



HUMAN
RIGHTS
WATCH

HARSH PUNISHMENT

The Human Toll of Georgia's Abusive Drug Policies



Harsh Punishment

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Summary

In February 2016, a 23-year-old musician and DJ, Kote Japaridze and two of his friends acquired two grams of MDMA, a recreational synthetic drug that acts as a stimulant and hallucinogen, producing distortions in time and perception. Two grams was enough for 10 doses, and they were planning to take it to celebrate a friend's birthday and continue the party in a nightclub. Police arrested Japaridze, together with one of the two friends, the same afternoon, before they could consume the drug. Police jailed him and charged him with possession of a particularly large quantity of drugs, punishable by eight to 20 years in prison. "I had no idea I was committing a particularly grave crime, we just wanted to have a good time," Japaridze explained to Human Rights Watch. The only way to mitigate the inevitably harsh punishment was to enter a plea bargain with the prosecutor's office, which Japaridze did, and a court sentenced him to six years in prison, five of which were suspended. The court also imposed a fine of 25,000 Georgian lari (GEL) (roughly US\$10,800).

After six months in prison, Japaridze was released under a presidential pardon. But to this day he continues to face the consequences of his criminal record. As a drug offender, Japaridze was automatically stripped of his driver's license and is banned from working in certain jobs for five years. The fine was exorbitant for his family of three. They had to get a loan, which Japaridze is still paying off. "This is all so unjust. I have not committed a dangerous or violent crime and I had no prior criminal record. The drugs I bought were for personal use, and yet I am paying dearly for it."

Police arrested 30-year-old Vano Machavariani in 2012, a day before his wedding. In fact, Machavariani was on his way to his own bachelor party when police stopped him and seized two doses of the hallucinogenic drug LSD, 0.00172 grams, from him. The seized amount was qualified as particularly large, and a court sentenced Machavariani to nine-and-a-half years in prison. His engagement fell apart and Machavariani spent five years in prison before he was released by presidential pardon in October 2017. Machavariani possessed a small quantity of drugs for personal use, but in Georgia, it is not unusual for people like Machavariani to be punished by grave criminal penalties.

These are but two examples of Georgia's harsh drug laws and policies, which prioritize criminal justice over a public health approach. In efforts to fight the use and sale of illicit drugs, Georgian authorities aggressively pursue drug prosecutions, which often lead to long sentences and prohibitive fines against individuals who have committed no harm to anyone, but who simply acquired small amounts of drugs for personal recreational use.

Although there is no official data, surveys in Georgia by experts show a growing number of injection drug users.

Although the Georgian government has partially liberalized its drug policies since 2012, they remain harsh. The criminal justice system continues to treat most drug consumption or possession for personal use as a criminal felony, with severe consequences. This report describes the human costs of these policies. It documents the impact of overly punitive drug laws and practices, including disproportionately harsh prison sentences and fines, abusive, mandatory drug tests, coerced plea bargains, and arbitrary limitations on rights, such as obtaining a driver's license or working in various professions.

The report is based on over 85 in-depth interviews with individuals who have been prosecuted for drug-related crimes, their lawyers and family members, as well as social workers, community organization leaders, government officials, and various advocacy groups and nongovernmental organizations from May 2016 to June 2018.

In Georgia, first-time illegal drug consumption or possession of a small quantity of drugs for personal use is a misdemeanor offense. A repeated offense within a year of the first results in criminal liability. However, for approximately three-quarters of substances classified as illicit drugs, including substances commonly used in Georgia, such as amphetamine, methamphetamine, and desomorphine, Georgian law does not establish a threshold for small quantities, which means that possession of even particles of those substances, including the residue of such substances in paraphernalia, automatically qualifies as a large amount, triggering criminal liability and a mandatory minimum five-

year prison sentence. Possession of more than one gram of those same substances is considered a “particularly large amount” and could result in life imprisonment.

In some circumstances, drug possession for personal consumption can carry a longer prison sentence than murder (from seven to 15 years), or rape (six to eight years).

Every year, police randomly detain thousands of people for coerced drug testing. Police have broad powers to stop individuals in the streets and compel them to undergo drug testing, if there are “sufficient grounds,” including police intelligence, for assuming they are under the influence of drugs. If the person refuses to undergo the test, police can detain them for up to 12 hours in a forensics lab. Georgian law does not provide people held for testing the same rights as detainees, such as the right to make a phone call, even though they are in police detention. This leaves them vulnerable to ill-treatment by police. People whose drug use is problematic and former drug offenders are especially vulnerable to serial, coerced drug testing.

Georgian law imposes long, mandatory minimum sentences for drug-related offenses, and there is a nearly 100 percent conviction rate for these offenses. As a result, a person charged with a drug-related offense often feels there is no other choice than to agree to a plea deal to avoid long prison terms. Plea bargaining in drug-related offenses often leads not only to prison sentences but also to prohibitive fines, which can financially devastate the accused and his or her family.

Drug felony convictions also lead to deprivation of the right to operate motor vehicles and to work in certain professions for periods ranging to from three to 20 years after release from prison. Such restrictions deprive many of their livelihoods and contribute to further stigmatization and isolation of people who use drugs in Georgia.

From “Zero Tolerance” to Partial Liberalization

Some of the harsher features of Georgia’s current drug policies and practices were adopted in 2006, when then-President Mikheil Saakashvili announced a “zero tolerance policy” towards all crime, including drug-related offenses.

This “tough on crime” approach towards drug users may have led to a reduction of the availability of certain illicit drugs, such as heroin, but did not lead to a decrease in drug

use. On the contrary, according to some estimates, the number of people dependent on drugs and at high risk of harm due to drug use grew from 40,000 in 2009 to 52,500 in 2017.

After the change of government in October 2012, Georgia's new leadership recognized the need to liberalize criminal justice policy, including drug policies. Legislative amendments reduced criminal penalties for drug possession and consumption. The government adopted a National Strategy and Action Plan to fight drug addiction, which emphasized the importance of public health, prevention of drug use, harm reduction programs, and overcoming stigma and discrimination against drug users. However, while the strategy and its action plan envisage many significant steps, little of it has been implemented.

Since 2015, there have been further, significant changes in law enforcement policy and practices towards liberalization. Most were prompted by lawsuits filed with the constitutional court. In response to a 2015 constitutional court decision declaring imprisonment for marijuana possession unconstitutional, parliament amended legislation in July 2017 to remove imprisonment as a penalty for up to 70 grams of cannabis possession. The amended law retained criminal liability for possession of over five grams of cannabis.¹ All people convicted for cannabis possession would still have a criminal record and be deprived of the right to operate a motor vehicle and work in a wide range of jobs.

The 2015 decision prompted other constitutional complaints that challenged current criminal drug policies, particularly regarding recreational drug use. A November 2017 constitutional court decision argued that it is within an individual's right to choose how to relax, including through marijuana consumption. According to the court, unless this action creates any relevant risk or danger to another person, it should not be considered a crime. Building on this decision, in July 2018, the constitutional court issued another ruling, abolishing all administrative sanctions for marijuana consumption, but it did not deliberate on the issues of purchase or possession of marijuana, which are regulated under the criminal code.

In June 2017, several members of parliament introduced a comprehensive draft law that would decriminalize personal drug use. The draft was developed by Georgia's National

¹ First instance of possession of marijuana, as noted below, in amounts of five grams or smaller is an administrative offense; a repeated offense within one year would incur criminal liability but not imprisonment.

Drug Policy Platform, a broad coalition of nongovernmental groups, experts, and activists. The draft law is grounded in a health-oriented approach that explicitly states that people with problematic drug use need support, not incarceration and stigmatization.

The draft stalled in parliament after just one committee hearing, and the government appears to have halted any plans for further substantial drug policy reform.

A Call for Decriminalization

Laws criminalizing drug use are inconsistent with respect for human autonomy and the right to privacy and contravene the human rights principle of proportionality in punishment. In practice, criminalizing drug use interferes with the right to health of those who use drugs. The harms experienced by people who use drugs, and by their families and broader communities, as a result of the enforcement of these laws may constitute additional, separate human rights violations.

Criminalization has yielded few, if any, benefits. Criminalizing drugs is not an effective public safety policy. Human Rights Watch is aware of no empirical evidence that low-level drug possession defendants would otherwise go on to commit violent crimes. And states have other tools at their disposal to address any harmful behaviors that may accompany drug use.

Criminalization is also a counterproductive public health strategy. In fact, rates of drug use have been increasing over the past decade, despite widespread criminalization. For people who struggle with drug dependence, criminalization often means cycling in and out of jail or prison, with little to no access to voluntary treatment. Criminalization undermines the right to health, as fear of law enforcement can drive people who use drugs underground, deterring them from accessing health services and emergency medicine and leading to illness and sometimes fatal overdose.

It is time for Georgia to rethink the criminalization paradigm. Although the amount cannot be quantified, the enormous resources spent in order to identify, arrest, prosecute, sentence, incarcerate, and supervise people whose only offense has been possession of drugs is hardly money well spent, and it has caused more harm than good.

Ending criminalization of simple drug possession does not mean turning a blind eye to the harm that drug dependence can cause in the lives of those who use, and of their families. On the contrary, it requires a more direct focus on effective measures to prevent problematic drug use, reduce the harms associated with it, and support those who struggle with dependence. Ultimately, the criminal law does not achieve these important ends, and causes additional harm and loss instead. It is time for Georgia to rethink its approach to drug use.

Recommendations

As a matter of policy, Human Rights Watch opposes the criminalization of the personal use of drugs and the possession of drugs for personal use. To deter, prevent, and remedy the harmful use of drugs, Human Rights Watch calls on governments, including the Georgian government, to rely on nonpenal regulatory and public health approaches that do not violate human rights.

Human Rights Watch calls on the Georgian authorities to end the criminalization of personal use of drugs and possession of drugs for personal use. Decriminalization of drug use and possession for personal use means removing all criminal sanctions for use and possession. This is not a call for legalization, as drug consumption and possession for personal use could remain an administrative offense that trigger administrative penalties, such as fines. Instead, greater focus should be placed on effective public health measures to prevent and address drug dependency and reduce the harms associated with it.

To the Government and Parliament of Georgia

- Initiate and support legislative amendments decriminalizing personal drug use and purchase and possession of small quantities of drugs for personal use; repetition of similar conduct should not lead to criminal liability or other deprivation of liberty, unless other aggravated circumstances are present.
- Until decriminalization has been achieved, the prosecutor general's office should issue new guidelines urging prosecutors to use their discretion not to prosecute cases of drug consumption and possession of small quantities for personal use.
- Also, before decriminalization, establish a strong presumption of noncustodial sentences for drug possession for personal use; end the mandatory minimum sentencing requirement for drug consumption and possession in quantities that are not large or particularly large, and allow judges to pass proportionate sentences in all drug possession cases.
- Revise thresholds for criminal drug possession in such a way that the thresholds are meaningful and serve as a guidance, rather than a strict dividing line between what is not criminal and what leads to criminal liability.

- Ensure prompt, thorough, and effective investigations into all allegations of abuse of coercive drug testing by law enforcement.
- End the existing practice of forced drug testing. In cases where a person is arrested on suspicion of an offense such as driving under the influence of drugs, a person may be required to undergo a drug test while availing of the full due process rights of a criminal suspect.
- Abolish additional penalties imposed on convicted drug offenders that deprive them of driver's licenses and affect their ability to work in certain professions. Any such penalties, if imposed, should be directly related and proportionate to an offense committed, such as driving under the influence of drugs.
- Support a public health approach to drug use to minimize the adverse consequences of drug use, reduce drug dependence, and to support harm reduction around drug use and increased access to emergency care. Appropriate sufficient funds to support evidence-based voluntary treatment and harm reduction services in the community, as well as in correctional facilities.
- Initiate public awareness information campaigns, emphasizing public health approaches to drug use, informing the public of the risks and consequences of drug use.
- Gather and aggregate the following data that would inform drug policy decisions, including data related to arrests for drug offenses (disintegrated by type of offense, type and amount of drugs, and gender of the offenders), convictions by type of offense, penalties, and length of sentences, and the prison population of those sentenced for drug offenses by type of offense and average sentences.
- Gather and aggregate data through the population-based, public health-oriented survey of substance use, including measuring type of use, duration of use, initiation of use, and treatment.

Methodology

Human Rights Watch prepared this report in close cooperation with the Human Rights Education and Monitoring Center (EMC), a leading Georgian nongovernmental organization.

The report is based on more than 87 in-depth interviews, review of relevant laws, bylaws, and ministerial regulations, strategy documents and their action plans, and information published on official state websites, as well as on data that government agencies provided to Human Rights Watch in response to our requests.

A Note on Interviews

Human Rights Watch and EMC identified individuals who had been prosecuted for drug-related crimes through extensive networks of community organizations, defense lawyers, and outreach service providers, including the Georgian Network of People Who Use Drugs (GeNPUD) and the “White Noise Movement,” a group of activists advocating for drug decriminalization in Georgia.

All individuals interviewed for this report about their experiences provided informed consent, and no incentive or remuneration was offered to interviewees. The interviews were conducted individually and in private to the degree possible. Interviews with six men and women convicted on drug charges serving their sentences in prisons in Rustavi, Batumi, and Geguti prisons were conducted via telephone conversation.

Most in-person interviews (38) were conducted in the capital, Tbilisi, from September 2016 to May 2017. Additional interviews were held in December 2017 and January 2018. Most of the interviews were with drug users who had been detained, prosecuted, subjected to drug testing, or otherwise harassed by the police and/or prosecutor’s office. We also interviewed individuals in some of Georgia’s largest cities, including Kutaisi, Batumi, Ozurgeti, Zugdidi, Telavi, and Gori. We interviewed five to 10 individuals in each city.

To protect the privacy and security of these interviewees, some of whom remain in custody, we decided to use pseudonyms in all cases, unless we were granted explicit consent to use their names or if the information was already public.

In addition, we conducted in-person interviews with social workers who provide drug users with different types of harm reduction and medical services, lawyers with extensive experience of defending accused drug offenders, and various community organization leaders.

When lawyers introduced us to their clients or provided information about the cases they litigated, we also tried to review indictments and verdicts. To protect interviewees' security, we did not seek the prosecutor's perspective on specific cases. Therefore, we present people's stories mostly as they, their attorneys, or family members told them to us. In addition, with regard to some cases, we reviewed case materials, including court rulings, investigations and detention reports.

In September 2017, we met with the Public Defender of Georgia, members of parliament, as well as high-level representatives of the prosecutor's office, the Ministry of Health and Social Affairs, and the Ministry of Justice. During these meetings, we discussed our research findings and the abusive nature of Georgia's drug policies.

A Note on Data Requests

Human Rights Watch and EMC submitted a series of data and information requests to a number of public agencies, regarding arrests, prosecutions, and the prison population for drug offenses. We requested the following:

- From parliament: reports on specific draft laws, explanatory notes on draft laws and minutes of the meeting at which relevant draft laws were discussed;
- From the supreme court: aggregated statistics on verdicts on drug-related offenses and also information about prison sentences and other penalties handed down in those cases;
- From the prosecutor's office: information on criminal prosecutions, drug offenses and plea bargains; internal guidelines related to drug prosecutions;
- From the Ministry of Internal Affairs: information on the number of persons held for mandatory drug testing; the work of drug-testing facilities; the numbers of investigations of drug-related crimes and their clearance rates;

- From the Ministry of Corrections: information on prisoners serving sentences for drug-related offenses, or being on a suspended sentence; also regarding the funds allocated per inmate, and medical and social services provided for drug dependent inmates;
- From the Ministry of Labor, Health and Social Affairs: information regarding the medical/social services provided to and budgetary funds allocated for, drug rehabilitation programs.

Most state agencies provided the requested information. However, some agencies replied that they do not gather the kinds of data we requested. For example, the Supreme Court of Georgia does not keep aggregate data on the fines imposed on people convicted for drug-related administrative and criminal offenses. Therefore, we individually wrote to 34 city and district courts in Georgia, requesting the same information. Except for the Tbilisi City and Bolnisi District Courts, all responded to our information requests. Those two courts responded that they do not gather such data. It is important to note that the Tbilisi City Court is by far the largest court in Georgia.

We also used statistical data published on the official websites of Georgia’s Ministry of Internal Affairs, Supreme Court, National Center for Disease Control, and National Statistics Office.

A Note on Normative Acts Reviewed

During this research, Human Rights Watch and EMC analyzed the following laws and bylaws: The Criminal Code and Criminal Procedural Code, Administrative Offences Code, Law on Police, Law on the Fight Against Drug Related Crimes, Law on Drugs, Psychotropic Substances, Precursors and Narcological Assistance, and the Law on New Psychoactive Substances. We also reviewed decrees regulating forced drug testing procedures, and rules applicable to medical responses in cases of drug overdose and other matters. We reviewed laws and normative acts that were in force starting from 2006 through the present, through rounds of amendments.

A Note on Terminology

This report uses the term “decriminalization” to mean abolishing custodial sentences as well as other criminal punishments for specific actions. It also implies eradicating the subsequent legal outcomes, such as criminal records and civil rights restrictions.

Decriminalization does not necessarily imply legalization of certain drug-related actions.

We use the term drugs to mean all “controlled substances” included in the first and second lists of Annex 1 to the Law of Georgia on Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance. The first list covers drugs that are severely restricted, while the second list covers drugs that are legal for medical use, including through a doctor’s prescription. In this report, “drugs” denotes illicit drugs, and also medications that are used for nonmedical purposes or obtained without a prescription.

When we refer to “drug possession” in this report, we mean possession of drugs for personal use, including purchase and possession without intent to sell or distribute.

For many years, the European Monitoring Center for Drugs and Drug Addiction (EMCDDA), defined problematic drug use as “recurrent drug use that is causing actual harms (negative consequences) to the person (including dependence, but also other health, psychological or social problems) or is placing the person at a high probability/risk of suffering such harms.”² The EMCDDA abandoned the term in recent years, and replaced it with “high-risk drug use.”³ In the Georgian context, “problematic drug use” mostly refers to injected use of controlled substances.

