

Case # 4/s- 182-2010

Decision

In the Name of Georgia

-----2010 Year

Kutaisi City

Kutaisi Appellate Court

Chamber of Administrative Affairs

Judge: Teimuraz Sikharulidze.

The Author of the Appellate Complaint: X

The Respondent: Kutaisi City 2nd Police Department.

The Subject of the Dispute: Administrative misdemeanor perpetration

The appealed decision: Decision of the Kutaisi City Court of 14 August 2010.

Individually, without oral hearing considered X's complaint on 14 August 2010 decision of Kutaisi City Court.

Indication on the Circumstances of the Case:

On 14 August 2010 the Chief of the Kutaisi City 2nd Police Department sent a report on administrative misdemeanor on case #06... against X to the Kutaisi City Court. During the drug test at the Center of Narcology the fact of tetrahydrocannabinol (marijuana) consumption by X was established.

According to the decision of the Kutaisi City Court on 14 August 2004, X was imposed an administrative fine of 500 GEL. At the court room he was immediately released from administrative detention.

The aforementioned decision was appealed by X according to the appellate rules. He requested to void the decision of Kutaisi City Court of 14 August 2010 and to cease the case for the following considerations: since 2007 he has a serious illness, an incurable disease, in the remaining life time he should be under treatment and under a doctor's constant supervision. Every single day of the treatment he takes special drugs, which heal the disease but cause the positive result of the marijuana test for illicit drug use. This is confirmed by the letter of doctor N. Bolokadze of the JSC

Infectious Diseases, AIDS and Clinical Immunology Research Center, according to which the drug Efavirenz (3 pills to be taken every day before sleep) has a false positive result on marijuana as a result of testing of urine for illicit drug use for the group of tetrahydrocannabinol and benzodiazepine substances. Always when he has to be tested for illicit drug use the fact of tetrahydrocannabinol consumption will be revealed, which is not his fault since otherwise his right to life is at stake.

The Appellate Court, after studying the case files and the thoroughness of the complaint, assessed the existing evidences, and is of the opinion that the complaint should not be satisfied for the following reasons:

On August ... 2010 at 17:45 in the city of Kutaisi, at A.Tsereteli Street near the school #.., in front of the building X was arrested according to the Administrative Procedural Rules (paragraph 2).

According to the forensic conclusion #...129 it is clear that on .. August 2010, X's test started at 18:35 and ended at 19:13. According to the laboratory test it was established: drug substance - tetrahydrocannabinol (Marijuana) (pg. 4).

On 14 August 2010 the district inspector-investigator of the Kutaisi City 2nd Police Department filled the administrative misdemeanor report #...44 where it was mentioned: "On 13 August 2010 in Kutaisi, at A.Tsereteli Street near the school #.., in front of the building X was arrested according to the Administrative Procedural rules, according to the laboratory test it was established: drug substance - tetrahydrocannabinol (Marihuana) consumed by X". The report was signed by X (pg. 7).

In the Kutaisi City Court's record of proceedings of 14 August 2010 X stated: "I confirm the indicated fact in the delinquency report" (pg. 09).

Therefore, Kutaisi City Court indicated in the appealed decision that X confirmed the correctness of the indicated facts (see the decision).

The Appellate Court agreed with the factual circumstances established by the City Court, their legal assessment and notes that the substance Efavirenz might have a positive result for marijuana as result of testing of urine for illicit drug use of the group of tetrahydrocannabinol and benzodiazepine substances. But it is obvious that on the one hand X's test is positive as result of the laboratory examination, the use of the drug tetrahydrocannabinol (marijuana) is confirmed and on the other hand, which is most significant, during the court hearing X confirmed the fact mentioned in the delinquency report – the use of tetrahydrocannabinol (marijuana).

Accordingly the act perpetrated by X is envisioned by Article 45 of the Administrative Delinquency Code and the decision is lawful, accordingly there is no legal basis to void or cease the case.

Resolution Part:

The Appellate Court guided by Articles 276, 278 and 279 of the Administrative Delinquency Code

Held:

X's complaint is not satisfied.

The Decision of the Kutaisi City Court of 14 August 2010 is to remain unchanged.

Judge: Taimuraz Sixarulidze