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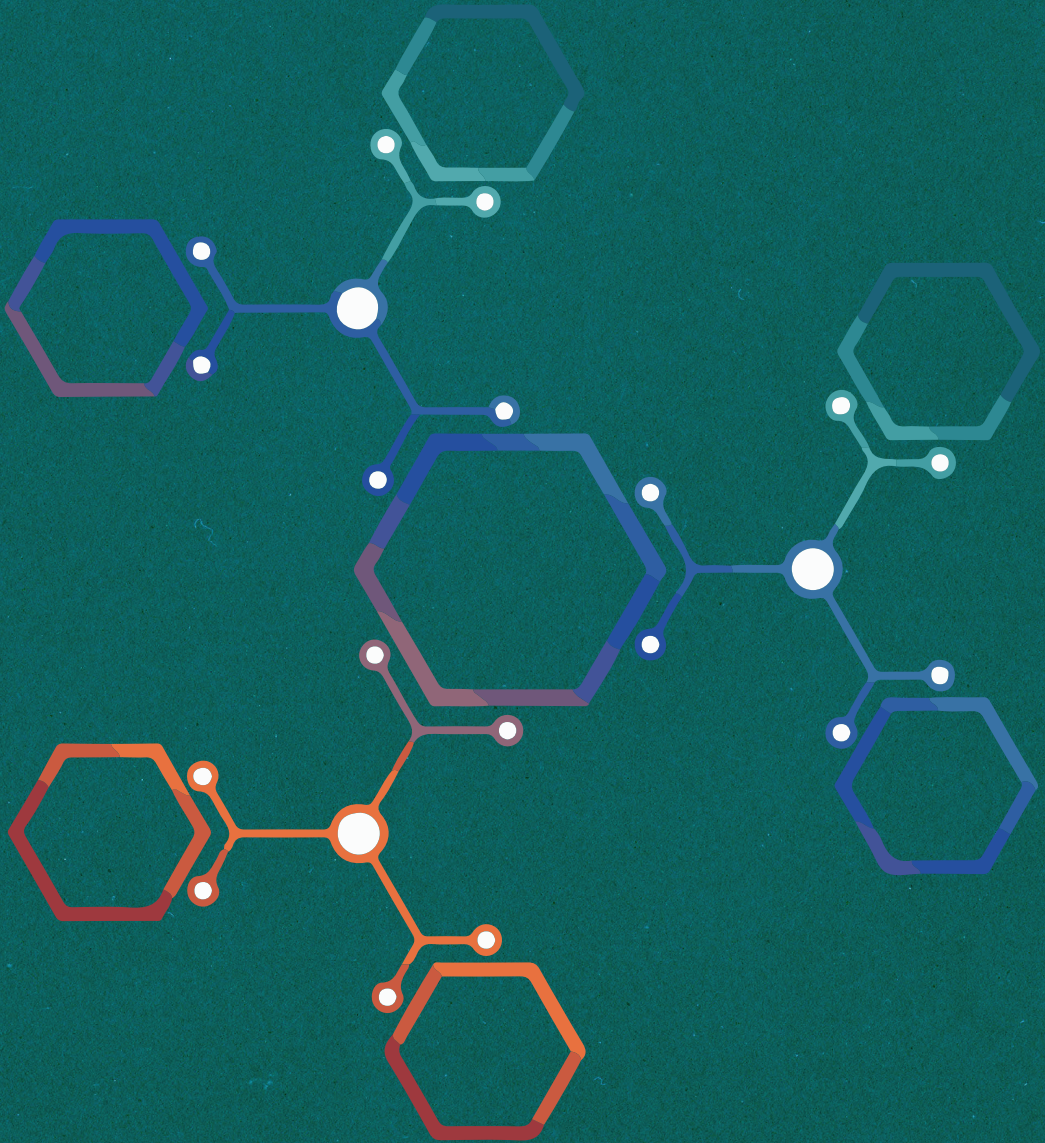
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# DRUG POLICY IN GEORGIA

Trends in 2022



SOCIAL  
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# **Drug Policy in Georgia**

## **Trends in 2022**

Social Justice Center  
2023

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## Introduction

The Social Justice Center annually evaluates the drug situation and the related changes in the country.<sup>1</sup> The report reviews drug policy trends in 2022, identifies key challenges, and suggests recommendations tailored to advance the rights of persons accused/convicted of drug-related crimes and persons with substance use disorder.

Systemic drug policy reform was not a politically relevant or broadly discussed topic yet again. No significant legislative amendments or fundamentally innovative approaches were implemented toward preventing drug addiction or treatment/rehabilitation. Therefore, the existing challenges in the field have remained relatively the same. Restrictive measures implemented to combat COVID-19 in force for the previous two years were significantly eased/removed in the reporting period. In light of this, while reviewing trends of the drug situation 2022, it is particularly interesting to assess the impact of the pandemic and Covid-regulations on the detection of drug-related crimes.

The report analyzes the measures the state took in drug policy in 2022, including the steps taken to prevent drug-related crimes. The report also reviews the statistical data regarding certain stages of the criminal procedure and administrative liability.

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<sup>1</sup> The reports of the Social Justice Center from 2019-2021 on drug policy are available at: <https://bit.ly/3H-7zeBc>, (accessed: 31.05.2023).

## Methodology

The report mainly analyzes the public information the Social Justice Center requested from public institutions. The national drug-related legislation, proactively published statistical data, and activity reports by public agencies were also examined to prepare the document.

Since the report is primarily based on public information, the Social Justice Center was reminded anew of the challenges related to the accessibility of public information. The Social Justice Center requested statistical data from 18 state agencies to assess the drug situation.

A significant number of the agencies (Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, Ministry of Internal Affairs, Special Penitentiary Service, etc.) provided the Centre with public information in a substantial violation of the terms set by the legislation. In some cases, the released data was incomplete. As it turns out, the data processed by the Office of Resource Officers of Educational Institutions, the Supreme Court of Georgia, and the Prosecutor's Office of Georgia are relatively accessible. However, considering various agencies' low levels of accountability, proper access to public information remains a significant problem. Further, agencies still produce flawed statistics, a problem subsequent chapters will discuss in more detail.

## Main Findings

The report summarizes the main characteristics of Georgia's drug policy as of 2022:

- Instead of implementing preventive measures, drug-related legislation is still largely dependent on punitive mechanisms and the restriction of the supply of drugs;
- Drug Action Plan for 2021-2022 reiterates the need for refining the legislative framework.<sup>2</sup> However, in the reporting period no substantial amendments were implemented into the drug-related legislation;
- The Parliament did not prepare the relevant amendments needed for the effective and timely execution of the judgments of the Constitutional Court;
- A large number of public agencies provide incomplete information related to drug-related crimes. The methodology of producing statistics is problematic, which in turn, prevents drawing out sound and evidence-based policies;
- Several significant constitutional complaints/referrals related to drug crimes are registered in the Constitutional Court. The review is delayed;
- The total number of registered drug-related crimes in 2022 (5471) has increased by 41% compared to 2021 (3873). That is the highest annual increase in the crime rate (in the reporting period);
- The total number of prosecutions for drug-related crimes increased (4802) and is only slightly below the pre-pandemic (2019) index (5120);
- The most common sentence for convictions in drug-related crimes was a conditional sentence (in particular, 66% of the cases considered by the courts of the first instance. The index is 10% higher than in 2021). The rarest sentence to be ordered by the courts was community service;
- Both the number of people subjected to drug testing and the index of testing positive have grown (72%);
- Presidential pardons of drug-related convictions are increasing and, in 2022, president pardoned 25 convicts;
- Geographical access to Opioid Substitution Therapy is a recurring problem, and a long-term medical program for opioid substitution in the penitentiary system is yet to be developed.
- Naloxone, the first aid drug used to control opioid overdose, is in short supply in pharmacy chains. Accordingly, the problem of access to Naloxone continues to be problematic.

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2 Anti-drug Action Plan for 2021-2022, available at: <https://shorturl.at/hrHT4> (accessed on: 31.05.2023).



# 1. Legal Framework for Drug-related Crimes and Initiated Draft Laws

Several legislative acts and by-laws regulate Georgian drug policy. Criminal liabilities for crimes/offenses regarding narcotic drugs are envisioned by the Criminal Code of Georgia (hereinafter ‘the CCG’) and the Administrative Offences Code of Georgia (hereinafter ‘the AOCG’). Various normative acts, including Laws of Georgia “on Combating Drug-related Crime”<sup>3</sup> and “On Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance”,<sup>4</sup> design the mechanisms of prevention and combat against drug-related crimes.

No legislative amendments were implemented throughout the reporting year. However, the Parliament of Georgia initiated two draft laws. Both of them, if passed, affect the law “On Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance.” Mentioned law is essential since it proposes the lists/quantities of substances under special control and establishes legal grounds for the state policy for the illegal circulation of those substances.<sup>5</sup> The Health Care and Social Issues Committee of the Parliament initiated the first draft law in February.<sup>6</sup> It redefines the amounts (small, medium (the threshold for criminal liability), large, and particularly large) for Buprenorphine (so-called Subutex), a substance subject to special control. Accordingly, the legal basis for administrative and criminal liabilities will be altered.<sup>7</sup> The table below outlines the amounts set for Buprenorphine in the current and draft laws.

