

# THE CODE OF ADMINISTRATIVE COURT PROCEDURES OF GEORGIA

## CHAPTER 1 GENERAL PROVISIONS

### *Art. 1. The area of application of the Code*

1. This Code defines the procedural rules for the hearing and resolution of administrative cases by General Courts of Georgia.
2. The provisions of the Civil Procedure Code are applied in administrative proceedings, if not otherwise prescribed by this Code.

### *Art. 2. Administrative cases considered by courts*

1. The disputes related to those legal relations, which are based upon administrative legislation, are considered in accordance with this Code.
2. An administrative dispute may have as its object
  - a) the legality of a judicial administrative acts
  - b) the enforcement of a contract concluded by an administrative agency
  - c) the obligation to pay compensation or commit other action or to issue an judicial administrative act.

### *Art. 3. The principle of disposition*

The parties determine the beginning, object and termination of a proceeding as laid down in Art. 3 CPC, but in the case of amicable agreement, waiver or recognition the administrative party may only proceed, if this is not against the pertinent law.

### *Art. 4. Concurrence and investigation of the case by the court*

The parties have to bring in the factual information and offer proofs as laid down in Art. 4 CPC, but the Court is free to add further factual information and seek additional proof.

## CHAPTER 2 JURISDICTION

### *Art. 5. The administrative cases under the jurisdiction of raion (city) courts*

The administrative cases, which are subject to the consideration by a court, are considered by a raion (city) court, except for the cases under Article 6 of this Law.

### *Art. 6. The administrative cases under the jurisdiction of olqi courts*

Olqi courts by first instance consider the lawsuits pertaining to:

- (a) The legality of the judicial administrative acts adopted by the President of Georgia or the regional divisions of the central government;
- (b) The legality of the judicial administrative acts adopted by supreme governmental organs of Georgia, supreme legislative and executive organs of Adjara and Abchasia autonomous republics and by the representative of the President of Georgia in the regions
- (c) The legality of the judicial administrative acts adopted by the Council

(Sakrebulo) or the Mayor of the cities Tbilissi, Kutaisi, Rustawi, Poti, Batumi and Sachumi.a raion, as well as by the regional administrator (Gamgebeli);central agencies of the Executive;

- (d) The issuance, refusal to issue and deprivation of a license.

### **CHAPTER 3**

#### **IMPARTIALITY; RECUSAL**

##### ***Art. 7. (Art. 29 CPC) Rule against bias***

A judge is excluded from hearing a case if he previously participated in an administrative proceeding relating to the same case.

***Art. 8. The application for recusal and its consideration***

1. The application for recusal suspends the consideration of a case by a court until the application is reviewed.
2. The judge, who was the subject of the application for recusal, shall recuse himself.
3. The application for recusal will be considered by other judge of the raion (city) court or the panel, which the recused judge is not a member to, of the Supreme Court of Georgia and the highest courts of Adjaria and Abkhazia autonomous republics and Olqi courts.
4. The statements of the party and the judge, who was the subject of the application for recusal, shall be heard during the consideration of the application. The court can decide that the judge and the party shall be heard separately.
5. Due to the claim of the party the court is entitled to substitute the hearing of the party with the submission of his substantiated written statement.
6. The court passes a judgement within two days, which the parties shall be immediately notified of.

**CHAPTER 4**  
**THE EXPENSES OF A PROCEEDING**

***Art. 9. (Art. 38, 39, 40, 41, 43, 46, 49 CPC) Court fees***

1. Court fees are not due for the handling and deciding of administrative disputes in cases concerning social defense.
2. Other than provided by Art. 40 sec.1 CPC the court determines the value of the dispute.
3. Court fees are also reduced to a half if the court declares that the dispute was exhausted.
4. Non-payment of court fees by a natural person shall not halt the consideration and resolution of the case.

***Art. 10. The compensation of court costs***

1. A natural person shall cover court costs at the first instance and the appellate court only if (he failed to use the opportunity to file an administrative lawsuit) or he was aware of the circumstances, which clearly suggest that his complaint was groundless.
2. An administrative agency shall cover court costs even if a court ruled in his favor, if the administrative act has been issued without due examination of the circumstances of the case.
3. If the party, which is liable to cover court costs, consists of several natural or juristic persons, the costs will be equally divided among them.

