



Ivane Javakhishvili Tbilisi State University
Faculty of Law

Journal of Law

№1, 2020



უნივერსიტეტის
გამომცემლობა

Origin and Development of Jury Trial in Georgia (General Overview)

Jury trials have a long-standing history of origin and development. However, initial models of public participation in the administration of justice, dating back to the 11th century England, were substantially different from the modern jury trials.

Despite the different forms of public participation in the administration of justice, jury trials were introduced in Georgia during the First Republic (1918-1921) when significant number of cases were adjudicated. However, soon after the commencement, it was abolished in 1921 as a result of the Soviet occupation. After the restoration of the Georgian state independence, jury trials became operational since October 1, 2010. The scope of the crimes to be adjudicated by the jury trial, as well as its territorial jurisdiction gradually expanded. Therefore, the number of cases heard by the jury trials has been increasing despite the controversial and incompatible positions prevailing around the institution.

Key Terms: *jury trial, jury, origination of the jury trial, development of the jury trial, jurisdiction of the jury trial.*

A jury is the person who safeguards our property, our dignity, life, soul and flesh, in a word, our manhood, and our humanity. It is a realized conscience, and yet to be realized scruples of an entire nation, to the extent possible purified from the best of the men and elevated to a deserved heights.

Ilia Chavchavadze¹

1. Introduction

Alongside the conventional procedures of rendering decisions by a professional judge during the criminal proceeding, a specific form of judicial proceeding is in place in various countries, when the decision is rendered not by a professional judge, but a juror.

A jury trial² consists of group of individuals (historically comprised of 12 people), who give an oath to render a verdict on a legal case based on the evidence submitted to them by a court³.

Jury trial can be considered as (1) a right of the party to have the case reviewed by the civilians; (2) guarantee of the right to life and freedom in cases when an accused can be sentenced to death or to

* Doctoral Student of Ivane Javakhishvili Tbilisi State University, Faculty of Law.

¹ *Bezhashvili T.*, Jury Trial (Brief History of Origin and Development), Tbilisi, 2014, 8 (in Georgian).

² In English – Jury Trial.

³ Jury Trial is also called: Petit Jury, Petty Jury. The concept originated from late middle ages, in England: from Old French juree ‘oath, inquiry, Latin – jurata. See *Feinman J. M.*, 1001 Legal Words You Need to Know, Oxford, 2005, 105.

a deprivation of liberty; (3) right of the citizens to participate in the judicial proceeding and a civic responsibility to get engaged in public processes.⁴

However, the institution of a jury trial, perhaps, is one of the most debatable issues among the representatives of legal profession (in Georgia, as well as in other countries).

Jury trial originates from the early stages of states' foundation. Public was participating in the administration of justice in various forms in Greece, Scandinavian countries, Norway and Sweden.⁵

Based on some resources, scholars believe that jury trials were first established in the IX century, in France. The institution was introduced by Normans in England, in 1066 and since then it had been perceived as an indispensable part of the judicial system of England.⁶ However⁷, the origin of a modern jury trial is still associated with the 11th century England⁸.

Before the enactment of the institution of a jury trial in Georgia, public representation in the administration of justice was ensured through various forms.

It is noteworthy that despite a brief existence of the Democratic Republic of Georgia (1918-1921), jury trial was introduced pursuant to the law adopted by the Parliament of Georgia and Republic of Georgia on January 17, 1919⁹. The institution reviewed multiple cases, whereas under Article 81 of the Constitution, adopted by the Georgian Founding Congress on February 21, 1921, a chapter on Judiciary contained a statement: "Institution of a jury trial exists for reviewing grave criminal offences and political and print crimes"¹⁰.

As a result of the Soviet occupation, jury trial was abolished, however, after the restoration of independence, jury resumed reviewing cases in the Common Courts of Georgia in cases and manner prescribed by the law pursuant to the Constitutional Law of Georgia "On the Introduction of Amendments and Addendums to the Constitution of Georgia" dated as of February 6, 2004.¹¹ Subsequently, since October 1, 2010, a new Criminal Procedure Code of Georgia stipulates enactment of a jury trial. However, initially, jury trials operated only in Tbilisi City Court reviewing criminal cases (only completed) under Article 109 of the Criminal Code (premeditated murder).¹²

Jury trials commenced in Kutaisi City Court since October 1, 2012¹³ resulting in a slight increase of cases reviewed under relevant articles of Criminal Code of Georgia. From January 1, 2017,

⁴ *Shvangiradze T., Chkaidze G., Jury in the Criminal Proceeding, Tbilisi, 2016, 22 (in Georgian).*

⁵ *Jorhand L., Tsikarishvili K., Jury Court (Review of Western Systems), Tbilisi, 2007, 11 (in Georgian).*

⁶ See citation: *Melkadze O., Dvali B., Judiciary in Foreign Countries, World Parliamentarism Research Center, Series of Political-legal Literature, Book XI, Tbilisi, 2000, 148 (in Georgian).*

⁷ The possibility of origination of jury trials in the IX century France is presumed.

⁸ See citation: *Jorhand L., Tsikarishvili K., Jury Court (Review of Western Systems), Tbilisi, 2009, 12 (in Georgian).*

⁹ *Bezhashvili T., Jury Trial (Brief History of Origin and Development), Tbilisi, 2014, 8 (in Georgian).*

¹⁰ *Gurgenidze E., Compilation of Legal Acts of a Democratic Republic of Georgia – 1918-1921, Tbilisi, 1990, 472 (in Georgian).*

¹¹ Constitutional Law of Georgia "On the Introduction of Amendments and Addendums in the Constitution of Georgia", №3272, LHG, 2, 06/02/2004.

¹² Law of Georgia "On Introduction of Addendums and Amendments to the Criminal Procedure Code of Georgia", №3616, LHG, 50, 24/09/2010.

