



Plea Bargaining in Georgia: Negotiated Justice

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Introduction

Plea bargaining was established in Georgia at the beginning of 2004. While the legal framework of plea bargaining has undergone a significant evolution from its original form, the general public's ambivalent attitude towards the procedure has not changed. The reason for this attitude could be a lack of public awareness about the purpose of plea bargaining and about the implementation of the procedure itself.

The purpose of this report is to improve the quality of public information about plea bargaining, and to that effect, the report will cover the issue in detail. The first chapter contains a small introduction covering the fundamentals of the issue and the basis for the establishment of plea bargaining procedure. The second chapter presents a brief legal overview explaining the main aspects of the legal framework of plea bargaining. The third chapter discusses how the procedure functions in real life and employs two methods to present a full picture. First, we obtained statistical data on plea bargaining from the courts and the chief prosecutor's office. This objective official information allows us to impartially assess the general situation and draw conclusions. On the other hand, to understand what lies beyond the dry statistical data, we talked to the parties who have the best understanding of how this procedure is implemented in reality: human rights defenders, non-governmental organizations, and representatives of the prosecutor's office and the courts. Their subjective opinions and judgments are based on individual experiences and reveal a diversity of attitudes which are often radically opposed, but that are helpful in presenting a full picture in this report. Discussion of this issue from many angles allows us to fully understand the plea bargaining process and to draw well-reasoned conclusions of our own.

The fourth and final chapter presents the main findings and conclusions of our research. Based on these conclusions we propose several recommendations for the improvement of plea bargaining procedures in Georgia.

This report has four appendices. Appendix N1 presents a full legal analysis of the plea bargaining framework in Georgia. Appendix N2 is a compilation of the case data we obtained from Tbilisi City Court and Tbilisi Appeals Court. We designed tables to present the main information about each legal case while closely adhering to the Georgian legislation in regards to protection of private information. Appendix N3 presents analyses of several interesting cases from our compilation of data. We selected those legal cases where the charges and penalty were radically different from the general trend. Appendix N4 presents a comparison of the plea bargaining model in Georgia to international examples. Specifically, we present an overview of legislation and practice in the United States and Estonia.

The Establishment of Plea Bargaining in Georgia

Plea bargaining was established in Georgia right after the “Rose Revolution” which took place on November 23rd, 2003. To gain a complete understanding the reasoning behind plea



bargaining's establishment, it is essential to understand the context in which it occurred. The reason for the success of the revolution was frustration with the existing situation among the general public. The government was dysfunctional, all spheres and levels of the state were corrupt, and citizens encountered injustice everywhere and felt vulnerable and powerless. The new government had to accomplish several important tasks without delay, since the success of the revolution and the trust of the people created a rare window of opportunity to implement radical changes without any significant resistance. The new government had to fill the empty state coffers, restore strength of the State – emphasizing that the state government makes decisions and implements them within the state borders – and restore a sense of justice. All of this had to be done publicly, so that the public's trust in government was not threatened.

Under these circumstances, one of the first steps taken by the new government was to oppress Shevardnadze's state officials and member of his inner circle. They were taken in custody in the presence of cameras and accused of corruption and wasting government funds. However, in most cases, no court cases were initiated and these individuals were never officially charged. The new government forced them to reimburse the damages caused by their alleged acts, which in some publicized cases amounted to millions of dollars, and in return relieved them from other responsibilities. This process started in December of 2003, while the initiative for the establishment of plea bargaining was publicized only at the end of January, 2004.¹ Plea bargaining was finally established through amendments to the Code of Criminal Procedure on February 13th. Consequently, the general public often associates plea bargaining with widely publicized high-profile corruption cases. Fairly or not, this is how plea bargaining has gained a reputation of an instrument allowing offenders to buy their freedom.

However, when talking about buying justice and freedom, the reputation of the Georgian court system must also be mentioned. During the Shevardnadze's presidency, the judiciary was perceived to be just as corrupt as, for instance, the police or any other state establishment.² Accordingly, as part of a major anti-corruption campaign initiated by the new government, significant changes were implemented in the judicial system and scores of judges were removed from the bench. This cleansing affected the Supreme Court as well, and although there was controversy over the lawfulness and political correctness of the methods used, it proved that the government could control the situation in the judicial sphere.³ Whether controlling the situation also means controlling the decisions made by judges is a whole other issue. We could say without much exaggeration that instead of being dependent on the bribes in most cases justice has now become dependent on the executive. To some extent, the government itself admits the lack of judicial independence by making promises about the reforms designed to improve the degree of independence. Research reveals public mistrust towards the judicial system as well. While it is true that there has been some increase in the degree of public confidence and trust since the revolution, the improved trend reveals that public distrust of the judiciary remains strong.

¹ Civil Georgia, 29.01.2004: President Proposes Simplifying the Procedure for Detaining High-ranking officials <http://civil.ge/geo/article.php?id=5925>. Accessed on 12.09.2010.

² Trust in the judicial system was so low that, according to voter motivation research published by the International Republican Institute (IRI) in February 2004, people were not even asked about their trust in the judiciary.

³ Civil Georgia, 26.12.2005: Kublashvili: Judges Will No Longer Be Untouchable, <http://www.civil.ge/geo/article.php?id=11347>.



According to Transparency International’s Global Corruption Barometer, over the years citizens of Georgia have considered the judicial system to be the most corrupt among the governmental and non-governmental institutions.⁴ Only in 2004 did the judicial system rank second to police, on the list of corrupt institutions and even then by only a few decimal points. In 2004 and 2005 the judicial system received 3.8 and 3.9 points respectively on a five-point scale where one indicates no corruption and five indicates complete corruption. The results were not any better in the following years. In 2007, the results of the Global Corruption Barometer indicated that 41% of Georgia’s population considered judicial system as corrupt, while in 2009 that number was 37%.

While the focus of the Barometer is corruption rather than measurement of overall trust, the general trends it reveals are confirmed by other studies as well.

According to voter opinion research published by the International Republican Institute, the judicial system is again one of the least trusted by the public among governmental institutions.⁵ Some progress in terms of public confidence has been noticeable in the last two publications of the research – in comparison to June 2009, October 2009 results reveal a 12% increase in the number of people with a favorable attitude toward the judicial system. However, even after considering this new data, 42% of the public has a favorable attitude towards the court and an equal 42% is unfavorably disposed.

A broader understanding of the public’s attitude towards the judicial system in Georgia is presented by the Caucasus Research Resource Centers’ Caucasus Barometer.⁶ According to the results of this 2009 research, 24.5% of Georgian population trusts the judicial system and 27.4% does not. It is also important to note that 32.6% of all individuals polled had no opinion on the matter and stated that they neither trust the judicial system nor distrust it. Trust in the judicial system requires trust in the fairness and justice of the system, but in this regard the situation is quite appalling. A staggering 54.4% of the population agrees with the statement that “Georgian courts treat part of the population fairly and part unfairly” and only 12.1% believe that “Georgian courts treat everyone fairly and do not grant special treatment to anyone.” It is also important to note that according to the opinion of 33.9% of Georgia’s population, the government exerts pressure on the courts, and only 27.8% believe that courts are politically independent. Additionally, one third of the population, 33.9%, has no opinion on this matter. This cannot be considered as an indicator of trust in the judicial system either.

