

Principles of Administrative Offense Proceedings in Assessing the Lawfulness of Personal Data Processing

The study of the lawfulness of personal data processing is one of the primary functions of the Personal Data Protection Service. This includes both the review of applications related to personal data processing and the examination (inspection) of its legality. This article explores the principles guiding the study of the lawfulness of personal data processing, which stem from the requirements set forth in the Law of Georgia “On Personal Data Protection” and the Code of Administrative Offenses of Georgia. These principles serve as the foundation upon which the Personal Data Protection Service evaluates each case.

Keywords: *Personal Data Protection Service, lawfulness of personal data processing, administrative offense case proceedings, principles of administrative offense case proceedings.*

1. Introduction

To properly conduct case proceedings when examining the lawfulness of personal data processing, it is crucial to adhere to principles explicitly established by applicable legislation or derived from the provisions of the Law of Georgia “On Personal Data Protection”, the Code of Administrative Offenses of Georgia, and relevant subordinate normative acts.

According to Article 52 of the Law “on Personal Data Protection”, if the Personal Data Protection Service detects an administrative offense, it is

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authorized to draw up a report of administrative offense and impose administrative liability on data controller and data processor, in accordance with the procedures established by this Law and the Code of Administrative Offenses of Georgia. Furthermore, Article 58, paragraph 3, of the same Law stipulates that the authority of the President of the Service and the procedure for conducting case proceedings are determined by this Law, the Code of Administrative Offenses of Georgia, other legislative acts, and normative acts issued by the President of the Service. Additionally, paragraph 4 of Article 58 establishes that in the event of a conflict between the Code of Administrative Offenses of Georgia and the provisions of this Law, the latter shall prevail.

The Law of Georgia “On Personal Data Protection”, adopted last year, introduced several innovations, including newly established rules for imposing administrative liability for violations of the law. In contrast to the previous version, where administrative penalties were primarily imposed in accordance with the provisions of the Code of Administrative Offenses of Georgia, the updated Law of Georgia “On Personal Data Protection” now comprehensively outlines the rules that must be followed in case proceedings, taking into account the specifics of the field.

This paper examines the fundamental principles of case management in the study of the lawfulness of personal data processing, as reflected in the Law of Georgia on Personal Data Protection and the Code of Administrative Offenses of Georgia. Strict adherence to these principles is essential for reaching an appropriate decision in administrative offense cases.

2. Lawfulness

Article 39, paragraph 3, of the Law of Georgia “On Personal Data Protection” explicitly defines the principles governing the activities of the Personal Data Protection Service. The first and foremost of these principles is lawfulness, which requires that every action taken in the examination of the legality of personal data processing within administrative offense cases must strictly comply with the relevant legislative acts.

In performing its duties, the Personal Data Protection Service is guided by the Constitution of Georgia, international treaties, generally recognized principles and norms of international law, as well as this Law and other applicable legal acts.¹

¹ Law of Georgia “On Personal Data Protection”, 3144-XIMs-XMP, 14/06/2023, Article 39, Paragraph 2.

The Code of Administrative Offenses also upholds the principle of lawfulness in the imposition of sanctions for administrative offenses. According to Article 8, "No one may be sanctioned for administrative offences except on the basis of, and according to the procedure laid down by, the legislation. Proceedings for administrative offences shall be conducted with strict observance of the law. Authorised bodies and officials shall impose sanctions for administrative offences within their scope of authority, in strict compliance with the legislation."

Furthermore, Article 33 of the Code reinforces this principle by establishing the general rule for imposing administrative penalties. Specifically, it states that "A penalty for an administrative offence shall be imposed to the extent defined by the normative act that prescribes liability in strict compliance with this Code of Administrative Offences and other acts on administrative offences."

3. Protection of Human Rights and Freedoms

The principle of **protecting human rights and freedoms** is established in the very first article of the Law of Georgia "On the Protection of Personal Data." Specifically, the Law states: "The purpose of this Law is to ensure the protection of fundamental human rights and freedoms, including the right to the inviolability of private and family life, and to privacy and communication, in the processing of personal data."

Accordingly, at every stage of administrative offense proceedings, fundamental human rights and freedoms, as universally recognized by the Constitution of Georgia and international norms, must be strictly upheld.

