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How to End Georgia's Unconstitutional Use of its Administrative Offenses Regime

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How to End Georgia’s Unconstitutional Use of its Administrative Offenses Regime

Abstract: Georgia’s system of administrative offenses, a holdover from the Soviet era, violates the rights of Georgia’s citizens and damages the country’s international reputation by imposing serious penalties without the due process guaranteed by the Georgian Constitution, and in contravention of Georgia’s obligations under international law. Although several alternatives for reform theoretically exist, the only practical solution is for Georgia to move administrative offenses that are criminal in nature out of the Code of Administrative Offenses and into a new “misdemeanor” section of the Criminal Code. Such transfers have been undertaken successfully in other countries in transition, and would bring Georgia into compliance with the practices of established Western democracies.

I. Georgia’s Administrative Offenses Regime Violates Citizen Rights and Georgian and International Law

The Georgian government convicts and punishes thousands of individuals each year, by fine or imprisonment for up to 90 days, without providing meaningful due process. It does this by charging and punishing citizens for “administrative violations” described in the Code of Administrative Offenses (CAO).

The CAO is the last remaining code of the Soviet era. While the Georgian justice system does not consider administrative violations criminal in nature since those convicted do not accrue a criminal record, the CAO includes violations that would be considered “misdemeanor” criminal offenses in the U.S. and other common law countries, or “*délits*” in the criminal codes of many civil law countries. The most commonly applied administrative violations include petty hooliganism, disobedience of a lawful order, and minor drug possession.¹

Despite the possibility of serious punishment, the due process provided those accused of administrative violations is much less than that provided for those accused of Criminal Code violations. The CAO does not require law enforcement to prove probable cause to make an arrest. It does not require law enforcement to promptly inform a detainee of his rights or the reasons for his arrest. It does not provide the presumption of innocence. It does not require a judge to apply a standard of proof, such as beyond a reasonable doubt. The abbreviated and summary nature of the guilt

¹ See <http://www.supremecourt.ge/files/upload-file/pdf/administraciuli2011.pdf>, p. 34 (accessed on 11 October, 2013) and <http://statistic.supremecourt.ge/module/?lang=en&type=1> (accessed on 11 October, 2013). As of the date of this report, figures related to administrative violations during 2012 were not available on the Supreme Court website.

and sentencing procedure provide little opportunity for either meaningful representation² or meaningful appeal.³

Administrative violation proceedings also lack transparency. Most administrative violation hearings are perfunctory; they involve little more than a police officer appearing in front of a judge (often an administrative judge inexperienced in criminal proceedings) and providing his own, short, written protocol supporting his request for detention and punishment, followed quickly by the judge pronouncing sentence.⁴ Since the CAO requires judges to hold these hearings within 24 hours of receiving the case,⁵ there is little opportunity for the public, the media, or even defense counsel in some cases, to attend the proceedings. Since administrative judges rarely require that law enforcement provide any supporting evidence for their claim, since there is little opportunity for the defense to submit evidence of its own, and since there is no word-for-word transcript or recording made of the proceedings, the record is insubstantial and generally inadequate to construct an appeal or otherwise understand the complete factual and legal basis for the decision.⁶

CAO violations are *not* a small part of the Georgian justice process; in fact, the cases handled by application of the CAO represent a significant number of the cases heard by Georgian judges each year. In 2011, administrative judges found 22,574 people guilty of administrative violations, of which 4,461 were punished with detention.⁷ Of those sentenced to administrative detention, almost all were found guilty of possession of a small amount of narcotic drugs, infringing public order, or

² See Human Rights Watch, *Administrative Error: Georgia's Flawed System of Administrative Justice* (January 2013), pp. 16-19, 20-23, providing examples of judges refusing to give individuals charged with administrative violations the opportunity to be represented by their own lawyer or, in some cases, to have a lawyer present at all. <http://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf> (accessed on 11 October, 2013).

³ *Id.* at pp. 16-19, 24-25.

⁴ In January 2012, the UN Human Rights Council Working Group on Arbitrary Detentions reported that “[administrative] court judgments were often decided hastily in a process that often saw judgments being ‘copied and pasted,’ and most decisions were rubber stamped without proper consideration for individual cases.” United Nations General Assembly, Human Rights Council, *Report of the Working Group on Arbitrary Detention*, 13, A/HRC/19/57/Add.2 (27 January 2012), para. 66 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-57-Add2_en.pdf (accessed on 11 October, 2013). According to Human Rights Watch, “Administrative ‘trials’ are in effect summary hearings that rarely last more than 15 minutes.” In the cases it observed, the court gave inadequate time to prepare a defense, and judges based their rulings almost exclusively on police testimony. It also noted that judges consistently denied lawyers’ requests to admit evidence, including exculpatory evidence, into the proceedings. *Administrative Error*, *supra* at pp. 19-20.

⁵ Code of Administrative Offenses, Art. 262, part 2.

⁶ See Public Defender of Georgia, *The Situation of Human Rights and Freedoms in Georgia: 2009 Second Half*, pp. 114-115 <http://www.ombudsman.ge/files/downloads/ge/iicsizmorgdfkakhkdqvc.pdf> (Georgian version, accessed on 11 October, 2013); <http://www.ombudsman.ge/files/downloads/en/skjfrvhzrzxgyvhnjppy.pdf> (English summary, accessed on 11 October, 2013). In 2012, the Public Defender of Georgia, which fulfills the role of ombudsman, conducted a study of administrative decisions made by the Tbilisi City Court in cases involving the offenses of petty hooliganism, disobeying an officer of the law, and violating the rules for public demonstrations. The Public Defender found that court rulings on administrative violations often lacked substantiation, judges used a standard form or a template in their rulings, changing only names, and that the descriptive and substantive provisions were overly general and uniform. The Public Defender concluded that the lack of specific circumstances led to a shortage of evidence and inadequate reasoning. The study also highlighted the lack of evidence supporting decisions and noted the general superficiality of proceedings and inadequate guarantees of defense. See also *Administrative Error*, *supra* at pp. 21-22.

