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THE JURY SELECTION PROCESS IN GEORGIA — LOOKING FOR A NEEDLE IN A HAYSTACK[1]

"We should trust jurors with our property, dignity, life, soul, and body . . ."
I. Chavchavadze, Law and Revenge, Iveria, February 25, 1889. Tbilisi

ABSTRACT

This article examines current jury selection practices in Georgian courts by analyzing the results of jury trial observations and a survey of judges, lawyers, prosecutors, representatives of the Ombudsman Office, civic activists, and journalists across all seven cities of Georgia where jury trials take place. Jury selection, which the public sometimes associates with undue delays and waste of resources, can be considered the Achilles' heel of the Georgian jury system. The research analyzes various stages of jury selection: creating jury rolls, summoning jurors, accepting summons, completing and returning juror questionnaires, showing up for jury selection, self-recusals and challenges by parties, and forming the jury. It aims to identify core problems in the jury selection process and propose solutions to policymakers and practitioners.

Georgia adopted a universal approach to jury selection by law, but the research demonstrates that the practice differs significantly from written law. This paper is the first empirical study in Georgia that examines the jury selection process. It provides policymakers and practitioners with a better view of the process and suggests various solutions that can help improve the process efficiency and effectiveness.

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1 INTRODUCTION

It is safe to say that one of the most important and perhaps challenging areas of democratic transition for developing countries is the reform of the judicial system. Even more so in areas that require a high level of civic participation, such as the establishment of a jury trial system. Transition towards democracy expresses itself in the rise of numbers and forms of civic participation. This was exactly the case in Georgia when 2010 marked the year that jury trials were first put to the test in the country. The event was even more significant because Georgia was the first nation in Europe to attempt this change in the 21st century.[2] The introduction of the jury system was also seen, by its proponents, as an additional building bloc in the country's ongoing reforms in the judicial sector, and in addition, and perhaps more crucially, in the attempt to forge active citizenship and responsibility.

Regardless of the years that passed, a jury trial system can still be considered as a relatively new institution that is in its early stages of development and is in constant need of improvement and reform. Therefore, the significance of the jury trial system, its evolution, and its place in Georgian society open many areas for academic reflection. Important issues such as changes in perceptions concerning jury trials, perceiving jurors as performers of an important duty, understanding the importance of the discussion, and challenging why it matters to society. All these issues need to be deliberated when considering reform of the jury trial. It is still a relatively new institution in the early stages of development. Transition towards democracy expresses itself in the rise of numbers and forms of civic participation. There are issues related to changes in perceptions concerning jury trials, in perceiving jurors as performers of an important duty, understanding the importance of the discussion, and challenging why it matters to society.

Furthermore, while a strong opposition from society regarding the implementation of jury trials[3] was expected[4] a less likely reaction was the pushback from political figures and legal professionals. The attacks of some Georgian politicians and legal professionals against the jury system are ongoing. As the former Supreme Court Chief Justice, Ms. Nino Gvenetadze, mentioned during her open discussions with one of the co-authors of this article, she simply did not believe in jury trials.[5]

2 It is interesting to note that other European states transformed or abolished their juries in the last 20 years. See, e.g., John D. Jackson and Nikolai P. Kovalev, "Lay Adjudication in Europe: The Rise and Fall of the Traditional Jury", 6(2) *Oñati Socio-Legal Series* (2016), 368-395; Sanja Kutnjak Ivkovic, Shari Seidman Diamond, Valerie P. Hans and Nancy S. Marder (eds.), *Juries, Lay Judges, and Mixed Courts: A Global Perspective* (Cambridge University Press, Cambridge, 2021).

3 This was mentioned by most of the respondents of experts' in-depth interviews in April-June 2018, project first stage report, the research project "Jury Trial Reform in Georgia: First Steps and First Challenges".

4 Society expressed definite positive attitude and considered the reform as a significant contributor to improvement of courts. In one study 66% of the respondents said that the jury trials will contribute to increased people's trust. See, Caucasus Research Resource Center, "Attitudes towards the Judicial System in Georgia, 2014", *CRRC Georgia*, available at https://caucasusbarometer.org/en/ji2014ge/IMPACRT/?fbclid=IwAR2yeSCj80Zx5IcWW65IPiX-IX2DL-vQ-WT-cLnafQoUT18GNDJKkQRIe3_M.

5 The comment was made during the open meeting with lawyers and NGO representatives on 11 March 2015 in Tbilisi after Ms. Gvenetadze got nominated for the position of the Chief Justice.

In fact, this comment pinpoints the problem of the ideological narrative regarding trial by jury, which is prevalent in the legal community in Georgia. Therefore, the authors aim to look beyond the ideological framework and initiate problem-oriented discussion on jury trial reform in Georgia.

The debates surrounding jury reform became heated soon after the change of government in 2012. The new government was openly critical of the reform and signaled that it had ideological and systemic problems with this institution. The critics of the reform pointed towards high costs, incompetence of jurors, and difficulties of selecting "*reliable jurors*" as the weak spots that were delegitimizing the reform.[6] The government's parliamentary secretary, presently the judge of the Supreme Court, Mr. Shalva Tadumadze, shared skepticism in his address to the parliamentary committee when he presented the reform package on 21 June 2016.[7] However, the reform proposal concerning the selection procedure was minor and only affected the qualifications of jurors. It extended the list of qualified candidates to psychologists, psychiatrists, lawyers, etc.[8]

The jury selection is the cornerstone of the jury trial. It has been argued by skeptics that Georgia is a small country, and it will be impossible to select "*objective jurors*".[9] Through a careful examination of the entire process, the article offers an analysis of present challenges and proposals for specific measures that would aid the judiciary in responding to increasing demand for jury trials and ensure the smooth functioning of jury courts. The article consists of four parts: a review of the history of the jury reform process in Georgia, an overview of the research approach and methodology, an analysis of the main findings and conclusions regarding policy recommendations.

2. THE HISTORICAL CONTEXT

In recent history, Georgia was the third European country after Russia in 1993[10] and Spain in 1995[11] which reintroduced the jury system after decades of dictatorship. Trial by jury has been ef-

6 Nikolai Kovalev, Giorgi Meladze, and Anna Zhvania, Media monitoring report within research project "Jury Trial Reform in Georgia: First Steps and First Challenges", presentation 1 May 2018. (Ilia State University, Tbilisi, 2018), in Georgian available at https://conlaw.iliauni.edu.ge/naphits-msajultha-sasamarthlo-mediashi-1998-2018/.

7 Amendments to the Criminal Procedure Code of Georgia; Speaker: Shalva Tadumadze.in Georgian available at https://info.parliament.ge/#law-drafting/12141.

8 *Ibid.*

9 Nikolai Kovalev and Giorgi Meladze, "Trial by Jury as a Catalyst for Evolving Independent Courts in Georgia", in Sanja Kutnjak Ivkovic, Shari Seidman Diamond, Valerie P. Hans, and Nancy S. Marder, (eds.), *Juries, Lay Judges, and Mixed Courts: A Global Perspective* (Cambridge University Press, Cambridge, 2021), 261-282.

10 Stephen C. Thaman, "The Resurrection of Trial by Jury in Russia", 31(61) *Stanford Journal of International Law* (1995), 61-274; Nikolai Kovalev, *Criminal Justice Reform in Russia, Ukraine, and the Former Republics of the Soviet Union. Trial by Jury and Mixed Courts* (Edwin Mellen Press, Lewiston, 2010).

11 Stephen C. Thaman, "Spain Returns to Trial by Jury", 21 *Hastings International & Comparative Law Review* (1998), 241-537.

fective in Georgia since 2010[12], yet several reforms have already been carried out to amend the system.[13] More than 40 trials[14] have been conducted, which provides an opportunity to study the early stages of implementation, make initial observations, and draw recommendations for ongoing reforms.

