DRUG POLICY IN GEORGIA

Canceled Reform and New Tendencies

Drug Policy in Georgia

(Canceled Reform and New Tendencies)

Human Rights Education and Monitoring Center (EMC)
2019

This report is prepared by the "Human Rights Education and Monitoring Center (EMC)" with the financial support of the "Open Society Foundations" (OSF). Opinions expressed in this report may not express the position of the donor. EMC is responsible for the content of this material.

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Circulation: 150
ISBN: 978-9941-8-14846

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Introduction

The report aims to provide with an overview of basic tendencies concerning the state policy, legislative framework and criminal law practices on drug-related crimes. Through this report, the EMC continues documenting the systemic challenges in the field of drug-related policy in order to provide with comparative analysis of practices and circumstances of previous years as well as to contribute to fundamental changes in drug-related policy.

During the last years, no substantial legislative amendments have been made in the field of drug–related policy. Thus, the report draws attention to challenges and to situation existing in law enforcement and justice system. The report makes an overview of the particular legal novelties that were largely determined by the decisions of the Constitutional Court of Georgia.

Taking into consideration certain efforts of non-systemic nature of the government to liberalize the drug-related policy, it is well-known that drug-related crimes remain the significant challenge in the field of human rights and justice system. The government appeared unable to make a decision on substantial changes despite the large-scale protest, performed work and requests that have been lasting for many years now. Moreover, since spring 2018, the government practically refused to discuss the reform on drug-related policy within the framework of different types of working groups. The draft law was cut from the legislative schedule.

This happens under the circumstances when legislative framework on drug-related crimes, the practices of investigatory bodies and effective judicial control leaves the risks and possibilities to use drug-related policy in an arbitrary, unfair and disproportionate manner and to apply inhuman punishments.

During the last six months of 2018 year, over 50 persons detained in penitentiary establishments launched hunger strikes for the judicial decisions on drug-related crimes or unfairness of sanctions applied against them.[1] In 2018, suspended sentence is used against 4697 persons[2] and only in the same period of time, approximately 3000 persons have been convicted for drug-related crimes.[3]

1 Letter N49199/01 of February 21, 2019 of the Ministry of Justice of Georgia Special Penitentiary Service.

2 Letter N2/22629 of March 12, 2019 LEPL National Bureau of Enforcement and Probation Service of Ministry of Justice of Georgia.

3 Letter Np-112-19 of February 13, 2019 of the Supreme Court of Georgia.

In this report, under the given circumstances of the canceled reform, the EMC assesses once again legal environment, updated statistical data with regard to drug-related policy as well as peculiarities of law enforcement bodies and judiciary with regard to particular criminal law cases and based on a study of existing practices in the field of drug-related policy.

We hope that, the assessments and tendencies invoked in this report will encourage the renewal of drug-related policy reform process and will assist all the interested parties in forming fair, humane and care-oriented drug-related policy.

Methodology

Normative acts, public information gathered from State bodies, decisions of the Constitutional Court of Georgia and statistical data have been examined in order to prepare the below report. In order to study the practices of investigatory bodies and court case-law, the decisions of 2018 year of Common Courts related to drug crimes as well as particular criminal law case materials of convicted persons have been examined.

Legislative analysis

Relevant Georgian legislation and basic amendments made in 2018 have been analyzed to prepare this document.

Overview of the Constitutional Court Decisions

The Constitutional Court decisions concerning drug policy as well as the legislative amendments influenced by these decisions have been analyzed for this report. A particular attention is paid to the decision of October 24, 2015 where the Constitutional Court established that it was unconstitutional to use custodial sentence for purchasing and possessing dry cannabis up to 70 grams. Similarly the report invokes, the Constitutional Court decision of July 13, 2017, related to using custodial sentences for purchasing and possessing a narcotic substance "desomorphine" weighing 0.00009 grams. The report overviews Constitutional Court decisions of 2017 year concerning the constitutionality of applying custodial sentences for cultivation of cannabis. The report analyzes the decisions of Constitutional Court of November 30, 2017 and July 30, 2018 that first decriminalized consumption of cannabis and later legalized consuming cannabis in a private space.

Public Information Gathered from State Bodies

Public information requested from the Ministry of Internal Affairs, the Ministry of Justice, the Special Penitentiary Service, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, is important for this research. The requested and examined information concerns the following issues: statistical data on persons transferred for drug testing; statistical data on persons convicted for drug-related crimes and persons who are on suspended sentence; data on state expenditures for cure and rehabilitation for drug consumers.

Common Courts

During the reporting period, the Supreme Court statistical data related to administrative fines for drugs as well as guilty verdicts and applied sentences were analyzed to examine the dynamics and related issues in the field of drug policy.

The verdicts of 2018 concerning drug-related crimes were requested from the Common Courts. The study of the above-mentioned verdicts aimed to establish the relevance of the quantity of narcotic substances and applied sentences. It also aimed to identify the most widespread narcotic substance as well as to assess the court case-law of the previous year.

Analysis of Criminal Cases on drug crimes

The report also overviews 3 criminal cases of convicted persons for drug crimes. For that reason the existing case materials are used. The EMC selected these cases according to the publicity of information and based on the submissions made by the citizens. The main criteria for selecting the cases was the violation of rights of convicted/accused persons, illegal acts allegedly committed by police officers and the existence of signs that demonstrated non-objective investigation.

Main Findings and Recommendations

Within the framework of the research, the following tendencies and challenges have been identified:

- The drug policy reform process is cancelled and the government has not disclosed its approach towards the solutions to the problems that exist in drug policy;

- It is unclear which state body is responsible to coordinate the drug-related policy reform process and to create a platform for interested parties;

- The actions of the government is limited to enforcement of Constitutional Court decisions and it avoids to initiate a systemic reform and sharing political responsibility on the issue;

- There is an increased number of applying suspended sentences for possessing narcotic substances in a small quantity. However, dozens of people still remain in penitentiary establishments for the very crimes;

- Last year, transferring persons to drug testing was decreased and slightly increased the number of positive forensic reports of the persons transferred to drug testing. Nevertheless, the legal basis to transfer and the protection of rights of transferred persons is a subject to critics;

- While working on the report, 2017 year has been recognized once again as an exceptionally troublesome year with regard to drug policy. Manipulating with evidence in criminal cases on drug crimes was manifest. In 2018 year, such facts have not come to light;

- The state does not collect relevant statistical data concerning drug crimes that would enable to determine drug policy in fair and rational way. The following statistical date is absent: the number of imprisoned or otherwise convicted persons; the statistics on the most widespread drug types; the overall number narcotic substances and statistics on applied sentences; the number of guilty verdicts with regard to types of crimes; data on problematic drug consumers in the country. Consequently, it is impossible to rationally plan the mobilization of resources for rehabilitation and treatment programs;

- There is no information on administrative arrests used against persons who were transferred to drug testing;

- The law amended and partially improved the methods of drug testing for motor car drivers. However, no improvements have been made to drug testing as a whole and to the procedures of transferring persons to drug testing from the streets;

- The Law of Georgia on "Combating Drug-related Crime" provides with additional deprivation of rights to persons convicted for drug-related crimes. Judges are not entitled to individually assess the necessity and proportionality of deprived rights. Along with the amendment made to the above-mentioned law in 2018, the scope of the problematic provisions was extended to administrative fines for cannabis consumption. However, it leaves the margin of appreciation for judges to decide on deprivation of rights up to three years for the persons with administrative liabilities;

- The law in force leaves the possibility to apply inhuman punishments without taking into account the quantity of narcotic substances. Plea agreement is the only legitimate possibility for the accused person to avoid such a punishment;

- The role of operative information within the framework of investigation remains a systemic challenge. The main investigatory actions are carried out based on the operative information and investigator is the only party to the criminal proceedings who can appeal or access to its content;

- According to the established practice, the testimonies of the police officers are the only source evidence to establish in what kind of circumstances was a narcotic substance obtained. This increases the risks of arbitrariness by police officers;

- Standard of proof on drug crimes established by the Court is such low that a person can be easily convicted if the police officers deliver testimonies prepared in advance and if the chemical expertise delivers a positive report on a narcotic substances.

In order to eradicate the problems in legislation and in practice, the EMC gives the following recommendations:

To the Parliament of Georgia:

- To recommence discussions of draft laws N7800/2-1 elaborated by "Georgia's National Drug Policy Platform" on June 22, 2017 and initiated by the members of Parliament (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava, I. Pruidze) and to make the existing repressive drug policy more human by adopting that draft law;

- To abolish the possibility that enables automatic application of additional sentences to the convicted persons for drug-related crimes before the adoption of the law. To leave the margin of appreciation to the Court to decide individually the necessity of deprivation of rights when rendering guilty verdict;

- To make relevant amendments to the Law of Georgia on "Operative-investigative Activities" and to Criminal Procedure Code of Georgia that would enable the Court to access to detailed content and sources of the information obtained via conducting a search based on the operative information on drug crime;

- To make amendments to Criminal Procedure Code of Georgia that would outlaw the risks of arbitrariness by the investigatory bodies while conducting a search on drug crimes. To discuss among others, the issue of using body cameras while conducting an investigative activities;

- To make a political decision to release (amnesty/ pardon) the persons who are victims of unfair or disproportionate punishments, before making fundamental drug-related reform. That should be made as an interim decision for transitional period. To create a working group in Parliament that would bring together the relevant bodies of executive branch and non-governmental organizations working on human rights and on the rights of drug users, in order to effectively carry out the work.

To the Government of Georgia:

- To collect data on number of drug users as well as on narcotic substance consumption types and on length of consumption in order to plan health-care oriented drug policy;

- To analyze such statistical data that would assist the State to make relevant political decisions on drug-related crimes. The following statistical data should be analyzed: the number of convicted persons for drug crimes; the data demonstrating the most spread types of narcotic substances; information on amount of narcotic substances, applied sentences and amounts of fines; statistics on guilty verdicts with regard to types of crimes;

- To encourage educational activities as preventive measures that would be oriented to raise public awareness about drug addictions;

- To create "Assignment Commissions" and to enlarge the scope of support and care services.

To the Common Courts:

- Not to check merely the urgency of investigative activities and decrees issued by investigator but, to check factual/substantive grounds for search as well, while the issuing relevant rulings for searches conducted under urgent necessities;

- Taking into consideration adversarial hearings, not to assess that testimonies of police officer bear higher credibility compared to testimonies of defense and to be guided by the fair trial principles;

- To raise the quality of checking the credibility of the evidence obtained via investigation conducted based on operative information;

- To be guided by the human rights principles while assessing the evidence on drug-related crimes and to take a decision on culpability beyond reasonable doubt under Criminal Procedure Code of Georgia;

I. Existing context

To assess the drug-related situation during the reporting period, it requires to discuss the landmark events of 2018 along with legislative regulations. The above-mentioned illustrates the reasons for the failure of drug-related policy reform and the existence of inhuman legislation in force.

Canceled drug policy reform

On June 22, 2017, the draft law elaborated by active involvement of civil society was initiated by five members of Parliament. That was the fruit of long-term discussions on drug policy reform and wide scale campaign. The draft law was elaborated by "Georgia's National Drug Policy Platform" and it envisaged fundamental changes to the repressive drug policy of the State. After introduction the legislative package to the Parliament and since the first hearing on the Committee of Healthcare, the working process on the draft law has been canceled for indefinite time at the legislative body.

The legislative package deals with practically all the challenges that the existing drug-related policy encounters with regard to human rights. It envisages decriminalization of consumption and possession of drugs for personal use with regard to all types of narcotic substances. It also sets fairly what should be the minimum quantity that can result in criminal liability and what sanctions can be proportionate. The draft law also deals with the abolishment of blanket norms with regard to deprivation of rights for the convicted persons and prefers the existence of discretionary power of the Court to decide individually on the necessity and length of deprivation of rights. The draft law package introduces a new methods and grounds for coercive drug testing. It also covers the issues of improvement of treatment-rehabilitation and prevention systems and establishment of "Assignment Commissions".[4]

Due to the absence of political will and unity inside the government to undertake fundamental changes and despite the different types of discussions on the legislative package, no political decision has been made with regard to the draft law. Moreover, from the beginning of 2018 year, different groups undertook an organized and intentional discrediting campaign towards the supporters of drug policy reform. This was accompanied by dissemination of fake information on the content and objectives of the draft law and by the counter-campaign on drug policy reform. Later, in order to discredit the club spaces of Tbilisi and to discredit the groups supporting drug policy reform, a wide scale police operation was carried out in May 12, 2018. It can be assumed that the Parliament used the context to cut the wide scale drug policy reform from the legislative schedule.

4 The draft law N07-3/77/9 elaborated by the Georgia's National Drug Policy Platform is available at https://bit.ly/2F5fkqp.

