

Georgia
Country Legal Description

International Bridges to Justice
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Introduction

Georgia is a sovereign nation in the Caucasus region between Eastern Europe and Western Asia. It covers an area of approximately 69,700 km² with an estimated population of 4.5 million people. The territory is divided into 9 regions, 1 city, and 2 autonomous republics (one which has been recognized as independent by the Georgian government, another which is operating under de facto independence). Georgia has a long but inconsistent history of occupation, including under the Persian and Ottoman Empires. It was annexed by Russia in 1805 and remained under Russian control until shortly before the Bolshevik Revolution in 1918, when it enjoyed a brief period of independence until it was overtaken by the Soviet Union in 1921. When the Soviet Union dissolved in 1991, Georgia was briefly united under its first president until he was deposed in a coup later that year, igniting a civil war that lasted until 1995. The leaders of the coup maintained power until 2003 when they were ousted in turn.

In 2008, Georgia and Russia engaged in armed conflict over the territory of the autonomous republics, and Georgia was defeated. The territory in question has declared its independence from Georgia, though Georgia considers it under Russian military occupation. Continued political strife led to numerous incidents of police violence and human rights violations.

Georgia is a member of the Council of Europe, the World Trade Organization, the GUAM Organization for Democracy and Economic Development, and the Community of Democratic Choice. As of 2012, it is seeking membership in NATO with the support of several Western countries, including the United States. Georgia accepts the jurisdiction of the ICC and the ICJ.

A. Type of Government

Georgia is a democratic republic with a civil law foundation. (Georgia Const. Art. 1.2). The Georgia legislature consists of a two-chamber Parliament; the Council of Republic has 100 members (elected under a proportional system), and the Senate has 50 members (most of whom are elected under a district system from the regions and autonomous territories, 5 of whom are appointed by the President). (Georgia Const. Arts. 4.2-4.3, 49.1). (N.B. – though there are two chambers, this distinction only applies to differences in electoral systems. The Parliament operates as a unicameral body.)

The executive branch is divided between the Head of State and the Head of the Government. The President is the Head of State (Georgia Const. Art. 69), and he has the power to conduct foreign affairs, issue orders and decrees consistent with the Constitution, grant pardons, make immigration decisions, etc. (Georgia Const. Art. 73). Interestingly, the President also has the ability to make legislative initiatives in certain circumstances. (Georgia Const. Art. 67). The Prime Minister is the Head of the Government, which comprises various Ministries headed by ministers who report to the President and Parliament and who control other executive functions. (Georgia Const. Arts. 78, 79).

The judiciary is separated into the Constitutional Court of Georgia, which determines the constitutionality of laws, international agreements, and normative acts by

the President or Parliament and hears cases involving constitutional claims, disputes over elections, or disputes between state bodies and courts of general jurisdiction, which oversee civil and criminal matters. (Georgia Const. Art. 86, 89).

B. Sources of Defendants' Rights

i. Constitution

Chapter Two of the Georgia Constitution gives an overview of the rights of citizens and the basic rights of the individual. It proclaims the right to life, dignity, and equality in fairly comprehensive provisions.

ii. Statutory Law

Georgia's Criminal Code identifies which activities are criminal and what punishments may be prescribed. The current incarnation of the Code came into effect on February 15, 2000. The Criminal Procedure Code provides details on the rights and obligations of suspects, defendants, investigators, lawyers, judges, and other participants in the criminal justice system.

The Law on Imprisonment details the conditions and requirements that apply to offenders serving prison terms. It includes quality of life provisions as well as acceptable disciplinary measures, rights of detainees, etc.

Georgia's Law on Police, though primarily concerned with the rights and obligations of police officers, outlines certain principles to guide police actions, including the principle that "police are obliged to respect and protect individual rights and freedoms, regardless of civic, social, or property status, racial and national origin, sex, age, education, language and religion, political or other opinion." (Law on Police, Art. 4.2).

iii. Other

The Constitution states that the government shall not deny the exercise of any universally recognized rights, even if they are not enumerated in the Constitution. (Georgia Const. Art. 39). Georgia is signatory to a number of international agreements dealing with defendants' rights.

C. Protections From Police

i. Identity Checks

The police have the right to check an individual's identification documents when determining whether a crime or administrative offense has been committed. (Law on Police, Art. 9). In addition, police may stop people and vehicles, conduct raids, and

require individuals to produce a national ID card, driving license, passport, etc. in cases of emergency. (Law on Police, Art. 9).

ii. Stops and Frisks

Searches of a person without a warrant may only take place during that person's arrest or during a previously authorized search of premises where the investigating officer has reason to believe that the person is hiding evidence on his or her person. (Crim Pro Code, Art. 325.3). A suspect or arrestee in that situation may be searched if the police officer has reasonable grounds to suspect that they may be armed or attempting to destroy evidence. (Crim Pro Code, Art. 145.2). This search must be documented either immediately or when the arrestee is brought to the police station.

iii. Searches and Seizures

Article 20 of the Georgia Constitution states that a person's right to private life, records, correspondence and communications is inviolable. (Georgia Const. Art. 20.1). Authorities may search a person's house or possessions only with the support of a court decision or in cases of "urgent necessity." (Georgia Const. Art. 20.2). However, police have the right to enter a house, institution, or other private building for the purposes of crime prevention, to effect an arrest, or where human life may be in danger, so long as they notify the prosecutor in writing within 24 hours. (Law on Police, Art. 9). Anyone whose dwelling is subject to search is entitled to make a statement about the conduct of the search to be entered into the record. (Crim Pro Code, Art. 321.5).

The Law on Police states that a search activity that temporarily restricts a person's life, private correspondence, telephone calls and messages may only be used in cases prescribed by rule and law. (Law on Police, Art. 14.3). Police and investigators are obliged to ensure the non-disclosure of any information they discover about the individual's personal life. (Crim Pro Code, Art. 323.3).

Food, fuel, objects of professional activity, and other essential goods belonging to the accused or the accused's family may not be seized. (Crim Pro Code, Art. 192.1).

iv. Arrests

A person may not be restrained or arrested without a legal ground. The Constitution requires that every person who is arrested, detained or otherwise restricted in their liberty must be brought to a competent court within 48 hours. If the court has failed to adjudicate the detention within 24 hours of the expiration of that window, the person must be released immediately. (Georgia Const. Art. 18.3).

