

QUESTIONNAIRE RELATED TO

THE RIGHT OF ANYONE DEPRIVED OF HIS OR HER LIBERTY BY ARREST OR DETENTION TO BRING PROCEEDINGS BEFORE COURT, IN ORDER THAT THE COURT MAY DECIDE WITHOUT DELAY ON THE LAWFULNESS OF HIS OR HER DETENTION AND ORDER HIS OR HER RELEASE IF THE DETENTION IS UNLAWFUL

1. (a) If your State is a party to the International Covenant on Civil and Political Rights, how is Article 9(4) incorporated into your domestic legislation? Please provide reference to the specific provisions, including their wording and date of adoption.
- Yes
 - No

If yes, please provide the legislation, their wording and year of adoption

Answer:

Yes.

Protection of fundamental human rights and freedoms is, first of all, guaranteed by *the Constitution of Georgia*¹ - supreme law of the country that was adopted on 24 August 1995. According to Article 6, paragraph 1, of the Constitution:

“...The Constitution of Georgia shall be the supreme law of the state. All other legal acts shall correspond to the Constitution.”

At the same time, it is noteworthy to mention that Article 6, paragraph 2, of the Constitution states:

“...The legislation of Georgia shall correspond to universally recognized principles and rules of international law. An international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts.”

Guarantees for the protection of fundamental human rights and freedoms are envisaged by the Chapter II of the Constitution. Among them are guarantees to be afforded to arrested and detained persons. In particular, Article 18, paragraph 3, of the Constitution provides that:

“... An arrest of an individual shall be permissible by a specially authorized official in the cases determined by law. Everyone arrested or

¹ referred to as “the Constitution”

otherwise restricted in his/her liberty shall be brought before a competent court not later than 48 hours. If, within next 24 hours, the court fails to adjudicate upon the detention or another type of restriction of liberty, the individual shall immediately be released.”

The main normative act that regulates issues concerning deprivation of liberty of a person in the course of criminal investigation is the *Criminal Procedure Code of Georgia*,² adopted on 9 October 2009. In this regards the CPCG distinguishes arrest and detention (preventive measure) as different procedural measures.

According to Article 170, paragraph 1, of the CPCG “arrest is short term deprivation of liberty”. Article 171, paragraph 1, provides conditions for arrest:

“...If there is a reasonable doubt that a person committed a crime for which sentence in form of imprisonment is stipulated by the legislation, and, at the same time, the person will abscond from justice or will not appear in court, will destroy the information of importance to the case or will commit a new crime, upon motion of the prosecutor the court, according to the place of investigation and without oral hearing shall make decision on issuing of warrant of arrest. Decision made on issuing of warrant of arrest referred to in this paragraph shall not be appealed.”

Article 171, paragraph 2, of the CPCG envisages possibility of arrest of a person without court decision and provides exhaustive list of preconditions:

“...Arrest without court decision shall be permitted if:

- a) a person is caught while committing a crime, or immediately thereafter;
- b) a person is seen at the crime scene and is immediately followed in order to effect an arrest;
- c) clear evidence of the committed crime is found on a person, with a person, or on his/her clothes;
- d) a person has fled after committing a crime, but was later identified by the eyewitness;
- e) a person may escape;
- f) a person is wanted”.

At the same time, according to Article 171, paragraph 3, of the CPCG:

“...Arrest without court decision can only be made if there is a probable cause that a person has committed a crime and the danger of flight, threat of destruction of important information for a case or possibility of committing a new crime cannot be avoided by measures alternative to arrest, which are proportionate to the circumstances of alleged crime and personal characteristics of the defendant.”

² referred to as “the CPCG”

“The term of arrest shall not exceed 72 hours”, - as it is provided by Article 174, paragraph 5, of the CPCG. Article 176, paragraph 1, provides grounds for release of arrested person. Among them are:

- “...b) decision was not made to apply detention as a preventive measure to the arrested person;
- c) term of arrest established by this Code has expired;
- d) approval of the authorized state body or official has not been secured...”.

Within 48 hours from arrest a prosecutor is obliged to apply to a court with a motion about imposition of preventive measures on an arrested person. Otherwise, arrested person shall be released. Namely, Article 196, paragraphs 1 and 3, of the CPCG read as follows:

- “1. Within 48 hours from arrest, the motion of the prosecutor to apply a preventive measure shall be filed with the magistrate’s court according to the place of investigation.
- ...3. If a motion stipulated by this Article is not filed with the magistrate’s court within 48 hours from arrest, the defendant shall be released immediately”.