Events of May 12

The wide scale police operation carried out in Tbilisi night clubs on May 12, 2018, finally canceled the fundamental reform of drug policy. The police operation started at night of May 12, by entering armed and masked Special Forces and particularly numerous police officers to Tbilisi night clubs. The special operation started when already tens of guests were gathered for the events. According to the official statement made by the Ministry of Internal Affairs, the wide scale special operation and the search operation were based on a Court ruling and aimed to identify and prevent drug crimes. The special operation of May 12 was preceded by the fatal cases of overdosing and by making the issue of political debates. Consequently, the demonstratively repressive acts carried out by the police officers towards the night clubs and participants of the manifestation that took place nearby the club "Bassiani", resulted in discrediting the drug policy reform supporters and thus left the existing repressive drug policy unaltered.[5]

The Ministry of Internal Affairs arrested 8 persons for having committed a drug crime, just a couple of hours before the mass search in the night clubs. The Ministry of Internal Affairs made the reference to the arrest of the eight persons in order to legitimize the operation of May 12 and to underline the necessity/urgency of the operation. However, the monitoring of the cases of arrested persons, made the official version and reasons less credible. The proceeding of the criminal cases of the persons arrested completed in February 2019. EMC monitored the Court hearings of the cases. As a result, it is worth mentioning that the link between the cases of the arrested persons and the wide scale operation conducted in the clubs became even more ambiguous.

The Court found that, only one person, out of 8 persons arrested, had narcotic substances in possession the day of arrest. In the rest seven cases, the fact of possessions and selling drugs had happened weeks earlier before May 12. The arrest and accusations of the above-mentioned persons were connected to episodes of purchase, storage and resale of March and April 2018. Consequently, demonstrating these arrests as an integral part of the special operation conducted in the clubs on May 12, represents an attempt of the law-enforcement bodies to increase legitimacy of the special operation, to demonstrate force and to mislead the society. After a year of the May 12 events, it can be stated more clearly that the main goal of the police operation was to discredit the supporters of humanized drug policy and to weaken the protest of civil society as much as possible.

5 "The Human Rights Education and Monitoring Centre" (EMC)/ The Georgian Young Lawyers Association, "May 12 – wide scale police operation in Tbilisi night clubs", 2018, p.6.

II. Overview of Legislative Framework on Drug Crimes

General legal framework

Law of Georgia on "Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance" enlists the substances that are under special control and determines legal grounds of State policy associated to their illegal circulation. The law is annexed with the lists I and II containing Narcotic Drugs Strictly Limited for Circulation. It is also annexed with list III and IV that enumerates psychotropic substances and precursors. The law determines the minimum limits of quantities of narcotic substances under special control to be classified as administrative offences and establishes the minimum limits of small, large, and particularly large quantities of substances under special control to be classified as criminal acts. In case the law does not determine the dosage of a substance under special control, any amount can be considered to establish criminal liability[6] that can lead to up to 6 years imprisonment.[7] The law does not determine the minimum quantity for imposing criminal liability of three fourth of the substances under special control.[8]

The first fact for purchase, storage or illegal consumption in small quantity results in administrative penalty. The repeated commission of such an act by a person who has been subjected to an administrative penalty results in criminal liability.[9]

Law of Georgia on "Combating Drug Crime" determines additional sanctions against persons who were found guilty for having committed a drug-related crime. Under this law, along with the punishments prescribed by the criminal legislation, the Court is obliged to deprive the following rights to the convicted person: a driving license, the right to medical and/or pharmaceutical practice, the right to practice law and the right to work in pedagogical and educational institutions as well as the right to work in public bodies. The length of deprivation of rights is determined by the gravity of the crime: up to three years for drug-users; from 5 to 15 years for other cases of drug crimes prescribed by the chapter of drug-related crimes; up to 20 years for drug-dealers.[10]

6 Article 6, paragraph 41 of the Law of Georgia on "Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance".

7 Article 260, paragraph 1 of the Criminal Code of Georgia.

8 Human Rights Watch, "Exemplary punishment – tough human results of repressive drug-related policy of Georgia", 2018, p.1.

9 Article 273 of the Criminal Code of Georgia.

10 Article 3 of the Law of Georgia on "Combating Drug-related Crime".

Along with the above-cited legislative acts, one of the possibilities to combat drug-related crimes is to establish the fact of narcotic drug or psychotropic substance by medical examination. That is regulated under Decree of the Ministry of Internal Affairs.[11] The instruction determines the following grounds to submit a person to be examined in an expertise establishment: 1) when the police officer identify the fact of possession or consumption of narcotic drugs in a small quantity; 2) when a person does not obey the legal instructions of police officers or attempts to escape; 3) operative information obtained by operative-investigative or secret investigative activities, including the information provided to 112 or directly to the police officer that a person is under drug influence. The last ground is largely connected to the risk of arbitrariness of police officer as far as under the legislation in force, it is practically impossible to check the credibility of the operative information. It does not fall within the scope of prosecutor's or the Court supervision.[12] That Decree about coercive drug-testing entitles the police officers to arrest and forcefully submit a person to drug testing in the event the person refuses to voluntarily undertake an examination. Not a single normative act or decree envisages the case when a person consents to be transferred but when having arrived at the establishment declines to participate in a laboratorial or clinical expertise. The above-mentioned Decree does not provide legal provisions whether and based on what grounds are the police officers entitled to detain or arrest a person in this particular case. In practice, this is normally used against the rights of transferred persons.

Since April 1, 2019, the above-mentioned drug-testing rule has been partially improved with regard to establishment of fact when driving a car in a state of narcotic or psychotropic substance intoxication.[13] Under instruction, if there is enough basis to believe that a driver is in a state of narcotic or psychotropic intoxication, he/she is tested with a portable drug-tester. In case a drug-tester shows a positive response, the driver is transferred to Expert-criminalistics establishment of the Ministry of Internal Affairs to undertake clinical or laboratorial examination. In the event when a driver refuses portable drug-testing, she/he is directly transferred Expert-criminalistics department. In case a driver refuses to undertake clinic-laboratorial examination, he/she is considered to be in a state of narcotic intoxication.[14]

11 Decree N725 of September 30, 2015 of the Minister of Internal Affairs on "Instruction to submit a person for examination to establish the fact of narcotic drug or psychotropic substance consumption".

12 "The Human Rights Education and Monitoring Centre" (EMC), "What changes have been made to coercive drug-testing practice", 2016, p.11. available at https://bit.ly/2F0SznK .

13 Joint Decree N25 –N01-30/N of March 29, 2019 of the Ministry of Internal Affairs and Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on "The Rule establishing administrative offences related to narcotic and psychotropic substance consumption". The Decree amended the joint Decree N1244-N278/N of October 24, 2016 of Ministry of Internal Affairs and Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

14 Article 2 of the Decree.

Overview of amendments made to the legislation during the last years

Elaboration of liberal legislative regulations in the field of drug policy was determined by a number of Constitutional Court decisions. During the last years, the following Governmental policy was manifest – the Government was attempting to avoid political responsibility with regard this issue and left the whole burden to the Constitutional Court and made it responsible for the changes. Even in the event, when Constitutional Court highly criticized the basic characteristics of the existing drug policy, the actions of Government were limited to execution of particular cases and refused to commence a systemic reform process that was recommended in Constitutional Court decisions.

It can be assumed that, if there is any progress made with regard to humanization and proportionality of punishments in the field of drug policy, it is made thanks to the efforts of Constitutional Court. Since 2015, the Court case-law amended drastically the preexisting legislation on consumption of cannabis. It also altered the sanctions with regard to consumption of other narcotic drugs.

At first, the decision of Constitutional Court abolished custodial sentence as a sanction for purchasing and possessing cannabis (up to 70 grams) for personal consumption.[15] Later, the Court ruled that it was unconstitutional to hold persons criminally liable for consumption of cannabis in general.[16] Finally, by the decision of July 30, 2018, the Constitutional Court declared that the blanket prohibition of consumption of cannabis was unconstitutional. The Court considered that it was disproportionate interference into a private life and abolished administrative fine for consumption of cannabis without doctor's prescription. The above-mentioned decision practically legalized consumption of cannabis in private space. The very decision indicates that it is proportionate to regulate the consumption of cannabis for the purpose to protect other persons.[17] The Constitutional Court underlined the necessity of legislative regulations to restrict consumption of cannabis in order to protect minors from negative impact. That refers to the cases when cannabis is consumed in presence of minors or at institutions that are normally visited by minors. For maintaining public order and public health, the Court justifies the prohibition of cannabis consumption at educational, pedagogical establishments as well as at medical and State establishments and at certain public spaces.[18]

15 The decision of the Constitutional Court of Georgia of October 24, 2015 on "Citizen of Georgia – Beka Tsikarishvili v. Parliament of Georgia".

16 The decision of the Constitutional Court of Georgia of November 30, 2017 on "Citizen of Georgia – Givi Shanidze v. Parliament of Georgia".

17 The decision of the Constitutional Court of Georgia of July 30, 2018 on "Citizen of Georgia – Zurab Japaridze and Vakhtang Megrelishvili v. Parliament of Georgia", §35.

18 Ibidem. §35.

Shortly after rendering the above-mentioned Constitutional Court Decision, in September 2018, the legislative package reflecting the decision and the draft law on Control of Cannabis were simultaneously submitted to the Parliament. The drat law aimed to establish legal basis for cultivation of cannabis for medical or commercial purposes. The explanatory note to the draft law invoked the Constitutional Court decisions related to circulation of cannabis.[19] The daft law envisaged to create the regime for granting license to export cannabis for medical or commercial purposes. It also aimed to determine the State competences with regard to this issue and to determine security measures. On the other hand, the draft law prohibited the realization of product obtained by licensed practice in Georgia.[20] On November 2018, the author withdrew the legislative package from Parliament due to the critics and different attitudes in society towards the draft law.

As for the legislative package reflecting the Constitutional Court ruling of July 30, 2018, it entered into force from November 30, 2019 and suggests new approaches towards criminal acts and offences related to consumption of cannabis.

Amendments made to Administrative Offences Code of Georgia

Commission of administrative offence in a state of narcotic or psychotropic intoxication was added as aggravating circumstances to impose an administrative penalty.[21]

Issues related to consumption of cannabis are regulated under a separate provision – under Article 45[1] of Administrative Offences Code of Georgia. The amendments abolished the pre-existing regulation concerning consumption of cannabis in a small quantity that was regulated under Article 45 of Administrative Offences Code of Georgia.

Under paragraph 1 of the new provision illegal purchase, storage, transportation or sending of cannabis in a small quantity is classified as an administrative offence. The repeated commission of such an act by a person who had been subjected to an administrative penalty results in criminal liability.[22]

The legislative amendment prohibits consumption of cannabis at any premises except for the living place of a person. The penalty for this administrative offence is defined from 500 to 1000 GEL. The same act committed repeatedly envisages a fine from 1000 to 1500 GEL.[23]

19 See explanatory note to the draft law on "Control of Cannabis" available at: https://bit.ly/2F3JuKG.

20 See the Law of Georgia on "Control of Cannabis" available at: https://bit.ly/2IAiWlb.

21 Article 35, paragraph 6 of Administrative Offences Code of Georgia.

22 Article 273, paragraph 1 of the Criminal Code of Georgia.

23 Article 45, paragraphs 2 and 3 of Administrative Offences Code of Georgia.

The legislative amendment introduced restrictions on consumption of cannabis by underage and by persons who have not reached 21 years.[24] It prescribes a strict liability for consumption of cannabis in presence of an underage person as well as at educational and pedagogical establishments[25] intended for underage persons and at public spaces. The law prescribes liability for the establishments in case they identify an employee in a state of cannabis intoxication and do not react to the fact.[26] Administrative penalties for popularization and advertising of narcotic substances became stricter.[27]

Making amendments to Administrative Offences Code of Georgia related to consumption of cannabis was intended to duly execute the last ruling of the Constitutional Court. However, neither on a stage of draft law initiation nor on committee hearings, there has not been any attempt to broadly regulate the issues related to cannabis based on the indications made by the Constitutional Court. The legislative body avoided to regulate the rules of acquisition of cannabis on a legislative level. Presumably, this question is left to Constitutional Court for future decisions. Moreover, it is ambiguous why the legislative regulation became stricter with regard to underage persons and person under age of 21. It is problematic that a legislative body is still addressing to repressive measures instead of introducing care-oriented policy in order to protect underage persons and persons under age of 21 from potential negative impact.

Amendments made to Criminal Code of Georgia

Amendments have been reflected to the Criminal Code of Georgia in order to protect minors from negative impact caused by narcotic substances. The amendments made to Criminal Code of Georgia establish criminal liability for the act of inducement to use narcotic substance with respect to person under age of 21 along with minors.[28] Amendments have been made to the Chapter of transport-related crimes. Driving in a state of narcotic or psychotropic intoxication was added as an aggravating condition, in order to prevent the violation of traffic safety rules.[29] By this novelty, drunk driving remains an administrative offence,[30] while the same act committed in a state of narcotic intoxication established criminal liability.[31]

24 See Explanatory Note of the Draft law on "Amendments made to Administrative Offences Code of Georgia", available at: https://bit.ly/2F3KmPs.

