



Caucasus Institute for Peace, Democracy and Development

The Georgian Judiciary – Paths to Improvement

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Introduction

Since 2004, important steps have been taken to reform state institutions in Georgia. There is a difference of opinion on what effect the increase in Georgian state capacity has had on individual rights and on the balance between the state, the business sector and civil society. One of the most significant issues in this regard is the reform of the Georgian courts and the creation of a just and impartial judiciary. Judiciary reform is still a work in progress in Georgia. The improvement of court infrastructure and buildings as well as the introduction of better socio-economic conditions for employees in the sector are the most noticeable changes. Institutional guarantees of judicial independence are largely in place. However, how independent the judiciary is in practice is still a matter of doubt. It is also still to be seen whether the system can fully fulfill its functions.

The following report does not aim to analyze the problems with the Georgian court system.¹ This report forms a part of an analysis of the deficit in democratization and possible ways to mitigate this and so aims to give an overview of the main issues that dominate discussion on the court and justice system. For this reason, this report does not contain any legal analysis but focuses on the political context and implications.

The report relies on a number of studies undertaken previously, resources available in the media, as well as formal and informal discussions such as meetings with relevant individuals conducted as part of the project.

The report is divided into several parts. The first part is a short explanation of why the correct functioning of the judiciary is so important for democratization. Here, the focus will be on the interrelationship between the rule of law, modernization and democracy. This issue is important as the current Georgian government places such an emphasis on modernisation, while the proper functioning of the judiciary is inextricably linked with effective state capacity. In the second part, a short analysis of indicators of the Georgian judiciary's performance and to this end Freedom House's data is used between 2004 and the present day. After this, there is a section focussing on the levels of public trust towards the Georgian courts and the situation in terms of the financial and institutional independence of the judiciary. Two issues related to the effectiveness and independence of the courts are also analysed – plea bargaining and jury trials. The report ends with a conclusion, which sums up the main issues.

¹ This report deals with the main court system (local courts, appeal courts and the Supreme Court) and not the Constitutional Court.

The relevance of courts and the “legal state” to democracy and modernization

Political science has remained unable to satisfactorily answer the question of whether democratic or authoritarian states are the most effective in terms of development. The example of many authoritarian states shows that they often quite successfully achieve economic development and modernisation. Of course, a positive correlation exists between democracy and wealth. In other words, democratic states are, with a few exceptions, economically successful and have modern societies. However, it is not true that every rich country is a democracy and many authoritarian regimes have successfully modernized their countries. The rule of law is important to the link between democracy and development. It is the existence of the rule of law that creates the institutional context in which is necessary for economic development. Easy to understand laws and working procedures increase trust and reduce the perception of future risk, which in turn encourages both internal and external investment. The extent to which this system came about through democratic means or the details of how laws were passed to bring it into being are less important. So it is possible for the rule of law to exist without democracy.

The justice system and its correct functioning are directly linked to the rule of law. In democratic states, courts are very important but they are also essential to all states in which the rule of law applies. This is relevant to the post-2004 Georgian government, whose prime aims were the development and modernisation of the country. In Georgia, the government always talks of improving the investment climate and of Georgia being one of the world's great success stories in this regard. The effective functioning of the courts is essential to the creation of this positive investment climate. The existence of effective courts and the rule of law may be very important for democracy, but it is also essential for modernization.

Evaluation of the judicial system

Freedom House provides us with one of the best ways to measuring and assessing the courts and the level of judicial independence. Since 1995, it has focused especially on assessing the situation in post-Communist states in eastern Europe. Each country's electoral system, civil society, media, levels of corruption, national and local governance, legal system and courts are assessed to give a general picture of the situation. The country's overall score is compiled by combining the scores of the country in each sphere. Freedom House uses the following classifications when analysing a country's judiciary:²

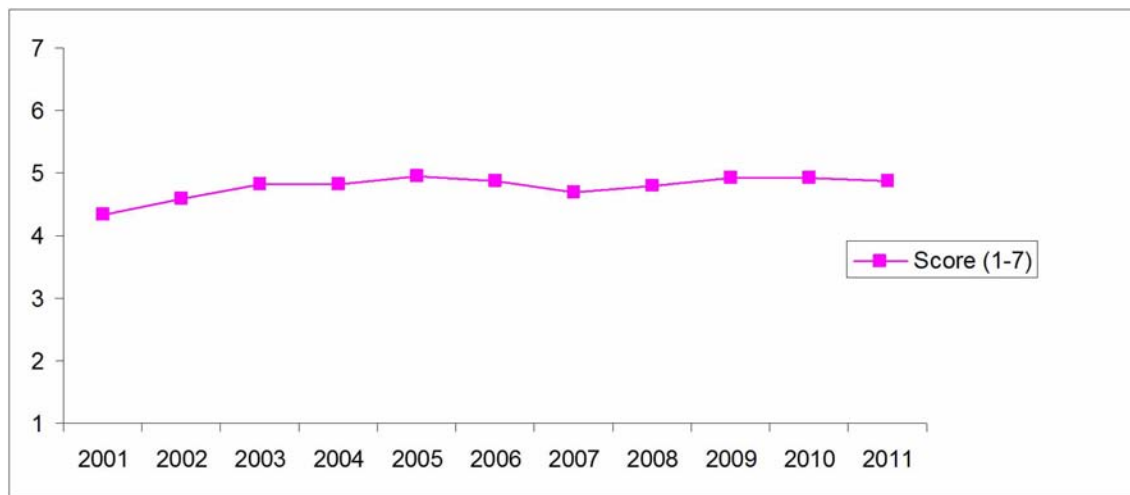
1. In a consolidated democratic system, the judiciary is independent, impartial, timely, and able to defend fundamental political, civil, and human rights. There is equality before the law, and judicial decisions are enforced, though timeliness remains an area of concern (1-2.99 points).