Plea bargaining was introduced to Georgia along with a number of other reforms in an environment of low public confidence, and an ineffective and slow judicial system. The

⁴ You can read about the methodology of the Global Corruption Barometer and view its results for different years at Transparency International’s website (in English, French and Spanish languages) at the following link: http://www.transparency.org/policy_research/surveys_indices/gcb.

⁵ The results of the research by the International Republican Institute can be found online at <http://www.iri.org/geo/geomain.htm>.

⁶ The full content of the Caucasus Barometer can be downloaded from the Caucasus Research Resource Centers’ website after filling out a brief application form on the following link: <http://www.crrc.ge/caucasusbarometer/datasets>.



following chapter presents an overview of the legal framework, which shapes the Georgian model of plea bargaining.⁷

Georgian Model of Plea Bargaining

Plea bargaining was introduced to the Georgian law through amendments and additions to the Code of Criminal Procedure on February 13th of 2004.⁸ The objective of these changes was to establish a prompt and efficient provision of justice while protecting the principles of independence of the judiciary system (Article 15¹). Accordingly, plea bargaining can be applicable to all categories of crime (the least severe, severe, and the most severe).

We can distinguish three stages in the development of the Georgian model of plea bargaining: 1) the original form formulated by amendments on February 13th, 2004; 2) amendments and additions to plea bargaining laws until 2009, which can be referred to as the 2005 model, due to significant modifications which were implemented on March 25, 2005; and 3) the latest model presented in the new Criminal Procedures Code introduced on October 9th, 2009 and made effective on October 1st, 2010. There is essentially no difference between last two models of plea bargaining, so we could say that in reality we are dealing with only two – the 2004 and 2005 models. However, taking into account that the Criminal Procedures Code adopted in 2009 presents a completely new approach and is built on different principles, even though these principles are not related to plea bargaining, we decided it would be logical to present it as a separate model.

This chapter presents an overview of the development of the Georgian model of plea bargaining, assessed significant amendments and their consequences.

The Essence of Plea Bargaining

According to the 2004 edition of the Georgian Code of Criminal Procedure, the basis for a plea agreement was the defendant's consent to cooperate with the prosecution, admit the charges against him, and provide the investigation with truthful information and / or evidence of a serious crime or a crime committed by a high official, thus contributing to the resolution of the case. Under such circumstances, the prosecutor had the right to petition the Court for a verdict without trial (Article 679^{1.2}).

However, due to amendments (Law N 214, 24.06.2004) enacted a few months after the law went into force, the basis for plea bargaining was divided into two types: the “charge bargain” and the “sentence bargain.” In the case of charge bargaining, the defendant must admit the crime and / or cooperate with the investigation, while in the case of sentence bargaining, the defendant need

⁷ The full legal analyses of the Georgian legislation on plea bargaining is presented in Appendix N1, available in Georgian language only on TI Georgia's website: <http://transparency.ge>).

⁸ The articles mentioned in this text are articles from the Criminal Procedures Code, unless otherwise notes. Articles are referenced with the current reference system and not according to the regulation that went into force on 1 October 2010, unless otherwise noted.



not admit the crime but must cooperate with the investigation and agree with the prosecutor on the severity of the sentence or dismissal of the charges altogether.

Under the 2005 model, whether it was a charge or sentence bargain, the defendant was freed from the requirement to cooperate and assist investigation. Because in both cases the procedural advantages and legal consequences – existence of criminal record – are identical, there is essentially no practical difference between charge and sentence bargain.

Under either type of plea bargaining model, cooperation with the investigation is mandatory only in order to allow the complete dismissal of the charges. Article 679⁹ explains that under special circumstances, when a defendant’s cooperation leads to the identification of an individual who committed a serious crime or identification of a high official who committed a crime, and conditions exist for the resolution of that crime, the Chief Prosecutor of Georgia can petition the Court for complete dismissal of charges.

It should also be noted that Article 679 was refined through other amendments introduced to the second (2005) model over time. For instance, it was clarified that even after complete dismissal of charges the individual is considered to have a criminal record (679⁹.1) and complete dismissal of charges is unacceptable if it is accomplished only by means of paying a monetary penalty/fine or other amount (679⁹.4). However, this last regulation is quite vague. It is not clear how an individual can be completely cleared of all charges and still be required to pay a penalty, which in itself is a form of punishment. It is also unclear what the other “amount”, besides the penalty that the regulation refers to might be.

It is important to note that a successful plea bargain does not free the defendant from civil liability. But according to the part 9 of Article 679⁹, under “special circumstances”, the Chief Prosecutor of Georgia or his deputy has the right to petition the court for the dismissal of defendant’s civil liability as well. In this case, civil liability will be assumed by the State. It should be noted that the law does not define what “special circumstances” may be, thus creating ambiguity and leaving it open to interpretation.

Under the first edition of the law, the plea bargaining process could be initiated only by the prosecutor. After 2005, the defendant and the Court are also allowed to initiate plea bargaining. However, taking into account the fact that a plea bargain has to be agreed to by both defendant and prosecution and then approved by the Court, the non-exclusive nature of the initiation should not have resulted in major changes in practice.

By pleading guilty, the defendant declines a whole set of constitutional rights (i.e. giving testimony, right to a trial with the participation of all parties and by fair representation, etc.). Due to this, the law provides some guarantees to protect defendant’s rights when plea bargains are negotiated. Specifically, the agreement can be signed only after expert legal assistance has been provided, without force, threat, misleading information or any other illegal promise. In other words by, there must be full and informed consent by the defendant (679³.1).

It should be noted that while a plea bargain is being negotiated the law requires the defendant to be represented by counsel (an attorney with legal education).



The defendant has the right to revoke the plea bargain and ask for a trial at any time before the Court approves the plea bargain. Revocation of the plea bargain does not require the defense attorney's agreement (679⁴.7). If the Court revokes the plea bargain or the defendant refuses it, defendant's testimony cannot be used against him/her (679⁵).

Necessary Conditions for the Agreement

The original model of plea bargaining presented several aspects that must have been considered during the plea bargaining agreement negotiation process (679¹.3). Among them: d) the possibility that court would find the defendant guilty, v) public interest in holding a trial, and t) in the case of crimes against human life, the condition of the victim and the satisfaction of his or her lawful rights. The full list of the aspects to be considered was removed from the legislation by the 2005 amendments.

According to the law the prosecutor can make a decision to lessen the extent of the punishment or partially dismiss it. Such decision can be made only after careful consideration of not only the severity of the punishment, the unlawfulness of the action, and the severity of crime but also the public interest (679¹.6).

Neither the 2005 nor 2009 model clearly defines what 'public interest' means. It was only defined in the first 2004 model. Specifically, part 'b' of article 679¹.6 (of the 2004 model?) defines public interest as interest that "government resources are used with maximum efficiency." Beyond this, the notion of public interest remains ambiguous and completely subjective.

According to the law, the necessary conditions for the plea bargaining agreement are the participation of the defense attorney, written consent of the defendant and written consent of the supervising prosecutor on the case.

