

THE JURY TRIAL: MORE DEMOCRACY OR THE IDEAL OF DEMOCRACY? GEORGIA - SOME FACTS AND FIGURES

JÜRİ YARGILAMASI: DAHA FAZLA DEMOKRASİ Mİ YOKSA DEMOKRASİNİN İDEALİ Mİ? GÜRCİSTAN - BAZI GERÇEKLER VE RAKAMLAR

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ÖZ

6 Şubat 2004'te Gürcistan Anayasası'nda bazı değişiklik yapıldı. Anayasa değişiklikleri arasında öne çıkan yeniliklerden biri Gürcistan Anayasası'nın 82. maddesinin 5. bölümünde yapılan yasal ön koşuldu. Bu değişikliğe göre mahkemelerdeki davalar, Gürcistan kanunları ve yasalarında belirttiği şekilde jüriler tarafından dinlenebilmektedir. Bu anayasa değişikliği bağlamında Gürcistan hükümeti ve sivil toplum kuruluşlarının da çabalarıyla, Gürcistan Parlamentosu tarafından Ekim 2009'da yeni bir Gürcistan Ceza Muhakemesi Kanunu taslağı hazırlanmış ve 1 Ekim 2010'da Kanun yürürlüğe girmiştir. Yeni Gürcistan Ceza Muhakemesi Kanununa göre, Gürcistandaki bazı ceza davalarında bir jüri enstitüsü kurulmuştur. Son zamanlarda, pratikte de, Gürcistan'da jüri üyeleri tarafından dinlenmiş bir dizi ceza davası vardır. Öte yandan - Gürcistan'ın yeni Ceza Muhakemesi Kanununun 226. maddesi uyarınca, suçlamalar belli şartlar altında ileri sürülürse (örneğin kasıtlı insan öldürme gibi), dava jüri tarafından dinlenilmektedir. Mevcut araştırma çalışmasının amacı, Jüri Yargılamasının demokratik değerler bağlamında tartışmak ve jürinin demokratik adaleti tesis etme fırsatının ne ölçüde olduğunu incelemektir. Araştırma çalışmasında şu soruları cevaplamaya çalışılmaktadır: Jüriyi Gürcistan'da tanıtmak haklı mı? Bir jüri yargılaması, daha çok demokrasi midir yoksa demokrasinin ideali midir? "İdeal" bir şeyin mükemmelliğini ifade etse de "ideal" doğada mevcut değildir. Ancak modern demokratik kurumların birincil işlevi, ideal ile gerçeklik arasındaki boşluğu doldurmaktır.

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ABSTRACT

On February 6, 2004, several amendments were implemented to the Constitution of Georgia. Among the constitutional amendments, one of the notable novelties was the legal reservation made in paragraph 5 of article 82 of the Constitution of Georgia, according to the above mentioned constitutional amendment – ‘the cases in the courts are heard by juries as it is prescribed by the rules of Georgia’. At the same time, by the efforts of the Georgian governmental and non-governmental sectors, a new Criminal Procedure Code of Georgia was finally drafted by the legislative power (Parliament of Georgia) in October 2009 and entered into force on October 1, 2010. The new Criminal Procedure Code of Georgia introduced a jury institute in certain criminal cases in Georgia. Recently, in practice, there are already several criminal cases heard by jurors in Georgia. On the other hand - according to article 226 of the new criminal procedure code of Georgia: 'The case shall be heard by a jury if the charges are brought under articles 108 Intentional killing (completed), etc. The present research works goal is to discuss the Trial by Jury in the context of democratic values and to analyze to what extent is the jury is an opportunity for establishing democratic justice. I will try to answer the questions: Is it justified to introduce the jury in Georgia? Whether a jury trial is the More Democracy or an Ideal of Democracy? - although the "ideal" expresses the perfection of something and the "ideal" as such does not exist in nature. But the primary function of modern democratic institutions is to fill the gap between ideal and reality.

Keywords the jury ~ Judiciary System ~ Trial by a Jury ~ Ideal of Democracy ~ Judge

INTRODUCTION

In Georgia after the Rose Revolution 2003 to be achieved rule of law and democratic principles of the State of Georgia, the newly formed government of Georgia has started plenty of reforms that covered almost all state systems, among them was Judiciary Power. Therefore, under the democratic reforms, the national legislation of Georgia was revised following universally recognized principles and rules of International Law. It is called the new codification and democratization era in Georgia.

Particularly on February 6, 2004, several amendments were implemented to the Constitution of Georgia. Among the constitutional amendments, one of the notable novelties was the legal reservation made in P. 5 of article 82 of the Constitution of Georgia, according to the above mentioned constitutional amendment – 'the cases in the courts are heard by juries as it is prescribed by the rules and laws of Georgia'¹.

At the same time, by the efforts of the Georgian governmental and non-governmental sectors, a new Criminal Procedure Code of Georgia was finally drafted by the legislative power (Parliament of Georgia) in October 2009 and entered into force on October 1, 2010. The new Criminal Procedure Code of Georgia introduced the institute of a jury in certain criminal cases in Georgia. Recently, in practice, there are already several criminal cases heard by juries in Georgia.

