

GEORGIA

# Administrative Error

Georgia's Flawed System for Administrative Detention

H U M A N  
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# **Administrative Error**

## Georgia's Flawed System for Administrative Detention

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## Georgia’s Flawed System for Administrative Detention

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## Summary

Nodari N., 34, is a Georgian opposition activist who has twice learned from personal experience how flawed the system of administrative detention or imprisonment is in his home country.

Detained twice by police during protests, first in 2009 and again in 2011, he was charged under the Code of Administrative Offenses for petty hooliganism and disobeying police orders and sentenced to 20 and 30 days imprisonment respectively.

In neither instance was Nodari informed of his rights or allowed to call his family. A judge ignored his request in 2009 to retain a lawyer of his choosing (he was offered the services of an unfamiliar state-appointed lawyer instead), and did not remark upon the activist's visible head wounds, sustained, he said, when he was apprehended and detained.

Nodari served his terms in holding cells intended for short-term detainees, where conditions were crowded, unhygienic, and poorly ventilated, and there was no chance to exercise.

This report describes the lack of due process protections in Georgia's administrative offenses code, which authorities have used in recent years to lock up protestors and activists at times of political tension. It is based on interviews with lawyers who between them have defended dozens of administrative detainees, six individuals who served administrative imprisonment sentences (all of them were sentenced for alleged offenses committed during demonstrations), and senior political and legal officials.

One key problem is the disparity in rights enjoyed by detainees held for administrative offenses, and those enjoyed by criminal defendants. Under Georgian law, a person can be imprisoned for up to 90 days for certain administrative offenses, or misdemeanors—increased from a maximum of 30 days following large-scale political protests in 2009. Under international law, the severity of this potential punishment amounts to a criminal penalty and means anyone facing administrative charges should be treated as though they are being prosecuted on a criminal charge, i.e. afforded the same rights to due process, fair trial protections, and protections against arbitrary deprivation of liberty.

However, protections in Georgia's Code of Administrative Offenses are either weaker or vaguer than similar safeguards in Georgia's Criminal Procedure Code. As a result, defendants to administrative charges in Georgia do not enjoy full due process rights. Indeed, in meetings with Human Rights Watch Ministry of Justice officials acknowledged discrepancies between the rights provided to administrative and criminal detainees, which became more significant after Georgia adopted a new criminal procedure code in 2010.

For example, the Code of Administrative Offenses does not require that police promptly inform detainees of their rights or give reasons for their detention. Former detainees said they had not been told of their rights and were not allowed to contact their families. In some cases family members could hire lawyers for their relatives, but the lawyers had serious difficulty finding detainees in custody. While detainees may request that authorities notify their relatives of their detention, the code does not state how the detainee is to be aware of this right, how they can exercise it, or when.

Nor do detainees enjoy due process protections in court. In the cases Human Rights Watch reviewed, trials were perfunctory, rarely lasted more than 15 minutes, and judicial decisions relied almost exclusively on police testimonies. In cases when detainees could retain lawyers, they lacked time to prepare an effective defense. Two former defendants had visible injuries in court, which went unquestioned by judges who did not refer the cases to a prosecutor for investigation, presumably because under the administrative offenses code, the judges were not required to do so. Human Rights Watch also heard how detainees and their lawyers face obstacles exercising the right to appeal, effectively rendering it meaningless.

The second key problem is that detention conditions for those awaiting trial on administrative offense charges, and for those who receive custodial sentences, are extremely poor. Those handed terms of administrative imprisonment serve their sentences in temporary detention isolators (TDIs), overseen by the Ministry of Interior, which are mainly used to hold detainees on criminal charges for up to 72 hours and were not intended for long-term occupancy. Interviewees described the unhygienic conditions in these facilities. While the report does not offer a comprehensive account of detention conditions in TDIs, reports by the European Committee for the Prevention of Torture and Georgia's National Preventive Mechanism (an independent body set up under the Ombudsman's office that monitors detention facilities to prevent torture and ill-treatment),

and corroborating testimony by former detainees, indicate that TDI conditions often fall short of international standards.

Georgian authorities have drafted a new Code of Administrative Offenses, are now seeking civil society input, and intend to send the draft to the Council of Europe for expert review. However, the initial draft that passed the first hearing in Georgia's parliament in July 2011, and was presented to a group of nongovernmental organizations in November, did not address the due process concerns documented in this report.

While Georgian government's efforts to develop a new Code of Administrative Offenses are encouraging, authorities should take immediate steps to address the current code's violations of Georgia's international obligations and should bring all detainees' fair trial rights into compliance with its human rights obligations. Given the early drafting stage of the new code, amendments to the current legislation should be tabled immediately to address existing gaps.

The government should ensure full due process protections for administrative detainees facing sanctions of imprisonment or a substantial fine, particularly with regard to the right to notify a third party about detention, the right to a lawyer of one's own choosing, and the right to a fair trial. As part of the ongoing reforms of the Code of Administrative Offenses, it should also consider abolishing administrative imprisonment as a penalty for administrative offenses.

## Key Recommendations

### To the Government of Georgia

- Consider, in the ongoing reform of the Code of Administrative Offenses, abolishing imprisonment as a penalty for administrative offenses.
  
- Immediately amend the Code of Administrative Offenses to:
  - Ensure full due process protections for anyone charged with an offense where they may face a custodial sentence or a significant fine, including the right to notify a third party about one’s detention; access to counsel; and adequate time for the preparation of defense.
  
  - Provide that detainees charged with administrative offenses should be released pending trial, subject to guarantees that they will appear for the court hearing
  
  - Remove the practical barriers to the exercise of the right to appeal judicial decisions regarding administrative imprisonment.
  
- Take immediate steps to ensure that all existing temporary detention isolators meet the requirements of the European Prison Rules.



## Methodology

Human Rights Watch conducted research on the system of administrative detention and imprisonment in Georgia from May through October 2011. This report is based on interviews with 11 lawyers who have between them defended dozens of administrative detainees in Georgia. Human Rights Watch also conducted in-depth interviews with six individuals whom the courts had found liable under the Code of Administrative Offenses and sentenced to administrative imprisonment, and two individuals whom the courts had fined. The report focuses on the weak protections provided in legislation, and provides a small selection of testimonies of those affected to highlight the human cost of these shortcomings. Human Rights Watch also conducted desk research analyzing Georgia's Code of Administrative Offenses and its compliance with Georgia's international obligations.

All of the detainees Human Rights Watch interviewed for this report had been sentenced for alleged offenses committed during political protests. Human Rights Watch chose to focus on these types of cases because the government has referred to the need to deter violations in the context of demonstrations to justify extending the maximum permitted period of administrative detention to 90 days.

The Georgian Young Lawyers' Association, a local nongovernmental organization, assisted in identifying some of the lawyers and several of the individual detainees who were interviewed for the report. All interviews were conducted in Georgian, by a native Georgian language speaker. Human Rights Watch spoke with all interviewees individually and in private.

Human Rights Watch raised many of the concerns outlined in this report in a submission to a working group that the Ministry of Justice convened in an effort to get input into reform of the Code of Administrative Offenses.

Human Rights Watch also met with the Public Defender of Georgia and representatives of Georgia's Ministry of Interior, Ministry of Justice, and National Security Council.

## I. Background

Georgia's President Mikheil Saakashvili came to power following a November 2003 popular uprising, which became known as the Rose Revolution. He was elected president in January 2004 and again in January 2008. Since coming to power, he has faced serious challenges, including two unresolved secessionist conflicts, a poor economy, widespread corruption, and paralyzed state institutions. Parliamentary elections in March 2004 and May 2008 gave Saakashvili's ruling National Movement party an overwhelming majority in parliament and further strengthened the president's mandate. With this parliamentary support, Saakashvili embarked on ambitious institutional reforms, most notably to overhaul a famously corrupt police force. He has also prioritized fighting organized crime.

However, Saakashvili's political opponents have criticized him for heavy-handed rule; for alienating the opposition by constantly rebutting criticism and using his majority in parliament to dominate politics; and for pursuing his reform agenda without securing broad social consensus.<sup>1</sup>

In the past five years there have been several rounds of large-scale protests. The government's response has varied from tolerating the protests to dispersing them with excessive police force. The authorities have detained dozens of demonstrators and put them on trial for administrative offenses leading to fines or imprisonment. The government has also initiated legislative amendments to establish higher penalties for some administrative offenses, including violating public order and resisting police.

Under Georgian law, administrative offenses range from disobeying a police order to leaving the scene of a car accident. The penalty for such an offense can include imprisonment—administrative detention—for up to 90 days. In many countries the term administrative detention refers to a form of 'preventive' detention imposed without a conviction or trial, for example, on illegal immigrants. However, in Georgia administrative detention is imposed by a court, following a determination that the defendant has committed the offense. In practice the Georgian authorities use the

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<sup>1</sup> See, "Georgia: Sliding towards Authoritarianism?", International Crisis Group, Europe Report No.189, December 19, 2007, <http://www.crisisgroup.org/en/regions/europe/caucasus/georgia/189-georgia-sliding-towards-authoritarianism.aspx> (accessed on December 17, 2011).

measure as a tool to control and deter allegedly unlawful conduct in public demonstrations. To distinguish it from other forms of administrative detention, and to reflect the fact that it is a punitive sanction imposed by a court, it is referred to in this report as administrative imprisonment.

