

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA's Statement on the Case of Lasha Chkhartishvili's Administrative Offence

GYLA provided legal aid to Lasha Chkhartishvili, who was arrested by the police on January 10, 2014 in the course of the rally in front of the City Hall on January 10, 2014. The protocol of violation was drafted as per Article 166 and 173 of the Administrative Code of Offences (petty hooliganism and disobedience to the lawful order of the law enforcement officer). As police employees have reported, by sitting on the stairs Chkhartishvili was blocking the entrance of the City Hall. Further, law enforcement

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officers alleged that they urged him to terminate such conduct, though he disobeyed.

On January 11, Tbilisi City Court found L.Chkhartishvili guilty as per Article 173 of the Administrative Code of Offences and fined him Gel 600. In its decision the judge explained that though the entrance was not blocked by the moment of Chkhartishvili's detention, such risk existed and police was obliged to implement the relevant measures.

It should be noted that for the past years, Article 173 of the Administrative Code of Offences was used as a tool to restrict freedom assembly and expression. On the one hand lack of effective procedural tools in the Administrative Code of Offences for exercise of the right to defence and on the other hand violation of the fair trial standards by the court granted pro-forma nature to the trial and turned Article 173 of the Code as a mechanism for punishment of the participants of the peaceful rallies. Chkhartishvili's case may be treated as continuation of such practice.

The court decision and applied sanction is unsubstantiated and distanced from the international human rights standards. The court determined the risk of blocking the entrance hypothetically, in absence of the immediate risk of achieving such outcome. The footages [released by mass media](#) illustrate that the entrance of the city hall is not blocked, nor is there any such real risk. Moreover, the recordings also demonstrate that Chkhartishvili has chosen the form of "sitting protest", which is not violation of law and therefore policemens' instruction to terminate such conduct cannot be considered as lawful demand, while Georgian legislation does not envisage obedience to the illegal requirements of law enforcement officers. Pro-forma approach of the court on the case may stimulate termination of undesirable actions by the policemen under the motive of the theoretic risk. Consequently, it may increase the instances of violating rights to freedom of assembly and expression.

Finally, we would like to highlight once again GYLA's negative position to the amendments introduced to the Code of Administrative Offences on November 27, 2013 by which the amount of fine has increased up to GEL 2000 for the offence envisaged as per Article 173 of the Code. On July 24, 2013 [GYLA submitted legal opinion to the Parliament](#), where it mentioned that in view of the existing reality aggravation of the sanction on freedom of assembly and manifestation might have "chilling effect". Nevertheless, the amount of penalty has increased and it is especially inadmissible when the Administrative Code of Offences fails to ensure

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minimal standards of legal defence. Moreover, it is true that applicable legislative regulations and court practice is defective and prejudices realization of the Constitution rights to freedom of assembly and expression.