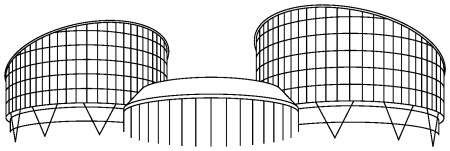

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER THIRD SECTION

CASE OF NATSVLISHVILI AND TOGONIDZE v. GEORGIA

(Application no. 9043/05)

JUDGMENT

STRASBOURG

29 April 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Natsvlishvili and Togonidze v. Georgia,

The European Court of Human Rights (Former Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges*,
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 15 October 2013 and 3 April 2014,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 9043/05) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Georgian nationals, Mr Amiran Natsvlishvili ("the first applicant") and Mrs Rusudan Togonidze ("the second applicant"), on 9 March 2005.

2. The applicants, who had been granted legal aid for the purposes of an oral hearing on the merits (see paragraphs 5 and 6 below), were represented by Ms M. Gioshvili, Ms E. Fileeva and Mr K. Koroteev, lawyers practising in Georgia and the Russian Federation. The Georgian Government ("the Government") were successively represented by their Agents, Mr M. Kekenadze, Mr D. Tomadze and Mr L. Meskhoradze, of the Ministry of Justice.

3. The first applicant alleged, in particular, that the plea-bargaining process, as provided for by domestic law at the material time and applied in his case, had been an abuse of process and unfair, in breach of Article 6 § 1 of the Convention and Article 2 of Protocol No. 7 to the Convention. He further alleged that the publicity given to his arrest had breached his right to be presumed innocent under Article 6 § 2 of the Convention. In addition, both applicants alleged that the State had hindered them in the exercise of their right of individual petition, contrary to Article 34 of the Convention, and that the financial penalties imposed upon them as part of the plea-bargaining process had breached their property rights under Article 1 of Protocol No. 1.

4. The applicants and the Government each filed written observations on the admissibility and merits of the application.

5. By a final decision of 25 June 2013, the Court declared the application admissible in part (Article 29 § 1 *in fine* of the Convention). As to the further procedure, the Court decided to obtain the parties' oral submissions on the merits (Rule 59 § 3).

6. A hearing on the merits took place in public in the Human Rights Building, Strasbourg, on 15 October 2013 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr G. LORTKIPANIDZE and Mr A. BARAMIDZE, *Deputy Ministers of Justice*,
Mr L. MESKHORADZE, *Agent*,
Mrs SH. MEZURNISHVILI and Mrs N. MEZVRISHVILI, *Advisers*,

(b) *for the applicants*
Mrs M. GIOSHVILI,
Mrs E. FILEEVA,
Mr K. KOROTEEV, *Counsel*.

The Court heard addresses by Mr Meskhoradze, Mrs Gioshvili, Mrs Fileeva and Mr Koroteev.

7. On 1 February 2014 the Court changed the composition of its Sections, but the present application was retained by the Former Third Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The first and second applicants were born in 1950 and 1953 and currently live in Moscow, the Russian Federation, and Kutaisi, Georgia, respectively. They are husband and wife.

A. Background

9. The first applicant was the deputy mayor of Kutaisi, the second largest city of Georgia, from 1993 to 1995 and the managing director of the company operating the Kutaisi Automotive Plant ("the factory"), one of the most important public companies in the country, from 1995 to 2000. On 29 December 2000 he was appointed chairman of the factory's supervisory committee at the shareholders' general meeting.

10. The first applicant was the principal shareholder in the factory after the State (78.61% of the shares), holding 12.95% of the shares through purchases made in 1998 and 2002. The second applicant held 2.6% of the shares, purchased in 2002, so together the couple owned a total of 15.55% of the shares.

11. The first applicant was kidnapped in December 2002. After being severely ill-treated by his abductors, he was released in exchange for a large ransom paid by his family.

B. Criminal proceedings against the first applicant

12. On 12 March 2004 the first applicant was accused of illegally reducing the share capital of the factory, for which he had been responsible firstly as managing director and secondly as chairman of the supervisory committee. He was charged with making fictitious sales, transfers and write-offs, and spending the proceeds without regard to the company's interests (Article 182 of the Criminal Code – "abuse of authority by embezzling and misappropriating the property of others").

13. On 15 March 2004 the police and the Kutaisi prosecutor went to the first applicant's workplace to arrest him. The arrest was filmed by journalists and broadcast on a local private television that same night. The broadcast consisted of an interview with the prosecutor following footage showing the first applicant's arrest and escort down a flight of stairs, with his arms held by policemen and surrounded by journalists. The prosecutor made two comments in respect of the matter: that the documents seized during a search of the first applicant's office "were relevant to an on-going criminal investigation and would be assessed and analysed"; and that the charge which the first applicant faced carried up to twelve years in prison.

14. The prosecutor's interview was followed by that of the Governor of the Region. The Governor, without making any reference to the first applicant or the criminal proceedings against him, declared, among other things, that the State, which was "experiencing difficult times [due to a political crisis,] would not stray from the path that it had chosen in pursuit of the identification of those who had devoured public money [...] which was exactly why pensions and salaries had not been able to be paid on time".

15. On 16 March 2004 the first applicant appointed a lawyer to protect his interests.

16. When questioned for the first time in the capacity of a suspect on 17 March 2004, the first applicant, assisted by his lawyer, protested his innocence and exercised his right to silence.

17. On the same day, 17 March 2004, the prosecution authority brought an application before the Kutaisi City Court to have the first applicant detained pending trial. The authority argued that the first applicant, who was

accused of a crime of a serious nature, might try to evade justice, prevent the discovery of the truth and pursue his criminal activities. Ruling on this request on an unspecified date, the City Court decided to place the first applicant in detention for three months. Applying Article 243 of the Code of Criminal Procedure ("the CCP"), the first applicant challenged that decision before the Kutaisi Regional Court, which dismissed his appeal on an unspecified date.

18. On 25 March 2004 the first applicant addressed a letter to the prosecution authority, which read as follows: "Since I am not indifferent to the future of the automobile factory and consider it possible to settle the problems [I am having] with the State, I express my readiness to forfeit the shares in the factory which are currently in my and my wife's possession to the State."

19. On 14 June 2004 the first applicant's detention pending trial was extended by the Kutaisi Regional Court until 15 July 2004, and in July 2004 it was extended until 15 September 2004.

20. During the first four months of his detention the first applicant was detained in the same cell as the person charged with his kidnapping in 2002 (see paragraph 11 above) and another person serving a sentence for murder. After the Public Defender's Office complained of that fact on the ground that it put the applicant's physical and psychological well-being at risk, the prison authorities transferred the applicant to another cell.

21. On 1 August 2004 the applicant and his lawyer were given access to the criminal case materials. On 6 August 2004 the first applicant designated a second lawyer to protect his interests in the proceedings.

22. On 6 September 2004 the investigation was terminated, and the first applicant was indicted on the aforementioned charges. Having acquainted himself, with the assistance of his two lawyers, with the case file in its entirety, he again protested his innocence but confirmed his intention to cooperate with the investigation.

23. On the same day, 6 September 2004, both applicants transferred their shares free of charge, representing an overall total of 15.55% of the factory's share capital, to the State.

24. According to a written statement in the case file from Mr G.T.-ia, a worker in the factory, on 6 September 2004 he and nine other employees of the factory transferred their shares to the State *ex gratia*, at the request of the prosecution authority, in connection with the criminal proceedings against the first applicant and in exchange for the latter's release from detention. The case file contains a copy of the relevant *ex gratia* agreements dated 6 September 2004.

25. The file also contains a witness statement by Mrs M.I.-dze, the second applicant's sister-in-law, that the public prosecutor had also demanded that the first applicant's family pay 50,000 Georgian laris (GEL) (about 21,000 euros (EUR)) to the Fund for the Development of

State Bodies ensuring the Protection of the Law ("the Development Fund") in order to conclude a procedural agreement releasing the first applicant from detention. Thus, the public prosecutor had supplied them with the documents necessary for the transfer, adding that the first applicant's name must not appear as the one paying the money. The public prosecutor insisted that the money not be paid to the Development Fund directly by the applicants. Mrs M.I.-dze therefore agreed to pay the required amount in her own name.

26. As confirmed by the relevant bank transfer receipt, that payment was made on 8 September 2004, with Mrs M.I.-dze's name duly appearing on the document as the source of the transfer.

27. On the following day, 9 September 2004, the first applicant filed a written statement with the public prosecutor, requesting him to arrange for "a procedural agreement" (hereafter "a plea bargain"), which procedure had been introduced into the Georgian judicial system in February 2004. The applicant specified that, whilst considering himself to be innocent, he was willing to reach an agreement as regards the sentence and to repair the damage caused to the State; he stated that he would pay GEL 35,000 (EUR 14,700) to the State budget in that connection. He added that he fully understood the contents of the agreement.

28. On the same day the public prosecutor of Kutaisi offered and the first applicant accepted a plea bargain regarding the sentence (Article 679 § 2 of the CCP). The written record of the plea agreement mentioned that, whilst the applicant refused to confess to the charges, he had "actively cooperated with the investigation by voluntarily repairing the damage of GEL 4,201,663 (approximately EUR 1,765,000) caused by his criminal activity by returning 22.5% of the shares in the factory to the State." The prosecutor further noted that, notwithstanding the fact that the applicant was charged with a particularly serious offence liable to a term of imprisonment of six to twelve years, it was still possible, having due regard to the full compensation of the damage and in the interest of the efficient use of State resources, to offer him a plea bargain. Notably, the prosecutor promised that he would request the trial court to convict the applicant without an examination of the merits, seeking a reduced sentence in the form of a GEL 35,000 (EUR 14,700) fine. It was explained to the applicant that the proposed plea bargain would not exempt him from civil liability. The first applicant stated that he fully understood the content of the bargain and was ready to accept it and that his decision was not the result of any duress, pressure or any kind of undue promise. The record of the plea agreement was duly signed by both the prosecutor and the applicant and his two lawyers.