⁷ <http://www.supremecourt.ge/files/upload-file/pdf/administraciuli2011.pdf>, *supra* and <http://statistic.supremecourt.ge/module/?lang=en&type=1>, *supra*.

hooliganism;⁸ sentences were as long as 90 days.⁹ By comparison, in the same year criminal case judges convicted 18,153 people of criminal charges and sentenced 7,454 to prison.¹⁰

Of special concern, the Georgian government has, in the past, used the CAO as a tool to summarily arrest and punish citizens involved in public demonstrations as well as individual political activists.¹¹ A danger exists that it will be used in this way again.

The ongoing use of the CAO violates Georgia’s Constitution as well as Georgia’s obligations under international law. Article 40 of Georgia’s Constitution, for example, provides individuals charged with an offense with the presumption of innocence and the protection of due process of law.¹² It also establishes a burden of proof similar to, if not the same as, beyond a reasonable doubt.¹³ The application of the CAO denies an accused these Constitutional protections.

Article 42 of the Georgia’s Constitution further guarantees an individual the right to a defense.¹⁴ It also gives an accused the right to obtain the attendance and examination of witnesses on its behalf under the same conditions as those brought by the prosecution.¹⁵ The summary operation of the administrative guilt and punishment proceedings as described above, work to deny the accused these essential Article 42 rights.

Georgia has signed both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (European Convention). ICCPR Article 9 and European Convention Article 5 prohibit the application of arbitrary detention. ICCPR Article 14 and ECHR Article 6 provide the right to a fair trial. Under these conventions, a fair trial includes such guarantees as the right to have adequate time and facilities to prepare a defense, access to legal representation, and the right to examine witnesses.¹⁶ Georgia’s application of the CAO violates these articles of the conventions.

Any claim that the application of the CAO does not violate due process and fair trial rights because the offense is not “criminal in nature” must take into consideration the

⁸ See <http://www.supremecourt.ge/files/upload-file/pdf/administraciuli2011.pdf>, pp. 34-36 (accessed on 11 October, 2013).

⁹ *Letter #1232247 from MoIA to Georgian Young Lawyers Association (GYLA)*, dated October 5, 2011, and *Letter #1288675 from MoIA to GYLA*, dated July 2, 2013 [copies available upon request].

¹⁰ See <http://www.supremecourt.ge/files/upload-file/pdf/sisxli2011.pdf>, p. 6 (accessed on 11 October, 2013).

¹¹ See *Administrative Error*, *supra* at pp. 7-9, 13; Human Rights Council, *Report of the Working Group on Arbitrary Detention*, *supra* at paras. 69-77.

¹² Georgian Constitution, Art. 40(1)(2).

¹³ Georgian Constitution Art. 40(3) states, “A person can only be proven guilty if the evidence is incontrovertible. Every suspicion of allegation not proven by the right established by law must be decided in favor of the defendant.”

¹⁴ Georgian Constitution, Art. 42(2).

¹⁵ Georgian Constitution, Art. 42(6).

¹⁶ See, e.g., European Convention, Arts. 5-6 www.echr.coe.int/Documents/Convention_ENG.pdf (accessed on 11 October, 2013); ICCPR, Arts. 9, 14 <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> (accessed on 11 October, 2013); Universal Declaration of Human Rights, Art. 11 <http://www.un.org/en/documents/udhr/> (accessed on 11 October, 2013).

decisions of the European Court of Human Rights (ECHR). The ECHR has repeatedly held that an administrative violation for which imprisonment is a potential sanction must be considered a “criminal charge” within the meaning of Article 6 of the European Convention, no matter how brief the potential imprisonment.¹⁷ The ECHR has further held that an administrative offense can be found criminal solely by its nature, or can be found criminal by taking into consideration both its nature and its potential penalties.¹⁸

Not surprisingly, Georgia’s retention and application of the Soviet-era CAO, in violation of its own Constitution and applicable international norms, has been heavily criticized by the human rights community and has damaged Georgia’s international standing. In January 2012, for example, the United Nations Human Rights Council Working Group on Arbitrary Detention expressed its concern that the rights of administrative detainees were “neither adequately protected nor compatible with international human rights standards.”¹⁹ The U.S. Department of State noted in its “2012 Georgia Country Report on Human Rights Practices” that the CAO lacks sufficient due process provisions, and cited an NGO’s description of the process as being a “summary punishment upon request of a police officer.”²⁰

II. A Proposed Solution: Transferring Violations that are Criminal in Nature Out of the CAO and Into a New “Misdemeanor” Section of the Criminal Code

It being clear that Georgia’s administrative violations regime violates domestic and international law, the question becomes: what changes should Georgia make to bring its legal system into compliance? The solution must take into account not only the imperative of providing adequate due process to the accused, but also the practical need to process relatively minor offenses in a timely and cost-effective manner. It is

¹⁷ According to Human Rights Watch, the European Court of Human Rights has held in over 24 cases against Armenia, Moldova, Russia, Ukraine and others that offenses regulated under administrative codes in these systems, where imprisonment is a potential penalty, are considered criminal offences for the purposes of the European Convention. See, e.g., *Ziliberberg v. Moldova*, Judgment of February 1, 2005, Application No. 61821/00 (2005) (determining that a case in which the defendant was fined €3 for participating in an unauthorized political demonstration was criminal since the purpose of the fine was both deterrence and punishment, and since if the defendant failed to pay the fine he faced a possible 20 days of imprisonment); *Galstyan v. Armenia*, Judgment of November 15, 2007, Application No. 26986/03 (determining that a case in which the defendant charged with petty hooliganism under a similar administrative code was criminal in nature because the defendant was actually deprived of his liberty for three days, and the potential sentence was up to 15 days in custody). This position has been affirmed by the Grand Chamber; see, e.g., *Sergey Zolotukin v. Russia*, Grand Chamber Judgment of February 10, 2009, Application No. 14939/03. *Administrative Error*, *supra* at p. 32, fn. 92.

¹⁸ See, e.g., *Ziliberberg v. Moldova*, Judgment of February 1, 2005, Application No. 61821/00, paras. 29-36 <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68119> (accessed on 11 October, 2013); *Galstyan v. Armenia*, Judgment of November 15, 2007, Application No. 26986/03, paras. 55-60 <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83297> (accessed on 11 October, 2013).

¹⁹ UN Human Rights Council, *Report of the Working Group on Arbitrary Detention*, *supra* at para. 67.