The Role of the Judge

The responsibility of the judge is not limited to reviewing the plea bargaining agreement presented by the prosecutor. Under to the 2005 model, the judge is authorized to offer the possibility of a plea bargaining agreement to the parties before the trial begins.

While considering the agreement itself, the court must verify that the defendant is fully aware of all legal requirements associated with the plea bargain (679³.2). In addition, the judge must verify with the defendant that law enforcement authorities have not subjected him or her to torture, or inhumane or degrading treatment. The judge must also explain to the defendant that his complaint for such treatment will not hinder the approval of a lawfully filed plea agreement (679³.2¹).

When mediating the plea bargaining agreement with the judge, he or she should be given not only the agreement, but also the formulation of the charges, evidence, the article from the Code of Criminal Procedure which is applicable to the given crime, and the severity of the sentence requested by the prosecution (679².1). The agreement is open to the public, except for the part



that reveals the information provided by the defendant to the prosecution (679².4). This information is accessible only to the parties signing the agreement, the court, and the individual affected by the information revealed and his/her attorney (679¹.10). This last Article has been considerably refined compared to its original (2004) version in the first model of the law, where part 4 of Article 679² required confidentiality of the entire agreement. The availability of this information to the affected person and his or her attorney is based on the individual's right to know what is he or she accused of, who his accuser is, and what evidence is used.

Considering the agreement and the evidence presented, the judge must make a decision based on the law and is not required to approve the agreement between the prosecutor and the defendant (679³.3). It should be noted that according to the first (2004) version of the law, the judge had much more authority than merely approving or rejecting the plea agreement. According to the amendments implemented on December 26th, 2006 (Law N4212), the judge is no longer allowed to lessen the severity of the sentence and is only allowed to introduce changes if parties are in agreement. This amendment can be unequivocally assessed as the expansion of the prosecution's authority at the expense of the court's.

With respect to the severity of punishment, careful consideration should be given to Article 55 of Georgia's Code of Criminal Procedure. According to Article 55, punishment lighter than the lowest threshold of penalty applicable for a given crime is permissible, if parties have signed the plea bargaining agreement. Two points are of interest when considering the effects of this Article. Firstly, this legislation allows for a punishment below the low end of the severity range. Secondly, punishment below the low end of the severity range is possible only when a plea bargaining agreement has been signed. In such a case, the prosecution determines the severity of the punishment. The sentencing is generally the exclusive authority of the judge. While the defendant also agrees to the measure of the punishment, compared to the prosecution the defendant has less leverage, especially in practice. Under the circumstances, when the judge can only approve or revoke the agreement and can only suggest changes, rather than make his or her own independent decision, the lessening of the severity of the sentence becomes the prosecution's prerogative. Thus, even with respect to sentencing, the authority of the judge is much more limited than the authority of the prosecution.

The Condition of the Victim

Changes to the plea bargaining legislation had significant effect on the role of the victim as well. Under the first version of the law, in legal cases concerning crimes against "human life", the position of the victim and public duty to satisfy his or her legitimate rights" was taken into consideration. However, amendments introduced on March 25th, 2005 removed that aspect of the legislation (Law N1204).

The current model regulates the victim's rights relying to Article 679⁸ (24.06.2004 Law N214), according to which the prosecutor is obligated to inform the victim before a plea bargaining agreement is signed. The victim has no right to appeal the agreement or resist it, but does have a right to file a civil suit. Under the 2009 model, the prosecutor is obligated to not only to inform the victim of the plea bargaining, but also to consult with him or her on offer (Article 217, part



1). However, while the consultation is mandatory, this does not necessarily mean that the victim's opinion will be decisive on whether or not to conclude a plea agreement. If that were the case, consultation would lose its purpose.

The Approval of the Plea Bargaining

If the court decides that the evidence presented is beyond reasonable doubt and that the sentence proposed by the prosecution is lawful, the court must rule on the case of approving or rejecting the plea agreement within 15 days. Otherwise, the case is returned back to the prosecutor's office. However, before the case is returned to the prosecution, the judge can offer the parties a chance to change the terms of the agreement (679⁴.4 and 679⁴.5). It should be noted that a court-approved verdict enters into force upon its announcement and cannot be appealed (679⁷.2). The only exception to this rule is the defendant's right to appeal the verdict to the higher court within 15 days of the ruling and request the cancelation of the agreement, if: a) the agreement was based on deception b) the defendant's right of defense were restricted c) the agreement was made under the influence of undue force, threat and intimidation, or d) the ruling court ignored the essential requirements for plea bargaining (679⁶.1). The prosecution can also revoke the plea bargaining, if the defendant violates the terms of the agreement. The prosecution has the right to appeal within one month of revealing the violation of the terms of the agreement (679⁶.2).

Despite the fact that both sides have an equal legal right to request the revocation of the plea bargaining agreement, it is hard to overlook the prosecution's preferential treatment when it comes to the deadline for filing the appeal. However, in this case deadlines are not as important as the entirely unequal playing field on which the defendant and the prosecution may act. It is hard to imagine that in case of intimidation and undue pressure, the situation could change so drastically within two weeks after the ruling that defendant would no longer feel threatened and would file a petition for revocation of the plea agreement. In contrast, the grounds on which the prosecution may petition for revocation are vague, and therefore broad. This vagueness is due to several factors. First, as mentioned above, the plea bargaining agreement requires only consent regarding the charges and the sentence, rather than the cooperation with the investigation. The latter is required only in those cases when absolute dismissal of all charges is desired. It is not clear what terms can be violated by the defendant in this case. Second, when cooperation with the investigation is required, only the prosecutor gets to decide whether the defendant is sufficiently cooperating. Third, the prosecution has the right to request the revocation of the plea bargaining agreement within a month after the violation of the terms is *noted*, rather than within a month after the *ruling*. This essentially gives the prosecution unlimited time to request the revocation of the agreement.

After reviewing the plea bargaining system in Georgia, we can say that over time plea bargaining procedures have been considerably simplified. Most likely, this occurred to ensure prompt ruling on cases, which was one of the objectives of the plea bargaining from its adoption into the legal system. However, this might prove insufficient for achieving the second objective - the overall



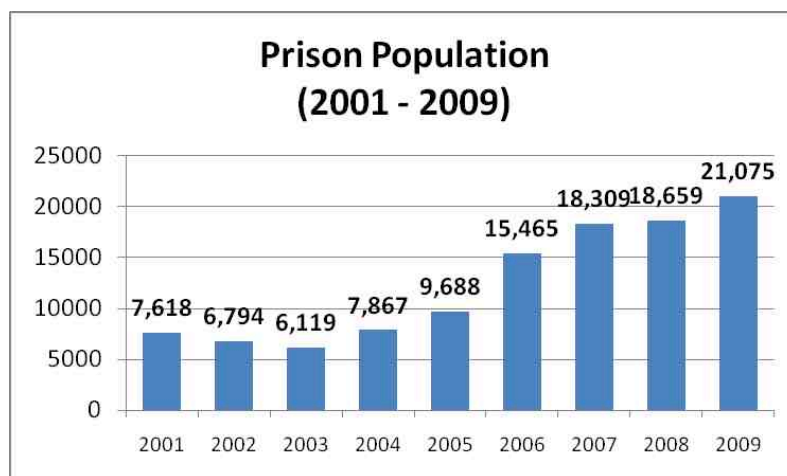
efficiency of the judicial system. The following chapter addresses how exactly plea bargaining functions in the Georgian reality.