29. On the same day, 9 September 2004, the public prosecutor filed a brief with the Kutaisi City Court, requesting approval of the aforementioned procedural agreement consisting of no examination of the merits of the case,

of finding the first applicant guilty of the charges brought against him and of reducing the sentence to which the offences were liable by fining the accused GEL 35,000 (EUR 14,700). It was mentioned in the prosecutorial brief that it was accompanied by the written record of the plea agreement and twelve volumes of the criminal case materials.

30. On the same day, 9 September 2004, Mrs M.I.-dze effected a bank transfer whereby the State was paid the fine of GEL 35,000 (EUR 14,700) as per the above-mentioned procedural agreement between the first applicant and the public prosecutor.

31. At an oral hearing on 10 September 2004, the Kutaisi City Court, sitting in a single-judge formation, examined the prosecutor's request of 9 September 2004. As disclosed by the record of the hearing, the judge explained to the first applicant, who was assisted by one of the two lawyers who had countersigned the plea bargain (see paragraph 27 above), his rights under Article 679-3 of the Code of Criminal Procedure. In reply, the applicant acknowledged that he was well aware of his rights and that he had agreed to the bargain voluntarily, without having being subjected to any kind of undue pressure during the negotiations with the prosecutor. That was confirmed by the lawyer as well. The first applicant and his lawyer then asked the judge to endorse the procedural bargain, as submitted by the prosecutor, confirming that they fully assumed its consequences. The lawyer added that he had assisted the plea bargaining negotiations between his client and the prosecution, that it was his client who had insisted on reaching a settlement, and that he, as a lawyer, had provided all the necessary counselling to the applicant.

32. Relying on the documentary evidence and the testimony of various witnesses acquired during the investigative stage, the Kutaisi Court found that the charges brought against the first applicant were well founded. The court also noted that, charged on 6 September 2004 with crimes under Article 182 § 2 (a), (b) and (c) and 3 (b) of the Criminal Code, the applicant "did not plead guilty and exercised his right to silence. However, having actively cooperated with the investigation, he had voluntarily repaired the damage of GEL 4,201,663 (EUR 1,765,000) caused by his criminal activity by returning 22.5% of the shares in the factory to the State".

33. The City Court further held that, following the judicial examination, it reached the conclusion that the procedural agreement had been concluded in accordance with the law, that the first applicant had signed it in full knowledge of the facts and that it was not the result of any duress, pressure or any kind of promise which went beyond what was permitted in plea bargaining. The court thus sanctioned the agreement by declaring the first applicant guilty of the charges brought against him and sentencing him to a GEL 35,000 (EUR 14,700) fine. The first applicant was then immediately released from the courtroom.

34. As mentioned in the operative part, the Kutaisi City Court's decision of 10 September 2004 was final and not subject to an appeal. A request could be made to have the decision quashed and the case reopened though, if newly discovered circumstances justified such a course of action.

35. According to the case file, after the termination of the criminal proceedings and his consequent release from detention, the first applicant left Georgia and has since been residing in Moscow, Russia.

C. The proceedings before the Court

36. After notice of the application had been given to the respondent Government on 21 September 2006 and the parties had exchanged their observations, the applicants complained to the Court, on 12 November 2007, that the General Prosecutor's Office ("the GPO") was continuing to exert pressure on them, this time with the aim of having them withdraw their application from the Court.

37. In support of that assertion, the applicants submitted a written statement given by their daughter, Ms A. Natsvlishvili, dated 6 November 2007.

38. According to that statement, after having been told by her parents that pressure was being brought to bear on them, in September 2004 Ms Natsvlishvili, who was a student at the Central European University in Budapest at the time, decided to approach an acquaintance of hers who was working at the GPO, Ms T.B. Subsequently, Ms Natsvlishvili exchanged several e-mails with her acquaintance in which the latter, claiming to act on behalf of the GPO, expressed that authority's position on the applicants' case. The case file contains a copy of the relevant e-mail exchange.

39. In the e-mail exchange, Ms Natsvlishvili and Ms T.B. addressed each other on friendly terms, using shortened, pet names and familiar instead of formal forms of address.

40. Ms Natsvlishvili was the first to contact, on 14 September 2006, Ms T.B., asking the latter, as a friend and an experienced lawyer, to give her some advice about her master's thesis and a forthcoming examination in law.

41. On 29 November 2006 Ms T.B. advised the applicants' daughter, whom she considered to be "a friend", that she had been "personally" working on her father's case and thus possessed important information emanating from the Prosecutor General. Inviting the applicants' daughter to express her parents' position on the matter, Ms T.B. promised to share her hierarchical superiors' views with them.

42. On 11 December 2006 Ms T.B. informed the applicants' daughter that the GPO would be ready to reopen the first applicant's criminal case and then terminate it again, this time in his favour, and to return the GEL 35,000 (EUR 14,700) which had been paid by him as a fine. Ms T.B.

encouraged the applicants to think about that proposal quickly and to accept it, otherwise, she stated, "the prosecution authority would defend its position in Strasbourg and might even unilaterally annul the plea bargain and reopen the criminal proceedings against the first applicant".

43. On 16 December 2006 Ms Natsvlishvili informed Ms T.B. that her father was ready to reach a friendly settlement, as provided for "by the Convention" and under the scrutiny of the Court. Ms Natsvlishvili then asked a number of procedural questions and also enquired whether it was possible, having due regard to the substantial pecuniary and non-pecuniary damage which had been inflicted on her family by the State, to review the conditions of the proposed settlement.

44. On the same date, 16 December 2006, Ms T.B. replied that "her personal involvement in the case was a guarantee that the applicants' family would not find itself in an inauspicious situation again". Ms T.B. then stated that the first applicant should file an application with the GPO, complaining that the plea bargain in question had been reached without a full consideration of his interests. The GPO would then treat that application as a request for the reopening of the case on the basis of newly discovered circumstances. Ms T.B. assured the applicants' daughter that, after the reopening of the case, the first applicant would, as a matter of fact, be rehabilitated by having obtained the deletion of the conviction from his criminal record.

45. Ms T.B. then stated that the State would be ready to return the money which had been paid by the first applicant as a fine and the shares in the factory forfeited by the second applicant; she explained that the first applicant's shares could not be returned as they had already been assigned to a third party. The GPO employee also assured Ms Natsvlishvili that the first applicant would become eligible to return to Georgia and to start business afresh there, in which entrepreneurial activity the prosecution authority would even assist him. Ms T.B. then continued:

> "We all know that errors have been committed, but it has become a particularly vital issue, in the interests of the country, to set aside personal experience and trauma now, notwithstanding the painfulness of those [experiences]. I know that this is difficult, but if you can manage it, I am confident that after years have passed you would then be in a position to tell yourself that you were successful in differentiating Georgia, as your own country, from individual State agents, and to tell yourself that you made your own small sacrifice for your country."

46. Ms T.B. specified that "they", the GPO, were not telling the applicants to first withdraw their application from the Court and to settle the issue at the domestic level afterwards. On the contrary, the State was ready to start working on the settlement of the issue at the domestic level first. However, Ms T.B. then reminded the applicants' daughter that "they had only a month left for [filing observations with] Strasbourg".

47. On an unspecified date, but apparently subsequent to the above-mentioned e-mail exchange, Ms T.B. informed Ms Natsvlishvili that the State would be ready to pay to the first applicant, in compensation, GEL 50,000 (EUR 22,000) and to take procedural measures to have the conviction deleted from his criminal record. She specified as follows:

> "As regards the issue of rehabilitation and compensation, the decision will apparently belong, according to the applicable rules of jurisdiction, to the Kutaisi Court of Appeal. It will therefore be indicated in this court's decision that, given the fact that the remainder of [the applicants'] shares have been assigned and that the factory has become indebted, it is factually impossible to return the shares in their entirety, which would then lead to the award of GEL 50,000 [(EUR 22,000)] in pecuniary and non-pecuniary damages."

48. Ms T.B. then assured the applicants' daughter that they could trust the GPO, as, in any event, should there be any improper conduct by the authorities, the applicants could always then complain to the Court about the alleged hindrance of the right of individual petition under Article 34 of the Convention, which allegation would be of particular harm for the respondent State's international image. Ms T.B. mentioned, lastly, that the State might be ready to increase the amount of compensation to a maximum of GEL 85,000 (EUR 35,700).

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

A. The Code of Criminal Procedure (CPP)

49. The relevant provisions concerning a "procedural agreement" ("*საპროცესო შეთანხმება*" in Georgian, *saprotseso shetankhmeba*), or plea bargaining, as introduced into the CCP on 13 February 2004 and amended for the first time on 24 June 2004 and thus applicable at the material time, read as follows:

Article 15

> "A procedural agreement may be reached in accordance with the principle of the independence of the judiciary. A procedural agreement contributes to a faster and more efficient justice system."

Article 679-1

> "1. A court may deliver a judgment based on a procedural agreement without examining the merits of the case before it. The procedural agreement is based on an agreement regarding the responsibility of the accused or the sentence. It is a prerogative of the prosecution to propose a procedural agreement.
>
> 2. When an agreement is reached regarding sentence, the accused does not plead guilty but reaches an agreement with the prosecutor regarding sentence or lack of sentence and/or agrees to cooperate with the investigation.

3. When an agreement is reached regarding responsibility, the accused pleads guilty and/or cooperates with the investigation.

4. A procedural agreement is concluded with the hierarchically superior prosecutor's consent.

5. On the basis of the procedural agreement, the prosecutor may request a reduction of sentence for the defendant, or decide to lessen some of the charges brought against him or abandon a number of them on condition that the accused plead guilty on all counts.

6. Before deciding on a reduction of sentence or lessening of charges, the prosecutor must consider (a) the severity of the sentence to which the accused is liable, as well as the seriousness of the illegality of the acts and the guilt of the accused; (b) the use of the State's resources in the way that most favours the general interest. ...