	Small Amount	Large Amount	Particularly Large Amount
Current Law <sup>8</sup>	0,0012	0,012	0,12
Draft Law <sup>9</sup>	0,005	0,05	5

As the table indicates, the draft law increases the small and large amounts of Buprenorphine by four times approximately; the index of particularly large amounts is 41 times

3 Law is available at: <https://bit.ly/3N4N9tQ> (accessed on: 31.05.2023).

4 Law is available at: <https://bit.ly/43AZxZR> (accessed on: 31.05.2023).

5 Guram Imnadze, in the textbook “Drug Crimes,” 2020, (ed.: B. Jishkariani), p. 33.

6 Draft law is available at: <https://bit.ly/3Noxo2n>, (accessed on: 31.05.2023).

7 A small amount is the basis for administrative liability, while a large and especially large amount falls under the scope of the Criminal Code.

8 Law of Georgia “On Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance”, Annex №2.

9 Draft law on amendments to the Law of Georgia “On Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance”, available at: <https://bit.ly/3Noxo2n> (accessed on: 31.05.2023).

higher than in the current regulation. If passed, the amendments can lead to the release of convicts from penitentiary institutions due to the revisions of their cases since the draft law significantly increases the amounts for criminal responsibility. Accordingly, time is of the essence here – the legislative body must not delay the consideration and adoption of the draft law. It still needs to be adopted in the first reading, despite the draft being initiated over a year ago, while the Committee discussion took place several months ago. The Social Justice Center calls on the Parliament to promptly discuss the draft laws that directly affect the liberty of many.

The government initiated the second draft law<sup>10</sup> in December. The bill was drafted by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health, and Social Affairs of Georgia. The proposed legislation adds eight new substances to the list of narcotic drugs strictly restricted from circulation (List I) and to the list of narcotic drugs provided for by Annex No. 2 (*list of small, large, and especially large amounts of narcotic drugs and psychotropic substances seized from illegal possession or circulation*). Per explanatory note,<sup>11</sup> the purpose of the draft law is to implement the requirements stemming from the international agreements. In particular, to harmonize the additions to the UN conventions of 1961, 1971, and 1988. The Parliament adopted this draft law in the third reading with 77 votes on May 2, 2023.

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10 Draft law on amendments to the Law of Georgia “On Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance”, available at: <https://bit.ly/3Cmnok3> (accessed on: 31.05.2023).

11 Explanatory note is available at: <https://bit.ly/43B1y88> (accessed on: 31.05.2023).

## 2. Analysis of Judgments of the Constitutional Court

The Constitutional Court issued two judgments regarding drug-related crimes in the reporting period. Both judgments were responses to the constitutional submissions. The Social Justice Center supports the trend of utilizing the mechanism of constitutional submissions by the common courts. The Center expresses its hope that judges will turn to this mechanism more actively in the future to minimize the risks that their decisions are based on an unconstitutional legal norm. The mechanism of constitutional submissions is important in dealing with drug-related crimes since the legislation sets up imprisonment for alternative, or sometimes only applicable, sentences for committing most of such crimes; therefore, the risk of an unjustified interference in human rights is exceptionally high.

According to the judgment of April 21, 2022, based on the constitutional submission of the Tbilisi City Court, the Constitutional Court noted<sup>12</sup> that imprisonment for the crime of repeated purchase and possession of the narcotic drug “cannabis resin” (amount of 0.1315 grams) for personal consumption (Article 260 of the Criminal Code) is against the inviolability of human dignity. The judgment echoes the 2015 judgment of Constitutional Court<sup>13</sup> and therefore does not establish novel standards. However, it must be emphasized that it was the first time when the court evaluated the constitutionality of the punishment provided for repeated drug-related crime. The court’s judgment is primarily based on expert opinions. Opinions suggest that 0.1315 grams of cannabis resin is a single dose on average or can be consumed in a maximum of 4 doses. That, of course, does not indicate the inevitability of its circulation.<sup>14</sup> Imprisonment was ruled to be disproportionate punishment, in the light that risks of circulation were minimal.

In the judgment of April 21, 2022, based on the constitutional submission of the Bolnisi District Court, the Constitutional Court deemed the imprisonment to be contrary to human dignity for illegally importing dried marijuana (in the amount of no more than 9.68 grams) for personal consumption.<sup>15</sup> Since the mentioned submissions were

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12 The court recognized the contested normative content of Article 260 of the Criminal Code as unconstitutional in relation to Clause 2 of Article 9 of the Constitution.

13 The judgment of the Constitutional Court of October 25, 2015, on the case – “Beka Tsikarishvili v. Parliament of Georgia”.

14 The judgment of the Constitutional Court of April 21, 2022, § 24.

15 The court recognized the contested normative content of Article 262 of the Criminal Code as unconstitutional in relation to Clause 2 of Article 9 of the Constitution.

concerned with the dried marijuana, the case was even more similar to the factual circumstances presented in the 2015 judgment.<sup>16</sup> Therefore, the court had already assessed the degree of public danger emanating from marijuana in the past. Nevertheless, a novel touch of the 2022 judgment must be underlined – the court reviewed the constitutionality of the sentence set by Article 262 of the CCG for the first time. The court noticed that importing marijuana for personal consumption poses only minimal, hypothetical risks of it being in circulation or sold.<sup>17</sup> The risks to others' health are nominal.<sup>18</sup> Above reiterated arguments led the court to conclude that such a sentence was against liberty rights.

It is promising that the Constitutional Court followed the progressive precedent established in 2015. It is crucial to reflect the rulings of the judgments into the legislation promptly. A year has passed since the rulings; however, the Parliament still needs to implement amendments in the relevant articles of the CCG. The Social Justice Center believes implementing appropriate legislative amendments within a reasonable period is necessary to ensure legal stability and clarity.

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16 The judgment of the Constitutional Court of October 25, 2015, on the case – “Beka Tsikarishvili v. Parliament of Georgia.”

17 The judgment of the Constitutional Court of April 21, 2022, § 20.

18 *ibid*, § 21.

### 3. Statistical Data Regarding Drug-related Crimes

Registered drug-related crimes decreased significantly throughout 2021-2022. As of June 2022, the restrictive measures to prevent the spread of COVID-19 were lifted. Restrictions on freedoms of assembly and movement (quarantine, curfew and ban on mass and public gatherings) were no longer in force during the reporting period. The entertainment and gastronomic venues were operating freely. It was the constraints on such businesses that affected the detection rate of drug-related crimes and, in turn, rates of prosecution. Considering the factor underlined, analysis of the statistical data on drug-related crimes detected in the reporting period and comparing it with the data of the previous two years enables us to assess the impact of the pandemic on the dynamics of committing and detecting drug-related crimes.

Compared to the previous two years, the rates of registered drug-related crimes and criminal prosecutions increased significantly in 2022. In most cases, numbers are near the pre-pandemic (2019) levels. The detected ratio confirms the claim that improved statistics for 2021-2022 were primarily the byproduct of regulations imposed to combat Covid-19. The decreased numbers do not indicate an improvement in the drug situation.

To identify the main trends of drug-related crimes and evaluate the effectiveness of the state's drug policy, the Social Justice Center processed statistical data obtained from public information. The data will be reviewed in the following sub-chapters.

#### 3.1. Crime Statistics Registered by the Ministry of Internal Affairs

The Ministry of Internal Affairs of Georgia proactively publishes registered crime statistics since 2018. Statistics review annual data, as well as numbers according to months.<sup>19</sup> This sub-chapter will examine the total number of registered drug-related crimes (Articles 260-274 of the CCG) along with the statistical data concerning individual crimes specified by the Chapter on drug-related crimes.

The total number of registered drug-related crimes in 2022 has increased by 41% since 2021. While in 2021, 3873 drug-related crimes were recorded, 2022 detected 5471 such crimes. Undeniably, the increasing statistics should be primarily caused by the ease/removal of Covid-19 regulations. However, additional factors might have influenced the increased numbers. Two circumstances corroborate that causes for such significant in-

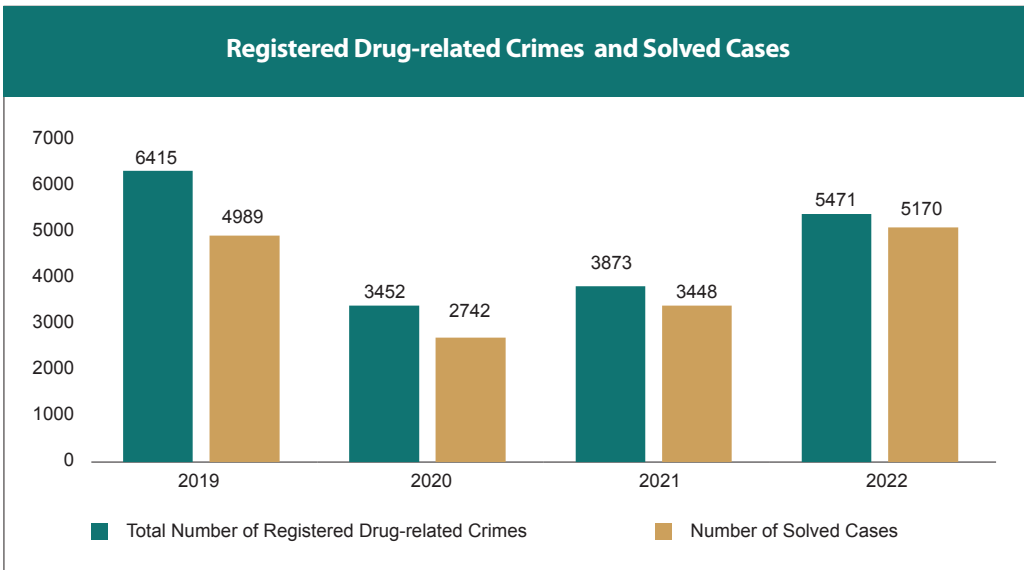
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<sup>19</sup> Ministry of Internal Affairs – Registered Crime Statistics, 2022 (January-December) available at: <https://bit.ly/3NoUh5K> (accessed on: 31.05.2023).

