



საიამ ადამიანის უფლებათა ევროპულ სასამართლოში
სამართალდამცავების მხრიდან ნარკოტიკების ჩადებასთან
დაკავშირებით მეოთხე საქმე მოიგო

GYLA won the fourth case of drug planting by law enforcement in the European Court of Human Rights

On 17th June 2021, the European Court of Human Rights delivered the Judgment on the case *Shubitidze v. Georgia*. The court upheld GYLA's complaint and found a violation of Article 6 (1) (right to a fair trial) of the European Convention. Apart from the *Shubitidze* case, the European Court of Human Rights has already made similar Judgments on cases litigated by GYLA, *Kalandia v. Georgia*, *Megrelishvili v. Georgia*, and *Tlashadze and Kakashvili v. Georgia*.

In the *Shubitidze v. Georgia* case, the applicant, Kako Shubitidze, alleged that he had been planted drug (marijuana) by the police in 2011. According to the factual circumstances of the case, the applicant was arrested by the police on 26 June 2011 on suspicion that he was under the influence of narcotic drugs. The expert examination found that the applicant was not under the influence of narcotic drugs at the time of testing, although traces of cannabis were found in his urine. The police further conducted a personal search of the applicant based on "operational information" that he had allegedly possessed narcotic drugs without a court ruling.

Attesting witnesses were not present during the search. However, it is apparent from the search report that two packages containing the green substance were retrieved from the applicant's shoes. According to the conclusion of the expert examination, the mentioned substance was 8 grams of marijuana. Kako Shubitidze was sentenced to 3 years in prison and fined 2000 GEL. Also, the right to drive a car and carry out various activities was restricted for 5 years.

The European Court of Human Rights found that the applicant had failed to exercise his right to a fair trial, and there has been a violation of Article 6 (1) of the Convention towards him. The Judgment of the European Court is based on the following arguments:

Search based on operational information: the applicant was searched based on operational information, accuracy, and reliability of which were not properly examined by the national courts.

Admissibility of the personal search report: The European Court notes that the legality of the personal search was questionable. The applicant was not allowed to exercise the right to have attesting witnesses attend the search procedure in accordance with the legal record in force at the time. The European Court notes that when the admissibility of the main evidence in a case (search report) is disputed, it is doubly important to have a fair procedure for examining the admissibility of evidence, which was not the case in that case.

The problem of due examination of the case by the courts: according to the European Court, the domestic courts did not address important aspects of the applicant's arguments concerning the lawfulness of his arrest and search and the admissibility of the personal search report. The courts did not respond to the applicant's argument that the seized substance did not belong to him. However, the courts did not consider that there was insufficient evidence other than the search report to convict the applicant.

Testimony of the police officers: regarding the police officer's testimony, the European Court notes that the police officer was an interested person since he initiated this case against the applicant. At the same time, the police officer was interested in convicting the applicant because the applicant was indicating the narcotic drug planting. The European Court thus held that if the search report had

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been inadmissible, other evidence would not have been sufficient to give a conviction against the applicant.

The Judgment in Shubitidze's case, like in Kalandia, Megrelishvili and Tlashadze Kakashvili cases, clarifies that the existing justice system does not contain sufficient procedural guarantees to protect individuals from alleged arbitrariness by law enforcement. Therefore, Georgia needs to take appropriate individual or general measures concerning the above cases to enforce the judgment effectively and to address existing structural and systemic shortcomings promptly.

GYLA calls on the Parliament of Georgia to immediately implement the legislative change with the purpose to implement the Judgments of the European Court, as well as the Judgment of the Constitutional Court of December 25, 2020 №2/2/1276, which will create sufficient safeguards for persons to be protected from arbitrary actions by law enforcement.

The GYLA litigated this case with the support of USAID / PROLoG.