7. A procedural agreement shall not be reached without the involvement of a defence lawyer and without the prior consent of the accused as to the contents of the agreement.

8. The procedural agreement is reputed null and void if it subsequently emerges that the information and evidence supplied by the accused for the investigation... is not reliable and does not contribute to a real possibility of identifying those responsible. The decision to nullify a procedural agreement is made by a court.

9. In particular cases, in which the cooperation of the accused in an investigation has led to the discovery of a particularly serious crime or the criminal activity of a public official, and where the accused has directly assisted in making an investigation feasible, the public prosecutor may ask the court for the accused to be acquitted of criminal responsibility. ...

11. When concluding the procedural agreement the prosecutor must inform the accused that the agreement does not clear him of civil liability. In special circumstances, the public prosecutor or deputy public prosecutor may, by a reasoned decision, clear the accused of civil liability. In these circumstances, liability will fall on the State."

Article 679-2 §§ 2, 3 and 4

"2. It must be confirmed, in a written declaration signed by the accused or his legal representative and his lawyer, that, having benefited from legal advice, the accused gave his consent freely to the judicial ruling without examination of the merits of his case. The accused must fully understand the contents of the brief that the prosecutor will submit to the court, as well as the legal consequences of the decision that may be delivered.

3. Once the accused and the prosecutor have reached a procedural agreement, the prosecutor must compose a brief in which he sets out the contents of the agreement. The brief is then signed by the prosecutor, the accused's lawyer and the accused.

4. The content of the brief referred to in paragraph 3 of the present Article is confidential and can only be consulted by the signatories and the court."

Article 679-3

"1. The procedural agreement must be in written form and must be approved by a court during a public hearing, unless compelling reasons call for a hearing in camera. The court's decision must reflect the procedural agreement. The court must ensure that the agreement was reached without violence and intimidation and without

deception or illegal promises. The court must also ensure that the accused consented freely and was in a position to receive qualified legal assistance.

2. Before approving a procedural agreement, the court must ensure that

(a) the accused fully understands the nature of the crime with which he is charged;

(b) the accused fully understands the sentence liable to be incurred for the crime to which he admits;

(c) the accused is aware of all the legal requirements relating to an admission of guilt in the context of a procedural agreement;

(d) the accused fully understands that the court is under no obligation to accept a brief by the prosecution which, based on the procedural agreement, recommends the mitigation or absolute discharge of the sentence;

(e) the accused understands that he has the following constitutional rights:

- the right to a defence;

- the right to refuse to enter into the agreement stating his admission of guilt;

- the right to have the merits of his case examined.

(f) the procedural agreement is not the result of duress, intimidation or a promise which goes beyond what is permitted in such an agreement;

(g) the accused does not contest the facts on which the agreement containing his admission of guilt is based.

3. The court shall make its decision in accordance with the law and is under no obligation to sanction the agreement between the accused and the prosecutor."

Article 679-4 §§ 1, 3, 4, 5, 6 and 7

"1. In situations envisaged in the previous Chapter, the court may deliver either a judgment [endorsing the plea bargain] without an examination on the merits or a decision remitting the case to the prosecutor for indictment.

3. The court must ensure, on the basis of the case file, that the charge is well founded, that the sentence proposed in the brief is fair and that the accused has freely pleaded guilty.

4. If the court agrees with the prosecutor's factual and legal assessment of the case and considers that the recommended sentence is fair, it delivers a judgment within one month following receipt of the relevant brief of the prosecutor ... .

5. If the court finds that that the submitted evidence does not substantiate the charge or that the procedural agreement has been reached in breach of Article 679-1, it will remit the case to the prosecutor for indictment.

6. If the court considers that the sentence recommended by the prosecutor is too severe, it has the power to reduce it.

7. The accused has the right to refuse to enter into a procedural agreement which is based upon his admission of guilt at any point during the judicial proceedings before the court gives its ruling. This refusal does not have to have been agreed with his lawyer. Once the court has ruled, it is no longer possible to refuse to be bound by the procedural agreement."

Article 679-7 §§ 2 and 3

"2. No appeal lies against the judgment [envisaged in the previous Articles], which becomes enforceable upon delivery.

3. The judgment may be revised in accordance with the usual rules regarding new circumstances of fact or law."

50. Following an amendment of 25 March 2005 to the CCP, the filing of a request with a court to have the proceedings terminated by a plea bargain was no longer the prosecutor's prerogative. Such a request could also be filed by the accused (Article 679-1 § 1). Furthermore, the content of the prosecutor's brief was no longer confidential (Article 679-2 § 4), barring the section containing the information that the accused had given during the investigation. The same amendment made it compulsory to have the hearing in which the court approved the procedural agreement recorded verbatim in the record of the proceedings (Article 679-3 § 4).

51. Furthermore, the amendment of 25 March 2005 made it compulsory for the court, when considering the lawfully filed plea bargain, to explain to the defendant that, should he raise a complaint about having been subjected to undue treatment by the prosecution during the preceding negotiations, such a complaint would not hinder the approval of the bargain (Article 679-3 § 2(1)).

52. Moreover, whilst before 25 March 2005 Article 679-6 had only provided for the possibility of an appeal against a judgment declaring the procedural agreement null and void, the amendment in question gave the accused the possibility of lodging an appeal with the higher court against the approval of the agreement within fifteen days of the ruling if

"(a) the procedural agreement was concluded using deception;

(b) the defence rights of the accused were restricted;

(c) the procedural agreement was concluded by violence, force, threats or intimidation;

(d) the court dealing with the case neglected its duties as laid out [in the above Articles]."

53. The amendment in question did not specify whether an appeal could lie, on the aforementioned grounds, against decisions prior to 25 March 2005.

B. Council of Europe

1. Recommendation No. R (87) 18 of the Committee of Ministers to Member States Concerning the Simplification of Criminal Justice

54. This Recommendation was adopted by the Committee of Ministers of the Council of Europe on 17 September 1987 and concerned simplified and summary procedures. A relevant excerpt reads as follows:

"Having regard to the increase in the number of criminal cases referred to the courts, and particularly those carrying minor penalties, and to the problems caused by the length of criminal proceedings;

Considering that delay in dealing with crimes brings criminal law into disrepute and affects the proper administration of justice;

Considering that delays in the administration of criminal justice might be remedied, not only by the allocation of specific resources and the manner in which these resources are used, but also by a clearer definition of priorities for the conduct of crime policy, with regard to both form and substance, by:

- resorting to the principle of discretionary prosecution;

- making use of the following measures when dealing with minor and mass offences:

- so-called summary procedures,

- out-of-court settlements by authorities competent in criminal matters and other intervening authorities, as a possible alternative to prosecution,

- so-called simplified procedures;

- the simplification of ordinary judicial procedures..."

2. *Honouring of Obligations and Commitments by Georgia, Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), 21 December 2005*

55. The relevant excerpts from the above-mentioned Report of the Monitoring Committee read as follows:

"44. The co-rapporteurs also have some reservations about the growing tendency to transplant foreign, usually non-European legal models into Georgia's domestic judicial system. This, for example is the case with the recent law on plea bargaining, which tries to imitate the United States legal practice, and to which the co-rapporteurs wish to return in the paragraph on the fight against corruption. ...

47. While it is clear that the authorities must take into account the public demands for immediate and decisive action in the most notorious cases of alleged corruption, the co-rapporteurs insist that popular expectations cannot justify violations of the rights of suspects and the failure to respect the basic principles of due criminal procedure. Arrests of some former officials accused of corruption were carried out in spectacular circumstances, often without warrants even in cases where there was no indication that suspects had the intention to flee. Human rights organisations reported several cases of excessive force, some arrests were filmed and images – degrading to the suspects' human dignity – were widely broadcasted on several television channels. The respect for the principle of the presumption of innocence for some categories of suspects has yet to take hold in the new Georgia.

48. The "plea bargaining" system, which makes it possible for some suspects to have their charges reduced or dropped in return for the payment of the money they have allegedly embezzled, is, to say the least, controversial. While plea bargaining is broadly used in the United States as well as in some Council of Europe member states, it usually relates to agreements by which accused persons agree to plea guilty

(denounce other culprits, etc.) in return for a lesser charge. The Georgian plea bargaining goes a step further and introduces a financial component into the quotation – the accused are asked to repay a certain sum, which is an approximation of what they have allegedly stolen. In return the prosecutor agrees to reduce or drop the charges. The deal must finally be approved by a judge.

49. The co-rapporteurs consider that the specificities of the Georgian version of the plea-bargaining system, especially the introduction of the financial component and the seemingly arbitrary way in which it is applied to some cases and not to others, make this practice incompatible with Council of Europe standards. The system may not only create an impression that big thieves are allowed to buy an immunity from justice, but is also worrisome because the lack of legal and administrative checks and balances in the Georgian police, prosecutor services and courts create a risk of abuse. The co-rapporteurs understand that the money obtained through "plea bargaining" (some 30 million USD so far) is very important and has helped to pay for pensions and other immediate needs, but they disagree with the notion suggested by the Prosecutor General that the efficiency of justice can be measured against the budgetary income it helps to generate. After years of a widespread corruption and systematic disregard for the rule of law Georgia needs justice which is efficient and equal for all.

50. Consequently, the rapporteurs call on the Georgian authorities to immediately and substantially review the present plea-bargaining procedure, in order to bring it in line with Council of Europe standards."

3. Resolution 1415 (2005) of the Parliamentary Assembly of the Council of Europe

56. On 24 January 2006 the Parliamentary Assembly of the Council of Europe, after having examined the above-mentioned Report of the Monitoring Committee, adopted Resolution 1415 (2005), the relevant excerpts from which read as follows:

"9. The Assembly, after having consulted the Georgian authorities, ... asks Georgia to: ...