crease are complex, and the detection of them requires special efforts of the relevant agencies:

1. Restrictions imposed to combat the pandemic significantly deterred many crimes. The effects of those restrictions are particularly discernible concerning detecting property-related crimes. Despite these difficulties, the highest increase of <sup>20</sup> in the reporting period among all the crimes of CCG was documented on drug-related crimes.
2. Liability for committing drug-related crimes, as mentioned, is determined by CCG and the AOCG (Articles 45 and 45<sup>1</sup>). Offenses are distinguished from crimes, not by the circumstances, but by the amount of the drug. Accordingly, the lifting of restrictions should have impacted administrative offenses too. But, on the contrary, the number of registered administrative offenses indicates a downtrend in 2020-2022 (quantitative data will be depicted in detail in subsequent subsections).

The total number of registered drug-related crimes in 2019-2022 and the percentage of solved cases are as follows:



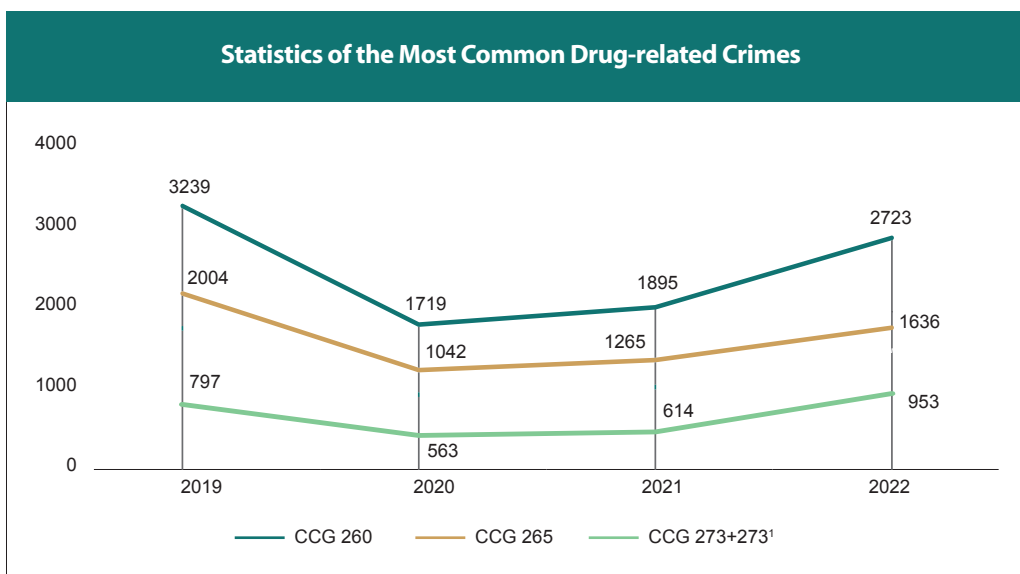
Sixteen articles of the CCG envision drug-related crimes. The upward trend in 2022 was detected concerning eight articles, while a downward was spotted only in the case of three articles. Not unlike the previous years, the most common drug-related crimes of 2022 were:

20 The difference in registered drug crimes in 2022 compared to 2021 was 1598.



- Illegal manufacture, purchase, and storage of drugs (Article 260 of the CCG) – 2723 registered crimes;
- Illegal purchase/storage of cannabis or marijuana (Article 273<sup>1</sup> of the CCG) – 1562 registered crimes;
- Illegal planting, growing, or cultivating of plants containing narcotics (Article 265 of the CCG) – 953 registered crimes.

The chart presents the numbers for the most common drug-related crimes committed in 2019-2022:



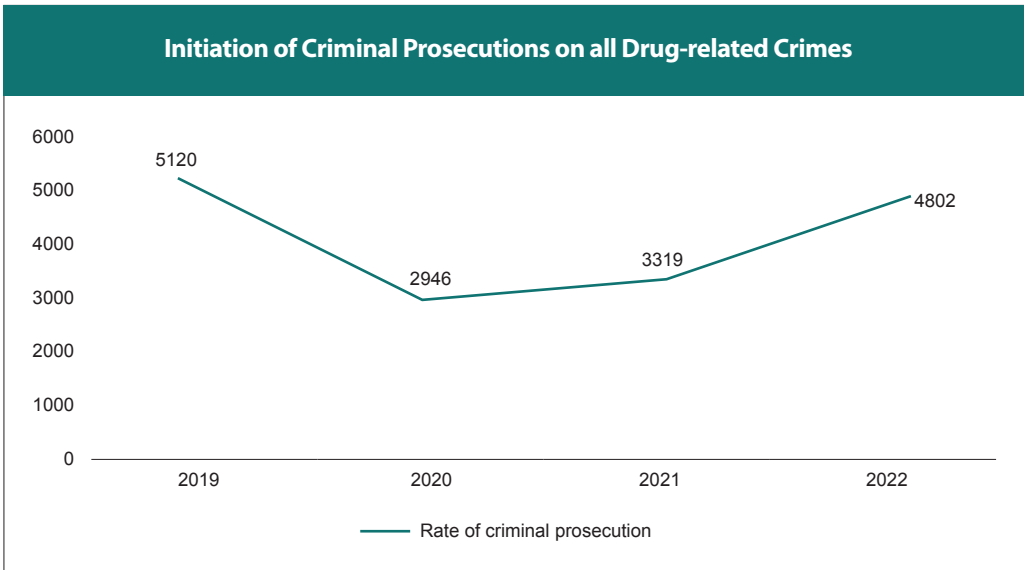
Until 2022, the Ministry of Internal Affairs published statistics on registered crimes only, according to articles. Since most but different drug-related crimes are combined within one article, it was impossible to fully discern the trends of the drug situation as the degrees of danger to the public were also different. Therefore, the fact that the Ministry separately produced the data about drug dealing crime (Articles 260, 273<sup>1</sup> of the CCG) in 2022 must be emphasized as a positive step.

### 3.2. Statistics on Criminal Prosecution and Verdicts for Drug-related Crimes

Public information received from the Office of the Prosecutor General and the Supreme Court of Georgia was processed to assess the quantitative dynamics of initiating criminal prosecutions for drug-related crimes and the respective verdicts.

Information<sup>21</sup> provided by the Prosecutor’s Office confirmed that in 2022, the initiation rate of criminal prosecution for drug crimes increased significantly compared to the previous year. It must be emphasized that comparing the quantitative data of 2022 with the data of 2019 is more appropriate since 2019 was the last year before the pandemic. Accordingly, comparing the data for 2019 and 2022 does not require us to consider restrictive regulations.

The total statistics of initiation of criminal prosecutions for drug crimes (Articles 260-274 of CCG) in 2019-2022, are as follows:



The chart depicts only a slight decrease in criminal prosecutions initiated for drug-related crimes (in 2022 compared to 2019). This confirms that the relatively optimistic picture of the previous two years could be primarily the result of Covid-regulations, while the primary challenges have mostly stayed the same.

Most commonly, criminal prosecution in 2022 was initiated concerning:

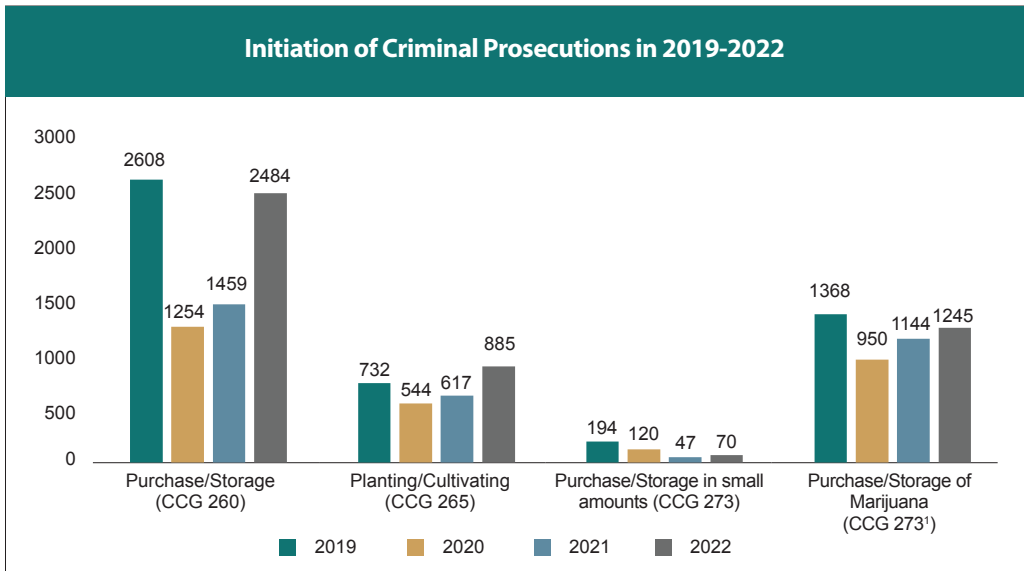
- The crime defined by the first paragraph of Article 260 of CCG (illegal manufacturing, production, purchase, storage, transportation, transfer of drugs, their analogues, precursors or new psychoactive substances)
- The crime defined by subsection “a” of part 2 of Article 265 of the CCG (illegal planting, growing, or cultivation of plants containing narcotics in large quantities) – 241 times;

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21 Letter No.13/5659 of the Office of the Prosecutor General dated January 30, 2023.