In order to avoid delay of procedures Article 196, paragraph 2, of the CPCG stipulates possibility of holding hearing in arrest/detention facilities:

- “...In special cases, when bringing of the defendant from the arrest/detention facility to the court is impossible due to his/her illness, natural disaster, or another objective reason, the judge may hold the hearing in the arrest/detention facility”.

According to Article 197, paragraph 1(f), of the CPCG:

- “1. No later than within 24 hours after submission of the motion on application of preventive measure, the magistrate judge, with the involvement of parties, shall:
 - ...(f) examine a motion to apply a preventive measure...”

Detention is a type of preventive measures envisaged by the CPCG that can be imposed on a person in limited cases. Article 205, paragraph 1, of the CPCG states:

- “1. Detention, as a preventive measure, can be used exclusively in cases where it is the only means to prevent:
 - a) risk of absconding from and obstruction of justice by the defendant;
 - b) obstruction in obtaining evidence;
 - c) commission of a new crime by the defendant”.

Paragraph 2 of the same Article reads as follows:

- “...The total term of detention of a defendant shall not exceed 9 months. Upon expiration of this term, the defendant must be released from detention. The

term of the defendant's detention runs from the moment he/she was arrested or, if he/she was not arrested, from the moment of execution of the court's order to apply detention as a preventive measure, until a final judgment is issued by the trial court".

Article 207 of the CPCG regulates procedures of appeal of imposed preventive measures, including detention. Paragraphs 1, 4 and 7 of this Article provide that:

"1.Order on applying, replacing, or revoking a preventive measure may be appealed once by the prosecutor, defendant and/or his/her counsel within 48 hours from the moment it was issued to the Investigative Chamber of a Court of Appeals.

...4.The judge of Investigative Chamber of a Court of Appeals shall examine the appeal individually...within 72 hours from the moment it is filed.

...7.Decision made in accordance with the procedure established by this Article shall be final and shall not be subject to appeal."

Articles 180-181 of the CPCG provide procedures for placing of a defendant to a medical institution. Grounds for such placing are given in Article 180, paragraph 1:

"...If a reasonable doubt exists to believe that a defendant committed a crime in the state of mental incompetence, or became mentally incompetent afterwards, and the interests of public safety require his/her isolation in a medical institution, the court according to place of investigation, upon a motion of prosecutor or defense counsel shall issue an order on placing of a person to a state medical institution. Motion shall be reviewed without oral hearing within 48 hours and the decision rendered on the motion is not subject to appeal."

According to Article 181, paragraph 1, of the CPCG maximum term of placing of a defendant to medical institution for examination is 20 days:

"...Defendant may be placed in a medical institution for examination for no more than 20 days."

But, in exceptional cases, Article 181, paragraph 2, of the CPCG stipulates extension of this period by 10 days:

"...In exceptional cases, based on the report of the doctors conducting stationary examination, this term can be extended by another 10 days by a court order. Even if the person placed in the medical institution so desires, further extension of this term shall be prohibited."

At the same time, according to Article 181, paragraph, 4 of the CPCG:

"...Defendant or his/her defense counsel may bring the motion to the court with a request to extend a term of appointed stationary examination. Full term of placement under stationary examination shall not exceed 2 months."

2. **Does this mechanism apply to all forms of deprivation of liberty, such as administrative detention, including detention for security reasons, involuntary hospitalization, immigration detention, or any other reason?**

- Yes
- No

If yes, please provide the list of the forms of detention to which the mechanism is applicable.

Answer:

Mechanisms concerning arrest and detention stipulated by the CPCG are not absolutely similar to procedures envisaged by administrative legislation and other legal acts.

Administrative Offences

*The Administrative Offences Code of Georgia*³ differentiates between two administrative measures: (1) administrative arrest - measure to ensure conducting of procedures on administrative offence cases and (2) administrative detention - type of administrative penalty.

Article 244 of the AOCG establishes grounds for carrying out of administrative arrest:

“Administrative arrest...of a person shall be permitted in cases determined by the Georgian statutory acts for the prevention of administrative offence, when all other forms of influence are exhausted, for identification of a person, for drawing up of protocol of administrative offence...for ensuring of execution of decisions made on administrative offence cases.”

List of organs (officials) authorized to arrest a person is given in Article 246 of the AOCG. Among them are Ministry of Interior, Ministry of Finance, Ministry of Environment and Natural Resources Protection of Georgia, etc.

Term of administrative arrest is envisaged by Article 247 of the AOCG. Namely, paragraph 1 of this Article states:

“Administrative arrest of a person who has committed an administrative offence shall not exceed 12 hours. In exceptional and urgent cases other terms of administrative arrest may be established by statutory act”.

