

Jury Trial Institute in Georgia

Introduction

Since the early 1990 s Georgia's judicial system has become one of the most corrupt institutions, distrust of which has become a tradition in society. Unfortunately, even in the 21st century the judicial system cannot manage to restore the prestige in society.

Judicial reforms began in Georgia since the 1990s, in particular, by the President's leadership was established the high Council of Justice, the process of appointing judges became stricter, changes were made in the legislative database [3, 1], but in light of these reforms there have not been done any effective measures to modernize the judicial system so far. The main changes in terms of reform began in 2003 – since the Rose Revolution. That was expressed in the dismissal of several judges from the position, the pay rise and lowering the working age for judges. Though, the judicial rating has not increased in society. That is why this problem has become the major preoccupation of the government. The way-out from this difficult situation was found in the transmission of innovations from the domestic legislation of western democratic countries in Georgia. That is the way how the jury appeared in the Georgian justice system. The indicated institute is considered as the highest expression of democracy in a number of Western countries.

Body

In this review I will try to discuss in detail the advantages and disadvantages, as well as the obstacles that these innovation lead and what may come in the form of problem in Georgian reality.

Before the introducing this novelty in Georgia, a very interesting research was conducted in the local population. First of all researches aimed at determining the readiness of Georgia society towards the incorporation of the new Institute of Justice. Studies have shown very interesting results in the form of statistics, outlining the main trends in the society. It should be noted that according to the research, in general, community is more or less informed about the institute, but the public is less informed about the introduction of this institute in Georgia. In general, taking into consideration the fact that there is not any kind of confidence towards the judiciary, public is looking at this institute with a hope - as a solution to the problem.

It is an interesting fact that the public opinion was divided into several parts, those who are below the poverty line for them it is all the same, because they look at all news with a hope; and for them who

are strong economically, all novelties are potentially dangerous. As we see, the approach of public to this novelty is different. The fact is, society looks at this institute with a hope; moreover, some of them regard it as a means of reducing the level of democracy. However, considering the risk and disadvantages, the part of the community has a negative attitude towards this novelty. According to the general trends, the society's attitude towards the jury is more positive than the expectation that this institute will work in Georgian Reality.

According to the researches, there was highlighted the skeptical attitude towards the society's readiness for the reform and the hypothesis was revealed that the illegal public mentality will impede the normal functioning of a jury trial. We can clearly conclude that it is necessary to prepare the society before introducing the novelty. It is necessary to increase legal education in society; otherwise, in Georgian reality this institute will work like "mobile phone in the Stone Age." We can say that the introduction of jury trial appears as a social order. However, this requirement is not for the fact that this institute will be the highest standard of formal democracy in Georgian legislation, but for the certain court decision made by jurors – they must be fair and impartial [6, 28].

The changes for introducing jury trial began in February of 2004. Particularly, the changes were made in the Article 82 of the Constitution but it was impossible to take any affective measures to activate the institute until 2008.

In 2009, as a result of intensive work of legislative body, the above mentioned institute came into force in stages. In fact, the jury trial came into force in Georgia in 2010. Perhaps it was limited to the specific types of crimes committed in the specific territorial unit.

The question arises – did the government introduce the jury trial in order to raise the level of democracy or to increase public trust in a court? There are no answers to these questions due to the fact that this institute has not yet been fully adapted to the Georgian legislation. The estimation of this institute will be possible only from 2013 when it entirely comes into force. The estimation of the results will take approximately 10 years at least. It certainly is quite a long time. Accordingly, it is connected with big risks because if this institute does not work in Georgian reality, the image of Georgian Court will come into discredit.

Here is my answer to the above mentioned questions: is jury trial more democracy or improvement of the Court image? I think the government adopted this institution in the domestic legislation in order to show everyone the high level of democracy in Georgia. In my opinion, it was not necessary to introduce such an expensive institute in a country with such a small budget like Georgia. Public confidence to the court will be restored only in the case of free and independent judiciary. The government could create an independent democratic judiciary instead of corrupt judge system. In this way it would be easier to regain public trust in court than to expend colossal amounts of money for introducing such an institution that will work or not in Georgian reality.