- The crime defined by subsection “a” of part 3 of Article 265 of the CCG (illegal planting, growing, or cultivation of plants containing narcotics in particularly large quantities) – 462 times;
- The crime defined by part 2 of Article 273<sup>1</sup> of the CCG (Illegal purchase, storage, carrying, or transfer of the cannabis plant or marijuana) – 230 times.

The chart depicts the quantitative ratio of initiation of criminal prosecutions for the most common drug crimes in 2019-2022.<sup>22</sup>



The chart shows that 2019’s indicators of the initiation of prosecution slightly exceed 2022’s. We see a different picture only concerning the Article 265 of the CCG (planting, growing, and cultivation) – 885 persons were prosecuted in 2022, while in 2019 – 732. The positive trend is recorded only regarding Article 273 of the CCG (Illegal production/purchase/consumption of a narcotic drug in small quantity). The lower rate of initiation of prosecution under this article is a positive trend since the crime belongs to a less grave category of crime that emanates minimal dangers to the public. The Social Justice Center reiterates the need for decriminalizing drug consumption. Substance use disorder is a problem of the health domain; it should not be dealt with punitive but rather preventive mechanisms.

<sup>22</sup> The chart shows the total rate of initiation of prosecution per each article (all parts and sub-sections).

As for the termination rates – 2022 recorded only 20 cases of termination of prosecution, most of them (7) related to crimes set by Part 2 of Article 273<sup>1</sup> of the CCG (Illegal purchase, storage, carrying, or transfer of the cannabis plant or marijuana).

The number of terminations of prosecution in 2019-2022, per specific articles, is as follows:

Article of CCG <sup>23</sup>	2019	2020	2021	2022
261	2	2	0	1
265	2	1	5	6
273	1	0	2	0
273 <sup>1</sup>	3	11	14	7

As data provided by the Supreme Court<sup>24</sup> indicates the courts of first instance heard 3696 cases in 2022,<sup>25</sup> and rendered 3735 guilty verdicts.<sup>26</sup> These numbers catch approximately a 30% increase in heard cases/guilty verdicts of 2021. Despite the surge in heard cases, the number of acquittals decreased, whereas the number of cases heard without imposing the sentence remained intact. The most common sentences imposed by the courts in 2022, like in the previous year, were conditional sentences. Out of all heard cases, conditional sentences were imposed in more than 66%. That is 10% higher than the respective rate of 2021.<sup>27</sup> It is noteworthy to stress that 92% of cases were concluded through plea agreements.<sup>28</sup>

In the reporting year, persons convicted of drug-related crimes were most often sentenced to a fine and, the least usually – community service. The decreasing trend in the imprisonment rate must be evaluated positively. 415 individuals were imprisoned in 2022, 11% of the total number of people convicted of drug-related crimes. The ratio was 13.7% in 2021 and 20% in 2020.

The quantitative distribution of sentences in the last four years imposed on persons convicted of drug-related crimes is as follows:

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23 The table does not include those crimes concerning which the rate of termination of prosecution was not recorded in 2019-2022.

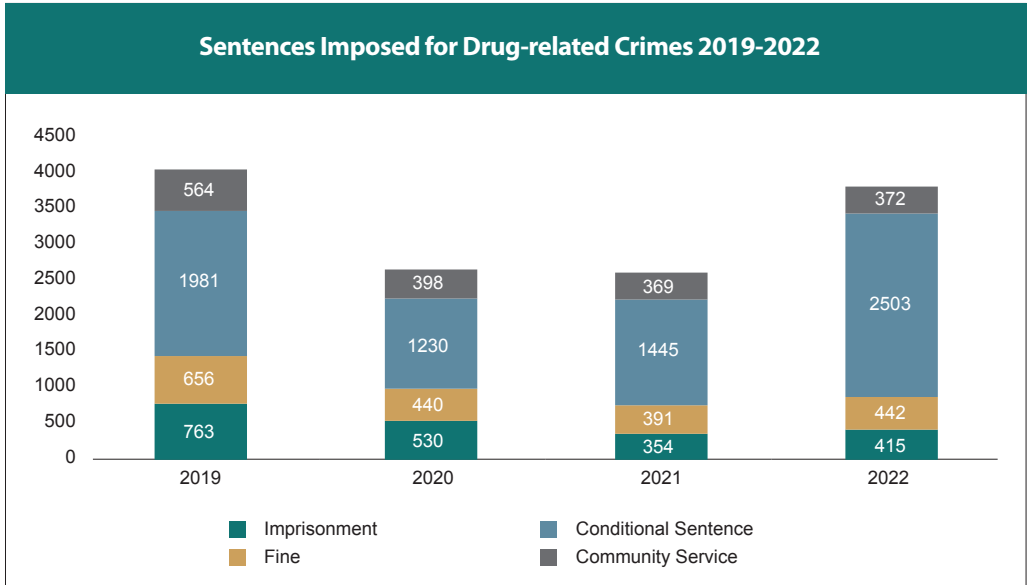
24 Letter No. P-116-23 of the Supreme Court dated February 17, 2023.

25 By heard cases we mean the cases concluded with verdicts.

26 Quantitative data include crimes committed by groups, which is why the number of persons exceeds the number of imposed sentences.

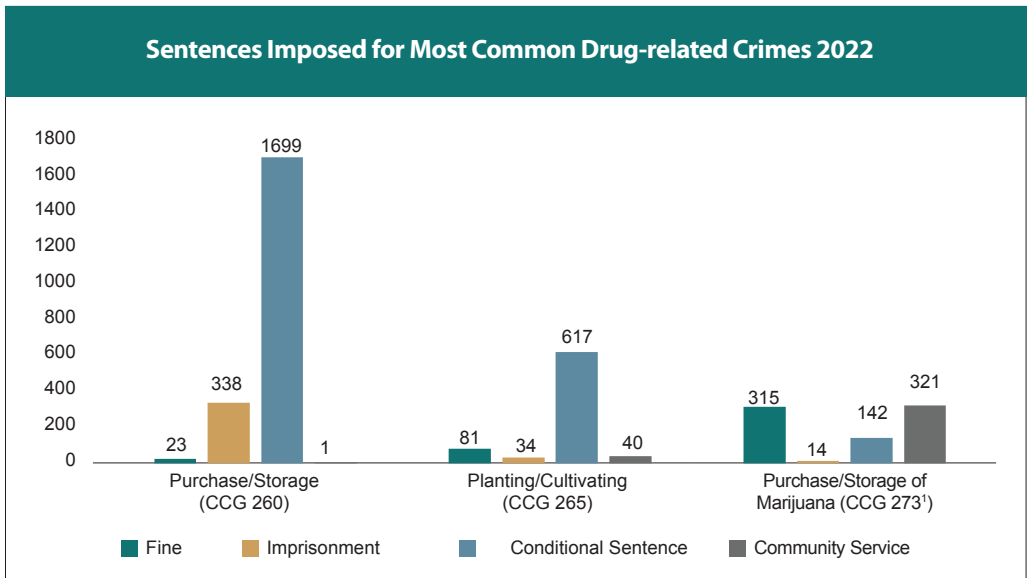
27 The Social Justice Center, Giorgi Potskhverishvili, Drug Policy in Georgia – Trends in 2021, 2022.

28 Plea agreements were concluded in 90% of the cases in 2021.



The Social Justice Center requested statistical data on verdicts and sentences for specific drug-related crimes.

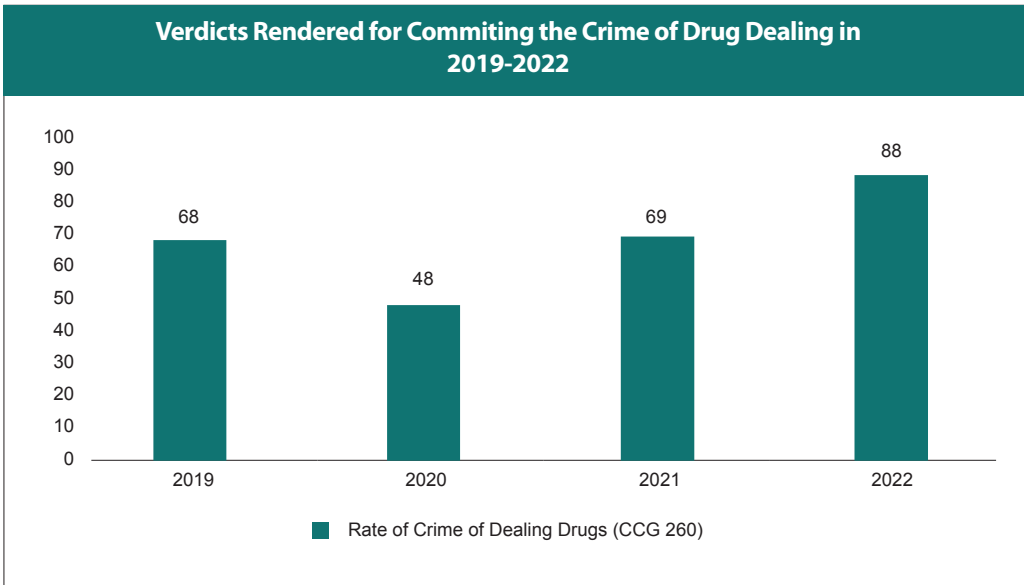
Chart<sup>29</sup> shows the ratio of sentences imposed for committing the most common drug-related crimes.



