



## Refreshing Georgia's Courts Trial by jury: More democracy or a face-lift for the judiciary?

In Georgia the judiciary has traditionally been viewed as one of the most corrupt institutions, best avoided at any opportunity. Hence the need for judicial reform has always ranked high on the government's agenda, from the Shevardnadze era to the present. Public distrust of the judiciary has become a sort of tradition. After decades of Soviet rule and its rubber stamp judiciary, the initial years of independence that threw the country into chaos and civil war did little to reinforce trust in the courts or judges. While judicial reforms have been ongoing since the mid 1990s, much progress has yet to be made. Above all, the Georgian public has yet to be convinced that judges are indeed immune from special interests and influence and can justly apply the law.

As a recent survey of Georgian voters<sup>1</sup> suggests, the public believes that the judiciary is the second most important sphere (after the economy) in need of reform. Twenty-two percent of those surveyed ranked the judiciary as the single most important reform priority, 16% and 15% - as second and third priority respectively. The same study conducted in 2006 also ranked the judiciary as second most in need of reform, following the economy. In the 2006 study 16% ranked it as the most important reform priority and 17% and 14%, respectively, as a second and third priority. The courts also feature towards the bottom of the institutional trust list, with only 23% having a favourable view of this institution, opposed to a 64% unfavourable attitude in 2007. Public trust has thus further deteriorated since last year, when 34% held a favourable view and 50%-unfavourable.

European collaboration on judicial reform through EUJUST-Themis has been ongoing since the very beginning of the reforms. And the current framework for EU-Georgian relations, the ENP AP, is quite attentive to reform needs in this sphere as well. Priority Area 1 is devoted to actions that will strengthen the rule of law. Specifically, the Georgian authorities are to reform "the whole judicial system in line with European standards, notably through the implementation of the reform strategy for the criminal justice system." This report looks at one aspect of the draft Code of Criminal Procedure, the introduction of trial by jury.<sup>2</sup> Following a brief review of the legacy of previous reforms and current circumstances, the report examines the proposed draft (already awaiting its second hearing<sup>3</sup> in Parliament) and explores competing views on the subject of jury introduction within the legal community.

### State of the Georgian judiciary - the legacy

Substantial justice reform was first undertaken under President Shevardnadze. Shevardnadze won wide international acclaim for sacking the country's entire corps of judges and appointing new judges after rigorous examinations in 1998. Today President Saakashvili, then-Chair of Parliament's Legal Committee and subsequently Minister of Justice, is widely given credit for masterminding this revolutionary change—yet unmatched anywhere in the former Soviet Union.

After the initial optimism, the reformers' zeal apparently waned. Allegations of favouritism during the judges' selection process were raised frequently and the integrity of the new judges was often

<sup>1</sup> Georgian National Voter Survey, February 2007. International Republican Institute. Survey results are available upon request.

<sup>2</sup> Formal grounds for jury trial have existed since the 2004 amendments to the Constitution. Article 82.5 of the Constitution provides for trial by jury, competence and procedures of which are to be determined by law.

<sup>3</sup> The second hearing of the draft will take place during Parliament's fall session, already underway.



questioned. Statistics seem to support a sceptical attitude towards the integrity of the examination process at different points in time: while on average 10-15% of applicants were able to pass the exams, data from two years do not fit this pattern. In 1999 the success rate jumped to 41% and in 2003 – to 90%. Although nothing could be proven, there are doubts that the procedure of strictly sealing the tests and maintaining them under lock and key until the time of the examination was followed. There are suspicions that the content of the tests was known in advance.<sup>4</sup> Subsequent frequent critiques of judicial corruption have further eroded the already low public trust in this branch.

Since the Rose Revolution, allegations of curtailment of the freedom of judges to rule according to the law and their own discretion have replaced allegations of corruption. The current argument is that judges are pressured by the executive to issue rulings that conform to the prosecution's opinions. It is also claimed that unlawful intrusion has been on the rise since 2003. However, opponents argue that judicial statistics do not support such claims. They argue that the proportion of judges having upheld motions of the defence side is quite high and there are no grounds indicating prosecution's precedence over the judiciary. Still, the proportion of acquittals remains quite low. The mood of the public has been especially aggravated by the judiciary's handling of several high profile cases. Although the public largely believes that judges were to blame, Levan Ramishvili of the Liberty Institute argues that judges were victims, rather than perpetrators. Judges, he says, ruled in accordance with the evidence presented to them and had no influence on whether the evidence presented was exhaustive or not.

