect the considerations that underlie the court's internal conviction.[28]

During the proceeding of case of administrative offences the court checks whether the resolution has been issued in accordance with the requirements of the law. Therefore the court dealing with administrative cases verifies the decision of the administrative body at the time of issuance of the resolution that was based on factual and legal situation. At the same time, it is also checked how the offender's action can be assessed within the court proceedings. It should be noted that the court makes an independent decision imposing an administrative penalty. If the court reaches the same decision as the administrative body, it will not approve the resolution nor will it refuse to grant the complaint. The court decides on the imposition of a fine without referring to the appealed decision. [29]

In order to relieve the courts, along with ensuring proper protection of human rights, appropriate mechanisms for appealing the resolution should clearly be stated in the Administrative Offences Code of Georgia. As noted in this chapter, it is also necessary the Code to also state the right to appeal to a higher authority for a decision on an offence, and the right to appeal later to the court.

8. Conclusion

The study revealed procedural shortcomings in appealing a resolution on administrative offence provided by applicable law. First of all, attention has been paid to the fact that the current Administrative Offences Code of Georgia does not define nor notion of the interested person and hence nor his rights. Having said that, it was proposed to incorporate the notion of an interested person in the new Code. Also the validity of an appeal and the ambiguous issues related to the enforcement of the resolution are discussed. Ways to correct them are given on the example of Germany. In order to fully realize the rights of citizens, the study also identified the need for new terms and a necessity for the applicant to introduce a appeal withdrawal mechanism, that are essential for the examination of the appeal and for appealing the administrative resolution. The article discusses the basics of cancellation of a resolution in a new way

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27 *Bohnert J., Bülte J.,* Ordnungswidrigkeitenrecht, 5. Auflage, München, 2016, 114.

28 Uniform practice of the Supreme Court of Georgia on administrative cases, second half of year 2014 - 2015, 83.

29 *Bohnert J., Bülte J.,* Ordnungswidrigkeitenrecht, 5. Auflage, München, 2016, 115.

and in detail. In particular, the procedural defect and the defect with regard to the form of publication are discussed. The study also suggests that provisions defining the invalidity of an administrative legal act and provisions defining the invalidity of invalid administrative acts, that are given is articles 60 and 60^1 of the General Administrative Code of Georgia, should also be reflected in the new Administrative Offences Code of Georgia.

It is proposed to radically change the approach in the Administrative Offences Code in relation to the appeal procedure, since all decisions / resolutions in administrative law cases should be subjected to appeal and not just some of them, as it is envisaged by the current Code.

Taking into consideration the ways of correcting the existing shortcomings suggested by the research and the relevant suggestions in the Administrative Offences Code, the proceeding of administrative offences with regard to an appeal will be significantly improved. This is both an appropriate guarantee of the protection of human rights and freedoms and an additional mechanism of control of administrative authorities by the state. In case of appeal against the resolution adopted by the authorized person in the case of administrative offence, the superior administrative authority and the court verify the legality of the decision at the stage of examination of an appeal. In this process all the measures taken by body examining the case are checked, including the extent to which the terms of the case have been complied with, whether all the evidence in the case has properly been examined, whether the rights of the person under administrative liability were protected, etc. It should be noted that the development of mechanisms proposed by the article will substantially reduce the risk of unlawful decision-making by an authorized body (official) dealing with an administrative offence case, as he will be aware of a number of special powers and measures specified in the Administrative Offences Code. For example, if the legislation takes into account the criteria for deficiencies of the resolution, set out in this work (procedural defect, defect with the regard form of publication, defect in content), a higher standard of resolution on administrative offence cases will be established.

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