<sup>29</sup> Due to the small number, the chart does not include statistics on exemption from punishment. In 2022, a total of 18 people were convicted without being sentenced for drug-related offenses.

As the chart indicates, the conditional sentence is widely used by the courts of first instance for the crimes of Articles 260 (illegal purchase/storage) and 265 (illegal planting/cultivation) of the CCG. However, the conditional sentence is relatively infrequently used regarding Article 273<sup>1</sup> (illegal purchase/storage of the cannabis plant or marijuana in small amounts). It can be caused by the fact that courts tend to use conditional sentences to bypass imposing imprisonment. The CCG does not envision imprisonment for the basic part of the crime set by Article 273<sup>1</sup>. The chart illustrates the courts' tendency to impose community service for crimes of Article 273<sup>1</sup>. This logical outcome is conditioned by the fact that Article 273<sup>1</sup> sets only non-custodial sentences (fines and community service) for the main and most common parts of (the first, second, and third parts of the article).

The chart displays numbers regarding verdicts<sup>30</sup> rendered in 2019-2022 regarding convictions for committing the crime of dealing drugs.<sup>31</sup>



Even though the amendments of 2021 significantly aggravated the sentence for dealing narcotic drugs, the number of verdicts for committing mentioned crimes has not decreased but has increased through reporting year. Drawing accurate conclusions about the prevalence of the specified crime based only on the number of verdicts is quite challenging. However, the presented trend emphasizes (at least) that the severity of the sen-

30 Parts 4, 5, and 7 of Article 260 of the Criminal Code. In the period before the implementation of the relevant legislative changes, only parts 4 and 5 of Article 260.

31 Letter No. P-116-23. of the Supreme Court dated February 17, 2023.



tence does not automatically ensure crime prevention. This type of legislative amendment should be grounded on studies of the respective field.<sup>32</sup>

### 3.3. Forced Drug Testing

Despite the legislative amendments, the so-called “street drug testing,” i.e., random testing of people, remains an unethical and repressive mechanism,<sup>33</sup> posing risks of an unjustified interference with privacy rights. Further, testing without having relevant evidence creates the risks of using the excessive police power.<sup>34</sup> Therefore, the Social Justice Center continues to assert that the practices and legislation regarding forced drug testing are very problematic.<sup>35</sup> The Public Defender of Georgia applied to the Constitutional Court and demanded repealing the norms regulating “street drug testing” in 2015.<sup>36</sup> However, the court has not yet assessed the constitutionality of the contested norms.

Forced drug testing is regulated by the Order<sup>37</sup> of the Minister of Internal Affairs. The law did not prescribe the specific grounds for forcing a person to undertake a drug test until 2015. Based on reasonable doubt, law enforcement officers were empowered to act on their suspicion. Although the law now defines three specific grounds for forced drug testing,<sup>38</sup> risks of arbitrariness and unjustified human rights restriction persist due to broad and vague law.<sup>39</sup>

Recently, the rate of submitting individuals to forced drug testing has significantly decreased. It was somewhat challenging to determine whether the downward trend was caused by a well-thought-out strategy of the Ministry of Internal Affairs or just a conse-

32 For more detailed information on this topic, see The Social Justice Center, Giorgi Potshverishvili, Drug Policy in Georgia – Trends in 2021, 2022, p. 16.

33 For more detailed information on this topic, see The Social Justice Center – What has changed in the practice of forced drug testing? available at: <https://bit.ly/44a9s9x> (accessed on: 31.05.2023).

34 I.Kachkachishvili et al. -“ Study of the Social Aspects of Crime and Punishment”, 2021, p. 22.

35 The Social Justice Center, Giorgi Potshverishvili, Drug Policy in Georgia – Trends in 2021, 2022, p. 24.

36 The Public Defender of Georgia v. the Parliament of Georgia, the Minister of Internal Affairs of Georgia, and the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia (Constitutional claim of November 25, 2015).

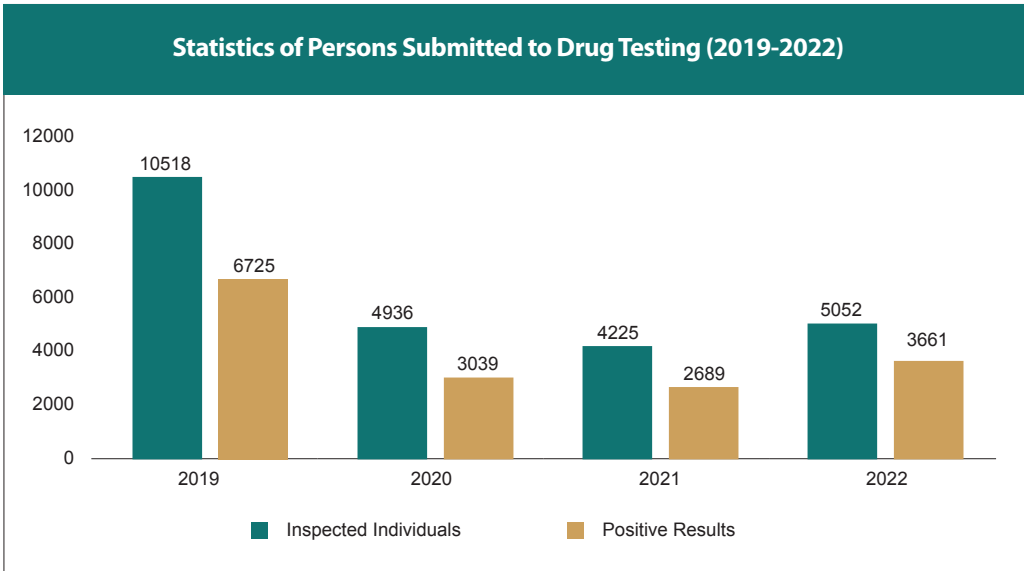
37 Order No. 725 of the Minister of Internal Affairs of Georgia, dated September 30, 2015 “On the approval of the instruction to submit a person for testing to determine the fact of the consumption of narcotic drugs and/or psychotropic substances.”

38 The Social Justice Center – What has changed in the practice of forced drug testing? p. 3, available at: <https://bit.ly/44a9s9x> (accessed on: 31.05.2023).

39 Especially the basis provided for by subparagraph “c” of the first paragraph of Article 3 of Order No. 725 of the Ministry of Internal Affairs.

quence of restrictions imposed to combat Covid-19. Comparing the numbers of 2022 to pre-pandemic 2019 can be indicative.

The chart depicts how many persons underwent forced drug testing and how many positive results were detected in 2019-2022.