The case of the “rebel judges” of the Supreme Court has been of special importance. The November 2003 Rose Revolution swept the young reformers to power with the promise of righting the wrongs of the Shevardnadze era. This primarily meant taming rampant corruption and ensuring state agencies' proper function and capacity to deliver services. Once in power with an overwhelming popular mandate, the new administration took to these tasks, but not always through entirely legitimate means. The reorganisation of the court system was announced and a significant number of lower court judges were dismissed. Further, several lower court judges were dismissed on corruption charges. Those dismissed were replaced by a new cadre with significantly higher salaries<sup>5</sup> and benefits.

The Supreme Court was by no means immune from the surge, though formally it was beyond the reach of reorganisation. While no charges of corruption were formally pressed, the state offered generous pensions (by Georgian standards), equivalent to the 1000 GEL salary,<sup>6</sup> to justices who voluntarily resigned by December 31, 2005. Several did resign, while others publicly spoke out against the governmental pressure.<sup>7</sup> These “rebel judges,” as they were termed by the Georgian media, were disciplined for alleged misconduct and fired. The practice of disciplinary punishment, and the corresponding Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of the Common Courts, were criticised by local civil society and international institutions. The Council of Europe's Commission for Democracy through Law (Venice Commission) openly

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<sup>4</sup> Mosiashvili, Maia, CIRC. *Exams, higher standards challenge Georgia's judges*. Available at: <http://www.circ.ge/news.php?lan=en&newsid=EEuZukEVZkzEPvtYHz&pageid=newsletter>

<sup>5</sup> Salaries were first increased in December 2004, nearly three-fold. Since then raises have been almost annual, with the latest increase in June 2007.

<sup>6</sup> Currently 1 USD=1.68 GEL. Current Supreme Court judges receive salaries three times that amount.

<sup>7</sup> Tea Gularidze, Civil Georgia. *Judges Speak Out Against Pressure*, December 8, 2005. Available at: <http://www.civil.ge/eng/article.php?id=11305>



regretted that the provisions of the law “pose a real threat to the independence of the judiciary and ultimately to the rule of law.”<sup>8</sup>

Alongside the quasi-legal dismissals of judges, the atmosphere of distrust was further exacerbated by the courts’ handling of several high profile cases. These cases were covered extensively in the media and drew much interest from political parties, local and international NGOs, and the general public. Many dissented with the court rulings and believed that judges were pressured by the executive. The cases of Girgvliani, a young man murdered with the involvement of Interior Ministry officers; Robakidze, a teenager shot by patrol police officers; Batiashvili, an opposition politician accused of intellectually supporting an alleged revolt, and other cases continue to taint the judiciary’s public image.<sup>9</sup>

These incidents, and the rather poor attempts at communication regarding reforms in the judiciary and its daily workings, have effectively shaped public opinion. While the low esteem of the judiciary is blamed largely on the fact that opinions are formed on the basis of just a few publicised cases, neither the judicial authorities nor the government has done much to remedy the crisis of trust.

### **The way out - send forth the jury**

Recognising the need to revitalise the justice system, the government has begun from the courts, reducing their number while expanding their geographic areas of jurisdiction, introducing magistrate courts, building and improving court infrastructure, and increasing funds allocated for the judiciary. Judges are continuously trained and the practice of justice specialisation has been introduced. The most significant change has been the drive to reform Georgia’s criminal justice system. Presidential Order #549, signed July 9, 2005, approved the Strategy for Reforming Georgia’s Criminal Legislation. In June 2006 a Strategy Implementation Action Plan was adopted. The Action Plan provides a detailed guide for reforming the courts; the legislation on administrative offences; the police; legal aid; the penitentiary system; prosecution; the Code of Criminal Procedure; legal education; and the institution of the ombudsman. Among these, changes to the Code of Criminal Procedure—especially introduction of the jury system—are most likely to influence public perceptions of the judiciary.