Let us consider briefly one by one the main advantages and disadvantages of jury trial in Georgian reality and make conclusions based on the information.

Advantages of jury trial:

- ✓ More democracy – the fact of introduction of this institute significantly raised the level of democracy in Georgia from the perspective of other countries.
- ✓ Jury trial institute was considered to the beacon of democracy in a number of western countries. This institution has succeeded in a country like United States; it is most likely to work in Georgia as well.
- ✓ In terms of this honor, it is certain that from the defendant's point of view it will be more objective if they will be judged by people like themselves rather than judges acting like "justice robots." It is more difficult make influence on them than on ordinary men.
- ✓ It is also a positive fact that the number of jurors is 12. Obviously, it is more difficult to manipulate and bribe 12 people than one judge whose salary is financed by the state budget.
- ✓ Judges receive salary from the state while jurors perform their duties honestly. This fact raises public trust to them.
- ✓ From the defendant's point of view, it is easy to reach a justification verdict from jurors by the manipulation of human feelings than in the case of an experienced judge.
- ✓ On a jury trial people are involved in justice which increases their confidence. Besides, if desired results are not achieved concerning justice rating, the society can no longer claim the government because they were involved in justice as ordinary citizens.
- ✓ When a person commits a crime, it affects not only the state but also the society. Due to this novelty, criminals are judged by public for the action that hurts the whole society.
- ✓ The greatest honor of the mentioned institute is that it increases competition on the trial as each side has equal power to prove his truth to jurors.

Disadvantages of jury trial:

After we have discussed the advantages of jury trial now let us move on the consideration of disadvantages that accompany the denoted institute.

- ✓ Jury trial is particularly expensive. For example in America each process is associated with huge amounts of money. Accordingly, it is doubtful to transmit such a luxury institute in the country with small budget like Georgia.

- ✓ The high risk of non objectivity. Some defendants prefer to be judged by well experienced judge rather than 12 citizens with no legal education.
- ✓ On the jury trial it is possible to release a murderer by the manipulation of human values. There is high probability of such kind of action particularly in Georgia considering Georgian mentality. (E.g. **The trial of O.J SIMPSON in 1995 in the USA.**)
- ✓ On the jury trial the principle of competition is protected that arises another problem – the winner of the trial becomes that who has a good lawyer. A good lawyer requires a great expenditure of money. Correspondingly, those who do not have money to take a good lawyer could not win the trial. That is injustice.
- ✓ There is most likely a danger in Georgia that judges can be bribed. Georgia is a small country where everyone knows each other. Georgian character must also be taken into consideration – everyone wants to know the fate of the accused.
- ✓ We must also consider the fact that just 10 years ago in Georgia there was a group of people with a criminal mentality whose roots remain even nowadays. Therefore, it is doubtful how this type of society will accept such an institute like jury trial.
- ✓ A good example will be the terrible fact that took place in Georgia (Gldani) when the husband cut a head from his wife's lover. If we image virtually the jury trial in this case I can say with certainty that each of Georgian jurors will find a defendant not guilty.
- ✓ The process of giving a verdict is very risky because 4 jurors' agreement from 12 is enough for finding a defendant not guilty.
- ✓ It is also a very problematic issue that jury's decision is final. If jurors find a murderer not guilty a judge is obliged to release a defendant.
- ✓ Institute of unjustified challenge on jury trial is a direct expression of non objectiveness. Having everything this in mind we can conclude that the jury composition is artificially formed by the parties; the party that makes better calculation will be the winner. Thus, jury trial resembles a game. In my opinion, it is illegal one's fate to depend on the game when we speak about 25 years imprisonment or life sentence.
- ✓ Jury trial is more expansive than a usual trial. Those who do not have costs for compensation will be judged by judges with the exclusion of any jury trial. That ignores the principle of equal access to the justice system for each person and leads to bias.
- ✓ Considering the objective reality of Georgia, it is doubtful how it will be possible to protect the privacy of jurors.
- ✓ There is a danger that by introducing this institution the government is trying to avoid public protest to the government engaging people in the process of judiciary. If there is not restored the court rates in the community.
- ✓ If this institution does not work, it will cause violation of thousands of defendants' rights.
- ✓ In the case of unlawful conviction, the state can refuse to pay the compensation for rehabilitation indicating that it was the society not the state who judged a defendant. In this situation the community cannot distribute any compensation.