² PDU (Problem Drug Use) Revision Summary, European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), February 20, 2013, file:///D:/Downloads/PDU%20revision%20(1).pdf (accessed June 26, 2018).

³ Ibid.

I. Background

Drug Use in Georgia

The Georgian government gathers only limited data on drug use. Throughout the past 10 years, various experts and nongovernmental organizations have carried out more in-depth surveys on drug use. The most recent survey, published in 2017, estimates that there are approximately 52,500 injection drug users in Georgia whose drug use is problematic because it is recurrent, causing harm to the user, or placing the person at a high probability/risk of suffering.⁴ Problematic drug use has likely been on the rise in Georgia, as evidenced by similar studies conducted in 2009, 2012 and 2014, when the estimates were 40,000, 45,000 and 49,700, respectively.⁵ The prevalence of problematic drug users in Georgia is about 1 percent of the general population and 2 percent among people aged 15 to 64.⁶ Based on the data gathered by nongovernmental organizations on drug use, Georgia would rank 3rd among 111 countries surveyed by the United Nations (UN) for injection drug users among people aged 15 to 64.⁷

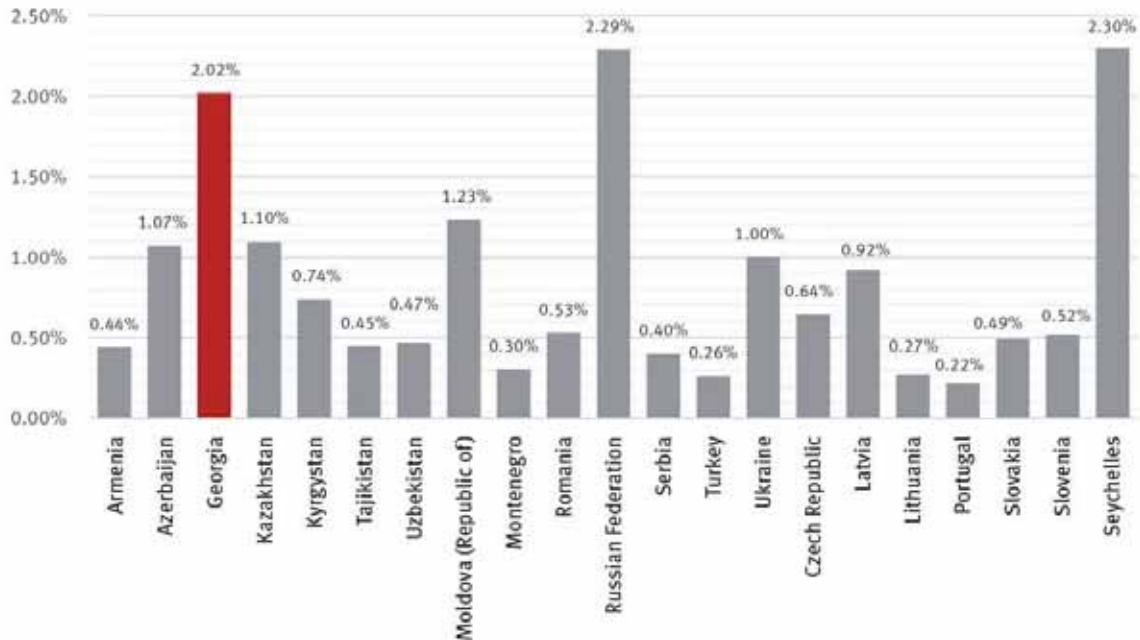
⁴ Curatio International Foundation and Public Union Bemoni (2017), *Population Size Estimation of People who Inject Drugs in Georgia 2016*, p. 8, <http://bemonidrug.org.ge/wp-content/uploads/2014/07/PWID-PSE-Report-2017-ENG.pdf> (accessed May 16, 2018). The study regarded any person who has used any psychoactive drug through injections, into muscles or veins, in a nonmedical context, as people who inject drugs (PWID) in Georgia. The study used Network Scale-Up (NSU) and Multiplier Benchmark methods to make the estimations. The general concept of the Network Scale-Up method is that the stigmatized behavior of one's acquaintances in a community reflects the characteristics of the community as whole. For example, if in a household survey of 400 participants, on average everyone has 200 persons in their network and on average the survey participants know two persons who inject drugs, then the overall estimated prevalence of drug injection is $2/200 = 1\%$. The second method, the Multiplier Benchmark, uses pre-existing data about a behavior or event to serve as an "anonymous count of the key behavior over a fixed time period," referred to as "benchmark information."

⁵ Tamar Sirbiladze, Lela Tavzarashvili, Tomas Zabransky, Lela Sturua (2009). "Estimating the Prevalence of Injection Drug Users in Five Cities of Georgia, 2008. Tbilisi, Georgia, 2009," <http://bemonidrug.org.ge/wp-content/uploads/2014/07/Estimating-the-Prevalence-of-Injection-Drug-Use-in-Five-Cities-of-Georgia.pdf> (accessed May 16, 2018). The study observed the prevalence of injection drug users (IDUs) in five cities: Tbilisi, Batumi, Gori, Zugdidi, and Telavi. To reach an estimate, the study combined "snowball sampling" (individuals referring acquaintances, who referred their acquaintances, and so on) with the prevalence estimation method. The five stages of the prevalence estimation method used are data collection of IDUs to gain benchmark data (using all available data), estimation of the value of the multiplier (the proportion of the target population in the benchmarks, using nomination techniques), the derivation of this multiplier, calculating an estimate of the number of drug injectors (by multiplying the recorded number of IDUs by an appropriate multiplier), and finally calculating the prevalence of drug injection for each of the five cities, using census data giving the population for urban areas.

⁶ Curatio International Foundation and Public Union Bemoni (2015.4), *Population Size Estimation of People who Inject Drugs in Georgia 2014*, p.36, http://curatiofoundation.org/wp-content/uploads/2016/05/PWIDs-PSE-Report-2015_ENG.pdf (accessed June 9, 2018).

⁷ United Nations Office on Drugs and Crime (UNODC), World Drug Report 2017 (ISBN: 978-92-1-148291-1, ISBN: 978-92-1-060623-3, United Nations publication, Sales No. E.17.XI.6). Because the Georgian government does not gather such data, Georgia was not included in the survey.

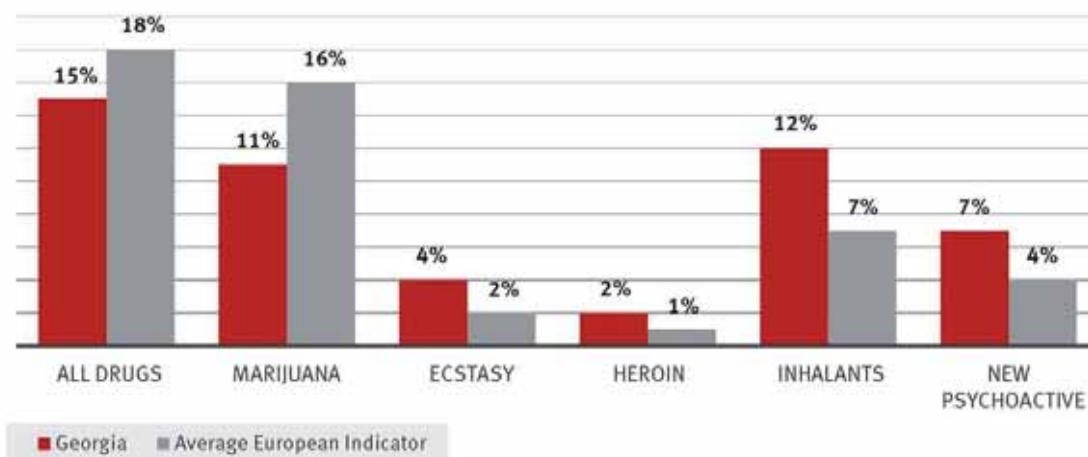
Figure 1: Prevalence of Problematic Drug Users among people aged 15 to 64 in Georgia and select countries



A 2016 survey by Georgia’s National Centre for Disease Control and Public Health looked at a single use of illicit drugs among 15 to 16-year-olds that took place at any point in their lives. Georgia’s ranking for this was lower than the average European indicator. However, the same survey showed that the use of drugs other than marijuana was higher in Georgia. In particular, the consumption of new psychoactive substances and inhalants among Georgian 15 and 16-year-olds is higher than the European average; consumption of heroin and Ecstasy (MDMA) among this age group is about twice as high in Georgia than in Europe on average.⁸

⁸ The European School Survey Project on Alcohol and Other Drugs, Report on Georgia, 2016, p.53, <http://www.ncdc.ge/Handlers/GetFile.ashx?ID=1f6bb777-0831-4e1e-af4b-ab0bd7821dd4> (accessed May 25, 2018). The data was collected from 35 countries in Europe.

Figure 2: Drug Consumption among School Age Children (15 to 16-years-old)



Since the mid-2000s, synthetic drugs made from cooking pharmaceutical drugs containing codeine or pseudoephedrine, lighter fluid, and industrial cleaning products, known by their local nicknames as “Vint,” “Jeff,” and “Krokodil,” are among the most widespread injected drugs in Georgia.⁹ The increasing use of psychoactive substances led the government to adopt a special law on New Psychoactive Substances (NSP), which is described below in this report.

Georgian government agencies do not gather data on substance overdose. The Georgian Harm Reduction Network, a member-based umbrella organization working on problematic drug use, through its own outreach in 2014, documented 39 people dying of drug overdose, of a total 528 overdose cases in the network’s member organizations. In 2015, the network documented 50 overdose deaths of a total of 892 overdose cases, and in 2016, 12 deaths of a total 849 overdose cases.¹⁰

⁹ Alavidze S., Duchidze N., Kirtadze I., Otiashvili D., Razmadze M., Sturua L., Tabatadze M., Javakhishvili J., *The Drug Situation in Georgia, Annual Report 2015* (Javakhishvili J., Ed.) Tbilisi, 2016, <http://www.ncdc.ge/Handlers/GetFile.ashx?ID=163d03e0-b909-496a-b5ab-3ca37e5a5703> (accessed June 8, 2018). Synthetic opioids appear particularly dangerous as they lead to body flesh being rotten in the places where they get injected.

¹⁰ Georgian Harm Reduction Network, *Annual Report, 2016*, p. 35, http://hrn.ge/assets/uploads/წლიური%20ანგარიში/2016_ანგარიში.pdf [in Georgian], (accessed May 16, 2018). These figures are not intended to be comprehensive, they merely reflect what the Georgian Harm Reduction Network was able to document through its outreach.

The proportion of prison inmates who are serving sentences for drug-related crimes in Georgia is believed to be high but has been decreasing in recent years. Georgia provided Council of Europe (CoE) data showing that in 2015, more than 25 percent of all inmates in Georgia (2,721 of 10,242) were serving their sentences on drug-related crimes.¹¹ The Ministry of Corrections and Probation informed Human Rights Watch that they do not gather data showing the breakdown of Georgia’s prison population by the categories of offense for which they were sentenced.¹² However, in a new letter, dated May 16, 2018, the ministry said that there were two prisoners serving terms for drug consumption or possession in small quantities (Article 273 of the Criminal Code), while 861 persons were in jail for drug possession or purchase in larger than criminal-minimum quantities (Article 260 of the Criminal Code). The same letter said that there were 870 convicts on suspended sentences for drug consumption and 3,462 for possession or purchase.¹³

War on Drugs and “Zero Tolerance” Policy

For more than a decade, Georgia’s fight against the use and sale of drugs emphasized arrest and incarceration. The fight against illicit drugs intensified in 2006, when then-President Mikheil Saakashvili declared fighting against organized crime one of his priorities. He launched a “zero tolerance” policy against all crime, including drug-related offenses, and promised harsh new mandatory prison sentences to fight crime and restore law and order.¹⁴ President Saakashvili spoke about forthcoming legislative changes that would abolish suspended sentences, establishing active prison sentences even for low-level offenses, increasing prison terms, and taking away judicial discretion to impose more lenient sentences for certain crimes.¹⁵

The government implemented each point of this “zero tolerance” platform, which harshened laws and regulations on drug-related offenses. In 2006, parliament adopted new anti-drug-related legislation that set out higher financial penalties and longer prison

¹¹ Council of Europe Annual Penal Statistics, Space I – Prison Populations, 2015, http://wp.unil.ch/space/files/2017/04/SPACE_I_2015_FinalReport_161215_REV170425.pdf (accessed May 25, 2018).

¹² Letter from the Ministry of Corrections of Georgia, N: MOC 8 17 00107784, February 2, 2017.

¹³ Letter from the Ministry of Corrections of Georgia, N: MOC 4 18 00434939, May 16, 2018.

¹⁴ See President Saakashvili’s annual address, <https://old.civil.ge/eng/article.php?id=11810> (accessed May 25, 2018).

¹⁵ Alexander Kupatadze, “Georgia: Breaking Out of a Vicious Cycle?”, 2015, p.5, https://www.againstcorruption.eu/wp-content/uploads/2015/05/D3-Georgia_Kupatadze.pdf (accessed June 10, 2018).

sentences for drug offenses, reduced judicial discretion in drug sentencing, and established additional penalties for drug offenders.

Under pre-2006 legislation, repeat consumption of drugs was punishable by an administrative fine, which a judge could set by taking into consideration an individual's salary or other economic circumstances. Amendments to the administrative code adopted in 2006 made only first-time consumption an administrative offense and set the penalty at GEL 500 (US\$190), five times higher than the subsistence minimum.¹⁶ Repeat consumption within a year became a criminal felony.

Criminal penalties became more severe. July 2007 amendments to the criminal code increased the sanctions for a felony defined under article 260 (1), "Purchase and possession of illicit drugs in more than a small quantity", from a maximum of 10 to 11 years. The move made the offense a particularly grave crime, which meant that the offender would retain a criminal record for eight years after serving the sentence, instead of six years for grave crimes.¹⁷

Other amendments adopted in 2006 and 2007 abolished conditional sentencing for grave and particularly grave crimes and stripped judges of their discretion, in all criminal cases, including drug offenses, to issue more lenient penalties than those prescribed by law.¹⁸

Also, in 2006, parliament adopted an anti-drug law that deprived people convicted of drug offenses of the right to drive a vehicle, practice law or medicine, occupy public office, or work in an educational institution. A person convicted for drug consumption would lose these rights for three years, while a drug possession conviction would lead to deprivation of these rights for five years. Repeated drug offenses would strip these rights for 10 years.¹⁹

¹⁶ See amendments here: <https://matsne.gov.ge/ka/document/view/26254#>. According to the National Statistics Office of Georgia, the subsistence minimum in April 2006 was fixed to GEL 98, http://geostat.ge/?action=page&p_id=178&lang=geo. (accessed May 16, 2018). Because of the fluctuating exchange rate, the report is using average exchange rate at a given time. See, National Statistics Office of Georgia, exchange rates by years are available at: http://www.geostat.ge/index.php?action=page&p_id=317&lang=eng (accessed May 16, 2018).

¹⁷ Art. 12 of the Criminal Code of Georgia. The conviction record for grave crimes is cancelled after six years of serving the sentence, while for particularly grave crimes the record is vacated after eight years. Art. 79 of the Criminal Code.

¹⁸ Art. 55 of the Criminal Code of Georgia.

¹⁹ The exception was the right to drive a vehicle, which could be stripped off for a maximum five-year term. The Law of Georgia on Combatting Drug-Related Crime, art. 3.

The term of deprivation of these rights would start once the offender served out the prison sentence.²⁰

According to the law, judges have no discretion to adjust these additional penalties, based on their own assessment of the circumstances.²¹

In 2006, the ministers of internal affairs and health issued a joint order defining procedures for forced drug testing.²² This order allows law enforcement officials to detain a person for up to 12 hours to force them to undergo a drug test.²³ The only criteria for subjecting the person to testing is “sufficient grounds” to assume that the person is under the influence of an illicit substance (see more on mandatory drug testing in section 2). In March 2007, narcological centers, where the mandatory drug tests were conducted, were transferred from the jurisdiction of the state forensic medical bureau to the Ministry of Internal Affairs.²⁴

²⁰ The Law of Georgia on Combatting Drug-Related Crime, art. 5.

²¹ The Law of Georgia on Combatting Drug-Related Crime, art. 3, para 4 (1).

²² Joint order No1244–No278/ of October 24, 2006, the Ministry of Internal Affairs of Georgia and of the Ministry of Labour, Health and Social Affairs, “On Approval of the Rule of Determination of Administrative Offences Related to Consumption of Narcotic Drugs and Psychotropic Substances.”

²³ Order No725, dated September 30, 2015, the Ministry of Internal Affairs, “Instructions on Presenting a Person for the Examination of Consumption of Narcotic Drugs, or Psychotropic Substances,” art. 4, <https://matsne.gov.ge/ka/document/view/2994508> (accessed June 12, 2018).

²⁴ Decree No 155 of March 3, 2007 of the President of Georgia, <https://matsne.gov.ge/ka/document/view/100126> (accessed May 29, 2018). Prior to 2005, drug tests were administered by the Narcological Medical Research Institute under the Ministry of Health. In 2005 the state forensics medical bureau took over the administration of these tests, before jurisdiction for them was moved to the Ministry of Interior in 2006.