Trial by jury has traditionally been regarded as the most democratic of all forms of justice. The defendant is tried by a jury of fellow citizens (as opposed to an individual judge), ordinary men and women without special training, to determine his guilt or innocence. This system is based on the belief that the public has a clear sense of justice and that it can, and should, protect a fellow citizen from unjust state domination. The jury does not sentence the guilty—that remains the prerogative of the judge. Still, the judge may not in any way contradict the jury’s verdict. In its most genuine form, the jury’s ruling may not be appealed. Cassation is permissible, however, under specific conditions only.

Despite the advantages of the jury system, several major criticisms have been voiced internationally. First, this system is more expensive than a bench trial system. A jury panel typically consists of 12

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<sup>8</sup> Venice Commission Opinion No.408/2006 Strasbourg, March 19, 2007. Available at: [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)009-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)009-e.asp)

<sup>9</sup> One cabinet minister, Goga Khaindrava, was dismissed, then joined the opposition following his open criticism of the handling of the Girgvliani case.



jurors whose impartiality is determined through a long procedure.<sup>10</sup> Potential jurors are usually drawn from the voter lists of the region under the court's jurisdiction. The use of voter lists as a primary source ensures that potential jurors are adults who take their civic responsibilities more or less seriously. The randomly drawn list is screened for possible biases. Jurors must be neutral, without predispositions regarding the case they will hear. Ideally, they should be ignorant of the crime and any media/public speculation regarding its circumstances. Further, their life experience should not create an obstacle to their fair judgment. For this reason lawyers and religious leaders are exempt from jury duty. Not only can they themselves be predisposed, they can unduly—deliberately or not—influence others' opinions. After the lengthy and costly selection process, the state must remunerate jurors (usually a minimal amount) for their service<sup>11</sup> and provide them with shelter and food in isolation from the rest of the society in the case of a protracted trial. These costs usually exceed those associated with bench trials.

The second critique of trial by jury pertains to competence. It has been argued that some cases are too complex for ordinary citizens to judge. Such claims have been especially vocally upheld in cases of money laundering or other finance-related offences, as well as in criminal cases involving highly scientific and complex evidence. Critics point to the need for special training and experience that can only be expected of highly specialised judges. But the competing evidence suggests that complicated cases of this sort are extremely rare and that the incompetence argument does not hold up in most cases. Further, there is the option of inviting expert specialists of the issue to testify before the jury and clarify whatever might be unclear.

Trial by jury is centuries old, though it has developed in the Anglo-American world primarily. It is traditionally alien to the continental system of law, Georgia included. Despite the claims of the Liberty Institute, an influential NGO in favour of the initiative, that early forms of jury trial have existed in Georgia throughout history, this issue has not been studied thoroughly. The institution was enshrined in the Constitution of the (first) Republic of Georgia (1918-1921). Because the Constitution was adopted on February 21, 1921—just three days prior to the Soviet occupation, the document was never put into practice. However, as Levan Ramishvili of Liberty Institute notes, the institution was functional based on the law of 1919 and is documented in memoirs and archives of the exiled government and affiliates. Currently though, knowledge of the formal existence of a jury trial system is confined primarily to professional circles of historians and lawyers. The public is largely unfamiliar with the practice, especially its workings in Georgia. The opinions that it still may have frequently reflect images from Hollywood films.

Jury courts were formalised in Article 82, paragraph 5 of the Constitution in February 2004. Since then, work on legislative revisions to facilitate the article's execution has been ongoing. The Criminal Legislation Reform Strategy Implementation Action Plan indicates that all necessary preparatory steps should have been taken before April 2007, and that by this time the system should have been functional. However, these deadlines were postponed according to the Anti-Corruption Action Plan (ACAP). The most current version of the ACAP, which is subject to annual revision, sets the year 2007 as a deadline for determining the jurisdiction of jury trials and 2007-2008—for having the system operational.

The draft Criminal Procedure Code containing a chapter on jury trials has been relatively finalised since summer 2006 (when the Action Plan itself was adopted). A subsequent, more consolidated

<sup>10</sup> However, the selection procedures vary from country to country and correspondingly vary the length and complication of the procedure.