4. Independence and Political Neutrality

The functions and duties of the Personal Data Protection Supervisory Authority are distinct among administrative bodies in Georgia, primarily due to its unique legal structure. A key defining factor is its independence and political neutrality, which are reinforced by both international and national legislation.

According to the General Data Protection Regulation (GDPR)² of the European Union, data protection supervisory authorities must operate with complete independence in the performance of their duties and the exercise of their powers. Similarly, under the Law of Georgia “On Personal Data Protection”, independence and political neutrality are fundamental principles of the authority’s activities. Consequently, when examining the legality of personal data processing in administrative offense cases, employees of the Personal Data Protection Service must act independently and are strictly prohibited from using their official positions for political or party-related purposes.

This principle is further upheld in Article 55 of the Law, which guarantees the legal protection of employees of the Personal Data Protection Service. Specifically, the Law states: “No one has the right to interfere in the official activities of an employee of the Personal Data Protection Service, except in cases provided for by law”. Also, “Obstructing an employee in the performance of their official duties, violating their honor and dignity, resisting them, making threats, committing acts of violence, or endangering their life, health, or property shall result in liability as established by Georgian law.” Additionally, if there is credible information regarding threats to the life, health, or property of the President, First Deputy President, Deputy President, or any employee of the Personal Data Protection Service—or their family members—due to their official duties, state bodies are legally required to take measures to ensure their personal and property security”.³

Moreover, obstructing the President of the Personal Data Protection Service or an authorized representative in the exercise of their legally defined rights constitutes an administrative offense under the Law of Georgia “On Personal Data Protection”⁴, punishable by a fine ranging from 1,000 to 6,000 GEL. Additionally, any attempt to influence the President of the Service or an employee constitutes a criminal offense under the Criminal Code of Georgia and results in criminal liability.

² Personal Data Protection Service, European Union General Data Protection Regulation (“GDPR”) - Georgian translation.

³ Law of Georgia “On Personal Data Protection”, 3144-XIMs-XMP, 14/06/2023, Article 55, Paragraph 3.

⁴ Law of Georgia “On Personal Data Protection”, 3144-XIMs-XMP, 14/06/2023, Article 88.

5. Objectivity and impartiality

Objectivity and impartiality are closely linked to independence and political neutrality, as discussed above. However, they constitute an independent principle and are explicitly recognized in the Law of Georgia on Personal Data Protection as a fundamental aspect of the Personal Data Protection Service's activities.

Notably, the current Code of Administrative Offenses does not explicitly define the principle of impartiality. However, the obligation to uphold it during proceedings can be inferred from Article 233 of the Code, which states: "Administrative proceedings shall be conducted based on the principle of equality of citizens before the law and the hearing authority (official), irrespective of origin, social and property status, racial or ethnic origin, sex, education, language, religious beliefs, type and nature of occupation, place of residence and other circumstances."

6. Proportionality

Every restrictive measure imposed by an administrative body must adhere to the principle of proportionality, which prohibits excessive or inappropriate restrictions on the subject of an administrative measure. This principle stems from the constitutional principle of a legal state, which permits the restriction of constitutional rights only to the extent necessary to protect public interests.⁵

When applying the principle of proportionality, the relationship between the means used by the administrative body and the intended goal must be carefully assessed. This evaluation follows a four-step process:⁶ Determining the goal – Identifying the legitimate objective of the measure, Determining suitability – Assessing whether the chosen measure is appropriate for achieving the goal, Determining necessity – Evaluating whether a less restrictive alternative could achieve the same objective, Determining proportionality – Ensuring that the imposed measure is not excessively burdensome in relation to the desired outcome. These steps are extensively analyzed in Georgian legal scholarship.⁷

⁵ *Detterbeck S.*, Allgemeines Verwaltungsrecht, 2004, 67.

⁶ *Ibid.*, 68-72.

⁷ *Turava P., Tskepladze N.*, General Administrative Law Handbook, 2010, 27.

The proper application of proportionality is particularly important in administrative offense proceedings, especially when deciding on an appropriate administrative penalty or imposing a mandatory obligation on a data controller.