On the other hand - by article 226 of the new criminal procedure code of Georgia: 'The case shall be heard by a jury if the charges are brought under the articles 108 - intentional killing (completed), and 109 - intentional killing under aggravating circumstances (completed), article 117 - intentional infliction of grave injury (2), (4), (6) and (8), article 126 - violence (2), article 135¹ - trade by human organs, article 143 - unlawful imprisonment (2-4), articles 144 - taking a hostage, 144² - threat of torture, article 144³ - humiliation or inhuman treatment (2), article 146 - malicious criminal prosecution of innocent persons (2), articles 147 - intentional illegal arrest or detention and 149 - illegal placement or arrest in a psychiatric hospital, article 197 - falsification (4), article 198 - manufacturing, import or sale of products hazardous to human life or health (3), and Article 229 explosion of the Criminal Code of Georgia².

This legislative innovation is an integral part of the ongoing judicial reform in Georgia, which aims to create a competitive and more democratic criminal justice system.

The main purpose of introducing the jury system is to make the judiciary more democratic and to increase public confidence in the judiciary. Naturally, there are other ways to be built trust, but the institution of a jury is the fastest and most effective because citizens are directly involved in the execution of justice.

¹ The Constitution of Georgia, S55, Tbilisi, 2011.

² Law of Georgia On Amendments to the Criminal Procedure Code of Georgia, N5591-IIS, Kutaisi, 24 June 2016.

Particularly introducing the institute of a jury in Georgia could be considered as recognizing of the direct participation of the public in the implementation of justice, which, I think, should eliminate any pre-existing, non-objective barriers among the judiciary power and the public, which will also undoubtedly contribute to raise the legal culture of communities in Georgia.

In the early middle of the twentieth century, when there was a reactionary policy between states, and governments were attempting to use juries to their advantage, Lord Devlin wrote in his 'Trial by Jury': "Each jury is a small parliament ... Any tyrant cannot trust the freedom of his subordinates - 12 of his countrymen. Consequently, a jury trial means more than a weapon of justice and an additional axis of the constitution: It is a beacon that shows that freedom lives on³.

Nevertheless, the institute of the jury as a medal has two sides: positive and negative, but whether these features are of equal importance in this institute it is already a matter of discussions on the one hand between lawyers and simply on the other hand between the societies.

Would the institute of the jury be finally justified in Georgia? It is not easy to be answered asked question, which is due to the time factor and therefore the lack of proper experience. However, it is inevitable that in the case of non-compliance of the conditions that are defined in the rules and laws of the criminal legislation of Georgia can cause discrediting and complete collapse of the institute of jury,; which unfortunately also makes impossible functioning properly of the jury institution within modern democratic values. Also, the jury has been considered in international practice or theory for centuries, also today is still considered as a unique institution that carries the modern values and principles of "democracy", and the rejection of the institute would be completely unacceptable and unjustified. Besides, the jury is not just the involvement of ordinary citizens in the execution of justice, but it is a rather complex trial that requires the resolution of many issues, from key points (such as the relationship between jurors and a judge, the form of a verdict, jurisdiction, etc.) to the smallest detail (e.g.: how to summon jurors, how to introduce the parties to the identity of juries etc.)

The present research work's goal is to discuss the Trial by Jury in the context of democratic values and to analyze to what extent is the jury is an opportunity for establishing more democratic justice. I will try to answer the question of whether a jury trial is more Democracy or an Ideal of Democracy? - although the "ideal" expresses the perfection of something and the "ideal" as such does not exist in nature. But the primary function of modern democratic institutions is to fill the gap between ideal and reality.

I. TRIAL BY A JURY - HISTORICAL BACKGROUNDS

In the present chapter, I will attempt to discuss the historical background of the emerging and development of Trial by Jury under the Judiciary System respectively its previous

³ Lars Yorhend, and Kakha Tsikarishvili, Trial by Jury, Tbilisi, Bona Causa, 2009, pg. 13.

faced difficulties and barriers while establishing processes, also its specific and crucial role of being a legal institute as the Ideal of Democracy or More Democracy historically.

The jury has its roots in the early stages of the origin of states. It is a legal institution with ancient traditions that have rendered invaluable service over the centuries and has played a crucial role in the development of justice also the establishment of democracy in many countries around the world⁴.

Historically societies have been directly involved in the execution of justice within various forms of executing mechanisms in states. Nevertheless, it is accepted that today's homeland of a jury is 11th century England, where the recognition of jury rights took place in 1215, when the king under the influence of a universal popular demand, signed the Magna Carta. The legal document (Magna Carta) that recognized the rights of all human beings, indicated as follows: each human being's case in the court shall be heard by "fellow citizens"⁵.

Trial by Jury, as a democratic institution, is considered to be the ancient ancestor of the Dicasteria in ancient Athens, also known as Heileia, where the public judges were called Dicasters and Hellests. The idea that several citizens should have the right to vote arose in BC the V-VI centuries' Athens. Compared to today's democratic society, the state of Athens was less democratic, it was a democracy for the distinctive people (when there were slaves alongside free citizens).⁶

In the middle ages, jurors always subordinated to physical ordeals. To make juries docile, they may have been locked in the room and left without meal and heating unless they make a guilty verdict. The above-mentioned in itself points to the paradox that a democratic institution existed in society and was suffering from a lack of democracy. It can be underlined that in this period the democratic character of the jury was an only formality. However, there are also historical decisions made by juries that illustrate the processes of growth of democracy⁷.