In addition, the Constitution and the Criminal Procedure Code mandate that every person arrested or detained must be informed of their rights and the grounds for the detention at the time of arrest. (Georgia Const. Art. 18.5; Crim Pro Code, Art. 12.2).

Police may use handcuffs or other means of binding, rubber batons, tear gas, light-sound devices, dogs, electrical devices, etc. under certain conditions, usually involving the need to repel an imminent attack. (Law on Police, Art. 12.1). Police may not use force against pregnant women or disabled persons unless they are part of an

armed attack. (Law on Police, Art. 12.3). If police use these measures, they must then provide first aid and inform their supervisor and the prosecutor that force was used. (Law on Police, Art. 12.2).

v. Right to Silence

An arrested or detained person should be informed of his rights immediately upon detention, including the right to remain silent, the right not to plead guilty, the right to communicate with family members, etc. (Crim Pro Code, Art. 72.3).

Investigators and prosecutors are to secure the non-disclosure of data pertaining to a criminal case, but this non-disclosure shall not be required of the suspect or accused. (Crim Pro Code, Art. 274.2).

vi. Right to Counsel

Upon arrest, an arrested or detained person may request counsel, and “the request shall be met.” (Georgia Const. Art. 18.5). The suspect or accused person is entitled to waive counsel unless they are a minor or otherwise incapacitated, in which case the participation of counsel is mandatory. If the person waives counsel, they are also entitled to change their mind and request counsel later. (Crim Pro Code, Arts. 78.6, 81).

The accused person has the right to choose their own representation and is given at least 3 hours to make their choice. Police and investigators are not permitted to make recommendations for particular lawyers to the accused or the accused’s family. (Crim Pro Code, Art. 83).

vii. Confessions

Under Article 15.4 of the Constitution, “physical or mental coercion of a person detained or otherwise restricted in his/her liberty is impermissible.”

A confession by the accused is not sufficient to establish guilt unless corroborated by other evidence. (Crim Pro Code, Art. 19.3). Similarly, the waiver of any other rights (silence, representation, etc.) may not be interpreted as proof of guilt. (Crim Pro Code, Art. 73.2).

A person who voluntarily confesses after committing a crime and cooperates with the authorities afterward may be absolved of criminal liability if it was the first offense and if the maximum sentence that may be imposed is less than two years imprisonment. (Crim Code, Art. 68.1).

At the beginning of a trial, the judge must ask the defendant if s/he pleads guilty and must also inform the defendant that s/he is not bound by any previous confession that was made during the preliminary investigation. (Crim Pro Code, Art. 472.2).

D. Rights During Detention

i. Freedom from Prolonged Pretrial Detention

An arrested person may not be held in custody for more than 48 hours without charge. (Crim Pro Code, Art. 12.3). The maximum period for detention upon remand after charge is nine months. (Georgia Const. Art. 18.6).

If a person was detained prior to sentencing but only received a sentence of a fine or suspension from public office, the sentence will be commuted to take into consideration the duration of pretrial detention. (Crim Code, Art. 62.5).

If a person is detained unlawfully, they are entitled to an official apology as well as compensation for any damage to property, person, or morals. (Crim Pro Code, Arts. 165, 225, 226).

ii. Freedom from Punishment

If an individual is sentenced to a period of imprisonment, there is a list of prescribed disciplinary measures for detainees who violate penitentiary regulations, ranging from a warning to transfer to a stricter facility for a period of months. It is explicitly noted that only one disciplinary measure may be imposed for a violation, and no disciplinary measures may be imposed if they are of a humiliating or degrading character. (Law on Imp., Art. 30.6, 30.10).

If police take illegal or coercive measures against an individual, they must make an official apology. (Law on Police, Art. 8.2).

iii. Right to Counsel

Individuals held in penitentiaries are entitled to “unlimited access to a lawyer.” In addition, the penitentiary is not permitted to delay communications from the individual to the court, the defender, or the prosecutor. (Law on Imp., Arts. 26.1, 26.2). Visits between a detainee and his/her attorney may not be limited or censored. (Law on Imp., Art. 48.7).

iv. Right to Habeas Corpus

There is no enumerated right to habeas corpus in the selected sources.

v. Right to Medical Care

The arrested or detained person has the right to obtain a medical evaluation immediately upon detention. (Crim Pro Code, Art. 73.1).

E. Rights During Trial

i. Legality Principle

The Criminal Procedure Code establishes that all criminal proceedings are based on legality, equality and human dignity. (Crim Pro Code, Art. 7.1).

ii. Right to Notice of Charges

The accused person has the right to be informed of the crime for which s/he is suspected immediately upon detention. The accused also has the right to be given a copy of the detention protocol and a copy of the judge's ruling to initiate criminal proceedings against him. (Crim Pro Code, Art. 73.1).

iii. Right to Counsel

The Constitution states simply and explicitly, "[t]he right to defense shall be guaranteed." (Georgia Const. Art. 42.3). The Criminal Procedure Code places the obligation of securing defense counsel on the court or official in charge of criminal proceedings. (Crim Pro Code, Art. 11.1)

Applications and letters sent from persons in police custody or pretrial detention to the Public Defender shall not be delayed or censored. (Org. Law. P.D., Art. 15).

There are no fees for applying to the Public Defender, and services are rendered free of charge. (Org. Law. P.D., Art. 16).

iv. Presumption of Innocence

Every person is presumed innocent until it is proved that they committed an offense under a final judgment of conviction. (Georgia Const. Art. 40.1; Crim Pro Code Art. 10.1). The burden of proof rests with the prosecution. (Georgia Constitution. Art. 40.2; Crim Pro Code, Art. 10.2).

