



**GEORGIAN
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SAFEGUARDING THE RIGHTS OF DETAINEES THROUGH THE DEVELOPMENT OF EFFECTIVE POLICE PROCEDURES



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INTRODUCTION

The Administrative Offences Code of Georgia is one of the most repressive acts from the Soviet period, which creates significant problems in terms of human rights protection in the country and does not take into account international standards in this regard. For years, the need for a fundamental reform of this code has been put on the agenda, however, the state, instead of starting work on the reform, intensively uses repressive legislation against citizens, especially as a basis for restricting the freedom of assembly and expression, and tightens the responsibility established by the code more and more,¹ **including**, in the terms of administrative detention, etc.²

Every year, hundreds of people across the country apply to Georgian Young Lawyers' Association (hereinafter, GYLA) for legal assistance in cases of administrative offences. Lawyers of GYLA begin defending them from a stage of administrative arrest. In the process of many years of work on such cases, a number of systemic legislative and practical problems have been identified while exercising power by the following institutions: the Ministry of Internal Affairs and the court.³

It is vital that a person is guaranteed with an opportunity to fully exercise his/her rights from the very first minutes of administrative detention, so that the violation of any right in this process does not affect the outcome of the court's consideration of the case.

It is true that the legislation establishes a number of procedural rights, but it is problematic to realize them in practice due to the artificial barriers set by the law enforcement agencies. Thus, the purpose of this document is to offer recommendations to the Ministry of Internal Affairs of Georgia regarding the proper implementation of some procedural rights of persons arrested under administrative rules.

The recommendations presented in the document specifically concern: the detainee's relationship with the lawyers, determining his/her location and issues of making a call.

¹ The Law of Georgia on Amendments to The Administrative Offences Code 21.04.2021, available at <https://www.matsne.gov.ge/ka/document/view/5160023?publication=0#DOCUMENT:1>.

² there.

³ Administrative Offense Legislation, ongoing reform efforts and successful strategic litigation, available at <https://www.gyla.ge/files/news/GetFileAttachment-2.pdf>, Briefly on the legislation of administrative offences, available at <https://www.gyla.ge/files/2020/>.

1. NATIONAL LEGISLATION AND PRACTICE

Physical integrity of a person, his right to personal freedom is one of the main pillars of fundamental rights⁴ and is subject to special protection both at the national and international levels. In particular, Article 13 of the Constitution of Georgia establishes procedural guarantees for the person whom the state confronts for the purpose of ensuring law and order, protecting society and/or its specific member. Based on Article 13 of the Constitution of Georgia, human freedom is guaranteed not only by a material norm, but also by a set of procedural legal provisions adopted in constitutional status.⁵

Administrative arrest falls within the scope of Article 5 of the European Convention on Human Rights. It should be noted that, the exceptional cases provided for in subsections a-f of the article 5.1 of this convention, in which the restriction of freedom is justified, do not separately indicate the administrative-legal aspects. However, the practice established by the European Court confirms that Article 5 of the Convention is related to the proceedings of both criminal and administrative offenses provided for by national legislation.⁶ For the purposes of Article 5 of the Convention, the terms “detention” and “imprisonment” include any measure that restricts a person’s liberty - no matter what name it is given in national law.

Article 38 of the Criminal Procedure Code of Georgia grants the right to the arrestee to inform family members or close relatives about the arrest.⁷ Article 245 of the Administrative Offences Code imposes the similar obligation to that of Article 38 of the Criminal Procedure Code, but with a slightly different wording. In particular, a person arrested with administrative manner, is guaranteed with the following right: “if desired, to request that the fact of his/her arrest and his/her location be made known to a relative named by him/her, also to the administration at his/her place of work or study.”⁸