In 1640, 12 juries in England refused to recognize William Penn and William Meade as accomplices in the conspiracy, therefore juries were locked without meal and water. In this case, the chief judge ruled in his historic decision that none of the juries could be punished because of their verdict⁸.

A jury is the only court that has the power to rule - if it is necessary to make a fair decision, to base it not on the law but it is understanding of justice. Unlike other courts, the jury acts not by legal categories, but by life experience, "common sense", public morality, individual conscience and the criteria of 'humanity'.

⁴ Explanatory Card on the Draft Law of Georgia - Criminal Procedure Code of Georgia, S160, Tbilisi, 2010.

⁵ Lars Yorhendi, Court of Jurors, Tbilisi, Bona Causa, 2009, pg. 12.

⁶ David Beetham, Democracy: Questions and Answers, Tbilisi, Unesco, 1998, pg. 16.

⁷ Lars Yorhendi, Court of Jurors, Tbilisi, Bona Causa, 2009, pg. 15.

⁸ William Frost J, William Penn's Experiment in the Wilderness: Promise and Legend, The Pennsylvania Magazine of History and Biography, Vol. 107, No. 4, 1983, pg. 1-30.

"Nullification of Jurors" is a central element of their democratic function - "parliament sets the laws and a strong government enforces the strictly approved laws. But governments cannot force any jury to execute a strict law set by parliament. In this regard, juries play a vital role in the democratic process. However, this "feature" of the jury is difficult to be evaluated as unequivocally positive or negative.

Many verdicts reached by juries have become the subject of negative public assessments. E.g. public opinion, fully exposed (in the murder of two people) Simpson case, also finding innocent of the young Basque nationalist Ortega in Spain⁹.

Outrage over such verdicts was so widespread in the communities that could have caused discrediting to the institute of the jury that was restored a couple of years earlier. One of the democratic characteristics of the jury is also its representative nature. Modern trial by a jury stands out in this respect that represents the interests of a much wider community than it was in the 18th century¹⁰.

Until 1972, only those who met the established property threshold could be members of the jury. Therefore, juries were mostly representatives of the male gender, middle-age, and middle-class. This indicates that the societies were not fully represented in the jury, hence not all members of the society could directly participate in the execution of justice, which in itself indicates the low degree of democracy. The question may also be asked: how much is it possible for democracy to exist in an economically unstable state?

There is a reason to believe that how higher is the level of development of a country's economy, the greater the chance is that democracy will exist. This is explained by the impact that economic development has on the character of the population. But it is also wrong to assume that democracy can only exist under conditions of high levels of economic development¹¹.

Developed countries are also experiencing economic problems and difficulties. This in itself leads to political consequences. Social contradictions are deepening. Protecting the principle of equality of citizens is much harder in times of economic depression than reducing trust in a democratic government. Stable democratic systems can struggle against similar problems, but new democracies that have to need supportive conditions to establish stability, are much more dangerous.

In a democratic society, such important rights as the right to freedom from discrimination cannot be restricted. Democracy is based on the principles of public deliberation, persuasion, and compromise. There is a right to express any type of opinion. Democracy within a society implies diversity and pluralism of opinions, in addition to equality of its members.

⁹ Neil Widmar, *Trial by Jury (Common Law Countries)*, Tbilisi, Meridiani, 2005, pg. 21.

¹⁰ Chibundu, Maxwell O, *Jury Trial, and Democratic Values: On the Twenty-First Century Incarnation of an Eighteenth-Century Institution*, the University of Maryland, Legal Studies Research Paper No. 2006-45, (December 2006), pg. 13. access date: 05/01/202.

¹¹ David Beetham, *Democracy: Questions and Answers*, Tbilisi, Unesco, 1998, pg. 138.

Until 1968, the jury selection procedure conflicted with democratic ideals. So in some American states, for example, only people with high intelligence, education, and morals were allowed to be jurors.

Until 1940, women could not participate in a jury trial in most states. In the second half of the 20th century, property, sex, racial, and ethnic qualifications, by which a jury was historically characterized were excluded. In 1968, Congress passed the Jury Selection and Service Act, which abolished special requirements for the selection of juries and imposed the principle of a random selection of juries from a wide range of communities. In its 1975 judgment of Taylor against Louisiana, the Supreme Court ruled that jurors should be selected from the wide range of public at the state level. The same decision also declared unconstitutional the selection of a jury on the grounds of sex discrimination and instructed the states to select equally male and female jurors using the same procedure and principle¹².

Finally, it is clear that the establishment and development of the jury system mainly were linked to developing democracy. Moreover, it is an integral part of the institution itself among the other democratic institutions, and the bright point of the democratization judiciary power.

II. JURISDICTION OF THE JURY

In the present chapter, I will discuss the main boundaries of the jurisdiction of a jury based on the judiciary system under the World Jury practice and experience.

With the establishment of the state, the judiciary power takes its place in the system of the state mechanism, that reviews and dealing with specific cases. Over the centuries, in parallel with the development of the state, an integral part of its mechanism has developed - the judiciary power.

The judicial system - however, has been established in a very complete way and acts in non-judicial, non-democratic states as well. The state that is governed under the rule of law its judicial system is characterized by a sharp orientation towards the society, also with deep and comprehensive functional interaction with it.