Plea Bargaining in Practice

Plea bargaining allows for speedy resolution of court cases, which is considered to be an indicator of court efficiency by the representatives of the government. While the efficiency of the judicial system is a rather controversial issue, there is no doubt that plea bargaining has led to less crowded prisons and lighter case load for the courts.

Under the government’s “zero tolerance” policy, there has been a considerable increase in the number of criminal cases. The effects of this policy, which was announced by the President on February 14, 2006, are clear given that the number of criminal cases initiated in 2006 (13,602) is almost twice the number of cases initiated in 2005 (7,358).⁹ The steady increase in the number of criminal court cases came to a halt in 2009, but the number of newly initiated cases still amounted to 15,592.¹⁰ Even though the trend of increasing criminal court cases has ceased, 22,628 individuals were serving a sentence in Georgian prisons in summer of 2010.¹¹ This means, 514 out of every 100,000 people in Georgia are prisoners and Georgia ranks seventh in the world by its incarceration rate.

Figure #1: Prison Populating in Georgia (2001-2009)



At the same time, there are only 281 judges in Georgia, which means there are on average 15 thousand people per judge. For instance, in Estonia the number of citizens per judge is less than

⁹ Georgia’s President, Mikheil Saakashvili’s annual address at the spring session of the parliament. The copy of the text of this address delivered on 14.02.2006 can be found on president’s official website, http://www.president.gov.ge/index.php?lang_id=GEO&sec_id=228&info_id=2686.

¹⁰ According to the Supreme Court of Georgia (Letter N15-k, 26.03.2010) the statistical data on the initiations of criminal court cases is as follows: 2005 – 7,358, 2006 – 13,602, 2007 – 1,526, 2008 – 17,639, 2009 – 15,592

¹¹ Kings College, London: World Prison Brief. Prison brief for Georgia is available at the following link: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=122.



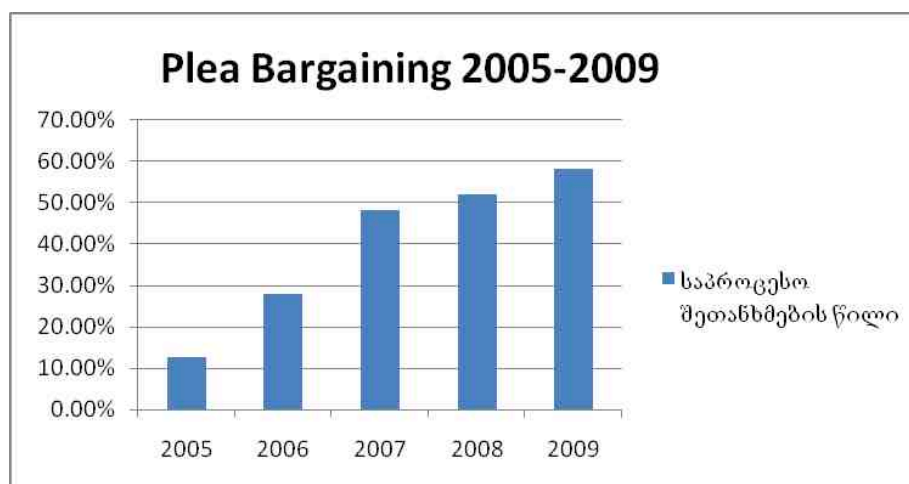
half this.¹² Under the circumstances that exist in Georgia, judges would have a case overload without plea bargaining agreement option.

Table #1:
The Dynamic of Using Sentence Types (2003 – 2009)
Data from the Court of First Instance

Year	Number of defendants	Types of Sentence (Percentage)							
		Imprisonment	Administrative incarceration	Penal Labor	Conditional sentence	Released through amnesty or other reason	Sentence execution deferred	Debarment from office	Fine
2003	8110	28.7	0.3	0.5	43.8	0.2	0.2	–	26.3
2004	9071	35.0	0.2	0.7	39.6	0.2	0.3	–	24.0
2005	9168	38.4	0.1	2.0	41.0	0.2	0.0	0.1	18.1
2006	16911	46.9	0.1	0.4	41.4	0.4	0.0	0.0	10.8
2007	21170	46.2	0.0	45.3	4.4	0.0	0.0	3.9	0.3
2008	20804	42.5	–	0.0	51.0	1.5	–	–	4.9
2009	18354	45.7	–	0.0	46.9	0.2	–	–	7.2

The number of cases settled through the plea bargaining is increasing every year. According to data from the Supreme Court, plea bargaining was used to settle in: 2005 – 932 cases, 2006 – 3,791, 2007 – 8,432, 2008 – 9,207 and in 2009 – 9,073 cases.¹³

Figure #2: The Share of Cases Settled Through Plea Bargaining Agreement (2005- 2009)



¹² Transparency International Georgia: *Plea Bargaining in Georgia*. February 2010. Materials were presented by the Supreme Court of Georgia, <http://www.transparency.ge/en/post/report/plea-bargaining-georgia>.

¹³ The statistical data by year can be found on the Supreme Court's Website at the following link: http://www.supremecourt.ge/default.aspx?sec_id=129&lang=1.



We should also note that the number of cases where the court refuses to approve the plea bargaining agreement is minimal. In 2007 as well as in 2008, 15 cases were transferred back to the prosecution for sentencing, while in 2009 17 cases were returned. For 2010, the data is available only for the first quarter and its comparison with the first quarter of 2009 reveals no change in the trend. In the first quarter of 2010, courts of the first instance approved plea bargaining for 2,856 cases and only 4 cases were transferred back to the prosecution. During the same period in 2009, plea bargaining was approved for 2,196 cases and 3 were denied. This means, that since 2007, the share of cases transferred back to the prosecution has never exceeded 0.2%.

Table #2
Statistical Data on the Approval of Plea Bargaining Agreements

Type	2007		2008		2009	
	Case	Individual	Case	Individual	Case	Individual
Sentence based on plea bargaining	8,432	10,459	9,207	11,513	9,073	11,027
Plea bargaining was denied and returned to the prosecution	15	15	15	19	17	20

It should also be noted that in the first quarter of 2009, 56.5% of cases were settled through plea bargaining in the court of the first instance while in the first quarter of 2010 the number was 71.6%.

Table # 3
Statistical Data on the Approval of Plea Bargaining Agreements

Type	2009 First quarter		2010 First quarter	
	Case	Individual	Case	Individual
Sentence based on plea bargaining	2,196	2,695	2,856	3,334
Plea bargaining was denied and returned to the prosecution	3	3	4	5

One reason for the use of plea bargaining on such a broad scale is no doubt the lack of public confidence in the judicial system. If we look at the statistics of the Supreme Court of Georgia, the chances of being acquitted in the Georgian judicial system have remained at 0.1% since 2007, meaning that in 99.99% of cases defendants are found guilty of the crime.