Impact of “Zero Tolerance” Policy

Officials and analysts say that “zero tolerance” policy succeeded in reducing crime and led to an increased perception of public safety.²⁵ It also coincided with a tripling of Georgia’s prison population between 2005 to 2011.²⁶

Between 2006 and 2008, the first two years of the “zero tolerance” policy, the number of registered drug offenses tripled.²⁷ Also, whereas in 2006 the share of drug offenses in overall crime data was 5.6 percent, by 2008 it rose to almost 20 percent, second after property-related offenses.²⁸

Officials have claimed the “zero tolerance” policy was successful in deterring people from trying drugs. For example, in 2011, a former Ministry of Justice official said during a television debate show that the policy increased the age of drug users, as fewer young people started using drugs as compared to previous years, and led to a reduction in overall availability of illicit drugs and a dramatic increase in their price, although it is unclear what scientific evidence the ministry gathered to back this claim.²⁹

The policy did not, however, lead to a decrease in drug use. On the contrary, the number of problematic drug users grew. From 2009 to 2014, according to one estimate, the number of

²⁵ There have not been any causal studies that can attribute a decrease in crime rates to the policy, while controlling for other factors. Nevertheless, according to data from the Ministry of Interior, all crime was cut nearly in half and serious crime was down by 70 percent in the five years since the policy was implemented in 2006. The total number of criminal cases in 2010 was 34,739, a nearly 49 percent reduction from a high of 62,283 cases in 2006. Even more significant has been the decrease in serious crime, only 9,987 cases in 2010, as compared with 29,249 in 2006. The spring 2010 survey on “Public Perceptions of Safety” was commissioned by the Ministry of Justice and funded by the European Union (EU). “A More Tolerant ‘Zero Tolerance’”, *Tabula*, April 7, 2011, <http://www.tabula.ge/en/story/70087-a-more-tolerant-zero-tolerance> (accessed June 26, 2018).

²⁶ There were 8,668 inmates in Georgian prisons in 2005, while in 2011 the inmate population grew to 24,186. Council of Europe, *Annual Penal Statistics, 2015, Space I – Prison Population*, p. 52, <http://www.statewatch.org/news/2017/apr/coe-annual-prison-statistics-report-1-prison-populations-2015.pdf> (accessed May 15, 2018).

²⁷ Official Statistics of the Ministry of Interior Affairs, <http://police.ge/ge/useful-information/statistics/statistics1> (accessed May 29, 2018).

²⁸ There were 8,699 drug-related crimes registered in 2008, while the overall number of all crimes was 44,644. Data available at <http://police.ge/files/pdf/statistika%20da%20kvlebebi/geo/danashaulis%20statistika/2007-2008%20respub.regist/resfull.jpg> (accessed May 16, 2018).

²⁹ Otar Kahidze, then head of the analytical department at the Ministry of Justice, TV debate show, *Rustavi 2 TV*, June 6, 2011, <https://youtu.be/5OTDbU8fd3Y?t=19m12s>. (accessed February 21, 2018). Currently a member of the parliamentary minority, Kakhidze is an active supporter of liberalization of the existing drug policy.

injecting drug users grew from 40,000 to 49,700,³⁰ and according to another estimate it surpassed 52,000 in 2017.³¹ New substances appeared on the unlawful “drug market” that have more risks to health and safety for those who use them.³² In the same television show noted above, the former Ministry of Justice official said: “The fact that drug prices increased in the black market led drug users to move to “Jeff,” “Krokodil” and other rubbish that seriously harm health, and if, say, using heroin or morphine affected health less and its users’ [physical appearance] was somewhat decent, now even their appearance was damaged... In this case the body simply rots.”³³

Drug Use Patterns in Georgia

In the mid-1990s, heroin pushed raw opium out of Georgia’s drug scene, but by 2005, Subutex tablets rapidly became a drug of preference. At about the same time, homemade drugs known as “Jeff” and “Vint” became the widespread drug for injection. By 2009, injected Subutex became dramatically more prevalent, and polysubstance (concurrent use of two or more substances) use became widespread. By 2012, desomorphine (aka “krokodil”), a home-made opioid produced from pharmaceutical drugs containing codeine, became the most frequently injected drug.

For more on drug use patterns in Georgia, please see, “Policing, massive street drug testing and poly-substance use chaos in Georgia – a policy case study,” Otiashvili et al., January 16, 2016, <https://substanceabusepolicy.biomedcentral.com/articles/10.1186/s13011-016-0049-2> (accessed June 26, 2018).

³⁰ Alavidze S. et al., *The Drug Situation in Georgia, Annual Report 2015* (Javakhishvili J., Ed.) Tbilisi, 2016.

³¹ Curatio International Foundation and Public Union Bemoni (2017), *Population Size Estimation of People who Inject Drugs in Georgia 2016*, p. 8, <http://bemonidrug.org.ge/wp-content/uploads/2014/07/PWID-PSE-Report-2017-ENG.pdf> (accessed May 16, 2018).

³² David Otiashvili et al., “Policing, Massive Street Drug Testing and Polysubstance Use chaos in Georgia – a Policy Case Study,” 2016, <https://substanceabusepolicy.biomedcentral.com/articles/10.1186/s13011-016-0049-2> (accessed June 8, 2018).

³³ Otar Kahidze, then head of the analytical department at the Ministry of Justice, TV debate show, Rustavi 2 TV, June 6, 2011. <https://youtu.be/5OTDbU8fd3Y?t=19m12s>. (accessed February 21, 2018).

The majority leader in the Georgian Parliament, Archil Talakvadze, told Human Rights Watch that he believes a drug policy based solely on a law enforcement approach is harmful to society:

The problem simply went out of sight; drug-trafficking went underground. It became invisible by the state systems, including by the healthcare system. We lost control of the scale of the health problems and overdose cases caused by drug use. Such a policy also boosted the black market. When conventional drugs were taken out of the streets, drug users started to use more harmful substances, such as “Vint”, “Jeff”, “Krokodil”, which in turn lead to more mental and physical health problems. Finally, thousands of people went through the criminal justice system.³⁴

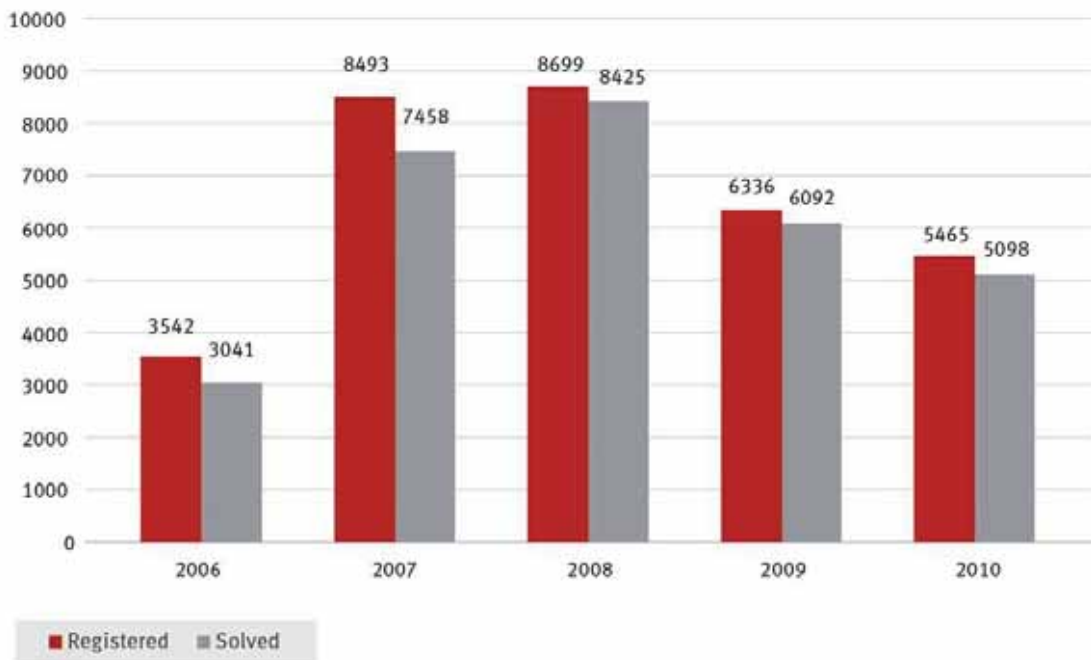
Furthermore, Talakvadze argued that incarcerating drug users created additional problems for the country’s penitentiary system:

Georgia arrested people for drug consumption, they received no adequate treatment in prisons, and as they were going through withdrawal, they disturbed the prison population, they committed, or were prone to committing suicide. Upon release, many of them continued to use drugs and would be recycling through the system again. Many of them had hepatitis C and would be a source of infection for the prison, and the general population too.³⁵

³⁴ Human Rights Watch interview with Archil Talakvadze, member of parliament from the “Georgian Dream” ruling party, majority leader, Tbilisi, September 21, 2017.

³⁵ Ibid.

Figure 3: Drug Related Crimes, 2006 to 2010³⁶



The new drug laws³⁶ contributed to a dramatic rise in the number of men and women serving prison time for drug offenses, and an increase in the fines paid for drug-related offenses.³⁷ According to one estimate, over GEL 44 million (approximately US\$26,500,000) was collected from people who use drugs between 2008 and 2009.³⁸ The impact of these fines on families is discussed below in this report.

³⁶ Although Human Rights Watch obtained data for post “zero tolerance” policy for 2012-2015, the Ministry of Interior’s methodology for crime registration changed in 2013, and Human Rights Watch was not in a position to compare the two sets of data. According to information provided by the Ministry of Interior and prosecutor’s office, the numbers of registered and solved drug-related crimes were as follows: 2012: Registered – 3119, Solved – 2797; 2013: Registered – 10526, Solved – 9097; 2014: Registered -7878, Solved – 7692; 2015: Registered - 5781, Solved – 5203. Letter from the Ministry of Internal Affairs of Georgia, N: 2054659, August 16, 2016; Letter from the Chief Prosecutor’s Office of Georgia N: 13/10230, February 14, 2017.

³⁷ According to the Council of Europe’s Prison Population Report, 2,721 inmates out of 10,233 by September 2014 were serving sentences for drug-related crimes. Council of Europe Annual Penal Statistics, SPACE I – Prison Populations, Survey 2015, <http://www.statewatch.org/news/2017/apr/coe-annual-prison-statistics-report-1-prison-populations-2015.pdf> (accessed May 16, 2018).

³⁸ Human Rights Education and Monitoring Center (EMC), *Unethical Drug Policy*, 2014, p. 28. The calculation was made based on the official data provided by the Supreme Court of Georgia.

Post “Zero Tolerance” Efforts towards Liberalization

After the change of government in October 2012, the new “Georgian Dream” ruling coalition committed itself to liberalizing criminal justice policy, including drug policies.³⁹ In December 2012, parliament adopted a large-scale amnesty act, which included drug-related offenses. People serving prison sentences on drug consumption or possession charges were released.⁴⁰ Following the amnesty, the prison population decreased nearly three-fold, although there is no official data on how many of those released had been serving time for drug offenses.⁴¹

At the end of 2013, the Interagency Council for Combatting Drug Abuse, an intergovernmental body, adopted the National Strategy on the Fight Against Drug Addiction.⁴² The strategy emphasized the importance of public health, harm reduction programs, overcoming stigma and discrimination against drug users, and focused on the need for more data to better guide drug policies. (See more on the National Strategy in section 3.)

After the strategy was approved, parliament adopted important legislative amendments that reduced the severity of penalties for drug offenses. In July 2015, article 260 of the criminal code was amended to reduce the penalty for purchase/possession of a “criminal-minimum” quantity (see below) of drugs for personal use from 11 to six years in prison. Sale or distribution of drugs was separated from possession for personal use, with a penalty of deprivation of liberty from six to 11 years. The authorities also softened the sentence for possession in large quantities, making it five to eight years, as opposed to seven to 14 years.

³⁹ See, National Strategy for the Protection of Human Rights in Georgia, 2014-2020, p.10, http://gov.ge/files/429_51454_924779_STRATEGYENG.pdf (accessed May 29, 2018).

⁴⁰ The Amnesty Law is available at <https://matsne.gov.ge/ka/document/view/1819020> (accessed May 29, 2018).

⁴¹ Annual Penal Statistics, 2015, Council of Europe, p. 52.

⁴² “The State Strategy on Fight against Drug Addiction,” adopted December 4, 2013, <http://www.justice.gov.ge/Multimedia%2FFiles%2Fsabchoebi%2FE1%83%9C%E1%83%90%E1%83%A0%E1%83%99%E1%83%9D%E1%83%9B%E1%83%90%E1%83%9C%E1%83%98%E1%83%90%E1%83%A1%E1%83%97%E1%83%90%E1%83%9C%20%E1%83%91%E1%83%A0%E1%83%AB%E1%83%9D%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%A1%E1%83%A2%E1%83%A0%E1%83%90%E1%83%A2%E1%83%94%E1%83%92%E1%83%98%E1%83%90.pdf> [In Georgian] (accessed February 16, 2018). The Interagency Council includes the ministers of justice, labour, health and social affairs, education and science, finance, and internal affairs, also the chief prosecutor, and other representatives of the executive and legislative branches, as well as representatives of the judiciary. The statute of the Interagency Council is available at <http://www.justice.gov.ge/Ministry/Index/226> [In Georgian] (accessed March 25, 2018).

In August 2014, as part of the National Strategy implementation process, the Ministry of Health amended a December 2000 decree that had required medical emergency workers to inform law enforcement officials when they treated people for drug overdose. Fear of imminent prosecution had driven drug users suffering from overdose from calling an ambulance, putting them at significant risk of death.⁴³

In September 2015, Georgia’s minister of internal affairs issued a decree providing new and slightly more specific instructions for forced drug testing.⁴⁴ The decree changed the grounds for detention for mandatory drug testing, from “reasonable grounds” to “police intelligence.” A later section in this report discusses the 2015 instruction and forced drug testing.

In 2014, parliament adopted a Law on New Psychoactive Substances, which made it a criminal felony to illegally manufacture, produce, purchase, possess, transport, or transfer psychoactive substances listed in the law. The penalty for this is a maximum five-year prison sentence.⁴⁵

In response to the growing use of homemade drugs, the authorities adopted amendments setting criminal liability for unlawful sale of drugs intended for medical use containing codeine, ephedrine, norephedrine, and pseudoephedrine, which are used to chemically produce such drugs as “Krokodil,” “Vint,” and “Jeff.”⁴⁶

Treatment and Rehabilitation Programs

This report does not provide a comprehensive overview of drug treatment and rehabilitation programs, nor does it assess the quality of these programs. It is still important to note that the state offers, free of charge, opioid substitution with Methadone or Suboxone and short-term detoxification and rehabilitation. Since 2012, the government has significantly increased financial allocations for these programs.

⁴³ According to a 2012 report by Alternative Georgia, some drug users did not call an ambulance, as medical staff were obliged to inform the police about overdose cases. The report is available at <http://altgeorgia.ge/2012/myfiles/Final-Naloxone-report-GEO.pdf> (accessed May 25, 2018).

⁴⁴ The decree of September 30, 2015, <https://matsne.gov.ge/ka/document/view/2994508> [in Georgian], (accessed May 29, 2018).

⁴⁵ The law on new psychoactive substances, <https://matsne.gov.ge/ka/document/view/2330479>; Article 260 [in Georgian], (accessed May 29, 2018).

⁴⁶ Drug situation in Georgia, 2016, *op. cit.*, p.46.

Georgian authorities took further steps to make these two rehabilitation programs available for larger numbers of drug users. In 2015, the authorities abolished the limit on the number of patients who could simultaneously benefit from the Methadone replacement program during a given period. In 2017, authorities stopped requiring a monthly copayment of GEL 110 (US\$45) for enrollment in substitution therapy.⁴⁷

Drug users told us that one of the barriers to seeking Methadone replacement therapy was the risk of their drug addiction becoming known to others. A 33-year-old resident of Zugdidi, Gela Mikava, told us, “Zugdidi’s Methadone program is located in the city center. It is impossible to go there and avoid the entire city knowing that you are involved in the methadone program. We all know the consequences: a drug user cannot work in the public sector. As for the private sector, they do not want to have addicted employees either.”⁴⁸

The government has not yet developed a program to prevent the use of psychotropic substances, nor does it offer long-term psychosocial rehabilitation programs for people who are addicted to drugs. One independent expert group found that, “The absence of a rehabilitative component dramatically reduces efficiency of treatment and very often, it is the main reason of unsuccessful treatment.”⁴⁹

⁴⁷ Decree No. 638 of December 30, 2016 of the Georgian government, attachment No. 10, <https://matsne.gov.ge/ka/document/view/3530020> (accessed May 28, 2018).

⁴⁸ Human Rights Watch interview with Gela Mikava (pseudonym), Zugdidi, April 21, 2017.

⁴⁹ Transitional Plan of Services, Drug Policy National Platform of Georgia, 2017, p. 23.

II. Abusive Drug Laws and Practices

Overview of Drug Laws

The Law on Drugs, Psychotropic Substances, Precursors and Narcological Aids (also called the “Framework Law”) regulates the legal circulation of drugs in Georgia, and the Code of Administrative Offenses and the Criminal Code define and set penalties for drug-related offenses.

A first instance of illegal drug use or possession of a small amount of drugs for personal consumption is an administrative offense and is punishable with a fine of GEL 500 (US\$190) or administrative detention for up to 15 days.⁵⁰ A second instance, if committed within a year of a first offense, results in criminal liability and carries a minimum fine of GEL 1,000 (US\$420) or up to one year of prison.⁵¹

Prison is the only penalty for the possession, manufacture, production, purchase, transportation, transfer, or sale of drugs in more than small amounts.⁵² Prison terms depend on various circumstances, chief among them the amount of drugs seized. The Framework Law defines small, large, or particularly large amounts of more than 200 narcotic and 67 psychotropic substances.⁵³

Possession of illegal drugs in any amount exceeding small quantities, as defined in the Framework Law, is considered a serious offense, even if committed for the first time. The penalty for possession of a “minimum amount for criminal liability” (hereafter “criminal-minimum”), for example, 0.05 grams of Morphine -is up to six years of imprisonment (the

⁵⁰ Art. 45 of the Administrative Offences Code of Georgia. The code also punishes such offenses as driving a vehicle in a state of alcoholic or narcotic intoxication (if it did not cause a car accident or does not endanger the health and life of people), hooliganism, and the like. According to the National Statistics Office of Georgia, the subsistence monthly minimum in November 2017 was GEL 175 (US\$72), so the administrative fine for drug consumption is about three times higher than the subsistence minimum. http://www.geostat.ge/?action=page&p_id=178&lang=geo [in Georgian] (accessed March 10, 2018).

