STUDENTS FORUM

The Main Trends of Origin and Development of the Institute of Jury

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I. Introduction

One of the most important and necessary preconditions for the existence of a modern democratic state is the protection of human rights which cannot be attained without a viable, independent and impartial judiciary. It is natural, therefore, that the problem of the implementation of fundamental judicial reform became so pressing for Georgia which, after the collapse of the Socialist system, is now oriented on democratic values.

For the efficient administration of justice the composition of courts of various instances is particularly important during the consideration of cases under their jurisdiction. This issue falls within the scope of improvement of procedural legislation. In this light, lawyers often speak about the phenomenon of jury and its alternatives (schoeffen, assizers, public jurors, judges of Public Courts, etc).

1. Modes of Participation of Citizens in the Administration of Justice

Legal science identifies two modes of participation of citizens in the administration of justice:
a) Direct, personal participation of citizens in the administration of justice and
b) Indirect, the so-called "mediatory" participation of citizens in the administration of justice, through public representatives.
The example of the first mode is the participation of citizens in the administration of justice in the capacity of jurors (lay-assessors, public assessors, assize, schoeffen). They represent society, have extensive rights (sometimes similar to those of the judges), are independent and obey only the law.

As for the mediatory or indirect participation of citizens in the administration of justice, it implies the participation of citizens and representatives of public associations, not only in court proceedings, but also in preliminary investigation. The law of a number of countries, for example, provides for the participation of a public prosecutor in the hearing of a case wherein petitions of the citizens are considered as the grounds for initiation a criminal case, private or public bailment is considered as a penalty, citizens and society are intensively involved in the investigation of crimes, citizens participate in the verification of

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various facts or the results of investigation actions and the giving evidence in the capacity of witnesses is also presumed as the participation of citizens in the administration of justice.[1]

2. Jurors and Georgian Reality

It seems that the deliberations on jury and jurors are not only of a theoretical and doctrinal nature but also have great practical importance by virtue of amendments to the Georgian Constitution as, for example, Paragraph 5 which was added to Article 82 of the Constitution ("The cases in the courts of general jurisdiction may be heard by jury in cases and according to the procedure, provided by the law") and introduced the participation of jury in the administration of justice. The aforementioned provision, however, cannot provide for the status of jurors, the mode of their conduct and their rights and obligations. Following the expression of the political will of the state power with respect to the introduction of this institution, then, the relevant legal basis is to be developed which will regulate these issues. Whilst this does not mean only the hasty adoption of a law, it is necessary to carefully analyse all the aspects of this problem insofar as the specific nature, traditions and deep historical roots of this institute requires a thorough consideration of the Georgian reality and the historical factors which provided for the development of the mentality of the nation.

A model similar to the institution of jury can be found in the Georgian sources of law of the feudal era. They are not exactly the current jurors but, rather, one of the varieties of participation of the society (citizens) in the administration of justice. In particular, this is the institution of the so-called "sage," which was very authoritative and only distinguished persons were entrusted with the right to perform this duty. In the laws of Beka-Aghbugha (included in the Code of Vakhtang VI) several fragments of the law of Bagrat III are quoted which prove the existence of this institute. It is said in Article 100, for example: "Whoever is a minister, or a person admitted by the King as respectful and experienced, or a good trader or governor of a village, make him a sage, be him wise, able to make sage decisions and say noting that is unfair."[2] As it seems, a sage and a juror have some common features; that is, they are ordinary members of society, are elected by the King (predecessors of jurors were elected in a similar manner) and participate in the administration of justice.

3. Types of Jurors

Jurors and their varieties – assizors (the French model), schoeffen (the German model), public judges (the Italian model) and lay assessors (the model of the Socialist and some of the Post-Socialist countries) – have one common feature: they all are the apparent example of indirect participation of the society in the administration of justice and are elected from amongst its ordinary members. There are, however, a number of distinguishing features within. The main peculiarity, which must be stressed in the first

[1] *Bohziev* (Ed.), Criminal Procedure, II Edition, Guidebook, 2000, 103.
[2] *Javakhishvili,* Works in 12 Volumes, v.6, 1982, 88.

instance, is that there is a distinction in kind between the classic British model and the other models. As is well known, courts have two main tasks upon hearing a criminal case; that is, the determination of a) guilt or factual circumstances of the case and b) penalty or legal aspects. In the classic model of a jury, the terms of references of jurors and professional judges are strictly delimited. The problem of guilt; that is, the factual circumstances of the case (whether a criminal act was committed, whether the accused person committed the action concerned and whether the accused is guilty of the commitment of the act concerned) is settled by the jury at a closed session and a verdict (either "guilty" or "not guilty") is delivered whilst the issues related to penalty; that is, the legal aspects (corpus delicti, necessary defence, urgent necessity, qualification of a act, etc.) are settled by professional judges who discuss the validity and fairness of the verdict, decide on the type and scope of the penalty and similar issues as, for example, the determination of the system of penitentiary institution with respective regimes. The second difference is that the jurors are elected for a specific case whilst the others are elected for a certain term and they participate in the hearings of a number of cases. The third feature, which is peculiar for classic jurors, is 1:12 system; that is, a case is heard at the court by one professional judge and 12 jurors. Initially this model was dogmatic; however, later some different models were also accepted. The amount of jurors may decrease (9, 6, 3, etc.) or even increase (16, 18, 23, 24, etc.). The 1:12 model is peculiar for the countries of the Anglo-Saxon legal system, however, even these countries derogate from this rule. In 1970, for example, the US Supreme Court ruled that the figure 12 is not a magic number and so a six-member jury subsequently became quite common.[3] Some of the US states, to illustrate, have juries consisting of 12-23 jurors. 12-member juries are typical for many countries as Canada and New Zealand.[4] The model, which is common for the countries of Continental Europe, is oriented on the decrease of the number of jurors (less than 12) or on the increase of the number of judges (more than two) or, as well, both alternatives together. The change of their number, however, should not result in the change of their essence. For the verification of whether or not a model of a certain country is a pure jury or its modification (mainly those of the continental Europe), it is necessary to establish to what extent their functions are delimited from each other. In this case the correlation varies; that is, in France, for example, there are 12-member mixed juries.[5]Further, there are juries consisting of three professional judges and nine jurors; three-to-four judges and two-to-three jurors (in Sweden), three judges and five jurors (in Greece); two jurors and two judges (in Austria), nine regular jurors and two talesmen (in Spain),[6] three judges and two schoeffen (in Germany) and two judges and six jurors (in Italy) amongst others.