***Art. 11. (Art. 20.5 CPC) The division of court costs in case of amicable settlement***

1. If a trial ended in an amicable settlement and the parties failed to agree on the division of court costs, the costs will be equally divided among them.
2. Each of the parties covers non-court-related costs independently.

**CHAPTER 5**  
**PROCEDURAL TIME-LIMITS; SERVING A SUBPOENA; SUMMONS**

***Art. 12. The calculation of the term for filing an appeal***

1. If not otherwise prescribed by law, the calculation of the term for filing an appeal starts with the announcement of the judgement of a court.
2. The running of the term for filing an appeal starts only if a party is notified in writing of the opportunity to file an appeal, the court where he can file an appeal, its location and the term and procedure for filing an appeal.
3. If a party was not notified of his right to file an appeal or was notified of this right in violation of any requirement stipulated by Paragraph 2 of this Article, he could file an appeal within one year.

***Art. 13. Serving a subpoena and documents on a party***

1. Every subpoena, document or letter served by a court on a party or any participant of a case shall be marked with the date of sending.
2. A copy of every decision, judgement or order of a court shall be served on a party.
3. A person, who has no permanent place of residence within the country, shall nominate a person according to the order of the court, who will be authorized to receive the documents.
4. If a party participates in a proceeding through a representative, all documents are served on the representative, except for the case stipulated by law, when the documents shall be sent to the party as well.
5. If the document, which shall be sent by a court, is large in size, a party receives only its title and is informed that he can access it at the chancellery of the court.
6. The party is entitled to receive a copy of the document or make abstracts from it the chancellery of the court at his own costs at.

**CHAPTER 6**

**THE PARTIES IN ADMINISTRATIVE COURT PROCEEDINGS**

***Art. 14. (Art. 79 CPC) Representatives in administrative court proceedings***

1. In addition to what is provided by Art. 79 CPC capacity to participate in proceedings extends to the administrative agency which issued the judicial administrative act or committed some action of legal relevance.
2. The state undertakes the responsibility for the actions and decisions of a state agency or a private person, who was authorized by the state.

***Art. 15. The participation in an administrative proceeding through a representative***

1. If a party is a state agency or a self-government body, in a court it is represented by its chief or the official, who enjoys the right of representation according to law.
2. A state agency or a self-government body is entitled in administrative proceeding to be represented by the official or the civil servant, who works at the administrative agency.

***Art. 16. The involvement of third parties in an administrative proceeding***

1. Until the completion of a main court session the court is entitled to inform the person, whose interest may be affected by the court's decision, about the commencement of the administrative proceeding and engage him in the case as a third party. This procedure is not applied during the consideration of a case in a superior court.

2. A third party shall be engaged in a proceeding, if he is a participant of the legal relation, about which a court can pass only a general judgement. If more than fifty persons participate in legal relations, a court shall involve in a proceeding only those persons who express their desire.
3. Court orders about the involvement of persons as third parties shall be sent to parties and third parties.
4. Court orders about the involvement of persons as third parties shall not be appealed. The order issued in connection with paragraph 2 of this article can be appealed only by the person who was involved in the proceeding.
5. Third parties mentioned in paragraph 2 of the article of this law exercise all the rights of plaintiffs and they are imposed all the obligations of plaintiffs (they can submit solicitation and application on factual as well as procedural issues including those, which essentially contradict the claims of parties).

## **CHAPTER 7**

### **COURT PROOFS**

#### ***Art. 17. Burden of proof***

1. The plaintiff has to substantiate his claim and to offer proofs. The defendant has to substantiate his counter-claim and offer proofs.
2. In the case of an application to quash an individual administrative act the burden of proof lies with the defendant, except where the law determines otherwise.