Interestingly, the Criminal Procedure Code also imposes a responsibility on the mass media reporting on criminal matters to base their coverage on the presumption of innocence. (Crim Pro Code, Art. 16.2).

v. Protections Against Self-Incrimination

No person is obliged to testify against him/herself or against close relatives. (Georgia Const. Art. 40.8). The Criminal Procedure Code states in multiple provisions that the defendant has the right, but not the obligation, to testify. (Crim Pro Code, Arts. 114, 115). During trial, the judge will invite the defendant to testify and inform him or her of the right to refuse to testify and the fact that refusal may not be used to draw negative inferences about the defendant's guilt. (Crim Pro Code, Art. 476.1). However, if the defendant refuses to testify, statements made by him or her during the preliminary investigation may become admissible. (Crim Pro Code, Art. 477.1).

vi. Right to Compulsory Process

The defendant has the same right to summon witnesses as the prosecution. (Georgia Const. Art. 40.6).

vii. Right to Confront Witnesses

The defendant has the same right to interrogate witnesses as the prosecution. (Georgia Const. Art. 40.6). During the trial, the defense is entitled to interrogate the victim. In that case, the defendant interrogates the victim after the prosecution if the victim sustains the complaint, and if the victim withdrew the complaint, then the defendant interrogates the victim before the prosecution. (Crim Pro Code, Art. 482.2).

viii. Right to a Speedy Trial

The arrangement of cases is determined by the court under the principle of court independence with the specific aim of securing a speedy adjudication. (Crim Pro Code, Art. 15¹).

A preliminary investigation is limited to three months, but it may be extended to up to 12 months depending on which procurator is handling the case. (Crim Pro Code, Art. 271). At the conclusion of the preliminary investigation, it must be referred to an administrative court within 5 days. (Crim Pro Code, Art. 413). The administrative court will then determine whether the case should proceed within 14 days (one month for complex cases). If the administrative court finds that the case should proceed, it shall be heard by a criminal court within 10 days (14 days for complex cases). (Crim Pro Code, Art. 433).

ix. Right to a Fair Trial

It is the responsibility of the court to ensure the equality of the parties and refrain from acting on behalf of either the prosecution or defense. (Crim Pro Code, Art. 439). The judge's ruling should be "lawful, reasoned and fair." (Crim Pro Code, Art. 496.1).

x. Right to an Impartial Judge

Article 49 of the Criminal Procedure Code declares that a judge is obliged to provide the parties with equal opportunities to defend their interests and to refrain from seeking evidence that favors one side over another.

xi. Right to a Trial By Jury

There is no right to a trial by jury enumerated in the selected sources.

xii. Standards of Proof

The standard of proof for criminal convictions is ‘beyond a reasonable doubt.’ The defendant is to be given the benefit of the doubt in all instances, and any discrepancies should be settled in favor of the accused. (Georgia Const. Art. 40.3; Crim Pro Code, Arts 10.1, 10.4). The burden of proof rests with the prosecution. (Georgia Constitution. Art. 40.2; Crim Pro Code, Art. 10.2).

xii. Double Jeopardy

No person may be convicted twice for the same crime arising from the same facts. (Georgia Const. Art. 40.4).

F. Sentencing

Sentencing for criminal offenses is structured on a tiered basis, starting with a fine and progressing to a period of socially useful labor, to corrective labor (where a person continues working their regular job and a portion of their pay is transferred to the national budget), to restriction of freedom in a supervisory institution that is not isolated from society, to a jail term, to imprisonment in a penitentiary for a specific term, to life imprisonment. If an offender seeks to avoid serving his/her sentence maliciously, it may be converted into the next tier – from fine to socially useful labor, from labor to restriction of freedom, from restriction of freedom to jail or imprisonment.

If the offender is in the military, there are additional punishments whereby the person is either placed in a military disciplinary unit for a period or suspended from service with 20% of their salary transferred to the national treasury. For offenders in public service, there is an additional punishment of being barred from holding office for a specific period.

According to the general principles of sentencing identified in the Criminal Code, the court shall award a fair sentence and may only use a more severe sentence if the less severe sentence would fail to achieve the purpose of the punishment. (Crim Code, Art. 53.1). There are a number of mitigating factors the court should consider when imposing a sentence, including the offender’s past life, social/economic position, and willingness to make restitution or reconcile with the victim. (Crim Code, Art. 53.3). The court may impose a sentence that is more lenient than the statutory minimum. (Crim Code, Art. 55). Conditional sentences and periods of probation may be imposed in lieu of more severe punishments. (Crim Code, Arts. 63-64).

i. Right Not to Be Fined Excessively

All fines are collected under a daily payment system. (Crim Code, Art. 42.1). There is no provision that explicitly states that an offender has a right not to be fined excessively. However, in determining the amount of the fine, the court is to take into account the offender’s position with respect to property ownership and income. (Crim Code, Art. 42.4). The minimum amount is two *lari* per day and the maximum is 10,000

lari per day. The minimum fine period is ten days and the maximum is 720 days. (Crim Code, Art. 42.2-42.3).

Payment of a fine may be postponed or paid in installments over a period of 6 months if immediate payment is impossible due to financial difficulty or other circumstances. (Crim Pro Code, Art. 607.2).

ii. Ex Post Facto Punishments

If an action did not constitute a crime at the time it was committed, the actor may not be held criminally responsible. Under the Constitution, laws mitigating or abrogating responsibility have no retroactive force. (Georgia Const. Art. 40.5).

The Criminal Code confirms this principle and clarifies that the time the crime is committed is when the action takes place, not necessarily when the result occurs. (Crim Code Art. 2). The Code goes on to say that laws which increase liability or punishment are not retroactive, but laws that decrease punishments or that benefit the offenders are retroactive. If multiple changes to the law occur between the commission of the offense and the sentence, the most lenient law shall be applied. (Crim Code Art. 3).

iii. Freedom from Cruel and Unusual Punishment

The Criminal Procedure Code states that the conditions of confinement must conform with standards for health and human dignity, and the “abusive treatment of a convict or accused, causing him physical and moral suffering are punishable by law.” (Crim Pro Code, Art. 136).

Although the Criminal Code allows for punishments involving manual labor, it specifically states that the purpose of punishment shall not be physical suffering or humiliation. (Crim Code, Art. 39.3).

iv. Freedom from Torture

According to Article 17.2 of the Constitution, “torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honour and dignity shall be impermissible.”