<sup>11</sup> In several USA states however many employers do pay their employees for the time they perform their jury duty. In such cases the state do not remunerate the jurors.



version has already passed a first hearing in Parliament and is currently awaiting a second hearing, when it will be discussed article by article. The Action Plan assigns responsibility for reform management and legislative drafting to the High Council of Justice (HCJ)<sup>12</sup> and the Supreme Court. Parliament's role is highlighted as well, insofar as it will decide the final shape of the legislation and adopt it. But in reality, the body most involved in the process seems to have been the Office of the Prosecutor General, an arm of the executive. Even a glance through the web pages of the agencies involved – the Supreme Court, the HCJ, the Prosecutor General's Office, the Ministry of Justice<sup>13</sup> – supports this conclusion. Both the Supreme Court and the HCJ have nothing more than a narrative section describing the planned judicial reforms. Neither strategy documents nor draft legislation are posted. The Ministry of Justice has posted the Strategy for Criminal Justice Reform and its Implementation Action Plan in addition to the narrative. The Prosecutor General's web page, however, is the most informative. In addition to the above-mentioned documents it includes the draft code itself (as of June 2006) along with an explanatory note. In its news section on Parliament's web page, the Legal Affairs Committee refers to discussions of the basic principles of the draft code in November 2006 and to more detailed discussion of the first chapter of the draft in May 2007.

## The jurors

The current draft, which still may undergo substantial change during the parliamentary hearings, provides for a 12-member jury. However, depending on the severity of the crime, the jury may be made up of eight, ten, or 12 persons. Two reserve jurors, who must be present during the entire hearing but may not participate in the jury workings unless they are called to replace the main jurors, are also selected. In complex cases with a high probability of juror replacement the judge may place more jurors on the reserve list.

Only a registered voter living within the jurisdiction of the court hearing the case who is able to comprehend the language of the criminal procedure may serve as a juror. Persons with mental or physical disabilities that could impair their performance as jurors are disqualified. Other exemptions include: state political officials; employees of the Prosecutor's Office, the Ministry of Justice, and the Ministry of Internal Affairs (Police); service men and women; clerics; those party to the given case; those charged with or tried for grave or especially grave crimes and not rehabilitated; those tried as a defendant; persons whose jury service would be clearly unfair due to the person's expressed viewpoints or experiences; psychologists; psychiatrists; and lawyers. A potential juror may also ask to be excused if: s/he has already served as a juror within one year; his/her absence from work could have real detrimental consequences; s/he is in poor health; s/he is outside of Georgia or is to leave the country for a long period; or s/he is over 70 years old.

Jurors are to be randomly drawn from voter lists provided by the election administration by March 1 of each year. One hundred jury candidates are called for *voire dire*, during which the presiding judge

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<sup>12</sup> According to the Law of Georgia on Common Courts (Chapter 9, Article 60), the High Council of Justice is the self-governing body of the justice system and is the highest disciplinary authority for judges. The Council has 15 members: the President of the Supreme Court and the Chair of the Parliamentary Legal Affairs Committee are *ex officio* members. Two members are appointed by the President, three MPs are elected by Parliament itself, and eight members representing the judicial corps are elected by the general conference of judges upon nomination of the President of the Supreme Court. The President of the Supreme Court chairs the HCJ. Council members must be at least 25 years of age and have a higher legal education (law degree).

<sup>13</sup> The web pages are as follows: Supreme Court – [www.supremecourt.ge](http://www.supremecourt.ge), HCJ - <http://coj.convert.ge>, Ministry of Justice – [www.justice.gov.ge](http://www.justice.gov.ge), Office of the Prosecutor General – [www.pog.gov.ge](http://www.pog.gov.ge), Parliament of Georgia – [www.parliament.ge](http://www.parliament.ge). The documents are available in Georgian on the Georgian-language version of the web pages as of 25 May 2007.