[3] *Abramson*, Is the American Jury System Going to Be Fair?, Freedom, 2004, No. 11 (23), 23.
[4] *Melkadze/Dvali*, Judicial Power in Foreign Countries, 2000, 78, 149.
[5] *Petrukhin*, Jury Trial Court: Problems and Perspectives, Gosudarstvo i Pravo, 2001, No 3.
[6] For details see: Constitutional Law of Foreign Countries, II Collection of Works, 2002, 221.

For the past decades the changes concerned not only the number of jurors but also their authority. It must be said, too, that the procedure of the delivery of a verdict varies from country to country with, for example, the number of necessary votes also differing therein. Even amongst the laws of the US states, there is no unanimity. In the Federal Court and the courts of 45 states, a verdict must be delivered unanimously whilst in other states, the proportion differs. All of the states, however, agree upon a common principle; that is, there must be a unanimous verdict if an individual is to be convicted to the death penalty for the crime concerned and if the verdict is delivered by six jurors.

The English law also requested the unanimity of jury for the delivery of a verdict of guilty. This requirement was cancelled by the Law of 1967 whilst the Law of 1974 states that in the case of a split decision of jurors; they must be in session for at least two hours. If the jury consists of 12 members, the consent of 12 members is required. In suit, if the jury consists of ten members, the consent of nine is required and so on. In the case of a failure to get the necessary amount of votes, the accused must be acquitted and released from the court hall.[7]

4. Social Purpose of the Institution

Due attention must be accorded to the social purpose of the institution. As previously mentioned, the jury is a legal institution with long-standing traditions and for centuries it contributed greatly to the development of justice and the establishment of democracy in many countries. It is also apparent that the popularity of this institution and trust in it was also conditioned by historical realities.

The importance of the social role of the jury is stressed by the fact that the leading slogan of the European revolutions was the introduction of the institution of the jury. It was construed as a mode of participation of the society in the administration of justice. It was peculiar for pre-Revolutionary, monarch states that the judiciary was the body which actually protected the interests of sovereigns and, thus, was subordinated to them. The introduction of the institution of the jury provided for a relevant independence of this body from the control of political power. There are many historical cases where the jury delivered risky, although impartial, decisions which reinforced the confidence of the population in this institution.

It should be mentioned that from the very outset, the introduction of the institution of the jury was related to the initiative of reformer sovereigns; that is, to gain the confidence in the judiciary. The jury was, however, more than once used against a sovereign power with the US, a former British colony, serving as an example to the aforementioned. The main demand of the fighters for freedom was the right to elect an independent court of jurors. When the government of Great Britain sued some of the American entrepreneurs for tax evasion or for criticism of the King, they were acquitted by the court of jurors (the cases of Peter Zenger and John Hancock, for example).

[7] *Gutsenko/Golovko/Fillimonov*, Criminal Procedure in Western Countries, 2002, 139.

In capitalist countries, the institution of the jury was considered as a reliable guarantor for the protection of human rights, market economy and the free development of individuals. This instrument became more deeply rooted in the US and, in the opinion of authorised representatives of the judiciary, it is of utmost importance for the efficiency of justice within the light of social purpose.

This institution had a different implication in the former Socialist countries which employed a variation of the jury; that is, the institution of "lay-assessors." In the former Soviet Union, the lay-assessors had more functions than a mere participation in the administration of justice as it was related to Marxism doctrine on the disappearance of law in the Communist society; that is, there would be no law and no courts within Communism and the conduct of an individual would be controlled by the influence of society therein. Each member of the society participated in the administration of justice and assured themselves of the fairness of the existing law. In this light, the institution of lay-assessors was related to one of the most important tasks of law; that is, the upbringing of a new individual.[8]

II. Peculiarities of the Development of the Institution of the Jury

From times immemorial, the principle of the so-called "Ordeal" was employed for the consideration of criminal cases; that is, the guilt of a person was determined according to his endurance of physical pain. Further, the co-called "divine justice" was created wherein an individual who committed a crime would have been acquitted if several persons swore upon his innocence. This, then, is the origin of the phrase "sworn juror."[9] In the course of time, divine justice became more and more like the current model of a jury trial.