The tradition of lay participation in Georgia can be traced back centuries.[15] The Russian Empire abolished the monarchy in Georgia in 1801, and the Russian system was imposed in Georgian courts. However, when Trial by Jury was introduced in Russian courts, Georgia was exempt from the reform.[16] Only in 1919, after gaining independence, was Georgia able to introduce a trial by jury, and the first jurors were summoned at the beginning of 1920. The First Republic was soon overrun by Bolshevik Russia[17] and the memory of an independent judiciary was swiftly erased through political authoritarianism and historical repressions.[18]

Introduction of the trial by jury marked the revision of the criminal justice system in Georgia. Following the Rose Revolution,[19] The amendment to the Constitution of Georgia in 2004[20] cemented the institution of trial by jury, which had been discussed by civil society long before. Political approval of the reform was critical in order to address public distrust of state agencies, when the voices of ordinary citizens were effectively ignored by ruling elites.[21] The reform was an attempt to build bridges between Georgian society and the judiciary.[22] Following the Constitutional amendment, the new Criminal Procedure Code of Georgia (CPC) was adopted in 2009, introducing the American-style jury system, but jury trials were limited to certain crimes defined by the Code.[23] Although there is currently a growing consensus among political groups to extend jury trials to all crimes,[24] it is still early to foresee developments in this regard. The Code included the detailed regulation of the jury trial, and shortly after it became effective in 2010, the first jury trial took place in 2011.[25] Jury trials

12 Sakartvelos siskhlis samartlis sap'rotseso k'odeksi [Criminal Procedur Code of Georgia] (2009), adopted on 9 October 2009, No. 1772. All translations from Georgian into English are by the authors of the present article unless otherwise noted.

13 Kovalev & Meladze, *op. cit.* note 9, 269-274.

14 Data has been obtained from the Supreme court on 29 April 2019 and completed with results from court monitoring. Based on monitoring result as of December 2019: Tbilisi court - 26 trials, Kutaisi court – 9, Gori court – 6, Zugdidi court – 1, Batumi court – 1 trial.

15 Giorgi Davitashvili, *Evidences in Traditional Law of Georgia* (Tbilisi State University, Tbilisi, 2003), 130-145.

16 Mikhail O. Gruzenberg, *Sud prisiazhknykh v zakavkazie [Jury trials in Transcaucasia]* (Tipografia Kantseliarii Osobogo Zakavkazskogo Komiteta, Tiflis,1917).

17 Kovalev, *op. cit.,* note 10, 118-121.

18 Stephen F. Jones, "The establishment of Soviet power in Transcaucasia: The case of Georgia 1921–1928", 11(4) *Soviet Studies* (1988), 616-639.

19 Kovalev & Meladze, *op. cit.,* note 9, 265.

20 Sakartvelos k'onst'it'utsia [Constitution of Georgia] (1995), adopted on 24 August 1995, with amendments as of 23 March 2018, Art. 84.

21 Kovalev & Meladze, *op. cit.,* note 9, 264-266.

22 *Ibid.*, 265.

23 Criminal Procedure Code, *op. cit.,* note 12, art. 226.

24 Memorandum was signed by all major political parties on13 March on future reforms in Judiciary. Text of the memorandum available in Georgian at http://www.tabula.ge/ge/story/166646-opoziciuri-partiebi-sasamartlos-reformaze-shetanxmdnen.

25 Mzia Lekveishvili, "Napits msajulta inst'it'ut'is sakmianoba tbilisis sakalako sasamartloshi" [The operation of the jury trials in Tbilisi City Court]. In *Napits msajulta inst'it'ut'i sakartveloshi [The trial by jury in Georgia]* (Iverioni, Tbilisi, 2013),146–161; English translation, 457–467.

are presently conducted by seven courts: Tbilisi, Kutaisi, Telavi, Rustavi, Gori, Zugdidi, and Batumi, with 46 trials against 59 defendants, out of which 18 were acquitted and 41 convicted between November 2011 and April 2019.[26]

According to the legislation, there are almost no eligibility restrictions for jury service - a person must be at least 18 years of age, a citizen of Georgia, and appear on the eligible voters list.[27] Exceptions are for current military personnel, prosecutors, judges, or defense attorneys (see details below). The decisions are made through a majority verdict. The jury first tries to reach a unanimous verdict, but if, within four hours, the jurors are unable to reach a unanimous verdict with respect to each filed charge, they shall hold a vote and reach a decision through a majority set by the law. [28] In case of a split vote or if only 7 jurors vote for either a conviction or acquittal, the judge dismisses the jury and sets a date for a new jury trial. The case can be tried only twice, and in case of repeated failure to reach a verdict, the jury is dismissed, and the defendants will be set free.[29]

The jury trial is still in the very early stage, but already has a reputation for splitting legal professionals into groups. It remains a subject of controversy with international organizations representing European Union states, and has also been the subject of heated parliamentary debates. The government's attempts to weaken the system resulted in parliamentary debates around specific measures aiming to amend the system and make it more symbolic, with limited powers for jurors. The amendments were criticized by civil society. However, despite the criticism, the Parliament of Georgia adopted amendments, and it is due to the veto of the President Margvelashvili in 2015 that the amendments did not take effect. Of all the vetoes used by the president, this veto was not overruled.

The reform of the jury was closely followed by Georgia's western partners. Opinions and recommendations were mixed: criticism of the jury system came from experts from civil law jurisdictions, while experts from the common law tradition supported the jury reform.[30] It can be argued that there was even an organized attack against reform, fueled by ideological sentiments. The rivalry was openly supported by legal experts from Germany, as it is well described by Rolf Knieper's observation: "For several years, USAID has stubbornly been trying to make the jury system popular in the [post-Soviet states…] For many years, in its publications, at workshops, international conferences, and in confrontation with USAID, the GTZ [German Organization for Technical Cooperation] has actively taken a different position. […] In Georgia, for example, it was possible to keep this legal policy debate on rational tracks."[31]

26 Official statistics received from the Supreme Court on 16 April 2019. On file with authors.

27 Criminal Procedure Code, *op. cit.,* note 12, art. 221.

28 Criminal Procedure Code of Georgia, *op. cit.,* note 12, art. 261.4

29 Criminal Procedure Code of Georgia, *op. cit.,* note 12, art. 261.6

30 Richard Vogler, *Report on the 2009 Draft of the Criminal Procedure Code of Georgia Prepared on Behalf of the Directorate General of Human Rights and Legal Affairs of the Council of Europe* (2009).

31 Kovalev, *op. cit., note 10,* 258.

The reform sparked debates in Georgian society, but it was limited to press briefings and expressions of ideological positions without any deep exploration of the topic.[32] Skeptics of the reform argued that high costs, logistical difficulties, and social networks made it nearly impossible to have a trial by jury. The advocates of the reform argued that none of these obstacles outweighs the value of trial by jury as a means of building trust towards the judiciary.[33] As one of the district court judges mentioned in an interview with the research team: "The experience of being a juror is extremely important. If we want to have citizens and not just inhabitants, we have to put the whole society through this experience, let them be jurors, and we will get a different, better society. You cannot push a former juror to obey somebody's will …. He completely changes after he becomes a juror; he becomes independent."[34] Similar considerations and conclusions were shared by the majority of other respondents in the study.