Those who are detained while awaiting trial on administrative offense charges and those who are found liable and given a custodial sentence, are held in custody in what are termed ‘temporary detention isolators’ (TDIs), which are under the jurisdiction of the Ministry of Interior. These facilities were designed to hold detainees on criminal charges for up to 72 hours, at which point they are charged and either released or transferred. They were not intended for long-term detention.<sup>2</sup>

## Protests and Use of Administrative Imprisonments

In recent years, Georgia has witnessed numerous street demonstrations as protesters have taken to the streets to voice a variety of demands, including demands for early elections and the president’s resignation. The most serious clash between the police and protesters took place on November 7, 2007, when, following several days of large scale rallies, police used excessive force to disperse protesters with water cannons, tear gas, and rubber bullets.<sup>3</sup> According to official statistics, over 550 protestors and 34 policemen were hospitalized as a result of these clashes.<sup>4</sup> According to the prosecutor general’s office, 75 people were detained for administrative offenses of petty hooliganism and resisting police orders; 21 of them were tried and given sentences of up to 30 days administrative

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<sup>2</sup> After they are charged, criminal suspects are either transferred to pre-trial custody, to facilities that are under the jurisdiction of the Ministry of Corrections and Legal Assistance, or are released on bail subject to a restraining measure. Out of 21,626 people placed in temporary detention isolators in 2010, only 8,657 were administrative detainees. Official statistics are posted on the Ministry of Interior website, [http://police.ge/uploads/izolatorebi/Isolatrors\\_-\\_2010\\_Stats\\_Geo.pdf](http://police.ge/uploads/izolatorebi/Isolatrors_-_2010_Stats_Geo.pdf) (accessed December 21, 2011).

<sup>3</sup> Human Rights Watch, *Crossing the Line: Georgia’s Violent Dispersal of Protestors and Raid on Imedi Television*, vol. 19, No. 8(D), December 2007. The violence capped several days of peaceful demonstrations by Georgia’s opposition parties and supporters, who were calling for early parliamentary elections and for the release of individuals whom they considered political prisoners, among other demands. Approximately 50,000 people participated on the first day of the protests on November 2, 2007. The authorities tolerated continued protests for several days, although the number of protestors steadily decreased on subsequent days. On November 7, the government initiated a violent crackdown on the protesters and instituted a nine-day state of emergency, saying that this was in response to a coup attempt. On the evening of November 7 riot police also raided the private Imedi television station, held the staff at gunpoint, destroyed archives, and smashed equipment. Both Imedi and another private station, Kavkasia, were taken off the air. Ibid.

<sup>4</sup> Human Rights Watch, *World Report 2008*, (New York: Human Rights Watch, 2008), Georgia chapter, <http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/georgi17743.htm>

imprisonment (the maximum sentence envisaged by the Code of Administrative Offenses at the time); the remaining 54 were fined and released.<sup>5</sup>

Another round of protests took place in 2009, when thousands of opposition supporters demanding Saakashvili's resignation blocked Tbilisi's streets from April to early June. Although the government largely tolerated the protracted protests, on June 15 police dispersed the demonstration with force, detaining dozens of activists, some of whom later said they were ill-treated in custody. Police attacked about 50 opposition supporters gathered outside the police headquarters protesting the detention of youth activists the day before.<sup>6</sup> Without warning, police chased and beat demonstrators with rubber truncheons, injuring at least 17. Police claimed that opposition supporters were blocking the main entrance and road and detained 38 demonstrators. The court fined and released 33 of them and sentenced the other five to 30 days' administrative imprisonment.<sup>7</sup>

In apparent response to the protests, in July 2009 the parliament amended the Code of Administrative Offenses, to increase the maximum length of administrative imprisonment, including for minor hooliganism and defying police orders, from 30 to 90 days. Another set of amendments to the Law on Assemblies and Manifestations banned full or partial blocking of roads during rallies unless the demonstration cannot be held elsewhere due to the number of participants.<sup>8</sup>

On January 3, 2011, police used force to break up a hunger strike held in central Tbilisi by more than a dozen veterans of Georgia's armed conflicts. The veterans had begun the hunger strike a week earlier to highlight their economic hardships.<sup>9</sup> Police detained 11 protesters, charging them under the Code of Administrative Offenses. The Tbilisi City Court

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<sup>5</sup> General Prosecutor's Office of Georgia, December 1, 2007, response to questions submitted by Human Rights Watch; quoted in Human Rights Watch, *Crossing the Line: Georgia's Violent Dispersal of Protestors and Raid on Imedi Television*, vol. 19, No. 8(D), December 2007.

<sup>6</sup> "Protesters Attacked at Police Headquarters," *Civil Georgia*, June 15, 2009, <http://civil.ge/eng/article.php?id=21108>, (accessed December 17, 2011).

<sup>7</sup> Human Rights Watch, *World Report 2010*, (New York: Human Rights Watch, 2010), Georgia chapter, <http://www.hrw.org/en/node/87536>.

<sup>8</sup> *Ibid.*

<sup>9</sup> "Police Break Up Hunger Striker Veterans," *Civil Georgia*, January 3, 2011, <http://civil.ge/eng/article.php?id=23009> (accessed on November 10, 2011).

found them liable for petty hooliganism and disobeying police orders and fined each GEL 400 (US\$ 240).<sup>10</sup>

Another clash between opposition supporters and police took place on May 26, 2011. This round of protests started in central Tbilisi on May 21, when about 10,000 protesters led by former speaker of the parliament Nino Burjanadze demonstrated in central Tbilisi. Hundreds continued to protest for five days in front of the Georgian Public Broadcasting building, calling for Saakashvili to step down. On May 25, hundreds of protestors moved in front of the parliament building on Rustaveli Avenue, the main thoroughfare in Tbilisi, but their rally permit expired at midnight. Meanwhile, the authorities wanted to clean up the area to make way for the planned Independence Day military parade on May 26. At 12:15 a.m., riot police used water cannons, tear gas, and rubber bullets to disperse the rally. Police pursued fleeing demonstrators, detaining some 160 participants, and beat many, including some who offered no resistance.<sup>11</sup>

In summary trials the Tbilisi City Court found over 90 of the protestors liable for disobeying police orders, and sentenced them to up to 30 days administrative imprisonment.<sup>12</sup>

Georgian authorities have also used the Code of Administrative Offenses to fine or lock up individual political activists. For example, in August 2010 police detained activists and writers Irakli Kakabadze, Shota Gagarin, and Aleksi Chigvinadze as they peacefully protested on George W. Bush Street in Tbilisi. The Tbilisi City Court held that they had disobeyed police orders, fined each of them GEL 400 (US\$240) and released them a day after their detention.<sup>13</sup>

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<sup>10</sup> “Veterans’ Protest Detainees Fined,” *Civil Georgia*, January 4, 2011, <http://civil.ge/eng/article.php?id=23014> (accessed on November 10, 2011)

<sup>11</sup> Police also interfered with the work of Georgian and foreign journalists, verbally and physically assaulting at least ten and detaining two. Police also took some journalists’ press cards and damaged or confiscated several reporters’ equipment. See, “Georgia: Police Used Excessive Force on Peaceful Protests,” Human Rights Watch news release, May 26, 2011, <http://www.hrw.org/news/2011/05/26/georgia-police-used-excessive-force-peaceful-protests>.

<sup>12</sup> “Police: Up to 90 Protesters Arrested,” *Civil Georgia*, May 26, 2011, <http://www.civil.ge/eng/article.php?id=23531> (accessed on December 6, 2011).

<sup>13</sup> “Public Defender Tells Chief Prosecutor to Look into ‘Bush Street Protester’ Case”, *Civil Georgia*, August 17, 2010, <http://www.civil.ge/eng/article.php?id=22604> (accessed December 21, 2011).

## II. Administrative Detention and Imprisonment in the Georgian Justice System

Georgia's justice system differentiates between criminal offenses, which are felonies, and administrative offenses, which are misdemeanors. Separate legislative acts define the offenses, set the sanctions, and govern the procedures for their application. Georgia's Code of Administrative Offenses, adopted in 1984, governs misdemeanor offenses, which are minor public order offenses that do not accrue a criminal record. Penalties for administrative offenses range from a fine to imprisonment of up to 90 days.<sup>14</sup>

The code provides for a penalty of administrative imprisonment for 23 offenses, including "petty hooliganism" (article 166), "maliciously disobeying a police order" (article 173), and "violating rules on public gatherings."<sup>15</sup>

According to the Ministry of Interior, in 2009, 6,511 individuals were tried for administrative offenses.<sup>16</sup> In 2010 the number increased to 8,657.<sup>17</sup> In the same year courts ordered administrative imprisonment for 3,097 offenders.<sup>18</sup> The administrative imprisonment rate for 2011 up to October was 2,550.<sup>19</sup> According to an official of the Ministry of Interior, about 20 to 25 people have been sentenced to 90 days of imprisonment annually for administrative offenses in recent years, and the average period of imprisonment imposed for administrative offenses varies from 15 to 20 days.<sup>20</sup> In an

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<sup>14</sup> The Code of Administrative Offenses of Georgia in article 24 also envisages other types of sanctions, including warnings and corrective labor. According to article 32, part 3, administrative imprisonment cannot be imposed on pregnant women, mothers with children under 12 years old, persons younger than 18, and people with certain types of disabilities.