Critically review the present practice of the "plea-bargaining" system which - in its present form - on the one hand allows some alleged offenders to use the proceeds of their crimes to buy their way out of prison and, on the other, risks being applied arbitrarily, abusively and even for political reasons; ..."

4. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011

57. The relevant parts of the Report issued by the Commissioner for Human Rights on 30 June 2011, which concerned the plea-bargaining system in Georgia, read as follows:

"**Plea-bargaining agreements**

63. The Commissioner devoted special attention to the issue of plea-bargaining and its application in criminal cases.

64. Plea-bargaining now pervades the operation of criminal justice in Georgia. Its application has witnessed a steep increase since its introduction in 2004. The Chairman of the Supreme Court informed the Commissioner that in 2010 plea agreements were applied in around 80% of all criminal cases.

65. Indisputably, plea-bargaining has been a successful tool in combating corruption and organised crime. It also offers the important benefit of speedy adjudication of criminal cases, alleviating the workload of courts, prosecutors and lawyers. Further, it contributes to the reduction of sentences and as a result to the number of prisoners, which is crucial in the context of the high rate of prison overcrowding in Georgia.

66. The current plea-bargaining model, anchored in the new CPC, implies pleading guilty or agreement with the prosecutor on sentence (*nolo contendere* plea). It can be initiated either by the defendant or by the prosecutor.

67. A defence lawyer is mandatory in the context of plea-bargaining; however, the role of the lawyers in this process is limited. According to the information obtained by the Commissioner, most defendants are virtually certain that they will be sentenced, and lawyers, instead of working towards their clients' acquittal, advise them to plea-bargain with the prosecutor to reduce the sentence to a minimum. This attitude is particularly common for violations that foresee imprisonment as a punishment. However, the Deputy Minister of Justice pointed out that the new Code of Criminal Procedure provisions which provide enhanced rights for the defence will also positively affect the defence's position in the context of the plea agreement.

68. One concern of the Commissioner relates to the discretionary powers of the prosecutor during the negotiation of the plea agreement. For instance, the prosecutor can now ask for sentences even below the minimum sentence provided in the law, a competence many believe should rest with the judge. In addition, the law does not define the required degree of cooperation of a defendant with the prosecution, which leads to subjectivity and inconsistency of practice.

69. A plea agreement is approved by court decision. In the course of the review of the agreement by the court, the judge should make sure that the plea agreement is not concluded upon coercion and intimidation and should examine the evidence supporting the charges. The authorities assert that judicial oversight of the plea agreements is an important safeguard, stressing that the court can refuse to approve an agreement if charges are unsubstantiated or a violation is observed. However, lawyers maintain that in practice, the judge relies essentially on the evidence that the prosecutor presents when examining the terms of the agreement, and in the overwhelming majority of cases the judge agrees with the demands of the prosecutor.

70. One of the peculiarities of the Georgian plea-bargaining system relates to Article 42 of the Criminal Code, which provides that fines can be imposed in the context of plea agreements even for violations of the Criminal Code for which this form of punishment is not foreseen. According to Transparency International Georgia, in practice fines are paid in 99% of the cases, a figure which is disputed by the authorities. The process lacks transparency, due to the absence of clear criteria for determining fines. Human rights defenders in Tbilisi alleged that this is done based on an assessment of the defendant's ability to pay; this has led to a perception that freedom can be bought.

71. Although the implementation of plea-bargaining in practice has given rise to concerns, the authorities maintain that sufficient safeguards exist in the system. The Deputy Minister of Justice did, however, acknowledge the need to increase transparency of the system and improve perceptions.

72. The law also provides for a full release from sentence in exceptional cases where there is effective cooperation with the investigation. While this possibility may certainly help in resolving criminal cases, instances of abuse have been reported in this context. ...

73. Concerns have also been raised that the system of plea-bargaining might make defendants more reluctant to complain against ill-treatment or excessive use of force by police, if this has been the case. The authorities have in the past acknowledged the problem and have introduced safeguards. However, the problem may lie not with the existence of system of plea-bargaining per se but rather, as already noted, the context in which it is being operated. In view of an almost certain conviction, for many defendants plea-bargaining is the only alternative to get a lighter sentence, and a defendant is less likely to bring a justified complaint of ill-treatment if there is a perceived risk that this could undermine the chance to conclude an agreement with the prosecutor.

Conclusions and recommendations

74. The functioning of the plea-bargaining system cannot and should not be seen as separate from the operation of the entire criminal justice system. The combination of several factors – very high conviction rates, a stringent sentencing policy and the low public trust in the administration in the justice system – may very well influence defendants to plead guilty even if innocent, leading to a distortion of justice.

75. It is important to bear in mind that when consenting to a guilty plea, a defendant waives a number of rights, including the right to give testimony and the right to trial. The Commissioner notes that while safeguards may be provided in the legislation, their implementation in practice has been subject to criticism. Judges should exercise adequate control over plea-bargaining agreements and see to it that these safeguards are fully implemented in practice. The Commissioner is also concerned with the very limited role that the defence plays in the negotiation of a plea agreement.

76. It is essential that the defendant's plea must always be made voluntarily and free from any improper pressure. To this end, the system further needs the development of objective standards for the negotiations between the defence and the prosecutor, including a clearer definition of the concept "cooperation with the investigation", as well as clear criteria for determining the amount of fines imposed upon the defendant.

77. Finally, there is an urgent need for concrete steps to increase the transparency of the system. The Commissioner supports the efforts of the authorities in this regard and encourages them to adopt an inclusive approach by consulting with all relevant groups, including human right defenders and lawyers."

C. Transparency International

58. In February 2010, Transparency International Georgia (TI Georgia), a national chapter of the above-mentioned international non-governmental organisation, issued its first analytical report on the plea-bargaining system in Georgia – *Plea Bargaining in Georgia*.

59. After having set out the procedure, the State's rationale for the introduction of plea bargaining into its legal system, the facts concerning its use (according to the official statistical data, in 2005 the number of criminal cases terminated by plea bargaining constituted 12.7%), the report analysed

the risks that the unique Georgian model of plea bargaining posed to the right to a fair trial.

60. Accordingly, some of the relevant excerpts from the latter part of the report read as follows (all the statistics mentioned in the report were official, obtained by TI Georgia either from the Supreme Court of Georgia or the GPO):

> "... The statistics show that plea bargains, once agreed upon between defendant and prosecutor, are almost always upheld.
>
> In theory, the presiding judge is meant to ensure that the plea bargain was not attained as a result of undue pressure on the defendant and that the deal was made voluntarily. The judge must also ensure that the defendant's core rights (such as that of assistance by a defence attorney) were not violated. In practice, only eight plea bargains were denied by Georgian judges in 2008 out of a total that year of 8,770, a rate of less than 0.1%. Judges are also meant to ascertain that there is a *prima facie* case. In other words, the judge must be satisfied that the evidence provided by the prosecutor would be considered sufficient to warrant a full trial. The difference being that, in a plea bargain, the evidence is not questioned by the defendant.
>
> The lawyers interviewed by TI Georgia all doubted that judges reviewed the *prima facie* case 'in anything but the most procedural manner'. One example of judges allegedly failing to look into the case properly is that of Natsvlishvili and Togonidze vs. Georgia, where the defendant said that the prosecutor only agreed to enter into a plea bargain *after* he transferred shares in a car manufacturing plant to the government and paid GEL 50,000 "of his own free will". The court then upheld a plea bargain, based on an official fine of GEL 35,000, which did not include the "presents" paid beforehand, without even looking into the suspicious payments. ...
>
> **An Omniscient Prosecutor?**
>
> If you're charged for a crime in Georgia, you can be pretty sure that you'll be found guilty. Conviction rates are sky high. Of the 17,639 criminal cases filed at Georgian courts during 2008, only seven ended in an acquittal and 111 more were terminated before a verdict was reached. That makes for a 99% conviction rate, which opponents of plea bargaining say is a direct result of the loss of judicial independence caused by the practice. Prosecutors say that the high conviction rate is the result of "hard work" and "careful prosecution" and is evidence of the system working well.
>
> Deputy chief justice of the Supreme Court, Zaza Meishvili, argues that the conviction rate is nothing out of the ordinary when compared to the USA, where 90-95% of criminal cases end in a plea bargain and therefore a guilty verdict.
>
> The difference however, is that a very high proportion of non-plea-bargaining cases in Georgia also end in conviction. Most countries have conviction rates far lower than Georgia's. For example, amongst OECD countries, only Japan's 99.7% conviction rate exceeds Georgia's. ...
>
> While the proportion of acquittals has dropped since plea bargaining started in 2004, the numbers were so low before that it hasn't made much difference. We have come from a 97% conviction rate in 2003 to a 99% conviction rate in 2009. In fact, in 2005, the year plea bargaining graduated from being an anti-corruption measure to being widespread practice in ordinary criminal cases, the number of acquittals and terminated cases almost doubled and the conviction rate came down to 94%; the lowest on record.

The explanation for high conviction rates has less to do with plea bargaining and more to do with Georgia's Soviet legal legacy, a system in which confession was king. As one academic put it: 'the most powerful person in the Soviet model of criminal justice was, and largely remains, the prosecutor. He or she was responsible for directing the entire criminal proceeding, and thought little of using coerced confessions, falsified evidence or pre-trial detention as a method of inducing a confession'.

Deputy Chief Justice of the Supreme Court Zaza Meishvili reaffirmed the high incidence of confessions to TI Georgia, saying the "vast majority" of plea bargains involved a defendant's confession.

No Choice but to Bargain

But while we cannot blame plea bargaining for overtly high conviction rates, the overwhelming statistical likelihood of conviction has another very negative effect. The essence of plea bargaining dictates that it should be just that, a bargaining process with the defendant trying to extract the lightest possible sentence from the prosecutor. This is possible only when the defendant has sufficient leverage to make such a deal worth the prosecutor's while. In other words, the prosecutor knows that if he doesn't agree to the defendant's terms, he will have to go through a lengthy legal process, perhaps through three levels of courts. When you have conviction rates approaching 100%, this leverage is much weakened, allowing prosecutors to dictate the terms and leaving defendants with "take it or leave it" offers.

