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დაარღვია

## Georgia has violated the applicant's right to a fair trial on a case of drug planting

On May 7th, 2020, the European Court of Human Rights found a violation of Article 6 (1) (right to a fair trial) of the European Convention on the joint case of GYLA and the European Center for Human Rights Megrelishvili v. Georgia. According to the Judgment, during the search, the applicant was unjustifiably denied the right to invite attesting witnesses and the national courts did not properly consider his argument on drug planting by the police.

According to the factual circumstances of the case, on July 3rd, 2007 the applicant was driving a car, during which the officers of the Special Operations Department (SOD) of the Ministry of Internal Affairs stopped him on the basis of operative information and conducted a personal search. SOD officers also conducted a search in the applicant's car. As a result, the drug was recovered from the applicant's pants pocket and the back seat of the car. On the same day, SOD officers searched the applicant's apartment and garage, from which they also recovered narcotic drugs.

All four searches had been conducted without a prior judicial warrant because of an urgent need, and only later did the court recognize them lawful. The applicant and his family members demanded that they are given the right to invite attesting witnesses to attend the search, which was envisaged by the law in force at the time, however, SOD officers unjustifiably denied him to do so. The applicant and his family members did not sign the search reports, explaining that the drugs had been planted by SOD officers. The National courts found the applicant guilty and sentenced him to 12 years' imprisonment.

The application was lodged with the European Court of Human Rights on 18th May 2009 by the applicant. In the presented appeal, the applicant sought to establish a violation of Article 6 of the Convention.

With this Judgment, the Strasbourg Court satisfied the applicant's appeal and ruled that Georgia had violated the right to a fair trial. The Court's Judgment is based on the following arguments:

- The searches have been conducted on the basis of operational information, which was not attached to the materials of the criminal case. Accordingly, the national courts failed to assess the validity of the information, including whether there was a degree of a reasonable suspicion to conduct a search, a reasonable assumption that the applicant had drugs and/or the urgency and necessity of carrying out a search without a prior judicial warrant.
- The rulings on the urgent need to conduct searches did not contain any justification for the reasons that would justify conducting the searches without a prior judicial warrant.
- The refusal of the SOD officers to invite the attesting witnesses to attend the search was not substantiated. Although they referred to "urgent circumstances", however, they could not substantiate in their testimonies and/or the police report, specifically what kind of urgent need has been existed, which would justify the restriction of this right for the applicant.

As for the judicial proceedings, the European Court of Human Rights found that the City Court's rejection of the applicant's claim on recognizing the unlawfulness of the conducted searches on the argument that the legality of the searches had already

been verified by the court – is a violation. And the Court of Appeal responded to the applicant with a pattern, without proper justification, that there had been no procedural violations on the face of it.

The court also noted that the material evidence obtained during the search was not substantiated by other evidence in the case. As for the testimony of SOD officers, they had an interest in the outcome of the prosecution. Their interest was particularly obvious in view of the applicant's allegation that the SOD officers had planted the drugs. Despite their apparent interest, nonetheless, their testimony was automatically taken as objective by the national courts, in contrast to, for example, that of the applicants' family members, which was dismissed by the court as subjective and not credible.

The European Court of Human Rights noted that the manner in which the key evidence against the applicant was obtained in the current case cast doubt on its reliability. The Court considers that the procedural irregularities during the searches, the inadequate judicial scrutiny, including the failure of the domestic courts to sufficiently examine the applicant's allegations that the drugs had been planted, rendered the applicant's trial as a whole unfair. There has accordingly been established a violation of Article 6 § 1 of the Convention.

There have been a number of high-profile cases in recent years that have raised suspicions on illegal planting of weapons/drugs by law enforcement officials. Like Megrelishvili's case, GYLA has filed three additional cases to the European Court of Human Rights, which points to identical problems. Consequently, it becomes clear that the existing judiciary system does not contain sufficient procedural safeguards to protect individuals from possible arbitrariness on the part of law enforcement officials. In the conditions when Megrelishvili's case points to the existing structural and systemic problems, it is important for Georgia to take appropriate individual or general measures to effectively implement the decision and eliminate the existing shortcomings in a timely manner.

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