25 Article 45^{1}, paragraphs 4, 5 and 6 of Administrative Offences Code of Georgia.

26 Article 45^{1}, paragraphs 14 of Administrative Offences Code of Georgia.

27 Article 159^{10} of Administrative Offences Code of Georgia.

28 Article 272, paragraph 3 of the Criminal Code of Georgia.

29 Article 275, paragraph 3; Article 276 paragraph 3 of the Criminal Code of Georgia.

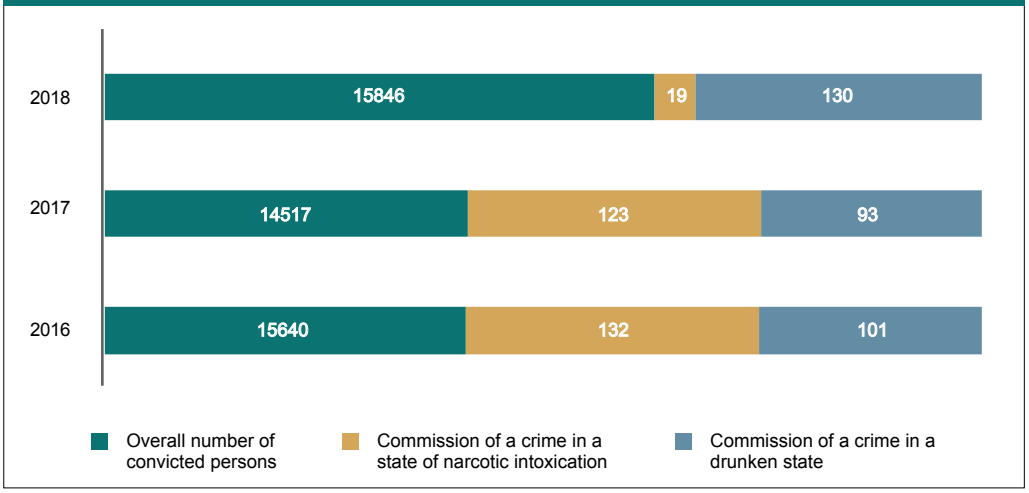
30 Article 116 of Administrative Offences Code of Georgia.

31 Article 276, paragraph 1 of the Criminal Code of Georgia.

The above-mentioned legislative amendment makes it ambiguous why there is two different approaches towards drunk driving and towards driving in a state of narcotic intoxication. It is not clear what justifies the drunk driving to be the ground for administrative liability and what makes driving in a state of narcotic intoxication to be the ground of criminal liability.

The statistical data on commission of a crime in a drunken state and in a state of alcoholic intoxication demonstrates the new regulations are problematic. The statistical data of the last year makes it clear that the commission of a crime in a drunken state is much higher compared with the commission of crime in a state of narcotic intoxication. Namely, in 2018 year, 130 persons were found guilty for commission of a crime in a drunken state (0.8 % of the whole number of convictions) and 19 persons were found guilty for commission of crime in a state of narcotic intoxication (0.1% of the whole number of convictions). According to the data of 2016 and 2017 years, there is a slight difference between the statistical data of convictions for commission of crimes in a state of narcotic intoxication (0.8%) and in a drunken state (0.6%).[32]

Statistical data on Commission of a Crime in a State of Narcotic Intoxication and in a Drunken State



Deprivation of civil rights for a convicted person is also established by the new regulation along with the establishment of criminal liability for commission of a crime in a state of narcotic or psychotropic intoxication. The Law of Georgia on "Combatting Drug-related Crime" enlarged the scope of definition of drug user and determined deprivation of rights up to three years for driving a motor car in a state of narcotic intoxication.[33] The amendments

32 The Supreme Court of Georgia " Justice in Georgia – statistical data of 2018 year" available at: https://bit.ly/2X1W8UD.
33 Article 3 of the Law of Georgia on "Combatting Drug-related Crime".

made to the above-mentioned law envisage for the first time the deprivation of rights for administrative offences as well. Namely, the Court has been granted with discretional power to make a decision on deprivation of rights up to three years against a person who previously had been subject to administrative penalty for consumption of cannabis.

The approach of the legislative body with regard to deprivation of rights against a person who previously had been subject to administrative penalty for consumption of cannabis, shall be assessed negatively. The mechanisms of deprivation of rights with regard to drug-related crimes is a subject to critics for its blanket nature. The automatic application of deprivation of rights with regard to convicted persons results in a grave financial consequences, stigmatization and isolation for a convicted person. For that reason, the necessity to make amendments to the Law of Georgia on "Combating Drug-related Crimes" has been a subject to discussions for many years now. Consequently, the enlargement of the scope of the problematic legislation and using the discretional power of the Court with regard to administrative offences − is unjustified.

Analysis of the Constitutional Court Rulings

Constitutional Court rulings served as a basis to make substantive legislative amendments in the field of drug-related policy. The Constitutional Court discusses the legislative regulations related to narcotic substances in the light of the rights guaranteed by the Constitution – including the prohibition of inhuman punishment, the right to personal development and the right to equality.

Prohibition of Inhuman Punishment

The approach developed in the Constitutional Court ruling on Beka Tsikarishvili case, made a huge impact on the fundamental changes undertaken in the field of drug-related policy in general and particularly on the aspects of strict punishments established for drug policy. The Court ruling concerned the issue, whether applying imprisonment for possessing 70 grams of cannabis for personal use was in compliance with the prohibition of inhuman punishment guaranteed by the Constitution. While discussing the issue of possessing cannabis for personal use, the Court made references to the rights guaranteed under the Constitution – human health, public order and ensuring security and stated: – "It contradicts the Constitution to imprison a person for an act that endangers merely the person herself/himself and is not intended (or cannot be intended) to violate the rights of others. It has no purpose and thus it is unjustified to impose criminal liability in form of imprisonments on a person for an act

that can only harm his own health. Taking everything into consideration, imposing criminal liability that can envisage imprisonment of person for purchase/possessing cannabis for personal use, represents disproportionate measure to attain the objective of securing health.[34]

The Court developed a similar approach in the case of illegal cultivation of cannabis in large quantity (150.72 gr. and 63.73 gr.) and in particularly large quantity (265.49 gr.). Cultivation of cannabis for personal use of the above-mentioned quantities resulted in penalty of imprisonment up to five years. The regulations in force stipulated 4-7 years imprisonment in case of large quantity and 6-12 years imprisonment in case of particularly large quantity, respectively. The Applicants argued that it violated the principle of prohibition of inhuman punishment.[35] Along with the assessment of health and security interest, the Court also discussed whether the appealed quantities could create the risk of automatic distribution and thus inevitable danger for other people's health. The Court found that sanctions imposed for cultivation of cannabis of 150.72 gr. and 63.73 gr. shall not be considered proportionate as such quantities did neither indicate to purpose of reselling nor to real risks for realization or any reasonable risks and thus to endangering the health of others. The Court found that the problem of the regulation was its blanket nature as long as it was impossible to impose sanctions on a person by individual assessment and by reasonable assessment of risks.[36] Contrary to that, the Court confirmed the necessity of State interference in case of particularly large quantities (265.49 gr.) due to the related risks. On the other hand, the Court assessed the proportionality of the penalty (6-7) and made comparison with regard to crimes bearing equal or more dangers such as rape and burglary.[37] The obvious severity of sanctions imposed for cultivation of cannabis compared with the above-mentioned crimes was found disproportionate and thus served as a basis to find them unconstitutional.[38]

Constitutionality of punishment imposed (5-8 years) for fabricating and storage of 0.00009 grams of narcotic substance – desomorphine – was also the subject to the Court discussions with respect to human dignity. The absence of a minimum quantity for imposing criminal liability for possession of desomorphine was considered as a problem. Possessing desomorphine even below to 1 grams that can be completely useless for consumption implied automatically possessing the substance in a large quantity. In that case as well, the Court found it unconstitutional to impose criminal liability for possessing a substance that is 111 times

34 The decision of the Constitutional Court of Georgia of October 24, 2015 on "Citizen of Georgia – Beka Tsikarishvili v. Parliament of Georgia", §84.

35The decision of the Constitutional Court of Georgia of July 14, 2017 on "Citizens of Georgia – Jambul Ghvianidze, David Khomeriki and Lasha Gagishvili v. Parliament of Georgia".

36 Ibiden: §31.

37 Ibiden .§35.

38 Ibiden. §37.

smaller than a minimum quantity for consumption.[39] The Court further explained that the State intended to use criminal liability in form of imprisonment as a general preventive measure. The basis of severity of a punishment is not an act committed itself, but the preventive purposes and the convicted individual is a mean for attainment of the above-mentioned purposes. Solely general prevention cannot be regarded sufficient as long as this approach will turn a person into a "threatening object" in the hands of a State. Using a human being as an object of menace is ruled out and contradicts the rule of law.[40]

Contradiction to right to free personal development

Abolishing criminal liability for consumption of cannabis in 2017 was a continuation of fundamental changes of the Constitutional Court with regard to the right to free personal development.[41] The subject of the case was to assess whether imposing criminal liability for consumption of cannabis was in conformity with the Constitution. The Court, therefore, did not assess the constitutionality of criminal liability for fabrication, purchase, storage and consumption of other narcotic substances.

The Parliament indicated that the protection of health of society (negative side effects of cannabis on health) was the legitimate goal to impose criminal liability for consumption of cannabis. Moreover, the respondent regarded consumption of cannabis as a starting point to use other narcotic substances. While assessing the above-mentioned objectives, the Court explained one more time that consumption of cannabis might have some potential risks for health, though, the harm largely depends on a state of health of a person individually. The harm caused by consumption of cannabis is less dangerous compared to the harm caused by consumption of other narcotic substances.[42]

The ruling states: „The Constitution guarantees the right of a person to freely determine plans and goals of his/her own life and act in a way that does not make harm on others. Despite the fact that, consumption of cannabis is related to negative side effects for its users – it derives from the freedom of choice and personal autonomy and it is guaranteed under the right to free personal development: the possibility to make a decision to try side effects of the substance even if in some manner it makes a negative impact on his/her health".

39 Ibiden. §11.

40 The decision of the Constitutional Court of Georgia of July 13, 2017 on "Citizen of Georgia – Lasha Bakhutashvili v. Parliament of Georgia", §19.

41 The decision of the Constitutional Court of Georgia of November 30, 2017 on "Citizen of Georgia – Givi Shanidze v. Parliament of Georgia".

42 Ibiden, §28-30.

The Court found that it was a disproportionate interference into someone's personal autonomy to impose criminal liability for a repeated consumption of cannabis merely on a basis of "moral self- degradation". The decision was based on the justification invoked in Beka Tsikarishvili's case. It refered to the risks related to consumption of cannabis that were insignificant towards public health, public security and other relevant interests. Thus, this makes it unjustified to impose criminal liability for consumption of cannabis.[43]

The Court underlined particularly the necessity to keep the balance between criminal liability mechanisms and the preventive measures to lower the risks to public security and public health –"to use result-oriented and practically effective approaches". The Court explains that imposing criminal liability for an act that does not create risks for the health of others cannot be considered as a necessary and proportionate interference into the right to free personal development. Holding a person criminally liable (including even using a discretionary power or making a plea agreement), convicting and stigmatizing a person does not comply with the objectives that were invoked by respondent party to justify criminal liability for repeated consumption of cannabis. Without a prescription of doctor it turns a human into a simple objective of criminal prosecution.[44]

After having declared unconstitutionality of imposing criminal liability for consumption of cannabis, in 2018 the Constitutional Court abolished as well administrative liabilities while discussing the case related to the right of free personal development. The ruling was substantively based on the approaches developed in the case-law of the Court. Repeated act of purchase and storage of cannabis in a small quantity remains the subject to prosecution as long as the Court did not address this issue.

The Principle of Equality under Law

The quantity of narcotic substances has been a subject to constitutional assessment for several times. The question was whether the principle of equality under law was respected when there was not a minimum limit determined for particular narcotic substances to establish a criminal liability and therefore committing such an act automatically falls within the scope grave crimes (for possessing narcotic substances in a large quantity. It is worth mentioning that the Constitutional Court has never found the violation of the principle of equality under law in similar cases. The applicant argued that there have been a violation of the principle of equality under law with regard to possession of desomorphine in unusable quantity (0.00009 gr.). Specifically, the applicant argued that Annex N2 of the Law of Georgia on

43 Ibiden: §56.

44 Ibiden, §49.

"Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance" did not establish the quantities for possessing desomprhine (as a result, possessing 0.00009 gr. of desomorphine is classified as – large quantity). The prosecutor while qualifying an act and the Court while rendering a verdict were unable to individually classify the cases based on personal characteristics of the person and based on assessment of relevant facts and circumstances. The applicant argued that the norm was discriminatory as long as the it caused unequal treatment under substantially equal circumstances.[45] The demand did not surmount the admissibility stage. The Court found that the application did not identify how and against who did the norm violate the principle of equality under law. The Court indicated that: If the applicant finds that criminal liability or application of the punishment is discriminatory against him then he shall appeal the demining rule of criminal liability imposition/punishment application and simultaneously, he shall justify how and with regard to whom has the law different approach.[46]

The Court developed similar approach with regard to other narcotic substances that lack legal regulations on what is considered as small quantity and what quantity may serve as a basis to start prosecution.[47]

45 The decision of the Constitutional Court of Georgia of July 13, 2017 on "Citizen of Georgia – Lasha Bakhutashvili v. Parliament of Georgia", §6-7.

