
Maka Salkhinashvili

*Doctor of Law. Professor of public law
Grigol Robakidze University
Gori State University*

Legal regulation issues of remote examination of cases in administrative bodies and courts

Abstract. The article discusses the issues of legal regulation regarding remote hearings in administrative bodies and courts. During the covid pandemic, administrative bodies and courts in Georgia and abroad used to hold sessions remotely, although the mentioned issue was not regulated by legal acts. Later, various administrative bodies adopted by-laws. One of these administrative bodies is the Georgian National Energy and Water Supply Regulatory Commission (hereinafter, GNERC). Initially, amendments were made to the Law of Georgia “On Energy and Water Supply”, and later GNERC adopted corresponding administrative acts.

The article elaborates on the difficulties that accompanied and accompany remote examinations of cases in administrative bodies and courts. The author’s opinions are expressed in the form of recommendations. Foreign practices are also considered within the paper.

Key words: pandemic, session, commission, administrative body.

Introduction. The Covid-19 pandemic has been a huge challenge for the entire world. It was primarily a health crisis that affected other areas of life, as well. Many countries have decided to close schools, universities, colleges and other educational institutions. It was also important to switch to the remote working mode in public and private sectors, which lasted more than two years.

Taking into account the threat of a mass spread of the pandemic and the recommendations of the World Health Organization, the Government of Georgia established new regulations to ensure the fulfillment of its constitutional obligation, protection of life and health of the population, reduction of possible risks and management of the situation. In order to manage the covid situation, the Government of Georgia adopted a number of by-laws, including Resolution #322 of May 23, 2020 “On Approval of Isolation and Quarantine Rules”. New regulations were established during the examination of cases in administrative bodies and the judicial system.

Terms for holding public hearings in administrative bodies and courts during the Covid pandemic

During the covid-pandemic, continuation of sessions in the administrative bodies and courts in the usual manner increased the risks of the virus spread. Administrative bodies and courts had to prevent the spread of the virus in their spaces without violating procedural deadlines. A solution was found - administrative bodies and courts started to conduct sessions remotely using technical means in

compliance with the procedural deadlines. They used and still use programs - Zoom, Google, Nexus, Tims, Webex and others.

Meetings were held remotely in administrative bodies in such a way that the issue was not legally regulated, although later, various administrative bodies made changes and additions to the subordinate normative acts on holding public meetings remotely.

Regulation of holding sessions according to the Code of Criminal Procedure of Georgia

Initially, the only code that was amended was the Criminal Procedure Code, for which remote hearings were not new, however, the expansion of the scope caused technical problems here as well.

According to Article 332⁵ of the Criminal Procedure Code of Georgia, a temporary rule for holding a relevant court session was determined until July 1, 2021 (later this period was extended to January 1, 2023). According to this article, until July 1, 2021, in the event of a pandemic and/or the threat of spreading an epidemic that is particularly dangerous to public health, the court session provided for by the Criminal Procedure Law of Georgia may be held remotely, using electronic means of communication, if:

a) the accused/convicted/acquitted agrees;

b) Imprisonment is applied as a deterrent measure against the accused, a convicted person is sentenced to imprisonment and/or failure to conduct the court session in this manner may lead to violation of the public interest in the investigation of the crime and the criminal liability of a person.

According to the second part of the same article, in the case of holding a court session in accordance with the first part of Article 332⁵, no person participating in it has the right to refuse holding a session remotely, expressing the desire to attend it in person.

Legal regulation of holding public sessions in administrative bodies

Unfortunately, as of May 1, 2022, no changes in the General Administrative Code of Georgia in this direction regarding the holding of public meetings remotely have been made, which can be considered one of the shortcomings of this code. According to the recommendation of Professor Maka Salkhinashvili, at the beginning of 2021, an opinion was expressed regarding the amendment of the General Administrative Code of Georgia regarding the possibility of holding public meetings remotely in the journal "Justice and Law" (#1 p. 9), although the mentioned recommendation was not taken into account at a legislative level and, public meetings in administrative bodies continue to be held remotely even today, without the corresponding changes being reflected in either the legislative or by-laws.