²⁰ U.S. Department of State Bureau of Human Rights and Labor, *2012 Country Report on Human Rights Practices, Georgia* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm - wrapper> (accessed on 11 October, 2013).

also extremely important that the negative consequences of burdening those convicted of minor offenses with a permanent criminal record be taken into consideration.

At first glance, it appears that Georgia has three options to bring its law and practice into compliance with the Georgian Constitution and international norms:

1. Amend the CAO to provide for all necessary due process requirements;
2. Abolish detention as a possibly penalty for administrative violations, leaving the offenses in the CAO but with only the possibility of a fine as punishment;
3. Move all administrative violations that are criminal in nature from the CAO to the Criminal Code, where the Code of Criminal Procedure and its due process protections apply.

An analysis of these options, however, reveals that there is only one practical solution.

1. *Amending the CAO to provide necessary due process protections is prohibitively complex and unnecessary*

As mentioned above, various international and local civil society organizations have criticized Georgia's administrative violations regime and suggested that the CAO be amended to provide all of the required due process protections. This turns out to be a simple thing to suggest but a difficult thing to do. The list of procedures that would need to be inserted into the CAO to bring it into compliance with due process and fair trial requirements is long, and the questions the insertions raise are myriad. To illustrate the problem: for the CAO to provide an accused the required due process and fair trial rights, it would have to be amended to include the right to meaningful representation, the right to present evidence, and the right to a meaningful appeal. This would include a requirement that the accused be provided – in advance – the evidence intended to be used by the State in its prosecution. Since these rights cannot be meaningfully exercised within the short time frames allowed by the CAO, the time frames would need to be extended to something similar to those now existing within the Criminal Procedural Code. This would change entirely the abbreviated nature of the administrative proceeding, making it something very similar to the criminal procedural process, eliminating the advantage of brevity and the efficiency of the CAO procedure. In short, any effort to amend the CAO to provide the required protections and rights will become an effort to recreate a process already described within the Criminal Procedure Code.

Even if the necessary due process elements could be inserted into the CAO, it would still often be the case that specialized *administrative judges* would be implementing fact finding and sentencing processes that are clearly criminal in nature. Administrative judges are not trained to do this. They are not experienced in applying criminal standards of proof to the submissions of the prosecution. Moreover, since they work outside the established criminal justice process, they are unable to impose sentences that are truly in conformity with sentences provided by criminal judges – an obvious inequity.

2. *Abolishing incarceration as a potential penalty would be a step forward, but would not solve the problem of lack of due process for offenses that remain criminal in nature*

A direct and seemingly effective approach would be to abolish detention as a possible penalty for administrative violations.²¹ This would be a step forward to be sure. However, this would not bring Georgia into compliance with its domestic or international obligations since many of the offenses within the CAO would remain criminal in nature even without the possibility of incarceration.²²

Examples of CAO offenses that would likely remain criminal in nature even if incarceration is removed as a potential penalty include: unlawful purchase or storage of a small amount of narcotic drugs without the intent to sell or consumption of narcotic drugs without a doctor's prescription (Article 45); seeding, growing or cultivating a plant containing a small amount of narcotic drug (Article 100²); abandoning the scene of a traffic accident or disobeying a police officer's demand to stop a vehicle (Article 123); petty hooliganism (Article 166); and disobedience to a lawful order or demand of a law enforcement official, military servant, member of the Special State Guard Service or enforcement police officer (Article 173).

3. *Moving all CAO violations that are criminal in nature to the Criminal Code is the only reasonable solution.*

The obvious advantage of moving CAO violations that are criminal in nature to the Criminal Code would be that the procedures already clearly described in the Criminal Procedural Code – procedures which provide due process and fair trial protections that meet Constitutional and international requirements – would be used to process the cases. There would be no need to invent a new set of procedures or force-fit those procedures into the administrative code. There would be no need to experiment with procedural mechanisms not designed for the adjudication of ordinary administrative cases. Moreover, criminal judges, judges trained and experienced in the application of criminal due process norms, not administrative judges, would adjudicate the cases.

In considering its own solution, Georgia should take special note of the fact that transporting administrative offenses to the criminal code has been carried out successfully by other post-Soviet countries, including Estonia, Bulgaria, Slovenia, Serbia and Croatia. These countries have essentially adopted the approach taken in the United States and Western Europe.

In the United States, many of the offenses described in the Georgian CAO exist within the individual states' penal codes. For example, in California some of the conduct described by the Georgian CAO would be considered misdemeanor "Crimes

²¹ This is the attempt at a solution that Armenia chose in 2005, when confronted with the task of amending a nearly identical code of administrative violations.

²² As the ECHR has made clear, even where imprisonment is not a potential penalty, individuals charged with administrative offenses are entitled to all of the procedural safeguards of a criminal defendant where an offense is criminal by its nature, or taking into consideration both the offense's nature and its potential penalties. *See, e.g., Ziliberg v. Moldova, supra.*

against the Public Peace” under California Penal Code Title 11, or misdemeanor “Malicious Mischief” under California Penal Code Title 14.²³ Similarly, in New York many of the violations described by the CAO exist within the New York Penal Law. Although some of these violations are treated as misdemeanors, others are treated as “violations,” a category of offense for which it is explicit that no criminal record will be imposed as a result of a finding of guilt.²⁴ In both California and New York, regardless of whether the act is treated as a misdemeanor or violation, the defendant is entitled to virtually all of the same rights as someone charged with a felony (the equivalent of a crime in Georgia).

In Western Europe, none of the countries with well-established democracies has a single piece of legislation that combines all administrative offenses, with most having laws of mixed character. The main administrative penalties in all European states are fines, and only in Austria and Switzerland is it possible to receive a short-term of imprisonment for committing an administrative offense. Despite these limited penalties, what is common to all the Western European countries is that their administrative processes provide those accused their basic due process and fair trial rights, including the rights to be informed of charges, to legal counsel, to collect and submit evidence, to comment on the charges, to file a complaint against an administrative decision, and to apply for reduced penalties.²⁵

Perhaps more instructive, however, is the experience of countries that, like Georgia, inherited their systems of administrative violations from the Soviet Union. In Eastern Europe, a number of countries have made the law on administrative offenses part of the criminal law, including Estonia, Bulgaria, Slovenia, Serbia and Croatia. For some of these countries, such as Bulgaria and the Balkan countries, the inclusion of administrative violations as part of criminal law was made decades ago.²⁶ Others, such as Estonia, made the change more recently.²⁷ In other states sometimes characterized as “young democracies” (Lithuania, Latvia, Poland, Czech Republic and Slovakia) the legislation on administrative violations remains separate from the criminal law. Of these only Lithuania and Latvia retain their Soviet codes of administrative offenses.²⁸

Armenia, which inherited a Soviet law on administrative violations almost identical to Georgia’s, abolished both administrative detention and the offense of hooliganism in

²³ See http://www.leginfo.ca.gov/html/pen_table_of_contents.html (accessed on 11 October, 2013).