briefs them on the case and the applicable laws. Parties to the case may also address the candidates briefly. The candidate jurors are provided with definitions of terms. They are interviewed by the judge and may also be questioned by the prosecution and defence attorneys. In the latter case, the judge may require that a list of questions be submitted to him in advance. With due reason, the sides may demand that any number of jurors be excused. Peremptory challenges may be used by both sides as well. In cases where an allegation may entail a life sentence, the sides are entitled to 12 peremptory challenges each. In other cases, the number stands at six. In cases with several defendants, each is entitled to three additional challenges. The quota is transferable – if one of the defendants does not exhaust the limit, another defendant can use this to supplement his/her quota. In all cases the prosecution has the same number of challenges as all the defendants together. Potential jurors may not be disqualified on the basis of race, ethnicity, gender, faith, etc. If, following the procedures, the number of candidates remaining is less than fourteen, the judge is to postpone the hearing and summon 50 additional candidates. A juror may be excused/disqualified during the court proceedings as well if s/he fails to exercise his/her responsibilities, violates the law, or reveals a bias. In such cases the disqualified juror is replaced by a reserve juror. If the entire reserve of jurors is exhausted and the number of jurors is less than the number prescribed by law, the judge must begin the selection process and the hearing anew.

Once selected, the jurors elect a chief juror from among their ranks. This individual will preside over the jury deliberations, address the judge with written questions on behalf of the jurors, count the votes and maintain all documentation, and sign and read the jury verdict at the hearing. Upon taking the oath, a juror must be present at all court proceedings. Until the verdict is read, jurors may not disclose information on the case or their personal opinions about it. They are to guard the confidentiality of the jury deliberations and may not engage with anyone other than the president of the court (judge). Nor may they seek information on the case outside of the court hearing. In the case of a violation, the offending juror is removed and substituted with a reserve juror. Jurors may inquire in writing regarding the applicable laws, circumstances, evidence, etc. Jurors may also request a copy of the court hearing protocol, save for the part on evidence deemed inadmissible. The judge alone determines the admissibility of a piece of evidence, without the jury. Jurors are to be notified about a plea bargain if the issue is substantially related to the case being heard. Jurors are not informed about the defendant's criminal history unless it pertains directly to the charges pressed. Nor are jurors provided with any other evidence unrelated to the determination of guilt, i.e. that which may be used only for setting the severity of the sentence.

The judge informs jurors about the charge and its legal basis and on evaluating the evidence. Jurors are reminded about the presumption of innocence, and that all doubt must benefit the defendant. Jurors may take notes during the hearing and use them during the deliberations. They must issue a verdict based solely on evidence presented during the hearing. The verdict may not be based on assumptions, evidence deemed inadmissible, or outside evidence.

The jurors must strive to be unanimous in their verdict on every count charged. If they fail to reach a unanimous verdict on all counts after six hours of deliberations, they may cast a majority vote (terms for the majority vote are not yet specified in the draft, since it allows for two different models). The jurors are to first vote on acquittal on all charges and, if a verdict is not reached to vote separately on guilt on all charges, then in order of increasing severity of the charge. For each charge the jurors must sign one of two verdicts only—guilty or not guilty.

After the judicial instructions are given, the jurors proceed to the jury room for deliberation. No one but the jury and reserve jurors may be present in the jury room or in any way influence the jury verdict. The jurors may end deliberations with the consent of the judge only. The jurors cast votes



according to their position on the juror list. No juror may abstain from the vote. The chief juror casts the last vote and summarises the results.

If one-third of the jurors agree on the need for additional direction regarding the law, judicial instructions, or the evidence presented, or to solicit new evidence (including examination of the crime scene) during the hearing or the deliberation, the chief juror must present the judge with a formal request and list of appropriate questions. The judge may call an additional session for all parties to further examine the specific evidence requested by the jurors. Upon examination of the evidence, the parties hold a brief debate and make their final statements. Thereafter jury deliberation continues as normal. Jurors may also hold preliminary deliberations during the hearings (upon the judge's decision, the request of the parties, or the request of one-third of the jurors), but are advised not to make a decision before hearing the case in full.

The jury judges and decides on facts only, not the law. The latter is the prerogative of the judge. In the case of guilt the jurors may refine their statement on the degree of guilt. Upon reaching a verdict, the jurors return to the courtroom and present it to the judge. The judge examines all the verdict forms to determine the consistency of the decisions on the various charges. If the judge finds inconsistencies among the verdict forms, the jurors are sent back to the jury room to correct the mistake. A jury verdict acquitting the defendant is final and may not be appealed. Cassation is applicable to a guilty verdict only. The acquitted is released immediately and within three days the judge must issue an acquittal ruling. If the jury finds the defendant guilty, the judge must set the date for a hearing to determine the sentence immediately. This hearing is to be held within one week. The judge may not cast doubt on the jury verdict or recommendation to lighten the sentence. If the jury recommends a lighter sentence, the judge may not sentence the defendant to more than two-thirds of the maximum sentence prescribed by law. If the jury requests an exacerbated sentence, the judge may not issue a sentence less than two-thirds the maximum prescribed by law. Unless both sides object, the jurors are present at the hearing during which the sentence is determined. The judge may not substantiate the verdict while issuing the sentence. The ruling may be substantiated as it pertains to the sentence only.