46 Ibiden §4.

47 The decision of the Constitutional Court of Georgia of June 22, 2017 on "Citizens of Georgia – Gela Tarielashvili, Giorgi Kvirikadze, Vladimer Gaspariani, Ivane Matchavariani et al. (9 applicants in total) v. the Parliament of Georgia.

III. Statistical data analysis of drug-related crimes

Analysis of statistical data related to a range of drug crimes for the report period is crucial for assessing the current situation in terms of effective drug policies. In the information provided by various state agencies on drug-related crimes, for the year of 2018 the main focus was placed on the following:

- Dynamic of prosecution;
- Rates of applying custodial sentences;
- Number of individuals serving conditional sentence;
- Number of individuals with administrative penalties for drug use;
- Statistics of individuals subjected to forced drug use inspection;
- Statistics of deprivation of civil rights to persons with conditional discharge.

Notably, for the purpose of the presented report it was also important to compile and process data about the total number of individuals placed in custody for drug-related crimes; however, the Special Penitentiary Service does not collect and maintain statistics about the convicts for crimes listed in certain articles of the Criminal Code, therefore, it is not possible to collect detailed data on this matter.[48] Due to the lack of statistics it is also impossible to obtain information about the amounts of drugs purchased and under possession by individuals for which they have been detained. The only means of information is to analyze each court ruling on drug-related crimes and scrutinize them with regard to the amounts of drugs and the applied punishment.

Statistical analysis of a range of data regarding drug-related crimes demonstrated prevalence of more liberal practices on the part of the state, compared to previous years. The number of individuals subjected to drug use inspection and those with administrative penalty for drug use has dropped. With regard to prosecution of drug crimes, 80% of cases have ended with conviction and every fifth convict has been subjected to custodial sentence. Notably, most of the convictions (about 85%) have been settled through procedural bargaining agreements. The mechanism of depriving the convicts for drug-related crimes of additional rights, which has been applied to about 5 000 conditional convicts within the report period, remains to be a challenge. Individuals under custodial sentences will face these restrictions after they leave the penitentiary institutions.

48 March 11, 2019 Correspondence N69404/01 of the Special Penitentiary Service under the Ministry of Justice.

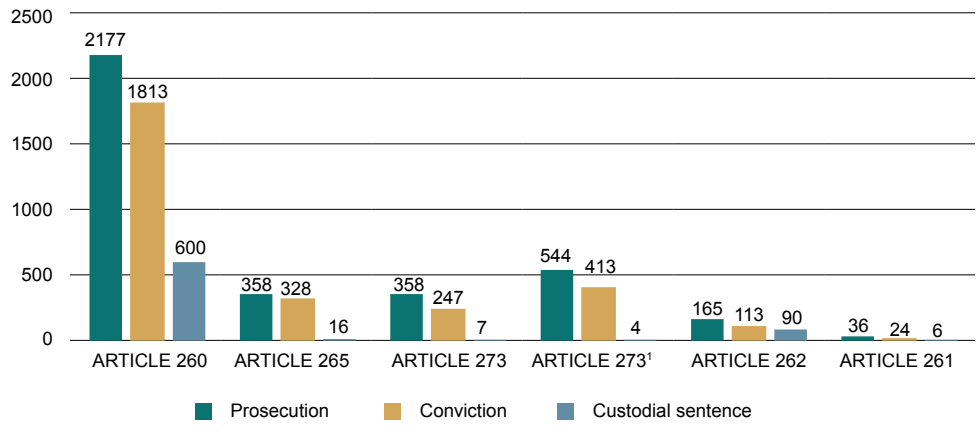
Statistics on prosecution and convictions

In 2018 prosecution for drug-related crimes[49] began against 3,638 individuals.[50] The District/City Courts of Georgia convicted 2,938 persons for these crimes, which is 84,2% of the prosecution for drug-related crimes. The remaining cases (15,8%) are either pending or have ended with acquittal.

In 24,7% of the convictions the courts imposed custodial sentences on 723 persons. Due to the lack of information in court statistics about the amounts of drugs,[51] it is difficult to establish the number of convicts who are detained for possessing small dosage of drugs (for personal use); however, according to the 2018 data, 11 persons have been placed under custody for repeated use of drugs (Article 273 of the Criminal Code) and for purchasing-possessing small amounts of marijuana or cannabis (Article 273[1] of the Criminal Code).

The table below offers statistics on most frequent drug crimes and the numbers of prosecution, conviction and custodial sentences per each type of crime.

2018 data on prosecution, conviction and custodial sentences in accordance with articles 260, 261, 262, 265, 273 and 273[1] of the Criminal Code of Georgia



49 The number includes crimes listed under the articles 260, 261, 262, 265, 273 and 273[1] of the Criminal Code.

50 April 23, 2019 correspondence N13/29585 of Attorney General of Georgia.

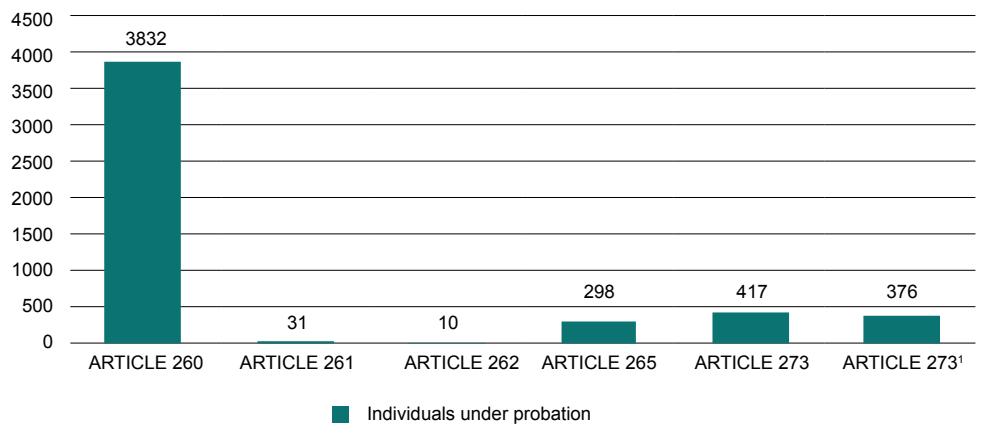
51 Letter Np-112-19 of February 13, 2019 of the Supreme Court of Georgia.

According to January 31, 2018 data of the Council of Europe, the number of individuals convicted for drug-related crimes composed 34,1% of the inmates in penitentiary institutions which is 3,733 persons out of 8,016 convicts.[52] Compared to the 2015 information of the Council of Europe, in the total number of inmates the share of individuals convicted for drug-related crimes has increased by 4%,[53] (2,721 convicts out of 10,242 inmates), however, this change stems from the decline in the overall number of convicts in 2018.

Number of conditional convictions

According to the 2018 data, the number of individuals subjected to conditional sentences reached 5,000. This number includes those who have received non-custodial sentence for drug-related crimes. According to the information provided by the National Probation Agency,[54] the highest number (77%) of probation sentences has to do with purchasing and possessing primary or large amounts of drugs/psychoactive substances under the paragraphs 1, 2 or 3 of Article 260 of the Criminal Code. The number of individuals convicted for these crimes amounted to 3,832 in 2018. High share of probation sentences also applies to the drug use and possession of small amounts of marijuana under articles 273 and 273[1] of the Criminal Code and the number of these individuals is 793. Conditional sentences are also imposed for cultivating marijuana or cannabis as described in Article 265 of the Criminal Code – 298 persons have been placed under probation for these actions.

Number of convicts under probation for drug-related crimes in 2018

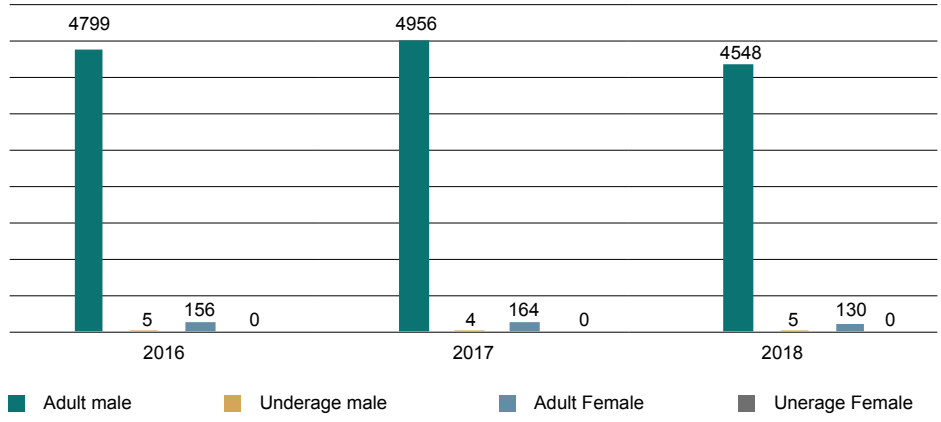


52 Please see Council of Europe Annual Penal Statistics – SPACE I 2018, available at: https://bit.ly/2K0VD84.

53 Please see Council of Europe Annual Penal Statistics – SPACE I 2015, available at: https://bit.ly/2ryNxY5.

54 February 19, 2019 correspondence № 2/16395 of the Ministry of Justice LEPL National Probation Agency.

Gender balance and ages of persons with conditional discharge in 2016-2018



As it was expected, statistical data of the previous three years concerning drug-related crimes (for commission of acts prescribed under Chapter XXXIII of Criminal Code of Georgia) with regard to gender balance and ages of the persons with conditional discharge, demonstrates that adult males represent the absolute majority. The number of underage males with conditional discharge is below ten. There is not a single underage female with conditional discharge. As for the adult females, in the above-mentioned years, their number was between 130 and 165.[55]

Number of individuals with administrative penalty

The legislation imposes administrative penalty of GEL 500 or imprisonment for 15 days for the first occurrence of using or possessing small amounts of drugs.

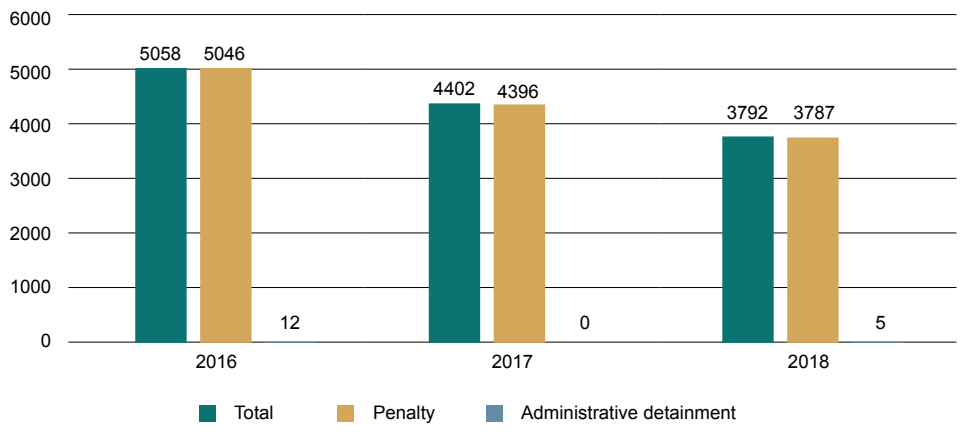
As of November 30, 2018, the same sanctions apply to owning and/or using small amounts of marijuana in a public space according to Article 45[1] of the Administrative Code of Georgia. The total number of individuals who have been penalized in the administrative manner for using marijuana amounted to 373 in the first quarter of 2019.[56] The court has enforced monetary penalty as the administrative sanction in all of the cases.

55 The letter N2/53606 of June 17, 2019 of the LEPL National Bureau of Non-Custodial Sentence Enforcement and Probation Service of the Ministry of Justice of Georgia.

56 April 22, 2019 correspondence Np-754-19 of the Supreme Court of Georgia.

The statistics[57] clearly demonstrate that in contrast to 2017 data, the number of administrative imprisonment for possessing or owning small amounts of drugs has marginally increased (by 5 units) in 2018. The frequency of subjecting individuals to administrative liability for listed offences has diminished in recent years. It may be the outcome of July 2018 ruling of the Constitutional Court of Georgia, which abolished administrative liability for marijuana use and effectively prompted legalization of marijuana.