<sup>15</sup> Other administrative offenses leading to imprisonment, include driving under the influence of alcohol, narcotic or psychotropic substances (article 116); refusal to undergo alcohol, narcotic or psychotropic substance testing (article 117); and abandoning the scene of a car accident (article 123).

<sup>16</sup> Statistical information on people transferred to temporary detention isolators under the Ministry of Interior's Human Rights and Monitoring Department in 2009, posted on the ministry's website, [http://police.ge/uploads/izolatorebi/Isolatrors\\_-\\_2009\\_Stats\\_Geo.pdf](http://police.ge/uploads/izolatorebi/Isolatrors_-_2009_Stats_Geo.pdf) (accessed December 21, 2011)

<sup>17</sup> Statistical information on people transferred to temporary detention facilities under the Ministry of Interior's Human Rights and Monitoring Department in 2010, [http://police.ge/uploads/izolatorebi/Isolatrors\\_-\\_2010\\_Stats\\_Geo.pdf](http://police.ge/uploads/izolatorebi/Isolatrors_-_2010_Stats_Geo.pdf) (accessed December 21, 2011).

<sup>18</sup> Official statistics provided by the Ministry of Interior to a request filed by the Georgian Young Lawyers' Association, October 5, 2011. On file with Human Rights Watch.

<sup>19</sup> Ibid.

<sup>20</sup> Human Rights Watch interview with Giorgi Kiknadze, head of the Ministry of Interior's Human Rights Protection and Monitoring Department Tbilisi, October 28, 2011.

official response to an information request by the Georgian Young Lawyers' Association, the Ministry of Interior noted that in 2011, 31 individuals were sentenced to 90 days, 132 people to 60 days and 343 people to 30 days of administrative imprisonment.<sup>21</sup>

Article 247 of the Code of Administrative Offenses authorizes police to detain alleged violators of most public order offenses for up to 12 hours,<sup>22</sup> after which they must either release the individual or forward the case to a court. Article 247-2 allows police to hold those detained for petty hooliganism for as long as necessary until their case is either reviewed by the police chief (or his deputy) or sent to court.<sup>23</sup> Courts must hear administrative offenses cases within 24 hours from the time they receive the cases.<sup>24</sup>

A defendant in an administrative case has due process rights, including the right to notify a third party of his or her detention, the right to legal counsel at hearings, to review the case materials, to reply to the charges, to present evidence, make petitions, and appeal the court ruling.<sup>25</sup> However as described in this report, the provisions setting out some of these protections are weaker, or vaguely worded, as compared to similar safeguards under the Criminal Procedures Code. This invites inconsistent application of the provisions and potential abuses.

Following a single court hearing of an administrative offense, the judge issues a ruling, which should include, among other things, “detailed findings of the investigation; and the normative act the offender has violated.”<sup>26</sup> Any penalty determined by the court takes effect immediately, and within three days the court must send a copy of the decision to the

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<sup>21</sup> Official statistics provided by the Ministry of Interior to a request filed by the Georgian Young Lawyers' Association, October 5, 2011. On file with Human Rights Watch. Statistics for 2010: 11 individuals sentenced to 90 days, 34 to 60 days, and 153 to 30 days of administrative imprisonment.

<sup>22</sup> The detention period was increased in April 2010 from 3 to 12 hours, except in cases of hooliganism, as noted above, and when the detention falls on or close to a public holiday.

<sup>23</sup> Code of Administrative Offenses, article 247, part 2. Part 3 of the same article states that if an administrative offender is detained on a non-working day he or she can be placed in a Ministry of Interior temporary detention isolator until the appropriate body can take a final decision on the case. The full text of article 247 reads: “Part 1. Administrative detention of an administrative violator should not exceed 12 hours. In exceptional cases, Georgian legislative acts could establish other time frames. (Amended in April 2010); Part 2. A person committing petty hooliganism can be detained for the time established by the law until the case is reviewed by a judge or by a chief of a ministry of interior body or his deputy; Part 3. If an administrative offender is detained on a nonworking day he or she can be placed in a Ministry of Interior temporary detention isolator until the appropriate body can take a final decision on the case”.

<sup>24</sup> Code of Administrative Offenses, article 262, part 2.

<sup>25</sup> Code of Administrative Offenses, article 252, part 1 and article 245.

<sup>26</sup> Code of Administrative Offenses, article 266, part 2.

offender.<sup>27</sup> A court ruling that sets a penalty of administrative imprisonment can be appealed within 48 hours, while rulings that set out other penalties, such as fines, can be appealed within 10 days.<sup>28</sup> As documented below, a number of obstacles in practice prevent defendants from exercising their right to appeal, rendering the appeals mechanism ineffective.

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<sup>27</sup> Code of Administrative Offenses, article 268, part. 2.

<sup>28</sup> Code of Administrative Offenses, articles 281 and 273. Other sanctions for administrative offences include: warning, corrective labor, confiscation of object used while committing the administrative offence, etc...



### **III. Due Process Rights Violations in Georgia's Administrative Proceedings**

As noted above, detainees held for administrative offenses do not fully enjoy due process rights because the protections in the Code of Administrative Offenses are either weaker or vaguely formulated as compared to similar safeguards in the Criminal Procedure Code.

To illustrate the human consequences of the shortcomings of the Code of Administrative Offenses and its application, Human Rights Watch examined a small number of cases in which administrative detainees were not informed of their rights and not allowed to notify their families or a lawyer of their whereabouts. In some of these cases family members could hire lawyers for their detained relatives, but the lawyers had serious difficulties finding the detainees in custody. Trials were short, and the court decisions relied almost exclusively on police testimonies. Lawyers, if present, had inadequate time to prepare an effective defense. When defendants appeared in court with visible injuries, judges did not inquire about the nature and circumstances of the injuries, let alone refer the cases to the prosecutor for investigation. In addition, detainees and their lawyers faced such obstacles in exercising the right to appeal as to deprive it of any practical meaning.

In meetings with Human Rights Watch, Ministry of Justice officials acknowledged that article 6 of the ECHR applies to administrative detention and proceedings. They recognized there were significant discrepancies between the rights provided to detainees charged with administrative, as compared to criminal, offenses—which became starker after Georgia adopted a new criminal procedure code in 2010.<sup>29</sup>

Almost all of the cases documented in this report involved individuals who were detained at or following political opposition protests. Almost all faced administrative charges of petty hooliganism or violation of the rules on holding the demonstrations, coupled with malicious disobedience of a police order.

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<sup>29</sup> Human Rights Watch interviews with Tina Burjalani, First Deputy Minister of Justice; Tamar Tomashvili, Head of Public International Law Department at the Ministry of Justice; and Giga Bokeria, National Security Council Secretary, Tbilisi, October 27, 2011.

## Right to be Informed of the Reasons for the Detention and to Notify a Third Party about the Detention

As noted above, Ministry of Interior personnel are authorized to detain a person suspected of an administrative offense for up to 12 hours, which can be extended if a person is detained on a non-working day.<sup>30</sup> The Code of Administrative Offenses does not oblige the detaining authorities to immediately explain to a detainee his or her rights and the reasons for the detention. By contrast, article 38 of the Criminal Procedures Code states that immediately upon detention, an individual shall be informed of the crime he or she is suspected of committing and tasks the appropriate authorities to inform the detainee of his or her rights, including the right to a lawyer.<sup>31</sup>

In administrative offense cases, the detaining officer instead issues detainees with an ‘administrative offense protocol,’ which states the grounds for the detention. The detainee’s rights are printed on the reverse side of the protocol. However the detaining authorities have at least 12 hours to issue the protocol, so individuals can be in detention for several hours before the authorities are required to inform them of the reasons for their deprivation of liberty or to read them their rights. Moreover individuals issued with administrative protocols may not necessarily read their rights: they may not be aware their rights are written on the protocol; and, according to lawyers with whom Human Rights Watch spoke, some detainees take issue with their arrest and refuse to read the protocol on principle.

Another key protection for those deprived of liberty is the right to inform a third party of their choice (family member, friend, lawyer, or consulate) about their detention and whereabouts. Detainees on criminal charges have the right to notify a family member or a close relative about their detention and whereabouts upon being detained and no later than three hours from the moment of the detention.<sup>32</sup> Article 245 of the Code of Administrative Offenses provides a similar right, but in less absolute terms, stating that the detaining authorities should notify relatives if requested by the detainee. However the code says nothing about how this right should be realized in practice, by whom, at what stage, and how detainees are supposed to be informed of this right.

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<sup>30</sup> Code of Administrative Offenses, article 246 (a).