Administrative detention is an intensive form of interference with a person’s rights. Due to its content, the Constitution of Georgia establishes the rights for detainees. The state’s sphere of action is strictly limited by the constitution, and as a counterweight to its power, the individual is equipped with such procedural rights that will protect him/her from unjustified and/or excessive interference in the right to freedom by the state.⁹ At the same time, the existing constitutional guarantees regarding the arrest of a person apply both to the arrest and detention provided for by the Code of Criminal Procedure, as well as to the same relationship regulated by the Administrative Offences Code.¹⁰

Apart from the Constitution, the guiding rules by which the authorized body acts after arresting a person are spelled out in the Administrative Offences Code of Georgia. In particular, according to the mentioned act, in the event of an administrative arrest, the arresting officer

⁴ Decision No. 1/1/503, 513 of the Constitutional Court of Georgia dated April 11, 2013 in the case “Citizens of Georgia - Levan Izoria and Davit-Mikheili Shubladze against the Parliament of Georgia”, 1.

⁵ Decision No. 2/1/415 of the Constitutional Court of Georgia dated April 6, 2009 in the case “Public Defender of Georgia against the Parliament of Georgia”, II-1, 6, 15.

⁶ See, for example, *S., V. and A. v. Denmark* [GC].

⁷ Constitution of Georgia, LSI “Legislative Herald of Georgia”, editorial effective November 25, 2022, available at: <https://matsne.gov.ge/en/document/view/30346>. “Criminal Procedural Code of Georgia”, “Legislative Herald of Georgia”, edition effective November 25, 2022, available at: <https://matsne.gov.ge/en/document/view/90034>

⁸ Administrative Offences Code of Georgia, Article 245, Part One, Subsection C, available at: <https://matsne.gov.ge/en/document/view/28216>.

⁹ 2nd and 3rd sentences of Article 13, Clause 3 of Constitution of Georgia.

¹⁰ Decisions No. 2/1/415, 06.04.2009; Decisions No. 2/1/263, 04.02.2005 of Constitutional Court of Georgia.

must inform the arrestee upon placing him/her under arrest, in a form that he/she understands:

- a) of the administrative offence committed by him/her and the basis of the arrest;
- b) of his/her right to a defense counsel;
- c) of his/her right, if desired, to request that the fact of his/her arrest and his/her location be made known to a relative named by him/her, also to the administration at his/her place of work or study.¹¹

At the same time, if a minor is placed under administrative arrest, his/her parent or any other legal representative shall be informed at the earliest convenience.¹² It should also be mentioned that, statements made by the arrestee before receiving the aforementioned information shall be inadmissible as evidence.¹³ Based on the named legal provision, it is conceivable to outline the major principles according to which the administrative body acts during detention:

- **The detained person must be provided with the explanation of the administrative offense he/she is accused to commit and the grounds for detention:**

Any arrestee must know why his/her freedom was restricted.¹⁴ A person who has the right to determine the legality of his/her detention in a timely manner within the framework of legal proceedings, will be deprived of an opportunity to exercise the mentioned right effectively if he/she is not informed in a timely and adequate manner of the ground why his freedom was prevented.¹⁵ At the same time, whether the information was properly provided must be assessed on a case-by-case basis, taking into account the specific characteristics.¹⁶ Merely stating the legal basis of detention is not sufficient.¹⁷ The detainee must be informed in a simple, understandable wording of the factual and legal grounds for the detention, so that he/she can, if he/she deems it necessary, apply to the court and question the legality of the arrest.¹⁸ In practice, the arrestees state that they don't know why they have been detained.¹⁹ As a rule, the grounds of detention and their rights are not explained to them.²⁰

- **It should be explained to the arrested person that he/she has the right to have a lawyer:**

The right to have a lawyer is established by the Constitution of Georgia, which states that a person may request the assistance of a lawyer immediately upon being arrested. This request

¹¹ The first part of Article 245 of the Code of Administrative Offenses of Georgia.

¹² Ibid., Part 2.

¹³ Ibid., Part 3.

¹⁴ *Khlaifia and Others v. Italy* [GC], § 115.