The jury trial has long standing historical traditions. Some scholars consider that it first appeared in France in 829 during the governance of Saint Ludovic (Devout)[10] although this sounds more like supposition than fact. On the contrary, the majority of legal scholars admits that England is the motherland of this institution and considers that jury trial originated in 1066 by the Normans under Wilhelm I. Officially, the operation of this institution was first reinforced in 1166 under the Ordinance of the King Henri II who wanted the courts to acquire confidence of the population and to make the judiciary flawless and fair.[11] Beginning from the 15th century, it functions already as an independent judicial body which makes decisions based on the facts of the case. A decision on the so-called "Bushell's case" was of particular importance for the reinforcement of the authority of this institution. Under this decision, fining or imprisonment of a juror for acquittal of an accused was prohibited. By virtue of this decision, jury trial gained independence from the King and Aula Regia in 1670. The institution maintained its popularity for the whole of the medieval centuries despite the intense resistance of the Catholic Church (the Inquisition) and spread first in the advanced countries of West Europe (England, Spain, Germany, Italy, France, Russia, etc.) and, subsequently, in their colonies (USA, Canada,

[8] *David*, Major Legal Systems in the World Today, Tbilisi, 1993, 175.
[9] *Liluashvili*, Will the Jury trial Proved to be Efficient?, Samartali, 1992, No 5, 4.
[10] *Petrukhin*, Jury Trial, Challenges and Perspectives, 2001, No 3, 5.
[11] *Chachua*, The judge is Only the Mouth of the Law, Akhalgazrda Iuristi, 2001, May, 6.

Latin America).[12] In the English language, there are several words used to denote the concept of a sworn judge: "jury," "juries," "juror," "juryman" and "jurywoman."[13]

The institution of the jury was often equalised with democratic values and, thus, the red line of the European revolutions was the introduction of the institution of the jury. In the US, for example, it was introduced together with the adoption of the Declaration of Independence (1776). The transposition of the English model of jury trial, however, was not always so painless in other countries due to two main reasons: firstly, each country and nation has its own dignity and originality and, thus, did not want to copy the British models and changed the name, the structure and terms of references of this institution. Secondly, the traditions of each nation have their own peculiar features and, thus, it is impossible for an institution which turned out to be quite successful in one country to successfully operate in all the other countries as well. Some of the countries, therefore, made their own corrections to this institution and introduced within elements of their own legal consciousness and only after this did they put this institution into practice. This process lasted for centuries, giving birth to a "mixed" form of the institution of the jury which can hardly been called a jury trial. This was the case, for example, in the countries of the law of continental Europe which employ markedly different models of the same institution.

In order to make certain conclusions about the models of a jury typical for a certain family of law or advanced country – and their peculiarities and to make respective analysis – it is necessary to give more detailed overview of the respective systems.

III. Jurors in the Countries of Various Legal Systems (A Short Comparative Analysis)

In order to have a general idea of the common types of jurors, their status and their main features, it is necessary to discuss the models of jurors of the countries of at least two legal systems (Anglo-Saxon; that is, Common Law, and Continental Europe; that is, Roman-German). The so-called judges of "lay assessors" of the Socialist countries will be discussed separately.

1. Countries of the Anglo-Saxon Law Family

Naturally, we must speak about the initial source and classic form of arbitrators; namely, the jurors. As a general rule, this model is peculiar for the countries of the Anglo-Saxon system of law. For making the full impression of this institution, it is sufficient to become familiar with the English-American model insofar as these two states dominate within Common Law in the light of the establishment of democratic values and with respect to the institution of the jury amongst them.

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[12] *Chachua,* On Certain Institutional Deficiencies of Judicial Reform, Georgian Law Review, 2003, No 2-3, 424.

[13] *Gutsenko/Golovko/Filimonov*, Criminal Proceedings of Western Countries, 2002, 77.

a) England. It should be mentioned that jurors are far more popular in the countries of the Anglo-Saxon system of law than in the countries of continental Europe. The scope of free discretion of the judiciary is far wider in these countries as it is less restricted by laws and dogmatic rules. This was the situation from the very outset and which conditioned the popularity of jury trial as the body for the protection of freedom. Herein the role of an attorney at law is expanded in the process of proof – this cannot be said about Continental Europe – where a judge is strictly dependant on the law and is able "to manoeuvre" only within its tight framework. Like the majority of the countries of the world, however, the cases are seldom heard by jurors. This particularly refers to civil cases. In England, they hear 4% of criminal cases and only 1% of civil ones. It should also be mentioned that English jurors participate in the hearing of civil cases on blackmail, violation of marriage terms and swindling with the jurors mainly invited to decide upon the qualification of facts of the cases.[14] Any large company or organisation prefers their disputes to be heard by a competent panel of professional judges and do not want their fate to depend on sentimental feelings or possible beneficial interests of laymen; that is, the jurors. Complicated procedures of the participation of jurors, the high level of their possible impartiality and, as well, bribery play important roles.

b) In Great Britain, for the time being, there is a tendency of approximation of the English model of jury trial to that of the Scottish one. In Scotland, 12 jurors participate in hearings of criminal cases, however it is possible to reduce their number to nine or, in the case of civil cases, to eight jurors. Further, the Scots have simplified the procedure of making a decision by jurors and deliver a verdict by a simple majority of votes if two jurors are in a minority and if they failed to come to an agreement within 23 hours.[15]

c) In the US, which once was British colony, jury trial was introduced as a result of influence of English law. This type of system is peculiar only for Great Britain, the US and some countries of the Commonwealth, such as Canada, where its legal system originates from the English one.