In systems with high conviction rates, plea bargaining doesn't work. When even innocent defendants feel pressure to "admit guilt" because the statistical likelihood of an acquittal is so low, the power is left in the hands of the prosecutors. Thus, unless Georgia's conviction rate comes down to something more realistic, plea bargaining as an institution cannot work effectively."

61. According to the official statistics obtained by the TI Georgia from the Supreme Court of Georgia and quoted in its two above-mentioned reports, the rate of acquittals in Georgia represented 0.4% in 2004, 0.7% in 2005, 0.2% in 2006 and remained at 0.1% between 2007 and 2009.

III. COMPARATIVE STUDY

62. Out of thirty Council of Europe member states studied for the existence of criminal procedures similar in nature to Georgia's plea-bargaining system, no equivalent mechanisms exist in the following three countries – Azerbaijan, Greece, and Turkey. A small number of other countries (namely Austria, Denmark and Portugal), while not having passed legislation establishing plea bargaining as a legal concept within their legal systems, are nonetheless familiar with plea bargaining or similar processes in practice.

63. Austria, Belgium, France and Liechtenstein have procedures presenting elements of plea bargaining leading to the discontinuation of criminal proceedings, while Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Malta, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain,

Switzerland, Ukraine and the United Kingdom (England and Wales) have established plea-bargaining processes resulting in a criminal conviction.

64. In addition, Austria, the Czech Republic, Hungary, Montenegro, Russia and Serbia provide for the opportunity to have a more lenient sentence imposed, charges dropped or criminal proceedings discontinued if a defendant cooperates with the authorities and thereby contributes to the resolution of the criminal case.

65. Plea bargaining in Council of Europe member states mostly takes the form of sentence bargaining, this being the case in Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Malta, Moldova, Montenegro, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine and the United Kingdom. Charge bargaining can be found in Hungary, Serbia, Slovenia, Spain, Switzerland and the United Kingdom. The survey shows that sentence bargaining is a more common practice in Council of Europe states than charge bargaining. This aspect is closely linked to the principle of legality providing less leeway for the prosecution to amend and drop charges.

66. Plea agreements leading to a criminal conviction are, without exception, reviewed by a competent court. In this sense, courts have the obligation to verify whether the plea agreement has been reached in accordance with applicable procedural and substantive rules, whether the defendant entered into it voluntarily and knowingly, whether there is evidence supporting the guilty plea entered by the defendant and whether the terms of the agreement are appropriate.

67. As a result of the survey, it can be established that the court dealing with the matter generally has the obligation to examine the case file before deciding on whether to approve or reject the plea agreement and has to ascertain that evidence provided in the file supports the plea of guilty entered or the confession made by the defendant. Conversely, in Italy, the court is not required by law to examine the evidence or to certify that there is a prima facie case against the accused, and in Switzerland the court is also not automatically obliged to examine the evidence. Russian legislation does not provide for an explicit obligation on the courts to examine the evidence in plea bargaining cases. Such an obligation could arguably nonetheless be inferred from the obligation on the court dealing with the case to verify whether all conditions for the approval of the plea agreement have been met.

68. In rarer instances, courts are required by law to, at least under certain circumstances, order and examine additional evidence not already contained in the case file in case of expedited proceedings. In this regard, German courts retain their obligation to order evidence aimed at uncovering any aspect of the case that might be relevant for their decision, even if a plea agreement has been entered into. In the United Kingdom, if facts are

disputed, the court should be invited to hear evidence to determine the facts, and then sentence on that basis.

69. In most countries surveyed, plea agreements are entered into by the prosecution and the defendant, and subsequently reviewed by a court. In this scenario, the courts in principle have the power to approve or reject the plea agreement but not to modify its terms. In Bulgaria courts are allowed to propose amendments to plea agreements they are requested to consider. However, such amendments need to be accepted by the defendant, the defence counsel and the prosecutor. In Germany, Romania and to some extent in the United Kingdom, the terms of the agreement are defined by the competent court (as opposed to being based on a prior agreement between the prosecution and the defence).

70. Based on the survey, it can be confirmed that the plea-bargaining process leads to expedited trial proceedings in every country that has such processes in place. Procedural safeguards and judicial guarantees are therefore affected in the event of a plea agreement being entered into. To counteract these effects, a number of safeguards are nonetheless provided.

71. For example, the representation of the defendant by counsel is obligatory in Bulgaria, the Czech Republic, France (for any court appearance upon a prior admission of guilt (*comparution sur reconnaissance préalable de culpabilité*)), Hungary, Malta, Moldova, Russia, Serbia and Slovenia. Other countries surveyed do not have special rules requiring representation by defence counsel in cases of plea bargaining, thus the regular rules relating to legal representation apply.

72. Entering into a plea agreement is conditioned on a confession by the defendant in Austria and Liechtenstein (in both States only the concept of *Diversion* exists, which leads to the discontinuation of criminal proceedings), in Bosnia and Herzegovina, the Czech Republic, Estonia, France, Germany, Hungary, Malta, Moldova, Montenegro, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine and the United Kingdom. Italy, on the other hand, constitutes the exception: a plea agreement does not necessarily need to include an admission of guilt on the part of the defendant.

73. However, in nearly all countries surveyed, with the apparent exception of Romania, the defendant's guilty plea can only be used for the purposes of the plea agreement. Should the plea agreement not be entered into or be rejected by the court, the guilty plea or the confession of the defendant cannot be used against him.

74. Courts decide on the plea agreement at a hearing in the following countries: Austria, Liechtenstein, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Malta, Moldova, Montenegro, Romania, Russia, Serbia, Slovakia, Spain, Switzerland and the United Kingdom. The presence of the defendant at the hearing is explicitly required by law in, for example, Bulgaria, Montenegro,

Romania, Russia, Hungary and Slovakia. On the other hand, the presence of the defendant is not necessarily required in Italy.

75. In the majority of the countries surveyed, the right to appeal will be restricted after a plea agreement has been entered into. There seems to be a full waiver of the right to appeal in the event of a plea agreement (at least when the plea agreement has been endorsed by the court) in Slovenia. Entering into a plea agreement results in the restriction of the right to appeal in Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Hungary, Italy, Malta, Moldova, Montenegro, Russia, Slovakia, Serbia, Spain, Switzerland and Ukraine. The right to appeal remains unaffected in France, Austria, Liechtenstein, Germany, Poland, Romania and the United Kingdom.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL No. 7

76. The first applicant complained under Article 6 § 1 of the Convention and Article 2 of Protocol No. 7 that the plea-bargaining process employed in his case had been an abuse of process and that no appeal to a higher court against the judicial endorsement of the plea-bargaining agreement, which he considered to have been unreasonable, had been possible.

77. Article 6 § 1 of the Convention and Article 2 of Protocol No. 7 read, in their relevant parts, as follows:

Article 6

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

Article 2 of Protocol No. 7

"1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law."

A. The Government's submissions

78. The Government submitted that plea bargaining, a form of consensual and abbreviated criminal justice, had been successfully incorporated in the legislation and practice of various European States and worldwide in harmony with the fundamental fair trial guarantees. The emergence and spread of plea bargaining had been driven by the increased interests of procedural economy. The Government highlighted that as early

as in 1987 the member States of the Council of Europe had been advised by the Committee of Ministers to develop means of simplifying and expediting trial procedures, which included summary judgments, out-of-court negotiations and guilty pleas (see paragraph 54 above). They further emphasised that the plea-bargaining process represented a practical and one of the most successful tools against corruption and organised crime. The introduction of plea bargaining in Georgia in 2004 could not possibly be fully understood without appreciating the context of endemic criminality and corruption pervading in the country at that time. The use of plea bargaining had been intended to be an urgent response to those systemic problems.

79. The Government submitted that plea bargaining in Georgia implied a waiver of certain procedural rights in exchange for a more lenient sentence and an expedited trial. Nevertheless, the most substantive guarantees of a fair trial had still been retained under the domestic law, and they had been duly put into practice in the first applicant's criminal case. Thus, first of all, the first applicant had been represented by qualified legal counsel, had given his prior approval before negotiations with the public prosecutor were started, and had provided the requisite written acceptance, countersigned by his lawyer, of the terms of the agreement reached. Subsequently, the trial court had examined the plea bargain at an oral and public hearing, during which it had enquired as to whether the plea bargain had been reached without duress and under otherwise fair conditions and whether the first applicant was willing to accept it in full awareness of the nature of the charges and the potential sentence. As further guarantees, the Government referred to the fact that not only had the first applicant been entitled to reject the agreed plea bargain during the court's review, but also the judge, who had been required to assess the validity of the accusations, had been empowered to block the plea bargain in the event of any doubt as to the first applicant's criminal liability.

80. In support of the claim that the first applicant had been in full awareness of the contents of the plea bargain and had consented to it voluntarily, the Government referred to the following factual circumstances of the case. Firstly, the first applicant had been represented by a qualified lawyer of his choice as early as on 16 March 2004, the very next day after his arrest (see paragraph 15 above). On 25 March 2004 he had addressed a letter to the public prosecutor, expressing his intention to cooperate with the authorities and reach a settlement (see 18 paragraph above). On 1 August 2004 the first applicant was given access to the criminal case materials, and on 6 August 2004 he appointed a second qualified lawyer of his choice (see paragraph 21 above). With the investigation having been terminated and the evidence against the first applicant added to the case file by 6 September 2004, an indictment accusing the first applicant of large-scale misappropriation of public funds had been issued by the public prosecutor.

Having duly acquainted himself with the indictment and the evidence collected, the first applicant, represented by his two lawyers, had again confirmed his readiness to cooperate with the authorities and had transferred on the same day, 6 September 2004, the shares in the factory to the State in reparation of the damage caused by his conduct (see paragraphs 22 and 23 above).