<sup>31</sup> Code of Administrative Offenses, article 38 also requires detainees to be informed of the reason for their detention in a language they can understand. Article 18(5), of Georgia’s Constitution also provides for the same safeguards. It states: “An arrested or detained person shall be informed about his/her rights and the grounds for restriction of his/her liberty upon his/her arrest or detention.”

<sup>32</sup> Criminal Procedures Code of Georgia, article 38.

An official of the Ministry of Interior said there were “no problems” with detainees either notifying a family member about their detention or being informed of their rights. He told Human Rights Watch that detainees have the right to call their families, and if they cannot do this, the police are obliged to do it for them.<sup>33</sup> Human Rights Watch’s research suggests otherwise. Of the six detainees interviewed, none were informed of their rights by the police or given the reasons for detention, at the time that they were detained. Furthermore, except for one individual, police did not allow detainees to contact their families. For example, 34-year-old Nodari N. is a political opposition activist who was detained twice, in June 2009 and in March 2011, and sentenced to 30 and 20 days administrative imprisonment respectively for petty hooliganism and disobeying police orders. Nodari N. told Human Rights Watch that in both instances, police did not tell him his rights and also denied his requests to call his family.<sup>34</sup>

Lawyers representing scores of clients detained on administrative charges told Human Rights Watch that such experiences were common. One lawyer, Lika Tsiklauri, said that in her experience police do not allow detainees to contact their families or friends from the outset of detention. She explained: “The only way for [their families] to know about the detention is if someone has witnessed it and later tells the family, or if [in cases of protests] . . . someone saw the detention on television.”<sup>35</sup>

She further explained:

“Only when detainees sign an administrative detention protocol, which happens later in the Ministry of Interior detention facilities, on the back of the protocol [can they read] their rights enumerated. However, no one reads it, particularly if they disagree with the content of the protocol and refuse to sign it.”<sup>36</sup>

Valerian Dzebisashvili, 44, an army veteran and a member of the Veterans Union, was detained after the January 3, 2011 protest. He was detained around 3:00 p.m. and kept in a

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<sup>33</sup> Human Rights Watch interview with Giorgi Kiknadze, chief of the Main Division of Human Rights Protection and Monitoring, Ministry of Interior, Tbilisi, October 28, 2011.

<sup>34</sup> Human Rights Watch interview with Nodari N., Tbilisi, June 17, 2011

<sup>35</sup> Human Rights Watch interview with Lika Tsiklauri, Tbilisi, June 17, 2011.

<sup>36</sup> Ibid.

police car for several hours before he was given an administrative offense protocol to sign. Dzebisashvili explained:

It was already dark when policemen brought me the [administrative offense] protocol. I disagreed with it and did not want to sign it. It said that I committed petty hooliganism and disobeyed a police order. I wanted to write somewhere that I disagreed, but they told me that I did not have to as it did not matter and that I should just sign it as an acknowledgement that I have read it.<sup>37</sup>

Dzebisashvili was taken to the temporary detention isolator in the Tbilisi Main Police Department well after midnight. At that time was he was allowed to call his family and notify them about his detention and whereabouts. The next day Dzebisashvili and 10 other protesters were brought to trial at the Tbilisi City Court, where they met with their lawyers for the first time. The court held them liable for petty hooliganism and disobeying police orders and fined each defendant GEL 400 (US\$ 240).<sup>38</sup>

## Right to a Lawyer of One's Choosing

The Code of Administrative Offenses provides that a defendant has a right to a lawyer at the hearings, but does not state whether a detainee has right to access to counsel from the moment of apprehension.<sup>39</sup> In practice, it is the family of a detainee who is in a position to find a lawyer for the detainee. Therefore it is essential that detainees are informed of their rights and allowed to notify their families about their detention and whereabouts if they are to exercise their right to a lawyer of choice. Detainees who cannot contact their families may not have a lawyer of their choosing represent them in court. Even a lawyer retained by the family may have difficulty locating the detainee in custody. In cases Human Rights Watch documented, detainees faced difficulties having access to a lawyer of their choice because they were among a larger group of people detained in the course of demonstrations and scattered amongst various temporary detention facilities.

Since 2005 the Ministry of Interior has maintained a centralized database of all detainees registered at temporary detention isolators, where detainees on administrative charges are

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<sup>37</sup> Human Rights Watch interview with Valerian Dzebisashvili, Tbilisi, June 17, 2011.

<sup>38</sup> Ibid.

<sup>39</sup> Code of Administrative Offenses, article 252, part 1.

held. However the information in the database is not publicly accessible, not even to lawyers seeking to identify the whereabouts of their clients. Several lawyers told Human Rights Watch that they were able to find their clients only by physically going to a courtroom and waiting there in the hope that they could see their clients when they were brought for trial. Lawyer Tsiklauri explained:

If someone is detained in Tbilisi, you know that the Tbilisi City Court will review his case. So you go there and wait. It was easier when police could detain them only for three hours prior to bringing them to the court. Now they have 12 hours and you never know when exactly your client will be brought to trial, so all you can do is wait and check with the court chancellery frequently.<sup>40</sup>

Another lawyer, Manana Kobakhidze, spent six hours trying to find one client after his detention in May 2011. She described the problems her client faced securing a lawyer:

My client was detained [at an opposition rally] on May 21 [2011]. His family contacted me and told me about the detention. They knew about the detention through an eyewitness. It took me six hours to find him. I looked for him at the Main Police Station temporary detention isolator. I was told that he was not there. I found him in the city court finally. The hearing process had just started. The judge had given my client 10 minutes to find a lawyer, but he was not given any means to contact one. He asked police [to let him use] the phone, but they refused. It was by chance that I walked into the courtroom [and found him].<sup>41</sup>

Dachi Tsaguria, a 29-year-old political activist, told Human Rights Watch that he had been found liable for administrative offenses over a dozen times. He was detained after the June 15, 2009 rally and sentenced to 30 days of imprisonment, the maximum penalty provided for by law at the time. He told Human Rights Watch that despite his repeated demands, he was not allowed to be represented by a lawyer of his choosing at the trial. He explained:

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<sup>40</sup> Human Rights Watch interview with Lika Tsiklauri, Tbilisi, June 17, 2011.

<sup>41</sup> Human Rights Watch interview with Manana Kobakhidze, Tbilisi, May 24, 2011.

As soon as we were brought to the Tbilisi City Court and taken to a courtroom, I told the judge I wanted a lawyer. The judge told me this was an administrative hearing and that he could hold it without a lawyer. I protested the judge's efforts to start the trial. But eventually the judge went ahead. Later I learned that my lawyer was in the building, but never allowed to the courtroom. Furthermore, when I got a copy of the court decision a few days later it said that I refused to have a lawyer present during the trial. I was shocked.<sup>42</sup>

Tsaguria's lawyer, Ekaterine Popkhadze, told Human Rights Watch that as soon as she learned that police had broken up the rally that her client was at she went straight to the Tbilisi City Court.<sup>43</sup> Court officials first told her, falsely, that her client had not yet been brought to the court, and then told her that the trial had already started and she could not enter the courtroom. The next day Popkhadze filed a complaint with the chair of the Tbilisi City Court, who responded that disciplinary action had been taken against the staff who interfered with her access to her client, but provided no details as to what the disciplinary measures were.<sup>44</sup>

Nodari N. was also detained following the June 15, 2009 rally and experienced similar problems retaining a lawyer:

I requested a lawyer as soon as we were brought to court. I asked the judge to let me have access to a lawyer. The judge offered me a state lawyer, which I refused. After my refusal the judge started the hearing.<sup>45</sup>

Giorgi Lapiashvili, a 17-year-old secondary school student was detained on May 27, 2011, together with two of his friends after they called the president a "murderer" during a visit by Saakashvili to a theater in Tbilisi. Lapiashvili was taken to the Old Tbilisi Police Department. Police did not allow him to call his family or a lawyer. His requests to have a lawyer during the trial were not heeded. He explained:

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<sup>42</sup> Human Rights Watch interview with Dachi Tsaguria, Tbilisi, June 17, 2011.

<sup>43</sup> Human Rights Watch interview with Ekaterine Popkhadze, Tbilisi, June 17, 2011.

<sup>44</sup> Ibid.

<sup>45</sup> Human Rights Watch interview with Nodari N., Tbilisi, June 17, 2011.

During the trial I asked for a lawyer and my parents, but I was refused. I told the judge that I was a minor and again requested the presence of a lawyer or my parents. They refused to allow my parents' presence. As for the lawyer, I was told that the police officer who detained me would be my lawyer and he sat next to me.<sup>46</sup>

In summary proceedings that lasted no longer than a few minutes, the court fined Lapiashvili GEL 400 (US\$240).