Presently, there are nearly twenty offences covered by the Code,[35] and the Parliament periodically amends this list. It is noteworthy that the agreement signed by the current opposition parties envisages extending jury trials to all crimes that are punished with deprivation of liberty. This commitment is made for the next four years if any of these parties come to power during the elections of 2020.[36]

The present article reflects on complex research findings conducted by the authors of the paper. Surprisingly, the majority of the respondents who participated in the present research viewed trial by jury as a democratic institution, and its introduction was assessed as a logical and positive step forward in the democratization process.[37]

32 Kovalev, Meladze & Zhvania, *op. cit.* note 6.

33 Transparency International Georgia, *Refreshing Georgia's Courts. Trial by jury: More democracy or a face-lift for the judiciary?* (2010), available at https://www.transparency.ge/sites/default/files/Trial by Jury.pdf.

34 Anonymous interview with a judge, Kutaisi, 29-30 May 2018 (transcript on file with authors). Notably, the judge was profoundly very antagonistic towards the introduction of the jury trial in Georgia and actively fought this reform. As he mentioned during the interview, his personal experience and observation of the transformational role of being a juror led him to completely change his mind as he told the researcher during the interview.

35 Intentional homicide (also in aggravating circumstances); intentional grievous bodily harm causing loss of life; trafficking with human organs; unlawful deprivation of liberty, placing in psychiatric hospital, arrest or detention; taking in hostage; torture or threat of it; degrading and inhuman treatment; deliberate prosecution of an innocent person; falsification; explosion; Criminal Procedure Code of Georgia, *op. cit.,* note 12, art. 226(1).

36 Text of the agreement in Georgian, available at https://www.tabula.ge/ge/story/166646-opoziciuri-partiebi-sasamartlos-reformaze-shetanxmdnen.

37 Anonymous interviews with legal experts/lawyers Tbilisi, 29 April 2018 (transcript on file with authors).

3. RESEARCH METHODOLOGY

The main aim of the presented article is a description and analysis of one important stage of the jury trial – the jury selection process in Georgia. This article is a first attempt to analyze the dynamics of the trial and is based on extensive research conducted by the authors. The research was based on a mixed approach with qualitative and quantitative methods and focused on the following: describing the current stage of the reform, establishing a picture of jury trial practices, studying public attitudes, experiences with jury trial, identifying major concerns among professionals, and the general population. Throughout the research, the methodology was tested to identify any shortcomings and make adjustments.

One of the questions that skeptics ask frequently is whether Georgian society is "*ready*" for the trial or not. There has been no substantial study before to understand various factors behind the notion of "*readiness*" as well as conduct a systematic analysis of the process using a complex framework. The article defines "*readiness*" as: readiness of courts (finances, infrastructure, logistics, and judges), readiness of society (people actively participate, increasing demand, citizens are well- informed), and readiness of professionals (professional capacities, trained staff, and mobilized resources), and examines each factor employing verified methodology.

The research team considered various methodological approaches used in other countries, including questionnaire surveys and in-depth interviews with parties, professional judges, and jurors; courtroom and deliberation room observations; review of courtroom transcripts, including jury verdicts; experimental simulations and field studies. Overall, the ability to apply any of these methods depends on such factors as legal and ethical rules, the political regime of the country, and funding and resources available for research.

The research methodology developed for the present study included: desk research, expert interviews, a roundtable discussion, in-depth semi-structured interviews, focus groups, and observations. The research team conducted 65 in-depth, semi-structured interviews with blocks of closed questions for informed respondents (representatives of legal professions, representatives of Public Defender /Ombudsman Office, media, and human rights NGOs/SCOs) in seven cities.[38] Two rounds of focus groups were conducted in 2018 and 2019 (14 focus groups in total) in seven regions with representatives of local societies. The research included observation of 35 jury selection sessions in courts.

Two different types of surveys have been applied by researchers globally to study the experiences of practicing lawyers: case-specific and general experience surveys.[39] The general experience

38 In the first stage of the research the in-depth expert interviews were conducted with 13 judges, 14 prosecutors, 18 defense attorneys (lawyers), five representatives from the Public defender/ Ombudsman; 13 media and NGO representatives, and two jurors.

39 Case specific survey was used in the studies by Harry Kalven and Hans Zeisel, *The American Jury*. (Little, Brown, Boston, 1966); John Baldwin and Michael McConville, *Jury Trials* (Oxford university Press, Oxford, 1979). This type of survey aims to collect opinions of legal

type generalizes respondents' practice in jury trials. While in a case-specific type of survey, respondents are asked whether a specific fact occurred during the trial, for instance, whether the presiding judge violated the principle of impartiality in his or her instructions to the jury, in the general experience type of survey, respondents can only be asked how often they observed such facts. Hence, the general experience type of survey may result in less accurate data than the case-specific approach. However, it should be acknowledged that the case-specific approach is a more time-consuming and expensive option than the general experience survey. For this study, the general experience type of survey was more appropriate and efficient due to the resources available for the research and legislative restrictions described below.

The selection of respondents and focus group participants was carried out using mixed methods: snowball for the selection of concrete respondents out of identified clusters, stratification, and quoting for identification of clusters of people.[40] An equal number of representatives of judges, the prosecutor's office, and defense lawyers was essential to achieve a balanced view of possible attitudes from participants in jury trials. Additionally, it was important to access two groups of legal professionals - those who were involved in the initial stages of the reform and those who are currently working. A separate selection was undertaken among individuals who monitor or supervise the court processes – representatives of the Public Defender/Ombudsman of Georgia, civic activists, and journalists. Another principle was geographic distribution to ensure that the study included respondents from regions as well as from the capital city, Tbilisi. The field work was conducted in two rounds - from February to June 2018 and from March to May 2019 - and covered all seven cities in Georgia where trials by jury were introduced – Tbilisi, Kutaisi, Zugdidi, Batumi, Telavi, Gori, and Rustavi. The Court monitoring/observation tool was developed based on the OSCE (Organization for Security and Co-operation in Europe) monitoring methodology and adapted to Georgian legislation.[41]. The monitors/observers were trained on the process and preparation of a monitoring report.

Jury research in any jurisdiction poses a number of challenges due to legal restrictions and regulations. In Georgia, there are legal restrictions on the observations of the deliberations of juries, even for research purposes. Moreover, Georgian law, like legal provisions in many other jurisdictions, such as Canada, England, and Hong Kong, prohibits researchers not only from observing jury deliberations but also from interviewing jurors about the deliberative process. Therefore, the

professionals in relation to specific jury trials. It allows researchers to collect more factual data and compare views of different participants in each trial: counsel, defendants, police officers and the presiding judge. The general experience survey was used in research of lay adjudication by Peter Duff, Mark Findlay, Carla T. Howarth, & Chan Tsang-Fai, *Juries: The Hong Kong Perspective* (Hong Kong University Press, Hong Kong, 1992) and by Kovalev, *op. cit.* note 10. In this type of survey questions are focused not on specific trials, in which respondents participated either as counsels or presiding judges, but on their general experiences in such trials.

40 This is a method used in the social sciences to access non-probability respondents, to establish a sample of people with certain qualities, for example, to acquire a list of respected experts in certain areas. With some variations the method follows the pattern when the initially identified respondent nominates the others and the sample grows as a snowball.

41 Organization for Security and Co-operation in Europe, *Trial Monitoring: A Reference Manual for Practitioners* (OSCE/ODIHR, Warsaw, 2012), available at https://www.osce.org/odihr/94216. The research also considered monitoring methodology with other court monitoring groups – Georgian Young Lawyers Association/USAID, *Monitoring of criminal trials. Report No. 13* (GYLA, Tbilisi, 2019), available at https://www.gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/angarishi%20eng.pdf.

research does not include the values and reflections of the jurors on the process.[42] This challenge may be overcome in the future if the need for such data is acknowledged and required changes are introduced in the legislation in order to facilitate research.