Article 35¹ of the General Administrative Code of Georgia deals with the issues of conducting proceedings with unified automatic means of management, although the content of this article does not directly imply conducting sessions remotely. This change was introduced in 2012 and further refined in 2017. According to the specified article, the administrative body is authorized to use software and unified automatic means of management for the purpose of proceedings and access to information - to receive, issue or give any information and/or document using unified automated means of management, unless other form of receiving information defined by the GAC is chosen by the person. The administrative body is authorized to store and issue any document created by it or kept within it in the

form of an electronic copy. Data can be entered in the document issued or given by the administrative body in a written form and/or electronic means. In my opinion, the second part should be added to the mentioned article, where conducting sessions remotely will be emphasized.

It should be noted that in some special norms, provision was made for holding public meetings remotely. In particular, the Law of Georgia “On Energy and Water Supply” was amended on December 22, 2021, and in Article 221, it was written that the commission is authorized to hold a meeting remotely, using electronic means of communication, so that interested parties are provided with an opportunity to participate in administrative proceedings via electronic means of communication.

According to Article 127, Part 3 of the Civil Procedure Code of Georgia,¹ by the judge’s decision, a remote explanation can be obtained from the party using telephone, video means or other technical means from another court, administrative body or through diplomatic missions and consular units of Georgia functioning abroad, and if possible, identification of a person by the relevant authority at the actual place of interrogation. In accordance with Article 148, part 6 of the same code, at a request of a party and a decision of a judge, it is possible to remotely question a witness in the manner established by Article 127, Part 3 of the Code of Civil Procedure, on which the parties are notified in advance.

Researches of the Association of Young Lawyers of Georgia and the Office of Public Defender of Georgia on remote case hearings

The Georgian Bar Association has made an important commentary regarding the holding of remote court sessions, in particular, in order to prevent the covid-19 virus, in accordance with the security measures issued by the Government of Georgia, the Georgian Bar Association has developed the necessary recommendations for the implementation of advocacy activities in relation to the issue of remote sessions in courts, although in the mentioned definition, nothing is mentioned about holding sessions in administrative bodies remotely, which, in my opinion is also noteworthy.

It is known, that the Association of Young Lawyers of Georgia² and the Public Defender of Georgia³ published a report on the challenges of remote judicial proceedings during the pandemic, where only the monitoring of criminal proceedings is discussed. It is recommended that similar monitoring is carried out in administrative bodies and courts as well, during the consideration of administrative cases.

Resolution of the Constitutional Court of Georgia regarding remote holding of sessions. Resolution of the Georgian National Energy and Water Supply Regulatory Commission on remote holding of public sessions.

Also, the Resolution of the Plenum of the Constitutional Court of Georgia dated December 07, 2020 127/1 regarding additions to the Rules of Procedure of the Constitutional Court is important, namely the addition of Articles 20¹-20⁶, which pertains to the decision to hold the session of the Con-

1 Review of Civil Procedure Code of Georgia. 1997. Available at: <<https://matsne.gov.ge/document/view/29962?publication=149>> retrieved: 10 May 2022].

2 Georgian Young Lawyers’ Association’s special report during the pandemic. [Internet] Available at: <<https://gyla.ge/ge/post/virtualur-sivrceshi-gadasuli-samartaltsarmoeba#sthash.IyE4xyTm.dpbs>> [retrieved: 10 May 2022].

3 Report of the Public Defender on the report of the monitoring of remote criminal court hearings. [Internet] Available at: <<https://www.ombudsman.ge/geo/190411044320siakhleebi/sakhalkho-damtsveli-distantsiuri-tsesit-chatarebuli-siskhlis-samart>>

stitutional Court of Georgia remotely⁴. According to the mentioned amendments, in the presence of special circumstances, the reviewing panel/plenum is authorized to make a decision on holding the oral hearing of the regulatory and/or substantive review session of the constitutional lawsuit remotely, using technical means. It is obligatory to notify the parties and only after obtaining their consent, it is allowed to hold the session remotely. The date of oral hearing to be held remotely will be determined by the chairmans of the collegiums/plenums. Remote sessions are conducted using technical means that allows participants of proceedings to establish audio and video communication with each other simultaneously. Remote court sessions are open and broadcast live to the public. The specified articles describe the rules and conditions for holding sessions remotely in the Constitutional Court in detail and exhaustively.