By virtue of an amendment to the Constitution of the US, this institution quickly became very popular and, from the 17th century, emerged as a key ally of freedom – the best protector of an accused against the tyranny of the British metropolis – as the Americans were already able to appear in the capacity of jurors. The prestige of this institution became particularly high as a result of such famous cases as, for example, that of John Peter Zenger who in 1735 criticised the British Government which was, at the time, a crime according to English laws. His jurors, however, subsequently acquitted him as they did with the tradesman, Jon Hancock, who disobeyed the English laws and did not pay taxes whilst being engaged in smuggling.[16] This was the situation before the Revolution. After the Revolution, VI-VII Amendments were made to the Constitution of the US which remains as a reputed symbol of democracy. The V Amendment to the Constitution of the

[14] *David*, Major Legal Systems in the World Today, 1993, 164.
[15] *Melkadze/Dvali*, Judicial Power in Foreign Countries, 2000, 152.
[16] *Abramson*, Is the American Jury System Going to Be Fair?, Freedom, 2004, No. 11 (23), 18.

US states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."[17]

The Grand Jury is comprised of 16 to 23 jurors. The jurisdiction of this body covers crimes which are punishable by the death penalty with the exception of maritime crimes. Except for the aforementioned cases, in criminal proceedings an accused is entitled to a quick and public hearing of his or her case by a jury trial in the state where the crime was committed.

Along with the institution of the Grand Jury in the US, there is also a Petty Jury which consists of six members and hears such cases as when an accused may be punished by imprisonment for a period of six months or more.[18]

In the last decade of the 20th century, juries consisting of nine, eight, seven, six, five and less jurors were allowed in the courts of various states. In the State of Georgia, for example, less dangerous crimes may be heard by a jury consisting of five jurors whilst in Florida it is six jurors which hear all the cases for which there is no chance of a death penalty. The law requires a mandatory participation of 12 jurors for the delivery of a verdict of guilty.[19]

Nowadays, jury trial is not as popular in the US which speaks, it can be said, for the rationality of Americans. In the US, 6-7% of criminal cases are heard through jury trial. The main reason for this is because the accused often refuses the employment of this expensive institution and give preference to hearing their cases by magistrate courts.[20] Neither the US lawyers, however, nor those of Western countries consider that this institution is outdated. On the contrary, it is the pride of democracy and the necessary requisite of a rule-of-law state. This notwithstanding, a jury hears, in fact only 6-7% of these cases (according to some other sources only 3-4%) but this does not at all diminish their role. In the US, 14-15 million crimes are committed annually and their absolute majority are petty larcenies. If we consider that 15% of the total cases are heard by juries, it makes for a rather measurable figure taking account of the inflexibility and expensiveness of this institution. Petty crimes and criminal cases, where the accused admits his guilt, are not heard through jury trial as consideration of such cases would have resulted in the overload of this institution.[21]

The fact that jury trial has better maintained its importance in the US than in England is naturally caused by the aforementioned Amendments to the Constitution of the US.

d) New Zealand, like other countries of the British Commonwealth, is also a country of Anglo-Saxon Law and bears all the peculiarities of the English model. Both criminal and

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[17] The US Constitution, The Art of Compromise, 1997, 250.
[18] Ibid., 251
[19] *Gutsenko/Golovko/Filimonov*, Criminal Proceedings of Western Countries, 2002, 265.
[20] *Paliashvili*, Jury Trial, (Will the Introduction of a Jury Trial in Georgia be a Success?), A Human and the Constitution, 2004. No 3, 47.
[21] *Petrukhin*, Jury Trial, Challenges and Perspectives, 2001, Gosudarstvo i Pravo, No 3, 14.

civil cases are heard by jury trial. Criminal cases are heard by 12 jurors whilst civil cases, with due consideration of the value thereof, by four to 12 jurors.

e) Canada also experiences the influence of Anglo-Saxon law, although the legislation of some of its regions (that of Quebec, for example) belong to the Law of purely Continental Europe. (After making the other countries her colonies, the guiding principle for England was to retain unchanged the customary law and the existing legal systems of the countries concerned. This was the case with Quebec which was first a French colony and then annexed by England. The existing French legal system, however, was not changed[22]). In this country, the jury is widely employed for hearing criminal and civil cases as provided for by the law. According to the national legislation, the number of jurors must be 12 and their unanimous consent is required for the delivery of a decision.

f) In Mexico jurors are elected by the population and they are widely involved in the administration of justice. Every accused is entitled to request his or her case to be heard by a jury trial when it is expected that punishment will be graver than a one-year imprisonment or when the case concerns the violation of public order or freedom of the press.

g) In Ireland the jurors appear only in the courts of high instances. A panel consists of one professional judge and 12 jurors. Such a composition is called the Central Criminal Court. For making a decision, the consent of nine of 12 jurors is sufficient. Revision of the decisions of circuit courts also falls with the jurisdiction of this court.[23]

h) In Australia the Supreme Court hears only particularly grave criminal cases under the participation of one judge and 12 jurors who are required to deliver a verdict unanimously. This branch of judiciary considers also civil cases of measurable value. In this case, the panel consists of one judge and, when any of the party so requests, four to six jurors.[24]

2. Countries of Continental Europe (Roman-German) Law Family

Initially, the prestige of jurors was also rather high in the countries of continental Europe. The variety of jurors typical for these countries, however, can hardly be called pure jurors as it is apparent that they are of a different type and with different names and, as a result, there is another form of participation of the public in the administration of justice. Cases, then, are heard by a panel which consists of a judge and non-lawyer (elected) members. These were called Public Courts in Italy whilst they were known as lay-assessors in Russia,

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[22] *Zweigert/Kotz*, An Introduction to Comparative Law, v.I, Tbilisi, 2004, 204.
[23] For details see: *Melkadze et al*, Legal systems of the World Countries, Reference Book, Part I, 2001, 244.
[24] *Koguashvili*, Development of Judicial System in the Search for Statehood (on Austrian Example), Samartali, 1996, No. 12, 45.

as – in Germany and as assizors in France. These names, in time, underwent some further transformation.