¹⁵ *Van der Leer v. the Netherlands*, § 28; *Shamayev and Others v. Georgia and Russia*, § 413; *Grubnyk v. Ukraine*, §§ 97 and 99.

¹⁶ *Fox, Campbell and Hartley v. the United Kingdom*, § 40.

¹⁷ *Murray v. the United Kingdom* [GC], § 76; *Kortesis v. Greece*, §§ 61-62.

¹⁸ *Khlaifia and Others v. Italy* [GC], § 115; *J.R. and Others v. Greece*, §§ 123-124; *Fox, Campbell and Hartley v. the United Kingdom*, § 40; *Murray v. the United Kingdom* [GC], § 72.

¹⁹ Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia, 2019. Available: <https://www.ombudsman.ge/res/docs/2020040215365449134.pdf>.

²⁰ Behind the Lost Eye (a legal assessment of the events of June 20-21), p. 76-77, available at: <https://www.gyla.ge/files/news/pdf>.

must be satisfied.²¹ In relation to this legal provision, the Constitutional Court of Georgia explained that, although this provision does not establish a specific time limit for the admission of a defense attorney to the case, but, based on the essence of the norm, it is necessary to meet the request of an arrested or imprisoned person for the assistance of a defense attorney immediately, in the most reasonable time.²² However, in practice, there are often cases when a lawyer is not assigned to a detained person on time. This right is hindered not due to factual circumstances, but due to artificial barriers. For example, in some cases where a detainee is placed in a law enforcement vehicle, a lawyer is not given the opportunity to meet with the detainee before he/she will be transported to a holding cell. It should be highlighted that, such an obstacle is created artificially.

- **The right of the arrested person, if desired, to request that the fact of his/her arrest and his/her location be made known to a relative named by him/her, also to the administration at his/her place of work or study:**

This provision is also important from the point of view of the execution of the right to protection. In particular, as a rule, it is the relatives of the detainee who provide him/her with the assistance of a lawyer. In contrast, individuals are restricted from making calls.²³ In some cases, they don't have the ability to provide family members with information about their whereabouts, nor know they whether the police itself had notified them.²⁴

- **Immediately after the arrest, the administrative offense committed, the reason for the arrest, the right to have a lawyer, as well as the right to inform relatives about the fact of his arrest and whereabouts must be explained to the person in an understandable manner:**

Providing information upon arrest means immediate clarification of these rights. Whether the information was provided promptly must be assessed on a case-by-case basis, taking into account its specific characteristics.²⁵ At the same time, information should be provided to the detainee in simple, non-technical language that he/she can understand.²⁶

- **Inadmissible evidence is the statement that the detainee made before receiving this explanation:²⁷**

Any testimony, confession that the arrested person made before receiving the explanations, the legislator declares as inadmissible evidence.

²¹ Article 13, paragraph 4, sentence 2 of the Constitution of Georgia.

²² Decision No. 2/3/182, 185, 191 of the Constitutional Court of Georgia of January 29, 2003 in the case "Citizens of Georgia - Firuz Beriashvili, Revaz Jimsherishvili and the Public Defender of Georgia against the Parliament of Georgia".

²³ see Footnote 20, p. 77.

²⁴ The Public Defender echoes the court proceedings of the persons arrested during the rally in front of the Parliament on November 18, 2019.

Available: <https://www.ombudsman.ge/geo/190411044320siakhleebi/sakhalkho-damtsveli-ekhmianeba-2019-tslis-18-noembers-parlamenttan-aktsiis-dros-dakavebuli-pirebis-sasamartlo-protseseb>

²⁵ Khlaifia and Others v. Italy [GC], § 115; Fox, Campbell and Hartley v. the United Kingdom, § 40; Murray v. the United Kingdom [GC], § 72.

²⁶ Ibid.

²⁷ Part 3 of Article 245 of the Administrative Offenses Code of Georgia.