If the jurors are unable to reach a verdict even after returning to the jury room for the third time, the judge dismisses the jury and appoints a date for the selection of new jurors. If the situation repeats with a second jury panel, the judge dismisses the jurors and acquits the defendant.

The grounds for cassation are strictly defined in the draft. Cassation may be applicable if the judge has: issued an illegal ruling on the admissibility of evidence; violated the principle of contestation; failed to base (in part or full) his/her decision on the jury's verdict; or based his/her decision on a verdict reached in breach of the law. Cassation is also possible if the evidence suggests that the verdict was issued in breach of the impartiality of the jurors – through bribery, intimidation, or harassment of any other form. If cassation is granted, the case is heard at a new trial by a new jury.

## Implications and controversies

Attitudes towards the introduction of trial by jury differ within the legal profession in Georgia. However, all agree that it may be an attempt to revitalise the image of the Georgian judiciary. The idea is that distrust is rooted in ignorance - in this case, ignorance of the judiciary's workings – and hence the participation and inclusion of the broader public will breed understanding and greater ownership of the institution. Once ordinary citizens become part of the court system and experience it first-hand as decision-makers, they will gain useful, practical knowledge of the legal system and will be better equipped to objectively judge its strengths and weaknesses. Further, serving on a jury



allows citizens to execute laws. Still, not all are convinced that this can prove to be a solution to the problem of distrust.

One of the major concerns cited by skeptics is that the public is not yet ready. Skeptics argue that Georgian society has neither the memory nor the tradition of a civic responsibility of this sort and lacks a clear understanding of the institution itself. Former Supreme Court Justice Nino Gvenetadze argues that consciousness of justice (სამართლებრივი მართლშეგნება) and law, and awareness of civic responsibility, are quite low in Georgia. She believes these are among the principle preconditions for the effectiveness of a jury system. But this point of view has been strongly disputed. Giorgi Meladze of the Liberty Institute maintains that Gvenetadze's argument calls into question not only the general legal awareness, but the capacity for reasonable judgment and intellectual maturity of the common citizen.

Regarding the desirability of a jury system at this stage, the experience of Russia is cited in support of jury system adoption. It is argued that Russian society was no more equipped than Georgian society today when trial by jury was introduced there in 1993.<sup>14</sup> Mathew Reger of the American Bar Association's Georgia office notes that its success will largely depend on how the institution is put into practice. It can either hurt or help court credibility: If the rules are enforced and the procedures implemented justly and fairly, then the jury system will have a better chance of success. While jury trials are not part of Georgian culture the way they are in America, for example, they may still work well in Georgia. Even though establishing a jury trial system in Georgia will likely require time to take root, postponing its introduction is not the solution. The introduction of a jury system will continue to feel premature until it is first attempted, and will always require improvement regardless of the conditions in which it is begun.

One problem that might arise with the new system is how the potential jurors are selected in practice. While *voire dire* could be used for manipulation through brainwashing the candidates and predisposing them, Levan Ramishvili of the Liberty Institute notes that it is a matter of consciousness and good faith. But he believes that jurors will inevitably be better than judges in at least one respect: jurors will be immune from bias associated with unacceptable evidence. In bench and jury trials alike judges are the determinants of what evidence is acceptable and applicable and what not. However, in bench trials when they are the sole determinants of the case, they can consciously or not be influenced by the inadmissible evidence. Jurors are immune from such bias, since they are only presented acceptable evidence that the judge has approved without their presence and involvement. This will undoubtedly reinforce the impartiality and vigour of Georgian justice.