Both in the countries of continental Europe and those of Common Law, the introduction of the institution of jurors is related to democratic changes. Furthermore, the abolition or reduction of the level of democracy in these countries always resulted in the abandonment or diminution of the role of the institution of jurors. This was the case in Italy in 1926, for example, when Benito Mussolini, the head of the Fascist government, was granted the right to adopt his "special laws." In those times, the role of jurors was greatly diminished and the most important cases were heard by judges who were appointed by the Government. A similar situation happened in Russia after the Revolution of 1917 and in Germany in the 1920s when the Fascist regime was established in this country.

For a better understanding, we would like to offer several examples, as follows:
a) France is one of the countries which introduced the institution of jurors, however in its "mixed form." Herein, the jurors are called assizors whose court is the only judicial institution where laymen, the so-called "national element," participate in the hearing of criminal cases.

It was in 1808 when France introduced a model similar to a court of jurors under its Code of Criminal Procedure. At that time, the assize court consisted of two independent parts: a) the main part (three to seven people), which decided on penalties, and b) a 12-member jury, which deliberated as to the guilt of an accused. Such a model of assize court existed for about 150 years. By virtue of the Law of 5 March 1932, the jurors were obliged to participate in the determination of penalty. This meant the rejection of the classic model of jurors and the introduction of the so-called "mixed model" which had the features of both jury trial and schoeffen courts. The assizors of the period, however, were more like jurors than schoeffen. On 25 November 1941, when France was occupied by the Fascists, a new law was adopted and the new system was created within which assize courts decided on both guilt and punishment through the participation of professionals and non-professionals. (The Law of 1941 provided for a three-member jury whilst, under the Ordinance of 1945, their number was increased to seven although the number of professional judges remained unchanged at three.) In 1941, Marshal Patten, in fact, liquidated the court of jurors and introduced the institution of "public jurors" which was different from the purely English type, not only according to the correlation of jurors and judges in a panel but also according to their functions – three judges and six jurors – who deliberate on all the issues related to a criminal case. By virtue of the reform of 1958, it became truly mixed as together with the growth of the number of jurors (now to 12 members), the role of professional judges was also increased.[25]

[25] *Gutsenko/Golovko/Filimonov*, Criminal Proceedings of Western Countries, 2002, 365-367.

The Law of 15 June 2000, however, maintained not only the first instance assize court but also the second instance; that is, the appellate version of this court was created. This all speaks for instable position of assize court in France.

For the time being, the number of jurors increased in France and cases at courts are heard by one judge and nine jurors. They make a joint panel and deliberate as to the guilt, type and scope of punishment by an absolute majority of votes. Recently, however, French mass media made it public that jury, consisting of 32 members, heard a particularly grave criminal case and deliberated on the guilt of the accused, who had previously been accused of sexual assault against minors on more than once instance. An examination of grave cases also falls within their terms of reference. These courts are located in Paris and other central cities of the departments with their sessions being held once per quarter. They also hear the cases related to the culpability of minors.[26]

b) The German model is not a classic version of the institution of jurors. There is a tendency in this country towards the reduction of the number of jurors in the panel which is sometimes related to the increase of judges. Germany introduced jury trial from the very outset but it had relatively nothing in common with the similar English model. The Constitution, however, still called them jurors although neither the German "schoeffen" nor the French "assizors" are actual jurors.

Beginning from 1922, jury trial was replaced by a single panel; that is, the court of schoeffen. For the time being, their participation is allowed at the level of Lands at which criminal cases are heard by three judges and two schoeffen in land courts.[27]

This change was conditioned by the well-known German nature; this being, that the Germans refused the transposition of the English model without any changes and they concentrated on the increase of the number of professional judges. In Germany, similar to the majority of the countries of continental Europe, jurors and judges make a single panel and deliver a decision by the majority of votes. The participation and the number of jurors depend on the complexity of a case and the court instance.

The German judicial system consists of four levels:
– The first one is a local court where a judge solely, or under the participation of two schoeffen, hears criminal cases. The sole arbitrators hear the cases which concern private accusation or when the maximum punishment provided for by the law is the deprivation of liberty for a period of up to one year. The cases are heard under the participation of schoeffen when the maximum period of deprivation of liberty for the crime concerned is up to three years;
– The land courts consist of big and small chambers. The big chamber considers comparatively grave criminal cases under the participation of three judges and two schoeffen. The small chamber, on the other hand, is a second instance court and schoeffen

[26] *Kverenchkhiladze/Melkadze*, State System of France, Tbilisi, 1996, 126.
[27] *Petrukhin*, Jury Trial, Challenges and Perspectives, Gosudarstvo i Pravo, 2001, No. 3, 5.

appeals against the decisions of local courts under the participation of a single judge and two schoeffen;
– At the next level, the land appellate court, which is comprised of five judges, reviews cases of treason;
– The Federal Court of Justice examines criminal cases in the capacity of a second instance court or reviews the decisions of lower courts.[28]

In Germany, a special list of candidate schoeffen is being maintained from which the judge, in examining the case, will select a leading and a reserve; that is, supporting schoeffen. The supporting (reserve) schoeffen substitute the leading ones when they leave the proceedings or are unable to participate in case consideration for a particular reason.[29] Furthermore, the German legislation provides for a detailed regulation of the procedure of selection of schoeffen and identifies those who cannot be appointed to this position. In particular, a person, who has not reached the age of twenty-five, a person who is or will turn seventy years old during the proceedings or a disabled persons to include the mentally retarded and anyone otherwise incapable, may not become schoeffen.

