

## Rule 9 Communication



### **Communication by the Council of Europe Commissioner for Human Rights**

under Rule 9.4 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

in the case of

**Makarashvili and Others v. Georgia**  
(application no. 23158/20, judgment of 1 September 2022)

**and 3 repetitive cases**

## Introduction

1. This communication by the Council of Europe Commissioner for Human Rights (hereinafter: “the Commissioner”) is addressed to the Committee of Ministers of the Council of Europe, in accordance with Rule 9.4 of the Rules of the Committee of Ministers,<sup>1</sup> in the context of the supervision of the execution of the judgments of the European Court of Human Rights (hereinafter: the Court) in the *Makarashvili and Others v Georgia* group of cases (hereinafter: *Makarashvili*):
    - Three cases in this group concern violations of the applicants’ rights to freedom of peaceful assembly, as well as a violation of one applicant’s right to a fair trial, on account of their administrative convictions for disorderly conduct and disobeying police orders during demonstrations in 2015 and in 2019 (violation of Article 11, read in the light of Article 10, in the *Peradze and Others* case and *Chkhartishvili* case, and a violation of Articles 6 and 11 in the *Makarashvili and Others* case);
    - The fourth case concerns violations of the applicants’ rights to liberty and security on account of their arbitrary administrative arrest and detention for about twelve hours in relation to alleged disobedience of a lawful police order in 2016 (violation of Article 5 in the *Dzerkorashvili and Others* case).
  2. According to his mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.<sup>2</sup>
  3. The present communication aims to assist the Committee of Ministers in its examination of the execution of the above cases, in particular in the light of violations of Article 11. It is primarily based on the findings and recommendation of the Commissioner following his visit to Georgia from 21 to 23 January 2025.<sup>3 4</sup>
  4. Section I of this communication contains an overview of the Commissioner’s observations on freedom of assembly in Georgia. Section II provides the Commissioner’s observations regarding recent amendments to the Code of Administrative Offences. These sections are followed by the Commissioner’s conclusions.
- I. Overview of the Commissioner’s observations on the freedom of peaceful assembly in Georgia**
5. The Commissioner visited Georgia following the mass protests against the Prime Minister’s announcement on 28 November 2024 to postpone the country’s EU membership bid. One of the key objectives of the visit was to look into the restrictions to the rights to freedom of peaceful assembly and media freedom in connection with the repression of protests in November and December 2024, and the adoption of new legislative and administrative limitations on freedom of assembly.
  6. The Commissioner notes that, from 28 November up to around 10 December, protesters and journalists covering the protests were subjected to a disturbing scale of violence by law enforcement officers and groups of unidentified, masked men, who allegedly acted with the authorisation, support or acquiescence of the authorities.

<sup>1</sup> [Rules of the Committee of Ministers](#) for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 and amended on 18 January 2017).

<sup>2</sup> [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

<sup>3</sup> [Memorandum](#) of the Commissioner on the human rights situation in Georgia, 10 March 2025.

<sup>4</sup> See also Communication by the Council of Europe Commissioner for Human Rights in the case of *Tsintsabadze v. Georgia* (Application no. 35403/06, Judgment of 15 February 2011), CommDH(2025)26.

