

საია ადმინისტრაციული
სამართალდარღვევის საქმეებში არსებულ
მტკიცების ტვირთის სტანდარტს
საკონსტიტუციო სასამართლოში ასაჩივრებს

GYLA appeals to the Constitutional Court existing standard on the burden of proof in cases of administrative offenses

GYLA will file a new lawsuit on behalf of Konstantine Chkheidze in the Constitutional Court, requesting that the existing standard on the burden of proof in cases of administrative offenses be declared unconstitutional. GYLA has been conducting strategic litigation for many years to eliminate unjustified interference in human rights using the Code of Administrative Offenses. So far, the GYLA has submitted 12 lawsuits to the Constitutional Court demanding that the various articles of the Code of Administrative Offenses be declared unconstitutional, three of which have been successfully completed and the rest are under consideration.

This time, GYLA, in its constitutional claim, requests that the first part of the Article 17 of the Administrative Procedure Code and the first part of Article 102 of the Civil Procedure Code be declared unconstitutional. These norms regulate the issue of distribution of the burden of proof in administrative and civil disputes between the

plaintiff and the defendant. However, because the Code of Administrative Offenses does not regulate who bears the onus of proof in the case of administrative offenses, the common courts apply the appealed norms of the Code of Administrative Procedure and Civil Procedure.

GYLA considers that the application of the first part of Article 17 of the Administrative Procedure Code and the first part of Article 102 of the Civil Procedure Code in administrative violation cases contradicts Article 31, Paragraph 6 of the Constitution of Georgia, according to which "no one is obliged to prove his/her innocence. The burden of proof shall rest with the prosecution."

By applying the norms appealed by the common courts, an administrative offender shall be liable to present evidence and prove that he/she has not committed an administrative offense. Some offenses, for example, under Articles 166 (petty hooliganism) and 173 (disobedience to a lawful order or demand of a law enforcement officer) of the Code of Administrative Offenses, is considered equivalent to criminal charges. In the event of committing such an act, a person may be sentenced to a high fine or up to 15 days in prison. Accordingly, a person held administratively liable shall have the right to remain silent and the burden of proof should not be borne by him. Thus, the current practice shows that, in contrast to Article 31 (6) of the Constitution of Georgia, the common courts transfer the burden of proof from the "prosecutor" to the "accused".

GYLA hopes that the lawsuit will help to end the use of the Code of Administrative Offenses as a tool of the police regime and to reform the existing legislation.

Georgian Young Lawyers' Association is carrying out this work with the support of USAID / PROLoG.