The significance of this principle is further reinforced by the European Data Protection Supervisor (EDPS), which has issued guidelines on proportionality in administrative measures. These guidelines emphasize that proportionality serves as a constraint on the exercise of authority, requiring a balanced approach between the means used and the objective pursued (or the result achieved).⁸

7. Equality Before the Law

According to the Constitution of Georgia,⁹ *“all persons are equal before the law. Discrimination on the basis of race, skin color, sex, origin, ethnicity, language, religion, political or other opinions, social affiliation, property or rank, place of residence, or other grounds is prohibited.”* This fundamental principle of equality is also enshrined in the General Administrative Code of Georgia. Specifically, Article 4 states that everyone is equal before the law and administrative bodies. It further establishes that: It is prohibited to restrict the legal rights, freedoms, or legitimate interests of any party engaged in administrative-legal relations, it is inadmissible to grant unlawful advantages or impose discriminatory measures against any party, and in cases where circumstances are identical, it is impermissible to render different decisions for different individuals, unless legally justified.

This prohibition of arbitrariness ensures that administrative bodies cannot apply unequal treatment to cases with substantially similar circumstances, nor can they treat substantially different cases as if they were the same. The incorporation of this constitutional principle into the General Administrative Code serves to safeguard the rights of individuals in administrative-legal relations. Any unjustified restriction or preferential treatment that lacks a reasonable legal basis constitutes a violation of this requirement.¹⁰

The principle of equality before the law is also reinforced in Article 233 of the Code of Administrative Offenses, which, as mentioned earlier, states that

⁸ European Data Protection Supervisor, Guidelines on Assessing the Proportionality of Measures that Limit the Fundamental Rights to Privacy and to the Protection of Personal Data, 2021, <<https://edps.europa.eu>> [10.02.2025].

⁹ Constitution of Georgia, 1995, Article 11.

¹⁰ Turava P., Tskepladze N., General Administrative Law Handbook, 2010, 27.

administrative offense cases must be considered before the law and the responsible body (official) on the basis of equality for all citizens, regardless of their: Origin, Social or property status, race or nationality, Gender, education, language, religious beliefs, occupation, place of residence, or other circumstances.

This principle of equality is closely linked to the core principles outlined in the Law on Personal Data Protection, as discussed in this paper. Notably, the law recognizes professionalism as a key guiding principle of the Personal Data Protection Service. This means that employees of the Service must act based on professional knowledge, skills, and experience, ensuring that their decisions—particularly when assessing the legality of personal data processing—are made objectively, in the public interest, and strictly in accordance with legal requirements.

8. Protection of Secrecy and Confidentiality

The Law of Georgia on Personal Data Protection imposes an obligation on data processing organizations to ensure data security and requires them to determine the necessary organizational and technical measures to achieve this. Additionally, the law establishes the obligation of the controller, as well as the employee of the processor or has access to personal data, to strictly adhere to the limits of their granted authority and to protect the secrecy and confidentiality of data, including after the termination of their official duties.

Furthermore, data security is also ensured by employees of the Personal Data Protection Service, who are required to conduct their activities with full respect for secrecy and confidentiality. This obligation is explicitly stated in Article 51 of the Law on Personal Data Protection, which provides that an employee of the Personal Data Protection Service is required to protect the security of all types of confidential information and must not disclose any confidential information acquired in the course of official duties. This obligation remains in effect even after the termination of their authority. This requirement is further reinforced by Order No. 34 of the President of the Personal Data Protection Service, issued on March 1, 2024, "On Approval of the Procedure for Examining the Lawfulness of Personal Data Processing," which establishes confidentiality obligations as part of official procedural requirements.¹¹

¹¹ Subparagraph "c" of paragraph three of Article 10 of the Order No. 34 of the President of the Personal Data Protection Service of March 1, 2024 "On Approval of the Procedure for Examining the Lawfulness of Personal Data Processing".

9. Inquisitoriality

One of the defining features of administrative offense proceedings is the application of the inquisitorial principle by the body conducting the case. Although this principle is not explicitly defined in the Code of Administrative Offenses, it is inherent to administrative proceedings.

In general, the inquisitorial principle implies that the authorized body responsible for the case initiates administrative offense proceedings and actively investigates the matter on its own initiative. This body must assess both the circumstances that indicate an offense and those that exempt a person from liability, ensuring an objective and impartial evaluation of all relevant factors.¹²

The application of the inquisitorial principle by the Personal Data Protection Service in examining the lawfulness of data processing is a key characteristic of the sector. This is reflected in Chapter 7 of the Law of Georgia on Personal Data Protection, which defines the Service's powers in overseeing investigative actions related to data protection.