It is widely believed that a jury acts only then If there are two jurisdictionally and functionally independent judicial formations: The non-professional – a jury that acts independently from a professional judge and without its participation, as the "Court of Conscience" that decides matters of fact under its discretion but the legal issues are decided by a professional judge - without the participation of juries. This is the "golden rule" of the jury, the violation of the "golden rule" will not only undermine the institutional identity of the jury but also can abolish it¹³.

¹² Jeffrey Abramson, Is America's Jury System on the Road to Justice?, Journal. Freedom, №11 (23), 2003, pg. 20/21, access date: 05/01/2021.

¹³ Iuri Gabisonia, Jurors, Magistrates and Conciliation Courts, Tbilisi, Bona Causa, 2008, pg. 85.

There is no jury as a separate judicial body or independent structure. A jury is formed by one or rarely more professional judges of a court of the first instance who presides hearings in the courts.

According to the main classification and the basic criteria of judicial systems, a jury does not represent any type of court, or judicial structure organizationally, it is one of the specific forms of case review or execution of justice¹⁴.

The issue of the jurisdiction of the jury is also important. By law only in four countries (the USA, Ireland, Canada, Cyprus), a jury is empowered to hear all or almost all of the more or less important categories of crime. In the USA, the jurisdiction of the jury (lower limit) begins with crimes that could be punishable by more than six months in prison. But in some countries (Sweden, Iran) the jurisdiction of the jury is limited to a minimum. The jurisdiction of the jury extends to the "most serious" cases of crimes.

Jurisdiction of the jury is often based on the expression of the will of the accused (defendant) itself through a motion (e.g. in Russia), or in some other form or by consent that the case to be referred to a jury trial. It usually refers to the accused (defendants) who do not plead guilty to the charges.

International or European standards completely "accept" the jury. These standards do not require that courts must have consisted of only non-professional jurors, professional judges, or even in the form of "mixed" representation - the main thing is that it must meet the requirements of the "court".

Studying the institute of the jury clarifies how democracy is achieved, and how is the ability to self-government of the people. The jury makes clear the pros and cons of democracy while promoting democratic values in society by increasing respect for the law, court judgments, and developing the legal culture of society.

It is not disputed that a jury cannot always reach an objective verdict. There is a big gap between the complexity of modern court cases and the qualifications of a jury. There are often dealing with difficulties when one is related to the requirements of the law and the other is justice. The law must be democratically interpreted in such a way that it reflects the common sense and values of the society in whose name the law is passed¹⁵.

Execution of justice does not mean doing what is popular. A democratic society, despite the will of the majority, protects the freedom of the unpopular (ordinary citizen) individual. The abolition of the jury is historically linked to anti-democratic political-state regimes. The introduction of a jury has coincided with the era of liberal reforms, (the introduction of the institute of a jury follows as the leitmotif European revolutions. In the US the institute was introduced at the moment of the adoption of the Declaration of Independence in 1776), the

¹⁴ IBID. TB., 2008, pg. 111.

¹⁵ Jeffrey Abramson, *We, the Jury: The Jury System and the Ideal of Democracy*, With a New Preface, Harvard, Harvard University Press, 2000, pg. 10-350.

initiative of the reformatory kings to gain confidence in the court. However, the jury was subsequently used against the king's authority. To give an example the US, which was a British colony. The main demand of American fighters for freedom and democracy was to have the right to elect an independent jury. And when some American entrepreneurs were sued by the British government for non-payment of taxes or criticism of the king's government, a jury acquitted them (e.g. the case of Peter Zenger)¹⁶.

As it was seen, historically, juries have repeatedly faced dilemmas but they endured all difficulties, despite the occasional dissatisfaction related to their non-professionalism expressed in world societies, juries maintained confidence as they step forward - more democracy all over the world. Below I will discuss the impartiality of the jury.

III. IMPARTIALITY OF THE JURY

In the present chapter, I will lead the discussions towards the impartiality of the jury as one of the important features that provide its independence within the whole process of the trial by the jury.

The judiciary system without the sign of independence loses its institutional identity and state-legal purpose because the independence of the judiciary system is a fundamental sign of a legal and democratic state.

The main dignity of the jury is not only the fact that the jurors have public wisdom, life experience and a sense of justice, but also that they are much more independent and more restrained than the judicial officials (professional judges) who are "aggravated" by their position and responsibility. Moreover, unlike the professional judges, the juries are not responsible to anyone for the decision they make, they are not even obliged to substantiate the verdict. However, it is more possible to be investigated facts correctly within reasoning by 12 people than one judge¹⁷.

The direct participation of the people in the execution of justice is a principle that reflects the democratic formations of justice at the same time is an essential element of the legal culture of society. The direct participation of the public in the execution of justice better ensures the social control of the state government, prevents "distancing oneself from the interests of the people", thereby supports the judiciary power, morally "affirming" it, elevating authority, and establishing a sense of justice in society.

Direct and joint participation in the trial, diversity of views, the existence of unanimity to reach a verdict, equal power in votes - all these create the conditions for democratic

¹⁶ Vakhtang Tchatchua, Basic Trends in the Origin and Development of the Institute of Jurors, Journal Justice and Law, №3-4, 2005, pg. 395, access date: 05/01/2021.