¹³ Criminal Procedure Code of Georgia, 09/10/2009, Article 330.

jury trials started operation in Tbilisi, Kutaisi, Batumi and Rustavi City Courts and Zugdidi, Telavi and Gori Regional Courts¹⁴, therefore, number of cases reviewed according to relevant articles of Criminal Code of Georgia, increased.

From October 1, 2010 to December 31, 2018, jury reviewed 38 criminal case against 49 people at the Regional (City) Courts and relevant verdicts were rendered¹⁵, which indicates that the number of cases reviewed with the participation of the citizens of Georgia, has increased.

The article reviews origin and the relevant stages of development of a jury trial in Georgia starting from the early period until 2019.

2. Origin and Development of Jury Trial in Georgia (Early Period)

While studying issues related to the institution of the jury in Georgia, some scholars draw parallels between mediation and jury trials, arguing that two main details connecting those are – the rule of giving an oath and jointly selecting non-professional jurors.¹⁶

Mediation court in Khevsureti was called “*Rjuli*” (The word “*Rjuli*” means faith in Georgian). Local law was also called “*Rjuli*” in Khevsureti. Selected mediators were named as “*Rjulis Katsi*” (Men of Faith/Men of Law), oftentimes – “*Bches*” (Adjudicators). Substantial discussion of the disputed case was called “*Garjulva*” (bringing to faith), verdict – “*Narjulevi*”, parties – “*Merjuleebi*”.¹⁷

Alongside the mediation courts, public self-government bodies also performed judicial functions in different parts of Georgia, specifically in the mountainous areas.¹⁸

The concept of a “judge” was expressed by the term “*Msajuli*” (Juror), “*Bche*” (Adjudicator) in the 11th century Georgian law. According to the Georgian scholars, the term “judge” denoted a public official having a judicial power, who was specifically assigned to hear the disputed cases, as well as a person, who as a nominee of the appellant, performed the functions of a judge in cooperation with others only for that particular case.¹⁹

Customary law of Khevsureti recognized judicial proceeding, such as “*Rjuli*”, i.e. a court comprised of 4 to 12 selected people. It is noteworthy that the court members were called “*Msajulebi*”. The cases, such as, reconciliation of blood feuders, theft, divorce and other relevant cases were

¹⁴ Law of Georgia “On Introduction of Amendments to the Criminal Procedure Code of Georgia”, №5591-III, 24.06.2016.

¹⁵ Web-site of the Supreme Court of Georgia: supremecourt.ge, Statistics of the cases reviewed by jury, 2019, 1, <<http://supremecourt.ge/files/upload-file/pdf/nafici-msajulebis-mier-ganxiluli-saqmeebis-statistika.pdf>> [10.03.2020].

¹⁶ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03.2020].

¹⁷ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court in Khevsureti, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03.2020].

¹⁸ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03.2020].

¹⁹ See citation: *Bezhashvili T.*, Jury Trial (Brief History of Origin and Development), Tbilisi, 2014, 16 (in Georgian).

reviewed according to ancient customs.²⁰ “*Rjuli*” (Faith) or the mediation court was most frequently addressed in Khevsureti for reviewing cases involving physical assault (*Chra-Chriloba*), murder and robbery.²¹

The author of the book “Five Years in Pshav-Khevsureti”, Giorgi Tedoradze, claims that “Entire *Rjuli* (Faith) was designed in the ancient times; first – in Likoki Valley, where Khevsurians from all parts had gathered and decided on the aforementioned.”²² However, Aleksii Ochauri, the author of the book “Georgian Public Fairs in the East Mountainous Georgia” and a writer of “Arkhoti New Faith” believes that the institute of “*Rjulis Katsebi*” (Men of Faith/Men of Law) is associated with Erekle II and Khevsurian Mamuka Bakalishvili.²³

The position of “*Rjulis Katsebi*” did not exist in Khevsureti, therefore, parties themselves would decide on the jurors. They would chiefly select the honorable, authoritative and a religious person, who knew Khevsurian “*Rjuli*” (law) well.²⁴ As a rule, the murderer and the family member of the victim would select only an authoritative person.²⁵ The same position is shared by Aleksii Ochauri, who when speaking about the rule of physical assault, claims that “*Rjulis Katsebi*” were selected by the parties themselves.”²⁶

The number of jurors/adjudicators depended on the gravity of the case. A simple case could have been heard by two jurors, but murder would have been decided by 12 jurors.²⁷ The jury could consist of 5-6 men as well.²⁸

“*Narjulevi*” or the verdict was unanimously reached and not by the majority of votes.²⁹ If the “Men of Faith/Men of Law” could not reach a unanimous decision, the Jurors would have been dissolved and the parties were advised to select new Jurors. The reasons of not reaching the decision or the position of each juror was kept confidential. Anecdotal evidence suggests that adjudications on the same case could have been arranged nine times only.³⁰

Svanetian mediation court or so-called “*Morvali*” is one of the unique legacies of Georgian judiciary. Svanetian law recognized one of the ancient forms of judicial proceeding – indictment procedure, with all its characteristics. Namely, the parties decided on the composition of the court,

²⁰ Ibid.

²¹ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court in Khevsureti, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03.2020].

²² See citation: *Jalabadze D.*, Georgia Customary Law 2, Tbilisi, 1990, 67 (in Georgian).

²³ Comp. Ibid, 82.

²⁴ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court in Khevsureti, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03.2020].

²⁵ The conclusion is suggested by *Tedoradze G.* in “Khevsurian *Rjuli*”. See citation: *Jalabadze D.*, Georgia Customary Law 2, Tbilisi, 1990, 66 (in Georgian).

²⁶ See citation: *ibid*, 82.

²⁷ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court in Khevsureti, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03.2020].

²⁸ The conclusion is suggested by *Tedoradze G.* in “Khevsurian *Rjuli*”. See citation: *Jalabadze D.*, Georgia Customary Law 2, Tbilisi, 1990, 66 (in Georgian).