⁵¹ Art. 273 of the Criminal Code of Georgia, “Illegal manufacturing, purchase, storage or illegal consumption without medical prescription of drugs, their analogues or precursors in small quantity for personal consumption, by a person who has been subjected to an administrative penalty for the commission of such an act, or who has been convicted of this crime, shall be punished by a fine or community service from 120 to 180 hours or by imprisonment for up to a year. Note: The fine defined in this article shall not be less than double the amount of the fine determined by the relevant article of the Administrative Offences Code of Georgia.”

⁵² Art. 260 of the Criminal Code of Georgia.

⁵³ Annex 2 to the Law on Drugs, Psychotropic Substances, Precursors and Narcological Aids (Framework Law).

mandatory minimum term of imprisonment for this type of crime is six months);⁵⁴ possession of large amounts of drugs could lead to a five to eight-year prison term, while possession of a particularly large amount could result in eight to 20 years in prison or a life sentence, irrespective of intent.

The Framework Law does not define small or “criminal-minimum” quantities for about three-quarters of the drugs on its illegal substance list. In these cases, even the smallest particles of substances commonly used in Georgia, for example, amphetamine, methamphetamine, and desomorphine, are considered large amounts, and more than one gram is a particularly large amount.⁵⁵ This means that a person can face between five to eight years in prison for being caught with a syringe with drug residue in it. (See more about undefined dosages leading to disproportionate penalties in section 2).

As noted above, the Law on New Psychoactive Substances criminalizes their illegal manufacture, production, purchase, possession, transportation, or transfer. The penalty for this is a maximum five-year prison sentence.⁵⁶

Abusive Drug Tests

Drug Testing as Arbitrary Detention

Each year, Georgian law enforcement officials detain thousands of people on the streets to conduct forced drug testing. A positive drug test result often serves as the sole basis for administrative or criminal charges for drug consumption.

The procedures for the drug testing were initially set out in a 2006 joint order of the Ministry of Internal Affairs and the Ministry of Labor, Health and Social Affairs.⁵⁷ In 2015, the minister of interior issued a new order authorizing police to stop people on the street

⁵⁴ Amounts higher than the small amount defined by the Framework Law is considered a starting amount for criminal liability, referred to as “criminal-minimum” in this report.

⁵⁵ The third paragraph of annex No. 2 of the Law of Georgia on Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance.

⁵⁶ The Law on New Psychoactive Substances, adopted in April 2014, <https://matsne.gov.ge/ka/document/view/2330479> [in Georgian], (accessed June 8, 2018); Art. 260 (2) of the Criminal Code of Georgia defines the sanctions.

⁵⁷ Joint Order No. 1244–No. 278/n of October 24, 2006, of the Ministry of Internal Affairs of Georgia and of the Ministry of Labour, Health and Social Affairs, “On Approval of the Rule of Determination of Administrative Offences Related to Consumption of Narcotic Drugs and Psychotropic Substances,” <https://matsne.gov.ge/ka/document/view/1079799> [in Georgian], (accessed May 18, 2018).

or in public places and compel them to undergo drug testing, so long as there are “sufficient grounds [including police intelligence] for assuming drug intoxication.”⁵⁸

These broad grounds leave ample room for police to detain people arbitrarily, and data on negative test results, described below, support this notion.⁵⁹ In November 2015, the ombudsman filed a complaint with Georgia’s Constitutional Court, challenging the constitutionality of forced drug testing. He argued that the practice amounted to deprivation of liberty on arbitrary grounds without the safeguards afforded to similar detainees in criminal investigations.⁶⁰ Three years later, the case is still pending.

Data and Procedures for Forced Drug Testing

According to the Ministry of Interior, from 2012 to 2016, police tested 193,918 individuals for drug consumption. If each test was conducted on a different person, the total number would amount to more than 5 percent of the entire population of Georgia.⁶¹ Less than a third of those detained for testing tested positive for drug intoxication. In other words, over 130,000 individuals were forced to take a drug test even though they were not intoxicated.

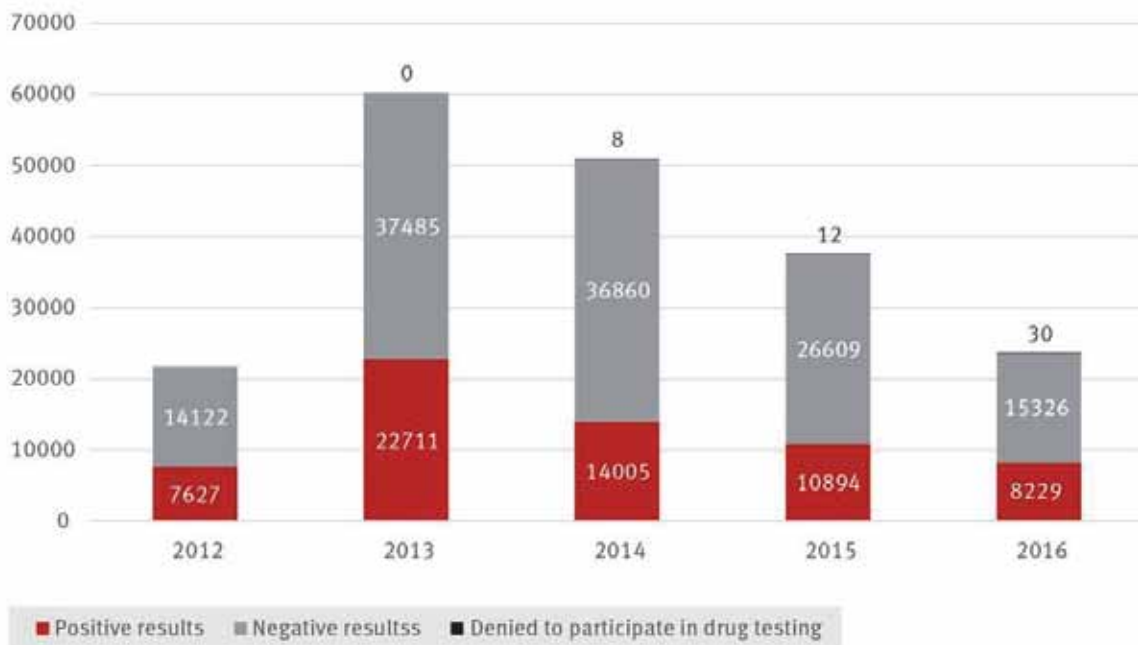
⁵⁸ Other grounds include if a policeman has witnessed the crime of consumption or possession of narcotic drugs or psychotropic substances, or if a person is trying to abscond or avoid fulfilling a legal order of a policeman, and there are reasonable grounds to believe that the person might be under the influence of drugs. Order No725, dated September 30, 2015, of the Ministry of Internal Affairs, “Instructions on Presenting Person for the Examination of Consumption of Narcotic Drugs, or Psychotropic Substances,” paragraph 3, <https://matsne.gov.ge/ka/document/view/2994508> (accessed June 11, 2018).

⁵⁹ Human Rights Watch interview with Ucha Nanuashvili, Ombudsman, September 21, 2017, Tbilisi, Georgia. See also, “Public Debates on Drug Policy,” May 27, 2016, <http://ombudsman.ge/ge/sadjaro-debatebi/sadjaro-debatebi-narkopolitikis-temaze.page> (accessed May 18, 2018).

⁶⁰ “Public Defender Files Constitutional Lawsuit on Legality of “Street Drug Testing”, November 24, 2015, <http://ombudsman.ge/en/recommendations-Proposal/sakonstitucio-sarchelebi/public-defender-files-constitutional-lawsuit-on-legality-of-street-drug-testing.page> (accessed May 18, 2018).

⁶¹ Letters of the Ministry of Interior of Georgia, No. 2331535, dated September 16, 2016 and No. 21700727030 dated March 27, 2017. The Ministry of Interior’s letter uses “number of tests conducted” and “number of individuals tested” interchangeably. Therefore, it is difficult to determine how many of them represented repeat tests on the same individual. Many people were likely tested multiple times. Population figures are according to the National Statistics Office of Georgia, As of January 1, 2015, the Georgian population was 3 729 500, <http://census.ge/en/saqartvelos-mosakhleobis-ritskhovnoba-2015-tslis-1-ianvr-is-mdgomareobit/184#.WZRGf1EjHIU> (accessed June 8, 2018).

Figure 4: Data on Forced Drug tests in Georgia, 2012 to 2016



A study conducted by the ombudsman’s office in Kutaisi, Georgia’s second largest city, found that about 80 percent of the 11,666 people detained for forced drug testing⁶² in 2014 and 2015 tested negative.⁶³

There are 17 forensic drug testing labs in Georgia.⁶⁴ In March 2007, the labs were transferred from the state forensic medical bureau to the jurisdiction of the Ministry of Interior, which is authorized to procure and carry out the drug tests. In 2013, the ministry spent GEL 52.8 (US\$28) on each test, or nearly US\$1.7 million in total.⁶⁵

⁶² Letters from the Ministry of Interior of Georgia, N2331535, September 16, 2016 and N21700727030, March 27, 2017.

⁶³ “Public Debates on Drug Policy,” May 27, 2016, <http://ombudsman.ge/ge/sadjaro-debatebi/sadjaro-debatebi-narkopolitikis-temaze.page> (accessed May 18, 2018).

⁶⁴ Letter from the Ministry of Internal Affairs to Human Rights Watch, N2331535, September 16, 2016. The labs employ a total of 103 people.

⁶⁵ Letter from the Ministry of Interior Affairs of Georgia, N41976, March 4, 2014.

Pressure to Provide a Sample: Detainees' Stories

To conduct a mandatory drug test, police stop people and compel them to go to a forensics lab, in some cases after bringing them first to a police station. Refusal to comply with the order to go to the forensics lab can result in administrative liability and a maximum 15-day jail sentence.⁶⁶ At the same time, the refusal to cooperate gives the police the right to detain the person and forcibly deliver them to the drug testing facility.⁶⁷ Detainees can refuse to provide a urine sample for the tests, but police can still hold them for up to 12 hours at the forensics lab.⁶⁸ During this period, the person is vulnerable to police abuse of their rights.

Human Rights Watch interviewed over 50 individuals who had been transferred to forensics labs for drug testing. Almost all described how, when in police custody at the forensics lab, police did not afford them basic rights to which detainees should be entitled. The police did not explain to them any of their due process rights, such as the right to a lawyer or to notify a family member of their detention. In some cases Human Rights Watch documented, police would not allow people detained for drug testing to use the restroom when they refused to give urine samples; in a few cases police resorted to slaps and other measures to coerce the person to provide a sample, and in others they were not allowed to make a phone call, or exercise other fundamental rights afforded to a detainee in other circumstances. In a number of cases, police used the testing process to pressure detainees to become informants. The forensics labs that carry out mandatory drug tests are under the jurisdiction of the Ministry of Interior and are not equipped for detaining people.

Nika Pantsulaia is a 36-year-old resident of the western Georgian city of Zugdidi. He also acknowledges that he is a drug user. Pantsulaia recalled several instances in 2016 when police stopped him on the street and detained him for drug testing. In one instance, after Pantsulaia refused to provide a urine sample, police held him for 12 hours, did not allow

⁶⁶ Code of Administrative Offenses of Georgia, art. 173.

⁶⁷ Order No. 725, dated September 30, 2015, of the Ministry of Internal Affairs, "Instructions on Presenting a Person for the Examination of Consumption of Narcotic Drugs, or Psychotropic Substances," art. 4, <https://matsne.gov.ge/ka/document/view/2994508> (accessed June 12, 2018).

⁶⁸ Administrative Offences Code of Georgia, art. 247, section I.

him to use the restroom, released him, and five minutes later took him back to the lab and held him for another 12 hours.⁶⁹ Pantsulaia explained:

It was April when I got detained and taken for drug testing by the Zugdidi Police. I was aware of my right to refuse to provide biological material [urine]. But police kept me for 12 hours and during this period they subjected me to different threats and blackmail. I was not allowed to use the bathroom. After 12 hours, I was “released” and in the next five minutes I was returned to the drug facility for another 12 hours. I had no other choice but to give in and provide my urine sample.⁷⁰

Pantsulaia tested positive for drug consumption, and police launched criminal charges against him, as this was the second time he tested positive within a year. A court fined him GEL 3,000 (US\$1,200).⁷¹

Forty-two-year-old Giorgi Kapanadze, who lives in the western Georgian town of Ozurgeti, has been substance dependent for 20 years.⁷² Kapanadze described two of many incidents when police forcefully took him for testing. The first incident happened in March 2014, when police stopped him on his way to visit his brother, who was hospitalized in the city of Mtskheta, about 15 kilometers west of Tbilisi. Kapanadze refused to provide a urine sample and managed to call his lawyer, who helped secure his release.⁷³ The second incident happened in spring 2016, in the city of Batumi, on the Black Sea. Local police took Kapanadze to the Batumi drug testing facility, where police held him for 18 hours and allegedly subjected him to pressure and ill-treatment:

My friend and I were detained and first brought to the Batumi police station. My friend got scared and gave a sample right away. It took them much longer to break me. Initially, when I refused to [provide a sample], they laughed at me, saying that they were “old school” and I would not get away with refusing. When the mockery didn’t work, I was slapped and

⁶⁹ Human Rights Watch interview with Nika Pantsulaia (Pseudonym), Zugdidi, April 21, 2017.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Human Rights Watch interview with Giorgi Kapanadze (pseudonym), Ozurgeti, March 23, 2017.

⁷³ Ibid.

punched. They kept me in the police station for 18 hours. I could not call anyone, nor was I allowed to contact my lawyer or use the bathroom. I was subjected to threats this entire period. Finally, I was coming to the point that I was banging my head against the wall and thinking of suicide. I have never in my life seen policemen being so happy and proud as when I agreed to [give a sample].⁷⁴

Kapanadze tested positive. Since this was his first positive test within a year, he was charged with an administrative offense of drug consumption and fined GEL 500 (US\$190).

In one case documented by Human Rights Watch, a man died shortly after being released from forced detention drug testing, during which police allegedly gave him diuretic pills to force a urine sample. On June 17, 2015, police detained Levan Abzianidze, 59, a taxi driver from Kutaisi, a western Georgian city, and took him to a local forensics lab. His wife told Human Rights Watch that undercover police introduced themselves as regular customers who needed a lift to the drug testing facility.⁷⁵ Once they arrived at the drug lab, the policemen told Abzianidze that he had to follow them for testing. They held him for three hours, during which Abzianidze provided a sample and tested negative. Police wanted a second sample, for which they gave Abzianidze the diuretic pills. His wife, Madona Jikia said:

Police didn't allow him to make even one phone call and were pressuring him into [becoming] an informer. Several hours prior to his death Levan spoke to our son and told him about the incident in detail.

After leaving the lab, he dropped by my work place for some time, his jaw was trembling and he didn't look good, but I blamed it on fatigue and told him to go home. He was waiting for me and our son at the square near our apartment when he suddenly fell and we couldn't bring him back.⁷⁶

⁷⁴ Ibid.

⁷⁵ Human Rights Watch interview with Levan Abzianidze's widow, Madona Jikia, Kutaisi, April 20, 2017.

⁷⁶ Ibid.

Human Rights Watch is not in a position to assert a causal connection between the coerced drug testing and Abzianidze's death. We spoke with Madona Jikia in April 2017, almost two years after the incident. At the time, the investigation was still inconclusive about the cause of Abzianidze's death and police responsibility for it. The prosecutor's office denied members of Abzianidze's family the status of the aggrieved party, thus denying them the possibility to request and review the investigation materials. The autopsy result, seen by Human Rights Watch, noted traces of diuretic drugs in Abzianidze's blood, but stated that the cause of death was "(cerebral) insufficiency developed from chronic cardiovascular ischemic disease."⁷⁷

Serial Detention for Drug Testing

Several people told Human Rights Watch that after testing positive for the first time, or after a prior drug conviction, police would closely monitor them and pick them up repeatedly for drug testing.

36-year-old Gia Kvaratskhelia was arrested in 2014 with one dose of desomorphine, or "Krokodil". He entered into a plea deal with the prosecutor's office and was handed an eight-year prison sentence, two of which he had to serve in prison, and six years suspended.⁷⁸ Kvaratskhelia told Human Rights Watch that after serving the two-year term, not a week would pass without police picking him up on the street and taking him for forced drug testing. He alleged that police pressured him to become an informant on other drug users.⁷⁹

In November 2015, 22-year-old Nika Gvaramadze was stopped for drug testing while on his way to university, where he was a student. Gvaramadze tested positive for marijuana and was released with a GEL 500 fine for the administrative offense.⁸⁰ It would be the first of at least six forced drug tests to which police subjected him over approximately 18 months. He explained:

⁷⁷ Forensics expert conclusion No. 003518316, June 27, 2016.

⁷⁸ Human Rights Watch interview with Gia Kvaratskhelia (pseudonym), Zugdidi, April 21, 2017.

⁷⁹ Ibid.

⁸⁰ Human Rights Watch interview with Nika Gvaramadze (pseudonym), Tbilisi, December 13, 2017.

After this incident, police appeared to think that since I had already tested positive for consumption, they got me [...] They never bothered to explain the reasons for the transfer or read my rights. The process was always identical: they would ask my name, check in the database, and once they saw that I had an administrative offense, they'd transfer me for a mandatory test. I tested negative all those times.⁸¹

One of the detentions turned into an overnight ordeal. In summer 2017, police asked Gvaramadze for his ID when he was out with friends. He did not have it with him but gave his name. After checking a database, police asked him to follow them to the police station to establish his identity. "They confiscated my phone, never explained my rights or the reason for my detention and took me to a police station. They allowed me to make one call after I practically begged for an hour," Gvaramadze described how police held him until the morning and attempted to coerce him to provide a urine sample:

I refused to give a [urine] sample. Policemen started to threaten me, 'Where will you get away from us? If you refuse to cooperate today, we'll detain you tomorrow. You'll spend 12 hours here, get on our wrong side for refusing to cooperate, and it will be worse for you.' I refused. In about 20 minutes, a doctor came by, asked me to stand up and raise my hands [in front of me]. I did not understand what was happening and obeyed as I thought it was a medical checkup. The doctor concluded clinically that I was under [the influence of drugs]. Policemen continued to pressure me, saying that they already had a clinical conclusion and I might as well give them a [urine] sample. I refused. They let me go around 5 a.m. the next morning.⁸²

At an administrative court hearing two days later, Gvaramadze's lawyer successfully challenged the legality of the absurd clinical intoxication report. The court acquitted him.