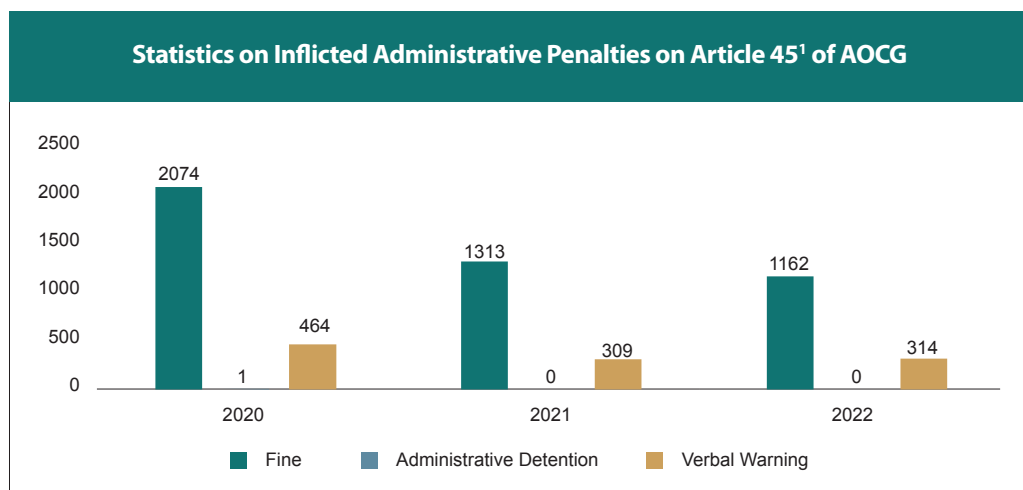
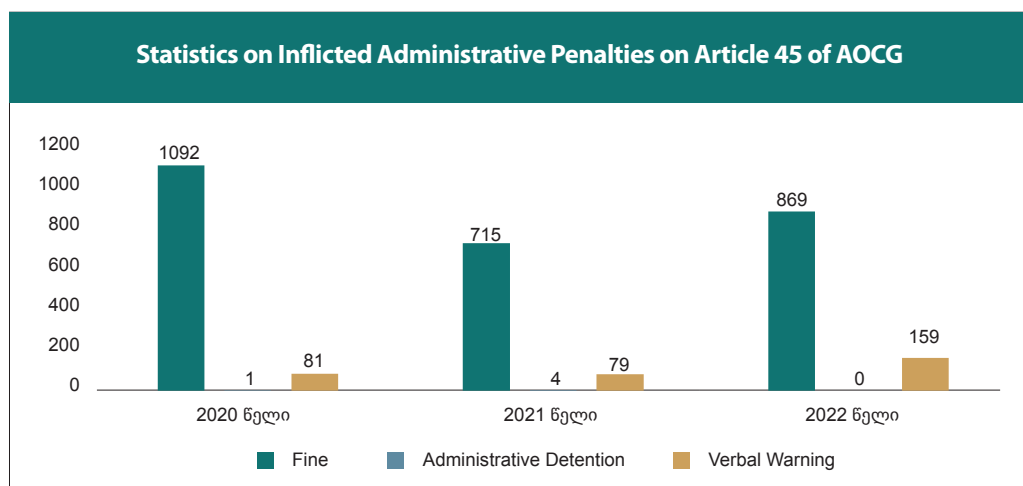
The chart shows an upward trend in the number of people who were submitted to drug testing (2022 compared to the previous two years); however, even this increase is twice as less as pre-pandemic (2019). The positive result index in 200 was 72%, whereas in the previous three years figure was at most 64%. The mentioned ratio suggests that the selection process of persons subjected to testing has improved in recent years and falls within a logical framework. The harmful practice of forced random drug testing based on stereotypes and the subjective opinions of police officers is gradually changing. The Social Justice Center welcomes positive steps in reducing the index of forced drug testing but firmly believes that consumption must be decriminalized. Decriminalization of consumption would entail that individuals will be subjected to drug testing only when there are risk factors to consider.

### 3.4. Administrative Liability for Drug Offenses

Articles 45 and 45<sup>1</sup> of the Administrative Offences Code of Georgia (hereinafter: AOCG) regulates the consumption/purchasing and possession of narcotic drugs in small amounts and set respective types of liability. Administrative liability is strictly connected to a small amount of narcotics.

As a general rule applying to all types of offenses, including the ones prescribed by Articles 45 and 45<sup>1</sup> of the AOCG, the legislation allows the authorized body to release the offender from administrative liability and give them only a verbal warning if s/he committed petty administrative offense.<sup>40</sup>

The chart is based on statistics provided by the Supreme Court of Georgia<sup>41</sup> and features the number of persons held administratively liable in 2019-2022 for offenses regulated by Articles 45 and 45.<sup>1</sup>



40 Administrative Offences Code of Georgia , Article 22.

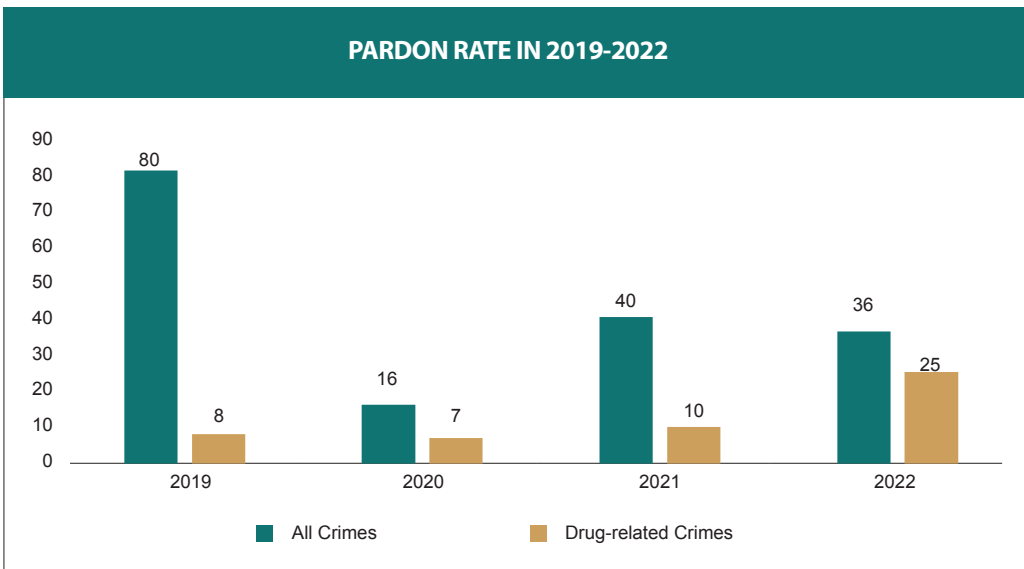
41 Letter No. P-53/23 of the Supreme Court dated January 30, 2023.

The charts convey a slight increase in 2022 in the number of persons on whom administrative penalties were imposed under Article 45 (illegal manufacturing/purchase of a small quantity of narcotic drugs) of the AOCG. As for Article 45<sup>1</sup> (illegal purchase/storage of the Cannabis plant or Marijuana in small amounts), analysis of 2020-2022 data underlines a downward trend. The increase in release rate from administrative liability and application of verbal notice should be evaluated positively.

### 3.5. Pardon Mechanism

Pardon is an exclusive power of the President granted by the Constitution aimed to advance convicts' rights. Besides the intended humane treatment of convicts, the pardon mechanism has significant social and political facets.<sup>42</sup> The Social Justice Center requested data from the Administration of the President of Georgia<sup>43</sup> to assess how often the President utilizes her power to grant a pardon to convicts of drug-related crimes. The President pardoned 61 convicts (Both those who were imprisoned and those who served other types of punishment) in 2022. 25 were serving sentences for committing drug-related crimes, 20 were fully released from serving their prison sentence, and 5 had their remaining sentence reduced.

The chart shows the number of persons pardoned by the President in 2019-2022.



42 For more detailed information on this topic, see: Social Justice Center, Tornike Gerliani – “The Politics of Pardon and the Logic of the Constitutional Order”.

43 Letter No.397 of the Administration of the President of Georgia dated January 25, 2023.

The increased number of pardons in 2022 of persons convicted of drug-related crimes should be assessed as a positive step. The number of pardoned convicts of drug crimes in 2022 equals the sum of those pardoned in the previous three years.<sup>44</sup> The Social Justice Center hopes that the President will grant pardons even more actively in the coming years for social and legal rehabilitation of persons convicted of such crimes.

### 3.6. Covert Investigative Activities

Amendments of 2022 to the Criminal Procedure Code significantly deteriorated legislation regulating secret surveillance.<sup>45</sup> The time limits determined for the wiretapping were extended; the range of crimes subjected (if needed) to covert investigative actions has been expanded. Regulations intensify the risks of law enforcement arbitrariness and unwarranted interference in the private lives of the accused (including in drug-related crimes).

Supreme Court proactively publishes statistics of motions discussed concerning covert wiretapping and recording of telephone communication per the qualification of the crime.<sup>46</sup> The courts of first instance discussed 91 motions concerning Article 260 of the Criminal Code (narcotic drug production/purchase/storage/sell). 78 were fully approved, 3 were partially approved, and only 10 were rejected.

As mentioned, Article 260 of the CCG unifies several criminal acts – among them, dealing narcotic drugs emanates the greatest public danger. Unfortunately, the statistics published by the Supreme Court prevent us from determining whether the motions were filed concerning the drug dealing or other crimes prescribed by the same article. Accordingly, assessing whether conducting covert investigative activities was caused by objective necessity is burdensome.

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44 Despite the recently increased number of pardons, the previous President of Georgia granted pardons much more actively, possibly due to objective reasons (repressive/strict legislation/inconsistent practice existing before 2018).

45 Joint statement of NGOs – The legislation on wiretapping deteriorates further, available at: <https://bit.ly/3oxpvO5>, (accessed on: 31.05.2023).

46 See the statistics of wiretapping and recording telephone communication, available at: <https://bit.ly/3N3OyRE>, (accessed on: 31.05.2023).

## 4. Deprivation of Civil Rights

Article 3 of the Law of Georgia “on Combating Drug-related Crime” (hereinafter “law”) automatically deprives convicts of drug-related crimes of some of their civil rights.<sup>47</sup> Contrasted to that, the judge decides on whether to forfeit the rights of administrative offenders (Articles 45<sup>1</sup> of the AOCCG).<sup>48</sup> Affected civil rights are:

- The right to drive a vehicle;
- The right to medical and/or pharmaceutical practice and the right to establish, manage, or represent a pharmacy;
- The right to practice law;
- The right to work in pedagogical and educational institutions;
- The right to work in public bodies;
- Passive voting rights;
- The right to manufacture, purchase, store, and carry weapons.

The law applies to the following persons:

1. Drug users;
2. Drug dealers;
3. Facilitators of drug-related activities;
4. Facilitators of the spread of narcotic drugs;
5. Administrative offenders (who committed the offense(s) of Article 45<sup>1</sup> of the AOCCG – illegal purchase, storage, transportation, transfer, consumption, and/or being under the influence of a small amount of cannabis or marijuana);

The law sets various terms for the deprivation of rights – depending on the crime committed terms range from 3 to 20 years.<sup>49</sup>

The Social Justice Center believes that the legislation concerning the deprivation of rights is deeply problematic in both terms – for those convicted of drug-related crimes and administrative offenders. Instead of a blanket approach, the judge who reviews the case should have the opportunity to assess the need and appropriateness of depriving convicts of their rights, considering individual circumstances. While deciding, the following circumstances might be taken into account: type of crime, type and amount of

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<sup>47</sup> Article 3 of the law.