²⁴ For example, the following offenses are all “violations” in New York: Penal Code Arts. 221.05 (Unlawful Possession of Marihuana), 240.20 (Disorderly Conduct), 240.26 (Harassment in the Second Degree), 240.35 (Loitering), 240.40 (Appearance in public under the influence of narcotics or a drug other than alcohol), 265.37 (Unlawful possession of certain ammunition feeding devices (1st offense/home)) <http://ypdcrime.com/penal.law/violations.htm> (accessed on 11 October, 2013).

²⁵ See *Law on Administrative Offenses and the Experience of Western and Eastern Europe*, Centre for Legal and Political Reforms, Alexander Banchuk and Graham Taylor (14 November 2012) <http://www.en.pravo.org.ua/index.php/149-criminal-justice/519-law-on-administrative-offenses-the-experience-of-western-and-eastern-europe> (accessed on 11 October, 2013).

²⁶ *Ibid.*

²⁷ See <http://www.iipa.com/rbc/2003/2003SPEC301ESTONIA.pdf> (accessed on 11 October, 2013).

²⁸ *Ibid.*

2005. This was at the urging of the Council of Europe, which described Armenia's administrative violations code as "one of the true relics of the communist justice system" and "in blatant contravention of the European Convention on Human Rights."²⁹

Estonia's approach is perhaps the most instructive for Georgia. In 2002, Estonia enacted a new Penal Code that abolished the old Soviet system of administrative violations. The new Estonian Penal Code establishes two categories of offenses: criminal offenses and misdemeanors.³⁰ A misdemeanor is defined as "an offence which is provided for in this Code or another Act and the principal punishment prescribed for which is a fine or detention."³¹ The maximum period of detention that may be imposed for a misdemeanor is 30 days, but community service may be imposed as an alternative to detention.³² Additional penalties may also be imposed, including a ban on certain occupations, deprivation of driving privileges, and deprivation of the right to hold weapons or ammunition.³³ If a person found guilty fails to pay a fine that has been ordered, imprisonment or community service may be ordered.³⁴ Under Estonia's Code of Criminal Procedure, a defendant – whether charged with a crime or misdemeanor – is entitled to the presumption of innocence, the right to personal liberty, and the same procedural rights as a criminal defendant.³⁵ In both criminal and misdemeanor cases, defendants are entitled to know the charges against them, to have assistance from counsel, and to submit evidence.³⁶

The one potential disadvantage of Georgia moving selected administrative offenses to the Criminal Code – that a criminal record would too harshly impact the lives of those convicted – can be eliminated by creating a new category of offenses in the Criminal Code where a conviction does not result in a criminal record. As mentioned above, many states in the U.S. have such a category of offense in their penal codes. Individuals charged with these types of offenses are provided their constitutionally-required due process rights, but are not burdened with a criminal record. New York, for example, has a category of offense under its penal code called "violations" whose offenses are not considered "crimes," and a finding of guilt does not result in a criminal record.³⁷ After the sentence associated with a violation is fulfilled, the records are automatically "sealed," resulting in the removal of the

²⁹ Council of Europe Parliamentary Assembly, *Honouring of Obligations and Commitments by Armenia* (20 Dec 2006), paras. 136-137 <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11396&Language=EN> (accessed on 11 October, 2013).

³⁰ Penal Code of Estonia (2005), Art. 3(2) http://legislationline.org/download/action/download/id/4707/file/Estonia_Penal%20Code_am2013_en.pdf (accessed on 11 October, 2013).

³¹ *Id.* at Art. 3(4).

³² *Id.* at Art. 48, 69.

³³ *Id.* at Art. 49-51.

³⁴ *Id.* at Art. 70-72.

³⁵ Code of Criminal Procedure of Estonia (2004), Arts. 7-9 http://legislationline.org/download/action/download/id/4707/file/Estonia_Penal%20Code_am2013_en.pdf (accessed on 11 October, 2013).

³⁶ *Id.* at Arts. 34, 43.

³⁷ Violation Offenses in New York in Alphabetical Order <http://www.new-york-arraignments.com/violation.htm> (accessed on 11 October, 2013).

finding of guilt from all public records.³⁸ Examples of “violations” in New York include: disorderly conduct, harassment, appearance in public under the influence of narcotics or a drug other than alcohol, trespass, and unlawful possession of marijuana.³⁹ Numerous other U.S. states have similar practices. In Minnesota, for example, there is a category of “petty misdemeanors” – offenses that do not constitute a crime and for which the maximum penalty is a fine of \$300.⁴⁰ Ohio also has a category of minor misdemeanor violations that do not constitute a crime and need not be reported in response to inquiries about a person’s criminal record.⁴¹ Similarly, California has a category of “infractions” that are not considered criminal and that do not appear on the criminal record of those found guilty.⁴²

III. The Way Forward

Moving the CAO offenses that are criminal in nature to the Criminal Code can be done in two, concrete steps:

First, administrative violations where the state chooses to keep the possibility of incarceration as a penalty *or* are criminal in nature regardless of penalty, can be moved to a new section of the Criminal Code and labeled as misdemeanors (or violations or infractions). Offenses that exist in both the CAO and the Criminal Code but describe essentially the same conduct can be “merged” into the Criminal Code, with less severe offenses constituting violations under the new misdemeanor section of the Code.

Those charged under the new special section of the Criminal Code will have their cases handled according to the procedures set out in the Code of Criminal Procedure (including the provisions applicable to juveniles), and thereby receive the rights to which they are entitled under the Georgian Constitution and international conventions, but would not be subject to the stigma of a criminal record if found guilty.

