



## The European Court has found a violation in the case of planted drugs and a gun

On 25 March 2021, the European Court of Human Rights upheld GYLA's application in the case of *Flashadze and Kakashvili v. Georgia* and found a violation of Article 6 (1) of the European Convention on Human Rights (the right to a fair trial).

The applicants were representatives of various opposition parties/movements and had taken an active part in mass anti-government protests by opposition parties in 2009. In an application submitted to the European Court, GYLA argued that in 2009-10, law enforcement officials planted firearms and/or drugs during the personal search of the applicants; whereas, the conviction delivered by the national courts against the applicants were based only on the arrest and personal search reports; testimonies of those police officers who carried out search and arrest operations; and on evidence obtained during the search.

The Judgment of the European Court is based on the following arguments:

**Carrying out a search based on operative information:** The applicants' searches were conducted on the basis of operative information, the accuracy and reliability of which were not properly assessed by the national courts at either the pre-trial or merit hearings. It should be noted that the reports on the existence of operative information, although attached to the criminal case file, and therefore available to the national court, contained only *cursory and indirect* information. Given that the national courts have not attempted to directly assess the nature of records on operative information, it is doubtful whether the existence of a reasonable belief standard required for a search has been properly assessed; also, questions about the merits of the applicants' possession of illegal items; and whether there was a need to conduct search in urgent necessity mode without a court ruling. However, apart from improper consideration of the nature, source and veracity of the operative information, the national courts failed to respond to the applicants' allegations that their illegal items had been planted on them by law enforcement officials.

**Carrying out a search in urgent necessity mode and the right to invite an attesting witness:** The applicants' personal search was carried out in an urgent necessity mode, however, the resolutions on urgent necessity did not contain any justification for the need to conduct an urgent search. At the same time, the national courts approved the searches conducted, in such a way that they did not discuss whether there was in fact an urgent necessity in the case. It should be noted that the verification of the urgent necessity was closely related to the procedural guarantee provided by the Criminal Procedure Code in force at the time, the search to be conducted in the presence of an attesting witness. The guarantee of inviting an attesting witness was a kind of protective mechanism to prevent the alleged

arbitrariness of the police. Nevertheless, during the personal search, the police officers, citing the urgent necessity of the search as a motive, did not allow the applicants to invite the attesting witnesses and the search was conducted only with the participation of the police. The European Court held that the examination of the existence of an "urgent necessity" by national courts based solely on the testimony and records of police officers was not an appropriate ground for restricting the applicants' procedural rights. The European Court has noted that when the credibility of evidence is questioned, the existence of a fair procedure for the admissibility of such evidence becomes even more important.

**Lawfulness verification of the search reports:** The European Court found to be a violation the fact, that the national court refused to the first applicant to verify the lawfulness of the search reports on the ground that the lawfulness of the search had already been examined by the court and the second applicant's claim was declared unsubstantiated without any explanation. The Court of Appeals replied to the applicants themselves, based on the search/ arrest reports and the testimony of the police officers, that there had been no procedural irregularities.

**Use of police testimonies as evidence:** The European Court noted that the police officers who testified against the applicants had a direct interest in the criminal case because they were involved in the search and arrest of the applicants, and at the same time were representatives of the authority which initiated the prosecution against the applicants. The interest of the police officers was particularly clear in the light of the applicants' arguments alleging that those police officers had planted illegal items on them. At the same time, the testimonies of the police officers were not unambiguous. Notwithstanding the foregoing, the national courts, without any due diligence, including ascertaining whether the applicants had been targeted for their political activities, automatically regarded the testimonies of the police officers as objective evidence. As a result, the European Court found that the national courts had not thoroughly examined the applicants' arguments concerning the fact that the police planted illegal items on them. In addition, the Court also clarified that the evidence in the case was not strong enough to deliver a conviction.

In the *Tlashadze and Kakashvili case*, the European Court relied largely on one of GYLA's most successful cases, *Megrelishvili v. Georgia*, on which a judgment was delivered in June 2020. GYLA has additionally submitted two more cases to the European Court, which deal with identical problems. The judgments on Megrelishvili,

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Tlashadze and Kakashvili cases make it clear that the existing legal system does not contain sufficient procedural guarantees to protect individuals from alleged arbitrariness on the part of law enforcement. It is important that Georgia takes appropriate individual or general measures to effectively enforce the Judgment and to address existing structural and systemic shortcomings in a timely manner.

***The Georgian Young Lawyers' Association litigated this case with the support of USAID/ PROLoG.***