

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## **GYLA's Statement on Giorgi Giorganashvili's case**

On 23 January 2018, the Criminal Cases Panel of Tbilisi City Court (Judge Shorena Guntsadze) delivered a guilty verdict against Giorgi Giorganashvili for commission of the offense referred to in Article 260 (6) (a) of the Criminal Code of Georgia (purchase-storage of a particular large amount of narcotic drugs). The Prosecutor's Office of Georgia charged Giorgi Giorganashvili with the fact that Giorganashvili unlawfully purchased and possessed 45 pills and the fractions of 4 pills containing a large amount 0,3726 grams of narcotic drug "Buprenorphine"(Subutex). Until the operative part of the judgment is available to GYLA, GYLA will refrain from making judicial assessments. However, with this statement, GYLA evaluates the compliance of the existing drug policy based on the example of Giorganashvili's case with constitutional standards of human rights protection.

According to the entry 29 of the table in the Annex # 2 of the Law of Georgia ☐ Narcotic Drugs, Psychotropic Substances, Precursors and Narcological Assistance ☐ Buprenorphine from 0,12 grams and more shall be considered to be a large amount. Therefore, possession of 0.3726 grams of Buprenorphine is punishable under paragraph 6 (a) of Article 260 of the Criminal Code of Georgia, as a particularly large quantity of narcotic drugs. The minimum sanction for this offense is 8 years of imprisonment, maximum 20 years or life imprisonment. This norm excludes the possibility of using a more lenient sentence than 8 years imprisonment for possession of narcotic drugs considered as a particularly large amount.

In this regard, the decision of the Constitutional Court on Beka Tsikarishvili's case is noteworthy. In the case, it was arguable that the law envisaged imprisonment from 7 to 14 years for possession of marijuana of up to 70 grams. One of the reasons for recognition of the norm as unconstitutional, the Constitutional Court named the fact that the judge considering the criminal case did not have possibility to use a more lenient sentence instead of seven years of imprisonment: "Although the judge might use individual approach within the scope of quantities prescribed by the law and impose imprisonment for 7 years for purchase/possession of 50-70 grams and 14 years for 500 grams, however as it was already mentioned nothing indicates towards high risks of realization during purchase/possession of 50 grams. Since the disputed provision sets imprisonment at least for 7 years even in the mentioned situations, it automatically precludes possibility of taking individual circumstances into consideration and imposition of punishment adequate to the act committed, including refusal to impose imprisonment as disproportionate sentence as is in the present

case”.

Even in case of 0,12 gram of Buprenorphine, the judge cannot impose a lighter penalty than 8 years, whether or not the amount of stored Buprenorphine is 0,37 or 2 grams.

In the decisions of the Constitutional Court, amounts of narcotic drugs are separated from each other. The more the amount of narcotic drugs is, according to the case-law of the Constitutional Court, the higher is the threat of its spread and the right of the State, in this case, to toughen the punishment increases. The Constitutional Court, in the Judgment delivered on the case of Jambul Gvianidze, Davit Khomeriki and Lasha Gagishvili v. the Parliament of Georgia considered that cultivation of 150.72 and 63.73 grams of cannabis did not constitute the treat of its dissemination, thus, the Court considered that imposition of imprisonment for sowing and cultivation of the amount of marijuana even for one day would be an inhuman and degrading punishment prohibited under Article 17(2) of the Constitution of Georgia. As for 265 grams of weed, the Constitutional Court in the case stated: "The Constitutional Court believes that, due to its particularly large amount, it may pose an automatic risk of its dissemination ... when the inevitability of realization / sale is obvious, the State should have the possibility to intervene with the freedom of a person."

Despite the fact that the Constitutional Court found the imprisonment for possession of 265 grams of cannabis as a disproportionate and unconstitutional punishment, the Constitutional Court focused on the minimum and maximum size of sentence - six to twelve years of imprisonment. Due to the fact that it was impossible to deprive a person of liberty for less than six years while lighter punishments were imposed for more serious offenses, even in the case of 265 grams of cannabis, the Constitutional Court established the infringement of Article 17(2) of the Constitution of Georgia:

□□□□□□□□ to the Criminal Code of Georgia, an intentional severe damage of bodily health, which has resulted in the death of a person, shall be punished by imprisonment for a period of four to seven years, rape shall be punishable by imprisonment for a period of six to eight years, and for a robbery the sanction shall be from five to seven years of imprisonment. This is a small list of acts which, based on their nature, are more dangerous offenses and are associated with more damage than sowing and growing of the amount of marijuana that can produce an automatic threat of its spread."

Similarly, possession of 0.37 grams of Buprenorphine is a lighter offense compared with robbery and rape. Nevertheless, possession of 0.37 grams of Buprenorphine is punished more severely than a robbery and rape.

We would like to note that the above-mentioned practice of the Constitutional Court allowed the judge to draw a conclusion that 8 years of deprivation of liberty for possession of 0.37 grams of Buprenorphine would contradict Article 17(2) of the Constitution of Georgia. In accordance with Article 19, paragraph 2 of the Organic Law of Georgia on the Constitutional Court: [ ] during hearing of a specific case in a common court, the court finds that there is a sufficient ground to consider a law or other normative act, which the court must apply when resolving the case, to be fully or partially non-compliant with the Constitution, it shall suspend hearing of the case and refer the issue to the Constitutional Court. The hearing shall be resumed after the Constitutional Court resolves the issue.”

The difference between the judge's reference and a constitutional claim of a citizen is that the judge cannot issue the verdict until the Constitutional Court makes a decision on the case referred by the judge. In case of a citizen's complaint, the General Court is not obligated to wait for the final decision of the Constitutional Court and unconstitutional judgment may precede the decision of the Constitutional Court. Consequently, with the view to establishing a guilty verdict, it would be more reasonable if the judge referred to the Constitutional Court rather than Giorgashvili filed a claim with the Constitutional Court. Expecting a decision of the Constitutional Court, which may last several years, would not have caused violation of the 9-month period of pre-trial detention based on the circumstance that imprisonment as a preventive measure was not applied against Giorgi Giorgashvili.

Given the above mentioned circumstances, GYLA believes that there were very strong arguments to consider 8 years of deprivation of liberty for possession of 0.37 grams of Buprenorphine disproportionate and, consequently, contradictory to the provisions of Article 17 (2) of the Constitution of Georgia. GYLA expresses its concern that the judge did not suspend the case before delivering the conviction judgment and did not refer the case to the Constitutional Court.