1.1. Legal gaps related to the use of some procedural rights in practice

- It is problematic for lawyers and family members to determine the whereabouts of arrested persons and, accordingly, to receive information about their condition in a timely manner;
- In certain cases, detainees are transferred to temporary detention centers throughout Georgia. This makes it even more difficult for lawyers to meet with them, since there is no single centralized system for determining the whereabouts of arrestees. Because of this, it is often necessary to find them by physically coming to various isolation cells across the country;
- In certain cases, detainees are kept in police vehicles for an unreasonable period of time, during which they also do not have the opportunity to communicate with lawyers or family members; If a person is taken to the administrative building of the Ministry of Internal Affairs during non-working hours, sometimes the lawyer is not able to visit the arrestee, because an additional pass is required to enter the building, which is not issued during non-working hours;
- It is problematic to meet the detainees with the lawyers before the court session, who were taken by the law enforcement officers directly from the detention center to the court. Despite the request of the lawyers, they cannot meet their mandator before the opening of the process and have to communicate in the courtroom in the presence of law enforcement officers and outsiders.

2. EXPERIENCE OF OTHER COUNTRIES

The protection of the rights of arrestees/detainees by the police is related to certain shortcomings not only in Georgia, but also in other countries. For the purposes of this document, we have researched several countries' regulations on detainees' rights. The legal systems differ significantly between the United Kingdom, the United States, and Canada. Yet, by comparing the different jurisdictions, it is apparent that there are shared procedures, and concepts that underlie those procedures, which are beneficial to safeguarding the aforementioned rights of detainees under Georgian law. A close examination of the procedures within those countries shows that creating effective procedures that serve the law reinforce those laws itself, and that where there is a lack of defined legal obligation, there is a corresponding lack of defined procedure as well.

2.1. The United Kingdom (England and Wales)

The majority of the legislation governing the codes of practice for police departments in England and Whales is defined by the PACE Codes of 1984. These codes provide explicitly for the right for the detainee (arrestee) to receive free legal aid or contact a lawyer and to notify a family member or a concerned individual about their arrest.

According to PACE Code C, paragraph 3.1, "when a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, the custody officer²⁸ must make sure the person is told clearly about their continuing rights."²⁹ This procedure provides for "useful redundancy" (obligation of the police officer to create several types of evidence to prove the fact). If an individual is arrested outside the unit, he/she should be informed of his/her rights both during the arrest and after being brought to the unit.

These rights include, among others:

- the right to have someone informed of their arrest;
- the right to consult privately with a solicitor and have access to free independent legal advice.

The detainee must be given written notice of these rights. After that, the arrestee is asked by the police officer to confirm that he/she has received a written notice of rights by signing a "custody record" (all events during their stay in a detention facility, which are recorded by a supervising officer). Refusal to sign is also reflected in the prison record. The obligation to record the detainee's refusal to sign gives an "incentive" to the police to ensure that the detainee has been informed.

In addition to the signing of the custody record certifying that the arrested individual received written notice of their rights, the custody officer or other custody staff shall:

(a) ask the detainee whether at this time, they:

(i) would like legal advice

(ii) want someone informed of their detention

(b) ask the detainee to sign the custody record to confirm their decisions in respect of (a)³⁰

²⁸ Position in UK

²⁹ "POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE) CODE C," GOV.UK, November 4, 2022, <https://www.gov.uk/government/publications/pace-code-c-2019/pace-code-c-2019-accessible>.

³⁰ "POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE) CODE C," GOV.UK, November 4, 2022, <https://www.gov.uk/government/publications/pace-code-c-2019/pace-code-c-2019-accessible>.