¹⁷ Iuri Gabisonia, Trial by the Jury, Journal Justice and Law, №5, 2005, pg. 64, access date: 05/01/2021.

judgment. At the same time, justice is more credible and convincing when it is a product of the struggle of the whole society¹⁸.

There is also widespread opinion as to whether a representative jury trial is dangerous if it is nothing more than a collection of private interests of those to whom it represents? - I consider that the consultation and evaluation process of trial by jury should be based on public interests and values, which should be the defining and guiding factor in the path of fair decision-making.

The trial by jury establishes a more progressive system - a competitive process, maximizing the equality of the parties, giving the accused opportunity to fully exercise his right to a fair trial. When judges have to make uncommon decisions, they are criticized by the public and officials. Because all legal actions of jurors are mostly anonymous they do not face similar problems. Jurors' actions are not related to the state and have no political ambitions, that underline their truly democratic nature.

As the negative aspect of the jury that is publicly indicated and widespread the mainly seems following: Jurors - "street people", who do not have any legal education that is necessary and inevitable to execute justice.

Even the most difficult procedures for forming a "high quality" jury and supporting its functioning do not ensure that there would be selected an appropriate contingent of jurors. Further protecting jurors from the influence of the judge, stakeholders, public, or the media can be the reason to put under the question mark of jurors' impartiality and the objectivity-fairness of the verdict¹⁹.

Despite the criticism related to the juror's unprofessionalism, it is clear that the jury has in particular features that create opportunities to be jurors more independent and impartial than professional judges in their judgments, therefore impartiality and independence are significant and integral parts of the judiciary system to be provided more justice, rule of law and democracy among societies and states.

IV. TRIAL BY A JURY AND DEMOCRACY

In the present chapter, I will discuss how the trial by a jury under the judiciary system is linked to the establishment of more democratic judicial power by taking into account democratic society, state and rule of law as inevitable preconditions.

Every particular society is characterized by specific historical values of assessments, also a kind of hierarchy of these assessment values. Value systems are formed and changed with the historical development of a society. Values are important to be discovered and distinguished regimes. There are so-called absolute or universal values. These values are valuable to everyone

¹⁸ Chibundu, Maxwell O, Jury Trial, and Democratic Values: On the Twenty-First Century Incarnation of an Eighteenth-Century Institution, the University of Maryland, Legal Studies Research Paper No. 2006-45, (December 2006), pg. 13. access date: 05/01/202.

¹⁹ Iuri Gabisonia, Jurors, Magistrates and Conciliation Courts, Tbilisi, Meridiani, 2008, pg. 95.

and at all times in their meaning. Values are related to ideals and are often equated as well. The ideal is experienced by people as the desired perfect being, that may not become a reality. However, the aspiration towards it is positively viewed²⁰.

Freedom (political, social, personal), equality (before the law), justice, non-violence, people's sovereignty - these are universal values.

The Jury Institute emerged from the beginning as a democratic institution and was evolving in the parallel of development of a society and democracy. The concept of democracy implies not only a certain system of government but also other specific public relations. For example, Americans say that their country has only not democratic political institutions unity, but also a democratic society.

A democratic society means a society without class differences, a society that approaches equal opportunities for all to establish the ideal model of existence. Democracy is a set of relationships that are formed based on free expression, consent, and equality of the will of the parties. Democracy is one of the greatest values of civilization, the idea of social order. Democracy gives freedom to any person to the extent necessary. In legal terms, democracy is based on a system of legal norms built on the rule of law, separation of powers and the principles of ensuring human rights.

A democratic society means the existence of an independent judiciary system based on the rule of law when the judiciary system is not a subject of political and ideological impacts. It is a commonly accepted idea that human rights and democracy are "interdependent and mutually reinforcing". Protecting human rights and ensuring the rule of law, not only in developed but also in developing countries, is provided at the expense of upholding democratic principles. Protection of human rights and freedoms is very essential to exist in a democracy. Civil and political rights are necessary to be controlled government by the public- "to participate in the state affairs directly as freely elected representatives."

The practice of existing democratic institutions contributes to the development of a democratic culture within the habits and experiences of the citizens they receive while participating in political activities²¹.

Today, increasing the number of countries that choosing a variety of forms of strategies for democratization and implementing reforms of their legal systems.

Democratization is the process of emerging, establishing, perfecting, and developing institutions that ensure the formation of public relations based on the free expression, consent, and equality of each individual. It is a process in which the independent, free participation of

²⁰ Gia Zhorzholiani, *Democracy: Ideal and Reality*, Tbilisi, Social Research Institute, 1999, pg. 5.

²¹ Ethan Leib, J, *A Comparison of Criminal Jury Decision Rules in Democratic Countries*. *Ohio State Journal of Criminal Law*, Vol. 5, 2008, access date: 04/01/2021.

people grows in public life, also the external influences on the public are weakened, respect of the public dignity and protection degree is increased²².

The democratization of life means making equal social conditions and equal opportunities for the realization of needs and interests for all citizens unlike the ancient democracy, which did not recognize the rights and freedoms of the individual, therefore it was often called the despotism of the majority.

In the process of democratization, many countries have considered and are considering the introduction of a jury system. How effectively will work the institution of a jury in a country depends on many complex factors.