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>47</sup> has also noted that during its most recent visits to temporary detention isolators in Georgia the delegation met a number of persons who indicated that they had met with a lawyer for the first time only in court. The CPT observed that it was relatively rare for persons suspected of an administrative offense to benefit from access to a lawyer during the first hours of police custody.<sup>48</sup> It further noted that not all administrative detainees it interviewed had been informed of their right to a lawyer or put in a position to exercise it.<sup>49</sup>

## Flawed Trials

Administrative 'trials' are in effect summary hearings that rarely last more than 15 minutes. Although they are open to the public, several lawyers complained that the rooms in which they are held are so small that there is space only for parties to the case, in practice making the hearing closed to the wider public. In the cases examined by Human Rights Watch the court gave inadequate time for lawyers to prepare a defense, and judges based their rulings almost exclusively on police testimonies. Judges consistently denied lawyers' requests to admit evidence, including exculpatory evidence, into the proceedings or to

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<sup>46</sup> Human Rights Watch interview with Giorgi Lapiashvili, Tbilisi, June 17, 2011.

<sup>47</sup> The CPT is the Council of Europe body that "visits places of detention to assess how persons deprived of their liberty are treated," See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment website, "The CPT in brief," <http://www.cpt.coe.int/en/about.htm>, (accessed December 5, 2011).

<sup>48</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, (CPT), "Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010," CPT/Inf 2010 (27), Strasbourg, September 21, 2010, para. 27, <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm> (accessed November 27, 2011)

<sup>49</sup> Ibid.

have the court hear defense witnesses. The courts also failed to consider allegations of ill-treatment in custody or take action to address them.

### *Pre-trial Detention Should not be the Norm*

As noted above, administrative cases are examined in a single hearing. According to the Code of Administrative Offenses, administrative courts must hear cases within 24 hours of receiving them from the police.<sup>50</sup> Government officials acknowledge that trials expedited to this extent do not allow for a lengthy period to prepare a defense, but argue that to hold a detainee for a longer period to allow more preparation time would not be justifiable, considering that the penalty for an administrative offense might only be a fine.<sup>51</sup>

This argument, however, rests on an unjustifiable presumption that detaining a person facing an administrative charge is in itself justifiable. In fact, using pre-trial detention for administrative offenses (by their very nature, minor, non-violent offenses) is inconsistent with human rights standards banning arbitrary detention. Under these standards, pre-trial detention is not the norm and is justifiable only where necessary to ensure the proper administration of justice. While allowing a reasonable time for defendants to prepare their defense may inevitably require lengthier court proceedings, if an accused is released with an order to reappear on a set date for the hearing, both the rights to prepare a defense, and against arbitrary detention can be met.

### *Adequate Defense and Reasoned Ruling*

While the mere fact that administrative trials are expedited is not in itself contrary to international norms, the proceedings must still comply with necessary safeguards for a fair trial, such as guarantees of access to legal representation, adequate time and facilities to prepare a defense, and the right to examine witnesses and introduce evidence.<sup>52</sup>

However as described above, several lawyers acting on behalf of administrative detainees told Human Rights Watch that in practice they do not get to see their clients prior to a trial. They therefore do not have the opportunity to see the administrative offense protocol and

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<sup>50</sup> Code of Administrative Offenses of Georgia, article 262, part 2.

<sup>51</sup> Human Rights Watch observation at the working group meeting discussing new draft Code of Administrative Offences, Tbilisi, November 10, 2011.

<sup>52</sup> See European Court of Human Rights, *Borisova v. Bulgaria*, Judgment of December 21, 2006, Application No. 56891/00.



sometimes do not even know which articles of the administrative code their clients have been accused of violating. In addition, the courts at times review multiple cases at the same hearing, further complicating effective defense in expedited trials. Lawyer Lika Tsiklauri explained:

In one case I defended seven people and, in another, four at the same time. I made a motion to the judge to give me some time to get familiar with the case and the administrative offense protocol. The judge gave me 20 minutes in one case and 10 in another. This is of course a formality. The time is hardly enough to read the protocols, to say nothing about preparing the defense. Things were further complicated because there were other defendants and other lawyers who also had to see the protocols. In another case, the judge refused to give us any time and instead read the detention protocol himself for everyone to hear and proceeded with the trial.<sup>53</sup>

Another lawyer, Lali Petriashvili, shared similar concerns:

Even if you can read the [administrative offense] protocols in the 10 or 15 minutes allowed by the court, it's by no means sufficient to prepare an adequate defense. There's no time to identify witnesses who could refute the offense noted in the protocol; [you] don't even have time to [consult] with the defendant on a defense strategy, etc. You see him for the first time in the courtroom.<sup>54</sup>

Georgian law requires judges hearing administrative offense cases to “evaluate the evidence by his inner conviction based on comprehensive, complete and objective investigation of all the circumstances of the case.”<sup>55</sup> However a study by Georgia's ombudsman of 900 judicial decisions made by the Tbilisi City Court in the second half of 2009 found that court rulings on administrative offenses lacked substantiation. The study analyzed the same types of cases described in this report: those concerning offenses of petty hooliganism, disobeying an officer of the law, and violating the rules for public

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<sup>53</sup> Human Rights Watch interview with Lika Tsiklauri, Tbilisi, June 17, 2011.

<sup>54</sup> Human Rights Watch interview with Lali Petriashvili, Tbilisi, June 17, 2011.

<sup>55</sup> Code of Administrative Offenses, article 237.

demonstrations.<sup>56</sup> The study found that in every ruling, the judge used a standard form or a template, changing only names, while the descriptive and substantive provisions were “overly general and uniform.” The lack of specific circumstances led to a “shortage of evidence and inadequate reasoning.”<sup>57</sup>

The study also highlights that judicial deliberations on administrative offense lacked evidence, and in particular lacked description of concrete pieces of evidence that led to the court decisions. They also did not include positions expressed by the alleged offenders, except for their statements agreeing or disagreeing with the administrative offense protocol.<sup>58</sup>

According to the Ombudman’s report:

The part of the ruling that should describe the circumstances established during the consideration of a case usually reads: Having considered the materials of the case and having heard explanations by the parties the court concludes that the materials of the case are evidence that A. A. committed offense stipulated by Article 173 of the Code on Administrative Offenses, which leads to imposition of an administrative penalty within the limits of the sanction as stipulated in the said article of the Code on Administrative Offenses. Thus, the ruling leaves completely unclear what concrete pieces of evidence led to the decision of the court, how conclusive that evidence was, and the like.<sup>59</sup>

Lawyers interviewed by Human Rights Watch confirmed that judges often refuse to consider additional evidence presented by the defense and decline motions to hear defense witnesses, basing their decisions exclusively on police testimonies and protocols. One of the lawyers explained:

In reality only one policeman draws up the administrative offense protocol, and the same person is a key witness at the trial; no other evidence is

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<sup>56</sup> Code of Administrative Offenses, articles 166, 173, and 174, respectively, of the Code of Administrative Offenses.

<sup>57</sup> Report of the Public Defender of Georgia, “The Situation of Human Rights and Freedoms in Georgia: 2009 Second Half”, p. 145. (Georgian version).

<sup>58</sup> Ibid. p. 146. (Georgian version).

<sup>59</sup> Report of the Public Defender of Georgia, “The Situation of Human Rights and Freedoms in Georgia: 2009 Second Half”, p. 146.

sought by the court or presented at trials. In several cases in which I acted as a defender we had video and photo evidence refuting the police testimony, but the court refused to accept them as evidence. Even in rare cases when judges agree to hear defense witnesses, the court never deliberates on them in the final decision.<sup>60</sup>

Because judicial decisions on administrative offenses often lack substantiation or reasoning, the penalties imposed appear arbitrary, particularly for offenses which carry a broad range of penalties. The penalty for petty hooliganism, for example, ranges from a GEL 400 fine to 90 days of imprisonment.<sup>61</sup> Most of the 900 decisions analyzed by the Ombudsman's office did not contain any indication or clarification as to why a certain penalty had been imposed.<sup>62</sup> Lawyer Kurdovanidze told Human Rights Watch that she defended two individuals in one case on the same offenses at the same administrative trial following the May 26, 2011 demonstration. One of her clients was sentenced to 30 days' administrative imprisonment, while the other was issued a GEL 400 (US\$ 240) fine, but the language of the judge's decision was identical.<sup>63</sup> The Tbilisi City Court also heard the case of seven more protesters detained on May 26 for petty hooliganism and disobeying police orders. Each detainee received an identical administrative offense protocol, but the court sentenced two of them to 20 days' imprisonment, one to 10 days, and imposed a fine of GEL 400 (US\$ 240) on the rest. The court ruling did not explain why it assigned different penalties, while the evidence presented at the hearing was identical.<sup>64</sup>

### *No Action on Ill-Treatment*

Two of those interviewed by Human Rights Watch said when they were brought to court they bore visible signs of the beating and ill-treatment they said they had received from the police. However the judges did not inquire about the nature and circumstances of the injuries or refer their cases to the prosecutor for investigation.

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<sup>60</sup> Human Rights Watch interview with Lika Tsiklauri, Tbilisi, June 17, 2011.

<sup>61</sup> Article 33 of the Code of Administrative Offences states that when imposing a penalty, "consideration should be given to the character of the committed offence, the personality of the offender, the measure of his guilt, his/her property status, circumstances mitigating or exacerbating the responsibility."

<sup>62</sup> Report of the Public Defender of Georgia, "The Situation of Human Rights and Freedoms in Georgia: 2009 Second Half", p. 147.