Restricted access to any information about jurors and the absence of accessible court statistics make court monitoring and observation the main source of information regarding the selection process. However, due to a limited number of jury trials, most of the respondents were very judgmental and less referring to concrete facts or figures. Therefore, the only section that implies the quantified analysis is court monitoring reports. The researchers were present during 35 jury selection hearings in five cities during five trials, but they were not able to observe jury selections conducted prior to the beginning of the study and could not attend all other jury selection proceedings due to limited funds and resources.

The novelty and uniqueness of the research tools used also posed a separate challenge - they had to be analyzed and verified before, during, and after the field work.

Overall, there is a crucial lack of reference data, and research focused on the justice system and law in Georgia (value structures and perceptions, experience and practices, social behavior and factors, etc.), which would put the findings of this study in context and help interpret various factors.

4. THE COURTS, THE LAWYERS, AND JURY SELECTION FROM A TO Z

The research allowed us to receive first-hand information from practicing lawyers, judges, and other professionals. The information provided below is based on oral stories recorded during the interviews, as well as legal regulations and other material obtained during the desk research. The authors attempt to bring together the complex mosaic of information and structure it for more clarity as well as for further reflection and analysis.

4.2 Courtrooms and access to trial

The need for configuration and renovation of courtrooms has been on top of the court reform agenda. The judiciary, represented by the so-called common courts, was reorganized for the pur-

42 "Jurors and spare judges are prohibited from: a) disclosing of information received during the hearing of the case before issuing the verdict or expressing one's own opinion regarding the case under consideration; b) violating the secrecy of deliberations and voting of the jury" Criminal Procedure Code of Georgia, *op. cit.,* note 12, art.236.1.

poses of conducting jury trials.[43] Presently, out of 26 courts of first instance, seven courts and seven courtrooms (Tbilisi, Kutaisi, Batumi, Rustavi, Gori, Zugdidi, Telavi) accommodate requests for jury trials from other court jurisdictions as well:

- Tbilisi court (East) covers cases in Tbilisi and those under the jurisdiction of courts of Sokhumi and Gagra-Gudauta;
- Kutaisi court (West) includes - Kutaisi, Ambrolauri, Zestafoni, Samtredia, Sachkhere, and Tsageri court jurisdictions;
- Batumi court (West) covers Batumi, Ozurgeti, and Khelvachauri courts;
- Rustavi court (East) covers Rustavi, Bolnisi, and Tetritskaro;
- Zugdidi court (West) covers Zugdidi, Senaki, Poti, Ochamchire-Tkvarcheli, and Gali-Gulripshi court jurisdictions;
- Telavi court (East) covers Telavi, Gurjaani, and Sighnaghi court jurisdictions;
- Gori court (East) covers Gori, Akhalkalaki, Akhaltsikhe, Mtskheta, and Khashuri court jurisdictions (The High Council of Justice, Decision #1/9, 1 February 2013).

First significant investments in courtroom re-design started in 2006 with five million Georgian Lari (GEL)[44] Allocated to improvements. Since then, every year, further steps were taken to either adapt or build new facilities.[45] Courtrooms adapted for jury trials have a standard setting with small variations. The judge sits in the center, with the court secretary seated in front of the judge or to his or her side. The defendant is located to the judge's left, the defense lawyer, the prosecutor, and jury candidates are on the right side of the judge.[46]

In some courts, the defendant's dock is separated by a glass panel, and in others it is open.[47]. Courts that have rooms dedicated to jury trials have "open benches" for defendants. Courts that use regular courtrooms for jury trials usually have a glass panel separating the defendant's dock. The defendant is usually guarded by police. Judges wear robes, and lawyers are usually dressed in formal attire.

All trials are recorded, but audio recordings and minutes are only provided to the parties. Access to audio files and trial minutes is problematic for research purposes.[48] Information on court deci-

43 Common courts include: 26 courts of first instance, two appellate courts and the Supreme Court with nearly 300 judges employed in all instances. - The High Council of Justice of Georgia, see data at http://hcoj.gov.ge/en/home.

44 Georgian lari (GEL), rate 1 GEL = 0,39 euro in 2006, or around 1,950 000 euro.

45 The Supreme Court, Main directions of the court reform, Justice magazine 2006, issue #1, published by the Supreme Court of Georgia. One of the last developments was the new building built in Telavi in 2018.

46 Court observation records 2019 the research project "Jury Trial Reform in Georgia: First Steps and First Challenges" (on file with authors).

47 Tbilisi, Kutaisi and Telavi docks have no glass barriers unlike other courts.

48 General Administrative Code of 1999, chapter 3 regulates access to public information. Any document produced by the public entity

sions is accessible, but usually, there is no reference to trial details, which makes such information unusable for a deeper understanding and study of a case. This limitation is even more pronounced in jury trials, where court records only include brief statements of facts, verdict, and sentencing.

4.3 Lawyers training

The ability of judges and parties to effectively use the jury trial for the sake of improved fairness of justice is in direct correlation with the formal education and follow-up training they received. But it should be mentioned that the current curriculum of most of the law faculties in Georgian universities poorly reflects the skills and knowledge necessary to conduct jury trials.[49] The standard-setting document updated by the National Center for Educational Quality Enhancement still does not include clear standards on developing trial advocacy skills so vital for effective implementation of Jury reform.[50] That leaves future legal practitioners with few opportunities to develop necessary skills and gain adequate knowledge for trial practice.

On-the-job capacity building of judges and prosecutors was carried out in all seven regions before the first trials.[51] Some training also involved defense lawyers (defense attorneys) and NGO representatives – for example, in Zugdidi, Kutaisi, and Batumi. However, the lack of proper training among defense lawyers is a commonly perceived problem, and various ways are discussed to deliver knowledge more effectively.[52]

According to the respondents, the moot courts proved to be the most effective training tool, providing the most insight, long-lasting effect, and were emotionally touching for the participants. Some moot courts have been carried out in Batumi, Gori, and Telavi. DOJ/ROL project is presently providing training to practicing lawyers, and nearly 200 defense lawyers have been provided with basic training for the past seven years, but without a systemic approach to skill development from very early stages of education, it will be difficult to see lasting results.

The courts also lack capacity and experience in effective communication with local communities and have not become promoters, centers for information and education about jury trials. The accessibility of reliable information, the capacity building of society and the trial parties, and the visibility of successful participation in a jury trial are obvious factors for improvement.

is public information and meets general requirements which restricts third party access to personal information. Based on the 2019 decision from Constitutional Court "Media Development Fund v. Parliament of Georgia" access to the complete decision was granted by the law based on "public necessity", but it still remains unclear whether trial minutes are accessible for the general public.

49 In-depth interviews reports, the research project "Jury Trial Reform in Georgia: First Steps and First Challenges".

50 National Center for Educational Quality Enhancement directive of 2 April 2020.

51 Anonymous interview with an expert, Tbilisi, 15 April 2018 (transcript on file with authors).

52 *Ibid.*

4.4 Qualifications of jury candidates

It appears that modern Georgian legislators have adopted what Vidmar calls *universal eligibility* for jury service.[53] This concept has developed in the 20th century in response to gender, property, and racial inequalities. The first qualification is a person being registered with the database of the Civil Registry of Georgia as a voter. This implies that only citizens of Georgia can become jurors. Citizenship is a standard requirement for most jurisdictions in the world. There are, however, exceptions such as England.