²⁹ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court in Khevsureti, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03.2020].

³⁰ Ibid.

presented evidence that were evaluated by the mediators and verdict was rendered. The Judge took passive role in collecting evidence. The proceeding was adversarial, and the parties were absolutely equal. The mediator in Svaneti was named as “*Morevi*” (singular) (“*Morvali*” – plural).³¹

Existing sources indicate that the party could name minimum number of two (one per party), and maximum number of 24 mediators. The number of such mediators would change according to the case nature, gravity, difficulty and significance. 24 mediators were appointed only in case of a murder. Another member of the mediation court was a Chief Mediator, called “*Mutsvri*”, or “*Nugsachu Megne*”. “*Mutsvri*” was appointed for extremely complicated and grave cases.³²

Likewise Khevsureti and Svaneti, mediation court operated in different parts of mountainous Georgia, almost analogous to Khevsureti but known with different names. Mediator-judges in Pshavi are recollected as “*Tavkatsebi*” (Chiefs), “*Kats Sakitkavebi*” (Councilors of Men), “*Natsadi Katsebi*” (Men of Wisdom), “*Kitkhuli Katsebi*” (Men of Books), “*Rjulis Katsebi*” (Men of Faith), “*Soplis Tavkatsebi*” (Heads of Village), “*Mebcheebi*” (Keepers), “*Merjuleebi*”, “*Bcheebi*”, and mediators. Mediator-judges in the valley were called “*Temis Katsebi*” (Men of Community), “*Kitkhuli Katsebi*” (Men of Books) and “*Temis Khalkhi*” (Community People). According to scholars, mediation court existed in Tusheti as well, however, mediators for reconciliation and agreement to a court, were selected by “*Khevisberi*” (Community Leader).³³

3. Origin and Development of Jury Trial in Georgia (Period of Russian Empire – 1868-1917)

During the rule of the Russian Empire, the tradition was changed by resorting on the Russian model of a Reconciliation Judge. The governors of the Russian Empire believed that Georgian population was not ready for the jury trials due to the development of the country’s judicial system.³⁴

The fact is interestingly explained by a historian and philologist, Sargis Kakabadze. He claims that “Unlike Russia, jury court was not introduced in Georgia and Transcaucasia. In Eastern Georgia, as well as in other parts of Georgia, for instance, horse theft in Odishi, or blood feud and robbery in other parts, were considered to be honorable acts among some of the retrograde nobilities. Therefore, it was considered that creating jury court from the locals could have diminished the fight against the criminals.”³⁵

Other scholars have different opinions flagging various factors. For example, the prominent scholar, Doctor of Historical Sciences, Professor Abel Kikvidze believes that “The Government of the

³¹ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court in Svaneti, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03,2020].

³² Web-site of jury court: msajuli.ge, Georgian history – mountain law – a meaning of mediation court in Svaneti, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10.03.2020].

³³ Web-site of jury court: msajuli.ge, Georgian history – mountain law – mediation court – Pshavi, Mtiuleti, Khevi, Tusheti, 2010, 1, <<http://msajuli.ge/index.php?m=794>> [10/03/2020].

³⁴ *Bezhasvili T.*, Jury Trials (Brief History of Origin and Development), Tbilisi, 2014, 16 (in Georgian).

³⁵ See citation: *Kakabadze S.*, History of Georgian Nation 1783-1921, 2nd edition, Tbilisi, 2003, 173-174 (in Georgian).

Russian Empire considered irrelevant to elect public jurors in Georgia. As if Georgian people were not ready for this; Georgian judicial reform in 1868 resulted in imposition of so-called Government Courts, comprised of Russian officials.”³⁶

Almost the same opinion is shared by the member of the extraordinary commission of the Transcaucasian Committee, M. Gruzenberg, who claims that “aspiring for maintaining criminal proceedings under its control on the coastline, as a mean of achieving its objectives, the governing circles of the time were terrified by the jury trials, perceived as an opportunity of expressing public justice and people’s rights, therefore, objected to its creation not only in Caucasus, but on other coastline areas (for example in Poland).”³⁷

Georgian society awaited for the introduction of the jury trials in Georgia (then the province of Russia) with great hopes.³⁸ The aforementioned is confirmed by the statement of one of the authors of the 1921 Constitution of Georgia, Samson Dadiani, claiming that “the desire and need of that”³⁹ need no proof for us, for our people, – we were begging Russian government for almost half a century to grant us such an institute.”⁴⁰ However “Russian authority and local government imposed new law slightly differently,”⁴¹ according to which, considering prevailing traditions and customs, jury trials were considered to be inappropriate for the region.⁴²

4. Origin and Development of Jury Trial in Georgia (First Republic – 1918-1921)

Jury Trials in Georgia started operating during the First Republic. Temporary government decided to implement judicial reform immediately after coming to power, which also envisaged creation of Jury Trials. The first legal act governing the institution was “The Resolution of Judicial Institution” adopted on September 21, 1917. Later, relevant amendments were elaborated for “Criminal Proceeding Resolution”.⁴³

On January 17, 1919, Government of Georgia adopted the law on “Introduction of Jury Trials”. According to the law, a jury with the composition of 12 persons, traditionally without interference of a judge, declared the accused guilty or not guilty.⁴⁴ It is noteworthy that “Resolution of Jury Trial” adopted on January 17, 1919 by Georgian National Council and government of the Republic of

³⁶ Comp. *Kikvidze A.*, History of Georgia XIX-XX cen. (1861-1921), Volume II, Tbilisi, 1959, 34-35 (in Georgian).

³⁷ Comp. *Gruzenberg M. O.*, Jury Trial in Transcaucasia, Tbilisi, 1917, 1 (in Russian).