7. As regards restrictions on the right to freedom of peaceful assembly, the Commissioner notes that the Ministry of Internal Affairs decided to disperse the entire assembly, which was overwhelmingly peaceful, instead of taking individual and proportionate measures in response to violence by a small group of protesters.
8. The Commissioner also examined the use of the Code of Administrative Offences (CAO) in respect of peaceful protesters.<sup>5</sup> He was informed by the Georgian authorities that proceedings under the CAO were initiated against 415 protesters, none of whom remained in detention at the time of the Commissioner's visit. NGOs informed the Commissioner that, in most cases, courts imposed administrative sanctions – usually consisting of a fine, but sometimes consisting of administrative detention of up to 15 days – based on the testimony of police officers who, according to the detainees, were not present at the time of their arrest. The authorities further stated that 31 protesters were arrested on criminal charges, including for attacking a police officer (Article 353<sup>1</sup> of the Criminal Code), organising/participating in group violence (Article 225) and damaging property (Article 187). The Commissioner received a detailed list of 43 protesters arrested on criminal charges in November and December 2024.
9. Following his visit to Georgia, the Commissioner continued to receive reports, according to which the CAO is being used to stifle the right to freedom of peaceful assembly. Civil society indicate that, from November 2024 to 28 February 2025, they have documented 1,082 cases of use of administrative offences against protesters, including 486 cases where individuals were subject to administrative detention.<sup>6</sup> It was noted that some individuals were not arrested during the protests, but rather in the streets after the protest had ended, or during the following days near their residences.<sup>7</sup> The Public Defender also indicated that detention of peaceful protesters on the basis of the CAO continued in the following months.<sup>8</sup> Courts have systematically imposed high fines or up to 15 days of imprisonment for those detained under CAO.<sup>9</sup> The Commissioner notes consistent reports, according to which such decisions have predominantly relied on testimony from police officers, while disregarding evidence presented by the defence.<sup>10</sup> This demonstrates similar issues that were highlighted in the Makarashvili judgment regarding the burden of proof in administrative proceedings, including the acceptance of certain presumptions in respect of evidence by the police, as well as the overzealous use of administrative arrest.
10. It is to be recalled in this respect that the CAO was used extensively against peaceful protesters also in earlier protests that took place in April and May 2024. The use of administrative detention against participants of peaceful gatherings has already been highlighted in earlier reports by the Public Defender, including in his 2023 annual report.<sup>11</sup>
11. The Commissioner remains concerned about the frequent use of administrative charges, such as petty hooliganism (Article 166) and disobedience to lawful police orders (Article 173), against protesters. These legal provisions are vaguely worded and widely reported to be applied in a discretionary manner that enables arbitrary enforcement. Moreover, the Commissioner notes continuing reports around the lack of effective access to legal counsel or meaningful judicial oversight, as already highlighted in the Makarashvili judgment.<sup>12</sup>
12. The incompatibility of the CAO with international standards, as well as the Georgian constitutional order, has been highlighted on multiple occasions. The first decision of the Georgian Constitutional Court, declaring articles of the CAO to be incompatible with fair trial guarantees set down by the Constitution, was issued 20 years ago. In its Concluding observations on the fifth periodic report of Georgia under the International Covenant on Civil and Political Rights, the Human Rights Committee stressed “*the persisting protection gap in the Code of Administrative*

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<sup>5</sup> Ibid.

<sup>6</sup> OMCT, [Briefing Note: Torture and Ill-Treatment During Protests and Suppression of Political Dissent in Georgia in November-December 2024](#), 27 March 2025.

<sup>7</sup> [Statement by](#) Social Justice Center, 17 December 2024.

<sup>8</sup> Public Defender of Georgia, [statement](#) of 3 February and [statement](#) of 8 April 2025.

<sup>9</sup> [Report Human Rights Violations and Criminal Cases Against Pro-European Protesters in Georgia \(November 29 – January 19\)](#) prepared by "Georgia's European Orbit" and the Human Rights Centre of the University of Georgia.

<sup>10</sup> [Report Human Rights Violations and Criminal Cases Against Pro-European Protesters in Georgia \(November 29 – January 19\)](#) prepared by "Georgia's European Orbit" and the Human Rights Centre of the University of Georgia.

<sup>11</sup> Public Defender of Georgia, [The Situation in Human Rights and Freedoms in Georgia 2023](#).

<sup>12</sup> [Communication](#) by 6 UN Special Rapporteurs, 4 April 2025.

