

# DRUG POLICY IN GEORGIA

Trends in 2019





## Drug Policy in Georgia - Trends in 2019

Human Rights Education and Monitoring Center (EMC)

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## Introduction

The purpose of this report is to provide an overview of the key trends, judicial practices, and statistics for 2019 in the field of drug policy. With this report, the Human Rights Education and Monitoring Center (EMC) continues to document systemic challenges in relation to drug policy issues, to compare them with the previous years' practices and developments, and to facilitate fundamental policy change.

It is a recognized problem, that the state authorities have not yet expressed a political will to introduce human rights-based drug policies through fundamental legislative changes. Accordingly, the current legislation remains a significant challenge for the criminal justice system. The legislation in place, along with investigative and judicial practices still carry the risks of arbitrary and unfair use of drug policy.

In 2019 no legislative changes were made in the field of drug policy. Work on the issue of drug policy was not included in the governmental program for 2019-2020, developed during last year's changes in the government,<sup>1</sup> which further demonstrated the state's position regarding the absence of a drug policy as a topic on the political agenda. To date, Drug Situation Monitoring Center, the main function of which is to analyze information regarding the use of the substances, subject to special control, has not been put in place, which is a commitment the government undertook in accordance with the 2015 EU-Georgia Association Agenda Implementation National Action Plan.<sup>2</sup>

The present report examines the state of affairs in the field of justice in relation to drug offenses, as well as the practical application of the Constitutional Court's 2019 decision. With this report, EMC assesses legal approaches to practical implications and presents statistical data from the past year on drug policy in light of the stalled drug reform.

We remain hopeful that the trends and assessments presented in the report will help refresh political discussions on the fundamental drug policy reform and introduce humane legal instruments in this area.

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<sup>1</sup> See Government Program 2019-2020, Available at: <https://bit.ly/2NKBKSe>.

<sup>2</sup> National Action Plan for the Implementation of the Association Agenda between Georgia and the European Union 2015, paragraph 205.

## Methodology

For the purposes of the report, EMC analyzed public information requested from the state agencies on drug related offenses, the Constitutional Court decision of August 2, 2019, and statistical data covering 2018-2019. Randomly selected Common Court judgments related to drug offenses in 2019 were also examined, in order to study investigative and judicial practices, in that regard.

### **Public information received from the state agencies**

EMC requested public information relevant to the research from the Ministry of Internal Affairs, the Special Penitentiary Service, the Prosecutor General's Office of Georgia and the Supreme Court of Georgia. The requested and processed information includes statistics on criminal prosecutions and convictions for drug offenses in 2019, number of persons subjected to drug testing, statistics on drug offenders at penitentiary establishments and persons sentenced to probation.

### **Judicial practice**

Judgments related to drug offenses in 2019 were requested from the Common Courts. The study aimed to assess the changes in attitudes on drug offenses, observed over the years. To that end, the research team studied 40 convictions and acquittals at the City Court and Court of Appeals in criminal cases of illicit drug purchase and possession.

The decisions of the Court of Appeals were also analyzed in light of a decision of the Constitutional Court of August 2, 2019, with a goal to examine the issues of practical enforcement of a decision of the Constitutional Court.

## Main Findings and Recommendations

The following trends and problematic issues were identified in 2019 in a field of drug policy:

- The process of drug policy reform has been suspended indefinitely and the political agenda of the government does not address problems in the field of drug policy; This issue has not been included in the 2019-2020 governmental program, which further demonstrates the government's indifference towards drug policy reform;

- In 2019, the rate of criminal prosecution of drug offenses has increased, as well as the use of imprisonment for the purchase or possession of narcotic drugs in minimal or large quantities;
- The number of persons subjected to drug testing has increased, there is also a slight increase in the rate of positive drug test results. Nevertheless, the legal basis for mandatory drug testing and the legal status of the persons subjected to the test remain problematic;
- Compared to 2018, there is an increase of plea deals in drug-related cases:
- The Drug Situation Monitoring National Center is not operational. Though the state has undertaken the responsibility to set up the Center since 2015.
- Statistical data on drug offenses, that is essential for rational and fair drug policy making, is largely missing. Data on the number of persons deprived of their liberty or otherwise convicted for drug offenses, the types of drugs used, the amount of penalties as a form of punishment used in cases completed with plea bargain, the amount of drugs and the forms of punishment are not processed;
- Information on cases of administrative detention used against persons subjected to drug testing is not processed;
- Statistical data of the Supreme Court on the consumption of marijuana and other drugs, in spite of distinguishing the said offenses in accordance with the amendments to the Administrative Code, does not distinguish the two offenses. Data on the restriction of civil rights, to the persons subjected to administrative liability for marijuana use, are also not processed;
- In relation to the early restoration of civil rights for drug offenders, the competence of the the Standing Commission on Revocation of Conditional Sentences does not apply to persons who are subject to an administrative liability for marijuana use, where a judge has a discretionary power to restrict their civil right for up to 3 years.
- The role of operative information in drug-related crime investigation remains a systemic challenge. Major investigative actions are conducted on the basis of operative information. No other party involved in the criminal process, but the investigator can dispute / access its contents.



- The court-established standard of proof for drug offenses is so low that the concerted testimony of police officers and the chemical expertise assigned to the drug are considered to be sufficient evidence for securing a conviction.

To eliminate the said problems in legislation and practice, EMC makes the following recommendations:

**To the Parliament of Georgia**

- Renew the consideration of the bill # 8700 / 2- 1 written by the Georgian National Drug Platform, June 22, 2017, and initiated by members of the Georgian Parliament (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava and I. Pruidze) and through that make a repressive drug policy more humane;
- Before the fundamental reform of the drug policy, take a political decision to release (amnesty / pardon) convicted persons from unjust and / or disproportionate sentences as an interim measure in the transitional period. To this end, a working group should be set up in the parliament with the participation of the relevant executive authorities as well as the drug user community and human rights organizations.