- ✓ There is a high probability of media impact on jury regarding well known cases. This raises the level of bias.
- ✓ If we take into consideration the fact that the society does not believe in impartiality and rightness of the decision made by a judge with 25 years of experience, it is doubtful that the same community will believe in the verdict adopted by ordinary legally uneducated citizens.
- ✓ The probability of manipulation of jurors is much higher than that of judges.
- ✓ Gradual introduction of this institute in Georgia is also an extremely problematic and important issue. Let us imagine two murder cases in Tbilisi and Mtskheta (the distance between these two towns is only a few kilometers). In Tbilisi this kind of crime is judged by jurors whereas in Mtskheta it is judged by the regional court. In the case of jurors the probability of verdict of not guilty is much higher. That means if the resident of Mtskheta decides to kill someone, he prefers to fulfill his decision in Tbilisi where he is more likely to be justified. This certainly is absurdity and embodiment of human discrimination.
- ✓ Through this institute it is freely available to release a murderer, which I assure you, does not contribute to the increase in court rating.
- ✓ It is also worth mentioning the fact that a modified version of modern jury trial existed in Georgian reality during the Soviet Union. Then they were called “Public Jurors”. We must consider the fact that the institute did not work in Georgia and was cancelled. This is the most likely reason for us to believe that this institute cannot be settled firmly in the roots of today’s reality.

Conclusion

After we have reviewed the advantages and disadvantages of the above mentioned novelty, it can be concluded that the introduction of jury trial in the Legislation of Georgian is a natural extension of the process which began in 2003 after the Rose Revolution in Georgia.

In my opinion, it would be better to save money instead of introducing such an expansive institute and create independent judiciary and not to intervene in the prerogatives of a judge. If the government does not stop the interference in the activities of the Court – with or without a jury, the court cannot restore the confidence of society.

References

1. The Parliament of Georgia. 2011. *Criminal Code of Georgia*. Tbilisi: RISE.

2. The Parliament of Georgia. 2011. *Criminal Procedural Code of Georgia*. Tbilisi: Law Firm “Bona Causa”.
3. Council of Justice of Law. <http://hcoj.gov.ge/?i=2448&l=2>
4. Adler F., Mueller G. O., Laufer W. (Editor-in-chief Dr. Glonti G). 2004. *Comparative Criminology and Criminal Justice System in the United States of America*. Tbilisi.
5. Team of authors. (Editor-in-chief Dr. Glonti G). 2004. *Criminology and Criminal Justice System in Georgia*. Tbilisi.
6. The research was implemented by the Company “Nikolo M”. 2007. Tbilisi. <http://www.supremecourt.ge/files/upload-file/pdf/researchjurytrial.pdf>
7. HEINRICH BOLL STISTUNG (South Caucasus). <http://georgien.boell-net.de>, <http://georgien.boell-net.de/web/101-882.html>
8. Radio Freedom. <http://www.radiotavisupleba.ge/>,
9. <http://www.radiotavisupleba.ge/content/article/2160774.html>
10. WebPortal on Huma Rights in Georgia. <http://www.humanrights.ge/>,
11. <http://www.humanrights.ge/index.php?a=text&pid=12885&lang=geo>
12. TRU TV(NOT REALITY, ACTUALITY). <http://www.trutv.com/index.html>,
http://www.trutv.com/library/crime/notorious_murders/famous/simpson/index_1.html