81. On 9 September 2004 the first applicant had filed another written statement with the public prosecutor. He had expressed his wish to reach a plea bargain as regards the sentence and pay GEL 35,000 as a fine. In that statement, he had explicitly confirmed that he fully understood the concept of plea bargaining. On the same date, the public prosecutor had visited the first applicant in prison, where, in the presence of his two lawyers, a written record of the agreement had been drawn up and signed by all persons concerned. Subsequently, that record had been duly examined by the court (see paragraphs 27-29 above).

82. As regards the adequacy of the judicial review of the plea bargain between the first applicant and the prosecution authority, the Government submitted that during the hearing of 10 September 2004 the judge had ensured that the agreement had been reached on the basis of the first applicant's free will and informed consent. In support, the Government referred to the relevant excerpts from the record of the hearing. The Government stressed that the Kutaisi City Court had been fully able to verify whether the guarantees of due process had been respected by the parties during the plea-bargaining negotiations, given that it had had the complete file before it, including: the first applicant's statement of 9 September 2004 expressing his willingness to enter into a plea bargain; the agreement itself, signed by both the first applicant and his lawyer and by the public prosecutor; and the prosecutor's application for the court to approve that agreement.

83. Furthermore, as confirmed by the record of the hearing of 10 September 2004, the City Court had questioned the first applicant, who had unambiguously maintained his interest in terminating the proceedings by means of the plea bargain. The same had been confirmed by his lawyer. In other words, the City Court had done everything possible to ensure that the first applicant had freely and knowingly entered into the plea bargain. Otherwise, the City Court would have rejected the bargain, as it had had the power to do by virtue of applicable domestic law. The Government further submitted that, even if the plea bargain had been protected by a confidentiality clause (Article 679-2 § 4 of the CCP), which was conditioned by a number of legitimate considerations, the hearing on 10 September 2004 had been open to the public. In support of that contention, the Government submitted written statements taken from the first applicant's lawyer, the prosecutor and a member of the Registry of the Kutaisi City Court, dated 10 and 11 July 2007, all of whom had attended the

hearing in question. Those witnesses had confirmed that the hearing had been public and that the court administration had not prevented any interested person from entering the courtroom.

84. Lastly, as regards the first applicant's inability to lodge an appeal against the Kutaisi City Court's decision of 10 September 2004, the Government argued that by having accepted the plea bargain he had unambiguously waived, similarly to some other fair trial rights, his right to appeal. All in all, the Government argued that the plea-bargaining process which had resulted in the first applicant's conviction through an abridged form of trial had not infringed either Article 6 § 1 of the Convention or Article 2 of Protocol No. 7.

B. The first applicant's submissions

85. The first applicant maintained that the termination of the criminal proceedings against him through the use of the plea bargain had amounted to a breach of Article 6 § 1 and Article 2 of Protocol No. 7 of the Convention, in so far as the charges against him had been determined without a fair trial and the possibility of lodging an appeal. Whilst the acceptance of the bargain had entailed a waiver of certain procedural rights, that waiver had not been accompanied by effective safeguards against the abuse of due process by the prosecution authority. To demonstrate the deficiencies of the Georgian model of plea bargaining in general, the first applicant gave his own comparative overview of how similar plea-bargaining mechanisms function in a number of other European countries (notably in Germany, the United Kingdom, Italy, France and Russia). On the basis of that comparison, he claimed that, unlike legal systems of the aforementioned countries, the Georgian model of plea bargaining had not allowed him to be represented by an advocate from the beginning of the investigation and had not allowed a judge to undertake sufficient review of the fairness of the circumstances in which the plea bargain had been reached.

86. Referring to the relevant international observations concerning the Georgian model of plea bargaining, the first applicant submitted that such a process could not fairly operate in a criminal justice system with a 99% conviction rate (see paragraphs 57-60 above). He also referred to the results of an empirical study, according to which even in those criminal justice systems in which the acquittal rate amounted to 15-20%, accused persons who considered themselves innocent often chose to plead guilty. In other words, it could not be said that his decision to accept a plea bargain had been truly voluntary. Consequently, the only real opportunity for him to avoid a lengthy term of imprisonment had been entering into a plea bargain. The first applicant emphasised in that connection that, at the time of accepting the plea bargain, he had been detained in particularly intolerable

and highly stressful conditions, sharing a cell with a murderer and a person who had abducted and ill-treated him in December 2002. He also referred in that connection to the systemic problem of poor physical conditions of detention in all of the post-conviction custodial institutions of Georgia at the material time.

87. The first applicant complained that the Georgian model of plea bargaining gave unrestricted rights and privileges to the prosecution authority, a legislative deficiency which excluded any possibility of an agreement being reached between the parties on a more or less equal footing. In that respect, the first applicant again referred to the conclusions of the study conducted by Transparency International Georgia (see paragraphs 58-60 above). He also condemned the fact that only the prosecutor and not the defendant was entitled, under the domestic law, to apply to the court with a plea bargain request at the material time and that it was the prosecutor and not the judge who had been empowered to choose what kind of punishment was to be imposed pursuant to the plea bargain. The first applicant also criticised the absence of a clear definition of the notion of "cooperation with the investigation" under domestic law, a legislative lacuna which increased the risk of procedural abuses.

88. The first applicant asserted that neither the public prosecutor nor the judge had warned him about the waiver of all his procedural rights in the event of entering into a plea bargain. He also complained that the domestic court's powers in the plea-bargaining process had not represented a sufficient system of checks and balances on potential abuses of power by the prosecutor. The domestic court had only been able to review the plea agreement itself, and had been unable to enquire as to how the relevant negotiations had been conducted and whether any abuses had been committed during those negotiations, as there had been no written or audio record of those negotiations. Thus, even if the Kutaisi City Court had formally asked the first applicant during the hearing of 10 September 2004 whether he had been subjected to any form of pressure during the preceding negotiations, that enquiry could not have been an effective check, as it was clear that the first applicant, who had been detained at that time under the control of the executive branch of the State, would not have dared to confide in the court about such duress. Furthermore, the domestic court had not attempted to ensure that the applicant, an accused person, had fully understood the facts which had given rise to the charges against him.

89. The first applicant complained that the Kutaisi City Court had endorsed the plea bargain in a single day, whereas it had been objectively impossible to study the case materials in such a short period. His guilt and punishment had, in reality, been established by the prosecutor, and the domestic court had formally endorsed the prosecutor's findings without carrying out its own judicial inquiry. Furthermore, observing that the transfer of the shares and the payments had taken place on 6, 8 and

9 September 2004, that is, prior to the approval of the plea bargain by the Kutaisi City Court on 10 September 2004, he submitted that if he had refused to accept the proposed plea bargain before the Kutaisi City Court on 10 September 2004, that would have only led to the continued deprivation of his liberty, in addition to the loss of all the previously forfeited assets, without receiving anything in exchange. In that respect, the first applicant emphasised that he had never pleaded guilty to the offences he had been accused of. Lastly, the first applicant maintained his complaint of the inability to lodge an appeal against the City Court's decision of 10 September 2004 convicting him on the basis of the plea bargain, claiming that the relevant criminal procedural legislation had not provided him with any legal avenue through which to contest the coercion applied to him during the plea-bargaining negotiations.

C. The Court's assessment

90. At the outset and in reply to the first applicant's certain empirical arguments about the viability of the early Georgian model of plea bargaining, the Court reiterates that it cannot be its task to review whether the relevant domestic legal framework was, per se, incompatible with the Convention standards. Rather, this matter must be assessed by taking into consideration the specific circumstances of the first applicant's criminal case. The Court further notes that it may be considered as a common feature of European criminal justice systems for an accused to obtain the lessening of charges or receive a reduction of his or her sentence in exchange for a guilty or *nolo contendere* plea in advance of trial or for providing substantial cooperation with the investigative authority (see the comparative legal study, paragraphs 62-75 above; see also, in this connection, *Slavcho Kostov v. Bulgaria*, no. 28674/03, § 17, 27 November 2008, and *Ruciński v. Poland*, no. 33198/04, § 12, 20 February 2007). There cannot be anything improper in the process of charge or sentence bargaining in itself (see, *mutatis mutandis*, *Babar Ahmad and Others v. the United Kingdom* (dec.), nos. 24027/07, 11949/08 and 36742/08, ECHR 6 July 2010). In this respect, the Court subscribes to the idea that plea bargaining, apart from offering the important benefits of speedy adjudication of criminal cases and alleviating the workload of courts, prosecutors and lawyers, can also be, if applied correctly, a successful tool in combating corruption and organised crime and can contribute to the reduction of the number of sentences handed down and as a result to the number of prisoners.

91. The Court considers that where the effect of plea bargaining is that a criminal charge against the accused is determined through an abridged form of judicial examination, this amounts, in substance, to the waiver of a number of procedural rights. This cannot be a problem in itself, since neither the letter nor the spirit of Article 6 prevents a person from waiving

these safeguards of his or her own free will (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 135, 17 September 2009). The Court observes in this connection that as early as in 1987 the Committee of Ministers of the Council of Europe called upon the member States to take measures aimed at the simplification of ordinary judicial procedures by resorting, for instance, to abridged, summary trials (see paragraph 54 above). However, it is also a cornerstone principle that any waiver of procedural rights must always, if it is to be effective for Convention purposes, be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance. In addition, it must not run counter to any important public interest (see, amongst other authorities, *Scoppola (no. 2)*, cited above, § 135-136; *Poitrimol v. France*, 23 November 1993, § 31, Series A no. 277-A; and *Hermi v. Italy* [GC], no. 18114/02, § 73, ECHR 2006-XII).