A primary function of the Personal Data Protection Service is to study the lawfulness of personal data processing. The Service is authorized to conduct inspections not only based on applications from interested parties but also on its own initiative¹³. This broad mandate allows the Service to actively engage in assessing data processing practices and ensures its inquisitorial authority. The Service initiates administrative offense proceedings either based on specific applications or publicly disseminated information. Additionally, at the beginning of each year, the President of the Service approves an annual inspection plan, which is developed by the Planned Inspection Department—a division established in 2023. In the same year, this department conducted 83 planned inspections to assess the legality of data processing.¹⁴

The purpose of the annual inspection plan is to enhance the effectiveness and consistency of the Service's activities, particularly in light of the diversity, dynamism, and complexity of modern data processing. The plan is formulated through a detailed study of data processing legislation and practices, the identification of priority and high-risk areas, and an analysis of risks associated with various data processing operations across different regions of Georgia.

¹² Bohnert J., *Ordnungswidrigkeitenrecht*, 4th ed. 2010, 5.

¹³ Law of Georgia "On Personal Data Protection", 3144-XIMs-XMP, 14/06/2023, Article 51, paragraph 1.

¹⁴ Personal Data Protection Service. Personal Data Protection Service Activity Report for 2023. <<https://pdps.ge/ka/content/988/angariSebi>> [10.02.2025].

This approach ensures a targeted and efficient allocation of the Service's resources.¹⁵

The inquisitorial principle is also evident in the conduct of unplanned inspections, which are initiated by the Service to assess the legality of specific data processing activities. In 2024 alone, 182 unplanned inspections were conducted, further demonstrating the Service's commitment to proactive oversight and enforcement.¹⁶

10. Prohibition of Double Jeopardy (“ne bis in idem”)

The risk of double jeopardy for an offender is a genuine concern in practice, despite its clear contradiction with universally recognized human rights. Punishing a person twice for the same illegal act is strictly prohibited, not only when penalties are imposed under different branches of law (e.g., the Criminal Code and the Code of Administrative Offenses) but also within the same legal framework. Once a penalty has been imposed, reapplying a sanction for the same offense is impermissible.

This principle, known as *ne bis in idem*, prohibits repeated punishment and is enshrined in Article 4, Part 1, of Additional Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms. According to this provision, no individual may be tried or punished twice in criminal proceedings within the same State's jurisdiction for an offense for which they have already been finally acquitted or convicted in accordance with that State's legal and procedural standards.¹⁷

This approach is also firmly upheld in Georgian legislation. Specifically, Article 42, Paragraph 4 of the Constitution of Georgia states that no one may be convicted twice for the same offense. This constitutional provision reinforces the fundamental prohibition of double punishment, and its imperative nature means that no exceptions or limitations to this guarantee are permitted.

Furthermore, the Constitutional Court of Georgia has consistently reaffirmed the importance of the *ne bis in idem* principle. The Court has clarified that this principle serves a dual function: first, to protect individuals

¹⁵ Personal Data Protection Service. Personal Data Protection Service Activity Report for 2023. <<https://pdps.ge/ka/content/988/angariSebi>> [10.02.2025].

¹⁶ Personal Data Protection Service. Statistics on the activities of the Personal Data Protection Service for the 12 months of 2024, <<https://pdps.ge/ka/content/988/angariSebi>> [10.02.2025].

¹⁷ European Convention on Human Rights, 1950.

from repeated criminal prosecution and punishment for the same act, and second, to ensure that state authorities are bound by final judicial decisions in criminal proceedings.¹⁸

The prohibition of double jeopardy is a fundamental manifestation of the rule of law. This principle ensures that state authorities, once they have rendered a final decision in a criminal justice process, cannot prosecute an individual again for the same act. This safeguard is directly linked to the principles of legal certainty and security. The predictability of legal consequences for actions that may restrict an individual's rights depends significantly on the extent to which final decisions in the justice system are upheld. If the law permits a person to be held liable multiple times for the same act and state authorities are not restricted in this regard, then the essential requirement that individuals must be able to anticipate the punishment for a specific act—and adjust their behavior accordingly—becomes meaningless.¹⁹