#### ***Art. 18. Witnesses and experts***

1. Court is obliged to notify the parties of the identification of the witness, the time and place of his/her interrogation as well as the facts about which he/she must be interrogated not later than 3 days before the witness gives the evidence at the trial.
2. The parties shall be notified of the decision on the assignment of the expert. Parties may submit their considerations on the subject and scope of expert examination within 3 days, if no other term is determined by court.
3. The conclusion of an expert shall be sent to the parties, which are allowed to submit their considerations.

#### ***Art. 19. Collection of proofs by court***

1. Besides the authority conferred on the court by article 103 of the Code on Civil Court Procedures, the court is entitled to collect factual circumstances and proofs on its own initiative.
2. Before the application of these factual circumstances and examination of proofs, parties are allowed to submit their considerations about them.

#### ***Art. 20. The obligation of state and local self-government agencies to submit information to a court***

1. At the request of a court, state and local self-government agencies are obliged to submit documents and other information necessary for the consideration and decision of a case.
2. State and local self-government agencies are entitled to refuse to submit the information including state, professional, commercial and private secrets; that endanger state and public safety and legal interests of a natural person.

3. At the request of a party, the court is entitled to issue court orders about the legality of the decision made by the agencies mentioned in paragraph 2 of this article. In case the court considers the refusal to submit the information illegal, state and local self-government agencies are obliged to submit appropriate documents or other information.

***Art. 21. The right of access to court files***

1. If not otherwise provided by law participants in a case have access to the judicial acts and materials presented to the court in the court office.
2. Parties are entitled to obtain the copies of judicial acts and other materials of administrative cases. Necessary expenses to make copies of the documents are paid by the parties. No other payment can be required for making copies.
3. Parties do not have access to the drafts of court actions or other preparatory materials, which need to be voted by a panel of judges.

**CHAPTER 8**  
**PROCEDURE IN THE FIRST INSTANCE**

***Art. 22. (Art. 180, 181 CCPC) Action for nullifying and quashing a judicial administrative act***

- (1) An action may be brought to seek the nullifying or quashing of a judicial administrative act.
- (2) Unless otherwise provided by law the action is admissible only if the plaintiff claims that his legally protected interests were directly and individually affected by the act.
- (3) The action must be filed within 6 months after the decision on the complaint or the judicial administrative act was notified to the plaintiff.

***Art. 23. Action for mandating***

1. An action may be brought to seek an order to issue an administrative act.
2. Unless otherwise provided by law the action is admissible only if the plaintiff claims that his legally protected interests were directly and individually affected by the refusal of the act.

***Art. 24. Action for performance***

1. An action may be brought to seek the performance of an activity or the ceasing of an activity other than the issuance of an administrative act.
2. An action is admissible only if the plaintiff claims that his legally protected interests were directly and individually affected by the activity or the omission of the activity.

***Art. 25. Declaratory action***

1. An action may be brought to seek declaration of the existence or non-existence of a legal relationship if the plaintiff has a legitimate interest in the declaration.
2. A declaration may not be sought where the plaintiff is entitled to sue by means of an action under Art. 22 – 24.

***Art. 26. Submission of an action to the competent court***

1. Actions shall be submitted to the court, which is entitled to consider and decide administrative cases.
2. In case of the submission of an action to the non-competent court, the latter sends the action to the competent court and notifies a plaintiff of it.
3. A dispute between courts about jurisdiction must be decided by order of the superior court.

### ***Art. 27. Simplified procedure***

The court may review and decide the case in the absence of the parties on the basis of a written demand of the parties.

### ***Art. 28. Prompt administrative legal proceedings***

1. A court (a judge) at the request of a party may make a decision on the consideration of the case by the prompt procedures.
2. In this case the court is entitled:
  - a. To reduce the term for the submission of the counter-claim by the defendant;
  - b. Not to define the term for the third parties to submit their considerations on the suit;
  - c. Not to grant the parties the time for the submission of their considerations on any experts assignment; and
  - d. To reduce the term for the submission of considerations by the parties on any expert's conclusions.