**To the Government of Georgia**

- Establish a Drug Situation Monitoring National Center and process statistical information that will assist the state in making policy decisions relevant to drug offenses. Including processing of data on the number of persons deprived of their liberty or otherwise convicted for drug offenses, information regarding the types of drugs used, information regarding the amount of drugs and the sentences, the amount of penalties, statistics on the convictions, by the types of crimes;

**To the Common Courts:**

- Based on the decision of the Constitutional Court of August 2, 2019, the Court of Appeals, when reviewing the verdict in light of the newly identified circumstances, should follow a logical, rather than literal, interpretation and apply the verdict to those convicted of possession of particles of a drug, unsuitable for consumption;
- Based on a decision of the Constitutional Court of August 2, 2019, in reviewing the verdicts, the court should bear in mind the burden of proof is on the prosecution and the obligation to present the relevant evidence on the effects of the use of marijuana should be exercised by the prosecution instead of the defendants;
- The Supreme Court should record marijuana and other drug use offenses and separately process them; Statistics on the rights restriction for marijuana users should also be inspected;
- In the context of the adversarial process, the Court should not assess the testimony of law enforcement officials regarding the defendant with high credibility and must be guided by the principles of a fair trial;
- Tighten the degree of verification of the credibility of the evidence obtained on the basis of operative information;
- When assessing evidence of drug related crime, be guided by the principles of protection of human rights and a standard of proof beyond the reasonable doubt, established by the Code of Criminal Procedure, when taking a decision about the person's guilt;

## I. Analysis of drug related crime statistics

Assessing the state of affairs in the country in relation to drug-related crimes has been a challenge for years. To date, no governmental agency has full information on statistical data related to drug offenses that are essential for a fair and rational drug policy determination. In 2015, the government committed itself to setting up a National Center for Monitoring Drug Situation. The main function of the Center was to collect and analyze information on the use of substances under special control in

the country<sup>3</sup>. On 16 January 2020, the Minister of Justice issued a decree on this matter, defining the statute of the Center and its main objectives. According to the decree, Drug Situation Monitoring Center shall be operational starting from March 2020 and its main objective shall be assessing the current drug related situation, including gathering and evaluating information regarding the use and/or illegal dissemination of substances under special control, as well as the introduction of evidence-based scientific and practical methodologies.<sup>4</sup>

In order to assess the state of drug policy in 2019, it is important to analyze statistics on drug offenses in different directions. Accordingly, for the purposes of the report, in the light of the information provided by various governmental agencies in relation to drug-related offenses, in 2019, special attention was directed at:

- the dynamics of criminal prosecution;
- indicators on imprisonment for certain drug offenses;
- quantitative data on persons under probation;
- the number of persons convicted of drug abuse by administrative means;
- statistical data of persons undergoing forced drug testing;
- statistics on deprivation or restriction of civil rights.

Due to the government's refusal to process relevant information, information on prison population in relation to drug offenses remains unknown, as the Special Penitentiary Service does not keep statistical data on the number of offenders convicted of a crime under specific articles of the Criminal Code.<sup>5</sup> Due to the complete lack of statistical data, it is effectively not possible to assess what amount of substances were procured and stored by the convicted persons, for them to be sent to the penitentiary establishments.

Compared to 2018, the statistics available during the reporting period show active state action on various drug policy issues. There has been an increase in the number of persons subjected to drug testing, as well as criminal prosecutions for drug circulation, possession, cultivation or consumption.

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<sup>3</sup> National Action Plan for the Implementation of the Association Agenda between Georgia and the European Union 2015, paragraph 205.

<sup>4</sup> Order No. 494 of the Minister of Justice of Georgia of 16 January 2020 on Approval of the Regulation of the National Center for Monitoring Drug Abuse.

<sup>5</sup> Special Penitentiary Service response to EMC 2019 letter of g/01/568/2019.

In most cases (about 89%) drug offenders enter a plea bargain with a prosecution. Moreover, deprivation of additional rights remain a challenge for those convicted of drug offenses. This mechanism was applied to 1621 probationers during the reporting period, and for those in custody, the restrictions will take effect upon leaving the penitentiary institution.

### 1. Statistics of criminal prosecution and conviction

During the reporting period, criminal prosecution for drug offenses was initiated against 4591 persons.<sup>6</sup> In total, 3127 individuals have been convicted by the District (City) Courts of Georgia for the said drug offenses, and 11 have been acquitted.<sup>7</sup> For the rest of the cases, the court has not made a final decision.

Due to the lack of accounting for the amount of narcotics in the statistical data, administered by the Courts, it is difficult to determine how many of the convicted are serving prison sentences for possession of a small amount of drug (for personal use).<sup>8</sup> According to the statistics of 10 months of 2019, imprisonment is mostly used for the purchase and possession of drugs under Article 260 of the Criminal Code of Georgia. It should be noted that of the 258 prisoners sentenced to imprisonment under Article 260 paras 1 or 3 of the Criminal Code – criminal conviction was based on the possession of initial (small) or a large amount of narcotics. Given that the initial amounts for most of the drugs available in Georgia are not specified, for the purposes of securing criminal responsibility,<sup>9</sup> possession of particles of a narcotic substance (too small for personal use)<sup>10</sup>, is also considered a large amount under the current law and leads to imprisonment of the offender for 5 to 8 years. With respect to the above mentioned 258 persons, the sentence of deprivation of liberty may be determined exactly by the lack of clear definition of the minimum amount of these substances.