In the context of administrative offenses, the *ne bis in idem* principle is also recognized. Notably, under German administrative offense law, the prohibition of repeated prosecution applies in administrative proceedings as well.²⁰

Similarly, Article 232 of the Administrative Offenses Code of Georgia explicitly upholds this principle. According to this provision, administrative offense proceedings cannot be initiated, and an existing case must be terminated if a competent authority (or official) has already imposed an administrative penalty on the person for the same act; an irrevocable decision has been issued by a civil court, following the transfer of materials from the body authorized to impose administrative penalties; an irrevocable resolution has been adopted to terminate the administrative offense case; a criminal case has been initiated on the same fact.

This principle is also explicitly enshrined in Order No. 34 of the President of the Personal Data Protection Service, issued on March 1, 2024, titled “On Approval of the Procedure for Reviewing the Lawfulness of Personal Data Processing.” Specifically, Article 18, Paragraph 1 outlines the circumstances that preclude the review of data processing legality, including:

¹⁸ Decision of the Constitutional Court of Georgia No. 3/1/608,609 of September 29, 2015 in the case “Constitutional submission of the Supreme Court of Georgia on the constitutionality of Part 4 of Article 306 of the Criminal Procedure Code of Georgia and Constitutional submission of the Supreme Court of Georgia on the constitutionality of Subparagraph “g” of Article 297 of the Criminal Procedure Code of Georgia”, II-35 <https://matsne.gov.ge/ka/document/view/3017013?publication=0> [10.02.2025].

¹⁹ Decision No. 2/7/636 of the Constitutional Court of Georgia of December 29, 2016. <<https://matsne.gov.ge/ka/document/view/3544820?publication=0>> [10.02.2025].

²⁰ *Bohnert J., Ordnungswidrigkeitenrecht*, 4th ed. 2010, 5.

- The existence of a court decision or ruling on the same fact of violation and involving the same parties, for which a review of the lawfulness of data processing should be initiated or is ongoing;
- The existence of a decision by the Service on the same fact and the same parties, for which a review should be initiated or is ongoing;
- The existence of a criminal case on the same fact, for which a review should be initiated or is ongoing.

11. Conclusion

This article examined the fundamental principles of administrative offense proceedings in the study of the legality of personal data processing, ensuring that these proceedings are conducted properly to protect the rights of data subjects.

The principle of lawfulness requires that every action taken in the proceedings strictly complies with legal standards. Without adherence to this principle, it is impossible to ensure that proceedings conform to both national legislation and international standards.

The protection of human rights and freedoms is not only essential in the study of personal data processing legality but also serves as a cornerstone of a lawful state.

The principle of independence and political neutrality acts as a key safeguard, ensuring that the study of personal data processing legality remains free from external influence, which is crucial for both justice and transparency.

Adhering to the principles of objectivity and impartiality prevents biased decision-making and serves as an essential guarantee of fair administrative proceedings.

The principle of proportionality ensures that all decisions are reasonable and appropriate, striking a balance between the rights of the data subject and public interests, while also preventing abuse of power.

The principle of equality before the law guarantees that all individuals enjoy the same rights and obligations, regardless of their social, legal, or other characteristics. This principle ensures that administrative decisions are based solely on legal grounds and not on unfair considerations.

The protection of secrecy and confidentiality is a fundamental aspect of the data processing process, extending even beyond the conclusion of a case. This obligation applies to both those responsible for processing personal data and employees of the Personal Data Protection Service.

The principle of inquisitoriality highlights the responsibility of administrative bodies to actively investigate all relevant facts, rather than relying solely on the information or documentation provided by the subject.

The principle of prohibition of double jeopardy (*ne bis in idem*) ensures that no individual can be held administratively liable twice for the same offense. This principle is vital for maintaining a fair legal environment, providing citizens with the assurance that they will not be subjected to excessive or unlawful sanctions. Its observance is crucial both for the protection of constitutional principles and the legitimacy of administrative proceedings.

In conclusion, strict adherence to each of the principles discussed in this article is essential for the effectiveness of administrative offense proceedings. Without these principles, it would be impossible to ensure the lawful protection of the rights of data subjects and to uphold justice and transparency in the administrative process.

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