³ referred to as “the AOCG”

“Administrative arrest...may be appealed to superior organ (official) or prosecutor”, - as it is provided by Article 251 of the AOCG.

As for administrative detention, Article 32, paragraph 1, of the AOCG reads as follows:

”...Administrative detention shall be imposed only in exceptional cases...for no more than 90 days. A judge of relevant District (City) Court is authorized to impose administrative detention on a person.”

According to Article 281¹, Article 281², paragraph 4, and Article 281³, paragraphs 1 and 5, of AOCG resolution of a district court on administrative detention may be appealed within 48 hours from its approval to a Court of Appeals. Court of Appeals within 24 hours from receipt of case materials without oral hearing shall decide on admissibility of application. If application is admitted it shall be examined within subsequent 48 hours. Decision made on the matter shall be final.

Involuntary Hospitalization

*The Administrative Procedure Code of Georgia*⁴ envisages procedures regulating placing of a person to hospital for providing involuntary psychiatric aid.

According to Article 21¹⁶, paragraph 1, of the APCG:

“...Order on placing of a person to hospital for the purpose of providing involuntary psychiatric aid shall be issued by...judge upon application of administration of relevant psychiatric hospital or penitentiary institution...”

Article 27¹⁷, paragraph 2, of the APCG reads as follows:

“...Administration of psychiatric hospital or penitentiary institution shall apply to...[court]...with a request to issue an order within 48 hours after a patient/convicted person is placed in hospital or relevant conclusion is made by authorized expertise institution.”

Judge shall consider the case and make decision on the issue within 24 hours after application is filed, - as it is envisaged by Article 21¹⁸, paragraph 1 of the APCG.

Article 21¹⁹ of the APCG determines terms of involuntary hospitalization:

“...order on placing of a person to hospital for the purpose of providing involuntary psychiatric aid shall be in force until criteria of patient’s involuntary medical treatment are exhausted...but this period shall not exceed 6 months. This period shall not apply to patient serving sentence in relevant medical institution.”

⁴ referred to as “the APCG”

According to the same Article this period may be extended for no more than 6 months upon substantiated application of psychiatric institution. In all cases of expiration of prolonged period administration of psychiatric institution may again apply to a court with a request to extend the period, if criteria of patient's involuntary medical treatment are not exhausted. Court shall consider the matter within 72 hours after application is received.

Appeal procedures are stipulated by Article 21²⁰ of the APCG:

“...2. Appeal for annulment of an order issued by judge...shall be filed within 48 hours after receipt of copy of order...”

...4. Appeal shall be examined by judges of a Court of Appeal collectively within one week after filing of appeal...”

Extradition/ Surrender

*The Law of Georgia on Mutual Legal Assistance in Criminal Matters*⁵ defines procedures for providing of a legal assistance in criminal matters, extradition, executing of judgments, surrender of persons sentenced to imprisonment to countries citizens of which they are, etc. In implementing these procedures the Law on MLACM stipulates employing of measures that are related to deprivation of liberty.

Preventive measure to be used in relation to person subject to extradition to a foreign state is envisaged by Article 30 of the Law on MLACM. Namely, paragraphs 1 and 2 of this Article provide that:

“1. Upon arrest of a person wanted by law enforcement bodies of a foreign state on the territory of Georgia, prosecutor of a relevant district shall be notified about arrest who shall submit a motion within 48 hours to a relevant magistrate judge according to the place of arrest to apply preventive measure against a person.

2. Extradition detention may be imposed on a person wanted by law enforcement bodies of a foreign state...”

Magistrate Judge considers the issue of imposition of preventive measure in accordance with rules established by the CPCG taking into consideration peculiarities of extradition procedures, as it is provided by paragraph 3 of the mentioned Article. As for appeal procedures, the same paragraph states that:

“...The decision issued by the magistrate judge may be appealed to Investigative Chamber of a Court of Appeals within 7 days from the moment of its deliverance to a person. The Investigative Chamber shall examine the appeal within 5 days.”

⁵ referred to as “the Law on MLACM”

Terms for extradition detention envisaged by Law on MLACM are not similar to other types of detention. According to Article 30, paragraphs 4 and 5, of the Law on MLACM:

“...4.The term of extradition detention of a person arrested on the territory of Georgia and subject to extradition to a foreign state shall be 3 months that, out of necessity arisen from carrying out of extradition, may be extended by 3 months, but no more than twice.

5...extradition detention shall be extended by Magistrate Judge upon substantiated motion of prosecutor... Decision of Magistrate Judge may be appealed to Investigative Chamber of a Court of Appeals in accordance with rules established by...Criminal Procedure Code of Georgia.”