<sup>48</sup> *ibid*, Paragraph 1<sup>2</sup>.

<sup>49</sup> Article 2 of the law- Definition of terms: For instance, person is defined as drug user if s/he committed crime(s) set by Article 273, Part 1 of the Article 273<sup>1</sup> or/and Articles 275/276.



drug, whether there is indicated aim to sell the drugs, the individual characteristics of the person, etc. There are several good reasons why an individual approach must be applied while deciding on rights deprivation:

- If the judges have the discretion to decide on the issue, they will be obliged to justify the necessity of deprivation of the right;
- The rulings concerning deprivation of rights will not be formal but based on the circumstances of the specific case;
- The judge will have the freedom to forfeit not all but only those rights, the exercise of which poses risks considering the crime committed and the personality of the convict.
- The judge will be authorized to decide the reasonable and specific timeframe (within the limits stipulated by law) for deprivation while considering the case's circumstances. As for now, the law does not set minimum and maximum times for the deprivation of the rights. The Law provides for only a single specific term, excluding the possibility of individual approach and imposing proportional restrictions.

Considering these factors, experts in the field believe that the mechanism of deprivation of civil rights has been problematic for years and needs to be reformed. Contrary to that spirit, legislative amendments of 2018<sup>50</sup> also extended the mechanism of the deprivation of rights to administrative offenders (Article 45<sup>1</sup> of the AOCG). Nonetheless, unlike criminal convicts, administrative offenders are not automatically deprived of their rights – the Judge reviewing the case has discretionary powers to decide. Accordingly, the judge has a variety of choices:

- Not to deprive the above-listed rights of the offender;
- To deprive some of the rights of the offender but not all of the listed rights;
- To determine the term of deprivation of the rights (maximum three years).

Empowering the judges with discretionary powers instead of blanketly depriving rights enables judges to come up with fair solutions. However, it must be emphasized that the deprivation of civil rights should not be applied to administrative offenders. Administrative responsibility under Article 45<sup>1</sup> of the AOCG is triggered only when the circumstances of the case indicate small amounts of marijuana/cannabis. A small amount of marijuana/cannabis does not lead to the rapid formation of addiction on the one hand, and on the other hand, poses only hypothetical risks to public health. Therefore, deprivation of civil rights for committing an administrative offense with this type and amount of narcotic substances is a disproportionate restriction of one's rights.

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50 Law of Georgia – “On amendments to the law “on Combating Drug-related Crime” – 30/11/2018. Available at: <https://bit.ly/45ZaOED> (accessed on: 31.05.2023).

The Social Justice Center requested statistical data from the Supreme Court concerning the deprivation of rights for committing administrative offenses. However, the requested information was not provided. The motivation for the denial was as follows: the form of statistical reports valid in courts does not include the information about the deprivation of civil rights provided by the Law of Georgia “on Combating Drug-related Crime”.<sup>51</sup> For the same reason, the Social Justice Center was unable to receive the requested information from the National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation either.<sup>52</sup> The public agencies uphold the unwelcome trend of refusing to issue public information since the requested data cannot be found in the statistics they have already produced. Refusal to provide public information on such grounds is against their legal obligations. This practice violates the right to access public information guaranteed by the Constitution.<sup>53</sup> General Administrative Code of Georgia does not exempt public institutions from responding to requests for large volumes of data or such information, which will require the research and processing information from other public institutions.<sup>54</sup> In addition, the processing of statistical data on the deprivation of civil rights is essential to assess how judges use their discretionary powers and how uniform is the practice of common courts. Therefore, it is unclear why these data are not recorded in courts.

The legislation envisions the grounds and procedures for restoring deprived civil rights. In particular, restoring deprived rights is allowed: 1. After the expiration of the term defined by law. 2. Based on the appeal of the National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation (hereinafter: “Agency”) to the Standing Committee for Considering Questions concerning the Execution of Non-Custodial Sentences and the Revocation of Conditional Sentences of the National Agency of Probation (hereinafter: “the Committee”).<sup>55</sup> 233 persons applied to the Committee in 2022, to restore their rights, of which 206 applications were approved.<sup>56</sup>

The Social Justice Center appealed to the Constitutional Court in 2015 and asked to review the automatic deprivation of civil rights for convicts. Constitutional Complaint<sup>57</sup> requests the court to repeal:

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51 Letter No. P-53/23 of the Supreme Court dated January 30, 2023.

52 Letter No.2/18391 of the National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation dated March 2, 2023.

53 Constitution of Georgia, Part 2 of the Article 18.

54 General Administrative Code of Georgia , Part 1 of the Article 40.

55 Article 6 of the law.

56 Letter No.2/9675 of the National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation dated February 3, 2023.

57 Citizens of Georgia – Konstantine Labartkava, Malkhaz Nozadze, and Irakli Gigolashvili v. the Parliament of Georgia (Constitutional Complaint No. 2/12/702; 16.12.2015).

1. The norms of the Law of Georgia “on Combating Drug-related Crime” that provide for the automatic deprivation of civil rights for convicts in drug-related crimes;
2. The norm of the Law of Georgia “on Public Service” that imposes a blanket and absolute ban on convicts to be employed as public servants.

According to the complaint, contested legal norms contradict<sup>58</sup> rights of equality, free personal development, inviolability of human dignity, electoral rights, the right to hold public office, and freedom of labor. The constitutional complaint was registered in 2015. Almost 8 years after the registration, the Constitutional Court has yet to make a final judgment. The Social Justice Center considers it unjustified to delay the case for this length of time, especially considering that the complaint concerns one of the most pressing problems.<sup>59</sup>

To summarize, the current mechanism of deprivation of rights has no legitimate basis and only serves to stigmatize drug users. The legislation already empowers the judge reviewing the criminal case to limit various activities of the convict by imposing additional punishments. While it is within the judge’s authority to impose an additional sentence, deprivation of rights is an automatic procedure. Such an arrangement is a clear continuation of the “zero tolerance” policy and disproportionately restricts the rights of convicts.

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58 Since the complaint was filed in 2015, it refers to the relevant articles of the old edition of the Constitution.

59 The decision-making process in the Constitutional Court is being delayed concerning many complaints. For more detailed information on this topic, see The Social Justice Center – The problem of delaying cases by the Constitutional Court of Georgia, available at: <https://bit.ly/440kpdF>, (accessed on: 31.05.2023).

## 5. Prevention and Harm Reduction

Drug abuse prevention involves a chain of interrelated measures for protecting public health and safety. The links of the “chain” are prevention, treatment/rehabilitation, harm reduction, and supply reduction.<sup>60</sup> Several targeted measures to prevent drug abuse have been recently implemented in Georgia, although most of them are fragmented. Accordingly, mechanisms that ensure a complex and cohesive approach at the national level must be developed, considering all forms of prevention.<sup>61</sup>

As mentioned, the Interagency Council on Drug Abuse approved the Drug Action Plan for 2021-2022 at the beginning of 2021.<sup>62</sup> The action plan, *inter alia*, compounds a list of prevention activities. Critical components of prevention are to strengthen primary prevention and to implement evidence-based programs in schools.

According to the Office of Resource Officers of Educational Institutions,<sup>63</sup> there are two programs implemented in schools tailored to prevent the use of narcotic substances:

- For students under 13 – the program “Evidence-based Method (EUDAP Unplugged Program) for the Prevention of Substance Use”;
- Program for students over 13 – “Prevention of Risky Behaviors.”

In the reporting year, the Psychosocial Service Center’s program focused on students under 13 was conducted in 8 groups of 4 public schools; the program designed for students over 13 – in 49 groups of 41 public schools. In total, 539 sessions were held within the framework of the programs in the reporting period.<sup>64</sup>

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60 National Strategy for Prevention of Drug Abuse 2021-2026, available at: <https://bit.ly/43BgT8G> (accessed on: 31.05.2023).

61 National Center for Monitoring the Drug Situation – Annual Report on the Drug Situation 2019.

62 National Strategy for Prevention of Drug Abuse 2021-2026, available at: <https://bit.ly/43BgT8G> (accessed on: 31.05.2023).

63 Letter No. MES 4 23 0000471903 the Office of Resource Officers of Educational Institutions dated April 28, 2023.

64 Ibid.

## 5.1. Prevention of Fatal Overdoses

The estimated number of injecting drug users in Georgia ranges from 50,000 to 56,000.<sup>65</sup> There are no official statistics on overdose deaths nationwide; however, according to international statistics, approximately 70,000-100,000 people die globally each year.<sup>66</sup> Therefore, the issue of overdose management is particularly relevant today worldwide, including in Georgia.<sup>67</sup>

The availability of Naloxone is vital to prevent fatal opioid overdoses.<sup>68</sup> Naloxone is a drug that momentarily blocks the effects of opioids – it can save lives. It is listed in group II drugs and issued with a form N3 prescription in Georgia. The Ordinance of the Government of Georgia<sup>69</sup> of March 22, 2022, added Naloxone to the list of “first aid kit” medications, meaning that the drug can be purchased without a prescription in an emergency.

