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

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Plea bargain in Georgian misappropriation case did not breach the accused's right to a fair trial

In today's Chamber judgment in the case of **Natsvlishvili and Togonidze v. Georgia** (application no. 9043/05), which is not final[1], the European Court of Human Rights held:

by a majority, that there had been **no violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights and **Article 2 of Protocol No. 7 (right of appeal in criminal matters)** to the Convention;

unanimously, that there had been **no violation of Article 6 § 2 (presumption of innocence)**;

unanimously, that there had been **no violation of Article 1 of Protocol No. 1 (protection of property)**; and,

unanimously, that Georgia had not failed to comply with its obligations under **Article 34 (right of individual petition)**.

In this case the Court for the first time examined in detail the compatibility of plea-bargaining arrangements with the right to a fair trial.

The Court noted that plea bargaining between the prosecution and the defence was a common feature of European criminal justice systems and not in itself open to criticism. In Mr Natsvlishvili's case, the plea bargain – a procedure introduced into the Georgian judicial system in 2004 – had been accompanied by sufficient safeguards against abuse. Mr Natsvlishvili had entered into the plea bargain voluntarily, having understood its contents and consequences.

Principal facts

The applicants, Amiran Natsvlishvili and Rusudan Togonidze, husband and wife, are Georgian nationals who were born in 1950 and 1953 and currently live in Moscow (Russia) and Kutaisi (Georgia) respectively.

Mr Natsvlishvili was the mayor of Kutaisi from 1993 to 1995 and the managing director of the automobile factory in Kutaisi, one of the largest public companies in Georgia, from 1995 to 2000. He and his wife together owned 15.55% of the shares in the factory and were the principal shareholders after the State. In December 2002 Mr Natsvlishvili was kidnapped and was only released in exchange for a large ransom paid by his family.

In March 2004, Mr Natsvlishvili was arrested on suspicion of illegally reducing the share capital of the factory for which he was responsible and charged with making fictitious sales, transfers and write-offs, and spending the proceeds without regard for the company's interests. His arrest was filmed and broadcast on local television. The Governor of the Region also made a declaration,

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

without directly referring to Mr Natsvlishvili, that it was the State's intention to pursue and identify all those who had misappropriated public money. During the first four months of his detention Mr Natsvlishvili was held in the same cell as the man who was charged with kidnapping him and with another man serving a sentence for murder.

Following negotiations with the prosecutor in September 2004, Mr Natsvlishvili accepted a plea bargain in which he was to be convicted without an examination of the merits and fined 35,000 Georgian laris (GEL), the equivalent of 14,700 euros, in exchange for a reduced sentence. The trial court – noting that Mr Natsvlishvili did not plead guilty but had actively cooperated with the investigation by returning 22.5% of the shares in the factory to the State – sanctioned the agreement and convicted him. The decision was final and not subject to an appeal. He was immediately released from the courtroom.

After the applicants' case before the European Court of Human Rights had been communicated to the Georgian Government in September 2006, they alleged that the prosecuting authorities put them under pressure to withdraw their application before the Court. They submitted a copy of an e-mail exchange which their daughter had initiated with a representative of the Georgian General Prosecutor's office, who was an acquaintance of hers. In the course of the correspondence, the representative informed the applicants' daughter in December 2006 that the prosecution would be ready to reopen Mr Natsvlishvili's case and possibly reach a settlement at national level.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial) of the Convention and Article 2 of Protocol No. 7 (right of appeal in criminal matters) to the Convention, Mr Natsvlishvili complained that the plea-bargaining procedure, as applied in his case, amounted to 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 be unreasonable, was possible. He further complained that the circumstances surrounding his arrest had been in breach of Article 6 § 2 (presumption of innocence). Both applicants relied on Article 1 of Protocol No. 1 (protection of property), complaining that they had been coerced into forfeiting their shares in the factory free of charge and that they had had to make additional payments for the discontinuation of the criminal proceedings. Finally, relying on Article 34 (right of individual petition), they alleged that the Georgian prosecuting authorities put them under pressure to withdraw their application before the European Court of Human Rights, by threatening to annul the plea bargain and reopen the criminal proceedings against Mr Natsvlishvili.