*Offences, including insufficient safeguards guaranteed to administrative detainees, the lack of clarity about the standards of proof, which often results in the burden of proof being borne by detainees, and the absence of the meaningful right to appeal detention decisions.”<sup>13</sup> It further underlined that administrative detainees are, in practice, not always afforded fundamental legal safeguards, including the right to promptly access legal counsel and to be brought before a judge in a timely manner, thereby putting them at higher risk of ill-treatment, both at the time of arrest and during detention. These observations are consistent with the findings of the Commissioner both during his mission to Georgia and through his subsequent engagement with stakeholders.*

13. The Commissioner is concerned that administrative sanctions are being used to discourage the exercise of the right to protest, thereby undermining the right to freedom of peaceful assembly. As highlighted in the Venice Commission/ODIHR Guidelines on Freedom of Peaceful Assembly, unnecessary or disproportionately harsh sanctions for behaviour during assemblies could inhibit the holding of such events and have a chilling effect that may prevent participants from attending.<sup>14</sup>

## **II. Commissioner’s observations on amendments to the Code of Administrative Offences**

14. Shortly after the November 2024 protests started, the government proposed additional amendments to the Assemblies Law and the CAO. The December 2024 amendments to the Assemblies Law introduced new prohibitions in the context of public assemblies and demonstrations, namely: (i) possession of pyrotechnic items; (ii) possession of a device with a laser beam or sharp light beam, the use of which may interfere with the activities of state officials or the proper functioning of technical equipment at their disposal; and (iii) covering one’s face with a mask or any other means. These prohibitions were incorporated into the offence of “violation of the rules for organising and holding an assembly or demonstration” under the CAO (Article 174<sup>1</sup>). The CAO was also amended to include new offences relating to the import, export, sale, purchase and use of pyrotechnic items in contravention of national regulations; illegal wearing of police uniforms or attributes and clothing/attributes similar to police uniforms or attributes. The offence of “failure to fulfil parental duties” was expanded to include new offences which, if committed by minor children, will lead to administrative liability for parents. The December 2024 amendments increased penalties for several administrative offences, including: violation of the rules for organising and holding an assembly or demonstration (Article 174<sup>1</sup> of the CAO); defacement of the appearance of a territory within the administrative boundaries of a municipality (Article 150 of the CAO); defacement of the appearance of Tbilisi city municipality (Article 150<sup>2</sup> of the CAO); and vandalism (Article 166<sup>2</sup> of the CAO). The December 2024 amendments also supplemented Article 244 of the CAO with the following additional grounds for administrative arrest: the necessity to present the offender to court in a timely manner to prevent delays in the case; to prevent evasion from participating in administrative proceedings; and to prevent the repeated commission of an administrative offence.
15. In February 2025, further amendments to the Law on Assemblies and Demonstrations, the CAO, as well as to the Criminal Code, were adopted. The newly-amended Article 32 of the CAO increased the maximum length of detention for administrative offences from 15 days up to 60 days. The amendments also increased the amount of the fine and the length of detention for several administrative offences, including petty hooliganism (amended Article 166 CAO), disobedience to the lawful order or demand of a law enforcement officer (amended Article 173 CAO), violation of the rules for organising and holding an assembly or demonstration, and other provisions of the Law on Assemblies and Manifestations (amended Article 174<sup>1</sup> CAO). Amendments to Article 35 of the CAO extend the list of aggravating circumstances, in particular to include not only where an individual has been penalised under the Code for a similar offence within a one-year period, but also where an individual has been given a verbal warning under the Code within the past year. The amendments to the CAO also stipulate that a police report shall be considered a legally-established fact by the courts, thereby shifting the burden of proof onto

<sup>13</sup> [Concluding observations](#) on the 5th periodic report of Georgia: Human Rights Committee, September 2022

<sup>14</sup> European Commission For Democracy Through Law (Venice Commission) OSCE Office For Democratic Institutions And Human Rights (OSCE/ODIHR) [Guidelines On Freedom Of Peaceful Assembly \(3rd Edition\)](#)., July 2020.

the protesters facing administrative charges to demonstrate they have not committed the administrative offence in question.