⁸¹ Ibid.

⁸² Ibid.

Arbitrary Detention Under Human Rights Law

Under human rights law, when police in Georgia hold a person for the purposes of requiring them to provide a urine sample and undergo a drug test, they are unquestionably depriving that person of their liberty.⁸³ The European Court of Human Rights (ECtHR) has repeatedly made clear that the element of coercion in the exercise of police powers of stop and search is indicative of a deprivation of liberty, even if the measure is in practice of short duration.⁸⁴ In the case of forced drug tests, not only are coercive police powers invoked, but the possibility of holding someone for 12 hours is a significant duration. The fact that a person might not, for example, be handcuffed or put in a cell does not mean that they are not deprived of their liberty. It is sufficient that the person's confinement is in a particularly restricted space, in this case a forensics lab, for a nonnegligible length of time, and that the person has not validly consented to the confinement.

The manner in which a person may be deprived of their liberty in Georgia to undergo a forced drug test is also arbitrary for the purposes of human rights law. While the power to detain someone for up to 12 hours to coerce them to provide a test may have a basis in Georgian law, it does not meet the criteria to render it valid under human rights law. First, the only legitimate grounds for which the power to coerce a drug test could be exercised is that the person is suspected of having committed a criminal offense. If that is the case, there must first be reasonable suspicion that they have committed the offense, and the purpose should be brought before a competent authority. In Georgia, the purpose of detaining a person for 12 hours is to secure a drug test, and the scope of the power to detain a person, as evidenced by the numbers detained, and the percentages that show negative drug tests go beyond only those for whom there is a reasonable suspicion. In addition, while detained for the purpose of a forced drug test, the detainees are not afforded basic due process rights, such as access to a lawyer or other protections against potential abuse.

⁸³ For an overview of the meaning of deprivation of liberty under the European Convention on Human Rights see, "Guide on Article 5 of the Convention – Rights to Liberty and Security", by the Council of Europe (CoE), https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf.

⁸⁴ *Krupko and Others v. Russia*, Case No. 26587/07, June 26, 2014, para. 36; *Foka v. Turkey*, Case No. 28940/95, June 24, 2008, para. 78; *Gillan and Quinton v. the United Kingdom*, ECtHR, Case No. 4158/05, 2010, para. 57; *Shimovolos v. Russia*, Case No. 30194/09, June 21, 2011, para. 50; *Brega and Others v. Moldova*, Case No. 61485/08, January 24, 2012, para. 43.

Georgia needs to end this practice of arbitrary detention for forced drug testing as it violates the government's obligations to respect the right to liberty and security. This does not mean that drug tests cannot lawfully be conducted, for example, to assess whether someone has consumed drugs when stopped on reasonable suspicion of operating a vehicle under the influence or in connection with another similar specific offense. In such cases, when the person is in detention on suspicion of having committed such an offense, any tests authorized by law should be conducted with full respect for the due process rights of the suspect.

One-time Pass for Consumption and Possession of a Small Amount for Personal Use

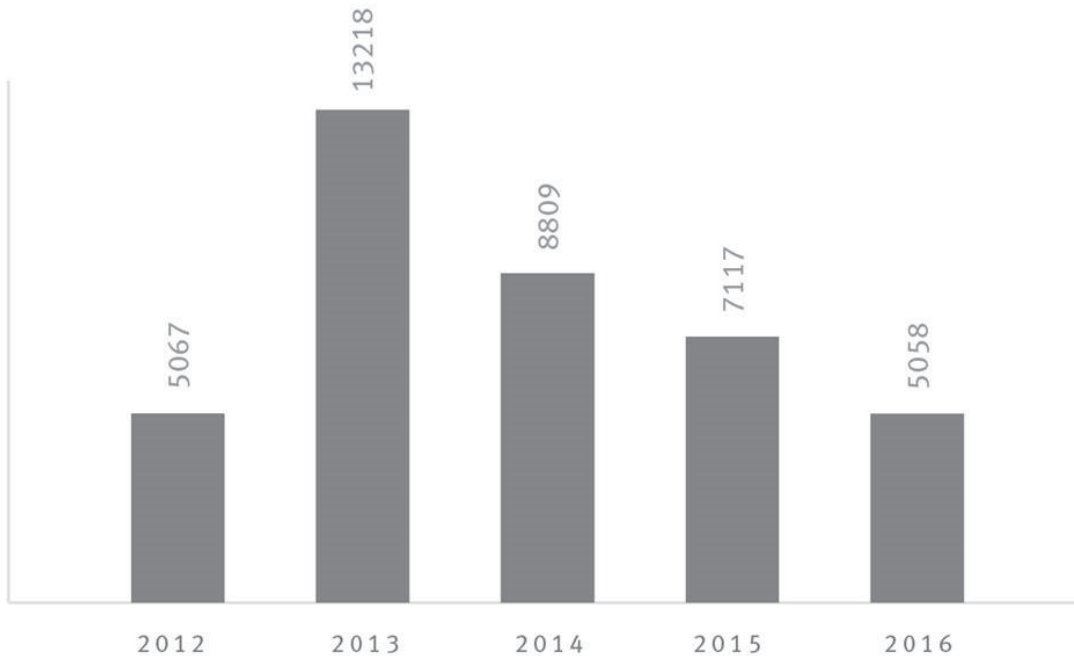
First-time consumption or possession of a small quantity of illegal drugs for personal use is an administrative offense, punishable by a GEL 500 (US\$190) fine, or in exceptional cases, by up to 15 days' administrative detention.⁸⁵ The number of people subjected to administrative penalties for this offense has steadily declined from a high of about 13,000 in 2013 to 5,058 in 2016. According to Georgia's Supreme Court, from 2012 to 2016, 39,269 persons were subjected to administrative penalties for this offense.⁸⁶ Given that courts rarely issue detention for this offense, the total amount in fines paid to the state budget for this offense was about GEL 19,600,000 (roughly US\$8 million).⁸⁷

⁸⁵ Art. 45 of the Code of Administrative Offenses.

⁸⁶ Letters from the Supreme Court of Georgia, No. P - 107-16, June 5, 2016; P- 42-17, February 7, 2017.

⁸⁷ State budget laws for 2012-2016.

Figure 5: Yearly Breakdown of Number of People Subjected to Administrative Offenses for Drug Consumption or Possession in Small Amounts, 2012-2016



It should also be noted⁸⁸ that detainees in administrative proceedings in Georgia do not enjoy equal due process rights to those detained for criminal offenses.⁸⁹ Although in recent years, the authorities have shortened the term for administrative detention from 90 to 15 days, and introduced some due process rights, some shortcomings remain, including the fact that under administrative proceedings the courts do not examine the legality and the grounds for a conducted search/frisk or mandatory drug testing.⁹⁰

⁸⁸ Letters from the Supreme Court of Georgia, No. P - 107-16, June 5, 2016; P- 42-17, February 7, 2017.

⁸⁹ Human Rights Watch, *Administrative Error: Georgia's Flawed System for Administrative Detention* (New York: Human Rights Watch, 2012), <https://www.hrw.org/report/2012/01/04/administrative-error/georgias-flawed-system-administrative-detention>.

⁹⁰ Human Rights Watch interview with Roland Asakashvili, defense attorney, Tbilisi, December 18, 2016.

Lack of Defined Small Quantities

Setting milder punishments for possession of a small quantity of illegal drugs for personal use was a positive step towards liberalizing drug laws. However, as noted above, the Framework Law does not define minimum quantities for three-quarters of all illegal substances.⁹¹ Among them are narcotic substances commonly used in Georgia, such as amphetamine, methamphetamine, and desomorphine. Possession of any particles of those substances, including in paraphernalia, would automatically qualify as a large quantity and would lead to a term of five to eight years in prison. Possession of more than one gram of the same substances is considered a particularly large amount and could result in life imprisonment.

The lack of a legal standard for small amounts in practice means that people are sent to prison for several years for possessing substances in amounts too small to cause any intoxication. (See the text box for the thresholds and penalties for some of the commonly controlled substances in Georgia).

⁹¹ Georgian Law on Drugs, Psychotropic Substances, Precursors and Narcological Aids, Annex 2. Out of 203 illegal drugs/psychotropic listed by the law, 156 do not have determined small amounts, and amounts enough to start a criminal prosecution.

Penalties for Unauthorized Possession of Some Common Controlled Substances in Georgia

Substances in grams	Small Amount	Starting Amount for Criminal Liability (Criminal-minimum)	Large Amount	Particularly Large Amount
	Punished by administrative fine – Gel 500 (US \$190)	Up to 6 years imprisonment	From 5 to 8 years in prison	From 8 to 20 years, or life imprisonment
Cocaine	Up to 0.06	More than 0.06 to 0.6	0.6 to 6	More than 6
MDMA	-	-	Up to 1 gram	More than 1 gram
Psilocybin	-	-	Up to 0.002	More than 0.002
Heroin	-	Up to 0.2	0.2 to 1	More than 1
Lysergic Acid (LSD)	-	-	Up to 0,0002	More than 0,0002
Morphine	Up to 0.04	0.04 to 0.4	0.4 to 4	More than 4
Cannabis Resin (Hashish)	Up to 0.05	0.05 to 0.5	0.5 to 5	More than 5

In Georgia, up to 75% of all controlled substances do not have defined small quantities; possession of any particle would lead to criminal accountability. Many substances also do not have a defined minimum threshold amount for criminal liability. Therefore, a person in possession of any amount of these substances would face prosecution for large or particularly large amounts, and penalties ranging from five years to life in prison.

Many countries adopt threshold amounts to aid police, prosecutors, and the judiciary in determining whether a person's possession is for personal use. But thresholds for personal use depend on a wide range of factors, depending on the drug and the user. Different countries have adopted different thresholds. If a government chooses to adopt a threshold system, the amounts defined in law should be meaningful, not arbitrary. Threshold amounts should serve as a guidance, rather than a strict divide between criminal or administrative liability.

The failure to define small quantities has ruined lives. This report opened with the story of Vano Machavariani, who was arrested in 2012, on the way to his own bachelor party with two doses of LSD.⁹² The verdict, on file with Human Rights Watch, states that Machavariani possessed 0.00172 grams of LSD. Because of the lack of a defined small dosage, the seized amount was considered a particularly large quantity, and a court sentenced him to nine-and-a-half years in prison. When he was arrested, Machavariani was 30 and felt he had to break off the engagement with his fiancée.⁹³ Machavariani was released under a presidential pardon in October 2017.

Machavariani is one of nine plaintiffs who filed a complaint with the Constitutional Court of Georgia in 2016, requesting it determine the constitutionality of prison terms that result from the lack of a legal standard for small amounts of drugs in cases of possession for personal use.⁹⁴ All nine plaintiffs were sentenced to imprisonment in separate cases at different times for unauthorized possession of different controlled substances. For example, in 2014, the Tbilisi City Court found G. Kvirikadze guilty of possessing a large quantity, 0.2640 grams, of heroin and sentenced him to seven years imprisonment; in 2015 a court found V. Gasparian guilty, also of possessing a large quantity, 0.0149 grams, of buprenorphine, or Subutex, and sentenced him to seven years and six months in prison; in 2014, the Gori District Court sentenced A. Broladze to four years in prison for possessing a large quantity, 0.00028 grams, of methamphetamine for personal use.⁹⁵

As noted above, homemade synthetic drugs became widespread in Georgia in the early 2000s. Among them is desomorphine, known colloquially as “Krokodil”, a synthetic opioid made from cooking pharmaceutical drugs containing codeine or pseudoephedrine, lighter fluid, and industrial cleaning products. There is no legal standard for a small or “criminal-minimum” quantity of desomorphine. Therefore, people have been sent to prison for years for possessing syringes with some particles of the drug in them. For example, 34-year-old Nika Lazikashvili was arrested in September 2014 for possession of 0.000000651 grams

⁹² “Convict: I Was Sentenced to 9.5 Years for Two Doses of LSD,” Liberali, May 18, 2017, <http://liberali.ge/news/view/29399/msjavrdebuli-2-doza-LSDs-gamo-95-tseli-momisajes> [in Georgian], (accessed May 30, 2018).

⁹³ Ibid.

⁹⁴ The Human Rights Education and Monitoring Center (EMC), a local nongovernmental organization, is one of the litigators in the case, <http://constcourt.ge/ge/ajax/downloadFile/2240> (accessed May 30, 2018).

⁹⁵ The latter has entered a plea deal with the prosecutor’s office and sentenced to one year of imprisonment and 3 years of conditional sentence. At time of writing, the constitutional claim is at the hearing stage, and no decision has been made.

of desomorphine that was in a syringe that Lazikashvili claimed police planted on him. For this, a court sent him to prison for eight years for possessing a large amount of desomorphine.⁹⁶

In July 2017, after serving almost three years of his term, Lazikashvili was released, shortly after the constitutional court decision issued a ruling on a case in which it found imprisonment for possession of 0.00009 grams of desomorphine unconstitutional.⁹⁷ The court found that such a small amount of that given substance was not enough to cause intoxication. Human Rights Watch is not aware of other drug offenders benefitting from this court decision.

A 36-year-old resident of Zugdidi, Lekso Akhaladze, twice missed the opportunity to study and pursue career development due to drug prosecutions. The first was in 2007, when he was arrested for unauthorized buprenorphine possession shortly before a planned internship in the United States. The second was in 2010. Akhaladze was accepted into a PhD program in Poznan University, when he was arrested for possession of one Subotex pill that had not been prescribed to him. He said, “In 2010 everything was settled with the university, the studies were to start in October. However, in August I was arrested . . .” Akhaladze was released by amnesty in 2013. “Today I am unemployed and not really into studying anymore. I am tutoring students in history.”⁹⁸

Coerced Plea Bargains: The False Choice of a Plea Deal

According to data provided by Georgia’s Supreme Court, 60 percent of all drug-related cases sent to first instance courts in 2016 ended in a plea deal.⁹⁹ The 2016 data for plea bargains in cases of possession is higher (69.5 percent) as compared to drug consumption

⁹⁶ Human Rights Watch telephone interview with Nika Lazishvili (pseudonym), Tbilisi, December 21, 2016.

⁹⁷ *Lasha Bakhutashvili v. Parliament of Georgia*, constitutional court, July 13, 2017. The decision is available here: <http://constcourt.ge/ge/legal-acts/judgments/1-8-696-saqartvelos-moqalaqe-lasha-baxutashvili-saqartvelos-parlamentis-winaagmdeg1.page> (accessed May 25, 2018).

⁹⁸ Human Rights Watch interview with Lekso Akhaladze (pseudonym), Zugdidi, April 21, 2017.

⁹⁹ Out of 4,321 drug related cases received by first instance courts in 2016, 2,594 cases were plea bargained. Letter from the Supreme Court of Georgia, Np-42-17, February 2, 2017, in response to Human Rights Watch’s request for public information.

cases (47 percent), most likely because defendants facing more severe penalties have a higher incentive to strike a deal than those facing a lesser penalty.¹⁰⁰

There is nothing inherently wrong with plea bargaining. Plea bargaining can be an important and critical element for fast and effective justice in Georgia. Coercion arises when prosecutors leverage the threat of an egregiously long sentence to induce defendants to plead guilty to a lesser one. Several factors give the prosecutor's office significant leverage to coerce plea deals in drug-related cases. These include low acquittal rates for drug-related offenses, disproportionately long sentences and financial penalties, especially for small quantities of most drugs, the courts' lack of discretion to impose sentences below the mandatory minimum prescribed by the law, as well as the prosecutor's authority to assign in a plea deal a prison sentence or financial penalty that is milder than terms set out in the criminal code. As a result, many defendants feel they have no other choice but to enter into a plea deal with the prosecution.

Strict Sanctions and Low Acquittal Rates for Drug Related Offenses

As described in the section on drug-related laws in Georgia, prison terms for drug offenses are disproportionately long.

As noted above, the penalty for illegal drug possession, manufacturing, production, purchase, and transportation can lead to deprivation of liberty from six months to life, depending on the quantity of drugs and other circumstances.¹⁰¹

This means that possession of drugs for personal use is punishable more severely than certain violent crimes or crimes against property or the state. (See figure 8.)

¹⁰⁰ In 1,290 cases out of 1,857 regarding possession of illegal substances, (art. 260 of the Criminal Code) parties signed a plea bargain, while out of 2,127 cases prosecuted under the drug consumption or possession of small quantity, 1,008 ended in a plea deal. Letter of Supreme Court of Georgia, Np-42-17, February 2, 2017.

¹⁰¹ Art. 260 of the Criminal Code of Georgia envisages sanctions for illegal preparation, purchase, storage, transportation, sending, or sale of drugs, their analogues or precursors, or new psychoactive substances.

Figure 6: Sanctions for Drug Offenses Vs. Other Violent Crimes¹⁰²	
Drug Related Offenses	Other Violent Crimes
Possessing Heroin above 1 gram - 8 to 20 years or life sentence	Murder - 7 to 15 years in prison
Possessing Desomorphine above 1 gram - 8 to 20 years or life sentence	Intentionally severe health injury - 3 to 6 years in prison
Possessing, without appropriate authorization, Buprenorphine (a.k.a. Subutex) above 0.12 grams- 8 to 20 years or life sentence	Rape - 6 to 8 years in prison
Possessing Methadone above 1 gram - 8 to 20 years or life sentence	Trafficking - 7 to 12 years in prison
Possessing Cannabis Resin above 0.5 grams - 5 to 8 years in prison	Taking hostage, also torturing - 7 to 10 years in prison
	Aggravated robbery - 5 to 7 years in prison
	Membership of a terrorist organization - 10 to 12 years in prison

As noted above, the “zero tolerance” policy stripped judges of their discretion to use more lenient sanctions for drug-related offenses than the minimum prescribed by the law. The only way to mitigate the harsh punishment would be to enter into a plea deal with the prosecution, which does have the power to set a prison term lower than what is set out in the criminal code.