Similar procedures, albeit with some differences, regarding arrest of person is determined by Article 54 of the Law on MLACM that regulates imposition of temporary measures related to enforcement of judgments: upon arrest of a convicted person for the purpose of execution of sentence prosecutor of a relevant district shall be notified about arrest who shall submit a motion within 48 hours to a relevant magistrate judge according to the place of arrest to apply detention against a person as a temporary measure; magistrate judge considers the issue of imposition of preventive measure in accordance with rules established by the CPCG taking into consideration peculiarities of execution of sentence; decision issued by the magistrate judge may be appealed to Investigative Chamber of a Court of Appeals within 7 days from the moment of its deliverance to a convicted person; Investigative Chamber shall examine the appeal within 5 days; terms of temporary measure shall not exceed 2 months that may be extended by 2 months, but no more than twice by magistrate judge upon substantiated motion of prosecutor. Decision of Magistrate Judge about extension of detention may be subject to appeal.

*The Law of Georgia on Cooperation of Georgia with the International Criminal Court*⁶, among other issues, regulates procedures of arrest and detention of a person who upon a request of International Criminal Court⁷ is subject to surrender. According to Article 22, paragraph 2, of the Law on CGICC if the Responsible Agency⁸ satisfies a request of the International Court on arrest of person, it shall ensure carrying out of procedures established by legislation regarding arrest of a person.

Article 23, paragraph 1, of the Law on CGICC provides that:

“1.Responsible Agency within 48 hours after arrest of a person applies to the Criminal Chamber of Tbilisi City Court with a request to issue order of

⁶ referred to as “ the Law on CGICC”

⁷ referred to as “the International Court”

⁸ Ministry of Justice

detention of the person for the purpose of his/her surrender to the International Court. Court makes decision about issuing order of detention within subsequent 24 hours. If during this period decision is not made by a Court arrested person shall be released.”

As for appeal procedures and terms of detention, Article 23, paragraph 5, and Article 24, paragraph 1, of the Law on CGICC state:

“...A person subject to surrender shall be entitled to appeal order of detention to the Criminal Chamber of a Court of Appeals within 5 days after receiving of copy of the order.

...Detention with a purpose of surrender shall last during the entire surrender proceedings.”

Article 17 of the Law on CGICC regulates procedures regarding use of Georgian territory for transportation of persons - at the request of the International Court the Responsible Agency issues a permit for transportation of arrested person through territory of Georgia. No permission is required for transportation of a person by air without landing on the territory of Georgia. In case of unscheduled landing:

“...transported person shall be arrested and transferred to the preliminary detention center envisaged by the Georgian legislation. The Responsible Agency shall immediately apply to the International Court for issuing a request for transportation. If within 72 hours following arrest such request is not received, arrested person shall be released. Person shall be re-arrested if a request is received afterwards and permission for transportation shall be issued.”

Administrative Arrest of Alien

Article 62 of *The Law of Georgia on Legal Status of Aliens and Stateless Persons* establishes legal grounds for administrative arrest of alien who is subject to deportation. Paragraph 2 of this Article provides that:

“...Arrested alien no later than 48 hours after arrest shall be presented to a court in order to make decision on expediency of administrative arrest. If court does not make decision on arrest in subsequent 24 hours alien shall be immediately released.”

Terms of administrative arrest are determined by paragraph 3 of the same Article:

“...administrative arrest of an alien shall be extended accordingly:

a) until identity, citizenship, permanent residence or country from which alien has entered Georgia is established;

b) until execution of deportation of an alien from Georgia is completed.”

3. Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court available for individuals subjected to preventive detention measures?

Answer:

See answers for questions N1 and N2.

4. Does this mechanism provide for any particular remedies? In particular, does the mechanism provide for release and compensation for unlawful detention?

Answer:

Georgian legislation guarantees pecuniary remedies for a person unlawfully arrested or detained. Legal grounds of compensation for illegal deprivation of liberty are established by Article 18, paragraph 7, of the Constitution:

“...A person arrested or detained illegally shall have the right to receive compensation.”

Compensation for damages caused by illegal procedural measures are envisaged by different statutory acts of Georgia. According to Article 38, paragraph 11, of the CPCG:

“A defendant shall be entitled through civil/administrative procedure to claim and receive compensation for damage resulting from any unlawful procedural action.”

Article 92, paragraph 1, of the CPCG states:

“...Everyone has a right via civil/administrative procedure to request and receive compensation for damages incurred due to illegal procedural actions and illegal decisions...”