The Right to Legal Advice

The detainee must be informed of their right to free legal advice after having been arrested and before being questioned at a police station.³¹ Outside of exceptional circumstances, the exercising of the right to legal advice must be carried out without delay. According to PACE code 6.1., "If the detainee has the right to speak to a solicitor in person but declines to exercise the right the officer should point out that the right includes the right to speak with a solicitor on the telephone."³²

In the event that the detainee continues to waive this right, the officer asks the detainee the reason(s) for that decision, and subsequently any reason(s) should be recorded (in the custody record or the interview record). The detainee is not obliged to give reasons for declining to exercise their right to legal advice.³³ Once again the procedure for safeguarding the detainee's right to legal advice is marked by redundancy, equally distributed administrative burdens, and meticulous records. The result is a process that constricts police behavior in a way to help limit unwanted outcomes, namely any breach of the detainee's rights.

The Right to Not be Held Incommunicado

Outside of exceptional circumstances, according to PACE Code 5.1:

*Any person arrested and held in custody at a police station or other premises may, on request, have one person known to them or likely to take an interest in their welfare informed at public expense of their whereabouts as soon as practicable.*³⁴

This right may be, "exercised each time a detainee is taken to another police station."³⁵ The custody officer or other police official must keep a record of any requests to exercise this right and the details of the communications themselves. In the event that the detainee refuses to have information disclosed, the detainee will be asked to countersign the record, and this will appear in the record.³⁶

Once again, the right to not be held incommunicado requires police to meticulously record requests to exercise that right. Yet, the process is not as strong when compared to that of the right to legal advice, for a detainee declining to exercise their right. The weakness of the procedure is expressed by the fact that the refusal to inform the third person is only recorded as a fact by the officer and confirmed by the detainee's signature. In this case, the questionnaire which is generally used at the time of refusal of legal assistance is not used. In addition, there is no process outlined in the PACE codes that ensures that the detainee's refusal to exercise the right to not be held incommunicado is recorded and subsequently acknowledged through signature or otherwise on the part of the detainee.

³¹ "Notice of Rights and Entitlements: English (Accessible Version)," GOV.UK, August 20, 2019, <https://www.gov.uk/government/publications/notice-of-rights-and-entitlements-english/notice-of-rights-and-entitlements-english>.

³² "PACE Code C 2019."

³³ "PACE Code C 2019."

³⁴ "PACE Code C 2019."

³⁵ "PACE Code C 2019."

³⁶ "PACE Code C 2019."

2.2. The United States – New York City Police Department

The U.S. constitution protects detainees' rights. Due to differences in state and municipal laws, the New York City Police Department (NYPD) has been chosen as a case study since it is the largest and one of the oldest police department in the United States with a well-defined police code.³⁷ The majority of the materials consulted include the NYPD Patrol Guides and related legal statutes. There is no enshrined right to inform someone of an individual's arrest at the federal level, though in the case of New York there is a legal obligation to do so, barring exceptions.

Arrest Process and Miranda Rights

Prior to questioning a person taken into custody, the arrested individual is read their Miranda warnings, these include, among others:

*The right to consult an attorney before speaking to the police and to consult an attorney present during any questioning. The individual will also be informed that if the detainee cannot afford an attorney one will be provided without cost. The individual has the right to remain silent until the individual has the opportunity to consult a lawyer.*³⁸

In accordance with procedure 212-123, uniformed members of the service are required to activate a body-worn camera prior to engaging in any police action.³⁹ Police action includes, "Any police service, as well as, law enforcement or investigative activity conducted in furtherance of official duties."⁴⁰ Officers are required to record continuously until any police action is concluded. In the case of arrests, this means that officers are required to record their interactions with the detainee until they are lodged at command for arrest processing.⁴¹

The procedures related to informing a concerned individual/family member of arrest are not read as part of the arrestees' Miranda rights, although, excluding specific circumstances, the arrestee does have the right to contact a family member/concerned individual in the state of New York.

The Right to Legal Aid

Upon being informed of their Miranda rights, and in the event that the arrestee wishes to speak with a lawyer or remain silent, the officer must stop any interrogation. Then, the officer must contact the lawyer on behalf of the arrestee. If the arrestee cannot afford a lawyer they will be represented by one provided in court.