Table #4
The Rates of Acquittal (2003-2009)
Data from the Courts of the First Instance

Year	Total	Found Guilty		Acquitted	
	<i>Individual</i>	<i>Individual</i>	%	<i>Individual</i>	%
2003	8,402	8,110	96.5	61	0.7
2004	9,359	9,071	96.9	38	0.4
2005	9,595	9,168	95.5	79	0.8
2006	17,155	16,911	98.6	37	0.2
2007	21,532	21,170	98.3	13	0.1
2008	21,132	20,804	98.4	30	0.1
2009	18,637	18,354	98.5	18	0.1

While it would be unjustified to question the fairness and professionalism of law enforcement agencies, and it is certainly not the objective of this report to do so,, it is hard to imagine how an innocent victim can have any hope of proving his or her innocence in a judicial system, where defendants are acquitted only in 0.1% of cases.

Under such circumstances, when plea bargaining is almost inevitable, it is of utmost importance to understand what lies behind the statistical data – how does plea bargaining really work? This insight is essential, since the flaws in the plea bargaining procedure can have significant consequences.

Access to Court Materials

One of our objectives in this research was to analyze all types of criminal cases settled through the plea bargaining agreement since the adoption of the plea bargaining procedures into Georgian law. It would be very challenging to conduct such research on the scale of the entire country, because there is no single centralized source of data, and obtaining and analyzing the case information from all courts in Georgia would be impossible in the short time we had available. Consequently, we chose to rely on the experience of Tbilisi courts. Generalizations drawn from the results of such research would help us formulate objective conclusions about the type of crimes that are most often settled through plea bargaining agreements and the terms of those settlements.

According to Articles 37 and 42 of the General Administrative Code of Georgia, the right to request public information is granted to all citizens. Taking this into account, we approached Tbilisi City and Appeals Courts and the Central Archives and requested the copies of those court



cases where a guilty verdict was passed without full trial (i.e. through plea bargaining) and the cases where the verdict was appealed.¹⁴ We requested this information for the years 2004-2010 and promised to reimburse all expenses associated.

In response to our Freedom of Information request, we received 43 cases, but these cases were chosen by the Tbilisi City Court itself and only covered the period from 2006-2010. By way of explanation for making such a limited selection, the Court stated that in order to satisfy our request, it was necessary to organize the court records in a way that required a lot of time and administrative resources, and at that time, this was not a necessary condition for the Court's functionality."¹⁵

Even after all this, we did not stop our efforts for obtaining the cases. On September 24, Tbilisi Appeals Court sent us a letter (N65) granting us access to review original court records for the period of 2006-2010. Finally, as a result of our persistent efforts, we agreed that the Appeals Court would provide us the materials for all plea bargaining cases from 2010. Consequently, we have received all cases for the three quarters of 2010, on the basis of the following letters: N70, October 19, 2010; N78, November 5, 2010; N84, December 2, 2010. However, due to the protracted process of getting the cases and the severe time limitations for their analysis, only the first batch of cases have been included in the database of Annex N2 of this report. We will continue to analyze all information we currently have and supplement the database. This information will also be made public. Unfortunately, we could not establish such cooperation with Tbilisi City Court.

No comprehensive research has yet been conducted on the functioning of the plea bargaining in Georgia and general information is not readily accessible to the public. Taking this into consideration, we believe the courts should facilitate the implementation of such initiatives. Transparency of the courts is a necessary condition for the study of legal practices and for public oversight of the judicial system.

We should also note that neither the Appeals Court nor the City Court, and not even the central archives, provided us with the information on cases settled through plea bargaining in the period of 2004-2005.¹⁶ This is the very period when plea bargaining was still in its infancy, and cases settled during that period are the ones that lead to the most questions in the society.

The sub-chapters that follow present the analyses of the practical application of plea bargaining and reveal its accomplishments and flaws.

¹⁴ Letter to Tbilisi City Court 23.04.2010 N. 03-655, 18.05.2010 N 03-739; Letter to Tbilisi Appeals Court N 1/3520, 29.04.2010; N03-759, 20.09.2010; Letter to central archive 21.09.2010 N 03-760.

¹⁵ Tbilisi City Court Letter N 104, 03.05.2010

¹⁶ As a result of the reorganization that took place within the framework of reforms of the judicial system, the Regional Courts were replaced with the Tbilisi City Courts and District Courts with Appeals Court. However, since new courts are legal successors of the old ones, the case dockets should have been replaced from them as well.



The Advantages of Plea Bargaining

When evaluating plea bargaining, both the opponents and the proponents of the process agree on several issues that are clear advantages of the system.

Using plea bargaining, criminal cases are settled much quicker than by full-blown trials. The prosecution has to provide the judge not only with the plea bargaining agreement, but also with the complete set of case materials and evidence that proves the charges against the defendant. Nevertheless, the defendant's agreement to the sentence, whether admitting the charges or not, considerably simplifies the situation and makes it possible to avoid the expenses associated with protracted full trials. This efficiency not only helps to avoid monetary expenses, but also saves attorneys, prosecutors and court administration valuable time and resources. The resources saved can be used more efficiently for investigation of other, more complex cases. To that purpose it is quite logical to offer some concessions to the defendant.

Levan Ramishvili, member of the Liberty Institute and an active supporter of the establishment of plea bargaining in Georgia, says that “the main concern for the state is not the cruelty of the punishment, but its inevitability. The main focus is that more of the guilty defendants are convicted. (...) And if the state settles on a sentence of seven years instead of five by offering concessions, you ultimately work better on prevention than when spending all the resources on a few cases.”¹⁷

Cooperation with the investigation is only one aspect of the plea bargaining agreement and not a required one, but it is very important for the government. It can help with the investigation of unsolved and unknown crimes, and thus with the execution of justice. Since the cooperation with the government investigation of other cases leads to a lower sentence for the defendant, plea bargaining “is the most effective way of motivating the defendant to cooperate with investigators.”¹⁸

The cooperation aspect of plea bargaining which leads to the resolution of other cases is a particularly effective tool in the fight against organized crime and corruption. This mechanism and the strict criminal law policy deserve the credit for the collapse of the “Thieves in Law” (the Soviet mafia) institution and the abolishment of their authority in the society.

Plea bargaining should receive credit for yet another benefit. Before the introduction of plea bargaining, due to the inefficiency of the courts and the resulting case overload, cases would frequently drag on for years. The investigation of these long-neglected cases through full-blown trials, without plea bargaining, would be impossible.¹⁹

¹⁷ Interview with Levan Ramishvili, head of the think tank Liberty Institute, 08.06.2010.

¹⁸ See above.

¹⁹ Interview with Ketevan Chomakhashvili, Chief Prosecutor's Office of Georgia. 05.05.2010.



Finally, both human rights defenders and representatives of the justice system agree that plea bargaining has significantly reduced the number of inmates in the correctional institutions and the length of their imprisonment. Taking into account that Georgian prisons are overcrowded and in most cases in inadequate condition, plea bargaining can be considered a humane mechanism. The assessment given by the Georgia’s public defender, Giorgi Tughushi that “in the absence of plea bargaining, conditions in correctional institutions would be much worse ” seems to be reflective of the general view.