The conviction rate for drug-related offenses is high. In 2016, of the 4,432 drug-related prosecutions heard by all courts in Georgia, only 18 cases (0.4 percent) resulted in acquittal.¹⁰³

As in other countries, prosecutors set the terms for a plea bargain with the alleged offender. Judges merely confirm the plea deal pro forma, asking the defendant whether he

¹⁰² Criminal Code of Georgia, arts. 108, 117, 137, 179, 1431, 144, 260, and 327.

¹⁰³ Letter from the Supreme Court of Georgia, Np-42-17, February 2, 2017, in response to Human Rights Watch’s request for public information.

or she was coerced into accepting the deal. Otherwise they play a limited role in executing the plea bargain.¹⁰⁴

The prosecutor has no obligation to explain the reasoning behind the plea bargain terms. There are no published guidelines on the severity of penalties the prosecutor should be offering for each offense and the criteria on which the plea bargain terms would be determined in specific cases. Prosecutor's office officials told Human Rights Watch that they have internal guidelines that outline the factors and the variety of punishments to be applied in drug-related prosecutions.¹⁰⁵ In executing the plea deals, the prosecutor's office takes into consideration such factors as the suspect's cooperation with the investigation, the degree and quality of that cooperation, such as willingness to participate in covert operations to expose other drug-related offenders, prior criminal record, family situation, etc.¹⁰⁶ The officials also said that the guidelines are more liberal than what they used to be during the "zero-tolerance" policy, but the leniency is expressed in terms of less severe penalties for drug-related offenses, rather than use of prosecutorial discretion not to press charges.¹⁰⁷ However, the guidelines are not public, and without court oversight, the alleged offender is still left at the mercy of the prosecutor.

Human Rights Watch interviewed about 10 former defendants in drug-related cases who appeared to think that they were "lucky" if they managed to strike a plea deal with the prosecutor's office and avoid disproportionately high sanctions. For example, Davit Abramashvili was arrested in 2013 with a single dose of methamphetamine, which as noted above, qualifies as possession of a large amount of drugs. He felt compelled to enter into a plea bargain with the prosecutor's office. He explained: "They offered a good plea, I didn't have to pay the fine and spent only one year in prison, as opposed to [five to eight years] set out in the criminal code."¹⁰⁸

The offer of a plea bargain can dissuade people from filing a complaint about police abuse. Lasha Bakhutashvili was arrested in 2013 for possession of 0.00009 grams of

¹⁰⁴ Criminal Procedure Code of Georgia, art. 213, section I.

¹⁰⁵ Human Rights Watch interview with the chief and deputy chief of the strategic development and prosecutorial supervising department at the general prosecutor's office, Tbilisi, September 22, 2017.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Human Rights Watch interview with Davit Abramashvili (pseudonym), Tbilisi, December 19, 2016.

desomorphine, which carries a mandatory minimum of five years in prison and a maximum of eight years. Bakhutashvili alleged that police planted the used syringe on him, filed a complaint with the authorities, and went public about it.¹⁰⁹ The prosecutor's office was in charge of prosecuting him and also investigating his drug-planting allegation. Eventually, at the end of 2016, Bakhutashvili accepted the plea bargain. In a departure from usual practice, the plea deal was set at four years suspended sentence, without a fine. Bakhutashvili's wife told Human Rights Watch that the decision was difficult:

It took us a long time to decide whether or not to accept the plea deal. It was even more difficult after we made our case so public and so many people stood by us. It was very hard for Lasha to confess to something he had never committed, but according to the plea bargain offered by the prosecutor's office, we would avoid penalty and real punishment. Had we had more trust in the court, we would definitely fight to the end and try to prove his innocence. However, in this case we made a more pragmatic decision and did not take a chance, especially considering such a high risk of deprivation of liberty for the term of five to eight years.¹¹⁰

Human Rights Watch documented two other cases when former defendants had to agree to a plea bargain, even when they claimed they had been victims of police abuse and alleged drug-planting.

Incentives for Drug Arrests

Supporters of laws that criminalize drug consumption point to the need to fight drug trafficking and related organized crime. A drug user is a "first point of contact" for law enforcement to deal with the broader drug problem and other crime. Some officials use similar reasoning to justify tough criminal penalties for possession of small amounts of drugs: it will always be hard for the police to establish whether seized controlled

¹⁰⁹ Several local human rights nongovernmental organizations and community organizations published a joint statement on this case and demanded that the prosecutor's office investigate the alleged "drug planting." "NGOs Demand Investigation into Beso Khutsishvili's Statement," *Liberali*, May 25, 2016, <http://liberali.ge/news/view/22812/NGOebi-beso-khutsishvilis-gantskhadebis-safudzvelze-gamodziebis-datsyebas-moitkhoven> (accessed May 23, 2018).

¹¹⁰ Human Rights Watch interview with Nino Gelashvili, Lasha Bakhutashvili's wife, Tbilisi, March 21, 2017.

substances are for personal consumption or for petty dealing. In a media interview, a parliamentarian and former minister of interior explained:

In practice, there's no such a thing as just a drug user. Such a person is often also a dealer. It is not just dealing, but also [...] drug trafficking. Therefore, due to the context of drug trafficking, I believe in most cases a drug user should be punished. Most often the case involves heavy drugs such as cocaine, etc. As for so called "soft drugs", which cause a diversity of opinions among [legal experts], society, specialists, in this case it is possible for the state to have a discussion about decriminalization.¹¹¹

However, other factors seem to provide clear incentives for the authorities to maintain existing drug policies: they boost the crime-solving rate on paper, they generate revenue, and they produce a network of informants for other crimes.

Boosting the Overall Crime-Solving Rate

According to the Ministry of Interior, in 2016, drug-related offenses ranked second by number of registered crimes, making up 14 percent of overall crime data in 2016.¹¹² However, unlike most other crimes, solving a drug crime in most cases requires nothing more than establishing the fact of possession or consumption. When police register a possession incident as a crime, all the important factual circumstances have already been established and solving the crime is no longer a challenge. For example, if there is police intelligence about a drug possession case, police already have information about the alleged perpetrators and their whereabouts. The same logic applies to illegal drug consumption: the criminal investigation into illegal drug consumption begins only after the drug test confirms the fact of intoxication, and that the person has already had one administrative penalty for the same offense in the past year. Therefore, the investigation formally begins at the stage when the offense has already been established, the

¹¹¹ "Drug User Should Be Punished," interview with Koba Narchemashvili, *Guria News*, November 15, 2016, <http://www.gurianews.com/article/mtavari/sazogadoeba/44197> (accessed March 9, 2018).

¹¹² There were a total of 35,997 crimes registered in 2016, 30 percent of which were property-related offenses, and 14 percent were drug offenses. Ministry of Internal Affairs, "Registered Crimes in 2016", <http://police.ge/files/pdf/statistika%20da%20kvlevebi/2016/%E1%83%93%E1%83%90%E1%83%9C%E1%83%90%E1%83%A8%E1%83%90%E1%83%A3%E1%83%9A%E1%83%98%E1%83%A1-%E1%83%A1%E1%83%A2%E1%83%90%E1%83%A2%E1%83%98%E1%83%A1%E1%83%A2%E1%83%98%E1%83%99%E1%83%90-2016.pdf> (accessed March 7, 2018).

perpetrator is known, and solving the crime is a matter of criminal prosecution that overwhelmingly results in guilty verdicts.

Year	Total Registered Offenses	Solved Cases	Registered Drug Offenses	Solved Cases
2014	26479	17805 (67.24%)	5122	5035 (98.3%)
2015	25494	17177 (67.38%)	3747	3688 (98.43%)

The nearly 100 percent crime-solving rate for drug offenses boosts the overall crime-solving rate. Although the Ministry of Interior currently does not publish detailed data for registered and solved cases in each crime categories, data from 2014 and 2015 clearly shows the high proportion of registered drug offenses and solved drug-related criminal cases.¹¹³

The data demonstrates that the solving rate for drug offenses is much higher than that of average registered crime. If we exclude drug offenses, the rate of clearance for all crimes would drop from 67 percent to 60 percent.

The Drug User as a Source of Information

Drug users can be an important source of information for police considering that often drugs are rarely consumed alone, and in many cases homemade drugs are rarely prepared alone. As one user noted to Human Rights Watch, “a drug addict rarely consumes alone. Especially today, when homemade drugs are so common, and cooking them could involve several people and, obviously, the drug is then consumed by several people together.”¹¹⁴ Law enforcement also sees drug users as a source of information to help find drug

¹¹³ Data on Registered Crimes, 2014-2015, Ministry of Interior of Georgia, http://police.ge/files/pdf/statistika%20da%20kvlevebi_new/geo/danashaulis%20statistika/2015%20%E1%83%93%E1%83%94%E1%83%99%E1%83%94%E1%83%9B%E1%83%91%E1%83%94%E1%83%A0%E1%83%98/%E1%83%A8%E1%83%A1%E1%83%A1%20%E1%83%A2%E1%83%94%E1%83%A0%E1%83%98%E1%83%A2%E1%83%9D%E1%83%A0%E1%83%98%E1%83%A3%E1%83%9A%E1%83%98%20%28%E1%83%98%E1%83%90%E1%83%9C%E1%83%95%E1%83%90%E1%83%A0-%E1%83%93%E1%83%94%E1%83%99%E1%83%94%E1%83%9B%E1%83%91%E1%83%94%E1%83%A0%E1%83%98%202015%E1%83%AC.%29.pdf [in Georgian], (accessed May 29, 2018).

¹¹⁴ Human Rights Watch interview with Tariel Gogoshvili (pseudonym), Batumi, December 22, 2016.

dealers, and current drug policies provide law enforcement with ample leverage to coerce users to inform.

Almost all interviewees said that during their arrest or detention for forced drug testing, police tried to pressure them to divulge information about different people directly or indirectly. Nika Gobronidze said that police had transferred him for mandatory testing several times, but before taking him to a test center, “police officers would put direct pressure [on him] to cooperate with them and name other people consuming drugs with [him].”¹¹⁵

One drug user and beneficiary of the Georgian Harm Reduction Network, an umbrella organization uniting groups working on drug use, eventually learned his rights and how to protect himself from police blackmail. He described what it is like to live under constant police pressure:

Breaking away from the police’s claws is harder than quitting drugs. Police are very well aware that you probably either have an amount (of drugs) that you are about to use, or you are under the influence of drugs. That means, they have a big advantage and they are using it to blackmail you into cooperating with them. There are people who can’t resist the pressure and therefore agree to the police’s deal in exchange for getting various guarantees for immunity. I am not an exception, and police had tried to coerce me into cooperating with them many times. Threatening and blackmailing has been used many times against me and I endured it all, I could never give out information against my friends to anyone. It’s easier for me since 2015, as I refuse to give a urine sample, invoking my constitutional rights, and never carry any “fact” [drugs] with me, therefore police have fewer means to influence me in any way.¹¹⁶

Gela Bichinashvili, another drug user who has had trouble with the police, also noted that in Tbilisi people can more easily protect themselves from police threats and blackmail because there are many human rights organizations who can provide support, and there is greater public awareness and scrutiny, which means

¹¹⁵ Human Rights Watch interview with Nika Gobronidze (pseudonym), Ozurgeti, December 15, 2016.

¹¹⁶ Human Rights Watch interview with Gela Bichinashvili (pseudonym), Tbilisi, November 10, 2016.

that police are more careful. In the regions, however, people are less informed about their rights, and few organizations are available to protect their rights.¹¹⁷

47-year-old Beso Khutsishvili started to use drugs in the mid-1990s.¹¹⁸ Police in Tbilisi arrested him in 2007 and charged him with possessing 0.0004 grams of heroin.¹¹⁹ A court sentenced him to 16 years in prison. He was released under an amnesty in 2013. Four days after his release, police detained him for mandatory drug testing, he tested positive, and, since it was a first-time offense that year, he was handed an administrative fine. But it meant that he was on the police's radar screen and police repeatedly detained him for drug testing, at some point even three times a day.¹²⁰ Police pressured him into becoming an informer and into setting up others, and eventually driving him to live in hiding for almost a year. He explained:

Since 2014, I started to hide so that I did not have to deal with law enforcement, I would stay with different people, sometimes in a monastery, but in the end, they would find me anyway. I was forced into cooperating with them—one of the policemen even bought me a cell phone to be able to contact me anytime. He would take me to the pharmacy himself, to buy drugs [to] prepare homemade substances and would protect me so that no one would touch me. [...] One evening, they wanted me to cook “Krokodil” [the homemade drug desomorphine] and share it with another person, and they would then arrest him in the process. I agreed, but at the last minute could not go through with it and discarded the syringe in a sewer. They arrested the person anyway. I fled to a monastery, but was also arrested upon return for drug consumption and sentenced to three months' imprisonment. After my release I joined a methadone substitution program, and maybe this explains why police are showing less interest in me.¹²¹

¹¹⁷ Human Rights Watch interview with Gela Bichinashvili (pseudonym), Tbilisi, November 10, 2016.

¹¹⁸ Human Rights Watch interview with Beso Khutsishvili, Tbilisi, March 21, 2017. Khutsishvili's video address on the matter was distributed by “White Noise Movement” nongovernmental organization, May 30, 2016, <https://www.youtube.com/watch?v=FLNa3OEHMVQ> (accessed May 23, 2018).

¹¹⁹ This is an average single dose, but Georgian law classifies this as a large amount.

¹²⁰ Human Rights Watch interview with Beso Khutsishvili, Tbilisi, March 21, 2017.

¹²¹ Human Rights Watch interview with Beso Khutsishvili, Tbilisi, March 21, 2017.

Known drug users are vulnerable to extortion. Forty-two-year-old Giorgi Kapanadze has been using drugs for almost 20 years, and said that he has paid around GEL 50,000 in fines and plea bargains since his first drug arrest. He also said that his known drug record made his family vulnerable to police blackmail:

In 2008, Ozurgeti police threatened my father that if he didn't transfer his shares of the luxurious restaurant in Lanchkhuti to the state budget, they would plant a large quantity of drugs on me and people would not question it, since everyone knew of my relation to drugs. My father was afraid of the police's threats and transferred the shares of the restaurant to the state budget the next day.¹²²

Kapanadze has filed a lawsuit to seek restitution of his family's shares in the restaurant.¹²³

In August 2016, 22-year-old Demur Sturua, a resident of Samtredia, in western Georgia, committed suicide, leaving behind a note stating that a local policeman was coercing him to inform on local cannabis growers and users. Sturua had a prior property crime conviction, although Human Rights Watch is not aware of whether police invoked this to pressure him. In response to pressure by local residents and mass protests, the prosecutor's office started an investigation, but did not move fast enough to protect evidence in the case; the day after the suicide, Sturua's neighbors cut the tree he hanged himself from. The prosecutor's office filed criminal charges against the policeman mentioned in the suicide note, but in spring 2017, the Kutaisi city court acquitted him.¹²⁴

Revenue Generating Exercise – Prohibitive Fines

It is unclear to Human Rights Watch whether high fines fuel increased drug arrests, however, disproportionately high fines contribute significant sums to the state budget and have crippling effects on drug users and their families. According to a 2014 study by EMC, from 2008 to 2009, financial penalties in administrative and criminal cases for consuming

¹²² Human Rights Watch interview with Giorgi Kapanadze (pseudonym), Ozurgeti, March 23, 2017.

¹²³ Ibid.

¹²⁴ EMC provided legal counseling to the family of Demur Sturua.

and possessing drugs brought GEL 45 million (US\$27 million) to the state budget,¹²⁵ or about 0.81 percent of Georgia’s total 2009 state budget of GEL 5,510,161,000.¹²⁶

Experts interviewed by Human Rights Watch for this report said that the total amount of financial sanctions in criminal drug cases decreased significantly since 2012.¹²⁷ The total amount of administrative fines imposed between 2012 and 2016 was more than GEL 19 million (US\$8 million).¹²⁸ However, it is impossible to determine the total amount of fines paid for all drug offenses since 2010 because the Supreme Court of Georgia stopped tracking fines by the type of crime committed.

In order to estimate the total amount of fines paid in criminal cases, Human Rights Watch requested data from all first-instance regional courts in Georgia regarding the financial penalties imposed for drug possession, consumption, and purchasing from 2014 to 2016 in drug offenses of consumption. We requested data from plea bargain deals, as well as the outcomes of cases that went to trial. Thirty-two lower courts provided the requested data, except for the Tbilisi City Court and the Bolnisi District Court. Analysis of the information we received shows that the courts imposed a total of GEL 10,667,025 (US\$4,848,636) in fines in the three-year period. (See figure 9.)