Interviews conducted between an attorney and the detainee are to be in the muster room for a reasonable period of time. This will be under visual observation of police to ensure that nothing is passed between the defendant and the lawyer.

³⁷ "Reports & Analyses - NYPD," accessed November 25, 2022, <https://www.nyc.gov/site/nypd/stats/reports-analysis/reports-landing.page>.

³⁸ "NYPD Patrol Guide: Rights of Persons Taken into Custody. Procedure No: 208-09" (NYPD, August 1, 2013), https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide2.pdf. (Paraphrased)

³⁹ "NYPD Patrol Guide: Use of Body-Worn Cameras. Procedure No: 212-123" (NYPD, July 25, 2022), https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide2.pdf.

⁴⁰ "NYPD Patrol Guide Procedure No: 212-123."

⁴¹ Ibid.

A police officer in the “Online Arrestee Registration System” (a police work system operating in New York State) describes the following details of an attorney-client meeting:

- a. Name, address and phone number of attorney and identity of person who retained him.*
- b. If interview was conducted*
- c. Time of attorney’s arrival and departure.⁴²*

This procedure has purposes outside of the safeguarding of the detainee’s rights in mind, yet it provides key evidence of an encounter with an attorney, and therefor serves the purpose of keeping a record of an individual in custody’s ability to exercise their right to a lawyer.

Contacting a Family Member or Concerned Individual

The procedure to allow an arrestee to contact a family member or concerned individual in the NYPD is particular and granularly spelled out. The following text has been extracted from the NYPD patrol guide:

Advise prisoner, sixteen years of age or older, of right to make three telephone calls without charge.

- 1. One of the calls may be placed anywhere within the United States or Puerto Rico. The remaining calls may be placed anywhere within New York City.*
- 2. Phone calls will not be allowed or may be terminated at any time if the calls would compromise an ongoing investigation or prosecution, if the ends of justice may be otherwise defeated, or a dangerous condition may be created.*
- 3. Make telephone calls for the prisoner if the prisoner is incapacitated by alcohol and/or drugs.*

Notify relatives or friends if the prisoner is under nineteen years of age, or is admitted to a hospital, or is apparently emotionally disturbed.

- 1. Prepare a MISSING - UNIDENTIFIED PERSON REPORT (PD336-151) and notify the precinct detective squad and the Missing Person Squad, if unable to make the above notification.*
 - a. If the notification is made after preparation of the MISSING - UNIDENTIFIED PERSON REPORT, notify the detective squad and the Missing Person Squad.⁴³*

To sum up, the arrestee is allowed to make three phone calls, and the police have significant discretionary power to disallow those calls. Certain circumstances oblige the police officer to notify relatives or friends on behalf of the arrestee, and in those circumstances if no notification is made, the police officer must file a missing persons report. The phone calls made by an arrestee must be recorded by the police officer in the aforementioned arrest worksheet.

⁴² “NYPD Patrol Guide Procedure No: 208-09,” August 1, 2013.

⁴³ “NYPD Patrol Guide Procedure No: 208-03,” May 24, 2022.

The procedures of the NYPD differ significantly from those outlined in the UK PACE Codes. In the UK the detainee has the explicit right not to be held incommunicado, while in the United States that right does not exist at the federal level. New York State Criminal Law, stipulates that the arrestee must be permitted to communicate by phone with a relative or friend for the purposes of informing them of their arrest, unless, “granting the call will compromise an ongoing investigation or the prosecution of the defendant.”⁴⁴

2.3. Canada

In Canada, there is no uniform practice allowing detainees to contact a family member or concerned individual of their arrest, although upon the discretion of the custody officer, or other member of the police force, contacting a family member or concerned individual may be allowed.⁴⁵