Criticisms of Plea Bargaining

The bases for criticism of plea bargaining in Georgia are much more diverse than those for its advantages. It should be noted that critics often emphasize that the basis for the criticism is not the essence of plea bargaining, but rather its execution, that “it’s the distorted practice (of plea bargaining) that is unacceptable.”²⁰

Most often, the criticism is focused on the parties involved, their relative leverage and the role of money in plea bargaining. Ultimately, the main object of criticism is the entire ineffective justice system in which plea bargaining operates. The systemic analysis of the justice system is not the objective of this research and accordingly, we focus our attention on analyzing the concrete aspects of a plea bargaining agreement.

Secondary Role of the Judge

The critics argue that one of the most important flaws of plea bargaining in Georgia is the limited authority of the judge. The most severe criticism is directed to those amendments of the Code of Criminal Procedure which revoked the right of the judge to reduce the sentence specified in the plea bargaining agreement and left him with the authority to only approve or dismiss the agreement. According to Gagi Mosiashvili of the Georgian Young Lawyers’ Association, “this is an example of the infringement on the court’s independence.”

As was mentioned in the legislative overview, in the case of a plea bargaining agreement it is possible that the defendant may receive a lesser sentence than the minimum specified in the corresponding article of the Code of Criminal Procedure.²¹ For instance, if the charges entail three to five years in prison, with a plea bargaining agreement it is possible to receive a sentence that is less than three years. However, granting such a concession is the privilege of the prosecutor. According to Dimitri Khachidze, an attorney with the human rights organization Article 42 if anyone is to have such a privilege, it should be the judge rather than prosecutor.

The proponents of the Georgian model of plea bargaining respond to the above critique by arguing that a plea bargaining agreement is nothing but an agreement between the prosecutor

²⁰ Interview with Gagi Mosiashvili from the Georgian Young Lawyers’ Association, 07.07.2010.

²¹ Article 55 of Criminal Procedures Code.



and the defendant which is concluded with the defendant's full understanding of the legal consequences and without any undue force or threat. Consequently, not allowing the judge to interfere and single-handedly alter the legally concluded agreement is not an infringement of the rights of the judge.

Judges are not immune to the rights defenders' criticism either. According to these attorneys, judges often ignore their legislative obligations and instead of making an independent assessment of the case based on the case material and evidence presented, they merely agree with the prosecution's position.²² It should be noted, that this problem is not exclusive to plea bargaining cases.

Obviously, the problems associated with the lack of judicial efficiency, independence and professionalism of the judges are not caused by plea bargaining. The violation of the law and failure to comply with its requirements goes beyond the narrow scope of plea bargaining and is a crime which should be considered by the disciplinary authorities responsible for the professional conduct of judges.

The Leading Role of the Prosecutor

The most severe criticism of the Georgian model of plea bargaining and its practical application focuses on the extensive power of the prosecutor. According to human rights defenders, prosecutors have the "ability to improvise."²³ By this, critics are not referring to bribes, but rather to subjectivity and bias which give the prosecutor unlimited space to maneuver. Due to subjectivity and inconsistency of practice, making an "agreement with the prosecutor has turned into dealing, in its worst sense."²⁴

According to human rights defenders, the opportunity for the subjective approach of the prosecutor is made possible by the ambiguities in the law, which does not clearly define the required degree of defendant's cooperation with the investigation. According to the legislation, even pleading guilty to the charges is a form of cooperation, since it ensures speedy court proceedings and conserves resources, thus facilitating the investigation of other criminal cases.²⁵ However, in practice, the prosecutor gets to determine what constitutes cooperation. With personal gain in mind, the prosecutor can subjectively decide whether to conclude a plea bargaining agreement and what type of cooperation to request in return. Consequently, to limit subjectivity and better control prosecutors, the legislation must offer a more specific definition of cooperation.²⁶

²² Interviews with Dimitri Khachidze, Lali Aptsiauri and Gagi Mosiashvili.

²³ Tamar Khidasheli, Georgian Young Lawyers' Association. Quoted from the article: From Plea Bargaining to Dealing, *Liberal*, N.15, December 2009-January 2010.

²⁴ Archil Chopikashvili, Article 42 of the Constitution. Quoted from the article: From Plea Bargaining to Dealing, *Liberal*, N.15, December 2009-January 2010.

²⁵ Please note that the defendant's plea of guilt cannot be the sole basis for his or her conviction and the only basis for the plea bargaining, the prosecutor should present more extensive evidence to the court as well.

²⁶ Interview with Gagi Mosiashvili, Georgian Young Lawyers' Association, 07.07.2010; See also the article by Natia Rokva entitled "Price of Freedom Determined by Prosecutor", published by Batumeleby, one of the winners of TI



Along with a clear definition of cooperation, it is essential for that cooperation to be transparent. Often, it is impossible to conclude from the verdict of the court what the basis of the plea bargaining agreement was (i.e. whether it was based on a guilty plea or cooperation with the investigation).

For us, the information about cooperation is important, since it helps us determine whether the practice is consistent or not. In other words, we are interested in whether the concessions offered are the same or similar in cases with the same degree of cooperation. Despite our best efforts, due to the lack of sufficient information on this issue we are unable to make complete and objective conclusions.

We understand the prosecutors' argument that the degree of cooperation and the information provided to the prosecutor should sometimes be protected to ensure the safety of the defendant. However, the existing situation completely eliminates the possibility of any impartial analyses. Accordingly, the prosecutor's office will have no opportunity to convincingly reject any fairness of the criticism and publicly confirm the impartiality and objectivity of the prosecutors.

The attorneys claim that their identity has become a part of the agreement as well. According to attorney Shalva Shavgulidze, prosecutors do not want to work with those attorneys who really try to protect client's interests. To avoid working with “problematic” attorneys, prosecutors often offer more lucrative terms to defendants represented by these attorneys in the plea bargaining agreement.²⁷ Other attorneys claim that often a particular attorney's removal from the case is part of the plea bargaining agreement itself.²⁸

The above allegations refer to informal verbal agreements and we can neither confirm nor deny them. But the fact is that due to the lack of judicial independence and lack of public's confidence in the system, defendants must prefer even a disadvantageous plea bargaining agreement, over a lengthy and expensive court trial, which will most likely result in their conviction. This situation would give the prosecutors ample room to maneuver, even if the law regulated all aspects of the agreement in the utmost detail.

In reference to the defendant's and his or her family's investment into the justice system, we have to separately consider one of the most problematic issues related to the plea bargaining – the issue of monetary penalties (fines). The prosecution's exclusive authority in determining the penalty (fine) has been the subject of much criticism and we consider it in a separate subchapter.

Georgia's journalism award plea bargaining stories: <http://transparency.ge/en/post/general-announcement/transparency-international-georgia-announces-winners-journalists-competiti>.

²⁷ Natia Rokva: “Price of Freedom Determined by Prosecutor”, http://transparency.ge/sites/default/files/post_attachments/Batumelebi%20article.pdf.

²⁸ Interview with Lali Aptsiauri, 8.05.2010.



The Position of the Victim

In our interviews with human rights defenders, reference was made to the weakened role and position of the victims in the criminal court cases. According to the Code of Criminal Procedure, the victim is no longer a party to the case, and can only be questioned as a witness. Nevertheless, the victim is informed by the prosecutor's office regarding any plea bargaining agreement, and has an opportunity to file a civil lawsuit (civil complaint).