Torture is identified as a crime in Georgia’s Criminal Code. Forcing a suspect, witness, victim, or expert to give testimony using threats, abuse, violence or torture is punishable by various terms of imprisonment. (Crim Code, Art. 335).

v. Capital Punishment

Capital punishment is prohibited under the Constitution. (Georgia Const. Art. 15.2).

vi. Right to Appeal

A participant in a criminal proceeding is entitled to appeal against the an act or decision of the court or official in charge of the criminal proceeding. (Crim Pro Code,

Art. 234). Interestingly, other citizens and organizations are also permitted to appeal under this section. The accused and his/her counsel has the right to appeal the sentence and any other final judgments. (Crim Pro Code, Art. 84). The appeal must be filed within 15 days from the time the appellant learned of the decision or act s/he feels is unlawful or unreasonable. (Crim Pro Code, Art. 242.4). The appellant is exempt from fees. (Crim Pro Code, Art. 242.7).

At any point in a criminal proceeding, the constitutionality of the underlying law may be challenged before the Constitutional Court, and the criminal proceeding will be suspended. (Crim Pro Code, Art. 29.1).

Appeals for pretrial matters like detention or coercive measures should be filed within 48 hours, and they should be decided within 72 hours of filing. (Crim Pro Code, Art. 243).

G. Rights in Prison

i. Conditions of Confinement

The specific conditions of life in prison facilities are determined by the regulations of the individual prisons. (Law on Imp., Art. 24.2). More generally, anyone serving a term of imprisonment is guaranteed living space, food, garments, a safe working environment, and access to telephone and mail communications. (Law on Imp., Art. 26.1). Living space must comply with construction and sanitary requirements to ensure the detainee's health, though the allocated minimum space is very small. (Law on Imp., Art. 33). Detainees are entitled to receive vocational, educational and social training and to participate in religious and cultural activities. (Law on Imp., Art. 26.1, 44, 45).

Though detainees may be required to work at a job offered by the penitentiary, no job will be offered under conditions that infringe on the individual's honor or dignity. (Law on Imp., Arts. 27.2, 53.4).

Food should be tailored to the cultural traditions of the prison population, and detainees may buy food with their own money. Detainees are entitled to unlimited drinking water. (Law on Imp., Art. 36).

ii. Immigration Detention

There are no criminal provisions dealing with immigration detention in the selected sources.

iii. Medical Care in Prison

Detainees must be medically examined immediately upon their admittance to a penitentiary. (Law on Imp., Art. 38.1). Thereafter, detainees should be examined once a year. Sick detainees are entitled to immediate medical care. (Law on Imp., Art. 38.2).

Prisons must either be equipped with a medical facility, have a medical facility service under contract, or hire a doctor on a contractual basis to oversee the health of detainees. (Law on Imp., Arts. 40, 41).

Detainees suffering from HIV, AIDS or other infectious diseases are to be detained in a separate medical facility. (Law on Imp., Art. 22.2). If a detainee becomes infected with an incurable disease, he or she shall be released. (Law on Imp., Art. 65.1).

iv. Mental Health Care in Prison

Detainees suffering from mental health issues are separated at or after sentencing. Courts may order the offender's admission to a mental hospital under ordinary, increased, or intensive supervision as a "coercive measure of medical nature." (Crim Code, Art. 101).

Though criminal liability may not be imposed on the mentally ill, a person may become subject to liability upon recovery. (Crim Code., Art. 34). A person who becomes mentally ill after the imposition of a sentence will be released from punishment, though he or she may become subject to coercive medical measures described above. (Crim Code, Art. 74).

v. Restrictions of Rights

Police are obligated to protect citizens' rights and only restrict the rights of individuals according to the law. If a police officer restricts a person's rights, the officer must explain the grounds and specific restrictions. (Law on Police, Art. 8.1).

Disciplinary measures may be imposed that restrict the rights of detainees in prisons. Specific punishments include reprimands and prohibitions against having certain visitors or receiving packages. (Law on Imp., Art. 30.6). However, no punishment may be imposed of a humiliating or degrading nature. (Law on Imp., Art. 30.10).

Food supply may not be reduced as a form of punishment. (Law on Imp., Art. 36.1).

vi. Women's Rights in Prison

Women serving terms of imprisonment are to be detained in separate facilities. (Law on Imp., Art. 22.1).

Certain sentences (socially useful labor, restriction of freedom, and jail terms) may not be imposed on a pregnant woman or a woman who has children aged 7 or younger according to the Criminal Code. (Crim Code, Arts. 44.4, 47.5, 48.4). Additionally, pregnant women or women with children under 7 may have their sentence suspended until their child reaches 7, at which point the court will decide whether to discharge or impose the sentence. (Crim Code, Art. 75.1). There may be some confusion on this point, since the Law on Imprisonment provides that mothers in prison may make arrangement to have children under 3 years live with them. (Law on Imp., Art. 39.1).

vii. Juveniles' Rights

No criminal proceedings may be initiated against a person aged 14 or younger. (Crim Code, Art. 33).

If a juvenile is suspected of committing an offense with an adult, their trials shall be severed unless severance will substantially prejudice the completeness or impartiality of the proceedings. (Crim Pro Code, Art. 640). At trial, a juvenile's case may be heard by a judge with training in psychology who is authorized to try juveniles. (Crim Pro Code, Art. 654).

Minors between the age of 14-18 who are sentenced to a term of imprisonment shall be placed in an educational institution. (Law on Imp., Art. 82). Fines may only be imposed on juveniles if they have an independent salary or property, and then for a more limited time period. (Crim Code, Art. 83). A range of more lenient "educative" punishments may be imposed instead, ranging from a caution to the restriction of certain conduct. (Crim Code, Art. 91.1). Juveniles may be employed at the penitentiary when they are not studying, but the total time spent working and studying should not exceed eight hours. (Law on Imp., Art. 54.2).

Juveniles serving terms of imprisonment are to be detained in separate facilities. (Law on Imp., Art. 22.1).

H. Ways to Protect Rights

i. Exclusionary Rule or Nullity of Procedure

Under the Constitution and the Criminal Procedure Code, evidence obtained in contravention of the law shall have no legal force. (Georgia Const. Art. 40.7; Crim Pro Code Arts. 7.6). The Criminal Procedure Code has an explicit exclusionary rule, making illegally obtained evidence inadmissible in court proceedings. (Crim Pro Code, Art. 119). This is confirmed in the Law on Police, which states that evidence obtained in a way that is prohibited by established operative/search activities will not be tested or evaluated for use in criminal cases. (Law on Police, Art. 15.2).