The relative simplicity of this switch is illustrated in the chart below. The first column of the chart provides the details of each of the 22 CAO violations for which imprisonment is a potential penalty. The second column identifies those articles of the Criminal Code, if any, that are most closely related to those administrative violations. The third column proposes a possible path for revision of each of those administrative violations, including penalties to be imposed.

³⁸ http://www2.nycbar.org/pdf/report/Labor_reentry_pamphlet_employees09.pdf, p. 11 (accessed on 11 October, 2013).

³⁹ Violation Offenses in New York, *supra*.

⁴⁰ <https://www.revisor.mn.gov/statutes/?id=609.02> (accessed on 11 October, 2013).

⁴¹ See

http://hr.4act.com/documents/State_Laws_and_Their_Impact_on_Use_of_Criminal_Records_for_Emplo.pdf (accessed on 11 October, 2013).

⁴² <http://www.conflictatlaw.com/content/infraction-misdemeanor-or-felony> (accessed on 11 October, 2013).

Second, for administrative violations that are criminal in nature *solely* because of the penalties that may be imposed, the penalties can be eliminated or reduced in a way that makes the offense “noncriminal in nature” and these offenses can remain in the CAO. These might include, for example, “Trading Outdoors without a Permit (Article 153³) and other like offenses. Determining which of the violations fall into this category will necessitate careful consideration of both the offense’s nature and the severity of potential penalties, guided by the decisions of the European Court of Human Rights.

Summary of Relevant Offenses and Possible Revisions

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
Drug-related offenses		
<p>Article 45. Unlawful purchase or storage of a small amount of narcotic drugs without the intent to sell them or consumption of narcotic drugs without a doctor’s prescription</p> <p>Unlawful possession of a small amount of narcotic drugs without the intent to sell, or consumption of narcotic drugs without a prescription:</p> <p style="padding-left: 40px;">Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: Fine of 500 Lari • Alternative penalty: Detention up to 30 days <p style="padding-left: 40px;">Also: Deprivation of the right to carry arms</p>	<p>Article 273. Illegal preparation, purchase, storage of a small quantity of narcotic drugs, its analogue or precursor for personal use or its illegal use without medical prescription</p> <p>Unlawful possession of a small amount of narcotic drugs without the intent to sell, or consumption of narcotic drugs without a prescription, by someone who previously served an administrative penalty for this offence or had been convicted for this crime:</p> <p style="padding-left: 40px;">Penalty:</p> <ul style="list-style-type: none"> • Fine of not less than twice the amount of the fine stipulated for this offense in the CAO, or • 120 to 180 hours of community service, or 	<p>Move both CAO Article 45 and Criminal Code Article 273 to a new section of the Criminal Code dealing with misdemeanors and/or violations; remove imprisonment as a potential penalty for the acts described in both articles.</p>

⁴³ Only those portions of administrative violations specifically related to administrative detention are summarized.

⁴⁴ Only those portions of Criminal Code offenses directly related to administrative violations are summarized; portions not directly related to administrative violations because of the severity of the harm, the number of participants in the offense, the use of weapons, etc. are excluded.

⁴⁵ These suggestions are simply for illustrative purposes. The Government should analyze these and all other articles of the CAO, together with the Criminal Code, and make its own determination as to the appropriate changes.

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
for up to 3 years	<ul style="list-style-type: none"> Imprisonment up to one year 	
<p>Article 100². Seeding, growing or cultivating a plant containing a small amount of narcotic drugs</p> <p>Seeding, growing or cultivating a plant containing a small amount of narcotic drugs:</p> <p>Penalty:</p> <ul style="list-style-type: none"> Standard penalty: Fine of 500 Lari Alternative penalty: Detention up to 30 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>Article 265. Illegal planting, growing or cultivating of plants containing narcotics</p> <p>Illegal planting, growing or cultivating of plants containing narcotics:</p> <p>Penalty:</p> <ul style="list-style-type: none"> Imprisonment for two to five years 	<p>Move CAO Article 100² to a new section of the Criminal Code dealing with misdemeanors and/or violations; remove imprisonment as a potential penalty for the acts described in CAO Article 100².</p> <p>Make the same changes to Criminal Code Article 265 where the plants are cultivated for personal use.</p>
Driving-related offenses		
<p>Article 116. Driving a vehicle while intoxicated with alcohol, narcotic drugs or psychotropic substances or the handing of a vehicle for driving to a person thus intoxicated</p> <p>⁴¹. Repeatedly driving while intoxicated or</p>	<p>No provision of the Criminal Code is closely related to CAO Article 116. The closest is:</p> <p>Article 276. Violation of safety regulations of transport circulation or rules of exploitation</p>	<p>Move CAO Article 116 to a new section of the Criminal Code dealing with misdemeanors and/or violations; maintain imprisonment as a potential penalty for the acts described in CAO Article 116.</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>knowingly handing a vehicle to an intoxicated person, repeatedly during a year:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • 700 Lari fine, or • Detention up to 90 days <p>Also: Deprivation of driving license for 3 years</p> <p>9. (a) A Georgian without a driver's license repeatedly during a year driving while intoxicated or handing a vehicle to an intoxicated person, or (b) A foreign or stateless person without a drivers license who repeatedly during a year drives while intoxicated or hands a vehicle to an intoxicated person who inflicts minor damages to a vehicle, cargo, road, building or other structure, other property or human body:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • 1,500 Lari fine, or • Detention up to 90 days 	<p>2. Violation of rules of automobile use while intoxicated, which causes less serious health damages:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Imprisonment up to five years, with possible deprivation of the right to hold office or pursue an activity for up to three years <p>4. Violation of rules of automobile use while intoxicated, which causes serious health damages:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Imprisonment of four to six years, with possible deprivation of the right to hold office or pursue an activity for up to three years 	