### ***Art. 29. (Title XXIII CCPC) Suspensory effect of the action on appeal***

1. The bringing of an action against an administrative act has a suspensory effect.
2. There is no suspensory effect
  - a) in the case of demands in respect to public charges and costs,
  - b) in the case of non-postponable orders and measures taken by police officers,
  - c) in the case when the administrative act was issued during an emergency or martial law, on the basis of appropriate law,
  - d) and in cases in which immediate execution is, in written form, ordered by the administrative agency in cases of necessity of immediate execution
  - e) in other cases stipulated by law.
3. In the cases described in section (2) of this article parties are entitled to apply to the court for the suspensory effect of the action on appeal. The court decides regarding this issue within three days.

### ***Art. 30. Order of suspensive effect of administrative acts***

1. On application of a party the court can suspend an administrative act or part of it in the case provided by paragraph 2 of article 29 of this code, if there is reasonable doubt about the legality of the administrative act or its prompt execution would inflict a serious harm on parties or would make the protection of their legal rights and interests impossible).
2. The application for the suspension of an administrative act can be filed even before the action has been lodged.
3. The court passes a decision on the application by the party within three days.
4. The decision shall be sent to the parties within one day.
5. Court is entitled to determine the term for the suspension of the effect of an administrative act or part of it.
6. If the term is not determined the decision becomes invalid:
  - a. when the decision on a given issue enters into force;
  - b. as soon as the action (law-suit) or administrative complaint has been withdrawn by the plaintiff;
  - c. after the expiration of the term for the appeal in court against the administrative act, which was adopted in connection with the administrative complaint.

7. If the suspended administrative act has been executed, the court can revoke the judgement passed on the execution of an administrative act.
8. In case of a newly discovered or newly detected circumstance, on the application of a party, the court may alter or revoke the judgement for the suspension of the effect of an administrative act.

***Art. 31. Temporary order to issue an administrative act or committ an action***

1. With respect to the actions described in Arts. 22-25 the court may, on application, issue a temporary order to issue an administrative act, perform an activity or desist from an activity.
2. The application can be filed even before the action has been lodged.
3. Authority for the issue of temporary orders rests with the court where the principal cause of action is situated.

***Art. 32. Judgements on nullifying and quashing of judicial administrative acts***

1. If an administrative act is unlawful with respect to the suit mentioned in article 22 of this code, the court shall issue a judgement declaring the administrative act null.
2. If an administrative act has been executed before the passage of the judgement, on the application of a party, the court shall indicate in the judgement the procedures for the revocation of the execution.
3. In case an administrative act has been declared invalid before the passage of the judgement, the court may declare this act null.
4. If the court considers that an administrative act was issued without the investigation and evaluation of the circumstances essential for the case, it may declare the act null without deciding the disputed issue and instruct the administrative agency to issue a new administrative act after the investigation and evaluation of these circumstances. The court issues such a judgement if there is an urgent legal interest for a declaration of an administrative act null.
5. The judgement of declaring a normative act null is generally binding. If the judgement of declaring the normative act null endangers state or public safety or results in reasonable increase of state or self-government expenses, the court may declare the normative administrative act invalid instead of null.
6. The first operative part must be advertised by the defendant in the same manner as the normative act would be required to be advertised.

***Art. 33. Judgements on the issuance of administrative acts regarding the suit***

1. If the dismissal of an administrative act is unlawful or the term for the issuance of an administrative act is violated, the court issues a judgement regarding the suit mentioned in article 23 of this code, by which it instructs an administrative agency to issue an administrative act. On the application of the party court may determine the term for the issuance of an administrative act.
2. Court may issue an administrative act itself, if the administrative act does not require additional investigation of the circumstances of the case and the issue does not fall within the discretionary authority of an administrative agency.

**CHAPTER 9**  
**APPELATION AND CASSATION**

***Art. 34. (Art. 365 CCPC) Appellation and cassation actions***

Other than provided by Art. 365 and 391 sec. 2 CCPC appeal is permissible without respect of the value of the dispute.

## **CHAPTER 10**

### **ENACTMENT PROVISIONS**

#### *Art. 35. Enforcement of the code*

This code shall enter into force at the 1<sup>st</sup> January of the year 2000.