Along with unfair and disproportionate punishments prescribed by the law for drug-related crimes, it is also important to note that the pardon mechanism for drug offenders was rarely used in 2019. Out

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<sup>6</sup> Letter N13 / 82936 of the General Prosecutor's Office of Georgia, dated November 26, 2019.

<sup>7</sup> Letter No. P-1377-19 dated November 27, 2019 of the Supreme Court of Georgia.

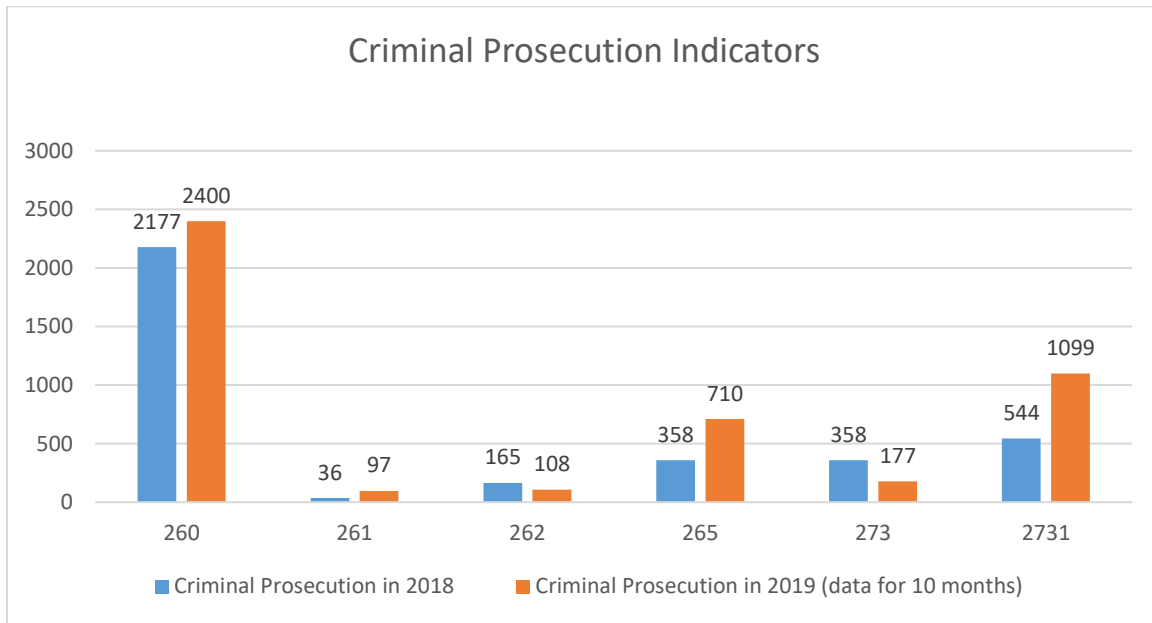
<sup>8</sup> EMC, Drug Policy in Georgia - Suspended Reform and New Trends, 2019, p. 34, Available at: <https://bit.ly/2REkhfd>.

<sup>9</sup> Chapter 6, Article 4 of the Law on Drugs, Psychotropic Substances, Precursors and Narcological Aids

<sup>10</sup> Article 260, Part 3 of the Criminal Code of Georgia.

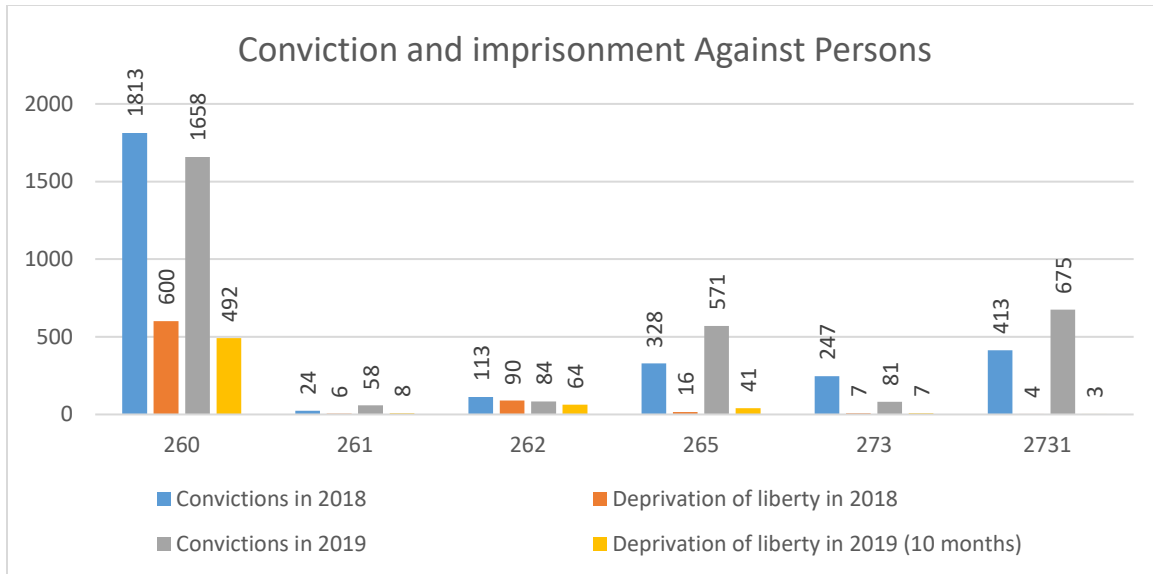
of the 96 people pardoned by the President in 2019, 7 have been pardoned for drug use, purchase and possession.<sup>11</sup>

The table below shows statistical information on the drug related crimes. It outlines the relative number of criminal prosecutions, convictions, and prison sentences in 2018-2019, by individual offenses.



Compared to 2018, the 10 months of 2019 data show that the rate of prosecution for drug offenses has increased. Criminal prosecutions for the illegal purchase, storage, transfer of cannabis or marijuana, as well as cultivation of cannabis plant and the purchase and storage of psychotropic substances approximately doubled.