<sup>63</sup> Human Rights Watch interview with Nona Kurdovanidze, Tbilisi, June 17, 2011.

<sup>64</sup> Human Rights Watch interviews with lawyers from Georgian Young Lawyers' Association, Tbilisi, June 17, 2011.

Nodari N. described his conditions when he appeared before a judge in June 2009:

My head was cut in two places and it was bleeding. A policeman sitting next to me was helping to stop the bleeding. I felt really bad. My face was all in bruises. The judge never inquired how I sustained those injuries.<sup>65</sup>

Dachi Tsaguria described a similar story:

I was all in bruises and my clothes were torn and I was naked above the waist, all injuries clearly visible. I asked the judge . . . to look into how I sustained those injuries. He responded that it was not his responsibility and that I could appeal to the prosecutor's office if I had been ill-treated.<sup>66</sup>

## Barriers to Appeal

The administrative code provides that defendants have 10 days to appeal decisions that hand down non-custodial penalties.<sup>67</sup> Defendants who have been handed a sentence of administrative imprisonment have only 48 hours to appeal. The authorities argue that the reason for this limited time for an appeal is so that a decision on imprisonment can be overturned before the alleged offender spends significant time in custody.<sup>68</sup> However, several lawyers indicated that the principle result of the time for appeal being so short is that defendants are hampered in making an effective appeal.

The lawyers pointed to two serious problems. First, although the court gives a copy of the judge's decision to the defendant's lawyer within 24 hours, the full court records may become available only three days later. Therefore, lawyers must prepare an appeal on a case without first being able to see the court records. Second, the Code of Administrative Offenses states that a decision can be appealed by a person found liable for an administrative offense or by his or her lawyer, with the client's consent.<sup>69</sup> Appeal courts have interpreted that the "consent" should be written and therefore require defendants to

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<sup>65</sup> Human Rights Watch interview with Nodari N., Tbilisi, June 17, 2011.

<sup>66</sup> Human Rights Watch interview with Dachi Tsaguria, Tbilisi, June 17, 2011.

<sup>67</sup> Code of Administrative Offenses, article 273.

<sup>68</sup> Code of Administrative Offenses, article 281. Until the 2010 Amendments to the Code of Administrative Offenses, any decision on administrative offenses could be challenged within 10 days.

<sup>69</sup> Code of Administrative Offenses, article 281.

sign appeal documents as proof of their consent. A practicing lawyer, Natia Katitsadze, who also litigates cases at the European Court of Human Rights, told Human Rights Watch that in several cases she defended, the appeals court found the appeal inadmissible due to the lack of the offenders' physical signature.<sup>70</sup> Several lawyers told Human Rights Watch that they failed to submit an appeal on time because they were not able to locate their clients and secure their signatures. Lawyer Ekaterine Popkhadze said that on several occasions she could not find the location of her clients and therefore could not appeal imprisonment rulings.<sup>71</sup>

Nona Kurdovanidze, a practicing lawyer who defended two protestors in the May 26, 2011 opposition demonstration, explained the difficulties she and her colleagues faced in filing an appeal:

We had only 48 hours to appeal the decision. The situation was complicated by the fact that I had to get the signature of my client who was imprisoned. I could not establish where he was being held. I went to the Tbilisi Main Police temporary detention isolator twice. There is a reception center on the first floor from where you call in the information and inquire if such and such person is there. First they were not telling me, then they stopped answering the phone altogether. Only through the Public Defender's [Ombudsman] office was I able to find out that my client was transferred to Mtskheta [a town 20 km west of Tbilisi] isolator. I was looking for him on the 26<sup>th</sup> [of May], but could not find him. We found out about his whereabouts late on the 27<sup>th</sup> and were able to visit him on the 28<sup>th</sup> to obtain his signature and file the appeal.<sup>72</sup>

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<sup>70</sup> Katsitadze represented seven people detained on March 25, 2011 at a protest in front of the Ministry of Corrections and Legal Assistance. Human Rights Watch interview with Natia Katsitadze, Tbilisi, June 17, 2011.

<sup>71</sup> Human Rights Watch interview with Ekaterine Popkhadze, Tbilisi, June 17, 2011.

<sup>72</sup> Human Rights Watch interview with Nona Kurdovanidze, Tbilisi, June 17, 2011.

## IV. Detention Conditions for Administrative Imprisonment

As mentioned above, those detained while awaiting trial on administrative offense charges and those found liable and given a custodial sentence, are held in custody in temporary detention isolators (TDIs), under the Ministry of Interior's jurisdiction. These facilities are used mostly to hold detainees on criminal charges for up to 72 hours, at which point they are charged and either released or transferred. They were not intended for long-term detention.<sup>73</sup> Reports by the European Committee for the Prevention of Torture (CPT) and Georgia's National Preventive Mechanism,<sup>74</sup> as well as corroborating testimony of former detainees who spoke with Human Rights Watch, indicate that conditions in TDIs often failed to meet international standards.<sup>75</sup>

The Ministry of Interior's Main Division of Human Rights Protection and Monitoring has jurisdiction and oversight responsibility for TDIs. There are 41 TDIs in Georgia.<sup>76</sup> Some regions have their own TDIs, but in some towns TDIs are located in police stations, with

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<sup>73</sup> After they are charged, criminal suspects are either transferred to pre-trial facilities that are under the jurisdiction of the Ministry of Corrections and Legal Assistance, or are released with another restraining measure. Of 21,626 people placed in temporary detention isolators in 2010, only 8,657 were administrative detainees. Official statistics are posted on the Ministry of Interior website, [http://police.ge/uploads/izolatorebi/Isolators\\_-\\_2010\\_Stats\\_Geo.pdf](http://police.ge/uploads/izolatorebi/Isolators_-_2010_Stats_Geo.pdf) (accessed December 21, 2011).

<sup>74</sup> The Optional Protocol to the Convention against Torture (OPCAT) requires participating states to create National Preventive Mechanisms to prevent torture and ill-treatment from occurring in detention centers, police stations, mental health hospitals, and prisons through regular monitoring and reporting. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted December 18, 2002, G.A. res. A/RES/57/199, [reprinted in 42 I.L.M. 26 (2003)], entered into force June 22, 2006.

<sup>75</sup> Georgia is a party to a number of international instruments that provide for specific guarantees relating to treatment and conditions in custody for those deprived of liberty. These instruments include the ECHR; the European Convention on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (ECPT), signed November 26, 1987, E.T.S. 126, entered into force February 1, 1989; the ICCPR; the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. Numerous international instruments provide further guidance on the protection and respect for the human rights of persons deprived of liberty. These include the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977; and the European Prison Rules adopted by the Council of Europe Committee of Ministers in 2006, establishing the basic requirements for prison conditions and treatment of prisoners in its member states. Council of Europe Committee of Ministers, "The European Prison Rules," adopted January 11, 2006, [https://wcd.coe.int/ViewDoc.jsp?id=955747#P6\\_138](https://wcd.coe.int/ViewDoc.jsp?id=955747#P6_138) (accessed December 5, 2011).

<sup>76</sup> Human Rights Watch interview with Giorgi Kiknadze, Chief of the Main Division of Human Rights Protection and Monitoring, Ministry of Interior, Tbilisi, October 28, 2011. Prior to 2005, each police station had its own isolator. Reforms enacted in 2005 centralized TDIs and placed them under the jurisdiction of the Ministry of Interior's Main Division of Human Rights Protection and Monitoring.

oversight carried out by the ministry. The Ministry of Interior has a single database where all detainees are registered.

The government has made significant efforts to renovate TDIs. In February 2010, the minister of interior issued Order No. 108 “On the Approval of Additional Instructions Regulating Activities of the Temporary Detention Isolators of the Ministry of Internal Affairs, and Complementing Typical Regulations and Internal Rules of Isolators.”<sup>77</sup> These instructions regulate the administration of TDIs, and set out some privileges for administrative detainees serving sentences of 15 days or longer, such as an hour of exercise daily.

However Order 108 does not, for example, instruct TDI administrators on the rights of detainees to access facilities such as showers. Whereas European standards require that individuals be allowed to bathe twice weekly, Order 108’s article 4 states only that “the sanitary-hygienic and general conditions in the isolators shall ensure human dignity, respect [the detainee’s] honor and dignity, personal integrity, and the possibility of protecting his own interests.”<sup>78</sup>

Nor does Order No. 108 adhere to international norms in the area of prisoners’ right to outdoor exercise. According to the Order No. 108, “[outdoor exercise] shall be organized for those persons detained administratively, who shall serve no fewer than 15 days of administrative imprisonment, as an administrative punishment.”<sup>79</sup> This contravenes the European Prison Rules, which stipulate that “every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.”<sup>80</sup>

The CPT has repeatedly criticized the regime under which administrative detainees are held in Georgia and the conditions in TDIs. In its most recent report on Georgia, published

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<sup>77</sup> On file with Human Rights Watch.