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>Also: Deprivation of driving license for 3 years</p>		
<p>Article 117. Avoiding a check-up for ascertaining intoxication with alcohol, narcotic drugs or psychotropic substances</p> <p>3. Repeatedly during a year avoiding a check-up for determining intoxication while driving by a person who has no driving license:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • 1,000 Lari fine, or • Detention up to 90 days <p>Also:</p> <ul style="list-style-type: none"> • Deprivation of driving license for 3 years • Deprivation of the right to carry arms for up to 3 years 	<p>No provision of the Criminal Code is closely related to CAO Article 117. The closest is:</p> <p>Article 276. Violation of safety regulations of transport circulation or rules of exploitation (See discussion, above)</p>	<p>Move CAO Article 117 to a new section of the Criminal Code dealing with misdemeanors and/or violations; maintain imprisonment as a potential penalty for the acts described in CAO Article 117.</p>
<p>Article 121. Driving a vehicle by a person who does not have a driving license or has been deprived of a driving license for other violations, or the handing of a vehicle for driving to a</p>	<p>No provision of the Criminal Code is closely related to CAO Article 117. The closest is:</p> <p>Article 276. Violation of safety regulations of</p>	<p>Move CAO Article 121 to a new section of the Criminal Code dealing with misdemeanors and/or violations; maintain imprisonment</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>juvenile or a person who does not have a driving license or has been deprived of a driving license for other violations</p> <p>4. Driving a vehicle without a license or handing a vehicle to a person without a license, repeatedly during a year:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • 500 Lari fine, or • Detention up to 90 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>transport circulation or rules of exploitation (See discussion, above)</p>	<p>as a potential penalty for the acts described in CAO Article 121.</p>
<p>Article 123. Abandoning a place of traffic accident or disobedience with a police officer's demand to stop a vehicle</p> <p>2. Maliciously disobeying the demand of a police officer to stop a vehicle, or abandoning a traffic accident by a driver involved in the accident, that creates an emergency condition or traffic hindrance:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine of 500 Lari, or 	<p>No provision of the Criminal Code is closely related to CAO Article 117. The closest is:</p> <p>Article 276. Violation of safety regulations of transport circulation or rules of exploitation (See discussion, above)</p>	<p>Move CAO Article 123 to a new section of the Criminal Code dealing with misdemeanors and/or violations; maintain imprisonment as a potential penalty for the acts described in CAO Article 123.</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<ul style="list-style-type: none"> • Detention up to 90 days, or • Deprivation of driving license for up to 2 years <p>Also: Deprivation of the right to carry arms for up to 3 years</p>		
Public order-related offenses		
<p>Article 55. Removing or damaging a border sign or arbitrarily altering a border line</p> <p>Removing or damaging a border sign or arbitrarily altering a border line:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • First offense: <ul style="list-style-type: none"> • Fine of 300 to 700 Lari, or • Detention up to 10 days • Second offense: <ul style="list-style-type: none"> • Fine of 1,500 to 2,000 Lari, or • Detention up to 10 days <p>Also: Restoration of border</p>	<p>Article 345. Illegal alteration of the state border of Georgia</p> <p>Illegal alteration of the state border:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Imprisonment for two to four years 	<p>Move CAO Article 55 to a new section of the Criminal Code dealing with misdemeanors and/or violations.</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>Article 150 – Tarnishing the appearance of self-governing body</p> <p>2². Repeatedly putting different types of inscriptions, drawings or symbols on the facade of administrative buildings or adjacent areas:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: Fine of 1000 Lari • Alternative penalty: Detention up to 30 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>There are three articles in the Criminal Code potentially related to CAO Article 150:</p> <p>Article 187. Damage or Destruction of an Object</p> <p>1. Damaging or destroying of another’s object that caused significant damage:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • A fine, <u>or</u> • 100-180 hours of community service, <u>or</u> • Correctional work of up to one year, <u>or</u> • Imprisonment of one to three years <p>Article 257. Damage or destruction of a natural monument</p> <p>1. Intentional damage or destruction of a natural monument:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • A fine or imprisonment up to four years 	<p>CAO Article 150 should be moved to a new section of the Criminal Code dealing with misdemeanors and/or violations, with imprisonment removed as a potential penalty. Criminal Code Article 187(1) should also be moved to the new Criminal Code section dealing with misdemeanors and/or violations; imprisonment should, however, be retained as a potential penalty for the acts described in Criminal Code Article 187(1).</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
	<p>Article 259/2. Damage or destruction of cultural heritage</p> <p>1. Intentional damage or destruction of a monument of cultural heritage or any other piece of cultural heritage:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • A fine or imprisonment up to two years 	
<p>Article 166. Petty hooliganism</p> <p>Using abusive language in public places, abusive harassment of citizens, and other similar conduct that violates public order and the peace:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: Fine of 100 Lari • Alternative penalty: Detention up to 90 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>Article 239. Hooliganism</p> <p>1. Grossly disturbing public order and demonstrating an obvious disrespect towards the society, committed with the use or threat of violence:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • 120 to 180 hours of community service, or • Correctional work up to one year, or • Imprisonment up to one year <p>2. If committed by a group with prior agreement, against a representative of authorities or another person</p>	<p>Move CAO Article 166 to a new section of the Criminal Code dealing with misdemeanors and/or violations; remove imprisonment as a potential penalty for the acts described in CAO Article 166.</p> <p>Consider the same change for Criminal Code Articles 239(1) and 239(2).</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
	<p>seeking to prevent hooliganism, or by a person previously convicted for hooliganism:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • 180 to 200 hours of community service, or • Correctional work from one to two years, or • Imprisonment from two to five years 	
<p>Article 171. Drinking alcoholic beverages in public places or drunk presence in public places</p> <p>3. Drinking alcoholic beverages in public (except where permitted), or public drunkenness that offends human dignity and public morals, by a person who has twice during a year received an administrative punishment for this offense:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: <ul style="list-style-type: none"> • Fine of from four to eight times the minimum labor remuneration rate, or • Corrective work of one to 	<p>No provision of the Criminal Code is closely related to CAO Article 171.</p>	<p>Move CAO Article 171 to a new section of the Criminal Code dealing with misdemeanors and/or violations; consider removing imprisonment as a potential penalty for the first three convictions.</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>two months, plus a 20% deduction from salary</p> <ul style="list-style-type: none"> • Alternative penalty: <ul style="list-style-type: none"> • Detention up to 30 days 		
<p>Article 173. Disobedience to a lawful order or demand of a law enforcement official, military servant, member of the Special State Guard Service or enforcement police officer</p> <p>Maliciously disobeying the lawful order of a law enforcement official:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: <ul style="list-style-type: none"> • Fine of 400 Lari, or • Corrective work of one to six months, plus a 20% deduction from salary • Alternative penalty: <ul style="list-style-type: none"> • Detention up to 90 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>Article 353. Resistance, threat or violence against a protector of public order or other representative of authorities</p> <p>1. Showing resistance to a policeman or other representative of authorities with the aim of preventing the protection of public order, terminating or altering his/her activities, or coercing him/her into explicitly illegal activity, committed with the use or threat of violence:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • Restriction of freed for up to three years, or • Imprisonment from four to seven years 	<p>Move CAO Article 173 to a new section of the Criminal Code dealing with misdemeanors and/or violations.</p>
<p>Article 174¹. Violation of rules of organizing or</p>	<p>Article 347. Violation of the rules of holding an</p>	<p>Move both CAO Article 174¹ and</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>holding a gathering or manifestation</p> <p>3. Blockading a court entrance or holding a gathering or manifestation at the residence of a judge or in a common court:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Detention up to 90 days <p>4. Violation of rules contained in Articles 9⁴⁶, 11⁴⁷ and 11¹⁴⁸ of the Law on Assemblage and Manifestations by the organizer of the gathering or manifestation:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine of 5,000 Lari, <u>or</u> • Detention up to 90 days <p>Also: Deprivation of the right to carry arms</p>	<p>assembly or manifestation</p> <p>Violation of the rules of holding an assembly or manifestation by the organizer of this action, that caused a grave consequence:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, <u>or</u> • Restriction of freedom for up to two years, <u>or</u> • Correctional work up to one year 	<p>Criminal Code Article 347 to a new section of the Criminal Code dealing with misdemeanors and/or violations.</p>