Figure 7: Breakdown of Financial Penalties Imposed by First Instance Courts.	
Possession /purchasing drugs (Article 260 of Criminal Code of Georgia)	Consumption /possessing small amounts of drugs (Article 273 of Criminal Code of Georgia)
2014 - GEL 3,185,846 (US\$1,303)	2014 - GEL 2,149,133 (US\$878,991.10)
2015 - GEL 2,119,096 (US\$866,706.03)	2015 - GEL 1,096,196 (US\$448,341.97)
2016 - GEL 1,145,046 (US\$468,321.52)	2016 - GEL 981,708 (US\$401 516.61)

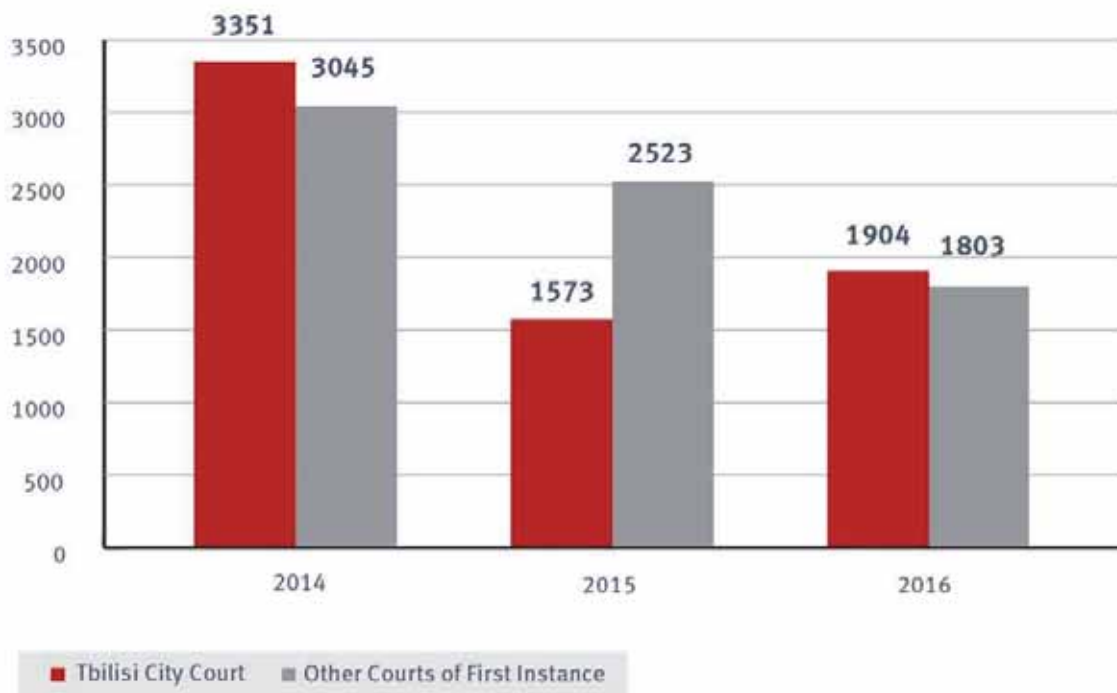
¹²⁵ Unethical drug policy, 2014, page 28. The calculation was made based on official data provided by the Supreme Court of Georgia.

¹²⁶ Ministry of Finance of Georgia, state budget of 2009, <https://www.mof.ge/en/4585> (accessed May 26, 2018).

¹²⁷ Human Rights Watch interviews with practicing lawyers working on drug offenses, Tbilisi, December 18, 2016.

¹²⁸ According to the Supreme Court of Georgia, from 2012 to 2016, a total of 39,269 persons were subjected to administrative punishment for the above-mentioned offenses. Considering that the amount of the fine, GEL 500, is mandatory and imprisonment is an exceptional measure in such cases, the amount of the total fine paid in the state budget for those administrative offenses would be around GEL 19,600,000 (roughly US\$8 million).

Figure 8: Number of drug related cases heard in Tbilisi City Court and other Courts of First Instance



The lack of data from the Tbilisi City Court is a serious obstacle to a comprehensive analysis, since it hears by far the largest number of criminal cases in Georgia; from 2014 to 2016, it heard almost as many cases as all other first instance courts combined.

Fines for drug offenses can have a crippling effect on defendants and their families. For example, 36-year-old Ketevan K. shared a story of how her family lost their apartment after they had to mortgage it to pay off a GEL 17,000 (US\$10,000) fine from a plea bargain deal for her husband in 2010. She explained:

In 2010, my husband was detained while driving without a driver's license. He was on probation for a drug offense, and his license was confiscated for a five-year period. The prosecutor's office requested [sic] the equivalent of US\$10,000 to not send him to jail for breaking the terms of his probation. A

regular bank refused to give us a mortgage and we had to seek a private lender with 5 percent monthly payments. With the help of my sister, who then worked abroad, we managed to pay the mortgage for two years, but in 2012 we could not pay anymore, and the lenders sold our apartment. My husband, his parents, our two children and I were left on the street. We've been renting a place since then, struggling to make ends meet.¹²⁹

In September 2013, Mikheil Todua, a 33-year-old DJ, was charged with possession of 12.99 grams of ecstasy, which is considered a particularly large amount and punishable by eight to 20 years in jail or life imprisonment. He could not afford to pay the GEL 20,000 demanded by the prosecutor's office as a fine in a plea deal that would have spared him part of his prison sentence. He had no choice but to go to trial. He was sentenced to nine years, and at time of writing remains in custody. As Todua's wife explained to Human Rights Watch, "we went for help to many famous lawyers, and they were promising to help with striking a plea deal, but the prosecutor's office was demanding that we pay GEL 20,000 in fines, which we could never afford, thus we had to take the case to court."¹³⁰

The story of one drug offender suggested that in at least some cases police use their knowledge of family assets of the accused to pressure them. Eliso Kiladze, mother of detained Davit Kharshiladze, recalls that while detaining her son in 2017, police said that if they entered into a plea bargain, it would not be a problem for Kharshiladze to pay the fine since his mother had GEL 2 million in savings.¹³¹ Police charged Kharshiladze with possession of a large amount of drugs, which he said were planted. A court later acquitted him.

Additional Punishment – Deprivation of Certain Rights

Georgian law strips people convicted of drug offenses of the right to operate motor vehicles and to work in certain professions for periods of between three and 20 years. If the offender is sentenced to prison, the additional deprivation period starts only after he

¹²⁹ Human Rights Watch interview with Ketevan K., Tbilisi, December 6, 2017.

¹³⁰ Human Rights Watch interview with Salome Tsivtsivadze, Tbilisi, December 8, 2017.

¹³¹ Human Rights Education and Monitoring Center Interview with Eliso Kiladze, Tbilisi, March 29, 2017.

or she is released. This policy in many cases deprives people of their livelihood and further stigmatizes and isolates them.¹³²

The driving ban applies to just about all motor vehicles for the maximum period of five years, including automobiles and tractors, which are both essential to employment for many people in Georgia. Convicted drug offenders may not work in any public office, the medical or legal professions, or in education establishments. A person convicted for drug consumption would lose these rights for three years, while a drug possession conviction would lead to deprivation of these rights for five years. A repeated drug offense would strip these rights for 10 years.¹³³

These penalties are applied to all drug offenders, regardless of whether, for example, they were found to have operated a car under the influence of drugs, or to have practiced medicine while intoxicated.

Police arrested Davit Abramashvili with a single dose of methamphetamine, for consumption, as he was walking home in May 2013. Police told him that this was possession of a large amount of drugs, and that he faced at least eight years in prison. Abramashvili felt compelled to seek a plea deal. “I got lucky,” he said. “They offered a good plea deal. I didn’t have to pay the fine and spent only one year in prison.” However, after his release Abramashvili was stripped of his driver’s license (and all other rights) for five years and could not find a job. He explained: “The biggest problem is deprivation of rights. I haven’t been able to drive a car for the past three years. Otherwise I would have started working as a taxi driver at least so I could have a source of minimum income. Today I don’t even have that.”¹³⁴

Thirty-seven-year-old Nika Kverenchkhiladze is a dentist. In 2015, police caught him with half a pill of Subutex (Buprenorphine). He was not under the influence at the time of apprehension and was facing up to eight years for possession. He agreed to a plea deal,

¹³² Law of Georgia on Combatting Drug-Related Crimes, <https://matsne.gov.ge/ka/document/view/22132> [in Georgian], (accessed May 29, 2018).

¹³³ Law of Georgia on Combating Drug-Related Crime, art. 3. The exception is the right to drive a vehicle, which can be stripped off for a maximum 5-year term. The ban on work in medical profession could be extended to 15 years, or 20 in case of drug selling.

¹³⁴ Human Rights Watch interview with Davit Abramashvili (pseudonym), Tbilisi, December 19, 2016.

paid a GEL 7,000 (approximately US\$3,000) fine, and received a four-year suspended sentence.¹³⁵ He too automatically lost his medical and driver's licenses for five years and was struggling to make ends meet at the time Human Rights Watch interviewed him. He explained: "Besides not being able to work in my profession, I'm banned from driving, and I find it very hard to do anything in such circumstances. And my family's condition worsens every day. I do not understand what benefit the state finds in having people like me unemployed."¹³⁶

In 2014, 38-year-old Temur Gobronidze, a farmer from the western Georgian region of Guria, was handed a four-year suspended sentence for marijuana possession. Although Gobronidze had no record of driving any vehicle while under the influence, he still lost his driver's license and other rights for five years. In June 2017, he was arrested and convicted for breaching the terms of his punishment by driving a tractor while farming his land when his driver's license was suspended. Gobronidze explained to Human Rights Watch: "Agricultural work is my only source of income and it is impossible to support myself and my family without the tractor. It's the law that's wrong, police didn't do anything wrong, they were acting in accordance with the law."¹³⁷

¹³⁵ Human Rights Watch interview with Nika Kverenchkhiladze (pseudonym), Tbilisi, February 18, 2017.

¹³⁶ Human Rights Watch interview with Nika Kverenchkhiladze (pseudonym), Tbilisi, February 18, 2017.

¹³⁷ Human Rights Watch telephone interview with Temur Gobronidze (pseudonym), Tbilisi, July 6, 2017.

III. Recent Efforts Towards Liberalizing Drug Policies

Constitutional Lawsuits

Most of the changes towards liberalizing Georgia’s drug policies have been prompted by lawsuits that plaintiffs filed with the constitutional court, often supported by local civil society groups and the ombudsman.

On October 24, 2015, the Constitutional Court of Georgia issued a groundbreaking judgement concerning marijuana possession in the case of *Beka Tsikarishvili v. Parliament of Georgia*. The court ruled that imprisonment for possession of up to 70 grams of dried marijuana for personal consumption, absent of any evidence of intent to sell, is disproportionate and degrading. In its judgment, the court stated that possessing marijuana for personal consumption is not enough of a public threat to justify even a single day of imprisonment.¹³⁸ Significantly, the decision further stated that sentences should not impose a harsh penalty in order to make an example of the defendant and intimidate the public. Instead, the court stated, the penalty should first and foremost be proportionate to the offense committed, make the defendant feel a sense of justice, and encourage his or her re-socialization.¹³⁹

The 2015 ruling prompted other constitutional lawsuits that challenged Georgia’s criminal drug policies, like the following four landmark judgments related to the proportionality of criminal penalties for certain drug-related offenses:

- As noted above, on July 13, 2017, the court ruled unconstitutional a five-to-eight-year prison sentence for purchase and possession of 0.00009 grams of desomorphine.¹⁴⁰ The ruling argued that any deprivation of liberty was unconstitutional in this case because such a small amount of desomorphine is not suitable for use and would not cause intoxication.

¹³⁸ Judgment of the Constitutional Court of Georgia on the case *Citizen of Georgia Beka Tsikarishvili v. the Parliament of Georgia*, October 24, 2015. Full judgment available in Georgian at: <http://www.constcourt.ge/en/legal-acts/judgments/citizen-of-georgia-beka-tsikarishvili-v-the-parliament-of-georgia.page> (accessed May 23, 2018).

¹³⁹ See the following paragraphs of the decision: II, Par. 22, 81-84, 102.

¹⁴⁰ Judgment of the Constitutional Court of Georgia on the case *Citizen of Georgia Lasha Bakhutashvili v. the Parliament of Georgia*, July 13, 2017. Full judgment in Georgian available at <http://constcourt.ge/ge/legal-acts/judgments/1-8-696-saqartvelos-moqalaqe-lasha-baxutashvili-saqartvelos-parlamentis-winaagmdeg1.page> (accessed May 23, 2018).

- On July 14, 2017, the court ruled in favor of a plaintiff who challenged the proportionality of sanctions for growing marijuana.¹⁴¹ The court declared unconstitutional the deprivation of liberty as a penalty for growing up to 151 grams of cannabis.¹⁴² Meanwhile, in the case of a second plaintiff, who had been sentenced for growing 266 grams of cannabis, the court said that while imprisonment might be constitutional, the existing term of six to 12 years was excessive.
- A November 30, 2017 ruling argued that it is within an individual’s right to free development of one’s personality to choose a type of recreation, including marijuana consumption. According to the court, unless this action creates any relevant risk or danger to another person, it should not be considered a crime.¹⁴³
- Building on this decision, in July 2018, the constitutional court issued another ruling, abolishing all administrative sanctions for marijuana consumption, but it did not deliberate on the issues of purchase or possession of marijuana, which are regulated under the criminal code.

At time of writing, two more complaints, both filed by the ombudsman’s office, are pending with the constitutional court. One challenges the constitutionality of imprisonment as a punishment for consumption of any type of drugs.¹⁴⁴ The second, as noted above, concerns the constitutionality of mandatory drug testing and questions the proportionality of detention during this procedure.¹⁴⁵ At time of writing, the court was hearing both lawsuits on the merits.

¹⁴¹ According to the disputed provisions of the Criminal Code of Georgia, illegal sowing, growing, or cultivation of up to 50 grams of cannabis was punished by fine or imprisonment for a term of two to five years, the same action with an amount of 50 to 250 grams of Cannabis was punished by imprisonment for a term of four to seven years, and illegal sowing, growing or cultivation of more than 250 grams of Cannabis was punished by imprisonment for a term of six to twelve years.

¹⁴² The constitutional court’s decision on the case *Citizens of Georgia Jambul Gvianidze, David Khomeriki and Lasha Gagishvili v. the Parliament of Georgia*, July 14, 2017, the decision is available at: <http://constcourt.ge/ge/legal-acts/judgments/1-9-701-saqartvelos-moqalaqeebi-djambul-gvianidze-davit-xomeriki-da-lasha-gagishvili-saqartvelos-parlamentis-winaagmdeg3.page> (accessed May 25, 2018).

¹⁴³ The constitutional court’s decision on the case *Citizen of Georgia Givi Shanidze v. the Parliament of Georgia*, November 30, 2017, the decision is available at: <http://constcourt.ge/ge/legal-acts/judgments/1-13-732-saqartvelos-moqalaqe-givi-shanidze-saqartvelos-parlamentis-winaagmdeg2.page> (accessed May 26, 2018).

¹⁴⁴ “Constitutional Court Declares Norms Disputed by Public Defender as Unconstitutional and Void,” December 24, 2016, <http://www.ombudsman.ge/en/news/constitutional-court-declares-norms-disputed-by-public-defender-as-unconstitutional-and-void.page> (accessed May 29, 2018).

¹⁴⁵ “Public Defender Files Constitutional Lawsuit on Legality of ‘Street Drug Testing’”, November 24, 2015, <http://www.ombudsman.ge/en/recommendations-Proposal/sakonstitucio-sarchelebi/public-defender-files-constitutional-lawsuit-on-legality-of-street-drug-testing.page> (accessed May 29, 2018).

Nongovernmental organizations have also filed two further complaints that are pending with the constitutional court. One concerns the mandatory and long-term deprivation of the rights to drive and to work in certain professions for people convicted of drug offenses.¹⁴⁶ The second challenges the constitutionality of long-term prison sentences for unauthorized possession of small amounts of controlled substances, including buprenorphine, desomorphine, LSD, methadone and others.¹⁴⁷

National Strategy on Combatting Drug Abuse

In November 2011, Georgia's president created an Interagency Coordination Council for Combatting Drug Addiction, a body which coordinates activities and policies among government agencies to tackle drug addiction and the illegal drug market.¹⁴⁸ The Council is chaired by the Ministry of Justice and includes representatives from the relevant line ministries and members of parliament. Nonvoting council members include members of civil society, international organizations, and representatives of expert communities. Through consultation with local and international experts, at the end of 2012, the council developed the draft National Strategy of Drug Policy, which focused on public healthcare, preventing drug use, harm reduction, overcoming discrimination and stigma towards drug users and introduced a system of relevant surveys to obtain data about drug use.¹⁴⁹ The strategy, together with a detailed action plan for 2014-2015, was approved one year later.¹⁵⁰

While the strategy and its action plan envisaged many significant steps, the government did not allocate funds for any of its key elements, such as developing institutional mechanisms for drug-use prevention. The Interagency Council prepared its own assessment, based on information shared by the state authorities, concluding that most of the recommendations set out in the 2014-2015 action plan were fully or partially implemented, however the assessment does not explain why some recommendations

¹⁴⁶ Constitutional Lawsuit No. 702.

¹⁴⁷ Constitutional Lawsuit No. 733.

¹⁴⁸ Decree No. 751 of the President of Georgia, November 22, 2011.

¹⁴⁹ The strategy document is available at:

<http://www.justice.gov.ge/Multimedia%2FFiles%2Fsabchoebi%2Fნარკომანიასთან%20ბრძოლის%20სტრატეგია.pdf> [in Georgian], (accessed May 25, 2018); Unethical Drug Policy, Human Rights Education and Monitoring Centre, (EMC), 2014, p. 21.

¹⁵⁰ 2014-2015 Action Plan for Combating Drug Addiction, available in Georgian at:

<http://www.justice.gov.ge/Multimedia%2FFiles%2Fsabchoebi%2Fსამოქმედო%20გეგმა.pdf> [in Georgian], (accessed May 23, 2018).

were not implemented or only partially implemented.¹⁵¹ No nongovernmental organization or other body conducted an independent assessment of the action plan's effectiveness.

Meanwhile, in December 2016, the Interagency Council approved another action plan for 2016-2018.¹⁵² The action plan mentions amendments to the framework law on drugs, but provides no further details, for example, on what aspects of the law would be amended and how.¹⁵³

A Ministry of Justice official told Human Rights Watch that the ministry is prepared to take further steps towards liberalization of drug policies short of decriminalization of consumption or possession in small quantities; the steps that they were contemplating included reduced penalties and defining small and criminal-minimum quantities for more substances.¹⁵⁴ The ministry has also prepared the draft regulations for the Drug Situation Monitoring Center, which would be in charge of collecting and analyzing all drug-related data that it would then feed into further policy development. They were planning to make the monitoring center operational by the end of 2017.¹⁵⁵ However, at time of writing, the center had not yet been established.

Draft Law Prepared by Georgia's National Drug Policy Platform

Georgia's National Drug Policy Platform was established in 2016 by a broad coalition of nongovernmental groups, experts, and civic activists. Currently, the platform consists of more than 40 member organizations or activist groups, and its mission is to facilitate the involvement of civil society, community groups, and experts in the development of drug-related policy.¹⁵⁶

¹⁵¹ Interagency Council on Combatting Drug Abuse, Assessment of the 2014-2015 Years Action Plan on Combatting Drug Abuse (on file with Human Rights Watch).