³⁸ *Nachkebia G., Lekveishvili M., Ivanidze M., Shalikashvili M., Tumanishvili G., Gogniashvili N., Bokhashvili Ir.*, The Institute of Jury Trial in Georgia, Tbilisi, 2013, 20 (in Georgian).

³⁹ Jury Trial is presumed.

⁴⁰ See citation: *Kordzadze Z., Nemstsveridze T.*, Chronicles of Georgian Constitutionalism, Tbilisi, 2016, 275 (in Georgian).

⁴¹ See citation: *Metreveli V.*, Akaki Tsereteli’s Political and Legal Opinions, Tbilisi, 1980, 117 (in Georgian).

⁴² *Nachkebia G., Lekveishvili M., Ivanidze M., Shalikashvili M., Tumanishvili G., Gogniashvili N., Bokhashvili Ir.*, The Institute of Jury Trials in Georgia, Tbilisi, 2013, 21 (in Georgian).

⁴³ Web-site of jury court: msajuli.ge, Georgian history – 1917-1921 – Jury Trials under Independent Georgia (1917-1921), 2010, 1, <<http://msajuli.ge/index.php?m=796>> [10.03.2020].

⁴⁴ *Bezhashvili T.*, Jury Trials (Brief History of Origin and Development), Tbilisi, 2014, 7 (in Georgian).

Georgia, was very progressive and stipulated democratic principles of selecting jurors.⁴⁵ The resolution of “Jury Trial” also included the rule of elaborating questions for jurors.⁴⁶

Provisional law of the Georgia’s Founding Congress and the Republic of Georgia dated as of April 23, 1920, “Introduction of Amendments in the Resolution of Jury Trial” regulated issues such as remuneration for the absenteeism of jurors and imposing punitive and other liabilities for the failure to show up in court due to irregular reasons.⁴⁷

Article 81 of the Constitution of Georgia adopted by the Georgia’s Founding Congress on February 21, 1921 contained the statement regarding the jury trials: “Institution of a jury trial exists for reviewing grave criminal offences and political and print crimes.”⁴⁸ However, jurors changed during the Soviet occupation period by the public jurors who maintained functions in courts formally.⁴⁹

5. History of Jurors’ Rulings in Press (1920-1921)

In February 1921, as a result of the Soviet occupation, jury trials, alongside other democratic institutions, were soon abolished in Georgia. However, some information regarding the rulings of jury trials on criminal cases and verdicts rendered in 1920-1921 in Georgia are preserved. Therefore, it is possible to form a certain opinion by getting acquainted and reviewing those cases.

The information on the first jury proceeding is given in the newspaper “*Sakartvelos Respublika*” (Republic of Georgia) dated as of March 10, 1920. The newspaper stated that “the first jury trial was held on March 8, 1920 in the District Court of Jurors. The court reviewed two cases of theft.”⁵⁰

The analysis of the criminal cases reviewed by the jurors indicate that the institution decided on the inconsistent types and categories of crimes committed by different people. For example, in some cases, the jury acquitted the person charged with intentional/premeditated murder. The Stolerman case, when the person was charged for the murder of his wife, confirms the fact. The murder committed by Stolerman was reviewed as an intentionally deliberated one and should have been sentenced to lifetime imprisonment at hard labour, however the court acquitted the person.⁵¹

Jury trials also reviewed the cases of former officials and military personal. For instance, on July 5, 1920, Tbilisi District Court, with the participation of jury, started reviewing the case of a former general-governor, Shalva Maglakelidze, former marshal of Tbilisi Provincial Battalion,

⁴⁵ *Gurgenidze E.*, Compilation of Legal Acts of the Democratic Republic of Georgia – 1918-1921, Tbilisi, 1990, 207-208 (in Georgian).

⁴⁶ *Ibid*, 214.

⁴⁷ *Ibid*, 382-383.

⁴⁸ *Ibid*, 472.

⁴⁹ *Bezhashvili T.*, Jury Trials (Brief History of Origin and Development), Tbilisi, 2014, 17 (in Georgian).

⁵⁰ Web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, indicated newspaper article, newspaper “*Sakartvelos Respublika*”, 10/03/1920, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].

⁵¹ Web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, indicated newspaper article, newspaper “*Sakartvelos Respublika*”, 06/03/1920, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].

Chachibaia and the public servants of the same battalion – Shengelia, Khoshtaria, Aznaurovi and Iushkevichi. It was one of the most famous cases reviewed by the jury trial in the history of 1918-1921 independent Georgia. The review of the Maghlakelidze’s case continued for almost two weeks, therefore, the proceeding was considered the longest in the work of judiciary of that time. The detained public officials were charged under several articles. After a lengthy deliberation, jury acquitted some of the convicts, and pleaded others guilty.⁵²

Jury trial also reviewed the bribery convictions. For instance, according to the information published in newspaper “*Sakartvelos Respublika*” dated as of March 10, 1920, “On January 29, a case against investigator Badashvili commenced at Tbilisi District Court. On January 31, 1920, charges were brought against Badashvili for bribery. The case review finished in favor of the investigator, jurors acquitted the investigator and ruled for his release.”⁵³

The consideration of expansion of the jurisdiction of jury trials in Georgia then, could be considered as a proof of the institution’s successful existence. For instance, according to the member of the Tuapse Department of the Literacy Society, Evgeni Gabunia, “institution of jury trials at the District Courts operates only in the department of the criminal proceedings. It should also be introduced in the civil proceedings department, so that all cases are reviewed with the participation of jurors.”⁵⁴

6. Development of Jury Trial in Georgia (2004-2010)

After the restoration of the independence of Georgia, according to the constitutional law of Georgia dated as of February 6, 2004, “On the Introduction of Amendments and Addendums to the Constitution of Georgia”, the cases in the Common Courts of Georgia can be reviewed by the jury according to the cases and rules prescribed by the law.⁵⁵ Thus, since October 1, 2010, according the new Criminal Procedure Code of Georgia, jury trial started operation. However, at the initial stage, the jury trials operated only in Tbilisi City Court and reviewed the cases (only completed) stipulated under Article 109 of the Criminal Code of Georgia (murder under aggravating circumstances)⁵⁶.