16. The Commissioner notes the increasingly-restrictive legal measures imposed on the right to freedom of peaceful assembly by the CAO, in particular the increased period of administrative detention and preventive detention, and increase of the administrative fines. These amendments appear to be inconsistent with Georgia's obligations under international human rights law, and are likely to have a chilling effect on the exercise of the rights to freedom of assembly and expression. The Venice Commission has criticised many of the amendments as incompatible with the principles of lawfulness, necessity and proportionality, stressing that it is essential that the authorities revisit them.<sup>15</sup> The Venice Commission has also underlined that the new, harsh custodial penalties, along with the substantial increase in fines for administrative offences, appear to be excessive. Similar observations were made by ODIHR.<sup>16</sup> In particular, the ODIHR Urgent Opinion noted that the February 2025 amendments appear to normalise the use of administrative detention, primarily in cases involving potential misbehaviour that may be committed in the context of exercising one's right to freedom of peaceful assembly.<sup>17</sup>
17. The Commissioner observes that the nature and severity of the penalties imposed are factors to be considered when assessing the proportionality of an interference with the right to freedom of assembly. In this context, the increase of maximum administrative detention from 15 to 60 days, which applies to ten administrative offences that are directly or indirectly linked to the exercise of the right to freedom of peaceful assembly, raises concerns of proportionality. Peaceful protesters should not, in principle, be rendered subject to the threat of deprivation of liberty.<sup>18</sup> In this context, the Commissioner refers to the judgment in one of the cases under the Makarashvili group (*Chkhartishvili v. Georgia*), which involved participants throwing objects (dried beans) at police officers and a refusal to follow a police order leading to such participants being sentenced to eight days' administrative detention, as per Article 173 CAO. The Court found in its judgment that the conduct in question was neither violent (it did not cause any injuries to the police officers and could hardly be aimed at causing physical harm to them), nor was it sufficiently serious to justify the imposition of a custodial term.<sup>19</sup>

### III. Conclusions

18. The Commissioner notes that the above-mentioned facts point to a persisting problem in Georgia regarding the arbitrary use of administrative detention by the police in the context of peaceful gatherings and protests, as well as the lack of substantial review of administrative detention cases by the domestic courts. This appears to be a systemic issue that merits the attention of the Committee of Ministers in the framework of the supervision of the Makarashvili judgment.
19. In order to address it, the Commissioner considers that the Georgian authorities should:
  - Undertake meaningful consultations with experts from civil society, the Office of the Public Defender of Georgia and international bodies (OSCE/ODIHR, the Venice Commission) and other relevant stakeholders regarding a comprehensive reform of the Code of Administrative Offences (CAO), to fully align it with international human rights standards, ensuring legal certainty, proportionality of sanctions, and adequate procedural safeguards for all individuals. In particular, authorities should reconsider and revise the legislative changes adopted since November 2024 that disproportionately restrict the right to peaceful

<sup>15</sup> Venice Commission, [Urgent Opinion on amendments to the Code of Administrative Offences and the Law on Assemblies and Demonstrations](#), March 2025.

<sup>16</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR) [Urgent Opinion](#) on the Amendments to the Law on Assemblies and Demonstrations, The Code of Administrative Offences and the Criminal Code of Georgia (As Adopted On 6 February 2025).

<sup>17</sup> Ibid, para 88.

<sup>18</sup> See [Akçöl and Göl v. Turkey](#), Application nos. 28495/06 and 28516/06, Judgment of 17 May 2011, para 43.

<sup>19</sup> [Chkhartishvili v. Georgia](#), Application no. 31349/20, Judgment of 11 May 2023, para 60.

assembly through expanding administrative offences and custodial sanctions for assembly-related conduct, particularly those permitting up to 60 days of administrative detention.

- Ensure individualised, evidence-based justification for any deprivation of liberty under the CAO, with a presumption in favour of non-custodial measures.
- Guarantee that individuals facing administrative charges have effective access to legal counsel from the outset, the right to present evidence and witnesses, and timely, independent judicial review, in accordance with Article 6 of the European Convention on Human Rights.