Number of individuals subjected to administrative liability for drug use



Statistics of drug testing

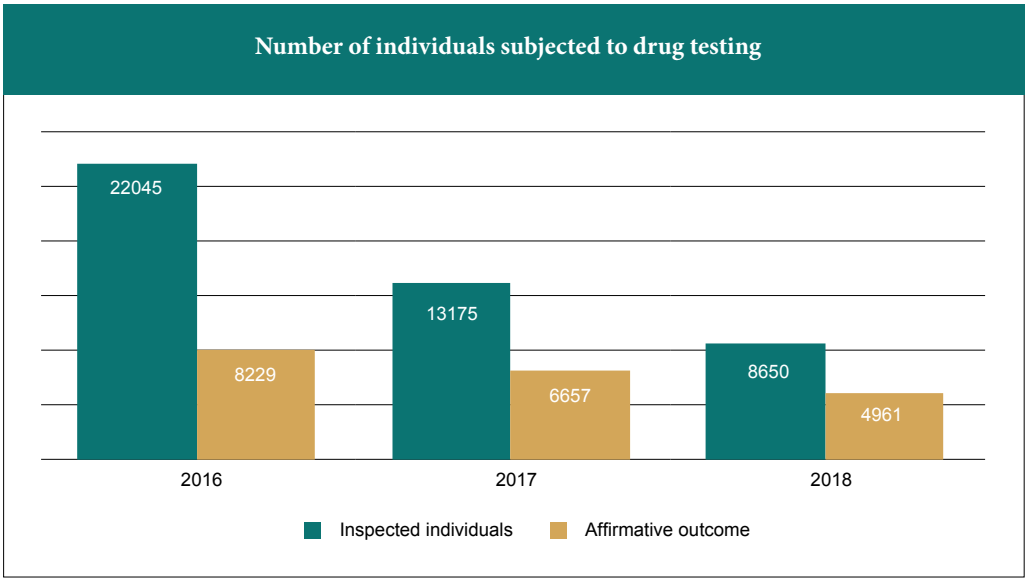
According to the information provided by the Ministry of Internal Affairs,[58] the number of individuals subjected to drug testing has dropped in recent years. This number has decreased by 34,3% compared to 2017. Nevertheless, approximately 42% of persons who underwent drug testing were not found to have used them.

For the purpose of assessing the practice in drug testing during the report period, it was important to look at the frequency of applying administrative arrest by the law enforcement bodies for the individuals subjected to drug testing in 2018; however, the Ministry of Internal Affairs does not maintain data on this practice for legal grounds which makes it impossible to examine data in this regard.[59]

57 March 19, 2019 correspondence Np-457-19 and April 16, 2019 correspondence Np-752-19 of the Supreme Court of Georgia.

58 Ministry of Internal Affairs statistics on drug use inspections, available at: https://bit.ly/2WxkOQL.

59 March 11, 2019 correspondence №MIA21900613593 of the Ministry of Internal Affairs.



Additional punishments for drug-related crimes

Pursuant to the Law of Georgia on "Combating Drug-Related Crimes", custodial sentences for drug-related crimes and administrative liability for possessing or using small amounts of drugs result in deprivation of a range of rights by default and through court rulings respectively. Persons convicted for drug use are stripped of the right to operate any type of vehicle and the rights to be employed at educational institutions, government bodies and in the legal sector for 3 years. If convicted for purchasing, keeping and selling drugs, these rights may be restricted over the course of 5 to 20 years.

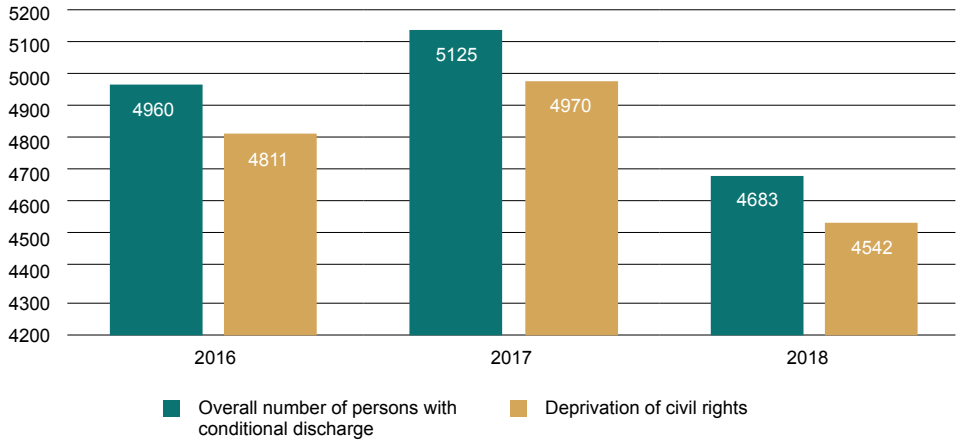
Restriction of the right to operate a vehicle is particularly burdensome for convicts of drug-related crimes as the realization of this right is frequently their only source of income. Based on the 2018 data, these restrictions were mainly imposed on the 4,967 individuals under probation as well as the 723 persons in custody – the countdown of the restriction period for the latter will start once they have served the sentence.[60]

The statistical data on deprivation of rights for drug-related crimes under the Law of Georgia on "Combatting Drug-related Crime" demonstrates that during the last three years, approximately 5000 persons are deprived from their civil rights annually. Taking into consideration the provision of the Law that establishes minimum term of 3 years for deprivation of civil rights, it can be assumed that in 2016-2018 years 14 323 persons were deprived from civil rights.[61]

60 Article 3 of the Law of Georgia on Combating Drug-Related Crimes.

61 Article 3, paragraph 11 of the the Law of Georgia on "Combatting Drug-related Crime".

Statistical Data on Deprivation of Civil Rights to Persons with Conditional Discharge in 2016-2018

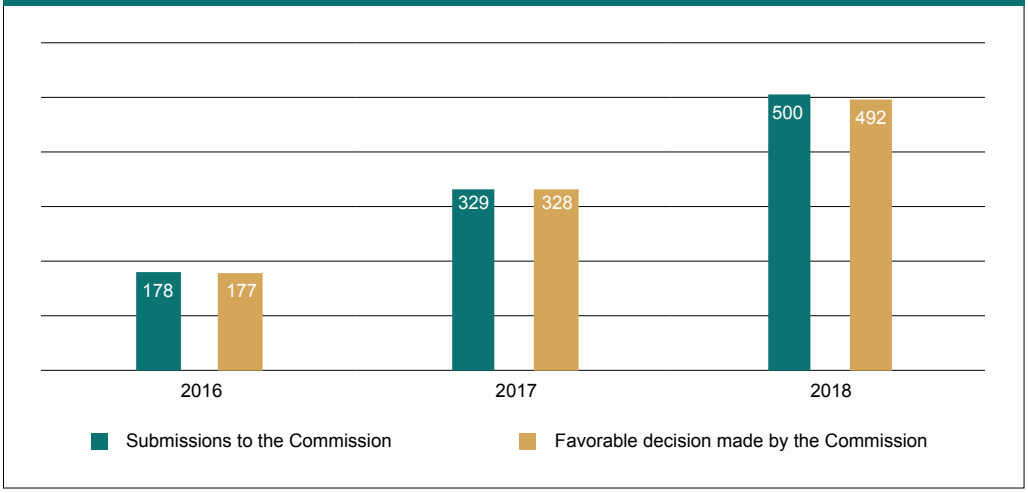


The only possibility to be discharged from additional punishment before full term is to address the Permanent Commission on the Issues of Abolishment of Conditional Discharge of the National Bureau of Non-custodial Sentence Enforcement and Probation Service. The Commission is entitled to discuss the possibility of restoration of deprived rights for drug-related crimes or to discuss the possibility to reduce the term under a precondition – one third of the term should be already passed.[62]

Notwithstanding the particularly high number of cases on deprivation of rights, the submissions made to the Commission are very rare. It must be assessed positively that during the last three years, the majority of submissions made to the Commission have been decided in favor of applicants with respect to abolishment or reducing the term of the deprived rights.

62 The letter N2/53606 of June 17, 2019 of the LEPL National Bureau of Non-custodial Sentence Enforcement and Probation Service of the Ministry of Justice of Georgia.

Statistical data on restoration or reducingt the term of deprivation of rights in 2016-2018



Statistics of drug-related crimes handled through plea agreements

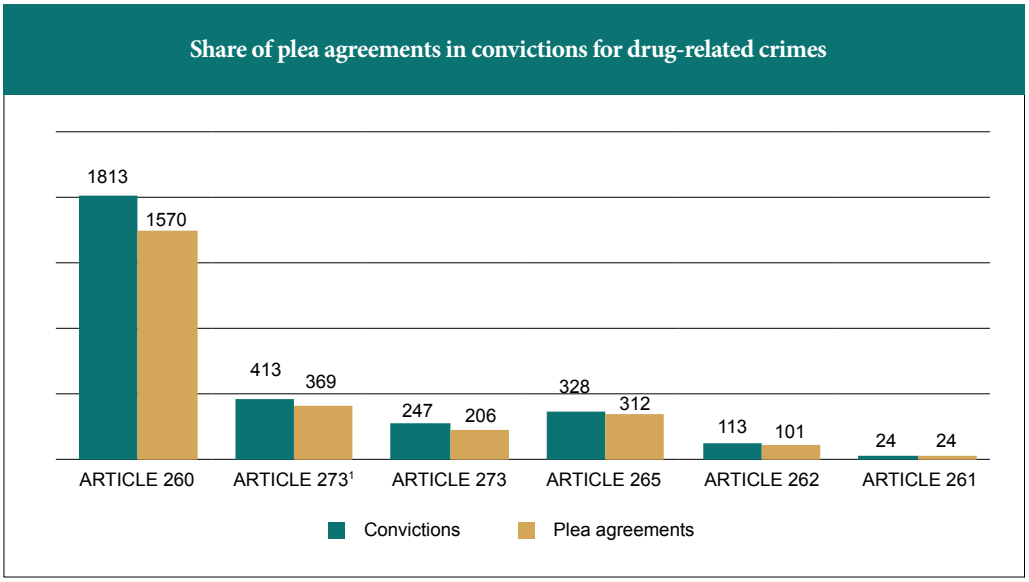
The share of plea agreements in the final outcome of drug-related crime trials have always been high which has also continued into 2018 as demonstrated by the available statistics. In 85% of convictions of drug-related crimes the convicts and the prosecutor's office have settled the case through plea agreements.[63]

Despite the fact that plea agreement presents a quick and effective method to implement justice, frequent application of this mechanism in settling drug-related crimes may also be emanated from additional factors. High level punishments for drug-related crimes may be one of the reasons circumvention of which and application of a minimal punishment is not the judge's discretion as determined by the legislation and which can only be implemented through plea agreement.[64] Forming plea agreements is also frequently linked with opportunities it offers to negotiate with prosecutors the restriction of additional rights of the convict.[65]

63 April 17, 2019 correspondence Np-753-19 of the Supreme Court of Georgia.

64 Article 2^1 of the Criminal Code of Georgia.

65 Paragrah 4^1 of Article 3 of the Law of Georgia on Combating Drug-Related Crimes.



Treatment and rehabilitation programs for drug users

In addition to examining the tendencies in prosecution policies of drug-related crimes, it is also important to review available state programs for treatment and rehabilitation of drug users. Currently the state runs an addiction treatment program which offers services such as: residential detoxification and primary rehabilitation during psychiatric and behavioral disorders caused by opioids and other psychoactive substances and the drug replacement therapy in Tbilisi and the regions. This program also offers drug replacement therapy and extensive detoxification services at №2 and №8 penitentiary institutions.

178 inmates of the penitentiary institutions are currently enrolled in this program of which 1 is female and 177 are male.[66] It is a positive tendency that the program budget has been increasing annually since 2016 – the 2016 budget amounted to GEL 5 million while in 2019 it has reached GEL 12 million.

66 April 1, 2019 correspondence N01/5562 of the Ministry of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Affairs of Georgia.

IV. Analysis of court practices in drug-related crimes

For the purposes of analysing judicial practices on drug offenses, EMC has requested 2018 judgments from the District and City Courts, as well as Appeal and Supreme Courts. The courts provided (incompletely) a total of 705 judgments, which is about 25% of all drug-related cases of 2018. Despite the fact that, processing this number of decisions does not provide enough for the generalization of judicial practices, the study of the verdicts still shows the tendencies in different directions.

Most of the judgments received from District/City courts, ended in decision on signing a plea agreement – without consideration of the case, and the processing of these decisions has shown to some extent, the policy of the Prosecutor's Office in relation to criteria for making a plea agreement in drug-related cases. The analysis of the judgments, made without substantial examination of the case, was also interesting, in the sense that, it is the only way to evaluate the proportionality of the sentences used by the court against the number of drugs and convicts.

For assessing the judicial practice of drug crimes, and the standard of proof, it was especially important to study the decisions made following the essential consideration of the case. Out of 705 obtained cases, we were able to study the verdicts of the cases from Tbilisi and Kutaisi Court of Appeals, adopted as a result of substantial discussion (and not the plea agreement). We received in total, 160 verdicts, from both courts, and in some of them, the parties had requested to change the sentence used. For the purposes of the report, we focused on 100 judgments, in which, the parties requested to amend the verdicts of the first instances due to his illegality or unsubstantiation.

Analysis of decisions of the first instance courts

The processing of the statistical data on drug offenses revealed that the majority of criminal cases in 2018 (approximately 85%), ended with a plea agreement between the accused and the Prosecutor's Office. According to the verdicts of the District/City Courts, the terms and conditions of a plea agreement for drug offenses are related to the gravity of the drug crime, which is determined by the amount of narcotic drugs in the criminal case.