<sup>11</sup> Letter N6775 of the Administration of the President of Georgia of 20 August 2019; Letter No. 7375 dated September 13, 2019; Letter No. 207 dated January 14, 2020.



Compared to last year, the number of prison sentences for drug related convictions has been reduced. If in 2018 24.7% of convictions ended with a sentence of imprisonment, according to the 10 months of 2019, the most severe sentence was used in 20% of the cases and this amounts to 615 inmates <sup>12</sup>.

## 2. Statistics of drug-related cases completed with a plea bargain

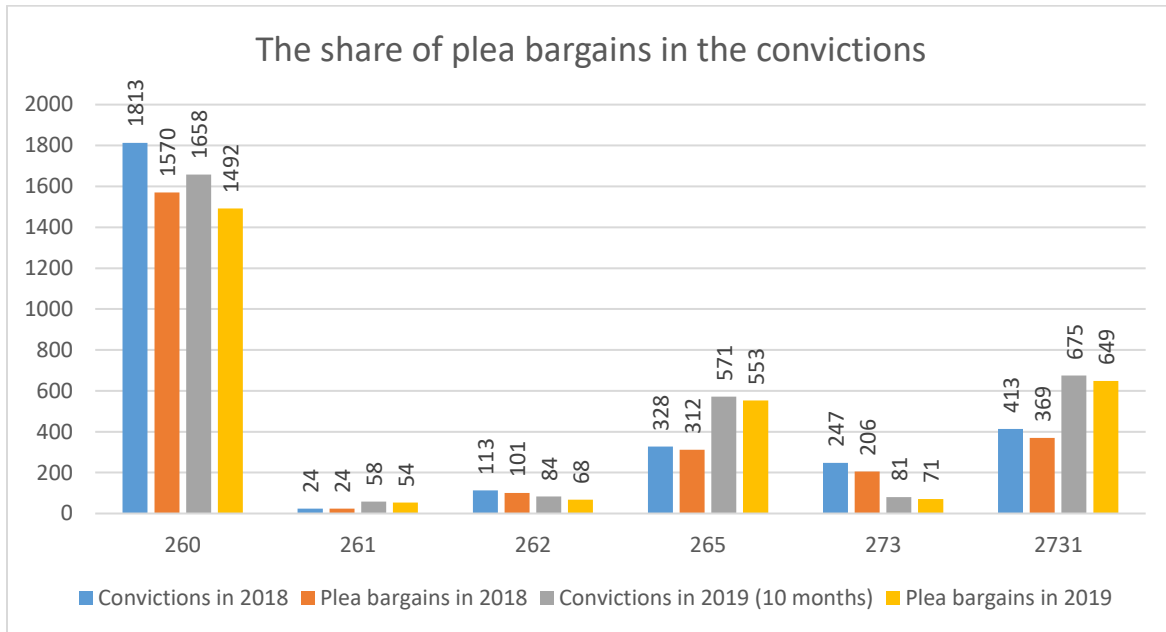
The share of plea bargains on drug offenses has always been high. This trend continues also according to the 2019 statistics. Compared to 2018, there has been an increase in the rate of plea bargains, without a completion of a court hearing, in cases of drug offenses, and about 89% of convictions ended with a plea bargain between the defendant and the prosecution.<sup>13</sup> Along with the “quick justice”, such high number of plea bargains is due to the fact that entering a plea agreement is the only possibility to evade strict penalties for drug offenses, as in this case, it is possible for the

<sup>12</sup> Letter N-1377-19 dated November 27, 2019 of the Supreme Court of Georgia; EMC, Drug Policy in Georgia, p. 35.

<sup>13</sup> Letter No. P-1377-19 dated November 27, 2019 of the Supreme Court of Georgia.

prosecution and defense to reach an agreement on less than the lowest form of punishment, as defined by the law.<sup>14</sup>

Entering plea bargain is often linked to the fact that, in this case, it is possible to negotiate with the prosecution on the limitation of additional rights <sup>15</sup>.



### 3. Additional penalties for drug offenses

Conviction for drug offenses automatically leads to the deprivation of a number of rights under the Law on Combating Drug Abuse. A person convicted of drug use shall be deprived of his / her right to drive any type of vehicle for up to 3 years. They are also forbidden to work in educational institutions, public institutions and the legal field. In the case of drug possession, circulation or procurement, these rights may be deprived for a term of 5 to 20 years. <sup>16</sup>

<sup>14</sup> Article 55 of the Criminal Code of Georgia.

<sup>15</sup> EMC, Drug Policy in Georgia - Suspended Reform and New Trends, 2019, p. 41, Available at: <https://bit.ly/2REkhfd>.

<sup>16</sup> Article 3 of the Law of Georgia on Combating Drug Crime.

The EMC applied to the Constitutional Court in 2015 for an assessment of the constitutionality of the blanket rule on deprivation of rights for drug related offenses. Despite the completion of the hearing, the court has not yet decided on the matter.<sup>17</sup>

With the 2018 legislative amendment, at the discretion of the judge, a three-year limitation can also be imposed in administrative cases of the illicit acquisition, possession, transportation, transfer, consumption of a small amount of cannabis or marijuana.<sup>18</sup>

For the purposes of the report, it was interesting to process statistics on marijuana possession or consumption offenses. However, such data are not recorded by the Supreme Court.<sup>19</sup>

Data on the deprivation of rights are not processed by the National Agency of Execution of Non-custodial Sentences and Probation, which reports on this issue only in the case of probation. In the event of a three-year restriction of rights by the judge, for possession or use of marijuana as a misdemeanor, a citizen is also not entitled to apply to the Standing Commission on Revocation of Conditional Sentences for the reduction or early reinstatement of deprived rights, as the Commission only accepts the applications concerning the restriction of rights as a result of a judicial conviction.<sup>20</sup>