92. The Court thus observes that by striking a bargain with the prosecution authority over the sentence and pleading no contest as regards the charges, the first applicant waived his right to have the criminal case against him examined on the merits. However, by analogy with the above-mentioned principles concerning the validity of such waivers, the Court considers that the first applicant's decision to accept the plea bargain should have been accompanied by the following conditions: (a) the bargain had to be accepted by the first applicant in full awareness of the facts of the case and the legal consequences and in a genuinely voluntary manner; and (b) the content of the bargain and the fairness of the manner in which it had been reached between the parties had to be subjected to sufficient judicial review.

93. In this connection, the Court first notes that it was the first applicant himself who asked the prosecution authority to arrange for a plea bargain. In other words, the initiative emanated from him personally and, as the case file discloses, could not be said to have been imposed by the prosecution; the first applicant unequivocally expressed his willingness to repair the damage caused to the State (see paragraphs 14, 18, 22 and 27 above). He was granted access to the criminal case materials as early as 1 August 2004 (see paragraph 21 above). The Court also observes that the first applicant was duly represented by two qualified lawyers of his choice (compare with *Hermi v. Italy*, cited above, § 79). One of them started meeting with the first applicant at the very beginning of the criminal proceedings, representing him during the first investigative interview of 17 March 2004 (see paragraphs 15 and 16). The two lawyers ensured that the first applicant received advice throughout the plea-bargaining negotiations with the prosecution, and one of them also represented the first applicant during the judicial examination of the agreement. Of further importance is the fact that the judge of the Kutaisi City Court, who was called upon to examine the lawfulness of the plea bargain during the hearing of 10 September 2004,

enquired with the first applicant and his lawyer as to whether he had been subjected to any kind of undue pressure during the negotiations with the prosecutor. The Court notes that the first applicant explicitly confirmed on several occasions, both before the prosecution authority and the judge, that he had fully understood the content of the agreement, had had his procedural rights and the legal consequences of the agreement explained to him, and that his decision to accept it was not the result of any duress or false promises (see paragraphs 27, 28 and 31 above).

94. The Court also notes that a written record of the agreement reached between the prosecutor and the first applicant was drawn up. The document was then signed by the prosecutor and by both the first applicant and his lawyer, and submitted to the Kutaisi City Court for consideration. The Court finds this factor to be important, as it made it possible to have the exact terms of the agreement, as well as of the preceding negotiations, set out for judicial review in a clear and incontrovertible manner.

95. As a further guarantee of the adequacy of the judicial review of the fairness of the plea bargain, the Court attaches significance to the fact that the Kutaisi City Court was not, according to applicable domestic law, bound by the agreement reached between the first applicant and the prosecutor. On the contrary, the City Court was entitled to reject that agreement depending upon its own assessment of the fairness of the terms contained in it and the process by which it had been entered into. Not only did the court have the right to assess the appropriateness of the sentence recommended by the prosecutor in relation to the offences charged, it had the power to lessen it (Article 679-4 §§ 1, 3, 4 and 6). The Court is further mindful of the fact that the Kutaisi City Court enquired, for the purposes of effective judicial review of the prosecution authority's role in plea bargaining, whether the accusations against the first applicant were well-founded and supported by prima facie evidence (Article 679-4 § 5). The fact that City Court examined and approved the plea bargain during a public hearing, in compliance with the requirement contained in Article 679-3 § 1 of the CCP, additionally contributed, in the Court's view, to the overall quality of the judicial review in question.

96. Lastly, as regards the first applicant's complaint under Article 2 of Protocol No. 7, the Court considers that it is normal for the scope of the exercise of the right to appellate review to be more limited with respect to a conviction based on a plea bargain, which represents a waiver of the right to have the criminal case against the accused examined on the merits, than it is with respect to a conviction based on an ordinary criminal trial. It reiterates in this connection that the Contracting States enjoy a wide margin of appreciation under Article 2 of Protocol No. 7 (see, amongst others, *Krombach v. France*, no. 29731/96, § 96, ECHR 2001-II). The Court is of the opinion that by accepting the plea bargain, the first applicant, as well as relinquishing his right to an ordinary trial, waived his right to ordinary

appellate review. That particular legal consequence of the plea bargain, which followed from the clearly worded domestic legal provision (Article 679-7 § 2), was or should have been explained to him by his lawyers. By analogy with its earlier findings as to the compatibility of the first applicant's plea bargain with the fairness principle enshrined in Article 6 § 1 of the Convention (see paragraphs 92-95 above), the Court considers that the waiver of the right to ordinary appellate review did not represent an arbitrary restriction running afoul of the analogous requirement of reasonableness contained in Article 2 of Protocol No. 7 either (for the general principle concerning the correlation between the fairness requirements of these two provisions, see *Galstyan v. Armenia*, no. 26986/03, § 125, 15 November 2007).

97. In the light of the foregoing, the Court concludes that the first applicant's acceptance of the plea bargain, which entailed the waiver of his rights to an ordinary examination of his case on the merits and to ordinary appellate review, was an undoubtedly conscious and voluntary decision. Judging by the circumstances of the case, that decision could not be said to have resulted from any duress or false promises made by the prosecution, but, on the contrary, was accompanied by sufficient safeguards against possible abuse of process. Nor can the Court establish from the available case materials that that waiver ran counter to any major public interest.

98. It follows that there has been no violation of either Article 6 § 1 of the Convention or Article 2 of Protocol No. 7.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

99. The first applicant complained that the circumstances surrounding his public arrest, notably the Regional Governor's statements, had violated the presumption of his innocence.

100. Article 6 § 2 of the Convention reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. The parties' submissions

101. The Government submitted that the Regional Governor's carefully worded interview had not amounted to a statement that the first applicant was guilty. The Governor had never made specific reference to the criminal case against the first applicant, but rather had expressed the State's position as regards corruption in general. The Governor had not even mentioned the first applicant's name, let alone made any declaration transgressing the presumption of the first applicant's innocence. As to the fact that there had been media coverage of the first applicant's arrest, the Government argued

that the applicants had failed to submit any evidence which could suggest that the journalists had been there upon the authorities' invitation.

102. The first applicant disagreed. He maintained that his arrest in front of the journalists' cameras, which had allegedly been there upon the prosecutor's invitation, and the Governor's interview, had served the purpose of giving the public the impression that he was guilty. The first applicant claimed that the prosecutor and the Government had instigated a media campaign against him which had adversely affected his right to the presumption of innocence and the subsequent trial.

B. The Court's assessment

103. The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial required by Article 6 § 1. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty (see, mutatis mutandis, *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308, and *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62). The Court is mindful of the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X). The principle of the presumption of innocence may be infringed not only by a judge or court, but also by other public authorities, including prosecutors (see *Kuzmin v. Russia*, no. 58939/00, §§ 51-63, 18 March 2010; *Daktaras*, cited above§ 42; and *Konstas v. Greece*, no. 53466/07, § 32, 24 May 2011). The question whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the statement in question was made (see *Daktaras*, cited above, § 43).

104. As regards the Regional Governor's interview, the Court attaches importance to the fact that that official did not make any specific reference either to the first applicant in person or to the criminal proceedings instituted against him. Rather, the Governor made a general declaration about the State's policy on the fight against corrupt public officials in the country. Judging by that interview, the Court cannot conclude that the Governor aimed in any manner at rendering the first applicant identifiable, either directly or indirectly, as the subject of his comments in question (contrast, for instance, with *Konstas*, cited above, §§ 39-40).

105. The Court has also had regard to the first applicant's argument concerning a media campaign allegedly instigated against him by the prosecutor and the Governor. Indeed, in certain situations, a virulent media

campaign can adversely affect the fairness of a trial and involve the State's responsibility. This may occur so with regard to the impartiality of the court under Article 6 § 1, as well as with regard to the presumption of innocence embodied in Article 6 § 2 (see *Shuvalov v. Estonia*, no. 39820/08 and 14942/09, § 82, 29 May 2012; *Ninn-Hansen v. Denmark* (dec.), no. 28972/95, ECHR 1999-V; and *Anguelov v. Bulgaria* (dec.), no. 45963/99, 14 December 2004). However, the Court does not consider that the filming of the first applicant's arrest by journalists from a private television station already amounted to a virulent media campaign aimed at hampering the fairness of the trial, nor is there any specific indication that the interest of the media in the matter was sparked by the prosecutor, the Governor or any other State authority. In the Court's opinion the media coverage of the present case did not extend beyond what can be considered as merely informing the public about the arrest of the managing director of one of the largest factories in the country.

106. There has accordingly been no violation of Article 6 § 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

107. Both applicants complained that the State had coerced them into forfeiting their shares in the factory free of charge and had extorted additional monetary payments in exchange for the discontinuation of the criminal proceedings against the first applicant, in breach of Article 1 of Protocol No. 1. This provision reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

108. The Government submitted that there had been no violation of Article 1 of Protocol No. 1, given that the forfeiture of their various assets and payment of the fine had not constituted a deprivation of property or some other type of interference with the peaceful enjoyment thereof, but rather a voluntary decision to reimburse the damage caused to the State by the first applicant's criminal activity and had formed part, in the form of a lawful and entirely proportionate measure, of the relevant plea bargain.

109. The applicants disagreed, maintaining that they had not freely chosen to forfeit the assets and pay the fines but had been coerced into doing so as a result of the undue pressure exercised by the prosecution in the course of the plea bargaining.

B. The Court's assessment

110. The Court reiterates that the forfeiture of the applicants' assets and the other payments which occurred pursuant to the plea bargain were intrinsically related to and resulted from the determination of the first applicant's criminal liability (see *Natsvlishvili and Togonidze v. Georgia* (dec.), no. 9043/05, § 84, 25 June 2013). The lawfulness and appropriateness of those criminal sanctions of a pecuniary nature cannot thus be dissociated from the issue of the fairness of the plea bargain itself. However, having regard to its comprehensive findings under Article 6 § 1 of the Convention and Article 2 of Protocol No. 7 (see paragraphs 90-98 above), the Court concludes, for the same reasons, that there has been no violation of Article 1 of Protocol No. 1.