Recordings or videos of meetings between an accused and his/her counsel are inadmissible. (Crim Pro Code, Art. 136.7).

ii. Civil Action

Article 40.9 of the Constitution guarantees the right to compensation for anyone who sustains damage through the illegal actions of the state. This is affirmed in the Law on Police, which states that citizens, institutions, and organizations shall be compensated for damage caused by police. (Law on Police, Art. 27.1). Furthermore, a citizen may lodge a complaint against a police officer with a higher-ranking officer, a prosecutor, or the court. (Law on Police, Art. 33).

The Criminal Procedure Code makes it clear that investigators and law enforcement officers may be held accountable in civil actions by saying that violations of the Constitution and criminal procedure laws "entails liability provided by law and

reversal of the unlawful act.” (Crim Pro Code, Art. 7.6). It goes on to say that anyone who is unlawfully subjected to arrest or restraint or whose private information was disclosed without their consent is entitled to damages. (Crim Pro Code, Arts. 12.4, 13.4, 73.1).

If a detainee who is employed at the penitentiary loses the ability to work, he or she has a right to seek compensatory damages after release. (Law on Imp., Art. 56.2).

iii. Motions

Any participant in criminal proceedings has the right to make a motion, written or oral, before the court or authority. (Crim Pro Code, Art. 230, 231).

The accused or detained person has the right to challenge the prosecutor’s order to initiate criminal proceedings and make other petitions and challenges. (Crim Pro Code, Art. 73.1).

Police Procedures

According to Georgia’s Law on Police, police work is based on “the rule of law, protection of personal honor and dignity, social justice, humanity and the principles of openness.” (Law on Police, Art. 1.4).

A. Complaint/Information

According to the Criminal Procedure Code, a criminal proceeding may be initiated by an investigator or judge “[u]pon the existence of the elements of a crime.” (Crim Pro Code, Art. 22.1). After a decision is made to accuse someone, that person must be notified and questioned about the crime within 48 hours. Defense counsel may attend the questioning. (Crim Pro Code, Art. 24.6).

There are many instances where a criminal proceeding may not be initiated, including changed circumstances, reconciliation between the victim and the accused, and in some cases, repentance. (Crim Pro Code, Art. 28).

A case may be initiated by a judge when the elements of a crime are present. No investigative activities may take place before a case is initiated. The preliminary investigation must take place within three months of the case initiation, though this may be extended by up to 12 months. (Crim Pro Code, Arts. 263, 271).

B. Arrests, Searches and Seizures

i. Stops and Frisks

Searches of a person without a warrant may only take place during that person’s arrest or during a previously authorized search for premises where the investigating

officer has reason to believe that the person is hiding evidence on his or her person. (Crim Pro Code, Art. 325.3). A suspect or arrestee may be searched if the police officer has reasonable grounds to suspect that they may be armed or attempting to destroy evidence. (Crim Pro Code, Art. 145.2). This search must be documented either immediately or when the arrestee is brought to the police station.

ii. Arrest

Part of the police duties outlined in the Law on Police is to “enable the person arrested or detained by law to exercise the right to legal protection.” (Law on Police, Art. 8.1).

A report must be drawn up immediately after making an arrest documenting who, where, when, and under what conditions and legal grounds the arrest was made and certifying that the arrestee was informed of his/her rights. The report should be signed by the officer and the arrestee. (Crim Pro Code, Art. 146.1). If this report is not filed immediately and according to the rules, the arrestee must be released at once. (Crim Pro Code, Art. 146.2).

An accused person’s belongings must be “carefully checked” when they are transferred to the special arrest department, and this check-in process shall be completed by a person of the same gender as the accused. (Law on Imp., Art. 87.1).

Malicious illegal arrest or detention is criminalized under the Georgian Criminal Code and is punishable by up to 12 years in prison. (Crim Code, Art. 147). Similarly, malicious prosecution of an innocent person is a criminal offense punishable by a period of imprisonment of up to five years. (Crim Code, Art. 146.1). Persecution is also a criminal offense; when carried out using one’s official position, it is punishable by up to three years in prison and suspension from official position for three years.

iii. Pretrial Detention

Police are obligated to ensure the protection of any person who is arrested or detained. (Law on Police, Art. 8.2). Accused persons or persons placed under arrest shall be kept in a special arrest department until their initial appearance. (Law on Imp., Art. 85). The Constitution requires that every person who is arrested, detained or otherwise restricted in their liberty must be brought to a competent court within 48 hours. If the court has failed to adjudicate the detention within 24 hours of the expiration of that window, the person must be released immediately. (Georgia Const. Art. 18.3; Crim Pro Code, Art. 146.7). The maximum period for detention between remand and trial is nine months. (Georgia Const. Art. 18.6).

iv. Searches

All searches that are not based on consent must be based on a judge’s order or court decision. Petitions for search, seizure, or inspection of premises shall be heard by a judge no later than the next day; other petitions for investigative acts must be heard within 24 hours. (Crim Pro Code, Art. 292.4). A judge’s order approving an investigative act cannot be appealed. (Crim Pro Code, Art. 293.2). In cases of urgent

need, premises and communications may be searched, but they must be approved by a judge no more than 24 hours later, at which point the judge will also determine the admissibility of any evidence that was seized. (Crim Pro Code, Art. 13.2). After an urgent search is conducted, the prosecutor must immediately submit the case for an initiation of criminal proceedings before a judge. (Crim Pro Code, Art. 290.5).

When conducting a search, police and investigators are entitled to prohibit persons present from communicating with each other and entering or leaving the premises. (Crim Pro Code, Art. 343.4).