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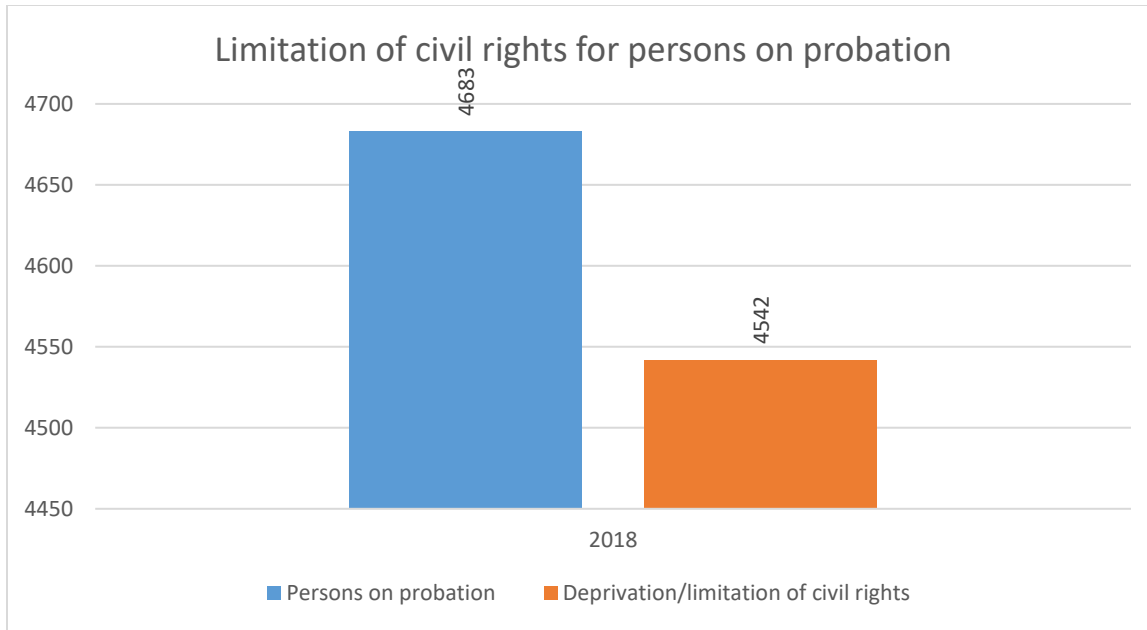
<sup>17</sup> Constitutional Claim N 702 - Konstantine Labartkava, Malkhaz Nozadze and Irakli Gigolashvili v. Parliament of Georgia.

<sup>18</sup> Article 3 of the Law of Georgia on Combating Drug Crime.

<sup>19</sup> Letter NP-9-20 of the Supreme Court of Georgia, January 17, 2020.

<sup>20</sup> Letter N2 / 846 of January 8, 2020 from the National Agency for Crime Prevention, Non-Custodial Sentencing and Probation, Ministry of Justice of Georgia.





#### 4. Drug Testing Statistics

According to the Ministry of Internal Affairs<sup>21</sup>, the total number of people subjected to drug testing has increased dramatically compared to 2018. Also, there is a slight increase in the positive result of the drug tests. 36% of the persons examined did not test positive for drug use.

The Ministry of Internal Affairs still does not record data on the use of administrative detention for persons subjected to drug testing.<sup>22</sup>

Since April 1, last year, a new rule on drug testing has come into force for the drivers.<sup>23</sup> According to the Patrol Police Department, out of the 346 drivers who were tested with a saliva screening test in 7 months including October 2019 (entry into force of the rule), 231 were reported to the forensic department of the Ministry. Of the reported persons, 203 individuals tested positive (through bio material testing) and 188 were under clinal drug influence.<sup>24</sup> The above statistical data indicates that

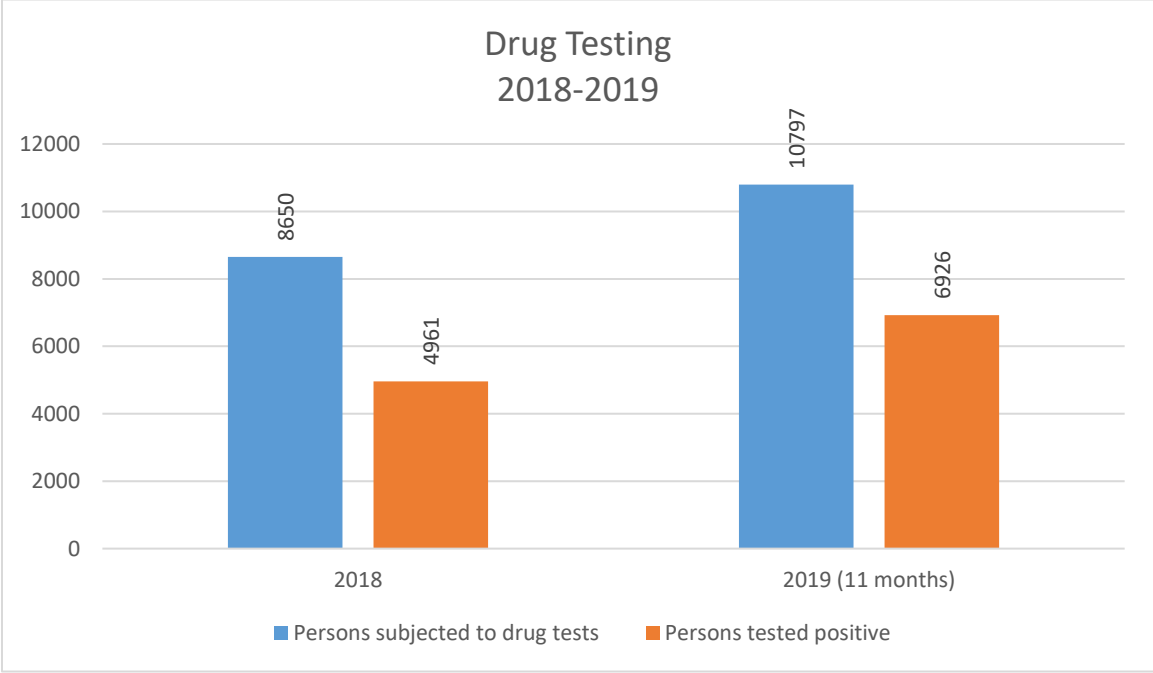
<sup>21</sup>Drug Testing Statistics of the Ministry of Internal Affairs of Georgia available at: [https://info.police.ge/page?id=256&parent\\_id=101](https://info.police.ge/page?id=256&parent_id=101).