IV. ALLEGED HINDRANCE OF THE RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

111. Both applicants complained under Article 34 of the Convention that the GPO had pressured them to withdraw their application to the Court, otherwise they would reopen the criminal proceedings against the first applicant. This provision, in so far as relevant, reads as follows:

> "The Court may receive applications from any person .... The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

112. The Government submitted that the GPO had simply attempted to conduct friendly settlement negotiations with the applicants, and that it was unethical for the applicants to disclose the contents of those negotiations by referring to them during the contentious proceedings, in breach of the confidentiality principle contained in Rule 62 § 2 of the Rules of Court. In that respect, the Government, observing that the Convention system was open to "out-of-court" and "in court" settlements or agreements between the parties at all stages of the proceedings, argued that Rule 62 § 2 should be held applicable to the "out-of-court" negotiations conducted between the applicants' daughter and a representative of the GPO.

113. The Government emphasised that the applicants' daughter had been the first to approach the representative from the GPO, whom she had

considered to be her friend, asking the latter to explain the friendly settlement procedure. In response, the representative from the GPO had provided the applicants' daughter, in her e-mails, with all relevant information and advice. The representative had never demanded that the applicants withdraw their case, but rather had attempted to arrange a settlement acceptable to both sides.

114. The applicants first replied that the confidentiality principle contained in Rule 62 § 2 of the Rules of Court had not applied to their situation, as the negotiations between their daughter and the representative from the GPO had been conducted outside the Court's procedural framework. Highlighting that the GPO representative had warned the applicants' daughter, in her e-mail dated 11 December 2006, that new criminal proceedings could be launched against her father if he refused to accept a settlement and withdraw his application to the Court, the applicants maintained their complaint of undue pressure.

B. The Court's assessment

115. The Court reiterates that, according to Article 39 § 2 of the Convention, friendly-settlement negotiations are confidential. Furthermore, Rule 62 § 2 of its Rules stipulates that no written or oral communication and no offer or concession made in the course of friendly-settlement negotiations may be referred to or relied on in contentious proceedings. Noting the importance of this principle, the Court reiterates that a breach of the rule of confidentiality might justify the conclusion that an application is inadmissible on the grounds of abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 68, 15 September 2009, and *Balenović v. Croatia* (dec.), no. 28369/07, 30 September 2010).

116. However, the Court does not see how the confidentiality principle contained in Rule 62 § 2 of the Rules of Court can be held applicable to the settlement negotiations conducted in the present case. In fact, those negotiations took place directly between the applicants' family and the General Prosecutor's Office, entirely without the Court's involvement. The parties' friendly settlement proposals, or at least their positions on the matter, were never filed with the Registry. The Court is consequently of the opinion that the confidentiality principle contained in the Rules of Court, which body of rules governs the organisation and working practices of the Court, cannot possibly apply to something which took place outside its procedural framework. The Government's objection should thus be rejected.

117. As to the essence of the applicants' complaint that the GPO had pressured them to withdraw their application, the Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being

subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports of Judgments and Decisions* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 105, *Reports* 1996-VI). In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III).

118. However, having particular regard to the content of the e-mail exchange initiated by the applicants' daughter with the GPO representative (see paragraphs 36-48 above), which was the only piece of evidence submitted by the applicants in support of their complaint, the Court, whilst noting that an informal channel of communication between the prosecution authority and a private third party is in no way an appropriate means with which to settle a case, still considers that that interaction cannot be said to have been incompatible in itself with the State's obligations under Article 34 of the Convention. The Court observes that the GPO representative's contact with the applicants' daughter was not calculated to induce the applicants to withdraw or modify their application or otherwise interfere with the effective exercise of their right of individual petition, or indeed had this effect (compare, for instance, with *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 162-163, ECHR 2012 (extracts)).

119. The authorities of the respondent State cannot thus be held to have hindered the applicants in the exercise of their right of individual petition, and the respondent State has not failed to comply with its obligations under Article 34 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds*, by six votes to one, that there have been no violations of Article 6 § 1 of the Convention and Article 2 of Protocol No. 7 to the Convention;

2. *Holds*, unanimously, that there has been no violation of Article 6 § 2 of the Convention;

3. *Holds*, unanimously, that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*, unanimously, that the respondent State has not failed to comply with its obligations under Article 34 of the Convention.

Done in English, and notified in writing on 29 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Gyulumyan is annexed to this judgment.

J.C.M.
S.Q.

PARTLY DISSENTING OPINION OF JUDGE GYULUMYAN

I am unable to subscribe to the opinion of the majority of the Court that there have been no violations of Article 6 § 1 of the Convention or Article 2 of Protocol No. 7 to the Convention. I agree, however, that there have been no violations of Article 6 § 2 or Article 1 of Protocol No. 1 to the Convention and that the respondent State has not failed to comply with its obligations under Article 34 of the Convention.

1. At the outset, I would like to point out that the manner in which the relevant authorities used the plea-bargaining procedure in Georgia at the material time was a target of heavy public criticism. In particular, many legal commentators considered that plea bargaining was used not so much for the legitimate purposes outlined in Article 15 of the Code of Criminal Procedure ("a faster and more efficient justice system"), but rather to fill the State treasury with funds and other assets extorted from the defendants. In line with this criticism, the Monitoring Committee of the Parliamentary Assembly of the Council of Europe went further by urging the Georgian authorities, on 24 January 2006, to "critically review the present practice of the 'plea-bargaining' system which - in its present form - on the one hand allows some alleged offenders to use the proceeds of their crimes to buy their way out of prison and, on the other, risks being applied arbitrarily, abusively and even for political reasons" (see paragraphs 55-56 of the judgment).

2. However, I also wish to make it clear that it is not my objective to call into question the system of plea bargaining as such, in general terms. Rather, it is the particular circumstances of the present case which have led me to the conclusion that the early Georgian model of plea bargaining, as applied by the relevant domestic authorities with respect to the first applicant, fell foul of the safeguards provided by Article 6 § 1 of the Convention for the following reasons.

3. I believe that the question whether the first applicant and the prosecutor had been on an equal footing during the plea-bargaining negotiations could not have been duly examined by the Tbilisi City Court without those negotiations having been recorded in full. However, as no such obligation was contained in the Georgian Code of Criminal Procedure, the prosecution did not apparently record its negotiations with the first applicant. Several shady factual circumstances of the case – the fact that the transfer of the factory shares and of the monetary payments had occurred even before the procedural agreement was struck; the statements of M.I.-dze and of the former employees of the factory accusing the prosecution authority of undue pressure; the fact that the first applicant had been detained, allegedly deliberately, in stressful conditions, etc. – also taint the

presumption of equality between the parties pending the relevant negotiations.

4. As regards the question whether the first applicant had conceded to the procedural bargain in a truly voluntary manner, I note that the conviction rate in Georgia amounted to some 99.6% at the material time, in 2004 (see paragraph 61 of the judgment). With such a skyrocketing rate, it is difficult to imagine that the applicant could have believed, during the relevant plea-bargaining negotiations, that his chances of obtaining an acquittal were real. The same argument, by the way, that in systems with high conviction rates the plea-bargaining system can hardly function fairly, was voiced by Transparency International Georgia in its report on the Georgian model of plea bargaining (see paragraph 60 of the judgment). Thus, the applicant had no real option other than to accept the "take it or leave it" terms dictated by the prosecutor. Of further importance in this regard is the manner in which the General Prosecutor's Office had apparently been treating the first applicant's case at domestic level, when its representative actually threatened the applicants' family with annulling the plea bargain and reopening proceedings against the first applicant and even went so far as to predict the content of a court decision (see paragraphs 42 and 47 of the judgment). Such a disturbing attitude on the part of the prosecution authority is also revealing as to the leverage it might have had with respect to the first applicant when the proceedings against him had still been pending.

5. Another important fairness safeguard as regards the plea bargaining is that the first applicant should not have been threatened by the prosecution with charges unsupported by prima facie evidence. The Tbilisi City Court should have ensured, pursuant to Article 679-4 §§ 3 and 4 of the Code of Criminal Procedure, that there had been a prima facie case against the first applicant. Whether that requirement was duly met by the domestic court seems, in my view, to be extremely dubious in the light of the available case materials; the Government have not submitted sufficient arguments or evidence which would enable me to reach a positive conclusion in this connection. On the contrary, it would have been an extremely difficult task for the Kutaisi City Court to examine the well-foundedness of the charges in one day alone, given that the prosecutor had applied to the court with the relevant brief on 9 September 2004 and that, already on the following day, the City Court approved the plea bargain and found the first applicant guilty (see paragraphs 30-32 of the judgment).

6. Lastly, I note with particular concern that the relevant domestic law did not entitle the first applicant to lodge an appeal against the court decision endorsing his plea bargain. The absence of such a remedy obviously resulted in a further limitation of the judicial supervision of the fairness of the plea bargaining. The Georgian authorities apparently acknowledged that serious shortcoming themselves when, on 25 March

2005, they finally introduced the right of appeal in plea-bargaining situations (see paragraphs 50-52 of the judgment).

7. All the above-mentioned deficiencies gain an additional dimension when assessed against the fact that the first applicant agreed to a bargain with the prosecution *in respect of the sentence alone and refused to plead guilty to the charges*. I regret that the majority did not consider it necessary to distinguish, as a matter of principle, between plea bargaining in respect of the charges, where the defendant freely and knowingly confesses to the offence committed, and a situation where the bargain relates solely to the sentence without a guilty plea. In the latter situation, as in the present case, I believe that the procedural safeguards in the plea-bargaining procedure must be even stricter. For instance, since the applicant never confessed to any the offences of which he had been accused by the prosecution, the domestic courts should, in my opinion, have subjected the well-foundedness of the charges to a much higher level of scrutiny than that which is normally reserved for situations where accused persons voluntarily plead guilty.

8. The above-mentioned considerations are sufficient for me to conclude that there has been a violation of Article 6 § 1 of the Convention and of Article 2 of Protocol No. 7.