According to the reviewed verdicts:

- In the case of acquisition and storage of narcotic drugs, as stipulated sections 1, 2 and 3 of Article 260 of the Criminal Code, in most cases, suspended sentence is used together with fine.

- In case of use of drugs (Article 273 of the Criminal Code), as well as prosecution for growing and cultivation of marijuana, a plea bargain is reached and the penalty is public benefit or fine.

- In cases, where large numbers of drugs were involved or any amount was intended for sale, the absolute majority of the decisions were made without substantive examination and resulted in prison sentences.

- At least 26 persons are deprived of liberty for the possession of drugs that are considered small or unsuitable for consumption according to the draft "Law on Special Substances and Narcological Assistance" developed under the uniform legislative package presented to the Parliament.

- The majority of judgments against individuals deprived of liberty are related to the acquisition and retaining of drugs such as buprenorphine, heroin, amphetamine, methamphetamine, MDMA and new psychoactive substances. The possession of amphetamine and methamphetamine in the amount from 1 to 5 grams, in case of failing to reach a plea bargain, is liable for imprisonment from 5 to 8 years under the existing legislative regulation.

Analysis of the judgments of the Appellate Courts

As mentioned above, in the reporting period, it was important to study the judgments adopted as a result of substantial discussion. For this purpose, 100 judgments of Tbilisi and Kutaisi Court of Appeals have been studied, where the prosecution or defence requested the amendments of illegal/unjustified decisions of the first instance courts.

Operative information

In all cases, the launch of an investigation of the facts of illegal purchase and storage of narcotic drugs is preceded by the receipt of information by the police officer. According to 2018 court practices, a police officer who writes the reports based on the received information, is questioned as a witness in the court and gives a general characteristic regarding the receipt of information.

Information to the police is the information provided to an investigator or operative officer by a secret employee (confidential), or another anonymous person, about a crime that has been committed or is being planned. The recipient of such information writes a report containing the content of the received information without indicating the identity of the information provider. According to the norms of the law on the operative-searching measures, it is impossible to share an informant's identity with a judge and/or to question the witness before the court.[67] In addition to the information about confidant, the methods, tactics, and organization of acquiring operative-investigative information are also secret and are beyond the prosecutorial supervision.[68]

Article 119 and 121 of the Criminal Procedure Code provides a prerequisite for search, confiscation and personal search – based on reasoned assumptions; in particular, where a combination of facts or information exists that, together with the circumstances of the criminal case, would satisfy the objective person to consider the possibility of a crime. This standard is used for conducting an investigative action as well.

The report of the police officer, who receives information and the same police officer's testimony, are used as a collective of information on narcotic crimes, which creates ambiguity and suspicion, when the accused denies the possession of the narcotic substance removed during the search, while, according to legislation, neither the court nor the prosecutor is able to verify the content of such information, the source of information and the circumstances of the urgent necessity. Instead, the content of the information is determined by the policeman's report and explanations, which cannot be equal to the degree of specificity of the first source. In this case, we are dealing with similar evidence of indirect testimony, except that it is impossible to identify the source of the information.

In two cases studied in the reporting period, the time discrepancy between the time of receiving the operative information and the commencement of investigative action, became the basis for the acquittal of the defendant together with other circumstances by the way of appeal. Interestingly, in this case, there was no discussion about the need for detailed access to the information from the court.[69] The analysis of the cases discussed below, as well as the court practices of 2018, show that in the course of establishing the legality of the search, the court relies only on confidential information, while neither the court, nor any other side, has the possibility to verify its actual existence, and there is no mechanism for evaluating its content.

67 Commentary to the Criminal Procedure Code, 2015, p. 331, 389, 619.

68 Law of Georgia On Operative Investigatory Activities, Article 21.

69 Tbilisi Court of Appeals, September 28, 2018, case №1b/834-18; Tbilisi Court of Appeals, May 17, 2018 case №1b/688-17.

Personal Search Report

According to the 2018 court practices, the most important evidence in deciding whether a person is guilty of criminal offense is the personal search report, the actual and relevant data, which is the subject of detailed examination by the court. In the majority of the examined judgments, the court directly points out that "the central evidence proving the guilt of a person is the personal search protocol",[70] which should be in compliance with the policemen's statements. The courts also pay particular attention to the recognition of the legality of a personal search report. Based on the analysis of 2018 judicial practices, to determine the guilt of a person it is very important that personal search protocol signature is confirmed, in which case, the alternate position of the defence on the search and the possible illegality, is considered by the court, to be largely unconvincing. [71]

The analysed decisions demonstrate that in cases of the acquittal verdict, there is no signature of the person on the search protocol. The court emphasizes the accuracy of the information indicated in the personal search protocol. In particular, it is examined whether the police officer, involved in the investigative action, described the character of the drug, colour, shape, types of packages, and so on. In some cases, the general character of the search protocol became the basis for the acquittal of the defendant.[72]

Police witnesses of the search and other persons

Most of the studied decisions are based on testimonies of police officers interrogated as witnesses. In assessing police statements, the court emphasizes the consistency of the statements of policemen participating in the search regarding the time, place and direction of investigative action. In drug offenses, it is often problematic to challenge the testimonies of police officers by the defence, if the search was conducted without witnesses or video cameras. There is an inconsistency in the courts' attitudes and in every case, the credibility of the testimony given by the family member or close friend of the accused, is evaluated.

In most of the judgments in the reporting period, in the circumstances of the court competitive process, the court required the parties to obtain evidence. In the judgments, it is clarified that, since the commencement of criminal persecution at all stages of the proceedings (including the substantive examination of the case), proceedings are conducted on the basis of the principle of adversariality, meaning that the parties had to present the evidence to they

70 Tbilisi Court of Appeals, April 23, 2018 case №1/b-26-18.

71 Tbilisi Court of Appeals, July 23, 2018 № 1 b / 1066-17.

72 Tbilisi Court of Appeals, June 29, 2018 case № 1b / 599-18.

confirm or deny the facts.[73] In only one of cases analyzed, where the person was found not guilty, the court indicates the necessity to have other witness present during search: "The obligation of the prosecution (and not it's authority) is also, to obtain not only the evidence that proves the person's guilt but, in order to ensure the establishment of truth on the case, they are obliged to obtain mitigating or justified evidence of the responsibility of a specific person in order to exclude any suspicion (including circumstances causing suspicion) on the factual circumstances."[74]

In the number of judgments, the court directly points out that "due to the specific nature of narcotic crimes, the offender is sometimes detained without the presence of other attendees and in this case, the basis of evidence is the testimony of police officers." [75] The Court notes that there are frequent cases when the witness, because of his relationship with the accused, may testify in his defense, however, when court evaluates the police testimonies on the one hand, and on the other hand, the testimony of witnesses, attention should also be paid to other factual circumstances that may put the testimonies of either side under the question mark.[76]

In the circumstances, where the biological-genetic examination, as well as the recording of the search, is not a prerequisite for a conviction, it is difficult to imagine, what other evidence may be available to question the police testimonies, or for sharing the interpretation of the defense.

Biological-Genetic Examination

Similar to previous years, the judicial practice of 2018 regarding the appointment of biological- genetic examination in drug-related criminal cases, on narcotics obtained as a result of a search, varies. This additional information provides whether, the accused, has had a physical connection to the drugs removed as a result of personal search.

The cases studied during the reporting period have shown that the prosecution made a decision, on the appointment of this examination, in only few of the cases. It is problematic that in these cases, there were no attempts to obtain such evidence even from defence side, which may be explained by the absence of the financial resources required to carry out this examination.

73 Tbilisi Court of Appeals, June 28, 2018 case №1b/189-18.

74 Tbilisi Court of Appeals, May 17, 2018 case №1b/688-17.

75 Tbilisi Court of Appeals, December 5, 2018 case №1/b 149-18.

76 Ibid.

The court decision on one of the cases, where the conviction of a person in the first instance and 6 years imprisonment, was based on testimonies of police officers involved in detention and personal search, the detention protocol, and chemical examination of 0.000082 grams of methamphetamine 0,000046 grams in the empty syringe. The Tbilisi Court of Appeal changed the guilty verdict. The Court of Appeal clarified that "the prosecution has the right to conduct, or not, any kind of examination, and the kind and the quantity of evidence presented in the court is also their decision, but in the event that, the accused denies his guilt from the beginning, and there is no signature on any investigative protocol, while he voluntarily submits a biological material for examination and relevant examination is not conducted, such action calls into question the objectivity of the fact of removing drugs in the syringes from the hands of the accused".[77]

The Court of Appeal made a different decision in a similar case where the defendant questioned the search protocol from the start and the biological genetic examination indicated that the genetic profile of the defendant was not revealed for the drugs. In this case, the Court of Appeals didn't change the guilty verdict with the argument that "overlapping one genetic profile and maintaining biological profile on the subject depends on many circumstances, including how genetic profile is revealed, what the surface is like, and so on. What is the probability of the genetic profile remaining on the subject, there is no exact answer." The result of the examination was not taken into consideration due to the fact that the testimonies of police officers, interrogated in the case, were in full cohesion. [78]

Conclusion

Based on the judgments in the reporting period, courts' approach and standard of proof have not changed substantially on narcotic crimes. Like previous years,[79] the conviction by a standard beyond reasonable suspicion, is usually based on the testimony of police officers, search protocols, and examination of narcotic drugs. The different and more critical assessments of the police officers' testimonies are performed by the court, when the accused refuses to sign the protocol of the search and makes the possession of drugs debatable, before the substantive discussion from the initial stage of an investigation. In contrast to the practices of 2017, the Court of Appeal does not normally overturn the conviction of the guilty verdict issued by the first instance and there is only one such case. The problem remains to be able to obtain neutral evidence in the case of narcotics, where the fact of searching is conducted without any personal or technical confirmation. The court practices of 2018 also vary in terms of existence or assessment of the biological-genetic examination in drug offenses.

77 Tbilisi Court of Appeals December 23, 2018, case №1/b 149-18.

78 Tbilisi Court of Appeals December case 13, 2018 №1/b-437-18.

79 Human Rights Education and Monitoring Center, (EMC), "Drug case hearings in courts – trends of 2017", 2018, p. 10.

V. Analysis of problematic criminal cases

Together with the court practice analysis, EMC examined three criminal cases of acquisition and storage of drugs in which the defendants referred to violations at the stages of investigations or trial. The study of cases has shown analogous shortcomings in terms of legality by investigation the law enforcement authorities and exercising of fair justice.[80] According to the existing court practices, the defence side is devoid of the opportunity to provide evidence to prove its position, especially, under conditions, where the personal search/detention of defendants takes place without witnesses or recording. The processing of these cases showed similar flaws that EMC has indicated in drug analysis for investigations and judicial review on drug offenses in 2017. [81]

The definitive character of testimony of a police officer

In all three criminal cases, one of the most important witnesses was a police officer, who received the information, and based on his report, other employees started the search. The authors of the report do not have the obligation to disclose the source of the information to the court. Based on this, it is important to evaluate these testimonies, because in this case, we are actually dealing with indirect testimony-based evidence.

In relation to the use of indirect testimony to prove a person's guilt, the Constitutional Court[82] in its judgment assessed the extent to which the criminal procedural legislation provided sufficient safeguards for establishing the fact of a crime committed by a person. The aim of the Constitutional Court was to exclude the danger that is related to the guilty verdict based on suspicious, false, unreliable evidence. The Court stated that "the principle of liability on the basis of justified evidence is a guarantee that no innocent person shall be convicted by arbitrariness or error of state officials". In drug-related cases, in the conditions, where the information is fully classified and the context in which it was obtained is only known to the investigator, a procedural reality is created, where the defence has no opportunity to fully confront the allegations, which even the prosecutor may not know, and obviously cannot become the subject to Court's attention. At that time, the accused cannot rely on the "good will" of the prosecution's office to provide him with all the information that could make the credibility of the main evidence in the

80 With the consent of convicted persons in criminal cases reviewed in the report, their full names are given.

81 Human Rights Education and Monitoring Center, (EMC), „"Gaps in the investigation and prosecution of of the drug crimes ", 2017; EMC, "Drug case hearings in courts – trends of 2017", 2018.

82 Decision of the Constitutional Court of Georgia of January 22, 2015 "Citizen of Georgia Zurab Mikadze v. Parliament of Georgia"

case, questionable.[83] The absence of prosecutor's supervision further reduces the expectations of the accountability and makes the evidence against the person trustworthy dependent only on the "presumable honesty" of the investigator.

Similar arguments are cited in the constitutional suit by EMC, in which, one of the issues was the issue of reviewing the testimony of the police officer, who received the information, as indirect evidence and its constitutional assessment.