A jury may have some beneficial effect on the judiciary, despite it is difficult to be assured that a jury on criminal cases is an essential characteristic of democracy in the modern global society. The trial by a jury on the criminal cases in some ways undoubtedly dominant among the world democracies, but the "Equal Court" model is not necessarily a triumph of Democracy. There may exist a normatively good justification for supporting and promoting the jury, but it is not a necessary indicator of the achievements of democracy. However, the introduction of a jury court implies an appropriate level of cultural development of the society in which that court should act.²³

It also implies an appropriate level of public righteousness as jurors are selected from the public.

This system is based on the belief that society is aware of the essence of justice and even must protect its fellow citizen from unjust violence by the state²⁴.

Every society is characterized by immanent conflict, conflict of interests, and the existence of disputes. Crime is also one form of conflict and expression of disagreement. In a democratic society, the social importance of the judiciary is manifested in ensuring the rule of law in resolving legal conflicts, the supreme goal of justice is to replace the idea of violence with the idea of law.

The fundamental idea of democracy is that all actions of the state must be based on the will of the public, and must be legitimized by the public. Democracy is a field of collective decision-making. Democracy embodies an ideal system where decisions that affect the whole society are made by direct participation of the members of societies, and also each of them has an equal right to participate in the resolution of any public issue.

Democracy requires the observance of two principles: public control over collective decisions and equality in the exercise of control. Depending on how well these principles are

²² Conference on Proceedings of the International Conference, Democratization: Theory and Practice, Tbilisi, 1993, pg. 41. access date: 04/01/2021.

²³ Leib, Ethan J., A Comparison of Criminal Jury Decision Rules in Democratic Countries. Ohio State Journal of Criminal Law, Vol. 5, 2008. access date: 04/01/2021.

²⁴ Brochure, Encouraging the Judiciary of Georgia: The Jury Trial: More Democracy or Improving the Image of the Judiciary, 2006, pg. 14. access date: 04/01/2021.

protected when making a decision, every society can be considered democratic or - not. Rights in a democratic society, that provide the public with equal job opportunities, housing, food, dignified living conditions, education, etc. It is considered the fundamental basis of civil society. A society in which the unemployment rate is high, and the majority of the population is hungry can only slightly approach democracy. Satisfying the most important needs of man, that save their lives from death - is a necessary precondition of democracy. Consequently, the country's social conditions reflect and at the same time determines the degree of democracy in the state.

The degree of democracy of a jury verdict is directly proportional to the degree of democracy in the country. If the state is not democratic, the existence of any democratic institution will have only a formal character. In such a case, the fight for justice becomes the equivalent of heroism.

V. CRIMINAL CASES HEARD BY A JURY IN GEORGIA SOME FACTS AND FIGURES

In the final chapter, I will discuss some facts and figures based on statistical data of the Basic Knowledge and Perception Research on the Judicial System of Georgia and the Criminal Cases Heard by a Jury in Georgia. As it is mentioned above in the present work the jury is absolute novation as an experimental reality in the case of Georgia. Moreover it would be interesting is justified or not introducing the jury in the judiciary system of Georgia?

To begin with, before the introduction of the institute of the jury in Georgia, there was existent several social and legal surveys related to the introduction of an absolutely new institute of the jury in the judiciary system of Georgia, social surveys mostly had served to understand the knowledge and attitudes of Georgian communities towards the jury institute and its introduction in the judiciary of Georgia. According to the data based on the Basic Knowledge and Perception Research on the Judicial System of Georgia, the majority of interviewed people (83.6%) believed (33.0%) or partially believed (50.6%), that the introduction of a jury will ensure the independence and impartiality of the judiciary system of Georgia²⁵. It is worthwhile to be underlined that the majority of the population of Georgia expressed confidence in introducing the institute of the jury under the reform of previous judiciary power which was considered as corrupted as missing fundamental impartiality and independence principles of the court, it is obvious Georgian society was unsatisfied by the work of the previous judiciary power, therefore Georgian communities believed in reforming the judiciary and the introduction of the jury will increase transparency, independence, and impartiality of the judiciary, hence the institute of the jury was welcomed among the communities of Georgia, in addition to being considered as the beacon of democracy.

²⁵ Institute of Social Researches, Basic Knowledge and Perception Research on the Judicial System of Georgia Published: 5/05/2009, <http://www.msajuli.ge/uploads/2009.pdf>, access date 04/01/2021.