¹⁵² The information on the main goals of the Action Plan, available in Georgian at <http://www.justice.gov.ge/Ministry/Index/308> (accessed May 23, 2018).

¹⁵³ 2016-2018 Action Plan, available in Georgian at <http://www.ncdc.ge/Handlers/GetFile.ashx?ID=4fb465ca-946f-4c26-8c99-81cf9db0fc52> (accessed May 23, 2018).

¹⁵⁴ Human Rights Watch interview with Mariam Bregadze, Advisor at the Department of Public International Law, Tbilisi, September 22, 2017. Her department is also serving as a secretariat for the Inter-Agency Council.

¹⁵⁵ *Ibid.*

¹⁵⁶ The Drug Situation in Georgia, Annual Report, 2016, p. 37.

In early 2017, the platform developed a comprehensive draft law on drug offenses, downgrading the consumption and possession of small quantities of all illicit drugs from criminal to administrative offenses.¹⁵⁷ The draft law also defines personal use quantities to establish pragmatic thresholds for illicit drugs.

The draft law sets out more specific grounds for mandatory drug testing, such as evidence that someone was driving a vehicle or engaged in high-risk professional activities under the influence or consumed illicit drugs in a public space or in the presence of children. It proposes to reform forced drug testing process. The draft envisages moving the drug testing centers from the jurisdiction of the Ministry of Interior to the Ministry of Health. Finally, the draft reintroduces judicial discretion on the issue of imposing bans on driving and occupying certain professions after a drug conviction.¹⁵⁸

Along with the aforementioned legal changes, the platform fully embraces the need for additional resources to set up effective drug prevention, provide treatment, broaden the coverage of harm reduction services, including creating a legal framework for this, establish special psychosocial rehabilitation services for the reintegration of drug users into society, and enhance the enforcement of laws prohibiting drug trafficking and distribution.

Five members of parliament initiated the draft law in the parliament in June 2017. At the end of 2017, the Healthcare Committee held a hearing on the draft. During the hearing, the committee supported the main principles of the draft law. Part of the ruling Georgian Dream party, as well as the majority of opposition parties, also support the draft. However, the executive authorities, including the Ministry of Justice, prosecutor's office, and Ministry of Interior, objected to it. Those against the draft and further liberalization of drug policies fear the reform would lead to an increase in drug users, and fear that law enforcement would not have enough tools to fight drug crime. Some critics also note that the healthcare system in Georgia is not ready to deal with the challenges that decriminalization could produce. A Ministry of Health official told Human Rights Watch

¹⁵⁷ The draft law is available in Georgian at <http://www.parliament.ge/ge/saparlamento-saqmianoba/komitetebi/djanmrtelobis-dacvisa-da-socialur-sakitxta-komiteti-149/narkopolitikis-reforma/narkopolitikis-reformastan-dakavshirebuli-dokumentacia> (accessed May 23, 2018).

¹⁵⁸ See the brief description of draft legislation at <https://emcrights.files.wordpress.com/2017/07/drug-policy.pdf> (accessed June 8, 2018).

they favored things like more precise definitions of threshold amounts, but that “Decriminalization [of consumption and possession of a small amount for personal use] is not our priority. If we decriminalize, consumption may increase, and so will overdose cases, and we need to be ready for that. [And] we need to strengthen rehabilitation, treatment, and prevention programs before we go any further.”¹⁵⁹ This concern was shared by the parliamentary majority leader, who told Human Rights Watch: “That happened everywhere they decriminalized, and it will happen here too. Drug users will start using and selling small amounts. Police are very afraid of it.”¹⁶⁰

However, at least one study has shown that decriminalization, “when implemented effectively does appear to direct more people who use drugs problematically into treatment.”¹⁶¹ The study went on to say that decriminalization also “reduce[d] criminal justice costs, improve[d] public health outcomes, and shield[ed] many drug users from the devastating impact of a criminal conviction.”¹⁶²

A study carried out in 2015 that compared drug use in 13 countries that had decriminalized drug consumption and personal possession found that there was no clear causal link between fear of legal sanctions and illegal drug use.¹⁶³

Despite the platform’s continued advocacy for the draft’s speedy review, parliament held no further hearings on the draft at this writing.

¹⁵⁹ Human Rights Watch interview with Marina Darakhvelidze, Chief of the Healthcare Department, Ministry of Health official, Tbilisi, September 22, 2017.

¹⁶⁰ Human Rights Watch interview with Archil Talakvadze, Tbilisi, September 21, 2017.

¹⁶¹ Niamh Eastwood, Edward Fox, Ari Rosmarin, “A Quiet Revolution: Drug Decriminalisation Across the Globe,” March 2016, p. 7, <https://www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf> (accessed June 29, 2018).

¹⁶² *Ibid.*

¹⁶³ “Drugs: International Comparators,” UK Home Office, October 2014, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf (accessed June 29, 2018).

IV. The Human Rights Case for Decriminalization

Human Rights Watch opposes the criminalization of personal use of drugs and possession of drugs for personal use. We recognize that governments have a legitimate interest in preventing societal harms caused by drugs and in criminalizing harmful or dangerous behavior, including where that behavior is linked to drug use. However, governments have other means beyond the criminal law to achieve those ends and need not pursue a criminalization approach, which violates basic human rights and, as this report documents, harms individuals and families.

The decision to use drugs, like the decision to consume alcohol or nicotine, is a matter of personal choice and an exercise of an aspect of the right to privacy under international law, a cornerstone of respect for personal autonomy. Limitations on autonomy and the right to privacy may be imposed but are justified only if they meet the criteria of legitimate purpose, proportionality, necessity, and nondiscrimination. The criteria of proportionality and necessity require governments to consider what means are available to achieve the same purpose that would be least restrictive or pose minimal interference with respect for and the exercise of human rights. Human Rights Watch believes that arguments for criminalization of personal drug use or possession of drugs for personal use rarely, if ever, meet these criteria. Arrest, incarceration, and a criminal record with possibly life-long consequences are inherently disproportionate government responses to someone who has done nothing more than partake in recreational drugs.

Different purposes have been advanced to justify the criminalization of drug use. One of those purposes is that of morality; drug use is seen by many as morally dubious or reprehensible, regardless of whether or not someone is harmed by it. Human rights norms, however, protect an individual's autonomy and right to privacy, which may include engaging in conduct that the majority may eschew as immoral, but where there is no harm to others. For example, human rights jurisprudence leaves no doubt today that the majority's beliefs in public morality cannot justify criminalization of private homosexual conduct by consenting adults. In essence, promoting public morality in the absence of harm to others is not a "legitimate purpose" for criminalization.

Protecting health is a legitimate purpose, as is protecting harm to others that may occur or be risked because of someone's drug use. But criminalization of drug use to protect someone from harming his or her own health does not meet the criteria of necessity or proportionality. Governments have many nonpenal measures to reduce harms to someone who uses drugs, including offering substance abuse treatment and social support. While the state has an important role in protecting health, it should not do so by punishing the person whose health it seeks to protect. As to proportionality, arrest, incarceration, and a criminal record with possibly life-long consequences are inherently disproportionate government responses to someone who has done nothing more than partake in recreational drugs. Criminalization can also disrupt the ability of individuals to secure their right to livelihood and housing, and it can separate families and parents from their children. The state can encourage people to make good choices around drugs without punishing them.

Criminal sanctions for drug possession and personal use have counterproductive health consequences. Imprisoning people who use drugs does little to protect their health, and fear of criminal sanctions can deter individuals who use drugs from accessing health services and treatment, and subject them to stigma and discrimination.

In a 2010 report to the UN General Assembly on the right to health and international drug control, the UN special rapporteur on the right to health specifically called for decriminalization on the grounds of respect for the right to health, and recommended that "member states...should reform domestic laws to decriminalize or de-penalize possession and use of drugs, and increase access to controlled essential *medicines* [emphasis added]."

Drug use in some situations causes or threatens to cause serious harm to others, and states have a legitimate interest in protecting third parties from harm resulting from drug use. In such circumstances, states may impose proportionate penal sanctions on harmful behavior that takes place in conjunction with drug use. Thus, a state might choose to criminalize driving a car or flying a plane while under the influence of drugs. It might choose to arrest a person who seriously neglects or abuses a child, where drug dependence is a factor in the neglect or abuse. It might make drug use an aggravating factor in an assault. However, in such cases the conduct or offense being punished with criminal sanctions is not simply using drugs, but directly causing or risking harm to others while using drugs.

Human Rights Watch is not alone in calling for decriminalization of drug use and possession of drugs for personal use. A number of human rights and public health bodies have urged states to decriminalize. These bodies include the World Health Organization (WHO), the United Nations Office of the High Commissioner for Human Rights (UNHCHR), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the International Federation of the Red Cross and Red Crescent Societies, and the Global Commission on Drug Policy.¹⁶⁴ In April 2016, the United Nations General Assembly held a Special Session (UNGASS) on the World Drug Problem, to convene a global debate about the costs of the current prohibitionist framework for dealing with drugs.¹⁶⁵ In advance of the session, several UN special rapporteurs issued a joint letter urging decriminalization and depenalization of drug use and possession.¹⁶⁶

Portugal's Successful Decriminalization of All Drugs

Decriminalization is not untested. A number of countries around the world either do not have laws criminalizing drug use or possession for personal use, or do not enforce criminal laws in practice. For example, personal drug use and possession are not criminalized by law in Portugal, Spain, the Czech Republic, and Costa Rica.¹⁶⁷

¹⁶⁴ World Health Organization (WHO), "Policy brief: H.I.V. prevention, diagnosis, treatment and care for key populations: consolidated guidelines July 2014," (Geneva: World Health Organization, 2014), p. 91, http://apps.who.int/iris/bitstream/10665/128048/1/9789241507431_eng.pdf (accessed May 21, 2018); United Nations High Commissioner for Human Rights (UNHCHR), "Study on the Impact of the World Drug Problem on the Enjoyment of Human Rights," September 4, 2015, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_65_E.docx (accessed May 21, 2018); Joint United Nations Programme on HIV/AIDS (UNAIDS), "The Gap Report," July 10, 2014, http://files.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2014/UNAIDS_Gap_report_en.pdf (accessed May 21, 2018); International Federation of the Red Cross and Red Crescent Societies, Statement to the United Nations Commission on Narcotic Drugs, 55th session, <http://www.ifrc.org/en/news-and-media/opinions-and-positions/speeches/2012/to-the-commission-on-narcotic-drugs-55th-session/> (accessed May 21, 2018); Global Commission on Drug Policy, "Taking Control: Pathways to Drug Policies That Work," 2014, <http://www.gcdpsummary2014.com/> (accessed May 21, 2018).

¹⁶⁵ Special session of the United Nations General Assembly on the World Drug Program (UNGASS 2016), <https://www.unodc.org/ungass2016/index.html> (accessed May 25, 2018).

¹⁶⁶ Joint Open Letter by the UN working group on arbitrary detention; the special rapporteurs on extrajudicial, summary or arbitrary executions; torture and other cruel, inhuman or degrading treatment or punishment; the right of everyone to the highest attainable standard of mental and physical health; and the committee on the rights of the child, on the occasion of the United Nations General Assembly Special Session on Drugs, April 15, 2016.

¹⁶⁷ Steve Rolles and Niamh Eastwood, "Drug Decriminalisation Policies in Practice: A Global Summary," September 2012, https://www.hri.global/files/2012/09/04/Chapter_3.4_drug-decriminalisation_.pdf (accessed May 25, 2018, pp. 161-162); The Law Library of Congress, Global Legal Research Center, "Decriminalization of Narcotics," July 2016, <https://www.loc.gov/law/help/decriminalization-of-narcotics/decriminalization-of-narcotics.pdf> (accessed May 25, 2018); Tomáš Zábřanský et al., "Impact Analysis Project of New Drugs Legislation: Summary Final Report," Office of the Czech Government, Secretariat of the National Drug Commission, 2001, http://www.druglawreform.info/images/stories/documents/Czech_evaluation_2001_PAD_en.pdf (accessed May 25,

In 2001, Portugal decriminalized the acquisition, consumption, and possession of illicit drugs in quantities up to a 10-day supply. Drug trafficking and sales still remain criminal offenses and are prosecuted.¹⁶⁸

Portugal retained drug possession as an administrative offense. Importantly, the government also invested substantial resources in treatment and harm reduction services. When police find people in possession of drugs, they hand out an administrative violation ticket. The person is then required to meet with a commission, made up of a social worker, a medical professional, and a lawyer, that is designed to respond to any of the person's health needs. If the person is drug dependent, the commission makes a referral to a treatment program where attendance is voluntary. If the person is not drug dependent, he or she is fined. Criminal sanctions are never imposed for personal use or small-quantity possession.¹⁶⁹

The results of Portugal's decriminalization so far indicate that public safety is much better served through a public health response rather than criminal justice response to problematic drug use.¹⁷⁰ According to a 2010 evaluation, rates of overall use in the population have stayed low, below the European average, while use by adolescents and people deemed to be drug dependent or who inject has declined.¹⁷¹ More than 80 percent of cases before the commissions are deemed nonproblematic and dismissed without sanction.

2018). For more on other countries that have instituted a decriminalization model, see Niamh Eastwood, Edward Fox, and Ari Rosmarin, "A Quiet Revolution: Drug Decriminalisation Across the Globe," March 2016, <http://www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf> (accessed May 25, 2018).

¹⁶⁸ Law No. 30/2000, November 29, entered into effect on July 1, 2001. See also Glenn Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*, The Cato Institute, April 2, 2009, <http://www.cato.org/publications/white-paper/drug-decriminalization-portugal-lessons-creating-fair-successful-drug-policies> (accessed May 25, 2018).

¹⁶⁹ *Ibid.* See also Drug Policy Alliance, *Drug Decriminalization in Portugal: A Health-Centered Approach*, February 2015, https://www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Portugal_Decriminalization_Feb2015.pdf (accessed May 25, 2018); Open Society Foundations, *Drug Policy in Portugal: Decriminalizing Drug Use*, June 2011, <https://www.opensocietyfoundations.org/sites/default/files/drug-policy-in-portugal-english-20120814.pdf> (accessed May 25, 2018); Carl Hart, *High Price: A Neuroscientist's Journey of Self-Discovery That Challenges Everything You Know About Drugs and Society*, (New York: Harper Perennial, 2012), pp. 324-325.

¹⁷⁰ Caitlin Elizabeth Hughes and Alex Stevens, "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?" *British Journal of Criminology*, vol. 50, no. 6 (2010).

¹⁷¹ This evaluation was the first on Portugal's decriminalization to be appear in an English peer-reviewed journal and was based on examination, over a period of years, of all the available Portuguese evaluative documents as well as a range of interviews. *Ibid.*

The number of people receiving drug treatment jumped by more than 60 percent after decriminalization. Deaths caused by drug overdoses decreased from 80 deaths in 2001 to 16 deaths in 2012.¹⁷² Decriminalization has also not triggered so-called “drug tourism,” a 2009 UN study found.¹⁷³ According to Fernando Negrão, a former police chief and then-head of Portugal’s Institute on Drugs and Drug Addiction, “There were fears Portugal might become a drug paradise, but that simply didn’t happen.”¹⁷⁴

In 2014 researchers studied changes in the social cost of drug use in Portugal, which they defined as “a sum of public expenditure on drugs, private costs (incurred by individuals who use drugs) and costs incurred by society (indirect costs, such as lost productivity).”¹⁷⁵ They found that the per capita social cost of drug use decreased an overall 18 percent since decriminalization. The study’s authors attribute this decrease largely to the reduction in legal system costs associated with criminalizing drug use and to savings in health-related costs resulting from decreased problematic drug use.¹⁷⁶

¹⁷² Ibid; Drug Policy Alliance, *Drug Decriminalization in Portugal: A Health-Centered Approach*.

¹⁷³ United Nations Office on Drugs and Crime (UNODC), “World Drug Report 2009,” p. 168, https://www.unodc.org/documents/wdr/WDR_2009/WDR2009_eng_web.pdf (accessed May 25, 2018).

¹⁷⁴ Quoted in Alison Roberts, “How Portugal Dealt with Drug Reform,” BBC News, January 22, 2004, <http://news.bbc.co.uk/2/hi/europe/3421523.stm> (accessed May 25, 2018).

¹⁷⁵ Ricardo Goncalves, Ana Lourenco, and Sofia Nogueira da Silva, “A Social Cost Perspective in the Wake of the Portuguese Strategy for the Fight against Drugs,” *International Journal of Drug Policy*, vol. 26 (February 2015).

¹⁷⁶ Ibid.

Acknowledgments

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HARSH PUNISHMENT

The Human Toll of Georgia's Abusive Drug Policies

In their effort to prevent the use and sale of illicit drugs, Georgian authorities aggressively pursue drug prosecutions, which often lead to long sentences and prohibitive fines against individuals who have committed no harm to anyone, but simply acquired small amounts of drugs for personal recreational use. The criminal justice system treats most drug consumption or possession for personal use as a criminal felony, with severe consequences. This report exposes the human costs of these policies.

Harsh Punishment is based on over 85 in-depth interviews with individuals prosecuted for drug-related crimes, lawyers, family members of those prosecuted, social workers, community leaders, government officials, and nongovernmental groups. The report documents the impact of overly punitive drug laws and practices, including disproportionately harsh prison sentences and fines; abusive, mandatory drug tests; coerced plea bargains; and arbitrary additional punishments, such as stripping people of their drivers' licenses or prohibiting them from working in an array of professions.

Laws that criminalize drug use are inconsistent with human rights norms. Georgian authorities have partially liberalized drug policies since 2012, but they remain harsh. Human Rights Watch urges the Georgian government to decriminalize personal use and possession of all drugs. To prevent and remedy the harmful use of drugs, the authorities should rely on non-penal regulatory and public health approaches that do not violate human rights.

(above) A banner which reads "Dare to Decriminalize!" displayed at a protest rally calling for decriminalization of personal drug use, Tbilisi, Georgia, December 10, 2016.

(front cover) A sign which reads "Care instead of Punishment" is held aloft at a protest rally calling for decriminalization of personal drug use, Tbilisi, Georgia, December 10, 2016.

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