Since the Constitutional Court has already established that information can be indirectly transferred and can be wrongly understood, the same risk accompanies the investigator's testimony is the case, "since he is unable to fully verify the information that he is presenting, he can only voice his assumptions, which in case of arbitrary actions by a policeman will not result in liability."[84] Thus, in the conditions, when the information about the informant is undisclosed, the defence side is unable to challenge this effectively, but also it's beyond the actual responsibility or direct supervision of prosecution, and at the same time, is not subject to court examination without the participation of the defence side.[85] Specifically, in the context of drug crimes, while the defendant is indicating the fact of "planting the drugs", based on the character of the crime, may become the only evidence for the defence.[86] In the present case, the confidentiality of all information on confidentiality creates a threat that the decision may be based on suspicious, false, unreliable or absolutely non-existent evidence. As it was noted, the substance evidence obtained during the search on the basis of confidential information and the narcotic substance in connection with the plaintiff often becomes the basis for liability.

The challenging nature of this topic was once again confirmed by the study of the cases. Temur Kalandadze's criminal case is particularly interesting, in which the police officer, who received information, unlike the report drawn up at the stage of the investigation, stated at the trial for the first time that he had received information through the internet. He did not answer the additional questions on the timing of receiving the information, location and the identity of the informant. The Court of Appeal found the policeman's testimony in conjunction with the testimony of two policemen participating in the search to be the basis for the conviction.

83 Decision of the Constitutional Court of Georgia of January 22, 2015 "Citizen of Georgia Zurab Mikadze v. Parliament of Georgia".§20.

84 Constitutional suit in the case N1276 "Georgian citizen Giorgi Keburia v. Parliament of Georgia".

85 Ibid., §29.

86 Ibid., §33.

The credibility of police testimony

The cases studied showed that the court found the police to be particularly trustworthy in all three cases. In all three cases, the guilty verdicts were based only on police statements, except for the conclusion of chemical examination on drugs removed during the search. In all three cases, the defence denied the fact of possession of drugs, and police officers testified about the personal search and drugs removed during the search at the stage of the investigation. The convicted Kalandadze openly accused the police of "planting the narcotic substance" throughout the trial. On the background of these clarifications, the court has assessed the position of the defence as an attempt to escape the expected responsibility, and the police testimonies, despite the inconsistencies, were accepted unconditionally. In the conditions, when the defendant states that the police officers conducted illegal acts (planting the drugs and threat of physical attack), giving credibility to the police testimony is especially problematic, since, if the court sees this as an attempt from the defendant to avoid the responsibility, with the same logic, it can be stated that the police officers also tried to cover up their actions and avoid the subsequent responsibility. The case law of the European Court of Human Rights disagrees in terms of giving the advantage to the police officer's testimony as evidence over the testimonies to the defendant or other witnesses. In many cases, the Court criticised the decisions by the investigative authorities to prioritize the police officers statements, while national courts didn't provide grounds for assessing their testimonies as credible and the statements by the defendants, not trustworthy. [87]

Standard of proof of guilty verdicts

The prosecution didn't request genetic-biological examination in any of the cases to establish the circumstances, whether genetic evidence was present on the main evidence – the drug substance and its package.

According to the testimony given by one of the convicts – Roin Chikhradze, the syringes that according to the police, was in his possession, had traces of blood. The accused stated that he had seen the illegal items mentioned in the search protocol for the first time in the police station and as a result of his personal search, nothing was removed from the scene. Nevertheless, the investigative body has not considered the appointment of biological examination to approve the opposite, nor the absence of this examination has been evaluated during the conviction of the conviction by the court. Despite that, the investigative body didn't deem it necessary to prove the opposite by requesting the biological examination and this was not

87 Virabyan v. Armenia, ECHR,2.10.2012, §167.

seen a shortcoming of the investigation during the trial either. Similar circumstances were present in Temur Kalandadze's case, which was suspected of importing drugs from France to the territory of Georgia via Turkey in the polyethylene parcel placed in the back pocket of his pants, while the defendant stated from the start that the drugs had been planted. In such a case, the conclusion of biological-genetic examination would be the answer to the question of whether the genetic profile of the defendant had been transferred to the illegal substance in his pockets during the course of a few hours, however, such an examination was not conducted within the investigation. According to the report of personal search of Irakli Chkheidze, the narcotics placed in the syringe were taken out of his hands. In this case, it is obvious that the interest of the investigation should be interested in the appointment of biological genetic examination to support the information indicated in the search report, but no examination conclusion is available in this case.

The existing investigative and judicial practice, established evidence standards in relation to the right to a fair trial as protected by the Convention, has been the subject of the assessment of the European Court of Human Rights in the case Kobiashvili v. Georgia, on which the decision was announced on 14 March 2019.[88] The applicant, in the ECtHR, indicated the violation of the right to a fair trial on the grounds that the verdict was based on the "planted" evidence. [89] In this case, the applicant was arrested for possession of 0,059 grams of heroin after the personal search conducted on the basis of operative information. According to the case file, according to the criminal procedural law existing in 2004, the fact that the narcotic substance was removed from the applicant by the investigative act was confirmed by two impartial attendees (witnesses), apart for the two police officers who conducted the search. One of them denied the fact at the trial and said that his interrogation took place under police pressure and intimidation at the investigation stage, and the other witness, according to the defence side, was a police agent. The courts of First and Second Instances, based on the testimony of police officers and chemical examination, sentenced the applicant to six years of imprisonment. The Supreme Court ruled that the appeal was not admissible for a re-examination of the case.

The ECtHR assessed the protection of the right to a fair trial, guaranteed by Article 6 of the Convention, by focusing on several issues. The focus was on the whole process, including the method of obtaining evidence and the fairness of its review at the trial, as well as the circumstances in which the applicant had the opportunity to argue the evidence and contradict it.[90] Before determining the violation of the right to a fair trial, the Court discussed the search on the basis of operative information and noted that the reason for conducting the search

88 Kobiashvili v. Georgia,ECHR, 14.03.2019.

89 Ibid., §42.

90 Ibid., §56

with the urgent necessity was vague "without reference to any relevant factual information simply based on the drawn-up text that only contained the applicant's name and the fact of possession of illegal substance."[91] The court also noted that the search procedure itself – in the face of the contradictory statements of police officers and the attendees, created doubts on the actual circumstances of the search."[92] In addition, the fact that the national court, after changing the testimony given to the investigation, automatically relied on the credibility of the defendant's testimony, in which the witness had indicated on the police's pressure and the absence of the search, was also criticized by the Court. Based on the above, the Court established the violation of Article 6 of the Convention.[93]

This decision of the European Court of Human Rights directly addresses the existing investigations and judicial approaches to drug offenses. Even though, as a result of investigation and overall assessment of the court hearing, the violation of the right to a fair trial was established in the case of 2004, the existing practice has not changed and evaluations in the judgment apply to the criminal cases studied.

Injustice caused by unspecified amounts of substances

In two criminal cases discussed, convicts are sentenced to six years of imprisonment for possession of narcotic drugs in the amounts unsuitable for consumption. Irakli Chkheidze was convicted for the possession/acquisition of 0,000305 grams of MDMA and 0,000106 grams of Methamphetamine (salt) for personal consumption and Roin Chikhradze – 0,001116 grams of methamphetamine (salt) and 0,001035 grams of Amphetamine. As it was already mentioned, the Law of Georgia "on Drugs, Psychotropic Substances, Precursors and Narcological Assistance", in the case of many drugs, including MDMA, Amphetamine and Methamphetamine, does not define initial small amounts for criminal liability, thus possession of these drugs in any amount is punishable to the full extent (under Article 260, paragraph 3).

In the criminal case of Irakli Chkheidze, EMC appealed the conviction of the Constitutional Court of Georgia and challenged the fact of the possession of Methamphetamine in the given amount and the subsequent imprisonment from 5 to 8 years in relation to the protection of the dignity and equality of human rights protected by the constitution. Constitutional Court has to give assessment, in line with person's right to dignity, as guaranteed by the Constitution,[94] whether it is relevant, for the purposes of general prevention, in the conditions where

91 Ibid., §61.

92 Ibid., §62-64.

93 Ibid., §71.

94 Constitutional suit in the case N1276 "Georgian citizen Giorgi Keburia v. Parliament of Georgia".

realisation is not the case and the risk of damaging other people's health is absent, to use the strictest instrument that the State has, for the passions of 0,000305 grams of MDMA and 0.000106 grams of Methamphetamine, in the name of achieving the abstract goal.

Temur Kalandadze's criminal case

Information to the Police

Temur Kalandadze was detained on 3 May 2017 at Tbilisi International Airport based on the information that police received. According to the information provided to the police through the Internet, Temur Kalandadze was "a drug user; he was planning to enter Georgia through Istanbul-Tbilisi flight via Tbilisi International Airport and bring drugs."

Personal search and detention conducted with the urgent necessity

According to the personal search report included the case materials; Temur Kalandadze was searched by three police officers of the operative group – Z.R, V.L. and K.B. in the room adjacent to the Tbilisi Airport Arrivals Hall on May 3, 2017, without using the technical means (video recording). The search protocol indicates that the 32 pill-like items in two packages were discovered in Temur Kalandadze's back pocket; after that he was detained for storing drugs in especially large amounts and bringing them across the border under the Article 260 (6) (a) and Article 262 (4) (a) of the Criminal Code of Georgia.

The search conducted in the urgent need was recognized by the Court as legal without any factual and legal reasoning, citing the existence sufficient information and evidence for the justified supposition standard set out in Article 119 of the CCG.

Chemical Examination

In the search protocol, there was no mention of the name of the label, colour, and the image placed on the tablet, except that the pills were wrapped in two pieces of polyethylene.

The following was submitted for the examination: 32 pills packed in two packages, which were white, oval shaped, with B8 inscribed on one side. When opening the sealed packet submitted to the expertise, it also appeared in the empty pieces of transparent polyethylene, which, according to the defence, makes the identity of the items that were subject of the examination and search, questionable.

According to the forensic examination, the drugs manufactured by the factory were buprenorphine and the total weight of narcotic drug buprenorphine was 0, 2513 grams, which according to the law "On Drugs, Psychotropic Substances, Precursors and Narcotics Aid" is especially large amount.

Narcological examination of the accused

After the personal search and detention, the accused was tested for drugs, and it was revealed that he was not under the influence of drugs. The defendant has voluntarily handed biological material and after the investigation, the facts of usage of buprenorphine, cocaine and psychotropic substance was established.

Position of the defendant

The accused pleaded not guilty and told the court that on May 3, 2017, 10-11 people participated in the search and detention and not three policemen as it was indicated in the case files. According to him, he knew, before passport control, that two men and one girl dressed in civilian clothes were watching him. The latter followed him to the luggage claim air, and tried to give him to the plastic package, he refused to take it.

Soon afterwards he was detained and taken to a luggage check room where 10-12 people demanded that he voluntarily submitted the "fact". According to the defendant, the policemen were verbally and physically abusing him, and because he had a strong physical trauma on the backbone, fearing physical violence, and he signed the search protocol. The defendant also explained that he had been under the police surveillance for about two months and three weeks before his detention, the search was conducted in his house, but nothing illegal was found. The defendant did not name a specific reason for his persecution or being the subject of interest by the police, but the documents related to this search are included in the case file.

Police Testimony

The case files include the testimonies of the police officers mentioned in the search report. All of them generally indicate the launch of investigation case and conducting a search in the Tbilisi International Airport arrival hall based on the received information.

The statements of these police officers interrogated as witnesses at the trial are contradictory. In particular, Z.R. clarified that the defendant was searched as soon as he crossed the border (at the top level the airport) and the policemen did not allow him to get to his luggage and after the search, he was taken to the police station immediately. In contrast, the remaining two policemen participating in the search indicate the ground floor of the airport as a place of search. Also, both police officers stated that after the search, Kalandadze was not taken to the police department but to the topographic and narcological examination. In essence, these policemen describe the place of search at the airport as well as legal actions taken against him after the arrest of the defendant, differently.

Video Recordings

Against the background of contradictory interpretations by the police and the detainee regarding the personal search, the defence side appealed to the court on issuing permits for obtaining the video recordings from the day of search and detention of the defendant at Tbilisi International Airport. The defence included the existing judgments and the personal search protocol in the appeal, which clearly indicated the specific time of this investigative action in the airport's specific area. Despite that, the court denied the motion on the grounds that the combination of the necessary information was not provided. The Investigation Panel of the Court of Appeals, citing the same argument, left the denial to issue the video recordings from the airport cameras, into force, after appealing the above-mentioned ruling.

Court Hearing

With the judgment of the Tbilisi City Court of 22 January 2018, Temur Kalandadze has been found not guilty of illegal purchase and keeping of drugs in large quantities and illegally import into Georgia. The Court did not take into account the testimonies of persons carrying out personal searches, because of the contradictions in search protocol in the case. The absence of video clips of the cameras inside the airport, which would make the actual place of search and detention were additional grounds for acquittal. The court also stated that the accused crossed the borders of two countries – France and Turkey without any problem and while entering the territory of Georgia, drugs were found in the back pocket of his pants, which deepened the court's suspicion and became the grounds for acquittal.