⁵² Web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, indicated newspaper article, newspaper “*Sakartvelos Respublika*”, 25/11/1920, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].

⁵³ Web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, indicated newspaper article, newspaper “*Sakartvelos Respublika*”, 12/02/1920, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].

⁵⁴ Web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, indicated newspaper article, newspaper “*Public Affair*”, 04/12/1920, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].

⁵⁵ Constitutional Law of Georgia “On the Introduction of Amendments and Addendums in the Constitution of Georgia, N3272, LHG, 2, 06/02/2004.

⁵⁶ Law of Georgia “On the Introduction of the Amendments and Addendums in the Criminal Procedure Code of Georgia”, №3616, LHG, 50, 24/09/2010.

It is noteworthy that sociological surveys were conducted in Georgia from 2004 to 2010. The aim of the surveys was to observe public awareness regarding the essence of the jury trial and its operation, thus, to assess the readiness of the society for the institution.

The analysis of the findings of the sociological survey⁵⁷ demonstrated high awareness level about the institute of jury trials: majority of respondents have heard about jury trials⁵⁸, and the attitude towards the introduction of the jury trial in Georgia was positive.⁵⁹

Nevertheless, scepticism regarding the readiness of the society for the reform, as well as the hypothesis that proper functioning of the jury trials could have been hindered by the unlawful mentality of the society, were also voiced.⁶⁰ Besides, the attitude towards jury trials was chiefly formed based on the selection principle of jurors and on the ground of the decision-making mechanisms: attitudes towards the jury trials were mainly formed based on jurors' selection, mechanisms of recusals/refusing to perform function and prohibitions imposed for the jurors, indicating that personal factors prevailed over formal factors.⁶¹

According to the findings of the sociological survey⁶² conducted in 2009, 66.1% of the respondents knew about the intention of introduction of jury trials in Georgia. It is noteworthy, that the indicator significantly increased since 2007, when 39.9% of the respondents declared the same.⁶³ 62.2% of the respondents would not agree to serve as a juror,⁶⁴ while the most frequent responses to the question "What can make the service as a juror prestigious?" were "the court taking fair decisions" (19.4%) and "fairness" (12.9%).⁶⁵

Besides, some respondents knew who renders conviction at the jury trials. For example, 37.4% of the respondents believed that conviction is rendered jointly by a judge and the jurors⁶⁶ and only 26.7% knew that the decision is only made by the jurors (and not a judge and/or jointly by a judge and the juror). It should also be noted that these parameters significantly decreased compared to 2007 – 42.7% of the respondents were correctly informed then.⁶⁷

⁵⁷ Company "Nikolo M", sociological survey "Public Awareness and Attitudes towards Jury Trials (Main Conclusions and Findings)", the survey was conducted under the auspices of the United Nations Development Program (UNDP) project, "Supporting Judicial System", Tbilisi, 2007, 2, <<http://msajuli.ge/uploads/2007.pdf>> [10.03.2020] (in Georgian).

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid, 3.

⁶² *Institute of Social Researchers*, Basic Knowledge and Perception Regarding Judicial System in Georgia (Final Report), the survey was conducted under the auspices of the United Nations Development Program (UNDP) project, "Supporting Judicial System", Tbilisi, 2009, 2, <<http://msajuli.ge/uploads/2009.pdf>> [10.03.2020] (in Georgian).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid, 4.

⁶⁷ Comp. Ibid, 2.

7. Development of the Jury Trial in Georgia (2011-2018)

Since October 1, 2012, Jury Trials started operation in Kutaisi City Court⁶⁸ and the number of the cases reviewed under the relevant articles of the Criminal Code of Georgia slightly increased. However, since January 1, 2017, Jury Trials were created in Tbilisi, Kutaisi, Batumi and Rustavi City Courts, as well as Zugdidi, Telavi and Gori Regional Courts,⁶⁹ therefore, number of the cases reviewed under relevant articles of the Criminal Code of Georgia, increased.

According to the statistics published on the web-page of the Supreme Court of Georgia, since the enactment of the institute of jury trials (October 1, 2010) till December 31, 2018, in total 38 criminal cases were reviewed by the jurors against 49 people at the Regional (City) courts. Out of this number:

- In 2011, 2 cases were heard against 4 people;
- In 2012, – 1 case against 1 person;
- In 2013, – 4 cases against 7 people;
- In 2014, – 4 cases against 7 people;
- In 2015, – 9 cases against 10 people;
- In 2016, – 4 cases against 4 people;
- In 2017, – 9 cases against 10 people;
- In 2018, – 5 cases against 6 people.⁷⁰

The cases are distributed among courts in the following way:

- Tbilisi City Court reviewed 27 criminal cases (71.1% of the total cases reviewed);
- Kutaisi City Court reviewed 8 cases (21.1% of the total cases reviewed);
- Rustavi City, Gori and Zugdidi Regional Courts reviewed – one case each (2.6% - 2.6%-2.6% of the total cases reviewed).
- Batumi City and Telavi Regional Courts have not heard any cases with the participation of the jurors.⁷¹

As for the types of crimes, since the enactment of the institute of the Jury Trials (October 1, 2010) until December 31, 2018, the jurors reviewed:

- Under Article 108 of the Criminal Code of Georgia (premeditated murder) – 7 cases (against 7 people), including one case under Article 11¹-108 of the CCG (premeditated murder committed by one family member against another family member);
- Under Article 109 of the Criminal Code of Georgia (premeditated murder under aggravating circumstances) – 14 cases (against 19 people), including one case under Article 11¹-109 of CCG (premeditated murder committed by one family member against another family member under aggravating circumstances);

⁶⁸ Criminal Procedure Code of Georgia, 09.10.2009. Article 330.