The CPCG provides compensation for illegal arrest regardless of person’s conviction. Namely, Article 176, paragraph 5, states:

“Regardless of whether arrested person is ultimately convicted, the state must fully reimburse from the state budget the damage caused from an illegal or groundless arrest through civil procedure.”

Compensation for damage caused by unlawful administrative detention is envisaged by Article 281 of the AOCG:

“Damage caused to citizen by illegal imposition of detention...as administrative penalty, shall be compensated in accordance with procedures established by law.”

Procedures regarding compensation for unlawful detention or other illegal action are stipulated by the Law on CGICC as well, with relevant specificity. Article 19, paragraph 1, of this law reads as follows:

“...Provisions of Georgian legislation relating to compensation for damage caused by unlawful detention or other unlawful act shall be applicable only in case when at the request of the International Court the prosecuted person has been subject to procedural measures under this Law on the territory of Georgia.”

The same Article stipulates refusal of compensation,

“...if the prosecuted person intentionally protracted or complicated investigation and detention in whole or in part was caused by his fault”.

At the same time,

“...Damage caused by unlawful detention or other unlawful act shall not be covered by Georgia, if...damage is compensated by the International Court or it makes decision to refuse compensation.”

It is noteworthy to mention that Article 147 of *The Criminal Code of Georgia* criminalizes intentional illegal arrest or detention of a person and determines severe penalty for this crime. Illegal hospitalization in psychiatric institution is criminally punishable conduct as well.

In regards of procedures relating to release from detention, see answers for questions N1 and N2.

5. Are there persons other than the detainee who can initiate the procedure on behalf of the detainee under your country’s domestic law?

Answer:

According to Georgian legislation procedures on behalf of the detainee can be initiated by his/her representative. The right to defense is guaranteed by Article 42, paragraph 3, of the Constitution and other legal acts of Georgia.

Article 38, paragraph 5, of the CPCG provides that defendant is entitled to choose or substitute counsel at any time. If he/she has no sufficient means defense counsel may be appointed free of charge:

“...defendant shall have the right to a counsel and the right to choose the counsel, as well as the right to substitute the counsel of his/her choice at any time. If a defendant is indigent he/she shall have a right to have a counsel appointed on the State’s expense.”

According to Article 44, paragraph 1, of the CPCG:

“...A defense counsel shall employ every lawful means to establish circumstances that speak to the innocence of a defendant and/or mitigate his/her responsibility. A defense counsel shall have no right to act contrary to the defendant’s instructions and interests. A defense counsel shall have no right to file or withdraw a complaint regarding the charges and the sentence against the will of the defendant, except in cases where the defendant is a juvenile, or has such physical or mental disability that makes impossible to receive this consent.”

As for preventive measures and authority of defense counsel in this regards, Article 206, paragraph 8, of the CPCG provides that:

“...party may file a motion with the magistrate judge, according to the place of investigation, to replace the preventive measure used against the defendant by a more lenient preventive measure or to revoke such a measure. Defense counsel may file such a motion only with the consent of the defendant, except when the defendant is a juvenile, or has a physical or psychological defect which does not allow getting of defendant’s consent.”

As for administrative procedures, Article 255 of the AOCC states:

“...Legal counsel participating in administrative offence case shall be entitled to...file motions, appeal decisions rendered on case upon a request and on behalf of a person by whom he/she is chosen.”

At the same time, if a person has no sufficient means and administrative detention as penalty is stipulated for an offence, upon his/her request legal counsel shall be appointed at state expense.

Right to be represented by legal counsel in other administrative litigations is guaranteed by Georgian legislation as well.

- 6. What are the formal requirements and procedures for a detainee to invoke the right to bring proceedings before court, in order that the court may decide without delay on the lawfulness of the detention? Please cite relevant legislation.**

Answer:

See answers for questions N1 and N2.

7. Does the legislation provide for a time limit for submitting such application to the court? If so, please indicate what is the maximum time in the number of:
- Days
 - Months
 - Years

Answer:

See answers for questions N1 and N2.

8. Are there any major decisions of your country's Constitutional or Supreme Courts concerning the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court?
- Yes
 - No

If yes, please, provide the date and number of the decision(s) and, if possible, a copy of the decision(s)

Answer:

- Decision N1/3/393.397, (15.12.2006), Constitutional Court of Georgia
- Decision N2/3/286, (17.03.2005), Constitutional Court of Georgia
- Decision N98, (29.01.2001), Supreme Court of Georgia

Note:

Alphabetic enumeration of Subparagraphs of Articles (unofficial translation) is Latin and does not coincide with Georgian edition (original) in which Georgian alphabetic enumeration is used.