<sup>22</sup> 2019 letter MIA21900613593 of the Ministry of Internal Affairs of Georgia.

<sup>23</sup> Joint Order N25-N01-30 / N of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of 29 March 2019

<sup>24</sup> Letter 21903217437 from the Ministry of Internal Affairs of Georgia.

the introduction of a new rule on the provision of drug testing for motor vehicle drivers did not affect the increase in the rate of 2019 drug tests, however overall street drug test statistics increased.



### 5. Number of persons subjected to administrative liability for drug abuse

First-time illegal drug consumption or possession of a small quantity of drugs for personal use is a misdemeanor offense. The administrative fine is 500 GEL or imprisonment up to 15 days.<sup>25</sup>

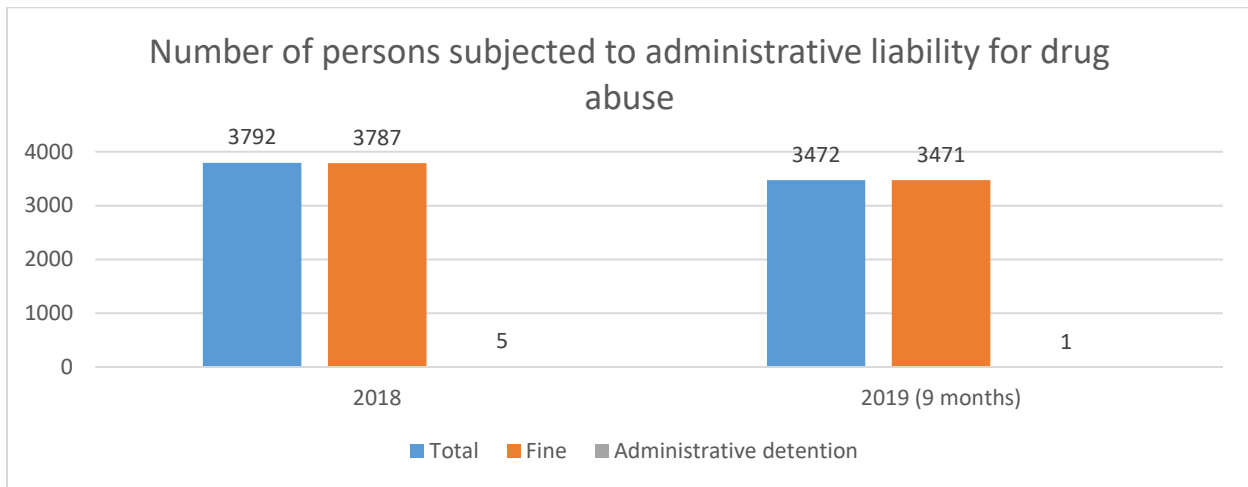
From November 30, 2018, similar liability applies to the possession of a small quantity of marijuana or for its consumption in a public space, in accordance with Section 45<sup>1</sup> of the Code of Administrative Offenses.

Despite the separation of marijuana use and its possession from other drug-related offenses by law and the separate statutory definition, the Common Courts report on the offenses, provided for in

<sup>25</sup> Article 45 of the Code of Administrative Offenses of Georgia.

Articles 45 and 45<sup>1</sup> of the Code of Administrative Offenses, indiscriminately. <sup>26</sup> Therefore, it is not possible to analyze the statistical information of marijuana or other drug use in more detail.

Data for the 9 months of 2019 are not substantially different from the results of the previous year. There were 3472 persons subjected to administrative liability, in all cases, except for one, fine is used as a form of sanction. <sup>27</sup> Considering that the minimum administrative fine imposed for any drug use is GEL 500, in the nine months of 2019, the total amount of the fines paid in favor of the state budget is GEL 1, 736,000.



## II. A judgment of the Constitutional Court of 2 August 2019 and its practical application

### 1. Argumentation of the Constitutional Court

On August 2, 2019 the Constitutional Court took a decision on the constitutional appeal of the Public Defender, according to which sanctions, such as administrative detention and imprisonment, for illegal creation, purchase, storage and / or use of drugs in small quantities (for personal use), <sup>28</sup> were contrary to the principle of prohibition of degrading punishment, guaranteed by the Constitution.

<sup>26</sup> Letter No. P-1379-19 dated November 27, 2019 of the Supreme Court of Georgia.

<sup>27</sup> Letter No. P-1379-19 dated November 27, 2019 of the Supreme Court of Georgia.

<sup>28</sup> For the actions provided for in Article 45 of the Code of Administrative Offenses of Georgia and Article 273 of the Criminal Code of Georgia - sanctions for the manufacture, purchase and storage of a narcotic drug without a prescription.