Attorneys are divided on the assessment of the victim's new position; however, the general opinion seems to be negative. The above is true despite the fact that in practice prosecutors mostly do consider the opinion of the victim while negotiating the plea bargaining and the severity of its terms with the defendant.²⁹

A different view is presented by the Chairman of the Liberty Institute, Levan Ramishvili. In his opinion, criminal law is a mechanism for protection of the state's interests rather than a mechanism for personal revenge. Additionally, considering a victim as a party to the agreement will lead to violation of principles of equality of the parties and adversarial nature of the process, since there would be two parties – state prosecution and the victim– against one defendant. In criminal cases, justice should be the priority rather than personal vendettas.³⁰

Money and the lack of Transparency since 2005

The amendments introduced to the Georgian criminal legislation (Criminal Code, article 42) on June 30th, 2005 (N1822), allowed for the inclusion of monetary penalties (fines) in plea bargaining agreements as an additional punishment, even in those cases where the Code does not provide for fines as a means of punishment. The most high-profiled case of the government anti-corruption campaign right after the revolution, including the cases of Gia Jokhtaberidze, Akaki Chkhaidze, and others, were over before the formal implementation of plea bargaining and the changes to the policy on fines.³¹ Contrary to the widespread opinion, it is not exactly known whether these famous cases ended with a plea bargaining agreement or some other type of the settlement.³²

The fact is that not all of the defendants from 2003-2004 high-profile cases pled guilty. According to the public announcements of high officials, those arrested paid the state large sums of money and did not serve any time. It is also unknown whether these cases resulted in criminal

²⁹ Interview with Gagi Mosiashvili, Georgian Young Lawyers' Association.

³⁰ Interview with Levan Ramishvili, Liberty Institute, 08.06.2010.

³¹ Despite our attempt to obtain this information, the files of the earlier cases which were settled with plea bargaining were not accessible. Accordingly, we do not know when exactly the cases were closed. In this case, we rely on the information provided by the state representative through the media.

³² The director of Liberty Institute, Levan Ramishvili, told TI Georgia, that these cases were not settled through plea bargaining agreement, rather through alternative mechanisms in the criminal justice system – halt of the persecution due to the change in circumstances. A change in circumstances in this case was the reimbursement of damages to the state.



records for the individuals involved. Analyses of the court cases from that early period would have been quite interesting especially to see what amounts were paid as penalties, what the reasoning was for imposing those penalties and then for the subsequent closure of the cases. Unfortunately, it is impossible to find answers to these questions without transparency and assistance of the judiciary.

According to the information available, proceeds from the penalties paid in the 2004-2005 plea bargains and other cases did not go to the state treasury. Instead, they were deposited into two special closed funds benefiting the police and the army. The sources of revenue for and expenditures from these funds remain unknown. The funds were abolished in 2006, largely because of criticism and advocacy of domestic civil society.

However, the situation has not improved much, even now that the special funds have been abolished and all government funds are required to be accounted for in a single treasury account. For instance, it is still unknown how much money goes into the state budget as a result of penalties resulting from plea agreements. According to the state treasury, there is no specific line item accounting for this revenue and, consequently, it is impossible to separate penalties paid because of plea agreements from other sources.³³

The prosecutor's office and the courts should also have information about the amounts of the plea-bargaining-related fines going to the state. However, we found that only the prosecutor's office has this information, and what information they do have is limited. According to their representative, the Chief Prosecutor's Office may have information about the imposed fines, but not about the actual amounts paid. It turns out that the Chief Prosecutor's Office only started collecting this information in 2009. According to their data, the state budget received 61,144,311 GEL from penalties in 2009.

We applaud prosecutor's office for their attempts to bring some clarity to this most problematic aspect of plea bargaining. However, it is still unclear why they cannot monitor the actual amount of each penalty paid. Paying the penalty is one of the terms of the plea bargaining agreement and the prosecution has the right and obligation to request the revocation of the agreement if the terms are violated. Consequently, for the effective execution of its duties, the prosecution should be able to monitor not only the assessed penalty, but also the actual amounts collected. We hope the Chief Prosecutor's Office will improve its methods and practices of data collection and help make this public information more accessible and transparent.

According to the critics, plea bargaining used equally successfully for supplementing the state revenues and for relieving overcrowded prisons. The basis for this argument is that, in practice, fines are inseparable and essential part of plea bargaining. But according to the law, a fine is only one of the terms (and not a required one) that may be included in a plea bargaining agreement.

According to the representatives of the Chief Prosecutor's Office, the critics and public defenders are wrong in arguing that fines resulting from plea bargaining agreements are used to

³³ Letter from Treasury Department of the Finance Ministry of Georgia, N 18-02-06/610/5502, 23.04.2010.



fill the state budget. Ketevan Chomakhashvili told us that while she did not have exact information about the amounts collected or their share in the state budget, she was “almost sure that the amount doesn't add a significant amount to the state budget, and nothing would be lost if it didn't even exist. I can say that right now.”³⁴

The plea-bargaining-related fines imposed (61,144,311 GEL) in 2009 constituted 1.2% of the state budget revenues (4,916,960,000) in the same year. Clearly, this amount is not quite insignificant. For a better perspective, this amount is twice the size of the 2010 budget of the Georgian Parliament and the budget of eight different Ministries combined.

The fines – Unfair or Reasonable?

Besides the issue of transparency of the fines that have already been imposed, the use of fines themselves can be problematic. One group of critics completely opposes having fines as part of plea bargaining, while another group is against imposition of fines as a punishment for serious crimes, and yet another group opposes the lack of transparency in the process of determining the amounts for fines.

The opponents of allowing lighter sentences for those who pay fines claim that this violates the principle of equal and fair justice. For instance, two defendants with equal involvement and equal charges could receive very different sentences (especially when it comes to imprisonment) only because one can afford to pay the fine, while the other cannot. According to human rights defenders, such situations are not hypothetical and are not rare in practice. Clearly, a fine is a form of punishment, especially given the sizable amounts of money that are often involved. This is likely a significant punishment not only to the defendant but his entire family, considering the economic situation in Georgia. However, considering the condition of Georgian prisons, a few thousand GEL are well worth it to avoid imprisonment. The penalty amount is determined on case-by-case basis, taking into account the details of the case and the defendant's personality; according to the claim of chief prosecutor's office, the economic condition of the defendant is also taken into consideration. However, the law does not regulate the upper limit of the fine and those who cannot afford it end up paying a much higher price.

According to Gagi Mosiashvili, an attorney, while the law does not directly require imposing a fine for concluding a plea agreement, in practice it is an unwritten law. In 99% of the cases, a plea bargaining agreement is formed in exchange for a fine. This is confirmed by our data as well, which include few plea bargaining agreements where no monetary fine was imposed.

It is this situation that gave birth to the idea that in Georgia freedom can be bought. The Chief Prosecutor's Office strongly disagrees.

According to them, only 4% of plea bargaining agreements ended with the imposition of a fine

³⁴ Interview with Ketevan Chomakhashvili, Prosecutor General's Office of Georgia, 05.05.2010.



as the sole punishment in 2009.³⁵ Unfortunately, the data for the entire period since the introduction of plea bargaining to Georgia remains unknown.