As for legal regulation of holding sessions remotely in administrative bodies, it is important to make amendments and additions to two resolutions of the Georgian National Energy and Water Supply Regulatory Commission.

GNERC's resolution #9 of May 13, 2021, "Regulations on implementation of administrative proceedings by the National Regulatory Commission for Energy and Water Supply of Georgia" was amended on February 28, 2022, in particular, Article 22¹ was added a specific item⁵, where it is noted that the commission's sessions can be held remotely, via video conference. In addition, simultaneous audio and video connection of the attending persons, including members of the commission, must be ensured using electronic means of communication.

It is also possible for one or more members of the commission to participate in sessions remotely. The interested parties will be notified on the remote holding of the commission sessions in accordance with the existing regulations.

The following information should also be indicated in the sent/published notification regarding holding the commission session remotely:

- a) technical means required to participate in the commission session, its (download) source and the method of use;
- b) necessary data and appropriate quality/speed of Internet for arrangement of the commission's sessions;
- c) instructions for remotely participating in the commission session;
- d) Instructions for electronic submission of relevant documents.

Participants of remote sessions of the commission are obliged to submit to the commission an identity document and if necessary, a document confirming the representative authority in electronic or material form, through the remote platform or before the start of the remote session of the commission.

⁴ Resolution of the Plenum of the Constitutional Court of Georgia #127/1. [Internet] Available at: <<https://constcourt.ge/ka/amendments-rules-of-court/amendment-07-12-2020>> [retrieved: 10 May 2022].

⁵ Article 22¹, "Stipulation on implementation of administrative proceedings by the National Regulatory Commission of Energy and Water Supply of Georgia". [Internet] Available at: <<https://matsne.gov.ge/ka/document/view/5167577?publication=1>> [retrieved: 10 May 2022].

Session of the commission held remotely must be conducted in accordance with the law and regulations, including:

a) relevant software support in such a way that it is possible to involve interested persons remotely, as well as to identify the participants in administrative proceedings and to confirm their representative authority;

b) the ability of interested persons to express their opinion;

c) an ability of a chairman of a session to ensure order during a session, to warn persons violating an order, and in special cases - to expel them, give a permission to speak, limit the duration of explanation or answers, to terminate the session and/or announce breaks.

d) possibility of commission members to express their opinions at any stage of a session, comment on the speaker's explanations and ask questions to persons participating in case discussions.

Expulsion of a person from a session means limiting an opportunity to speak at a session of the commission held remotely by means of appropriate software.

The session protocol held remotely is conducted in accordance with the provisions of the regulation.

The place of remote sessions of the commission is the administrative building of the commission.

Resolution No. 24 of June 4, 2020 of the National Energy and Water Supply Regulatory Commission of Georgia "On Approving Dispute Resolution Rules" was amended on April 28, 2022, in particular, Article 18¹ was added to the resolution and it was formulated as follows: the session of the commission can be held remotely, via video conference, in compliance with the requirements provided for in Article 20¹ of the "Regulation on Implementation of Administrative Proceedings by the National Energy and Water Supply Regulatory Commission of Georgia" approved by resolution No. 9 of May 13, 2021. In case an interested person does not have a technical ability to participate in the remotely session of the commission, the commission will ensure his/her participation in the session from the administrative building of the commission based on the relevant request.

The mentioned provision gives interested parties the right to attend the public session or remotely participate in the hearings of cases.

According to the Code of Administrative Offenses of Georgia, utility companies will be charged with administrative offenses based on delegated authority in accordance with Articles 96¹ and 149 of the Code of Administrative Offenses of Georgia. During the pandemic, these bodies have examined and are still examining administrative violations remotely, using the Zoom platform. Decision made by them is appealed in GNERC, and the individual administrative legal act issued by GNERC is appealed in court. In 2020-2021, none of the appealed cases were sent back to the utility company for reconsideration and no decision was overturned on the grounds that hearings were held remotely. No request on annulment of individual administrative legal acts on the named basis before the superior administrative body and the court has been made. The mentioned grounds are important, because the issue of hold-

ing sessions remotely was not legally regulated. It would be interesting to see what decision the higher administrative body or the court would make in the event of a request for annulment on the mentioned basis.