Since the enactment of the Institute of Jurors until May 1, 2020, in Georgia, a total of 46 criminal cases were heard by the jury against 59 persons. Out of these, in 2011 - 2 criminal cases were heard against 4 persons, in 2012 - 1 criminal case against 1 person, in 2013 - 4 criminal cases against 7 persons, in 2014 - 4 criminal cases against 7 persons, in 2015 - 9 criminal cases against 10 persons, in 2016 - 4 criminal cases against 4 persons, in 2017 - 9 criminal cases against 10 persons, in 2018 - 5 criminal cases against 6 persons, in 2019 - 7 criminal cases against 7 persons, in 4 months of 2020 - 1 criminal case against 3 persons²⁶. Under the statistical data of the Criminal Cases Heard by a Jury in Georgia, it is worthwhile to be mentioned that since the enactment of jury in Georgia until today the number of criminal cases that were heard by juries was being increased periodically. It is a fact that in the first years after the enactment of the institute of the jury, only a few criminal cases were heard by juries, to give an example in 2011 – it was 2 cases, and in 2012 - 1 case, this may be due to the lack of experience acting of the institute of a jury in the judiciary system of Georgia, thus It could be considered very logical because at the beginning introduction of the institute of the jury was an experiment, moreover, there was a fear in the judiciary whether the institute of the jury would be a new challenge for the court or the ideal of democracy, or whether the institute of the jury would be justified in the Georgian reality. On the contrary, the maximum number of criminal cases - 9 heard by jurors was equally recorded in 2015 and 2017. Besides, based on the above-mentioned statistical data, it can be said that trust in the work and function of the jury is growing stage by stage almost every day in Georgia. But it is still difficult to be predicted that whether would the institute of the jury be an ideal of democracy in the case of Georgia once many factors can be causing new problems to the judiciary system, despite this and similar existed debates towards the institute of the jury can only time can make clear and blatant.

According to the courts, the mentioned data are distributed as follows: Tbilisi City Court - 31; Kutaisi City Court - 9; Gori District Court - 4, Rustavi District Court - 1; and Zugdidi district court -1 criminal cases were heard by jurors. Besides, in Batumi City and Telavi District Courts, none of the cases were heard by the jury, from here during the above mentioned period, 9 criminal cases under article 108 (Intentional killing), 17 criminal cases under article 109 (Intentional killing under aggravating circumstances), 9 criminal cases under articles 19-109 (attempted Intentional killing under aggravating circumstances) of the criminal code of Georgia were heard by the jury²⁷. Based on the statistical data of the Criminal Cases Heard by a Jury in Georgia the most number of criminal cases - 31 were heard by juries under its jurisdiction acting in Tbilisi City Court, and on the contrary the fewest number of case – 1 was equally heard by juries under its jurisdiction acting in Zugdidi and Rustavi District Courts. It is worthwhile to be mentioned that Tbilisi is the capital city of Georgia, thus Tbilisi City Court's territorial jurisdiction covers the most administrative units of the country where the vast majority of the total population of the country is distributed therefore not surprisingly a

²⁶ Supreme Court of Georgia, Statistics of Cases Heard by a Jury, Published: 21/03/2019, <http://www.supreme-court.ge/news/id/1909>. access date 04/01/2021.

²⁷ IBID, Published: 21/03/2019.

huge number of the criminal cases were heard by juries under its jurisdiction acting in Tbilisi City Court.

Besides, the vast majority number of criminal cases heard by juries were qualified under articles 108 (Intentional killing), 109 (Intentional killing under aggravating circumstances), 19-109 (attempted Intentional killing under aggravating circumstances) of the criminal code of Georgia, and Why? - Perhaps this is due to the commonly approved fact that according to the world experience of the institute of the jury it is considered to be easier for juries to investigate the facts of such serious criminal cases and reach a verdict on them, once the facts, shreds of evidence, and proofs in their nature are obvious and almost do not require special education.

Out of 46 criminal cases (against 59 persons) heard by the jury, 41 were found guilty and 18 not guilty. According to the verdicts on the criminal cases that were handed down by the jury, the sentences imposed on 41 convicts are distributed as follows: Term imprisonment- 35 persons; imprisonment for life - 4 persons; fine - 1 person; and released by amnesty - 1 person. Finally, out of 46 criminal cases heard by the jury (against 59 persons), 24 criminal cases (52.2%) were appealed in the cassation courts against 27 persons (45.8%). Out of 23 heard criminal cases (one criminal case is not completed at this stage), 10 criminal cases (43.5%) were declared inadmissible against 12 persons (46.2%), 2 criminal cases (8.7%) were left unconsidered against 3 persons (11, 5%), the sentence was left unchanged in 10 criminal cases (43.5%) against 10 persons (38.5%), the sentence was canceled in the sentencing part and returned to the court for re-appointment of the sentence in 1 criminal case (4.3%) against 1 person (3, 8%)²⁸. It is clear from the analyzed data that the most reached verdicts by juries were almost final, although the jury verdicts that were appealed in the cassation courts were mainly declared as inadmissible or were left unchanged, only an inconsiderable number of the criminal case (1) was returned to the court for reappointing sentence, therefore in a short time following analyzed statistical data: 'Basic Knowledge and Perception Research on the Judicial System of Georgia and the Criminal Cases Heard by a Jury in Georgia' acting jury in the judiciary of Georgia could be partly evaluated and approached positively as optimistic unless the time would show us the more clear outlooks that should be discussed far in the future.

Following the Criminal Code, and Criminal Procedure Code of Georgia, the institute of jury acts in the City (Tbilisi, Kutaisi, Batumi) and District (Zugdidi, Telavi, Gori Rustavi) Common Courts of Georgia and hears only specific criminal cases (mostly serious crimes), therefore its administrative and legal jurisdiction is strictly defined and prescribed by the general rules and laws of Georgia.

According to some facts and figures based on statistical data of the Criminal Cases Heard by a Jury in Georgia since the enactment of the institute of the jury until May 1, 2020, a total number of 46 criminal cases were heard by juries against 59 persons, and the vast majority reached verdicts on the criminal cases by the jury were final. Moreover, the appealed jury

²⁸ IBID, Published: 21/03/2019.

verdicts in the cassation courts of Georgia were mainly declared inadmissible or left unchanged, that could be considered one of the biggest achievements of the jury in that short period in its functioning in the judiciary of Georgia.