The right to legal aid is outlined similarly to that of the UK and USA, but there are significant differences in the right to representation beyond an initial interview with an attorney. One author, writing for the University of British Columbia human rights article, mentions: “Detainees in Canada, though, are generally guaranteed only a single consultation with a lawyer, which often consists of a short phone call from a police station. Police are then entitled to endlessly question detainees while they’re being held incommunicado by the state.”⁴⁶

The Right to Legal Aid

The following are legal statutes which must be adhered to by Canadian police:

1. *the officer must inform the detainee of his right to instruct counsel without delay and of the existence and availability of Legal Aid and duty counsel;*
2. *if the detainee has indicated a desire to exercise this right, the officer must provide the detainee with a reasonable opportunity to exercise that right, except in urgent and dangerous circumstances;*
3. *the officer must refrain from eliciting evidence from the detainee until he has had that reasonable opportunity to contact counsel, except in urgent and dangerous circumstances.*

In the legal statutes of Canada there is a particular emphasis on the swift exercising of the right to legal aid, outside of exceptions that include officer safety and other limitations.

*As soon as the right is properly asserted, the police have an obligation to assist the detainee in exercising that right without delay. The police must also cease questioning or otherwise attempting to elicit evidence until the detainee has been given a reasonable opportunity to retain and instruct counsel. The only exception to this is where there has been a clear waiver.*⁴⁷

⁴⁴ “Article 140 Criminal Procedure Law | Arrest Without Warrant,” 140, accessed November 25, 2022, <https://ypdcrime.com/cpl/article140.php>.

⁴⁵ “Your Rights - Arrest and Detention,” accessed November 25, 2022, <https://www.creejustice.ca/index.php/ca/laws/your-rights-under-the-law#who-can-i-contact>.

⁴⁶ International Justice and Human Rights Clinic at the Allard School of Law, “The Right to Counsel: It’s Time for Canada to Allow Lawyers in the Interrogation Room – International Justice and Human Rights Clinic at the Allard School of Law,” accessed November 21, 2022, <https://blogs.ubc.ca/ijhr/2021/11/29/the-right-to-counsel-its-time-for-canada-to-allow-lawyers-in-the-interrogation-room/>.

⁴⁷ “Right to Counsel on Detention or Arrest - Criminal Law Notebook,” January 2020, http://criminalnotebook.ca/index.php/Right_to_Counsel_on_Detention_or_Arrest#General_Principles.

Toronto Police Service Procedures for Legal Aid

In the Toronto Police Service Procedures, Chapter One: Arrest & release, there are clearly stipulated guidelines to ensure that the detainee is given the opportunity to exercise their right to legal aid.

Upon being brought into the police station the arresting officer must do the following:

- *ensure the person has been informed of the right to counsel, including the availability of free legal advice through Duty Counsel and Legal Aid*
- *ensure reasonable access to a telephone is afforded as soon as practicable and “no call desired” or the telephone number is recorded in the Arrest Booking/Cell Management screen*
 - *Telephone conversations with counsel shall be in private where conversations cannot be overheard.*⁴⁸

The booking officer should activate video surveillance system (BHS) when a detainee is brought into the station. The recording should encompass the entire booking process.⁴⁹ Also, all pertinent information is recorded by written/typed entry into the appropriate digital information systems.

This practice of video recording and building a “paper trail”, provides another example of useful redundancy. This allows for the preservation of evidence that the detainee was (or was not) given the opportunity to access an attorney.

A note on the ability of a Detainee to contact a family member/ concerned individual:

There is an evident lack of process in the Toronto Police Services Procedures on the topic of a detainee contacting a concerned individual about their arrest, by phone or otherwise. It is not a legal right in Canada, but the police will sometimes allow a detainee to make a call.⁵⁰ There is also somewhat of a legal basis for doing so in case law, in particular, if the detainee explicitly requests to make a call specifically in order to finally inform the lawyer about the arrest, the policeman is obliged to give the detainee the opportunity to do so. Even still, there are no protections for making phones outside of ones made for the purpose of contacting an attorney within the Service Procedures of the Toronto Police Services.