The practice of several foreign countries on holding meetings remotely

It is also interesting to consider how administrative proceedings were conducted remotely in foreign countries, for example, on February 1, 2021, some recommendations were developed based on the practice of tax cases in Michigan, which reflected the Michigan administrative hearing procedure⁶. According to the first part of Article 121 of the mentioned rule, administrative law judges were given the right to hold hearings partially or completely by video conference or other electronic means⁷. Remote hearings are conducted with full protection of personal data. The Zoom and Teams platforms are used. The rules for conducting remote meetings through these platforms are described in detail in the mentioned rule, which helps persons reviewing the cases to conduct meetings objectively. During the Covid pandemic, on March 22, 2022, the Texas Supreme Court issued Executive Order #29 regarding emergency matters. In accordance with the specified order, it was possible to hear the case, question the witness, etc. through video conference.

An interesting paper on conducting sessions remotely in courts was published at the Ukrainian State University of Economics and Technology, which concerns the legal regulation of remote proceedings in Ukraine and offers mechanisms for its improvement⁸. The mentioned paper does not refer to the remote consideration of cases in administrative bodies.

A paper on hearings in administrative courts by Jeremy Grabois at the US Administrative Conference was also published. The article mainly examines the remote hearing of cases in the courts and the hearing of cases in administrative bodies is not the subject of discussion⁹.

IBA Litigation Committee Co-Chairs Angelo Anglan and Tim Strong have prepared an interesting study which also only examines hearing cases in courts during the covid pandemic. In the mentioned study, the judicial practice of 36 countries is discussed and the work is productive, although the disclosure of cases in administrative bodies is not discussed in this study either.

It should be noted that the conducted studies and scientific works mainly refer to the remote consideration of cases in courts.

Conclusion. Considering all of the above mentioned:

➤ The pandemic has not ended and when it ends, no one knows whether it will still be necessary to hold public meetings remotely or not. Discussions at a legisla-

6 Michigan office of administrative hearings and Rules, 2022 y. accessible: <<https://www.michigan.gov/lara/bureau-list/moahr>> [retrieved: 10 May 2022].

7 *ibid.* article 121.

8 Legal Aspects of Remote Trial. [internet] accessible: https://www.shs-conferences.org/articles/shsconf/pdf/2021/11/shs-conf_icsai2021_03006.pdf > [retrieved: 10 May 2022].

9 LEGAL CONSIDERATIONS FOR REMOTE HEARINGS IN AGENCY ADJUDICATIONS. [internet] accessible: https://www.acus.gov/sites/default/files/documents/Legal%20Considerations%20for%20Remote%20Hearings%20in%20Agency%20Adjudications_1.pdf > [retrieved: 10 May 2022].

tive level are still relevant and it is better to regulate the mentioned issue by laws and by-laws;

➤ Administrative bodies should take care to make changes and additions to the relevant acts, despite the fact that the pandemic is coming to an end and no one knows when it will happen again;

➤ It would be good if the General Administrative Code of Georgia is amended to conduct remote administrative sessions. In this direction, preparation of a package of certain changes by the Parliament of Georgia is still relevant;

➤ We believe that the legislative acts and by-laws of Georgia do not fully reflect the holding of sessions remotely. The majority of administrative bodies conducted and conducts sessions remotely;

➤ During the pandemic, several researches were conducted (these studies were conducted by non-governmental bodies) remote sessions, these studies were mainly concerned with the issues and challenges of conducting sessions remotely in courts, however, nowhere in these studies were the shortcomings and problems identified during the conduct of sessions remotely in administrative bodies, which, in my opinion, is important and relevant agencies should be interested in the mentioned issue;

➤ A second part should be added to Article 35¹ of the General Administrative Code of Georgia, which will be formulated as follows: “Administrative bodies are authorized to hold meetings remotely if necessary.”

➤ Under the conditions of the pandemic, such platforms as Teams, Zoom, Google, Nexus, Webex were improved. I think it will be important to create and use a variety of platforms. Persons of relevant competence should be interested in this issue and together with administrative bodies should develop various programs, taking into account all the existing gaps and create new, more sophisticated and flexible platforms.