⁶⁹ Law of Georgia “On the Introduction of the Amendments in the Criminal Procedure Code of Georgia”, №5591-IIS, 24.06.2016.

⁷⁰ Web-page of the Supreme Court of Georgia: supremecourt.ge, Statistics of the Cases reviewed by the jury trials, 2019, 1, <<http://supremecourt.ge/files/upload-file/pdf/nafici-msajulebis-mier-ganxiluli-saqmeebis-statistika.pdf>> [10.03.2020].

⁷¹ Ibid.

– Under Article 19-109 of Criminal Code of Georgia (the attempt of premeditated murder under aggravating circumstances) – 9 cases (against 9 people);

– Under Article 342 Criminal Code of Georgia (Neglect of official duty) – 2 cases (against 3 people);

– Under Article 25-109 (premeditated murder under aggravating circumstances), Article 180 (Fraud), Article 182 (Appropriation and Embezzlement), Article 185 (Damage of property by deception), Article 186 (Purchase or sale of property obtained knowingly by illegal means), Article 333 (exceeding official powers) – one case each (Total 6 cases against 11 people).⁷²

It is noteworthy that out of every 4 accused, on average 3 people were indicted and 1 was acquitted by jurors; more specifically, since the enactment of the Jury Trial (October 1, 2010) till December 31 2018, out of 38 cases reviewed by the jury trial (against 49 people) judgement of conviction was rendered against 36 people (73.5%), while 13 people were acquitted (26.5%).⁷³

Out of every 3 accused, two were fully convicted, whereas one – partially acquitted; more specifically, judgement of conviction against 36 people rendered by the jury, 24 people were pleaded guilty on all charged, while 12 were partially acquitted.⁷⁴

Statistical data on appealing decisions rendered by the Jury Trial is particularly interesting, since it could also be perceived as a criteria determining trustworthiness of the verdicts reached by the jury; more specifically, out of 38 cases reviewed by the Jury Trial (against 49 people), cassation appeal against a judgement on 18 cases were brought in the Appellate Court (37.5%) against 21 people (42.8%).⁷⁵

In addition to that, out of the cases heard by the Appellate Court:

– 3 cases were claimed inadmissible (16.6%) against 7 people (33.3%);

– 2 cases remained unheard (11.1%) against 3 people (14%);

– The judgement remained unchanged on 10 cases (55.5%) against 10 people (48%);

– The judgement was revoked in the part of imposing sentence and was sent back to the court for imposing the sentence on 1 case (5.5%) against 1 person (5%).⁷⁶

The analysis of the statistical data indicates that Criminal Law Chamber of the Appellate Court revoked the judgement of the Jury Trial only in 1 case, in the part of sentencing only.

8. Conclusion

Considering public participation in the administration of justice, jury trial is an important institution uniting the state and the public. A citizen decides the fate of another member of the society and acknowledges his/her responsibility in the process. A judge participates in this process as an arbitrator; he/she controls the process of the fulfilment of jurors' duties and rendering a verdict based on the adversarial system and equality principle.

⁷² Ibid, 2.

⁷³ Ibid, 3.

⁷⁴ Ibid, 4.

⁷⁵ Ibid, 7.

⁷⁶ Ibid, 7.

The establishment of a jury trial in a certain country has always been shrouded in controversy. The concept was either eagerly supported or criticized. Compared to a jury trial, no other legal institution has ever caused such a dispute and debate up to date.⁷⁷ In fact, in comparison to the ancient or modern judicial mechanisms (judicial structures or forms), it is factually impossible to compare jury trials with any other institution that could be more controversial due to its intrinsic nature or causing more diametrically debatable assessment among the attorneys and the public.⁷⁸

Jeffrey Abramson claims that “Jury trial is the best and the worst legacy of democracy.”⁷⁹ The statement is extremely interesting since it shows a stark contrast between two opposite concepts: more public involvement and thus integrating independent components in the judiciary, and the necessity of equipping judiciary with more competency and qualification. According to the definition of the Constitutional Court of Georgia: “Both arguments are extremely important for a proper exercise of the judicial power.”⁸⁰

The former president of the American Bar Association, Robert J. Grey Jr. states that “Jury trial guarantees that our democracy is not managed by only powerful and rich, but rather than that, it is constructed through equal votes of citizens.”⁸¹

Naturally, the same controversial attitude regarding jury trial exists in Georgia.

Jury trial was introduced pursuant to the law of the Parliament of Georgia and the Republic of Georgia dated as of January 17, 1919⁸². Jury court reviewed number of cases. However, before the enactment of the jury trials, public participation in the administration of justice were ensured through different forms.

Jury trial was abolished as a result of the Soviet occupation, however, after the restoration of the independence of Georgia, the jury system was reestablished since October 1, 2010 pursuant to a new Criminal Procedure Code of Georgia

In contrast to the negative perception prevailing among some lawyers regarding the institution, some scholars believe that “establishment of the jury court will require significant time, but the delay of its implementation (by the time when people are ready for the system) is not a solution. Introduction of the jury court will always be considered premature, unless the first attempts of its establishment are implemented.”⁸³ Besides, special attention is paid to the statement that introduction of the jury trial in

⁷⁷ *Nachkebia G., Lekveishvili M., Ivanidze M., Shalikashvili M., Tumanishvili G., Gogniashvili N., Bokhashvili Ir.*, *Jury Trial in Georgia*, Tbilisi, 2013, 24 (in Georgian).

⁷⁸ *Gabisonia I.*, *Jury Trial, Magistrate and Reconciliation Courts*, Tbilisi, 2008, 92 (in Georgian).

⁷⁹ See citation: *Abramson J.*, *We, The Jury: The Jury System and the Ideal of Democracy*, Harvard, 2003, 1.