Searches, seizures, inspections, etc. must be carried out in the presence of at least two witnesses. (Crim Pro Code, Arts. 272.1, 321.1). Investigative acts, including searches and seizures, are inadmissible if they are carried out at night except in urgent circumstances. (Crim Pro Code, Art. 286.2). Any participant to an investigative act (suspect, accused, victim, witness, lawyer, etc.) must be informed of their rights or obligations. Suspects, accused, victims, and defendants shall be provided with a written list of their rights at that time. (Crim Pro Code, Art. 289). Police and investigators are prohibited from disclosing information about a person's private life uncovered by the search. Moreover, a person is entitled to be notified of this non-disclosure requirement. (Crim Pro Code, Art. 13.3). At the conclusion of a search, the investigator must make a record attesting to the items seized, their location, and under what conditions the search was conducted. (Crim Pro Code, Art. 326).

Investigators may obtain a warrant to seize communications, including calls, post, and electronic contacts if there are sufficient grounds to believe that the communications contain data on an offense or the location/complicity of an accused. (Crim Pro Code, Art. 329). If the seizure involves letters or other post, the investigator shall inspect the communications at the post office in the presence of two post office employees. (Crim Pro Code, Art. 330).

Illegal searches of another's house using one's official position is a criminal offense punishable by a 2-5 month jail sentence and the deprivation of office for up to three years. (Crim Code, Art. 160.3).

C. Lineups and Identification Procedures

Before showing an accused person to a witness, the investigator shall question the witness on the appearance and distinctive marks of the person they saw. (Crim Pro Code, Art. 347.1). During a lineup, a suspected person shall be presented to the witness with no less than three others of the same sex having no obvious distinctions. (Crim Pro Code, Art. 347.3). Suspected persons may be identified with a photograph, but in such a procedure, the photo must be presented to the witness with at least three other photos of persons without marked differences. (Crim Pro Code, Art. 347.7).

Defendant's counsel is entitled to be present during a lineup procedure. (Crim Pro Code, Art. 347.8). A lineup shall take place with at least 2 witnesses. (Crim Pro Code, Art. 347.9). A record shall be made of the identification noting the witness's personality, background, descriptions, and the conditions under which the identification was made. (Crim Pro Code, Art. 349).

D. Interrogation

i. Before Formal Charge in Court

The police are not permitted to carry out investigative acts (including interrogation but excepting urgent searches and seizures) before the criminal case is initiated by a judicial order. (Crim Pro Code, Art. 262.2).

A suspected or accused person may be detained for a maximum of 48 hours. Interrogations and questioning may only take place during the first 24 hours of this period. (Crim Pro Code, Arts. 72.4, 310). A single interrogation shall not exceed 4 hours. During the course of a day, the total period of interrogation shall not exceed 8 hours. (Crim Pro Code, Art. 302). Each interrogation must be recorded, and the suspect/accused must sign each page. (Crim Pro Code, Art. 312).

Leading questions and answers given to leading questions during interrogation – before and after a formal charge in court – are not admissible in court proceedings. (Crim Pro Code, Art. 299). This provision applies to both suspects and witnesses.

Juveniles may only be interrogated with the participation of an advocate. (Crim Pro Code, Art. 647.1). Interrogations of a juvenile may only last for 2 hours at a time for not more than 4 hours a day. This may be shortened if the juvenile shows signs of fatigue. (Crim Pro Code, Art. 647.4).

ii. After Formal Charge in Court

After an accused has been arraigned, s/he shall be interrogated immediately. Interrogations should take place in the daytime (except in cases of urgency), and defense counsel must be present. (Crim Pro Code, Art. 311).

During trial in certain cases, the accused may be kept in an isolation ward as a coercive measure on the application of the prosecutor or the victim if it appears that the accused will abscond or engage in further illegal activity. The Criminal Procedure Code states that “the conduct of operation activities in an isolation ward is inadmissible,” strongly suggesting that police are not permitted to interrogate the accused during this time. (Crim Pro Code, Art. 161.3).

The Criminal Procedure Code states that during investigative procedures, individuals “shall not be subjected to duress, threat, blackmail, torture or other methods of physical or mental coercion.” (Crim Pro Code, Art. 12.7).

It is a criminal offense to use violence against a person who is in detention for the purpose of changing or suppressing evidence. (Crim Code, Art. 378.2). Though this provision appears to be aimed at preventing violence among fellow detainees, there is nothing that would prevent it from applying to interrogators.

iii. Enforcing the Rules – Prohibitions on Illegal Interrogation

Torture is criminalized under the Georgian Criminal Code. When “beating or other violence” is used against the victim, even where the resulting harm is not serious or does not harm the victim’s future working capacity, it may be punishable by a term of

imprisonment from 3-6 years and a suspension from official position for one year when it is carried out in an official capacity. (Crim Code, Art. 126.2(h)). The Criminal Procedure Code states that no person may be tortured or coerced, either physically or mentally, nor may they be deprived of sleep, water, food, or be placed in conditions that “adversely affect human health and degrade human dignity.” (Crim Pro Code, Art. 12.7).

It is explicitly prohibited under Georgia’s Criminal Code for an investigator, attorney, bailiff, or anyone else closely related to the court is to threaten a judge or jury member in relation to an administrative or legal proceeding. (Crim Code, Art. 365, Org. Law on Courts, Art. 8.2).

Exceeding official powers is punishable by deprivation of public office and jail or imprisonment when the abuse of power causes substantial damage to a person’s or entity’s rights. (Crim Code, Art. 333). Similarly, obstructing the administration of justice or preliminary investigation using one’s official position is a criminal offense. (Crim Code, Art. 364.3). Though neither of these provisions specifically identifies police officers or investigators, they are clearly applicable to police conduct.

Fabrication of evidence by an investigator, inquirer, or attorney is a criminal offense punishable by deprivation of office and imprisonment. (Crim Code, Art. 369.2). Bribing or compelling the witness or expert to give false evidence is also prohibited. (Crim Code, Art. 372).

E. Right to Counsel

An arrested person in detention shall have unlimited access to his or her counsel or, if the arrested person is a foreign citizen, to consular services. (Law on Imp., Art. 89.2, 89.3).