Regardless of whether or not they are prepared for the new system, all agree that if jury trials are to be effective the public needs to be educated about them. Because the new code changes the entire *modus operandi* of the courts and professions involved, there is also a need for urgent retraining of staff. Currently the office of the Prosecutor General reports having already trained up to 600 prosecutors and an additional 30 prosecutors as trainers. But other key bodies have been slow to react to the legislative amendments. Judges and attorneys in particular will need to be retrained and university law department curricula revised to correspond to the new initiative. Despite the obvious need, however, thus far neither the High Council of Justice nor the Supreme Court has made concrete plans to train key players in the new system.

Both the HCJ and the Supreme Court have denied our requests to hear their positions. At first TI Georgia was asked to submit a list of interview questions, then was subsequently notified that both

<sup>14</sup> Russia did have a system of jury trials during Imperial times, from 1864 till the revolution in 1917. The system was reintroduced after the fall of USSR in 1993 and the references made here are to the new system.



the HCJ and the Supreme Court deem it unnecessary to comment on the draft code in general, or on the subject of jury trials in particular. Their position is especially surprising given that these are the very institutions responsible for elaborating and developing the draft code (formally, at least, according to both the Criminal Legislation Reform Action Plan and the Anti-Corruption Strategy Implementation Action Plan). These institutions' reluctance to cooperate with civil society organisations can cast credible doubt on their ability to carry out an effective public information and education campaign for the very same purposes.

The need for re-education and training of lawyers and judges is underscored by all parties. Most base this opinion on the grounds that the new system outlined in the draft code is founded on the principle of contestation, which until now was alien to the Georgian legal system. Further, unlike in the current inquisitional system, in a jury system attorneys will be called upon to be not only professionals of law, but effective speakers and skillful debaters. This challenge can only be met with training and practice.

Giorgi Meladze also cites existing problems within the legal profession. He claims that the levels of legal education and expertise, especially in criminal law, are alarmingly low and that the need for large-scale change is obvious. Perhaps here again the Russian experience is instructive: many argue that, despite its deficiencies, the Russian jury has in practice resulted in more rigorous and fair trials. Experts note that both prosecutors and defence attorneys are held to higher professional standards by jurors than they were in the past by judges.<sup>15</sup> Also, statistics show that juries tend to be more lenient than judges.<sup>16</sup> This, many believe, can be a step to remedy Georgian courts' alarmingly low acquittal rate.

Not all agree that there is a higher risk of error in jury trials than in ordinary courts. The main objection to this argument is that the jury's role is to examine facts and determine guilt, not to sentence. In principle, the jury's responsibility requires common sense and good faith only, not special legal training. Even those who for various reasons do not entirely support the jury system in Georgia believe that jurors can and will be more fair and trustworthy than judges. Several arguments are given in explanation.

First, jurors are not state employees. Unlike judges, they do not depend on the goodwill of the state. Therefore it is believed that they will be more difficult to influence. Judges are correspondingly deemed more susceptible to pressure and interference, particularly if they have at least once bent the law in the past. That is, a judge who has himself manipulated the law is himself more easily manipulated. Judges, as described above, have proven easy to replace or discipline when their views conflict with those of the government, especially the executive. Jurors, in contrast, have less to lose by resisting unlawful influence. Further, the state is no longer Georgia's largest employer, so the chances that a juror will be employed by the state have decreased. While no specific data is available from the Department of Statistics, keeping in mind the countless staff downsizings in government institutions and agency liquidations and mergers, the argument is fairly grounded.

Nevertheless, Ramishvili believes that judges are better held accountable in a way than ordinary citizens serving as jury. He argues, that while jurors disband upon resolution of the case and are not likely to be called for another jury service for several years to come, judges are in an entirely different situation. Judges are appointed for long terms and will easily be available in case questions arise

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<sup>15</sup> O'Malley Kristi. "Not Guilty Until the Supreme Court Finds You Guilty: A Reflection on Jury Trials in Russia." *Democratizatsia*, Vol 14, Issue 1, pg. 42-58, 2006.

<sup>16</sup> Russian jury is by various accounts somewhere from 10 to 20 times more lenient than judges. While Russian courts acquit less than 1 percent of defendants, juries acquit 15 to 20 percent. *Ibid* p. 44



regarding his/her decisions, etc. Also, membership in a small select group of judges can be used as a disciplining tool, subjecting its members to high standards and morale.