Second qualification, as opposed to neighboring Kazakhstan[54] and Russia[55] Where jurors are selected from men and women not younger than twenty-five, Georgia followed the contemporary England.[56], the vast majority of Canadian[57] American jurisdictions, and provided the same minimum age of eighteen for jurors as for voters.[58]

The third general qualification is the ability to speak the language of criminal procedure.[59]. Georgian is the only state language of the entire country.[60] (Const. Georgia, art. 2(3)). The law also recognizes the Abkhazian language as the second state language on the territory of Abkhazia.[61] Although during the Soviet period, Georgia had Georgian as the official language, courts and other government organs and agencies might have used Russian as well.[62]

Not all Georgian citizens are proficient in the Georgian language. Around 14% of the population belongs to different ethnic groups whose mother tongue is not the Georgian language; therefore, many of them do not speak Georgian or only on a very poor level.[63]. Interestingly, the law does not require full literacy in the language of the trial. The law only requires that the person be able to speak, but not read or write in Georgian.

53 Neil Vidmar, "A Historical and Comparative Perspective on the Common Law Jury", In Neil Vidmar (ed.), *World Jury Systems* (Oxford University Press, Oxford, 2000), 28.

54 Law of the Republic of Kazakhstan "On Jurors", art. 10(1), available at http://sud.gov.kz/rus/content/zakon-respubliki-kazahstan-o-prisyazhnyh-zasedatelyah-0.

55 Law of the Russian Federation "On Jurors", art. 3(2), available at http://www.consultant.ru/document/cons_doc_LAW_48943/b627da5751a2e8345d191ec951cada837c16ccb5.

56 Juries Act 1974, 23, available at https://www.legislation.gov.uk/ukpga/1974/23/contents.

57 Christopher Granger, *The Criminal Jury Trial in Canada* (Carswell, Toronto,1996, 2nd edition).

58 Criminal Procedure Code, *op. cit.,* note 12, art. 29(a).

59 Criminal Procedure Code, *op. cit.,* note 12, art. 29(b).

60 Constitution of Georgia, *op. cit.,* note 20, 2(3).

61 It should be noted that trial by jury has not been introduced in Abkhazia because it has been *de facto* independent of Georgia since 1990s.

62 Ugolovno-Protsessual'nyi kodeks SSR, 1961, art. 15.

63 Many minority languages are spoken in Georgia: Abkhazian, Ossetian, Azeri, Armenian, Russian, Ukrainian, Kurmanji (Kurdish), Chechen (Kist), Ottoman Turkish, Pontic Greek, Syriac, Avar, Tsova-Tush and Udi. In addition, four distinct languages are spoken by the majority Georgian population – Georgian, Megrelian, Svan and Laz – although these are vernacular languages that are not normally written. Most minority languages are spoken only in certain regions of the country. Number of people whose mother tongue is Azeri: 283,632, Armenian: 235,653, Russian: 83,007, Ossetian: 31,38. European Centre for Minority Issues, "Georgia and the European Charter for Regional or Minority Languages", *ECMI Working Paper # 42* (ECMI, June 2009), 4, 10, available at https://www.files.ethz.ch/isn/102089/working_paper_42_en.pdf.

The fourth general requirement for jurors is the residency qualification.[64] The law states that a juror resides in eastern or Western Georgia, depending on the part of Georgia where the district (city) court is located, where the jury trial is scheduled. As indicated above, courts are divided between Western and Eastern Georgia, so, for example, a jury for one of the courts located in Western Georgia will be selected from the residents of all of Western Georgia. It will be shown further that this is one of the most significant factors for failing to select jurors in a timely and effective way.

The fifth and last general qualification for jurors is physical and mental ability to carry out the duty of a juror.[65] This vague legal provision does not specify the standard for the physical and mental ability of the juror, which can be used by judges arbitrarily and discriminatorily. It would be better if the legislation stipulated clearly in which cases a person can be disqualified from jury service for medical reasons. In some jurisdictions, the law disqualifies only those whose mental disabilities have caused them to be confined to institutions or certified incompetent.[66] In many democratic states, there is a growing practice of allowing physically impaired people to be eligible for jury service. There are cases where courts allowed deaf persons to serve on the jury with the help of sign language interpreters.[67] Some anti-discrimination advocates argued that courts should accommodate disabled persons to enable them to serve as jurors.[68]

There is also a list of disqualifications from jury service.[69]. This list is rather standard and similar to many jurisdictions, but in some cases is quite broad. The first category of disqualifications is occupational disqualifications, which exclude certain occupations from jury duty. This category includes public officials.[70], some professions associated with the administration of criminal justice, acting members of the Georgian Armed Forces, and clergymen. The Code does not specify what occupations are qualified as public officials.

However, according to the Law on Public Service, public officials include the categories amongst which the Code disqualifies only certain professionals associated with the administration of justice. In particular, it disqualifies only prosecutors, investigators, police officers, and defense attorneys. Meanwhile, it does not disqualify judges, various court officers, such as clerks, registrars, correctional officers, probation officers, and penitentiary employees, officers of the State Security Services of Georgia, and other law enforcement agencies.

The 2016 amendments made lawyers, in a general sense, eligible for jury service, disqualifying only defense attorneys. This provision can lead to various interpretations of the disqualification. Defense attorneys are qualified lawyers, and any lawyer can, at any time, represent clients in crimi-

64 Criminal Procedure Code, *op. cit.,* note 12, art. 29(c).

65 Criminal Procedure Code, *op.cit.,* note 12, art.29(d).

66 David Tanovich et al., *Jury Selection in Criminal Trials: Skills, Science, and the Law* (Irwin Law, Toronto, 1997), 50.

67 Amir A. Majid, "Disability Per Se Is Not Bar to Jury Service", 1(1) *Journal of Legal Technology Risk Managemet* (2007), 8.

68 Neil Vidmar & Valerie P. Hans, *American Juries: The Verdict* (Prometheus Books, Amherst, 2007).

69 Criminal Procedure Code, *op. cit.,* note 12, art. 30.

70 "An official is a person appointed or elected to a staff position of a treasury institution." Law on Public Service of Georgia, art. 6.

nal trials. For example, if a lawyer defended a person once in the last five years and now practices almost exclusively real estate law, it is not clear that she is eligible to serve as a juror.

The law neither provides a clear definition of the term clergy nor does it specify whether monks and nuns are part of the clergy, and (based on neutral language, we assume that it affects all religious organizations) whether leaders of other religions, such as Islam and Judaism, are disqualified from jury service. It is noteworthy that before 2017, the law also disqualified psychologists and psychiatrists.

The second category of disqualifications is based on criminal antecedents. In particular, the law excludes the accused, persons previously convicted of criminal offences, and persons who are found guilty of an administrative offence of abusing narcotics in small quantities.

When the candidates' list is compiled blindly, everybody is in the pool, and courts do not have mechanisms and procedures to avoid inviting unqualified candidates to the sessions. This leads us to look into practices in other jurisdictions where similar problems were dealt with by creating a separate list of non-qualified citizens/personnel before the selection process to optimize the outreach procedures.

As the research shows, the problem is significant and seriously undermines the effectiveness of the system. Based on international experiences (USA, Canada, Argentina), one of the ways to deal with the issue is the approach where the court establishes the pool of potential jurors, and the process is split into two consecutive stages with two different selection questionnaires. Initially, the first qualification questionnaires are used to establish a pool of potential jurors irrespective of any trial and are assigned to a concrete district court. There can be a certain number of jury candidates pre-selected based on general eligibility criteria in each region per year, and after verification, the list can be considered as the working list. People on the list would know that they have a high probability of becoming a juror during the given year. The second selection of the candidates will use different questionnaires to establish potential bias or prevent factors with regard to a particular case pending at a court. The idea of pre-selection and establishing a system of jury panels, pre-selected candidates who are called more promptly and effectively, might address most of the problems described below.

4.5 Invitation and summoning of jurors

4.1 Brief description of the process - How does it work?

The voters' list is used to draft jury candidates.[71] The voter's list contains two parts covering Eastern and Western Georgia, respectively. Courts compile the list of candidates using random drafting.