In Germany, only a German national may become schoeffen. Due to their official status, the following persons may not become schoeffen: the President of the Federation, Members of Federal or Land Governments, a judge, an official of the Prosecutor's Office, a notary or an official of the judiciary, a policeman or a court bailiff, a member of the clergy or of a religious association (sect), Members of Parliament, the Bundestag, Bundesrat and landstag; doctors, dentists, nurses, midwives, a manager of a pharmacy, if there is no other pharmacist therein, and persons who are notable for their merits before society or who are popularly known.[30]

As in the case of jurors, it is the chairperson of a panel who is engaged in organisational issues. It is he, for example, who sets the time and date of appearance of schoeffen at court sessions. German schoeffen, however, have more powers than jurors in that they are the ones who decide on the points of culpability or the points of law and, what is of particular importance, they are elected not for the examination of a particular case but rather from lists which have been prepared in advance for a term of four years.[31]

Although lawyers do not consider German schoeffen as typical jurors, they are often called as such as is mainly conditioned by the position of the Constitutions of the countries of Continental Europe. According to general assessment, however, and as already mentioned, neither German schoeffen nor French assizors are classic jurors.

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[28] *Gutsenko/Golovko/Filimonov*, Criminal Proceedings of Western Countries, 2002, 449.
[29] Karlsruler Kommentar zur Strafprozesssordnung und zum Gerichtsverfassungsgesetz mit Einfuhrungsgesetz, V Auflage, Muenchen, 1993, 1928.
[30] *Lutz Meyer-Grosse,* Strafprozessordnung mit GVG und Nebengesetzen, 46. Auflage, Muenchen 2003, 1537.
[31] *Gobe,* Strafprozess (Handbuch der Rechtpraxis), 5. Auflage, Muenchen, 1996, 57.

c) In Italy, there are the so-called "people's courts" wherein each court has a panel of jurors, forming a separate section of the court, which examines appeals against the judgements of the courts of jurors of lower instances. The panels consist of two judges and six lay jurors who are selected by the chairperson of the court from the list of candidates prepared by the communities. Starting from 1988, Italy has tribunals where experts – two judges and two experts – instead of jurors participate in trial proceedings.[32] A court consisting of six jurors and two judges is a single panel in Italy and it deliberates together on all the issues related to guilt and punishment of a crime.[33]

d) In Spain, the Constitution secures the right of every citizen to participate in the administration of justice in the capacity of a juror which is a mandatory and remunerated activity under Spanish law. Under the Organic Law of 1995, On the Tribunal of Jurors, crimes committed against an individual, his honour, dignity, human rights and security and also official crimes and arsons fall within the terms of reference of jury trial. This tribunal consists of a chairperson, who is a professional judge, 12 jurors and two talesmen. Any Spanish citizen, who has reached the age of eighteen years, is literate and has no physical or mental deficiency may become a juror.[34]

e) In Austria, the panel of judges trying criminal cases generally consists of three judges and eight lay persons (jurors). The qualification of facts (guilty – not guilty) is decided upon by jurors together with professional judges.

For having committed a lesser crime, a person is tried by a sole judge provided the potential prescribed sentence for the crime concerned does not exceed a period of three years. When a graver sentence may be imposed, the jurors also participate in case proceedings. The Austrian jurors can be attributed to the so-called "schoeffen" model; that is, a panel which consists of two judges and two jurors. There are juries in Austria as well, however, which are peculiar mainly to Anglo-Saxon countries. This jury deliberates on the guilt on an accused person and is convened when an individual may be sentenced to life imprisonment and also when the case concerns political crimes.

f) In Denmark, the grave and particularly grave crimes (except for the crimes related to economic activities such as swindling, embezzlement, misappropriation, etc.) are tried by three professional and 12 lay judges in the capacity of a court of first instance. Decision on the qualification of guilt is made both by the first and the second panels. Professional judges decide on the guilt of an accused person by a simple majority of votes (two of three votes), whilst the decision of lay judges depends on a qualified majority (not less than eight vote of 12). A person is acknowledged guilty if the positions of both panels are identical. After delivering a judgement of guilty, both panels make a joint decision on the

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[32] *Bezhitashvili/Melkadze*, The State Sysytem of Italy, 1997, 125.
[33] *Paliashvili*, Jury Trial, (Will the Introduction of a Jury Trial in Georgia be a Success?), A Human and the Constitution, 2004, No 3, 48.
[34] Constitutional Law of Foreign Countries, II Collection of Works, 2002, 156.