The application was lodged with the European Court of Human Rights on 9 March 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Alvina **Gyulumyan** (Armenia),
Corneliu **Bîrsan** (Romania),
Ján **Šikuta** (Slovakia),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino),
Johannes **Silvis** (the Netherlands),

and also Santiago **Quesada**, *Section Registrar.*

Decision of the Court

Article 6 § 1 and Article 2 of Protocol No. 7

The Court noted that plea-bargaining between the prosecution and the defence – the possibility for an accused to obtain the lessening of the charges or receive a reduction of his or her sentence in exchange for a guilty plea or a plea of no contest – was a common feature of European criminal justice systems. The fact that a plea bargain could amount to the waiver of certain procedural rights was not in itself a problem under Article 6. However, it was important that: this waiver was established in an unequivocal manner; it was accompanied by minimum safeguards to prevent abuse; and, it did not run counter to public interest.

As regards the facts of the case, the Court noted that it had been the initiative of Mr Natsvlishvili himself to ask the prosecution to arrange for a plea bargain. He had been granted access to the criminal case materials and had been duly represented by two qualified lawyers of his choice who had advised him throughout the plea-bargaining negotiations with the prosecution. Moreover, before the judge overseeing the validity of the agreement, Mr Natsvlishvili had explicitly confirmed that he had fully understood the content of the agreement and its legal consequences, and that his decision to accept it was not the result of any duress or false promises.

Furthermore, a written record of the agreement, signed by Mr Natsvlishvili, had been submitted to the trial judge for consideration. The exact terms of the agreement and of the preceding negotiations had thus been set out for judicial review. The trial court had not been bound by the agreement. It had been entitled to reject it, depending on its assessment of the fairness of the terms and the process by which it had been reached.

As regards the complaint under Article 2 of Protocol No. 7 that no appeal to a higher court against the plea-bargaining agreement was possible, the Court considered it normal for the scope of the right to appellate review to be more limited with respect to a conviction based on a plea bargain than with respect to a conviction based on an ordinary criminal trial. By accepting the plea bargain, Mr Natsvlishvili had knowingly waived his right to an ordinary appellate review.

The Court concluded that Mr Natsvlishvili's acceptance of the plea bargain had been an undoubtedly conscious and voluntary decision. That decision could not be said to have resulted from any duress or false promises made by the prosecution. On the contrary, it had been accompanied by sufficient safeguards against possible abuse of process. Finally, the Court could not see that it ran counter to any public interest. There had accordingly been no violation of Article 6 § 1 or Article 2 of Protocol No. 7.

Article 6 § 2

As regards Mr Natsvlishvili's complaint that the circumstances of his arrest had breached the presumption of innocence, the Court noted that the Governor of the Region had not specifically referred to Mr Natsvlishvili in his statement about the State's intention to fight corruption. The Court therefore could not conclude that in the declaration in question, the Governor had aimed at making Mr Natsvlishvili identifiable. Neither could the Court find that the filming of his arrest by journalists from a private TV station in itself had amounted to a media campaign against him that would have undermined his right to a fair trial. There had accordingly been no violation of Article 6 § 2.

Article 1 of Protocol No. 1

The Court noted that the forfeiture of the applicants' assets and the other payments pursuant to the plea bargain had been intrinsically related to the determination of Mr Natsvlishvili's criminal liability. The lawfulness and appropriateness of those sanctions could thus not be dissociated from the question of the fairness of the plea bargain itself. Having regard to its findings under Article 6 § 1 and

Article 2 of Protocol No. 7, the Court therefore concluded that there had been no violation of Article 1 of Protocol No. 1.

Article 34

With regard to the e-mail exchange between the applicants' daughter and the representative of the Georgian General Prosecutor's office, the Court noted that an informal communication between the prosecution authority and a private third party was not an appropriate means by which to settle a case. However, the Court did not consider that that interaction in itself had been incompatible with the State's obligations under Article 34. The Court observed that the representative's contact with the applicants' daughter had not been calculated to induce the applicants to withdraw or modify their application or otherwise interfere with the effective exercise of their right of individual petition. Georgia had therefore not failed to comply with its obligations under Article 34.

Separate opinion

Judge Gyulumyan expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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