71 Criminal Procedure Code, *op. cit.,* note 12, art.221.1; 221.4; 221.5.

Invitations are sent to 300 candidates from the respective region, and they are called to participate in a selection trial in two consecutive groups, with 150 candidates in each group. The candidates also receive the standard questionnaire that they need to fill out and return to the court manager before the session.

The selection trial is open and allows parties to ask questions, initiate challenges for cause, and a limited number of peremptory challenges (six in a standard trial and 10 peremptory challenges by each party in a trial involving life sentencing).[72] After 12 jurors and two reserve jurors are selected, the Judge schedules court sessions. The hearing is held without interruptions, and the verdict is delivered by a qualified majority (Art. 261).

By 2023, all courts had experience with conducting jury trials: Tbilisi court - 31 cases against 41 defendants, Kutaisi court - 9 cases against 9 defendants, Gori court - 4 cases against 6 defendants, Rustavi court - 1 case against 2 defendants, Zugdidi court - 1 case against 1 defendant. Telavi court had several selection hearings, but the defendant re-elected a bench trial.[73] – needs to be updated

The analyzed data from 35 selection hearings showed the average percentage of appearance was 17%. In total, 59 candidates were selected from the pool of 3600 candidates called in by the court in those 35 selection hearings. This looks dramatic, and it is, in fact, a very disadvantageous statistic that requires close attention and effort to improve.

Most of the negativism about the current practice of jury trial was expressed about the lengthy and inefficient process of jury selection. Jury selection can take up to 10-12 sessions and last for a few weeks. However, some respondents noted that recently the selection process has become more efficient in Tbilisi, with three-four sessions still necessary to select jurors.[74].

Mainly, this prolongation results from the low turnout of candidates. Some 60-80% of the individuals from the initial list fail to show up because court magistrates are not able to locate the candidates at the officially registered address. This is frequently misinterpreted as disobedience to a court order. From those who receive an invitation letter, more than 50% show up for the session, and around 30% of them are ready to participate as jurors. Mostly, from every hundred candidates listed in the official candidate list, only two or three get selected, and the average number of candidates selected during one session is one or two. To select 12 main and two alternate jurors, courts need many sessions.

The Code regulates the selection of candidates for jury panels.[75] According to the law, once a request is made by the defendant to proceed with a jury trial, the first preparatory meeting of the parties with the judge is organized to start the selection of candidates. This meeting takes place in

72 Criminal Procedure Code, *op. cit.,* note 12, art.222 and 223.

73 Information obtained from the Supreme Court of Georgia.

74 This can be attributed to the following reasons: earlier introduction of jury trials in Tbilisi in 2011 and consequently more experiences courts and parties; better reach out to candidates due to high density and easy to travel around the city.

75 Criminal Procedure Code, *op. cit.,* note 12, arts. 221-224.

the courtroom; it is an open hearing, and the judge composes the first list of jury candidates from the electoral roll.[76] The court sends postal invitations to candidates with standard questionnaires, which should be filled out by the candidate and returned within five days. The process is administered by court employees.

Several problems are identified at this stage. Legal professionals interviewed believe the biggest problem with the selection process is the invitation procedure for the candidates. According to the procedure[77] The court uses the voters' list, and an invitation and standard questionnaire are sent to the address registered in the voters' list to the candidate who lives in areas covered by the court's jurisdiction.[78] The procedure is not effective because of the following reasons: not everybody resides at the address indicated in the voters' list. The large numbers of invitations and questionnaires do not get delivered only because the official address indicated in the electoral register is not the residential address of the candidate.

Formal registration is not mandatory in Georgia, and unless owners are selling their property, it is very rare that one changes formal registration.[79] Whenever invitations are left with neighbors or family members, recipients do not take official responsibility to pass them on to the candidate. There has been no comprehensive study of internal labor migration, but it is believed that a large part of the young and middle-aged population is actively migrating to nearby cities or the capital, leaving on rent without formal registration. Therefore, the letters do not reach at least half of the candidates.

The problem that lawyers mentioned during interviews and focus groups was limited access to the phone numbers of candidates. The courts are restricted to act in a manner that many other institutions are already doing, for example, as one lawyer said, "Companies, shops, political parties all call us to advertise either their product or to recruit us in their campaigns. Why shouldn't courts have the right to access telephones and directly call candidates? Phone calls are much better than letters because letters from the court sound intimidating for most people, and during a phone conversation, it will be easier to remove this fear and explain in brief why one is being called by a judge."[80]

The majority of judges stated that they can issue a verdict allowing any institution to use the personal information, including cell phone numbers, but paradoxically, the courts themselves were not allowed to access the data until recently.[81]

76 *Ibid.,* art. 221(1).

77 *Ibid.,* arts. 221(1); 221(5).

78 Decision #1/150-2007 of High Council of Justice of Georgia on the Establishment of District (city), Tbilisi and Kutaisi Courts of Appeal, determining their scope an number of judge, available in Georgian at https://matsne.gov.ge/ka/document/view/4788612?publication=0.

79 Irina Badurashvili, Mamuka Nadareishvili, *Social Impact of Emigration and Rural-Urban Migration in Central and Eastern Europe. Final Country Report on Georgia* (European Commission, 2012), available at http://ec.europa.eu/social/BlobServlet?docId=8862&langId=fr.

80 Anonymous interview with a defense lawyer, Gori, 30 April 2018 (transcript on file with authors).

81 Amendment to the Criminal Procedure Code, Art. 221, 2 July 2020.

As one of the defense lawyers explained, "Candidates are invited by post. Why should one delay the process when it is much easier to call? Once, I was at a party at the trial, and an assistant to the judge just called me; they did not send any letters. If I had not received this call, I would have missed my trial."[82]

As reaching out to the potential juror is much more effective by phone than by post, respondents suggested that the procedure must be simplified and courts should get access to mobile phone numbers of the candidates, which will make it easier to deliver invitation letters and questionnaires.[83] The parliament addressed the problem, and judges were granted the right to use the phone numbers of the candidates.

Due to logistical difficulties, it was suggested that questionnaires could be delivered to a village by local government employees or local police authority for further distribution and not by post or a court employee. But respondents also mentioned that sometimes these policemen or local government employees "*help*" candidates to fill in the questionnaire.[84] The problem of literacy plays its role, but participants of the focus groups and in-depth interviews have mentioned that a major reason for this practice is the total lack of information about jury trials.[85]

The division of the voters' list into two parts is an additional problem for courts. The geographical area covered by the court jurisdictions is very large, and because of the mountainous landscape, many places are hard to reach in a short time. That extends the process of delivering and collecting questionnaires to and from potential candidates.

Some lawyers have suggested that instead of drafting people from half of the country, it would be more advisable to narrow down the selection to smaller geographical regions, and in case jury bias exists, have clear standards to move the trial to a different jurisdiction.[86]

Sometimes lawyers play a negative role in the justice system by encouraging and consulting candidates to initiate self-recusals. There are even defense lawyers who are specifically working to discourage citizens from participating in trials and provide consultation services with directed towards this goal: "Of course many will try to escape the trial but it is more disturbing when lawyers are serving a bad job to the system by advising candidates to fight with defense lawyers during the selection process which will be a sure argument for the judge to dismiss them. These defense lawyers are providing consultancy services to many, as they have a reputation for knowing jury trials, and many people are consulting with them," – Gori.[87]

82 Anonymous interview with a defense lawyer, Telavi, 5 June 2018 (transcript on file with authors).

83 This recommendation was presented to the stakeholders during the first conference, 1 May 2018 at Ilia State University, and also communicated during the follow up meetings with primary stakeholders. In late 2019 this becomes a package of legislative changes.