punishment. In this joint panel, a lay judge has one vote whilst a professional judge has four; that is, both panels have an equal amount of votes, 12:12.[35]

g) Sweden provides for a specific regulation of this issue: the first instance cases are tried by three-to-four judges and two-to-three jurors provided that a person will be sentenced to a graver sentence than a monetary fine. The central point is the "assize court" where one judge and five jurors try criminal and marriage-family related cases. Further, the appeals against the acts of administrative bodies and issues related to wages and social security are tried by one judge and three jurors.

h) Greece employs the "schoeffen" model which is peculiar for the countries of continental Europe. Herein, jurors participate in the trial of criminal cases at the first instance with a panel consisting of three judges and five jurors. Judgements of this court may be appealed in the court of appeals where the jurors participate in case proceedings on a mandatory basis.[36]

i) In Belgium, jurors participate in the trial of political crimes and crimes against the press. Under Belgian law, the major criminal cases are tried by panels consisting of one judge and two schoeffen. As regards civil cases, they are mainly tried by sole arbitrators.[37] Relatively grave crimes are tried by court panels which consist of three judges and twelve jurors. The peculiarity of a Belgian court is that the panel of jurors delivers a sentence by a simple majority of votes (seven pro and five against). In this case, professional judges are entitled to disagree with the acknowledgement of an accused person as guilty by jurors. Some legal scholars consider that the aforementioned peculiarity makes this institution more "picturesque" and it becomes somewhat of a classic model of jurors.

j) Practically the same system as in Belgium is employed by Switzerland and Luxembourg wherein jurors are invited for the trial of such important issues as treason, the violation of other rules of international law of a political nature and crimes committed by Federal officials, amongst others. These countries have the so-called "assize court" which consists of six members (one judge and five assizors).[38]

3. Countries of Socialist and Post-Socialist Law

The institution of lay-assessors of the so-called Socialist camp and, specifically, the countries of the former Soviet Union should be analysed separately.

a) The Soviet Union. The elements of the institution of jurors appeared in this space in 1864, even before the creation of the Soviet Union, when judicial reform was implemented in Tsarist Russia. This reform is known as the outcome of the efforts of Western-oriented

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[35] *Gutsenko/Golovko/Fillimonov*, Criminal Procedure in Western Countries, 2002, 33.
[36] Constitutional Law of Foreign Countries, II Collection of Works, 2002, 231.
[37] *Melkadze et al*, Legal systems of the World Countries, Reference Book, Part I, 2001, 370.
[38] *Melkadze et al*, Legal systems of the World Countries, Reference Book, Part I, 2001, 291.

legal scholars.[39] This institution, however, existed only until the October Revolution although, in the opinion of the majority of Russian scholars, the introduction of the jury trial was the most prominent achievement of judicial reform of the time. This institution became very popular in Russia with the Russian press regularly covering case proceedings under their participation which resulted in the creation of a whole generation of orators and the population regaining trust in the justice system. Any member of the society was able to become a juror and enjoyed rights similar to those of judges in delivering judgements.[40]

As previously mentioned the institution of jurors was abolished in Russia after the October Revolution as it came to be regarded as a bourgeois element and disappeared from the Union for 76 years. During this period, the Soviet regime created a completely different phenomenon; that is, one of lay-assessors.

According to the Soviet ideology, the jury was considered as a dangerous, liberal institution. Instead, Socialist countries employed the so-called "lay-assessors" which where elected according to their workplaces, at the assembly of citizens, through open balloting. Like Anglo-Saxon jurors, the Soviet judges of People's Courts were ordinary citizens who were invited to trials according to the plan approved in advance. They were elected at the meetings of workers, peasants and servants for a term of two years. At the first instance court, the cases were tried by the court under the participation of lay-assessors who always formed the majority of panels.

Lay-assessors were freed from the obligations of their work places during the period when administered their authorities. They enjoyed the rights equal to those of the judges with respect to both the qualification of the facts and the points of law. The judges, who always were lawyers by education and held official positions, had measurable influence on lay-assessors and, as a rule, the members of the panel had a common position during the proceedings. In the opinion of Rene David, the lay-assessors of Socialist countries had more functions and bigger workload than the jurors. The jurors, and first of all the "schoeffen," who are often compared with the lay-assessors, were quite useful as they provided the court with special technical knowledge as, for example, the schoeffen, or vice versa, used to bring people's ideas and opinions to the court and amend the legal professionalism of judges in the field of jurisprudence. In the case of the Soviet Union, where both judges and lay-assessors were elected and neither of them was required to be professionals, these deliberations are less useful.[41]

b) Georgia. As Georgia was one of the Soviet Republics until 1991, the Soviet version of jury trial was also implemented in our country. An analysis of the articles of the Code of Criminal Procedure of the Georgian Soviet Socialist Republic as concerns lay-assessors shows that their rights were equal to those of the judges and, in the case of deliberation as to the appropriate punishment or some other issues, to those of a chairperson of the session. Both professional judges and lay-assessors were elected in accordance with

[39] *Demichev*, Perspectives of the Russian Jury Trial, Gosudarstvo i Pravo, 2002, No 11, 101.
[40] *Petrukhin*, Jury Trial, Challenges and Perspectives, Gosudarstvo i Pravo, 2001, No 3, 5.
[41] *David*, Major Legal Systems in the World Today, Ganatleba, Tbilisi, 1993, 175.