Court Procedures

There is an interesting mix between criminal and civil procedure in Georgia. Any party in a criminal case (including the state, victim or defendant) may initiate civil proceedings against another party. The criminal and civil matters are heard by the same court and decided in the same ruling. Procedurally, however, the matters are dealt with as distinct issues and the parties are expected to assume the roles of both criminal and civil entities. If a criminal defendant is named as a civil defendant, for instance, he may retain separate counsel for the civil matter, file counterclaims, and rely on different standards of proof. At trial, arguments on the civil matter proceed after the evidence in the criminal matter has been presented at the judicial investigation stage. Civil parties may appeal the ruling, though to a more limited extent than criminal defendants are permitted to appeal (*see* Crim Pro Code, Art. 518).

Victims of crime play critical roles throughout the investigation and trial. They act as a distinct party in a criminal case and may assert their rights independent of the prosecutor, even without initiating civil proceedings. A victim may present evidence and submit statements before the court and demand an appeal. There is also a procedure by

which a criminal proceeding may be initiated by a victim's complaint directly to the court through a "private prosecution." (*see* Crim Pro Code, Ch. 62).

A. Pretrial

i. Initial Court Appearance

The defendant's initial appearance is before the administrative session of the court, which determines if the case should proceed to a criminal trial. The administrative court hears pretrial motions, but the defendant's role is unclear, since testimony is not heard at this stage.

ii. Charging Instrument

At the close of a preliminary investigation, the investigator shall immediately refer the case along with the indictment to the procurator. (Crim Pro Code, Art. 411). At that point, the procurator examines the case to determine whether the act took place, whether it contains the elements of a crime and whether procedural rules have been followed. (Crim Pro Code, Art. 412). The procurator has 5 days in which to decide whether to refer the case to court for prosecution, return the case to the investigator, or suspend the case. (Crim Pro Code, Art. 413).

If the prosecutor approves the indictment, a copy shall be sent to the accused, the victim, and their respective attorneys. The prosecutor has 48 hours in which to refer the case to a competent court. (Crim Pro Code, Art. 416). The court will then hold an administrative session within 14 days to determine whether to bring the accused to trial or, in the complex cases, within a month after rendering its most recent decision. (Crim Pro Code, Art. 419).

iii. Preliminary Hearing

When a case is referred to court, the court sits in an administrative session to render decisions on pretrial motions and determine if the case should proceed to trial. Testimony from witnesses and experts is inadmissible at this stage. (Crim Pro Code, Art. 423). In determining whether the case should proceed to trial, the administrative court will consider, among other things, whether the elements of a crime are present, whether the preliminary investigation was conducted without bias, and whether procedural rules were followed. (Crim Pro Code, Art. 424).

Once the administrative court determines that a case should proceed, it will adjudicate other matters, including pretrial motions, the time and place of trial, and (if necessary) the appointment of defense counsel and interpreters, etc. (Crim Pro Code, Art. 425). The administrative court may also refer a case back to the procurator for reinvestigation, order compensation for damage sustained by the accused during the preliminary investigation, and/or terminate criminal proceedings. (Crim Pro Code, Arts. 426, 427).

Once an administrative court has determined that the case should proceed, it shall be heard by a criminal court within 10 days (14 days for complex cases). (Crim Pro Code, Art 433).

iv. Pretrial Motions

After consulting the case materials during the pretrial familiarization, a party is permitted to make one motion to supplement the investigation. (Crim Pro Code, Art. 407.1). This and other motions may be made directly to the court. The court's decisions on pretrial matters may not be appealed but are preserved on the record. (Crim Pro Code, Art. 422).

v. Discovery

At the conclusion of the preliminary investigation, the defendant and the victim are each entitled to become familiar with the case materials (case file, slides, videos, recordings, etc.) with their respective counsel and the investigator, individually or jointly. (Crim Pro Code, Art. 401). A party shall have between 6 and 8 hours per day to familiarize themselves with the case material. They shall not be restricted in the number of days they take to acquaint themselves unless they cause deliberate delay. (Crim Pro Code, Art. 406). The parties may make extracts or copies of the case materials at their own expense. (Crim Pro Code, Art. 405.6).

If an administrative court determines that the case should proceed to trial, the parties have 5 days in which to familiarize themselves with the materials before the trial date (10 days for complex cases). (Crim Pro Code, Art. 429.1). If the defense counsel did not participate in the pretrial proceedings, the defense has 10 days to consult the materials (30 days for complex cases). (Crim Pro Code, Art. 429.2).

B. Trial

i. Nature of the Proceeding

According to Article 9 of the Criminal Procedure Code, “[e]veryone is equal before the law and court regardless of the race, nationality, language, sex, social origin, property and official status, place of residence, attitude towards religion, faith as well as of other circumstances.”

The nature of the proceeding is based on equality and competition between the parties on an adversarial model. (Crim Pro Code, Art. 439). The parties are entitled to present evidence, participate in the examination, file motions, and “express their own opinion at any point of the criminal case.” (Crim Pro Code, Art. 15.3). Parties may present a petition to withdraw from the case at the beginning of a trial. If it is denied, they are permitted to renew it during the course of the trial. (Crim Pro Code, Art. 468). After the prosecution has presented his or her evidence, the defense may draw the court's attention to any insufficiencies and make a motion for acquittal. (Crim Pro Code, Art. 475.8).

Victims of crimes may bring civil claims against the defendant in conjunction with the state's criminal case and before the same court. This requires the defendant to assume the roles of both a criminal and civil defendant. (Crim Pro Code, Art. 36). The state may also become a civil plaintiff against the same defendant. (Crim Pro Code, Art. 37).

If the court discovers that a violation of human rights occurred during the investigation, pretrial proceedings or before a lower court, it may make a separate ruling addressing the violation. (Crim Pro Code, Art. 50.2).

A criminal proceeding will be heard in the first instance by a district/city court with a single judge. At the Supreme Court of one of the autonomous republics, a criminal proceeding will be heard by a panel of three judges. At the Criminal Judicial Board of the Supreme Court of Georgia, a case shall be heard by a panel composed of one judge and two lay judges. (Crim Pro Code, Art. 434).