<sup>78</sup> European Prison Rule 19.4 states: “adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene”. Council of Europe Committee of Ministers, “The European Prison Rules,” adopted January 11, 2006, [https://wcd.coe.int/ViewDoc.jsp?id=955747#P6\\_138](https://wcd.coe.int/ViewDoc.jsp?id=955747#P6_138) (accessed December 5, 2011).

<sup>79</sup> Ministry of Interior Order No. 108, article 9.

<sup>80</sup> The Rule 27.1., Council of Europe Committee of Ministers, “The European Prison Rules,” adopted January 11, 2006, [https://wcd.coe.int/ViewDoc.jsp?id=955747#P6\\_138](https://wcd.coe.int/ViewDoc.jsp?id=955747#P6_138) (accessed December 5, 2011).

in 2010, the CPT noted the government's efforts to renovate TDIs, but also expressed concerns about detention conditions.

In 2010 the CPT visited five TDIs, three of which they had already visited in 2007: two in Tbilisi and one in Kutaisi, a city in western Georgia. It observed that temporary detention isolator No.2 in Tbilisi and the isolator in Kutaisi had not been refurbished and “display[ed] numerous deficiencies.” The CPT wrote:

“the cells were dimly lit and in a dilapidated condition. Further, the cells in Kutaisi were unheated. [...] In most of the cells at isolator No. 2 in Tbilisi, detainees slept on a wooden platforms (rather than beds). In both isolators, the in-cell toilets were either not partitioned or had a low partition which was insufficient.”<sup>81</sup>

The CPT also visited two TDIs for the first time and found conditions in the Zestaphoni isolator, which had not been renovated, to be particularly poor. The report noted: “The four cells in use measured between 7 and 8.5 m<sup>2</sup> and were designed to hold two or three persons. Two of the cells had no access to natural light, and all the cells were poorly ventilated, unheated and unhygienic. The equipment consisted of platforms on which mattresses and blankets had been placed. As for the communal toilet, it was simply execrable.”<sup>82</sup>

The National Preventive Mechanism under the Georgian Ombudsman also conducts regular visits to places of deprivation of liberty. In the first half of 2010, it conducted 43 planned and 23 *ad hoc* visits to temporary detention isolators in Georgia.<sup>83</sup> The monitors have observed a number of problems with TDI conditions:

[B]ed and linen is not provided to detainees/prisoners in any of the isolators. They are only provided with blankets. [...] The blankets are washed once a

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<sup>81</sup> “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010,” Strasbourg, September 21, 2010, para. 34. It should be noted that the CPT reports are not public in general, but published if requested by the country's authorities. The Georgian government has been requesting the publication of CPT reports.

<sup>82</sup> “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010,” Strasbourg, September 21, 2010, para. 35.

<sup>83</sup> “Special Report on Monitoring of the Penitentiary Establishments, Temporary Detention Isolators and Military Detention Facilities,” Public Defender of Georgia, National Preventive Mechanism, First Half of 2010, p.5.



month at best. Respectively, there is a risk of spreading various diseases and parasites. [...] Some of the temporary detention isolators do not have showers... or despite having showers, prisoners are not able to use them. [...] some of the isolators have no means of heating that places detainees/prisoners in inhuman conditions. [...] There is no sufficient light and ventilation in the majority of temporary detention isolators.<sup>84</sup>

Human Rights Watch interviewed several former detainees who served administrative sentences in conditions they described as inhumane. Nodari N. served two administrative imprisonment sentences, in June 2009 and March 2011, in the Tbilisi Main Police Station TDI. Notably, inmates had to request the staff to turn on water each time they needed it, and there was one spigot in the cell for all uses, including to flush the toilet. He described the conditions:

The conditions in the cell were appalling: complete lack of hygiene; there were two rats in my cell; the toilet was in the cell, without any walls or curtain, just open to all; when the toilet flushed, you had exactly the time needed for the flush to [get water to drink]. The cell had one small window, but it was never open, so it was hard to breath. I was never taken out for any walk or exercise. No bathing facilities either. On the 30<sup>th</sup> day, they asked if we wanted to take a shower. We had no hygienic means. The room was about 10 sq. meters. There were five of us in the cell. There were no beds, but a plain wooden platform. We had no blankets for the first three days. No pillows either. I used the toilet paper to put my head on instead. Despite my numerous requests I was not provided with a paper and pencil to write.<sup>85</sup>

According to Nodari N. conditions were almost identical in March 2011 when he was sentenced to 20 days' administrative imprisonment. He served the term in the same facility, which had better ventilation this time around. He was also given toothpaste and taken outdoors for exercise once for 10 minutes during his entire time in detention.<sup>86</sup>

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<sup>84</sup> "Special Report on Monitoring of the Penitentiary Establishments, Temporary Detention Isolators and Military Detention Facilities," Public Defender of Georgia, National Preventive Mechanism, First Half of 2010, pp. 51-52.

<sup>85</sup> Human Rights Watch interview with Nodari N., Tbilisi, June 17, 2011.

<sup>86</sup> Ibid.

Twenty-four-year-old Giorgi Kharabadze, who was detained together with Nodari N. in March 2011 and also served 20 days in the facility, corroborated the story:

I was placed in cell number nine. The room was little over 10 square meters. There were three of us in the cell. There was a wooden platform intended for sleeping four people. There were blankets on the platform, but they were dirty. The toilet was in the cell and it was not isolated. The water tap was 40-50 centimeters above the toilet, but we could not turn the water on or off ourselves; it was controlled from outside and we had to beg for it. The cell had a small window, but it was open only on the first day. There was ventilation, but it was turned off at night and I was waking up as there was no air to breath. There was a light bulb across the wooden platform, which was on all the time; we could not control it. I did not have a chance to shower for the entire period I spent in the isolator.<sup>87</sup>

The CPT and Ombudsman's reports as well as former detainees interviewed by Human Rights Watch note the lack of fresh air and exercise as significant problems in TDIs. Ministry of Interior Order No. 108 states that "exercise shall be arranged only for those persons detained administratively, who shall serve no fewer than 15 days of administrative imprisonment, as an administrative punishment."<sup>88</sup> The CPT found the regulation insufficient and urged the authorities to amend it to "ensure that anyone obliged to stay in a temporary detention isolator for over 24 hours is granted access to outdoor exercise."<sup>89</sup>

During a meeting with Human Rights Watch, Ministry of Interior officials did not acknowledge any problems with regard the conditions in TDIs. Giorgi Kiknadze, the head of the Ministry of Interior department which oversees the isolators, told Human Rights Watch that in 2011 alone, 12 isolators were renovated and three new ones were built. He asserted that the facilities mentioned in the CPT and Ombudsman's reports had been renovated.<sup>90</sup>

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<sup>87</sup> Human Rights Watch interview with Giorgi Kharabadze, Tbilisi, June 17, 2011.

<sup>88</sup> Ministry of Interior Order No. 108 , article 9, "On the Approval of the Additional Instructions Regulating Activities of the Temporary Detention Isolators of the Ministry of Internal Affairs, and Complementing the Typical Regulations and Internal Rules of Isolators."

<sup>89</sup> "Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010," Strasbourg, September 21, 2010, para. 40.

<sup>90</sup> Human Rights Watch interview with Giorgi Kiknadze, Tbilisi, October 28, 2011.

He acknowledged that bringing the TDIs to acceptable standards was a work in progress to be accomplished by the end of 2012. Human Rights Watch was not in a position to verify the extent of the renovations in any of the TDIs. However, in several instances the CPT and Ombudsman's reports had found problematic conditions in facilities that had already undergone renovations.

## V. International Human Rights Protections Applicable to Administrative Offenses

Georgia is a party to both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), which guarantee fair trial rights (articles 14 and 6 respectively) and protection against arbitrary detention (articles 9 and 5 respectively).

For the purposes of international human rights law, the application of standards for rights protection depends not on whether a defendant is facing charges based in the criminal code or in the administrative code, but rather on the substance of the charge against the defendant: the nature of the offense and the severity of the potential penalty. The types of offenses regulated under the Georgian Code of Administrative Offenses would be regulated under many civil law systems as “*délits*” and in common law systems as “misdemeanors.” Both categories reflect that the offenses are at the less grave end of the spectrum of criminal offenses, but criminal offenses nonetheless.

Article 6 of the ECHR provides for fair trial norms, including minimum due process rights for those charged with a criminal offense. Such guarantees include, among other things, the right to be promptly informed of the charges, adequate time and facilities to prepare a defense, access to legal representation, and the right to examine witnesses.<sup>91</sup>

The European Court of Human Rights has issued several key rulings on cases involving defendants charged with offenses under a code of administrative offenses similar to that in place in Georgia.<sup>92</sup> The court’s rulings consistently make clear that a domestic

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<sup>91</sup> European Convention on Human Rights, article 6 states: “Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and the facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so requires; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.” European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively.

<sup>92</sup> The European Court of Human Rights has consistently held in over two dozen cases against Armenia, Moldova, Russia, Ukraine, and others that offences regulated under administrative codes in these systems, where imprisonment is a potential penalty, are considered criminal offences for the purposes of the Convention. See European Court of Human Rights in e.g. *Ziliberberg v. Moldova*, Judgment of February 1, 2005, Application No. 61821/00, *Meneshva v. Russia*, Judgment March 9,

classification of an offense does not determine the applicability of article 6 and that the severity of the punishment is central to determining the criminal nature of the offense. The rulings also make clear that 90 days of imprisonment for an administrative offense, currently the maximum sentence under the Georgian Code of Administration Offenses, is undoubtedly severe enough to invoke article 6 protections.