the procedure provided by the law. At the first instance court, the cases were tried by one judge and two lay-assessors who were independent and obeyed only the law. There were also talesmen (reserve lay-assessors) who attended the sessions and were ready to substitute a lay-assessor in case the latter left the panel when hearing of a criminal case lasted for an overly long period of time. Further, one of the peculiarities of the status of a lay-assessor was that he could have been both the object (a party was entitled to challenge both the lay-assessors and talesmen) and the subject of challenge as he decided the issue of challenge of professional judges together with the court panel.[42]

The two "lay-assessors," introduced by the Bolsheviks to replace jurors, have never been the social instrument for balancing professional judges. They enjoyed wide authority – but only formally – and were often called a "rubber-stamp" given their lack of real authority. In the last decades of the Soviet Union, no one argued the deficiency of the institution other than within M. Gorbachev's "perestroika" which also covered judicial reform, and which officially admitted the weakness of lay-assessors and took account of "certain cases of codification of the right of jury trial to hear the cases."[43] The reason for this is a well-known fact, as will be explained, and which is supported by people who earlier appeared in the role of lay-assessors during court proceedings. The participation of lay-assessors was rather formal as their rights often remained just rights-on-paper and, in fact and despite their wishes, were not able to efficiently participate in the settlement of cases; that is, to ask the parties questions of principle importance, to hear their answers and to get involved practically in the determination of guilt and punishment, amongst others. Their participation in the administration of justice, therefore, was mere fiction and one of the parts of the Soviet ideology.

c) Hungary. In Hungary, which was a Socialist country in the nearest past, the institution of lay-assessors, similar to those of former Soviet Republics, still exists. This institution, however, has changed considerably during the past decades. In particular, according to the current legislation, a lay-assessor may not be brought to account for crimes committed during the administration of justice without the prior consent of the President. It is worth mentioning, too, that the terms for occupying the office of a law-assessor and a judge and nearly the same. For becoming a lay-assessor, for example, a citizen must have reached the age of 24 years, be a Hungarian national and have no prior criminal offences and have the legal right to vote. Furthermore, a higher legal education is required in the case of holding the office of a judge. The candidate lay-assessors are nominated according to their places of residence by electors, local self-government bodies and social organisations (except for political ones). The lay-assessors are elected by a local self-government body for a term of four years. The lay-assessors of this country are more like the jurors of continental Europe; that is, those of the Anglo-Saxon countries. The court panel consists of one judge and two lay-assessors who have equal rights and

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[42] With respect to terms of references of lay-assessors of Soviet Georgia, see: Articles 13 and 244 of the Criminal Procedure Code of Georgia of 1960.

[43] *Teiman*, Reform of the Prosecutor's Office in Russia – a Rrosecur: an Accuser or the Eye of the Executive Power?, Herald of Justice, 1996, No 3, 3

decide upon all the issues related to a criminal case.[44] It should be mentioned as well that in Hungary, like in all the countries of the former Socialist camp, a certain influence of the ideology of the Soviet-type lay-assessors is still notable.

Following the collapse of the Soviet Union, the Post-Socialist countries tried to introduce the old Russian, pre-Revolutionary jury trial – introduced on 16 July 1993 – as a matter of experiment. Following this, the institution of jurors was reinforced by the Constitution of Russia and respective legal acts. The Code of Criminal Procedure of 2001 provided for its introduction, in certain intervals, throughout the whole of the Russian state.

The official statistics speak for the growing popularity of this institution in Russia. In the regions, which employ the institution of jurors, more and more accused persons demand their cases to be tried by jury trial (in 1994 – 20,4%, in 1995 – 30,9%, in 1996 – 37%, in 1998 – 43,2%, in 1999 – 44%). The number of persons with respect to whom the court of jurors delivered a verdict of not guilty is also increasing (in 1994 – 241 persons, in 1995 – 544 persons, in 1996 – 618 persons, in 1997 – 825 persons, in 1998 – 800 persons and in 1999 – 867).[45]

This statistics and the assessments of modern Russian legal scholars allow for the assertion that the institution of jurors proved to be successful in this country and its popularity among the population is ever more increasing.

Russian legislation has, until recently, allowed for the participation of two lay-assessors in trials of criminal cases at first instance court. Moreover, until the enactment of the new Code of Criminal Proceedings of 2001, the institution of jurors was employed only by some of Russia's federal units during the previous seventy-eight years of the Soviet system. The cases under their participation were tried only in the Sevastopol, Altai and Krasnodar regions and also in Ivanovo, Moscow, Riazan, Saratov, Ulianovsk and Rostov circuits.[46]

IV. Conclusion

The analysis of various models of jurors and within various countries shows that this institution is rather rich in its traditions and was particularly important for the involvement of the society at large in the administration of justice, a revival of the trust in judiciary, an improvement of the level of protection of human rights and, in certain cases, for supporting state ideology which was attained successfully for centuries. These days, however, when the popularity of jurors has considerably decreased in democratic countries and, respectively the amount of cases tried under their participation becomes less and less, a question arises: how efficient will the introduction or operation of the institution of jurors be in the world of the twenty-first century? This question is particularly pressing for Georgia insofar as the changes to the Constitution allowed for the participation of jurors in the administration of justice and now the development of respective legal framework may become the point of agenda. This is indeed a topic for further deliberation.

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[44] Constitutional Law of Foreign Countries, II Collection of Works, 2002, 370.
[45] *Shurigin*, For Five Years the Jury Trial Reached Nine Regions, Russian Justice, 1998, No 12, 5.
[46] *Rizhakov*, Article-by-Article Comments on the Code of Criminal Procedure, 2001, 661.