The court reasoned that administrative detention or imprisonment for the use of a narcotic substance, precursor, analogue of a narcotic and for creating, purchasing or storing one dose of the said substance, shall be abolished.

The court discussed the severity of the offenses prescribed by the norms and the sentence for the conviction and introduced the notion of producing, purchasing, and storing a single dose of substance. According to the court, the use of the drug, due to the specific nature of the action, completely eliminates the risk of its consumption damaging the health of other people. Therefore, with the decision, consumption of a drug, as well as its integral components, producing, procurement and storage a single dose of a drug, was considered to be the least public threat invoking, as compared to other punishable actions (production, procurement, storage).<sup>29</sup>

The Constitutional Court ruled that deprivation of liberty (as well as administrative detention) for the consumption of drugs and its manufacturing, purchase or storage in a small quantity, cannot be relevant means of achieving the legitimate aim to protect public safety, in relation to those drugs the consumption of which does not cause rapid addiction, withdrawal and / or under the influence of which the person is not being aggressive and prone to commit a crime<sup>30</sup>.

The decision permitted the use of imprisonment as a punishment for the use of narcotics that could easily lead to addiction or which causes the person to become aggressive and commit violent acts as they pose a risk to public safety.<sup>31</sup> According to the decision, when in the withdrawal stage, the drug users are predisposed to crime and other anti-social behavior, and therefore, for the use of such substances and / or for the purchase and storage of the substance obviously for personal use (one dose of consumption) it is only appropriate to introduce a sentence, with the legitimate aim for protect public safety.

Such an approach of the court is problematic in terms of the stigmatization of drug users. It is also problematic that the court, instead of providing additional reasoning and the need to develop state care-oriented policies, in some cases permits the use of a repressive mechanism, deprivation of liberty for the purpose of ensuring public safety, against a person with drug addiction.

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<sup>29</sup> Paragraph 31 of the judgment.

<sup>30</sup> Paragraph 41 of the judgment.

<sup>31</sup> Paragraph 42 of the judgment.

## 2. Practical application of a decision of the Constitutional Court of August 2, 2019

The relevant legislative body has not yet prepared a draft law on the ways in which the aforementioned Constitutional Court decision may be enforced. Consequently, it is unknown what approach Parliament will take to identify the difference in impact drug use can have on people and thus determine the appropriate forms of punishment.

In terms of the practical enforcement of the decision during the investigation, for the assessment of the impact of the drug on humans and the risks of abstinence, it is important to take into account the principle in criminal proceedings, according to which the burden of proof is on the prosecution.<sup>32</sup> Accordingly, the prosecution is obliged to prove that the offense was committed by the defendant, the criminal act took place and that the evidence, information or opinion submitted by the defense is inadmissible.<sup>33</sup> In light of the Constitutional Court's ruling, the initiator of the investigative / procedural action should be required to provide relevant evidence on the effects of a particular drug use.

In order to study the practical application of the aforementioned decision of the Constitutional Court, EMC examined the content of the judgments given by the Court of Appeals on the basis of the newly discovered circumstances.

The Tbilisi Court of Appeals has provided us only two rulings in which the convicted persons sought a retrial, with a reference to the Constitutional Court's decision of 2 August 2019.

One of the judgments rendered by the Court of Appeals concerned a person who was sentenced to six years of imprisonment, for the possession of particles of methamphetamine (too small quantity for consumption), under Article 260 para. 3 of the Criminal Code, because there was no initial quantity determined for imposing criminal liability under the law.<sup>34</sup> The defendant had submitted an expert report confirming that the substance amount was too small for consumption, but failed to determine the general effects of drug use.

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<sup>32</sup> Article 5, Part 2 of the Criminal Procedure Code of Georgia.

<sup>33</sup> Commentary on the Criminal Procedure Code of Georgia, p. 55.

<sup>34</sup> Judgment of the Tbilisi Court of Appeal of 16 August 2019.

The second case concerned Article 273 of the Criminal Code of Georgia - drug offender was convicted for the consumption of deomorphine, the Court of Appeals found the motion to reopen the case inadmissible on the ground that the defendant had "failed to submit to the Court of Appeals any relevant documents, reports by the relevant organs or persons, therefore they cannot prove the argument that the drug they consumed does not cause rapid addiction and / or aggressive behavior, as determined by the Constitutional Court".<sup>35</sup>

While it is difficult to generalize the Court of Appeal's practice solely on the basis of these rulings, the Appeal Court's approach to the Constitutional Court's decision of 2 August 2019 to interpret it word by word and transfer the burden of proof to the defendants was clearly identified. In one case, the Court disregarded the decision of the Constitutional Court on the possession of drug unsuitable for consumption, with the reasoning that the Constitutional Court solely relied on Article 273, therefore, discussions concerning Article 260 of the Criminal Code were automatically excluded. In the second case, the court imposed the burden of proof on the defendant and asked them to provide expert's opinion on the effects of the drug used by the offender and on the resulting addiction from the use of the said drug.

### III. Analysis of judicial practice

To assess the judicial practice in the cases of drug related offenses (drug use, possession and procurement), EMC requested information about acquittals and convictions from the City Courts and Courts of Appeals in 2019. <sup>36</sup> For the purposes of the report, a total of 40 judgments, in accordance with the existing rule, were examined.

Based on these decisions, it can be said that the Court's approach and standard of proof in cases of drug procurement-possession have not changed substantially.

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<sup>35</sup> Judgment of the Tbilisi Court of Appeal of 11 September 2019.

<sup>36</sup> EMC has addressed to the Tbilisi, Rustavi, Batumi, Kutaisi City and Gori District Courts as well as the Kutaisi and Tbilisi Courts of Appeal with the request for the transfer of two acquittals and two convictions in 2019 related to drug offenses under Articles 260, 261, 262, 263, 273 and 273<sup>1</sup> of the Criminal Code.. The information provided by the courts was incomplete, most of which involved drug dealing and possession cases.