After the judicial investigation, in which the parties present evidence to the court, the judge will hear pleadings which consist of statements given by the defendant, prosecution, victims, etc. The court may not limit the length of these statements but may prohibit the parties from mentioning irrelevant things or evidence that was not considered during the judicial investigation stage of the trial. (Crim Pro Code, Art. 490). After this, each party may make one more brief statement. (Crim Pro Code, Art. 491). The defendant may then make a final statement in which he can proclaim his innocence, give his opinions on all relevant matters, etc. (Crim Pro Code, Art. 491). At this point, each party may submit a statement with proposed wordings for a judgment; these statements are not binding on the court. (Crim Pro code, Art. 493).

ii. Defendant

Proceedings in court take place in the official language, but if the defendant is not proficient, s/he is entitled to the services of an interpreter provided by the state. (Crim Pro Code, Arts. 17. 2, 17.5).

The defendant has the right to participate in debates during court sessions and the right to have the last word. (Crim Pro Code, Art. 76.3).

iii. Lawyers

The office of Public Defender (PD) is charged with addressing several sweeping categories of issues. First, the PD is charged with ensuring the protection of human rights, a function which requires the PD (through the Special Preventative Group) to oversee all government agencies and officials for compliance, implement educational programs on human rights, and exercise the functions of the National Preventative Mechanism under the United Nations Convention Against Torture (CAT) by visiting all places where liberty is restricted and interviewing detainees/patients. (Org. Law P.D., Arts. 2, 3, 19).

In carrying out an examination of a case, the PD is guaranteed unimpeded access to all places and facilities, including military units, pretrial detention centers, psychiatric facilities, etc. The PD is also guaranteed access to all state documents necessary for the case examination and may require state agencies to prepare findings and conduct expert

investigations. (Org. Law. P.D., Art. 18). The PD is also entitled to obtain material sealed as a state secret, though he/she is under certain obligations not to disclose. (Org. Law. P.D., Art. 20).

Exerting pressure on the PD in order to obstruct his/her official activities is a criminal offense under Article 352 of Georgia's Criminal Code. When pressure is exerted using one's official capacity, it is punishable by up to two years imprisonment and deprivation of public office. (Crim Code, Art. 352.2; Org. Law. P.D., Arts. 4.2, 5.7).

The prosecutor (or procurator) is a judicial authority acting on behalf of the state. The prosecutor is required to supervise and direct the investigation and pretrial proceedings to ensure legality and to make decisions about whether to bring charges. (Crim Pro Code, Arts. 56, 57).

iv. Expert Witnesses

As previously noted, it is a criminal offense to pressure an expert into giving testimony using threats, abuse, violence, or torture. (Crim Code, Art. 335).

It is also a criminal offense for experts to give false opinions in court proceedings. (Crim Code, Art. 370).

v. Judges

During a trial, the judges are responsible for maintaining order, following procedural requirements, ensuring an unbiased examination of all relevant evidence, and safeguarding the equality of the parties. (Crim Pro Code, Art. 437).

Judges and lay judges share the same rights and responsibilities while serving on a panel. All matters requiring judicial consideration shall be decided by a majority vote. (Crim Pro Code, Art. 438).

Neglect of official duty is identified as a criminal offense carrying a punishment of jail or imprisonment. (Crim Code, Art. 342). This could reasonably apply to judges who fail to uphold their obligations to ensure fairness in criminal proceedings.

vi. Victims

During trial, the victim enjoys all the rights of a party. (Crim Pro Code, Art. 447.1). A victim may be compelled to take part in a trial if the court determines that his or her participation is mandatory. (Crim Pro Code, Art. 447.2). If a victim refuses to make an accusation or continue a case, the charges will be dropped or the outcome will be a verdict of not guilty. (Crim Pro Code, Art. 14.6).

Victims are prohibited from submitting false evidence, though they may be absolved of criminal liability if they voluntarily confess to having given false evidence. (Crim Code, Art. 370).

C. Sentencing

It is a criminal offense to deliver an illegal sentence or other illegal court decision punishable by a term of imprisonment and deprivation of public office. (Crim Code, Art. 336). The non-execution of a valid sentence or impeding the execution thereof by an officer or government representative is also prohibited. (Crim Code, Art. 381).

D. Appeals

Criminal defendants and victims have an automatic right to appeal a judgment from the first instance. (Crim Pro Code, Art. 517). Appellants are exempt from state fees. (Crim Pro Code, Art. 529.5). Instructions for the appellate court are in place to ensure that a criminal defendant's position is not worsened on appeal. (Crim Pro Code, Art. 540).

i. Right to Counsel

Individuals sentenced to imprisonment in penitentiaries are entitled to "unlimited access to a lawyer." In addition, the penitentiary is not permitted to delay communications from the individual to the court, the defender, or the prosecutor. (Law on Imp., Arts. 26.1, 26.2).

ii. Ineffective Assistance of Counsel

Ineffective assistance of counsel is not identified as an explicit ground for appeal in the selected sources.

iii. Other Grounds for Appeal

During an investigation, the suspect or defendant is entitled to appeal an investigator's refusal to satisfy discovery requests and motions. (Crim Pro Code, Art. 15.4).

The primary grounds for appeal is a challenge of the validity and legality of the court's judgment. (Crim Pro Code, Art. 522). Other grounds include the partiality or incompleteness of the pretrial investigation or judicial investigation, a lack of correspondence between the judge's conclusions and the evidence presented in the case, and a substantial violation of criminal procedure, including a judgment based on evidence obtained in contravention of the law. (Crim Pro Code, Arts. 537, 563.2). A defendant may also appeal if the court imposed a stricter punishment or applied a clause for a graver crime in the Criminal Procedure Code in contravention of Article 540.1. Newly discovered circumstances of a factual or legal nature may also form the grounds for appeal. (Crim Pro Code, Art. 593).

A supplementary appeal may be filed to make up for any deficiencies in the primary appeal. (Crim Pro Code, Art. 526).

iv. Remedies

Under Article 18.7 of the Georgia Constitution (concerning arrests), any person who is arrested or detained illegally “shall have the right to receive a compensation.” Compensation for damages during investigation and trial are determined in the judge’s ruling at first instance.

Upon appeal, the court may revoke the lower court’s judgment of conviction/acquittal and substitute a judgment of acquittal/conviction, amend the lower court’s ruling, or affirm the lower court’s ruling. (Crim Pro Code, Art. 536.1). It may also refer the case for reinvestigation and rehearing before the court of first instance. (Crim Pro Code, Art. 541).

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