84 Anonymous interview with a journalist, Gori, 1 June 2018 (transcript on file with authors).

85 Field report for the interviews and focus groups April-June 2018. The research project "Jury Trial Reform in Georgia: First Steps and First Challenges" (on file with authors).

86 Anonymous interview with a defense lawyer, Tbilisi, 25 April 2018 (transcript on file with authors).

87 Anonymous interview with a defense lawyer, Gori, 1 June 2018 (transcript on file with authors).

Sometimes, the defense lawyers have a strategy to extend the election process so that it surpasses the 9-month limit for pretrial detention.[88] And once an accused is released from the pretrial detention facility, it is thought that the job has been done;

Violations of procedures also negatively affect its efficiency. Some respondents reported that representatives of local government and sometimes local police officers are assisting candidates to fill in the questionnaire sent by the judge. For this reason, answers indicated in the questionnaire might not necessarily reflect the position of the candidate.

This is a good indication not only of the problem of legal ethics but also of the need to peddle the work with professionals, educational institutions, and the wider community to better understand the system, understand the value of the reform, and the role of individuals.

The present article argues that splitting the selection process into two stages, as is proposed above, will provide a solution to the problems described in this subchapter and will help to make it speedy and cost-effective.

4.6 Preparing for the trial and self-recusals

After the questionnaires are collected, they are distributed to the parties in the trial, and the first hearing is scheduled. Usually, parties have a couple of days before the hearing, but sometimes questionnaires are delivered the night before the hearing starts. 150 candidates are called on each session, which is half of the list (art. 221.5), but we have already mentioned that the average appearance was 17% based on data from 35 selection hearings.

As candidates come to the court, they are taken to a separate place, assigned numbers, and only after this procedure is complete, they are let into the courtroom: "When I entered the building, there were people in the hall. We waited, and then a court employee came and asked who the jury candidates were among us. Some people identified themselves, and they were asked to get closer to the courtroom. We stayed and watched how they identified themselves and received their numbers. After they started to enter the room, we were also allowed to go inside. I observed that there were relatives of the defendant among us, but they remained calm and did not interrupt the process. The prosecutor and defense lawyer also came in and took place. When we sat down defendants entered the courtroom. They sat behind the bar, which was open. He was accompanied by police officers in uniform."[89]

The procedure looked mostly similar in all courts. In Rustavi, court candidates were separated from other attendees from the very beginning and directed to the second floor, where they were

88 Georgian legislation states a limit for any pretrial detention for the period of nine months. Constitution of Georgia, *op. cit.,* note 20 and Criminal Procedure Code, *op. cit.,* note 12.

89 Court observations Report 2019 (on file with authors).

given numbers, and in the courtroom, they came with number tags in their hands: "I arrived early, and there were already people in front of the court building waiting. After some time doors opened and the court marshal asked whether there were candidates among us. I also saw a court employee with the list checking candidates. I entered the building."

Trials are open to the public.[90] And court monitors hired by the research project team observed that in some cases, relatives of the defendant and victim flooded the courtroom and attempted to leverage psychological pressure.[91]. Judges prevented such attempts, but this still results in delays to the hearings, so an effective mechanism needs to be elaborated to prevent such occurrences.

Monitors also noticed that candidates freely moved around the building during breaks: "During breaks, I was quite close with candidates who walked around the hall, but never mentioned them speaking with lawyers, we even had dinner in one dining room in the court building during one of the breaks.

The first action that the judge takes before moving into the questioning stage is asking candidates if any of them have a reason for self-recusal. According to the law[92] Self-recusal can be demanded by the candidate, should be justified, and parties have the right to intervene with their arguments. The Judge is the one who decides to affirm the request or not, and the decision should be justified.

The monitoring team observed that often the self-recusals were made privately in front of the judge, and therefore, the reasons were not known to the monitors. In most cases, judges affirmed such requests. Judges also frequently affirmed requests without sufficient justification. The largest number of requests addressed health problems of candidates, and in many cases, no examination of the argument was carried out by the court.

The four major reasons that candidates cite for self-recusals are[93]:

- Health – 50%
- Job-related arguments – 40%
- Religion and belief – 3%
- Being affected by crime or had criminal past – 7%.

Religion and belief - there has been no official position from the Georgian Orthodox Church or any leader of any religious group on how they see participation in jury panels, and therefore the argument is largely referring to individual beliefs of candidates who think that their religious and ethical belief does not allow them to make a judgment.

90 Criminal Procedure Code, *op. cit.,* note 12, art. 222(1).

91 Court observations Report 2019, *op. cit*., note 89.

92 Criminal Procedure Code, *op. cit.,* note 12, art. 223(7) and (8).

93 Court observations Report 2019, *op. cit*., note 89.

Occasionally, the candidates used the lack of information and poor understanding of the process as a basis for self-recusal.

The trial monitoring showed that from 3600 candidates called by the court, only 582 candidates showed up, and from these 582 candidates, 419 demanded self-recusal - about 72%. The data shows that 80% of all demands in monitored trials were affirmed by the court, which made an average of 8 candidates make it to the questioning part of the process. Again, we would like to point to the striking numbers that make it practically impossible to recruit jurors effectively.

4.7 Questioning of candidates and Challenges for cause

Once self-recusals are dealt with by the court, the questioning begins. The respondents who were most familiar with the process have a very negative view of the quality of questioning.[94].

Prosecutors and defense lawyers frequently fail to come up with solid arguments for recusal, but judges still follow the request and strike out candidates. Weak arguments of self-recusal are also an issue that leaves courts with empty seats at the end of the day. These tendencies are more evident in courts that have only recently started to implement trial by jury.

The monitoring has shown that the questions asked during the session are not greatly different from the questions included in the questionnaire. “It was rare that questioning included questions that were not in the questionnaire already. I had the impression that a lot was done without words’’ says one of the observers employed by the project.[95] There can be various explanations for this practice, and most frequently, we have heard that from the very first answers, an experienced lawyer already has a psychological portrait of the candidate, and there is no need for deeper investigation.[96]

Several lawyers mentioned to us that they follow the pattern of dividing candidates into three groups: Liberals (would be more tolerant towards mitigating factors of the crime), Mid-Players (can be moved in both directions), Hard-liners (are very rational, without emotions, can make decisions without much hesitation). From interviews, it was obvious that the strategy was clear, but monitoring revealed difficulties during deliberation, which will be underlined below.

Questioning is conducted in turns, first by the prosecutor then followed by the defense attorney. On average, there are seven questions asked by each party, and the hearing lasts for nearly five hours. Considering the number of candidates and the number of questions asked, the time spent on the whole process might look inappropriate. Delays are largely caused by the judge taking time to decide requests, as well as lengthy private discussions between lawyers and the judge.

94 *Ibid.*

95 Interview with the court observer M. M., 23 February 2020 (transcript on file with authors).

96 Anonymous interview with a defense lawyer, 15 March 2020 (transcript on file with authors).

Several questions are treated with special attention by lawyers:

- Do candidates trust law enforcement officials and their statements?
- Do candidates trust evidence presented as a video or audio recording?
- Do candidates believe that murder in self-defense should be treated as a general murder case?

Because nearly 20% of population absolutely distrusts the system and only 5% have a trust, while 53% of respondents believed the Georgian judicial system is 'under influence of the ruling party', 48% that it is 'biased', and 43% that it is 'under the control of an influential group of judges and only 25% said that the courts were 'just'[97] It becomes obvious that selecting a juror is a very difficult exercise when we take blind trust as a standard.

It is difficult to justify causes for other challenges, too. The reasons for challenges were boldly explained by parties, and the majority of them got approved by the judge without much deliberation.