⁴⁶ Article 9 of the Law on Assemblage and Manifestations (Law on Assemblage) prohibits assemblies and manifestation in government buildings and related facilities, as well up to 20 meters of their entrances.

⁴⁷ Article 11 of the Law on Assemblage requires that an assemblage or manifestation be held at the place and time indicated, in accordance with the specified route and purposes, and that participants and organizers comply with the requirements of the Law on Assemblage and other obligations. It also prohibits participants from having weapons, harmful substances or alcoholic beverages, and prohibits the intentional hindering of public transport. Article 11 also permits the authorities to halt an assemblage or a manifestation if it is violating the law.

⁴⁸ Article 11¹ of the Law on Assemblage provides that where there is full or partial blockage of a thoroughfare, officials may restore the movement of traffic if the assembly can be held otherwise.

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
for up to 3 years		
<p>Article 175². Failure to fulfill the obligations and requirements indicated in protective and deterrent warrants</p> <p>1. Failure to fulfill the obligations and requirements in a deterrent warrant:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Detention up to 7 days, or • Corrective work up to one month <p>Also: Deprivation of the right to carry arms for up to 3 years</p> <p>2. Failure to fulfill the obligations and requirements in a protective warrant:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Detention up to 30 days, or • Corrective work up to three months <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>Article 381¹. Non-compliance with demands and/or obligations provided by a protective or a preventive order</p> <p>Non-compliance with demands and/or obligations provided by a protective or a preventive order by a person who had previously received an administrative sanction in accordance with the Article 175² of the Administrative Violations Code:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • Corrective work from 180 to 240 hours, or • Imprisonment up to one year 	<p>Move CAO Article 175² to a new section of the Criminal Code dealing with misdemeanors and/or violations; maintain imprisonment as a potential penalty for the acts described in CAO Article 175².</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
Trade-related offenses		
<p>Article 153³. Outdoor trading without an appropriate permit</p> <p>2. Outdoor trading without an appropriate permit, committed in disobedience of a lawful order or demand:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine of 50 to 100 Lari, or • Detention up to 7 days and confiscation of the items of offense 	<p>No provision of the Criminal Code is closely related to CAO Article 153³. The closest is:</p> <p>Article 192. Illegal Entrepreneurial Activity</p> <p>1. Entrepreneurial activity without registration, permission or licence, that caused significant damage and which resulted in collection of large revenues:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • Imprisonment of one to three years 	<p>Move both CAO Article 153³ and Criminal Code Article 192(1) to a new section of the Criminal Code dealing with misdemeanors and/or violations; remove imprisonment as a potential penalty for the acts described in CAO Article 153³.</p>
<p>Article 153⁶. Outdoor trading without an appropriate permit on the territory of the Tbilisi self-governance unit</p> <p>2. Outdoor trading without an appropriate permit on the territory of the Tbilisi self-governance unit, committed in disobedience of a lawful order or demand:</p>	<p>No provision of the Criminal Code is closely related to CAO Article 153⁶. The closest is:</p> <p>Article 192. Illegal Entrepreneurial Activity (See discussion, above)</p>	<p>Move both CAO Article 153⁶ and Criminal Code Article 192(1) to a new section of the Criminal Code dealing with misdemeanors and/or violations; remove imprisonment as a potential penalty for the acts described in CAO Article 153⁶.</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>Penalty:</p> <ul style="list-style-type: none"> • Fine of 50 Lari and confiscation of the items of offense, or • Detention up to 7 days and confiscation of the items of offense 		
<p>Article 155². Production, storage, sale or transportation of excise goods subject to excise labeling without excise labels</p> <p>Production, storage, sale or transportation of goods subject to excise labeling without excise labels</p> <p>Penalty:</p> <ul style="list-style-type: none"> • First offense (Article 155²(1)): <ul style="list-style-type: none"> • Fine of 1,000 to 2,000 Lari, or • Detention up to 30 days • Second offense within a year (Article 155²(2)): <ul style="list-style-type: none"> • Standard penalty: Fine of 10,000 Lari • Alternative penalty: Detention up to 60 days, with 	<p>Article 200. Production, Storage, Sale and Transportation of an Excisable Good without Excise Stamp</p> <p>1. Production, storage, sale and transportation of legally excisable goods with a value of more than 2,000 GEL without excise stamp:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • Imprisonment from two to four years <p>2. Repeated production, storage, sale and transportation of legally excisable goods without excise stamp:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Imprisonment from four to six years 	<p>Move CAO Article 155² to a new section of the Criminal Code dealing with misdemeanors and/or violations; remove imprisonment as a potential penalty for the first offense described in CAO Article 155²(1).</p> <p>Consider uniform approach to all tax and customs-related violations and crimes.</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>or without confiscation of the items of offence, the means of transportation and the means of supply</p>	<p>3. Either the offense in sub(1) or sub(2), where the value of excisable good exceeds 10,000 Lari:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Imprisonment from six to eight years 	
<p>Article 157. Sale of humanitarian assistance goods that were designed for distribution free of charge</p> <p>Sale of humanitarian assistance goods that were designed for distribution free of charge:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: Fine of five times the price of goods and confiscation of the goods • Alternative penalty: Detention up to 30 days 	<p>No provision of the Criminal Code is closely related to CAO Article 117. The closest is:</p> <p>Article 192. Illegal Entrepreneurial Activity (See discussion, above)</p>	<p>Move CAO Article 157 to a new section of the Criminal Code dealing with misdemeanors and/or violations; consider removing imprisonment as a potential penalty for the acts described in CAO Article 157.</p>
<p>Article 177¹. Violation of the rules of quoting and licensing of export and import of goods (works, services)</p> <p>Violation of a Government resolution governing the</p>	<p>Article 214. Violation of Customs regulations</p> <p>1. Export or import of a large number of movable goods across the borders of Georgia without passing through customs control, abusing customs documents</p>	<p>Move CAO Article 177¹ to a new section of the Criminal Code dealing with misdemeanors and/or violations; consider removing imprisonment as a potential penalty</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>quoting and licensing of export or import of goods (works, services):</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: <ul style="list-style-type: none"> • Fine of from 20 to 70 times the minimum labor remuneration rate • Alternative penalty: <ul style="list-style-type: none"> • Detention up to 30 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>and identification papers, or entering false information in customs declaration:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • Imprisonment of three to five years <p>2. The same offence committed as to goods with a customs value greater than 25,000 Lari:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • Imprisonment of five to seven years 	<p>for the acts described in CAO Article 177¹.</p>
<p>Article 178. Violation of the rules of currency exchange operations</p> <p>1. Engaging in currency exchange operations without a license:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: <ul style="list-style-type: none"> • Fine of 50 times the minimum labor remuneration rate for ordinary citizens • Fine of 70 times the 	<p>Two provisions of the Criminal Code are potentially related to CAO Article 178:</p> <p>Article 192. Illegal Entrepreneurial Activity.</p> <p>1. Entrepreneurial activity without registration, permission or licence that caused significant damage and which resulted in collection of large revenues:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, or • Imprisonment of one to three years 	<p>Move CAO Article 178 to a new section of the Criminal Code dealing with misdemeanors and/or violations; consider removing imprisonment as a potential penalty for the acts described in CAO Article 178.</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>minimum labor remuneration rate for officials</p> <ul style="list-style-type: none"> • Alternative penalty: <ul style="list-style-type: none"> • Detention up to 30 days <p>2. Unjustified refusal by an employee of a currency exchange institution to exchange a foreign currency for the national currency:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Standard penalty: <ul style="list-style-type: none"> • Fine of 80 times the minimum labor remuneration rate • Alternative penalty: <ul style="list-style-type: none"> • Detention up to 30 days 	<p>2. The same offence committed by a group, repeatedly or by a person previously convicted of the same crime:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, <u>or</u> • Imprisonment of three to five years <p>Article 216. Violation of the rules about the use of national currency in circulation on the territory of Georgia</p> <p>1. Violation of the rules on the use of national currency in Georgia, that caused significant damage:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, with deprivation of the right to hold office or pursue an activity for a term of up to three years <p>2. The same offence committed by a group or a person previously convicted of this offense:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, <u>or</u> • Imprisonment up to three years 	