Another argument is that of sheer numbers. A jury is made up of 12 individuals, while a judge is the only individual deciding the fate of the defendant. If unlawful influence is attempted, it is easier accomplished with one person than with twelve. Even if one of the jurors is corrupted, s/he can hardly alter the opinion of the entire body; on the contrary, s/he can be relatively easily counterbalanced by others of higher moral standard. Moreover, as Ramishvili noted, heterogeneous groups tend to be more objective in their judgements: 12 individuals with various backgrounds and life experiences will have a more multi-faceted view than a single judge with specific educational or social constraints.

Still, Gvenetadze believes that, at least in the initial years of jury institutionalisation, demand for trial by jury will be minimal. She believes that, despite the judiciary's poor image, most defendants will opt to be tried by a professional judge than by common people with questionable qualifications. The validity of her speculation cannot yet be verified in Georgia, but again, Russian experience can be a good reference. The Russian Supreme Court estimates that an average of 20% of all eligible defendants request to be tried by jury annually and asserts that this number is constantly rising. In fact, this figure is reported to reach over 60% in some regions, with defendants waiting months for a jury trial due to an overburdened system.<sup>17</sup>

Several reservations on the introduction of the system in Georgia have been voiced based on the country's specific conditions. First, skeptics point to the size of the country, arguing that the small population and strong tradition of personal loyalties (importance of extended networks of friends, relatives, etc.) will make finding impartial jurors virtually impossible. The territorial jurisdiction of the jury trials will make the situation even more complicated. Scotland is cited as an example to prove the opposite. There, in a country of similar size and strong traditional loyalty to clans and community, the jury trial system functions effectively.

Another criticism pertains to the absence of effective data protection systems in the country, including witness protection programmes. The argument is that jurors may become targets for revenge if an unpopular or undesirable verdict is passed. Proponents of the jury trial dismiss these reservation, countering that given the territorial jurisdiction principle, the problem of impartiality may arise anywhere, since close-knit communities are not unique to Georgia. In the U.S., for example, small communities have not proven to be a hindrance to effective use of the jury system. In addition, judges in Georgia do not have specific protections either. If a threat is made against a judge, juror, or any other person, the police must take the same measures. Another option too is provided by the current draft - if the dangers are acknowledged from the start, the case may be heard at a bench trial, not by jury, provided that both parties consent. Therefore, jury advocates argue, there are no inherent or insurmountable obstacles to trial by jury in Georgia.

### Considerations for the future

Despite the existence of a complete draft in Parliament, several issues remain unaddressed in the present document. The scope of jury trials has not yet been determined. It is expected that, in its pilot stage, juries will try cases of torture and corruption. Alternate sources predict first testing the new system on first-degree murder cases. A final decision, however, will be reached during the parliamentary hearings.

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<sup>17</sup> Ibid. p. 44



Another undecided issue is the territorial reach of the jury courts. Initially it was proposed to introduce jury trials in Tbilisi first and then in a few select cities or regions, but this proposal may still be challenged at the Constitutional Court. Limiting access to trial by jury on the basis of geographic location would obstruct equal access to the law and the right to a fair trial guaranteed in the Constitution. This has already been the case in Russia, where juries were initially introduced in nine (of eighty-nine) regions only and later extended to the entire country after appeals were made. One possibility for avoiding a similar situation in Georgia is to create two regional jury courts, for eastern and western Georgia, as a starting point, and later extending them to the city or municipality level.

Despite the controversies and lack of consensus regarding the need for and usefulness of a jury system in Georgia, there is general agreement on a number of positive aspects of the initiative. The draft presented to Parliament is truly based on best practices and takes note of the deficiencies evident in other systems, the Russian system in particular. Perhaps most importantly, unlike in Russia, jury acquittals in Georgia will under no circumstances be subject to appeal or cassation. The extent to which this seemingly basic principle is upheld will test the true commitment of the Georgian government to genuinely reforming the justice system. Still, there remains much to be done to ensure the smooth introduction of the new system and its effective functioning, including a well-designed public relations/education campaign. Familiarising potential jurors with their future responsibilities and retraining both judges and attorneys in accordance with the demands of the new system are essential. Above all, the procedures and rules prescribed in the new law must be upheld to their finest detail if the new jury system is to rebuild public trust in the judiciary and in the fairness of the state.

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