In *Galstyan v. Armenia*, the court concluded that “the indication afforded by national law is not decisive for the purpose of Article 6 and the very nature of the offense in question is a factor of a greater importance.” In determining whether an offense qualifies as “criminal” for the purposes of the European Convention, the court looks not only at the domestic classification, but also at the “very nature of the offense” and the “degree of severity of the penalty risked.”<sup>93</sup> The court further argued that “loss of liberty imposed as punishment for an offense belongs in general to the criminal sphere.”<sup>94</sup> In *Galstyan v. Armenia* the defendant was sentenced to three days of imprisonment and risked the maximum sentence of 15 days, which the court determined was sufficient to consider the defendant’s alleged offense to be “criminal” for the purposes of the Convention.”<sup>95</sup>

The severity of the punishment is not the only factor that determines the “criminal” character of the offense. In *Ziliberberg v. Moldova*, the court argued that the very fact that a defendant was taken into police custody for several hours and interrogated was evidence of the criminal character of the offense.<sup>96</sup> Although the local court only fined the defendant, the European Court found the penalty severe enough to have entitled him to fair trial guarantees afforded under article 6 of the European Convention.<sup>97</sup>

With respect to the scope of the rights protected under article 6, the court has also emphasized that the right to “adequate time and facilities for the preparation of his

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2006, Application no. 59261/00, ECHR 2006; *Galstyan v. Armenia*, Judgment of November 15, 2007, Application No. 26986/03; *Nadtochiy v Ukraine*, Judgment May 15, 2008, Application No. 7460/03; *Balsyte-Lideikiene v Lithuania*, Judgment November 4, 2008, Application No. 72596/01. This has also been the position affirmed by the Grand Chamber, see e.g. *Sergey Zolotukin v Russia*, Grand Chamber Judgment of February 10, 2009, Application No. 14939/03.

<sup>93</sup> European Court of Human Rights, *Galstyan v. Armenia*, op.cit, para. 56.

<sup>94</sup> Ibid., para. 59.

<sup>95</sup> Ibid., para. 60.

<sup>96</sup> European Court of Human Rights, *Ziliberberg v. Moldova*, op.cit. para. 34.

<sup>97</sup> The court stated that “in principle, the general character of the Code of Administrative Offences and the purpose of the penalties, which are both deterrent and punitive, suffice to show that for the purposes of Article 6 of the Convention the applicant was charged with a criminal offence.” Ibid. para. 33.

defence” requires that an accused must have the opportunity to organize his defense in an appropriate way and without restriction of the possibility to put all relevant defense arguments before the trial court; and that ‘the facilities’ enjoyed by a person facing charges should include the opportunity to acquaint himself, for the purposes of preparing his defense, with the results of investigations carried out throughout the proceedings.<sup>98</sup>

Georgian authorities have drafted a new Code of Administrative Offenses, are now seeking civil society input to the draft, and intend to send the draft to the Council of Europe for expert review.<sup>99</sup> However, the initial draft that was presented to a group of civil society organizations did not address the due process concerns documented in this report.

While the Georgian government’s efforts to develop a new Code of Administrative Offenses are encouraging, it is important that the authorities take immediate steps to address serious violations of Georgia’s international obligations in the current code. Because the adoption of a new code may take a long time, the Georgian government should promptly introduce amendments to the current legislation to address the existing gaps. They should provide full due process protections for administrative detainees facing sanctions of imprisonment or a substantial fine. As part of the ongoing reforms of the Code of Administrative Offenses, the authorities should also consider abolishing administrative imprisonment as a penalty for administrative offenses.

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<sup>98</sup> *Moiseyev v. Russia*, Application no. 62936/00, Judgment October 9, 2008, para 220; *Galstyan v. Armenia*, op. cit. para. 84.

<sup>99</sup> For example, on November 10, 2011, the Ministry of Justice held a meeting of government officials responsible for drafting the new code and representatives of local civil society and international organizations to discuss the draft. A Human Rights Watch representative participated in the meeting.

## VI. Recommendations

### To the Government of Georgia

- Consider, in the ongoing reforms of the Code of Administrative Offenses, abolishing administrative imprisonment as a potential penalty for administrative offenses.

### *Regarding Due Process Rights*

- Immediately amend the Code of Administrative Offenses to provide full due process protections for administrative detainees where the potential sanction is imprisonment or a substantial fine.
- Ensure that anyone taken into custody in the context of administrative offense:
  - Is informed without delay of all his or her rights;
  - Is able to notify a third part that they have been detained and their whereabouts upon the detention or shortly thereafter;
  - Is allowed access to a lawyer of one's choosing from the moment of detention;
  - Is released without charge within the legal period or brought promptly before a judge and charged and released with an order to reappear for hearing. There should not be detention pre-conviction for administrative offenses;
  - Has access to an independent mechanism to submit complaints about treatment whilst in police custody.

### *Regarding Fair Trial Norms*

- Immediately amend the Code of Administrative Offenses to ensure the right to a fair trial:
  - Provide adequate time for the preparation of defense;
  - Envisage the default position being the release of a detainee on administrative charges pending trial;
  - Provide for adversarial proceedings, with defense witnesses and additional defense evidence allowed at trials;
  - Require judges to provide rational reasons for their choice of penalty.

- Ensure that if defendants bear visible signs of physical injuries, judges refer the cases to the prosecutor for investigation or independently inquire about the nature and circumstances of the injuries.

### *Regarding the Right to Appeal*

- Immediately remove any practical barriers to the realization of the right to appeal judicial decisions regarding administrative imprisonment.
- Ensure that the Code of Administrative Offenses protects the individual's interest in liberty, by allowing a defendant to both immediately challenge detention and have a genuine opportunity to secure conditional release pending the final decision of the appeal.

### *Regarding Detention Conditions*

- Implement the recommendations of the European Committee for the Prevention of Torture and Inhuman Degrading Treatment or Punishment detailed in its report to the Georgian government following its visits of February 5-15, 2010 and March 21 – April 2, 2007.
- Implement the recommendations of the National Preventive Mechanism under the Public Defender of Georgia, outlined in 2010 Special Report on the Monitoring of Temporary Detention Isolators.
- If imprisonment for an administrative offense is retained as an option, consider building special establishments that meet international standards where individuals serving administrative imprisonment can be placed.
- Take immediate steps to ensure that all existing temporary detention isolators meet the requirements of the European Prison Rules. Specifically:
  - Provide for at least 4 square meters of living space per detainee in multi-occupancy cells;
  - Ensure adequate lighting in cells, including access to natural light if possible;
  - Abolish wooden platforms, and provide each detainee with an individual bed;
  - Ensure appropriate ventilation and heating in all cells;
  - Provide each detainee with clean bed linen;
  - Ensure that in-cell toilets provide for sufficient privacy.
  - Ensure that anyone detained for over 24 hours is granted access to a shower;
  - Provide detained persons with essential personal hygiene products;



- Amend the regulations on temporary detention isolators to ensure that anyone obliged to stay in a temporary detention isolator for over 24 hours is granted access to outdoor exercise.
- Equip all temporary detention isolators with outdoor exercise yards.

## **VII. Acknowledgements**

This report was researched and written by Giorgi Gogia, senior researcher in the Europe and Central Asia Division of Human Rights Watch. It was edited by Rachel Denber, deputy director of the Europe and Central Asia Division and Tom Porteous, deputy program director. Aisling Reidy, senior legal advisor for Human Rights Watch, also reviewed the report. Veronika Szente Goldston, advocacy director of the Europe and Central Asia Division reviewed the summary and recommendations.

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# Administrative Error

## Georgia's Flawed System for Administrative Detention

Georgian authorities have used the Code of Administrative Offenses in recent years to lock up protestors and activists at times of political tension. The code allows for a person to be imprisoned for up to 90 days for certain administrative offenses, or misdemeanors.

However, as this report describes, the code lacks due process and fair trial protections required for punishment of this severity. It does not explicitly require that police promptly inform defendants of their rights or give reasons for their detention. Detainees are often not allowed to contact their families, and if retained, lawyers often have difficulties in finding detainees in custody. Nor do detainees enjoy fair trial rights in court. Trials are often perfunctory, rarely last more than 15 minutes, and judicial decisions often rely exclusively on police testimonies. If lawyers are present, they lack time to prepare an effective defense. Lawyers and their clients also face obstacles exercising the right to appeal.

Those handed terms of administrative imprisonment serve sentences in temporary detention isolators not intended for long-term occupancy, where conditions often fall short of international standards.

As a party to both the International Covenant on Civil and Political Rights and the European Convention on Human Rights, Georgia should ensure full due process protections for administrative defendants, particularly with regard to the right to notify a third party about detention, the right to lawyer of one's choosing, and the right to a fair trial.