Uncomplicated public access to Naloxone remains a challenge for Georgia, despite the positive step of adding it to the “first aid kit” – pharmacy chains have a relatively limited stock of drugs. Analyzing the websites of pharmacy chains (PSP-Pharmacy LLC, Aversi, GPC-Pharmacy, Pharmadepo, and Impex) proves that Naloxone is only in stock in the Aversi chain, but only in 10 pharmacy shops in Tbilisi, and 9 pharmacy shops throughout regions. The Social Justice Center requested information from the pharmacy chains about the total amount of Naloxone imported and sold by the private pharmacy chains during the reporting period. However, none of them responded.<sup>70</sup> Considering the vital importance of Naloxone, the Social Justice Center calls on the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia to ensure the availability of the drug through communication and advocacy with pharmacy chains.

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65 Bemoni Public Union and Curatio International Foundation. (2017). Evaluation of the size of injecting drug users in Georgia.

66 UNAIDS, Do No Harm, 2016. Available at: <https://bit.ly/3C4WWeE> (accessed on 31.05.2023).

67 Statement of the Georgian Harm Reduction Network GHRN is available at: <https://bit.ly/3H7Dil5> (accessed on: 31.05.2023).

68 Opiates and opioids include the following substances: morphine, codeine, heroin, methadone and fentanyl, desomorphine, so-called Sirets, etc.

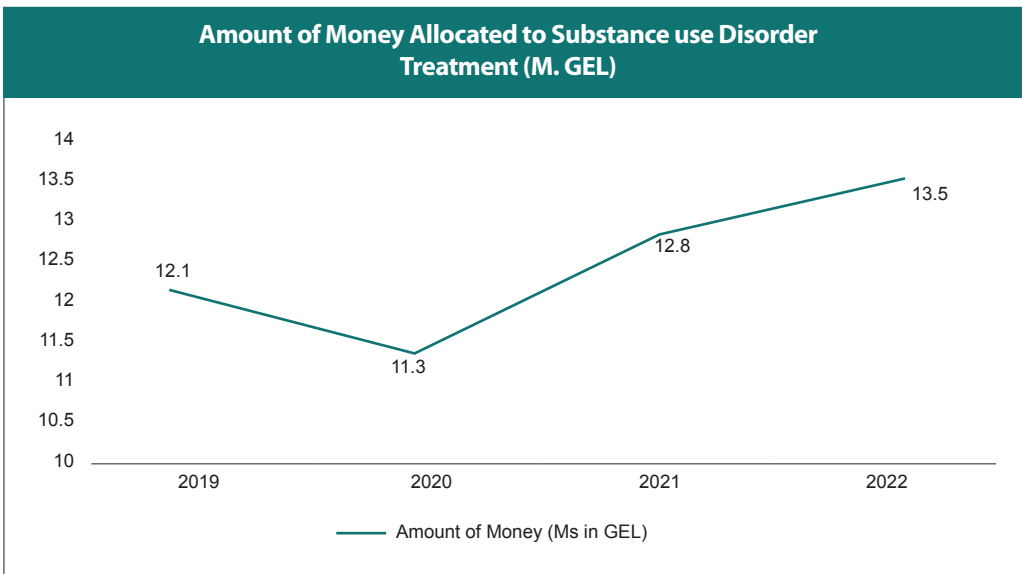
69 Ordinance No. 141 of the Government of Georgia dated March 22, 2022 is accessible at: <https://bit.ly/3F-6Wjln>, (accessed on: 31.05.2023). See also the “first aid kit” list, available at: <https://bit.ly/3LH0PtI> (accessed on 31.05.2023).

70 Pharmacy chains have no obligation to provide information.

## 5.2. Treatment and Rehabilitation Programs

Two methods of opioid use disorder treatment are employed in Georgia: abstinence-based therapy and opioid agonist treatment, i.e., substitution therapy. Many years of international experience has shown that treatment methods focused on drug withdrawal from the very first stages tend to be less effective.<sup>71</sup> Therefore, in the modern medical field, opioid substitution therapy (hereinafter: OST) is recognized as the most effective and long-lasting method of treatment and management of opioid use disorders. OST treatment primarily facilitates reducing illegal drug consumption, as well as to reduces overdose deaths and risk behaviors related to HIV infections.<sup>72</sup>

The OST program has been implemented in Georgia since 2005. The number of beneficiaries involved in the program has been increasing yearly. The chart illustrates the money allocated annually from the healthcare budget for substance use disorder treatment in 2019-2022.



Ministry of Internally Displaced Persons from Occupied Territories, Labor, Health and Social Affairs of Georgia did not provide the Social Justice Center with public informa-

71 Center for Mental Health and Prevention of Addiction – Methadone Maintenance Treatment available at: <https://bit.ly/43CyY6z> (accessed on: 31.05.2023).

72 EMC, Tamar Gvasalia Substitution Treatment Programs for Opioid Dependent Persons in the Penitentiary System – A Legislative Analysis, 2021.

tion about treatment, rehabilitation and harm reduction services for drug users within 5 months after public information request.<sup>73</sup> Although the information requested in 2022,<sup>74</sup> reveals that the following types of treatment services are provided to persons with a substance use disorder:

- Inpatient detoxification and primary rehabilitation for mental and behavioral disorders caused by the consumption of opioids, stimulants, and other psychoactive substances;
- Provision of the substitution therapy program and delivery of substitute pharmaceutical drugs (transportation, escort) in the city of Tbilisi and regions;
- Provision of psychosocial rehabilitation;
- Provision of short-term and long-term detoxification with substitute pharmaceutical products in N2 and N8 penitentiary facilities;
- Inpatient services for mental and behavioral disorders caused by alcohol use disorder;
- Within the framework of the state program of “health promotion” – prevention of substance addiction (including drugs) and gambling addiction.

Two programs of opioid substitution therapy (OST) are implemented in Georgia – Methadone and Suboxone. As of July 2022, more than 12000 beneficiaries were involved in both state programs. Despite the growing number of beneficiaries, utilizing OST programs in Georgia is still associated with several challenges. Foremost, the issue of geographical accessibility remains a challenge. Currently, 22 substitution therapy centers are operating in Georgia. For instance, programs do not cover Kvemo Kartli and Racha-Lechkhumi.<sup>75</sup> A survey on users’ satisfaction with substitution therapy services reveals that beneficiaries’ treatment process is hindered by the daily requirement to visit the center. Therefore, the Social Justice Center, as well as various expert communities and international organizations, consider it appropriate to provide stable beneficiaries with the possibility to receive multi-day dosage.<sup>76</sup>

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73 The Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs did not provide the Social Justice Center with public information, despite repetitive formal requests and several attempts of telephone communication.

74 Letter No.01/8525 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs, dated March 30, 2022.

75 Natia Amiranashvili, “The methadone clinic is still met with resistance from the population | where lies the problem”, available at: <https://bit.ly/3mZ70Sk>, (accessed on: 31.05.2023).

76 For more detailed information on this topic, see The Social Justice Center, Giorgi Potskhverishvili, Drug Policy in Georgia – Trends in 2021, 2022, pp. 35-36.

## Conclusion and Recommendations

To summarize, regarding systemic changes in drug policy, 2022 did not significantly differ from previous years. The need for legislative amendments and harmonization of the judgments of the Constitutional Court into the legislation did not cease to exist. The problem of producing comprehensive statistics by public agencies continues to be a pressing problem. The report highlights that fragmented programs to prevent abusing drug consumption cannot provide large-scale and long-term success.

The drug-related legislation in force primarily employs punitive measures and targets supply restrictions. Therefore, fundamentally reforming drug policy to promote human health protection is vital. Preventive measures must be strengthened, not punitive measures. Systemic reform, as the Social Justice Center believes, is necessary to decriminalize the consumption of narcotic drugs, ease sanctions for drug crimes, reform the mechanism of deprivation of rights, and improve the treatment-rehabilitation system.

In the absence of the political will vital for systemic reforms, the Social Justice Center calls on the state agencies to take at least the following steps to improve the drug situation and humanize the drug policy:

### *The Parliament of Georgia:*

- To accomplish activities of the Drug Action Plan for 2021-2022 – implement relevant legislative amendments and timely review of bills that are already initiated in the Parliament;
- To implement appropriate legislative amendments for harmonization of the judgments of the Constitutional Court in the Criminal Code;
- To reform the mechanism of deprivation of civil rights – to revoke the possibility of deprivation of rights for administrative offenders; empower judges with discretionary powers in criminal convictions.

### *The Constitutional Court of Georgia:*

To timely review constitutional complaints and referrals for narcotic crimes and administrative offenses.



***The Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:***

- Make opioid substitution programs widely accessible and improve existing services;
- Take steps to replenish the supply of Naloxone in pharmacy chains.

***The Ministry of Education and Science of Georgia and the Office of Resource Officers of Educational Institutions:***

Within the framework of strengthening primary prevention, expand the circle of beneficiaries involved in evidence-based prevention programs;

***Member agencies of the Inter-agency Coordinating Council for Combating Drug Abuse:***

- Improve the quality of accessibility to public information;
- Improve methods of collecting and processing statistical data;
- Record the statistics concerning the deprivation of civil rights for administrative offenses.