Despite the claims of the prosecutor's office, the fact remains that there is no rule (at least, none that is public), for determining the exact criteria for the calculation of fines. In this case, the prosecutor has unlimited discretion for bargaining on penalty amounts.

The Georgian Ombudsman believes that the fines imposed by the prosecutor's office must be realistic, not astronomical and clearly out of reach for the defendants. In his opinion, officially established rates would not be efficient or flexible, but he does feel that fines should be based on reasonable calculations.

A fine is a form of punishment and in determining its amount its purpose should not be obscured. A fine must serve justice, rather than become a source of injustice.

Evaluation and Recommendations

Having analyzed the legislative and practical aspects of plea bargaining system in Georgia, we can make an informed evaluation of its effectiveness.

If speed and efficiency are criteria for assessment, it is clear that plea bargaining is perceived as effective in this area. We do not have exact data on the average amount of time and money required for resolving a criminal case, with plea bargaining or without it. Statistical data of this kind is not currently available in Georgia. However, discussions conducted in the process of this research revealed an overall assessment that criminal proceedings are much faster and require fewer resources when plea bargaining agreements are reached.

Plea bargaining appears productive in the battle against corruption as well. It is clear that corruption often has an organized or networked character. The defendant's active cooperation with the investigation can reveal more significant crimes, and thus, offering good terms of plea bargaining to an individual defendant could be an important way of fighting organized corruption networks. Here again, we have to note the lack of statistical data. Despite some progress in data collection, there are still lots of problems associated with collection, usability and accessibility of the statistical data in the court system. For instance, we do not know how many plea bargaining agreements are corruption-related or how many corruption cases end with plea bargaining agreements. Data on how many new prosecutions result from cooperation with defendants would also be extremely useful, but are currently unavailable. Availability of such data would make our discussion and analysis much more complete.

Considering the current situation, the effect of plea bargaining on corruption can still be assessed as positive, especially taking into account the period when plea bargaining was first introduced and criminal prosecution of corrupt officials and their families was extremely common.

³⁵ Interview with Ketevan Chomakhshvili, Chief Prosecutor's Office of Georgia. 05.05.2010.



However, we reiterate the issues we discussed earlier regarding the lack of access to the cases from this period, the many procedural questions, and the lack of transparency regarding the amount of fines collected.

The positive role of plea bargaining agreements in relieving overcrowded correctional facilities is beyond doubt and is noted by all parties concerned. Through plea bargaining, many fewer offenders end up serving a sentence in jail than would have otherwise because of the criminal code and strict criminal policy. With plea bargaining agreements, it is common to use conditional sentencing, and those who do serve time in prison often receive a shorter imprisonment term, sometimes even one that is shorter than the minimum sentence defined by the criminal code. Thus, Georgia's overcrowded correctional institutions, many of them in extremely poor condition, certainly get much-needed relief from the use of the plea bargaining system.

The caseload of the court system is also related to this. The availability of plea bargaining agreements is a great relief to the overloaded courts because it reduces the average amount of time and resources required to process each case. As a result, courts can allocate their human and financial resources more effectively to pursue the public interest.

However, if we talk about the fairness of the plea bargaining system, the situation is much more complicated. Under the present circumstances, the prosecutor is more powerful than the judge and the defendant must choose between plea bargaining or trial where he risks the full severity of the law, without much chance of being found innocent. It is therefore hard to talk about the fairness of the system. When speaking about the power of the prosecutor, we refer to the broad authority that allows the prosecutor to offer and agree to a plea bargain agreement and its specific terms at his or her own discretion. Lack of transparency regarding the calculation of the required fine and the amount of imposed and collected fines leads to widespread suspicion towards prosecutors and plea bargaining in general.

When speaking about mistrust, we consider it a mistake to separate the issues related to the prosecutor's office and plea bargaining from the environment they function in. The general institutional problems of the court and justice system lead to the problems in the plea bargaining system. In this regard, the belief of Levan Ramishvili, that the real and core problem is not in the law, but rather in the system, appears to reflect the opinion of everyone we spoke with while researching this report. The independence and competency of judges should be guaranteed in practice, not just in the law. No code, no matter how good, will be sufficient unless true institutional reform of the entire system is implemented.

Recommendations

The problems revealed through this analysis of the plea bargaining system in Georgia can be divided into two broad issues: lack of transparency and unequal distribution of power.



We propose the following recommendations to improve the situation:

- **Increased Transparency of the Court System**
The Courts must guarantee freedom and accessibility of public information. Instead, unfortunately, the judicial system itself is closed. In our experience, the court does not often consider it necessary or appropriate to spend resources to fulfill its direct obligation – giving out public information that it holds, in this case. Such an attitude is not only alarming but also violates the law. At the same time, it is impossible to analyze the processes and reforms taking place in the justice system without the courts' assistance. Not much research-based information is available to government agencies or the general public on these issues. Hence, the importance of the courts' support of research and increased openness cannot be overestimated.
- **Full and Transparent Accounting of Fines Paid**
Complete and transparent accounting of the fines imposed in plea bargaining agreements is still not happening. This is despite the fact that the issue of fines has been a problem since its introduction and Georgian non-governmental organizations have repeatedly made recommendations for improvements. The situation as it stands, where the fines imposed in plea bargaining are accounted by the treasury with other types of revenue and it is impossible to say exactly how much money from fines goes to the budget, is not satisfactory. While it is true that since 2009 it is possible to get data on the total value of the fines imposed by the prosecutor's office, it is not enough. It is necessary to account not only for fines imposed, but also for fines that are actually paid. This should happen with complete transparency by assigning a special treasury code to fines collected through plea bargaining agreements.
- **Better Transparency of the Rules Used to Determine the Amount of Fines**
Although the amount of each fine should be realistic and logical and should be calculated while taking into account the details of the specific case and the conditions of the defendant, in reality, there is no public mechanism to ensure this. The Prosecutor's Office should be required to justify the fine imposed in the plea bargaining agreement to some extent. Under the circumstances, where the court only has the authority to approve the plea bargaining agreement or reject it, the prosecution has the most authority in determining the fine. Judges' authority to offer amendments to the agreement's terms cannot be considered significant leverage. The introduction of such requirements of publicity would help to eliminate the reputation of plea bargaining as haggling over the price for freedom.
- **Transparency of the Essence and Role of Cooperation in Plea Bargaining**
It is important that the role of cooperation in plea bargaining is clear and open. In some cases it might be ill advised to make the information provided by a cooperating defendant public. But it should be clear why a certain individual receives a deal. This should be clear for ensuring consistency in the practice.



- **Equalized Balance of Power Between Parties Involved in Plea Bargaining**
The previous two recommendations mainly referred to balancing the prosecutor’s broad authority through increased transparency. However, transparency alone is not enough. For plea bargaining system to work correctly, the whole legal system should be effective as well. For the system to function effectively there should be a balance between the executive and judicial branches. The independence of judges should also be guaranteed. Without institutional reforms in the court system, it will be impossible for any legal system to function effectively, even if the system is sophisticated on the legislative level.