It should be separately underlined that the institute of the jury is now introduced and has just only 10 years acting experience in the judiciary of Georgia. Therefore it is recently may be early and difficult to be discussed objectively the real outlooks of the jury, also to be offered any exact opinions towards the institution itself in the case of Georgia. However it would be unfair to avoid taking positive and decisive steps by governmental and non-governmental organizations of Georgia in terms of introducing the institute of the jury under the reform of judiciary system in Georgia.

Finally, as it is understood from the above mentioned analyzed statistical data based on some facts and figures of the Criminal Cases Heard by a Jury in Georgia, I think introducing the jury in the judiciary system of Georgia is justified, and why? – The answer can be given in several stages as follows:

At the first, it supports and provides more democratic judiciary power despite some discussed difficulties that juries could face while the whole process from starting to ending point related to the trial by the jury.

Secondly the institute of the jury is the pillar to be protected transparency, impartiality and independence principles of the judiciary.

Thirdly the current jury institution among other democratic institutions - it is one of the most ideal of democracy to be compared to the previous judiciary power in Georgia.

Besides, in the case of Georgia, a jury trial has to play the main role of the pillar that can restore in people the faith of lost justice, trust in the judiciary, and approve that the law is supreme – thus everyone has to act according to the law without any distinction and subordination, so the jury is new hope as the way on the more democracy.

CONCLUSION

The jury trial is a highly controversial institution. Perhaps that is why Jeffrey Abramson mentions in his book (*We, the Jurors*) that the jury trial is the best and at the same time the worst achievement "and as examples historically famous verdicts that surprise public until today: Jurors sentenced Socrates to death in Athens for a religious crime committed against the state, in England - jurors preferred going to jail to accuse William Penn, In Salem, women were accused of magic, while in America they resisted the persecution of witches (progressive people), in South America, vigilantes who were lynched by African-Americans were released and in the North, they sheltered fugitive slaves and abolitionists (they aimed to abolish African slavery in the United States)²⁹.

²⁹ Jeffrey Abramson, *We, the Jury: The Jury System and the Ideal of Democracy*, With a New Preface, Harvard, Harvard University Press, 2000, pg. 10-350.

As we see we are dealing with two extremes, which can be the source of error. The truth as they say "somewhere in the middle". But where is this golden mean? - Despite a jury trial may have some beneficial effects, no one should think that a jury trial is just only one essential feature of democracy in modern global society. The trial of defendants by non-professionals is undoubtedly the dominant one among the world's democracies, but the "Court of Equality" model, is not necessarily the triumph of democracy.

There may be a normatively enough good justification for facilitating a jury, but it is not a necessary indicator of the achievements of democracy.

The participation of the "public" in the criminal case is aimed at protecting civil rights from a professional judge who represents State authorities. The jury was historically regarded as a guarantee of protection of civil rights.

What about the establishment of the institute of the jury in the Georgian reality. Many difficulties could be accompanied by taking into account the lifestyle that exists in the country.

The public view has been expressed that the institute should be established not as radically and widely as it is in other countries.

It should be noted that the proper functioning of any democratic institution depends significantly on the degree of democracy of the state in which it operates.

In the case of Georgia, giving examples of England, The USA, etc. can not give us enough clear idea of the problem. All of the above-mentioned states belong to the number of developed states, respectively, their standard of living and sustainable socio-economic conditions create the right ground for the existence of such an institution. Grounds should be improved and better prepared in order for acting a jury more effectively in Georgia. Steps should be taken forward to promote and popularize trial by a jury in Georgia.

Members of the public should not be unfamiliar with the laws and professional language of judges. The execution of criminal justice should be considered by the public as a common problem and not as a problem of a particular individual³⁰.

For the democratic ideal to be put into practice, it is necessary to have an appropriate mechanism in the form of state structures, which act following the law and the constitution.

The answer to the question - is the institution of a jury the ideal of democracy or more democracy? -The jury - is self-evident. The jury is one of the institutions among many others that should contribute to the growth of democracy.

Is it justified to introduce the jury in Georgia? Is it more democracy? - Under some facts and figures based on statistical data of the criminal cases already heard by a Jury in Georgia, I think that introducing the jury in the judiciary system of Georgia is justified, at first

³⁰ Felix Herzog, Philosophical and Social View of the Jury: Could It Have a Renaissance in Germany?, in Lay participation in the criminal trial in the XXist century, 72 *Revue Internationale De Droi Penal*, 2001, pg. 553-57.

it supports and provides a more democratic judiciary power despite some discussed difficulties that jurors could face while the whole processes related to the trial by the jury. At the second current jury institution among other democratic institutions- it is one of the most ideal of democracy – more democracy to be compared to previous judiciary power in Georgia.

In deed, no state can fully implement the principle of public control and political equality, but the process of democratization is endless. Every healthy society yearns for the perfection of democratization since it is a key factor in social progress.

Finally, it is difficult to be rejected by the public opinion that building a democratic judiciary system is possible even without the institution of a jury. However, it is also an indisputable fact that the institution of the jury has endured for centuries and has been playing an important role in the process of democratization of the justice system.

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