⁸⁰ *Kublashvili K., Mumladze G., Gabunia M., Melikidze T., Simsive T.*, *Viable Constitution – Definition of the Constitutional Norms*, Tbilisi., 2018, 512 (in Georgian), see citation: Decision of the Constitutional Court of Georgia, dated as of November 13, 2014 on the case №1/4/557,571,576, II-93, <<http://www.constcourt.ge/ge/legal-acts/judgments/saqartvelos-moqalaqeebi-valerian-gelbaxiani-mamuka-nikolaishvili-da-aleqsandre-silagadze-saqartvelos-parlamentis-winaagmdeg-872.page>> [10.03.2020].

⁸¹ See citation: *Widman N., Hans V.P.*, *American Jurors – Verdict*, Tbilisi, 2019, 9 (in Georgian).

⁸² *Bezhashvili T.*, *Jury Trial (Brief History of Origin and Development)*, Tbilisi, 2014, 8 (in Georgian).

⁸³ See citation: *Songulia N.*, *Jury Court*, *Journal “Judiciary and Law”*, №1(32), 2012, 86 (in Georgian).

Georgia may contribute to the development of citizens' state consciousness⁸⁴, whereas the existence of the jury court will nurture democratic values and realization of self-governance principal through involving ordinary citizens in the governance process.⁸⁵ According to the proponents of the institute: "The answer to a question whether jury trial is an ideal of a democracy or not – is apparent. Jury trial is one of the institutions among many others that should strengthen democracy."⁸⁶

Interestingly enough, the same position was shared a century ago by one of the authors of the 1921 Constitution of Georgia, Samson Dadiani, who believed that "wherever the state belongs to people and they are the governors and rulers of their public life, the power of adjudicating fellow citizens should be vested in them as well."⁸⁷

On the case *Citizens of Georgia – Valerian Gelbakhiani, Mamuka Nikolaishvili and Aleksandre Silagadze vs. Parliament of Georgia*, the Constitutional Court of Georgia ruled that "The main aim and the objective of the administration of justice with the participation of jurors is boosting democratic principles in the government generally, therefore, implementing and strengthening democratic component in the judicial system. Public trust towards government is increased through a direct participation of people in the governance on all levels and its branches."⁸⁸

The hearings conducted with the participation of the jurors in Georgia are not sufficient for conducting a comprehensive analysis and drawing final conclusions, however, as the Doctor of Jurisprudence, Guram Nachkebia indicates, "Jury trials justified its existence in the Georgian reality."⁸⁹ Within the framework of the project "Implementation, Study and Analysis of the Institution of Jury Trial", implemented under his leadership, the scholars pinpointed that verdict has to be reached by non-professionals, which has frequently become the matter of debate among scholars. According to them, the judicial proceedings conducted with the participation of jurors in Georgia showed that the case was reviewed and decided based on jurors' inner belief and based on the summary of the

⁸⁴ See citation: *Nachkebia G., Lekveishvili M., Ivanidze M., Shalikhvili M., Tumanishvili G., Gogniashvili N., Bokhashvili Ir.*, *Jury Trial in Georgia*, Tbilisi, 2013, 364 (in Georgian).

⁸⁵ See citation: *Melkadze O., Dvali B.*, *Judiciary in Foreign Countries*, World Parliamentarism Research Center, Series of Political-Legal Literature, Volume XI, Tbilisi, 2000, 154 (in Georgian).

⁸⁶ See citation: *Kusiani E.*, *Jury Trial – Ideal of Democracy?* *Journal "Scientific Journal of Association of Open Diplomacy"*, №2(18), 2011, 53 (in Georgian).

⁸⁷ See citation: *Kordzadze Z., Nemstveridze T.*, *Chronicles of the Georgian Constitutionalism*, Tbilisi, 2016, 275 (in Georgian).

⁸⁸ Decision of the Constitutional Court of Georgia, dated as of November 13, 2014 on the case №1/4/557,571,576, II-92, <<http://www.constcourt.ge/ge/legal-acts/judgments/saqartvelos-moqalaaqeebi-valerian-gelbakhiani-mamuka-nikolaishvili-da-aleqsandre-silagadze-saqartvelos-parlamentis-winaagmdge-872.page>> [10.03.2020].

⁸⁹ The project was funded by "Open Society – Georgia". The aim was to explore and analyse the innovation enacted in 2010 in Georgia – Jury Trial Institution. Within the frameworks of the project, the scholars of the Tbilisi State University Faculty of Law explored and analysed three criminal cases heard with the participation of jury in Georgia. See: *Nachkebia G., Lekveishvili M., Ivanidze M., Shalikhvili M., Gogniashvili N., Tumanishvili G.*, Project – "For Implementing, Studying and Analysing the Institute of the Jury Trials", Tbilisi, 2013, 1, <<http://online.tsu.edu.ge/ge/science/9972/?p=18>> [10.03.2020] (in Georgian).

evidence presented by the parties;⁹⁰ while the introduction of the jury trials in Georgia will support development of all basic principles for the administration of justice – fairness, collegiality, public wisdom and prudence.⁹¹

Bibliography:

1. Constitutional Law of Georgia “On the Introduction of Amendments and Addendums in the Constitution of Georgia”, №3272, LHG, 2, 06/02/2004.
2. Criminal Procedure Code of Georgia, 09/10/2009.
3. *Abramson J.*, *We, The Jury: The Jury System and the Ideal of Democracy*, Harvard, 2003, 1.
4. *Bezhashvili T.*, *Jury Trial (Brief History of Origin and Development)*, Tbilisi, 2014, 7, 8, 16, 17 (in Georgian)
5. *Company “Nikolo M”*, sociological survey “Public Awareness and Attitudes towards Jury Trials (Main Conclusions and Findings)”, the survey was conducted under the auspices of the United Nations Development Program (UNDP) project, “Supporting Judicial System”, Tbilisi, 2007, 2, 3, <<http://msajuli.ge/uploads/2007.pdf>> [10.03.2020] (in Georgian).
6. *Feinman J. M.*, *1001 Legal Words You Need to Know*, Oxford, 2005, 105.
7. *Gabisonia I.*, *Jury Trial, Magistrate and Reconciliation Courts*, Tbilisi, 2008, 92 (in Georgian).
8. *Gruzenberg M. O.*, *Jury Trial in Transcaucasia*, Tbilisi, 1917, 1 (in Russian).
9. *Gurgenidze E.*, *Compilation of Legal Acts of the Democratic Republic of Georgia – 1918-1921*, Tbilisi, 1990, 207-208, 214, 382-383, 472 (in Georgian).
10. *Institute of Social Researchers*, *Basic Knowledge and Perception Regarding Judicial System in Georgia (Final Report)*, the survey was conducted under the auspices of the United Nations Development Program (UNDP) project, “Supporting Judicial System”, Tbilisi, 2009, 2, 4, <<http://msajuli.ge/uploads/2009.pdf>> [10.03.2020] (in Georgian).
11. *Jalabadze D.*, *Georgia Customary Law 2*, Tbilisi, 1990, 66, 67, 82 (in Georgian).
12. *Jorhand L., Tsikarishvili K.*, *Jury Court (Review of Western Systems)*, Tbilisi, 2007, 11 (in Georgian).
13. *Jorhand L., Tsikarishvili K.*, *Jury Court (Review of Western Systems)*, Tbilisi, 2009, 12 (in Georgian).
14. *Jury court – Georgian history – mountain law*, 2010, 1, information is available: <<http://msajuli.ge/index.php?m=794>> [10.03.2020].
15. *Jury court – Georgian history – 1917-1921*, 2010, 1, information is available: <<http://msajuli.ge/index.php?m=796>> [10.03.2020].
16. *Kakabadze S.*, *History of Georgian Nation 1783-1921*, 2nd edition, Tbilisi, 2003, 173-174 (in Georgian).
17. *Kikvidze A.*, *History of Georgia XIX-XX cen. (1861-1921)*, Volume II, Tbilisi, 1959, 34-35 (in Georgian).
18. *Kordzadze Z., Nemstveridze T.*, *Chronicles of the Georgian Constitutionalism*, Tbilisi, 2016, 275 (in Georgian).

⁹⁰ For justifying the aforementioned conclusion, the authors indicate that during the research, there was an instance, when the votes of the jurors split when rendering the verdict. In addition, jurors were not able to adopt unanimous decision within first three hours. *Ibid.*

⁹¹ *Ibid.*

19. *Kublashvili K., Mumladze G., Gabunia M., Melikidze T., Simsive T.*, Viable Constitution – Definition of the Constitutional Norms, Tbilisi., 2018, 512 (in Georgian)
20. *Kusiani E.*, Jury Trial – Ideal of Democracy? Journal “Scientific Journal of Association of Open Diplomacy”, №2(18), 2011, 53 (in Georgian).
21. *Melkadze O., Dvali B.*, Judiciary in Foreign Countries, World Parliamentarism Research Center, Series of Political-legal Literature, Book XI, Tbilisi, 2000, 148, 154 (in Georgian).
22. *Metreveli V.*, Akaki Tsereteli’s Political and Legal Opinions, Tbilisi, 1980, 117 (in Georgian).
23. *Nachkebia G., Lekveishvili M., Ivanidze M., Shalikashvili M., Tumanishvili G., Gogniashvili N., Bokhashvili Ir.*, Jury Trial in Georgia, Tbilisi, 2013, 20, 21, 24, 364 (in Georgian).
24. *Nachkebia G., Lekveishvili M., Ivanidze M., Shalikashvili M., Gogniashvili N., Tumanishvili G.*, Project – “For Implementing, Studying and Analysing the Institute of the Jury Trials”, Tbilisi, 2013, 1, <<http://online.tsu.edu.ge/ge/science/9972/?p=18>> [10.03.2020] (in Georgian).
25. Newspaper “Public Affair”, 04/12/1920, information is available: web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].
26. Newspaper “Sakartvelos Respublika”, 25/11/1920, information is available: web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].
27. Newspaper “Sakartvelos Respublika”, 10/03/1920, information is available: web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].
28. Newspaper “Sakartvelos Respublika”, 06/03/1920, information is available: web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].
29. Newspaper “Sakartvelos Respublika”, 12/02/1920, information is available: web-site of jury court: msajuli.ge, Georgian History – History in Press – History of Georgian Judiciary in Newspapers, 2010, 1, <<http://msajuli.ge/index.php?m=797>> [10.03.2020].
30. *Shvangiradze T., Chkaidze G.*, Jury in the Criminal Proceeding, Tbilisi, 2016, 22 (in Georgian).
31. *Songulia N.*, Jury Court, Journal “Judiciary and Law”, №1(32), 2012, 86 (in Georgian).
32. Statistics of the Cases reviewed by the jury trials, 2019, 1, 2, 3, 4, 7, <<http://supreme-court.ge/files/upload-file/pdf/nafici-msajulebis-mier-ganxiluli-saqmeebis-statistika.pdf>> [10.03.2020].
33. *Widman N., Hans V.P.*, American Jurors – Verdict, Tbilisi, 2019, 9 (in Georgian).
34. Decision of the Constitutional Court of Georgia, dated as of November 13, 2014 on the case №1/4/557,571,576, II-92, <<http://www.constcourt.ge/ge/legal-acts/judgments/saqartvelos-moqalage-bi-valerian-gelbaxiani-mamuka-nikolaishvili-da-aleqsandre-silagadze-saqartvelos-parlamentis-winaagmdeg-872.page>> [10.03.2020].