The Tbilisi Court of Appeals, in contrast to the first instance, found evidence in the case sufficient to convict beyond reasonable doubt and sentenced him to 15 years imprisonment on June 11, 2018, as a result of the assessment of evidence in the case. It should be noted that

the practice of changing judgments in criminal cases related to drug offenses by the Court of Appeal, has been noticeable since 2017. [95]

According to the Court of Appeals, the offender accused of having a standard beyond the reasonable suspicion of the evidence in the case – the testimonies of the participants of the search and the conclusion of the chemical expertise. The controversy between the police explanations, and regarding the place of conducting the search, and the place of detention of the accused was assessed by the court as an insignificant, and the police testimony as a whole was assessed as reliable.

It is noteworthy that the Court of Appeals compared the statements of three police officers – Z.R., V.A. and K.B., mentioned in the search protocol, instead of checking the compliance of each other, compared the testimony of two police officers – V.A. and K.B., on the other hand – the testimony of the police officer receiving the information (The latter did not participate in the search and according to his testimony it was not at the place of investigative actions at the airport). In the judgment, it is directly and incorrectly stated that after the receipt of the information, the investigation was launched and the operative group was formed by the three policemen who met Kalandadze at the Tbilisi airport, took him to the luggage room as soon as he crossed the border and carried out a personal search. According to the case materials, the testimony given to the police's court found that the policeman who received the operative information was not involved in the search or detention and was not present during the investigative activities at the airport. But the third person who was involved in the search was Z.R., which is not mentioned in the appeal decision at all. Consequently, neither his contradictory testimony is evaluated with the testimony of other police officers participating in the search.

In addition, the Court of Appeal found the fact that Temur Kalandadze bought drugs during his stay in France as established. None of the evidence in the case file provides the grounds for making this conclusion, and even the prosecution side cannot specify the place of acquisition of drugs. Thus, it is unclear what the Court of Appeal relies upon when making this conclusion.

It is noteworthy, that the problem of court practice in connection with the time and place of acquisition of drugs, was the fact that in the part of the illegal purchase of narcotic drugs, accusations were made without presenting any evidence to the court about the circumstances of this acquisition. The court accepted the position of the prosecution based on supposition, in relation to acquisition of drugs illegally, in "unrecorded time and circumstances", without

95 Human Rights Education and Monitoring Center, (EMC), "Drug case hearings in courts – trends of 2017",, 2018, p.20.

any judgment and assessment.[96] Although such cases were not observable when studying the 2018 judgments, in the present case, the Court made the conclusion on the acquisition of drugs in France by the accused and did not indicate that even the prosecution did not assert that.

According to the verdict of the Court of Appeal, the absence of video recordings from cameras inside the airport in the criminal case could not have been the basis for the acquittal of the defendant, since the personal search protocol was sufficiently credible in terms of the details of the investigative action and the prosecution determined which evidence should be have been presented to prove the guilt. The Court of Appeal viewed Temur Kalandadze's testimony on "planting" the evidence and different place of the search, as an attempt to avoid responsibility. It should be noted also that the same composition of the Chamber of Appeals in one of the cases[97] involving identical narcotic crimes in 2018 issued different explanations: "When the law enforcement statements contradict the testimony of the defendant and his relatives (friends), or when, there is a difference between the testimonies of a defendant and other witnesses, the advantage should not be given to the police officers' testimony unconditionally, especially in cases, when complaints are made against police officers on their conduct, because they are likely to be interested in avoiding the responsibility."[98] A completely different approach from the Court, on similar case, can be explained by the fact that, unlike the case of Kalandadze, in the latter case, the criminal case and the court hearings were closely followed by the media and the public. It is noteworthy that one of the major challenges to the practice of drug crimes in 2017 was the substantial difference in judicial execution in well-known criminal cases and other cases. The mentioned was demonstrated in the uneven assessment of the evidence, judgments of the decisions, the identification of problematic issues by courts and their critical assessment and the standards used to reach the verdict.[99] On 18 January 2019, the Supreme Court ruled that the cassation appeal of the defence was inadmissible and as a result, the verdict of the Court of Appeals remained unchanged on Temur Kalandadze's conviction.

96 Ibid., p.20.

97 Tbilisi Court of Appeals, May 17, 2018, case # 1b / 688-17; At the time of consideration of Kalandadze's case, one judge has been replaced in the Chamber of Appeals.

98 Tbilisi Court of Appeals, case № 1 b / 688-17 May 17. 2018.

99 Human Rights Education and Monitoring Center, (EMC), "Drug case hearings in courts – trends of 2017" 2018, p.20.

Irakli Chkheidze Criminal Case

Information to the Police

Irakli Chkheidze was detained on March 6, 2017, on the basis of information to the police, in the entrance of his house, after the search under the first part of article 260 of the Criminal Code of Georgia. Information to the Police On March 6, 2017, was received by an officer of Vake-Saburtalo IV Division of the Tbilisi Police Department. According to the information, Irakli Chkheidze was on Petritsi street in Didi Dighomi, Tbilisi, with his friend, and was under the influence of drugs and had drugs. The interview with the officer who received the information started at 00:06 and finished at 00:17.

Personal search and detention conducted with the urgent necessity

According to the case file, Irakli Chkheidze's personal search was carried out within two minutes after the receipt of the information (before the interview with the recipient was concluded) by three policemen in the entrance to his house in Petritsi Street.

According to the information provided in the personal search report, the glass, transparent ampoule in the open plastic package, the injection syringe with the white substance on the upper wall, one piece of insulin syringe fluid dyes, two pieces of insulin syringe from his right hand. After Chkheidze's personal search, he was arrested. Irakli Chkheidze refused to sign the search and detention protocol.

Chemical Examination

The chemical examination was appointed within the scope of the investigation to investigate the syringes and ampoules removed during the search. In the syringe contents, according to the chemical expertise conclusion, 0,000305 grams of MDMA and 0,000106 grams of methamphetamine have been identified, which is defined by the legislation as a large amount. By the initiative of the prosecution, there was no biological genetic examination.

Narcological examination of the accused

As a result of testing, Irakli Chkheidze was under the influence of narcotic substance and he refused to submit biological material.

Position of the defendant

Irakli Chkheidze made all the allegations of the prosecution doubtful, and pleaded not guilty. According to him, when he entered the entrance of his house, he met his friend B.K.. Within 5 minutes after the conversation, two men came to them, when Piranishvili fled to the upper floor and Chkheidze stayed. He was arrested on the spot. According to the defendant, he saw the syringes mentioned in the search protocol in the police station for the first time, also he indicated the police station and not the area of his residence as a place where the search protocol was prepared.

Police Testimony

According to the materials of Irakli Chkheidze's criminal case, four policemen arrived at the spot of his personal search. They describe the departure to the spot and the details of investigative actions identically, regarding the removal of drugs from Chkheidze's hand and his detention.

Court Hearing

The court, in this case, also sentenced the accused to 6 years of imprisonment for possession of a large quantity of narcotic substance under Article 260 of the Criminal Code of Georgia. The guilty verdict was based on police officers' testimony because they were "are in unison with the evidence, as well as the provisions of the personal search protocol and the conclusions of examination." The Court also relied on the protocol of the inquiry of a friend, who was with him during the detention. The mentioned person denied this information during the trial and said he did observe the fact of the removal of narcotic substance during Irakli Chkheidze's personal search. According to the verdict, the reason for the change of testimony by the witness was to promote his friend's avoidance of responsibility, for which the testimony given to the trial was assessed as false information.

It should be noted that this explanation of the Court's case of change of testimony contradicts the practice of the European Court of Human Rights. The case law establishes that in the fair and competitive process, the advantage should be given to the testimony given before the court, and not at the investigative stage unless there is a good basis for the opposite. [100] Such a decision was taken by the Court in the circumstances where the applicant's conviction was based on the testimony given to the police and the witness's testimony, who during the trial

100 Erkapic v. Croatia, ECHR, 25.04.2013. §75.

changed their testimony, which naturally led created serious doubts in terms of reliability of such testimony.[101]

The court's explanation on the fact of planting the drugs is also interesting. According to the verdict, in such a case the attention is paid to the existence of video recording of the search conducted by the prosecution or to neutral person's presence, but in the absence of such, this fact annulled by the testimony of the witness who gave two different testimonies in the course of investigation and during the trial.

On March 14, 2019, the court halted appeal on Irakli Chkheidze's criminal case and the making of a final decision. The reason for this is the appeal of the judge of the case to the Constitutional Court; as a result, the penalty for the possession of the small amount of drugs in the given case shall be assessed by the Constitutional Court in relation with human rights.

Roin Chikhradze's Criminal Case

Information to the Police

Roin Chikhradze was detained on February 27, 2017, by the officers of III Division of Vake-Saburtalo Division of Tbilisi Police Department based on received information on Nutsubidze territory. According to the information, Roin Chikhradze was on Nutsubidze Street. He should have been under the influence of drugs and he had to have drugs on him.

Personal search and detention conducted with the urgent necessity

According to the case files, in 6 minutes after receiving operative information, two police officers conducted the personal search on the basis of the urgent necessity. Despite Chikhradze's request, the third person didn't witness the search. The search protocol indicated that from the right pocket of Chikhradze's coat, 3 pieces of paper package with crumbly substance were removed and two pieces of 20 ml syringes in the plastic packaging with the substances placed in them, and 1 piece small glass bottle in plastic bag, with sediments on the inner walls, Also 1 piece one ml syringe with substances.

101 Levinta v. Moldova, ECHR, 16.12.2008, §§101- 103.

Narcological examination of the accused

Roin Chikhradze's narcological examination revealed that he was not clinically under the influence of narcotics, and in laboratory examination, the use of amphetamine, methamphetamine, and benzodiazepine group psychotropic substance in the past was confirmed.

Chemical Examination

The chemical examination on the items removed as a result of personal search and the powder revealed 0,001116 grams of methamphetamine (salt), 0,001035 grams of amphetamine and 0,0341 grams of psychotropic substance Ephedrine.

Position of the defendant

According to Roin Chikhradze, he was under conditional sentence during his arrest and should have appeared at the National Probation Agency on February 27, 2017, the day of his arrest. Prior to that, he was helping his friend to carry out the electric power works.

During the hearing, he refused the removal of any illegal items as a result of the search and explained that he saw the items mentioned in the search protocol for the first time when he was detained in the police station. According to him, the police officers were persuading him to make a plea agreement from the very beginning, that why he signed the search protocols.

Police Testimony

According to the case materials, two police officers participated in the personal search of Roin Chikhradze. Their testimonies are identical to the circumstances surrounding the personal search and the detention conducted by the police as investigative acts.

Court Hearing

On 16 November 2017, Roin Chikhradze was found guilty of committing a crime under Article 260 (3) "a", "d" and "c" of the Criminal Code of Georgia and was sentenced to six years of imprisonment Under Article 273, and a fine in the amount of 2000 GEL for use of narcotics.

The Court did not discuss the circumstances that have been disputed by the defendant – the absence of illegal items on the spot, as well as the non-compliance with the request to have other witnesses during the search. The court did not pay attention to the fact that Roin Chikhradze was not under the influence of drugs, as established by the examination. It was also not considered that, the psychotropic substance of the powder and syringe that were seized was found to have the ephemeris of the drug, but his narcological inspection did not determine the fact of consumption of such substance. The accused was disputing the possession of substances and items mentioned in the search protocol, saying that he saw them, for the first time, in the police station and there were bloodstains on the syringes. Nevertheless, the absence of tectonic and genetic examination was not viewed as problematic by the court. In contrast, the Court observed that the absence of the conclusions of the examination in the case does not exclude the guilt of the person and does not explicitly indicate the acquittal, when there is other objective evidence in the case and there is no reason to doubt its credibility. The Court reiterated the same on the use of technical means – the video record. According to the court, this kind of evidence is the most important in the drug offence cases. This evidence is of crucial importance for court for the decision-making, when the defence's evidence (e.g. witnesses testimonies) is confirmed the prosecution's evidence is different from the facts of the case, however, in the given case, there is no such evidence that would put the evidence presented by the prosecutor under the question mark.

The court didn't clarify what kind of evidence could the accused present, when the police refused to have witnesses/third person at the scene and the testimonies of the police officers, which in the case, were also the prosecuting side, were considered legitimate without checking the fact, whether the accused had any physical connection to the items removed during the search.

The guilty verdict by the Tbilisi City Court was based on the testimony of two police officers and the conclusion of the chemical examination that resulted in six years imprisonment for the minor particulars of the drug found in the empty syringe. The Tbilisi Court of Appeals left the verdict unchanged and the Supreme Court ruled that the cassation complaint was inadmissible.

Conclusion

In the discussed criminal cases, the judge did not assess the actual circumstances to the necessary level. Meanwhile, in order to issue the guilty verdict, the level of evidence as established by the law – the unanimous and convincing evidence agreed with each other – is not sufficiently clear in any of these judgments. During the hearing, the passive role of the

court and the low standard for establishing the guilty verdict do not encourage the law enforcement agencies to conduct comprehensive, complete and objective investigation into the person's drug offense and in practice, this creates expectations among the law enforcement that based on the police testimony and examination, a court shall pass the guilty verdict by standard beyond the reasonable doubt.