Testimony of the police officers, search protocol, and the conclusion of a forensic chemical examiner are a combination of sufficient evidence to secure conviction. Similar to that of 2018 <sup>37</sup>, one of the 2019 judgments concerned the Court of Appeal's reversal of the acquittal of conviction in the first instance.

Neutral evidence in drug-related crime cases remains problematic, as is the Court's nonuniform practice of evaluating biological-genetic evidence in drug related crimes.

## 1. Operative Information

Based on 2019 decisions, operative information remains to be the main basis for launching an investigation into drug offenses.

Last year's verdicts illustrate the court's established practice in drug-related cases, when police officers obtain operative information, write up protocols and consequently conduct key investigative actions - personal searches. A police officer receiving operative information is questioned as a witness in the court, without any disclosure of the source of the information, which ultimately, along with other statements made by the police, is the basis of a guilty verdict.

Neither the parties nor the court investigated the validity or the source of the operative information in any of the decisions examined during the reporting period, including the acquittals.

## 2. Personal Search Protocol

In deciding a person's conviction for a drug crime, last year's court practice relies heavily on a personal search protocol. In most convictions, the court pays particular attention to establishing compliance between the personal search protocol and the oral testimony of the police officers. In one judgment, the Court emphasizes that “one of the most essential evidences in cases under Article 260 of the Criminal Code are the search protocol and the search procedures. It is essential that the search

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EMC, Drug Policy in Georgia - Suspended Reform and New Trends, 2019, p. 50, available: <https://bit.ly/2REkhfd>.

protocol and the search process do not give a reasonable doubt to the objective observer regarding the lawfulness of these investigative actions.”<sup>38</sup>

In one of the cases, studied for the purposes of this report, citing the contradictions in the police testimonies, the Court of Appeals overturned acquittal verdict of the first instance court relying on the argument that the Court of Appeals had no grounds to have doubt with respect to the credibility of the testimony of the police officers, because they were consistent with each other, as well as fully consistent with the other evidence, namely - personal search and chemical expert examination results.<sup>39</sup> The decision is problematic given the fact that the Court of Appeals sentenced the defendant to 6 years in prison on the basis of the testimony of the police officers and the personal search protocol completed by them, without further justification, dismissing the facts alleged by the defendant.

Last year's case law is also unchanged in that a person's signing of a personal search protocol is defining for the person's guilty conviction. In this case, the court finds alternative position of the defense on the possible violations in the case largely unconvincing.

### 3. The police and other persons who witness the search

Police officers involved in investigations have been the main witnesses for the conviction, based on years of approach to drug crimes. Convictions made last year are a continuation of that trend and, in the absence of neutral witnesses involved in the case, they are based on the police testimony about the conduct of the investigation.

Besides law enforcement testimonies, in the 2019 judgments, neutral witnesses or neutral evidence (video recordings) continue to be rare.

For years, refuting police testimony, who were questioned as witnesses in drug related cases, remains a problem when the search was conducted without neutral witnesses or video cameras. It is

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<sup>38</sup> Judgment of Tbilisi City Court of 7 March 2019.

<sup>39</sup> Kutaisi Court of Appeal decision of April 3, 2019.



noteworthy that all the acquittals in last year's judgments were based on the testimony of neutral witnesses of the search.<sup>40</sup>

#### 4. Biological-genetic examination

As in previous years, the analyzed decisions of 2019 rarely contain the findings of biological-genetic expertise, which provides additional information on the physical contact of the accused with the drug recovered from their personal search.

In one of the cases analyzed, the court did not agree with the forensic evidence finding of the defendant's genetic trace on the places of storing the drug, pointing to the fact that the defendant was referring to the forced and unlawful collection of the forensic sample. For the court, the main basis for the exclusion of the evidence, along with the defendant's position, was the contradiction between the personal search protocol, the video recording taken from the place of the search and the factual circumstances set out in the testimony of the detective investigators.<sup>41</sup>

In the adversarial process, the prosecution's refusal to carry out this expert examination does not preclude the possibility for the defense to request biological expert examination. From the analyzed decisions, in some cases this type of evidence is obtained in criminal cases and in no case it is presented by the defense. This may be due to the lack of additional finances needed to conduct the examination.

## IV. Conclusion

To sum up the drug related situation in 2019, it can be said that the state remains largely inactive in terms of substantial changes in the field of drug policies. State authorities have not, in any working format, presented their views on the plans for fundamental reform of drug policy and consideration of the relevant draft law submitted to Parliament. In this context, the existing legislation has more

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<sup>40</sup> Judgment of February 25, 2019 of Tbilisi City Court; Judgment of March 4, 2019 of Tbilisi City Court; Judgment of Tbilisi City Court of 7 March 2019

<sup>41</sup> Judgement of Tbilisi City Court of March 4, 2019.

significant impact, in particular, on the convicted drug offenders in residing in the penitentiary establishments.

During the reporting period, number of issues, including prosecution of drug offenses, number of persons subjected to drug testing, and number of cases completed with plea bargains, have increased compared to last year. The mechanism of deprivation of civil rights of drug offenders is still in place, which is one of the important factors in excluding these persons from public life even after they had served their time.

The Common Courts are particularly careful when interpreting the decisions of the Constitutional Court, which was also revealed in the interpretation of the Constitutional Court's decision of August 2, 2019. The Court of Appeal's approach to the re-trial of the case was problematic when the burden of proof on the impact of drugs was imposed on the defendant instead of the prosecution.

The 2019 court practice is also unchanged in relation to drug offenses, where the testimony of the police officers is considered to be particularly credible and the court relies on a low standard of proof for securing conviction.