The result speaks for itself. Each questioning observed resulted in selecting none or a maximum of two candidates, which still had to go through peremptory challenges.

The in-depth interviews with legal professionals made it obvious that there are varying patterns in jury selection.

Firstly, the additional "*qualifications*", qualities of jurors which include:

- literacy and education level, whatever it means (make references to interviews with examples);
- complete trust towards law enforcement (mostly prosecutors, judges, but defense lawyers do not object to these questions, make references to court monitoring as many);
- trusting evidence that is presented;
- religion questions;
- ability to convict.

At the beginning of the reform, both sides (prosecution and defense) were trying to select "*reliable*" jurors (those with logical judgment, focused and more diligent, respects authority of law, are not sympathetic to criminal groups, and the last argument is especially sensitive, considering the long history of organized crime and so-called "*thieves in law*"[98] Which is still affecting the formulation of social values and the formation of young minds,[99]) such as middle-aged women above 40

97 Caucasus Research Resource Centers, *op. cit.,* note 4.

98 Louise Shelley, Erik R. Scott, & Anthony Latta, *Organized crime and corruption in Georgia* (Routledge, London, 2007).

99 Caucasus Youth Nexus, *Youth Feelings about Justice, Judiciary and Law Enforcements* (Tbilisi, May 2017), available at http://caynex.ge/

years of age with high education and stable employment, preferably as teachers or administrators at public institutions[100]. During the second phase of the reform, this approach has changed, and no significant clear preferences exist, though representatives of both sides welcome more young people.[101]

It was evident from the research that some judges, and generally representatives of legal professions did not fully trust society, because probably 1) due to fears that Georgian society has too criminal mindset and history of opposing formal legal systems and will be guided by "*deviant*" values, 2) or there is a distrust and unwillingness towards lay people, because they do not know the law and in general they are uneducated. The general resistance towards lay people's involvement is so vividly expressed by lawyers and the so-called "*elite.*"[102] has a history from the very early periods of establishing the Georgian state.[103] This is also reflected in the necessity to "*translate*" the legal speech into a "*normal*" one, which takes time and efforts[104] 3) or the current government has special distrust in society.

There were no concrete age or gender preferences for potential jurors expressed during interviews and focus groups; however, in Imereti, Western Georgia, certain skepticism was expressed about the ability of young men (under 30) not to fall under the influence of others and think critically and independently. Partially, it can be attributed to perceived criminal values presented in this social group or a lack of civic activism.

The monitoring also revealed that the prosecutors and judges tended to exclude potential leaders and critical thinkers who might question the credibility of state evidence. A retrospective change of perceptions was also observed, but it needs a separate article for more in-depth discussion.

In general, it can be argued that challenges for cause are presented in a very vague manner, and in many cases, it remains unclear what exactly provoked the challenge and what the real grounds for parties to disapprove of the candidate.

4.8 Peremptory challenges

Peremptory challenges were used seldom and mostly targeted younger jurors, who were motivated to participate. In private interviews, lawyers expressed critical opinions of active jurors, calling them risky participants who can influence the discussion and promote their position, rather than

en/caynex-survey-youth-feelings-about-justice-judiciary-and-law-enforcement/.

100 Anonymous interviews with lawyers Tbilisi (11-30 April 2018), Gori (1 June 2018) and Kutaisi (30 May 2018) (transcripts on file with authors).

101 *Ibid.*

102 Media monitoring report, *op. cit.,* note 6.

103 Levan Ramishvili & Tamar Chergoleishvili, "March of the Goblins: Permanent Revolution in Georgia", in Stephen F. Jones (ed.), *The Making of Modern Georgia, 1918–2012* (Routledge, London, 2014).

104 Anonymous interview with a defense lawyer, Gori, 1 June 2018 (transcript on file with authors).

follow the theory offered by the parties. It is obvious that psychological portraits used by the parties are playing a role at this stage, and if, for some reason, the court refuses to approve the challenge parties can exercise their right at this stage. According to the law, the number of challenges is unlimited, but the number of peremptory challenges is limited to 10 challenges when the crime is punishable by life imprisonment, and parties have 6 peremptory challenges in other cases.[105]

It was observed that sometimes lawyers are trying to delay the trial until the time of pre-trial detention is exhausted for the defendant.[106] Courts have no mechanisms to intervene, and we have no record of cases when disciplinary measures have been enforced against parties.

5 SUMMING UP AND POINTS FOR FURTHER CONSIDERATION

The research presented in this article shows that jury trial reform is advancing in Georgia. It was also found that the selection of jurors remains a key and persistent challenge for the effective implementation of the jury trial reform in Georgia.

Crucially, problems concerning the selection of jurors are twofold: on one side, logistical and organizational, and on the other side, ideological and to do with residual attitudes. Ideological resistance towards reform will always exist, and it is of crucial importance to keep a dialogue going between professional communities to maintain critical analysis and a spirit of partnership, which is crucial for the successful implementation of reforms. Dialogue within the legal profession is also vital, since our research found that many lawyers do not engage themselves in professional debates with their colleagues, and the ones who do rarely pay attention to the trial by jury.

Institutional difficulties are rather more difficult to address, and there are multiple areas where efforts should concentrate. The study recorded an extremely low rate of appearance of jury candidates. Only 20% of summoned candidates actually show up for jury selection. In addition to this large number of candidates appealing to the court with self-recusals, the research identified that one of the major arguments for self-recusals is the inability to leave the workplace, as a large number of citizens are self-employed in Georgia. The system of compensation only considers costs related to travel and accommodation for candidates and similar compensation for jurors. Authors of the research argue that it is important that self-employed candidates are offered adequate compensation so that they have financial security when they are serving their duty.

105 Criminal Procedure Code, *op. cit.,* note 12, art. 223.

106 Anonymous interviews with lawyers Gori (1 June 2018) and Tbilisi (25 April and 5 May 2018). (transcripts on file with authors).

By way of a conclusion, the paper identifies some points for further consideration. A complex reform of the law is needed; at the same time, a wider societal awareness-raising effort is also needed. Information for the public, teaching about jury trials at schools, would be an important step. But arguably, the effort should be wider and requires the state to make use of municipal buildings, school buildings, state-organized gatherings, and the Public Broadcaster to inform and educate on the jury system and its linkage to citizenship. The awareness-raising campaign is key to success, and presently, very little is done on this subject.

A second point for further consideration relates to the need for capacity building of defense lawyers and to focus on those who have more practice in jury trials, as well as try to build confidence between defense lawyers and prosecutors who participate in jury trials. It was suggested by some participants of the focus groups that mixed training is an effective way not only to share the information and knowledge but also build the ground for future cooperation and ethical professional interaction between prosecutors and defense attorneys.

The need for further reform of the selection stage is evident, and the paper proposes a more open approach to this matter. The authors of the paper understand the difficulty of implementing the reform through law, but reforming jury selection is essential to fully embrace the benefits of the system. It has been suggested above that creating a pool of jurors using qualification questionnaires can accelerate processes, make it more effective, and cost-efficient. The random survey of 5000 citizens by each court annually would be sufficient to recruit enough candidates for at least 10 trials, which is an adequate number considering the present workload.

As a final comment, the paper sees that for a country like Georgia, the introduction of a quality and sustainable jury system could well be a valuable building block in further consolidating democratization and active citizenship. It is important that Georgian citizens perceive jury service as a matter of honor and that jurors are treated with respect by members of their communities. The experience of the past nine years has once again reiterated the historical truth that there are no perfect systems and there is always room for improvement. It is crucial that time is used wisely, and necessary reforms are not delayed so that when the demand is increased, the system will be ready to respond effectively.