Following common procedures are characteristic for all three jurisdictions:

Among these jurisdictions with different laws, rights, and practices there are some common procedures that facilitate the safeguarding of the rights of detainees. Chief among them are “evidential redundancies”, meaning the creation of different types of records that can be used to provide evidence for the same event. These include:

- An audio/visual recording of the situations in which the detainee is informed of their rights and given the opportunity to exercise those rights.
- A written record that certifies that the detainee was informed of their rights and given the opportunity to exercise them; it is preferential to have the detainee countersign this record.

⁴⁸ “Toronto Police Service Procedures: Chapter 1 - Arrest & Release (01-03 Persons in Custody),” July 28, 2022, https://www.tps.ca/media/filer_public/4c/bb/4cbbb401-9a00-4895-b807-316b0f543684/01-03_persons_in_custody_20220728external.pdf.

⁴⁹ “Service Procedures: Ch.1.”

⁵⁰ “Your Rights - Arrest and Detention.”

- A written record that certifies, in the case thereof, that the detainee chose to decline their rights unequivocally. This should include any context for the reasons the detainee chose not to exercise their rights; it is preferential to have the detainee countersign this record.

Another significant factor in reducing the incidence of officers disregarding these procedures is to build an incentive structure that makes disregarding these procedures more difficult than following them. This is another important factor that reduces the risks of officers violating procedures. For instance, in the case of the United Kingdom, there is significant follow up that has to occur when a detainee decides to decline the right to legal aid. The arresting officer must ask for reasons why, and document any reasons given. This creates an administrative burden that may, at times, be just as cumbersome as allowing the detainee to contact a lawyer. On the other hand, a procedure that requires an irrational administrative burden (is difficult) to comply with may lead to unwanted outcomes, given that the “relief” of this burden can be alluded by skirting the rights of the detainee.

In comparing police procedures within the USA, Canada, and the United Kingdom it is apparent that certain aspects of these procedures can be seen as suitable for the purposes of safeguarding the rights of detainees. Namely, creating evidential redundancies that can be used to determine post-hoc whether a detainee was given the opportunity to exercise their rights, and building an incentive structure that facilitates wanted police behavior are two important aspects of building a successful police procedure in service of the law.

3. RECOMMENDATIONS

Taking into account the problems described in the document and international experience, in order to promote the exercise of the rights of the detainee, it is important for the Ministry of Internal Affairs of Georgia to take the following steps:

1. The detainee must be informed in a clear and understandable manner that he/she/she has the right to have a lawyer. The detainee's request to include a lawyer in the case must be met immediately. Artificial barriers for lawyers should be removed and they should be given the opportunity to meet detainees immediately. The process of explaining these rights must be recorded on videotape;
2. A confidential meeting of the detained person and the lawyer in the police institution should be ensured, if necessary, by creating the appropriate infrastructure;
3. To eliminate the illegal practice of restricting the making of calls guaranteed by law during detention. Detainees should be given the opportunity to enjoy this right even during their stay in the temporary detention center. In case of refusal to use this right, create a corresponding written document (protocol), which the detainee himself will sign;
4. The detained person must be given the opportunity to meet with a lawyer defending his interests even before going through the procedures of being brought to the department or temporary isolation cell;
5. In all administrative buildings of the Ministry of Internal Affairs, regardless of the working day or time, the entry of a lawyer without a special pass must be ensured to visit the arrestee;
6. In the police institutions, proper documentation of the request for notification of the family or the lawyer by the detained person should be ensured;
7. The lawyer and/or family member of the arrestee should be provided with information about the location of the detainee centrally at any time, by telephone;
8. To eliminate the practice of delaying detained persons in the police car for an unreasonable period of time and to transfer them as quickly as possible to the nearest police station or other law enforcement agency.