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
	Also: Deprivation of the right to hold office or pursue an activity for a term of up to three years	
Military-related offenses		
<p>Article 197¹. Failure to appear before a compulsory military service drafting commission with the intent to avoid compulsory military service</p> <p>2. Failing to appear before a drafting commission with the intent to avoid compulsory military service, and then failing to pay the 1,000 Lari fine:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Detention for 30 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>Article 356. Evasion of military service or alternative labour service by a conscript</p> <p>1. Evasion of military service by a conscript:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Fine, <u>or</u> • Imprisonment up to three years 	<p>Move CAO Article 197¹ to a new section of the Criminal Code dealing with misdemeanors and/or violations; maintain imprisonment as a potential penalty for the acts described in CAO Article 197¹.</p>
<p>Article 197². Violation of rules of military service by a military servant</p> <p>Violation of rules of military service by a military servant, if the violation does not entail criminal</p>	<p>Two provisions of the Criminal Code are potentially related to CAO Article 197²:</p> <p>Article 383. Non-execution of an order</p>	<p>Move CAO Article 197² to a new section of the Criminal Code dealing with misdemeanors and/or violations; maintain imprisonment as a potential penalty for the acts</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
<p>liability:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Detention up to 30 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>1. Non-execution of an order given by a superior, which caused substantial damage to an interest of the military service:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Service restrictions of the military serviceman for up to two years, or • Imprisonment up to one year <p>3. Non-execution of an order as a result of negligent and dishonest attitude towards the service, which recklessly caused substantial damage to an interest of the military service:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Service restrictions of the military serviceman for up to one year <p>Article 384. Opposing a superior or coercion of a superior to violate service obligations</p> <p>1. Opposing a superior or a person who is fulfilling an obligation to the military service with the use or threat of violence, or coercing him/her to violate this obligation:</p>	<p>described in CAO Article 197².</p>

Administrative violations for which detention is a possible sanction ⁴³	Related Criminal Code provisions ⁴⁴	Possible revisions regarding administrative violations ⁴⁵
	Penalty: <ul style="list-style-type: none"> • Service restrictions of the military serviceman for up to two years, or • Imprisonment from two to five years 	
<p>Article 197³. Failure to appear for military reserve service with the intent to avoid serving in the military reserve</p> <p>2. Failing to appear for military reserve service with the intent to avoid serving in the reserve, and then failing to pay the 500 Lari fine:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Detention for 15 days <p>Also: Deprivation of the right to carry arms for up to 3 years</p>	<p>Article 357. Evasion of military reserve service</p> <p>Evasion of military reserve service by a person who previously received an administrative sanction for this offense:</p> <p>Penalty:</p> <ul style="list-style-type: none"> • Community service from 180 to 220 hours, or • Imprisonment up to one year 	<p>Move CAO Article 197³ to a new section of the Criminal Code dealing with misdemeanors and/or violations; maintain imprisonment as a potential penalty for the acts described in CAO Article 197³.</p>