² See Freedom House, Nations in Transit <http://www.freedomhouse.org/template.cfm?page=17> (20.10.11)

2. In a semi-consolidated democratic system, the framework for an independent judiciary is in place. However, judicial independence and the protection of basic rights, especially those of ethnic and religious minorities, are weak. Judicial processes are slow, inconsistent, and open to abuse (3-3.99 points).
3. In a transitional or hybrid regime, the judiciary struggles to maintain its independence from the government. Respect for basic political, civil, and human rights is selective, and equality before the law is not guaranteed. In addition to the judiciary being slow, abuses occur. Use of torture in prisons may be a problem (4-4.99 points).
4. In a semi-consolidated authoritarian regime, the judiciary is restrained in its ability to act independently of the executive, and equality before the law is not guaranteed. The judiciary is frequently co-opted as a tool to silence opposition figures and has limited ability to protect the basic rights and liberties of citizens (5-5.99 points).
5. In a consolidated authoritarian regime, the rule of law is subordinate to the regime, and violations of basic political, civil, and human rights are widespread. Courts are used to harass members of the opposition (6-7 points).

Georgia has, in terms of its overall democracy score, stably remained within the transitional or hybrid regimes category (between 4-4.99 points). As has already been stated, a country's democracy score is an average of scores in each category.

Diagram 1: Georgia's democracy score

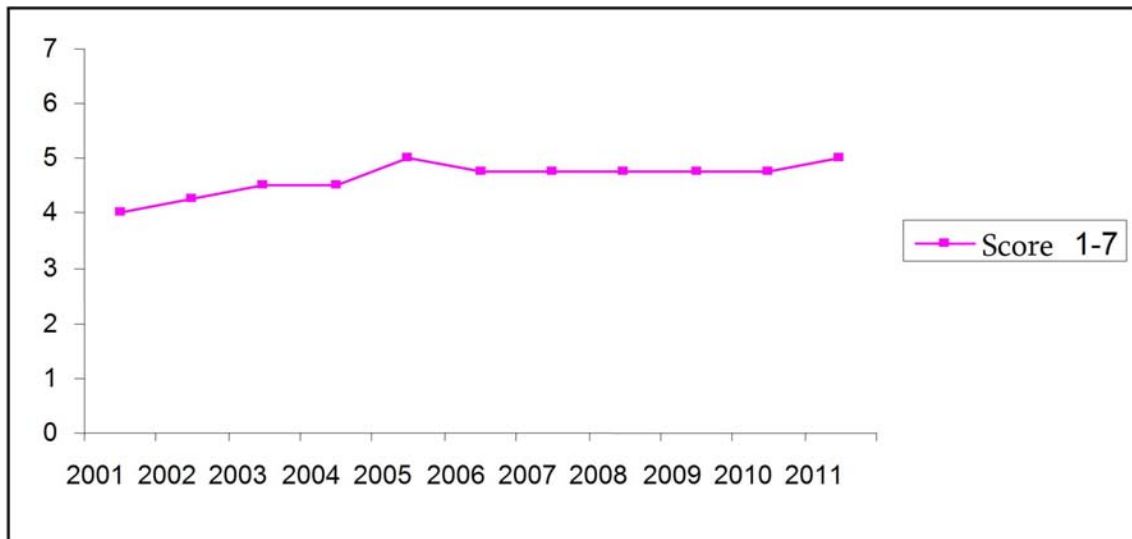


Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Score	4.33	4.58	4.83	4.83	4.96	4.86	4.68	4.79	4.93	4.93	4.86

Source: Freedom House, Nations in Transit, <http://www.freedomhouse.org/template.cfm?page=17>
 (Note: The scores reflect the situation in the previous year as the analysis encompasses information gathered over the course of the year)

It is also interesting to note the score Georgia got specifically for the judiciary:

Diagram 2: Georgia's judiciary score



Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Score	4.00	4.25	4.50	4.50	5.00	4.75	4.75	4.75	4.75	4.75	5.00
Score	4.33	4.58	4.83	4.83	4.96	4.86	4.68	4.79	4.93	4.93	4.86

Source: Freedom House, Nations in Transit, <http://www.freedomhouse.org/template.cfm?page=17>

(Note: The scores reflect the situation in the previous year as the analysis encompasses information gathered over the course of the year)

As we can see, Georgia's judiciary score is more or less in line with its overall democracy score. Although it is the only score that deteriorated in 2011 when Georgia's overall democracy score improved.

For additional clarity, it should be noted that when assessing whether a country falls between 4-5 or 5-6 points Freedom House guidelines specify that electoral rules and electoral practice be assessed separately – i.e. the existence of institutional and legal channels and rules as well as the operation of these rules in practice. Scores are awarded in these areas in the following way:

4	There are rules and policies which are in line with most standards in terms of human rights, individual liberty, democratic norms and the rule of law.	There are practices which are in line with most standards in terms of human rights, individual liberty, democratic norms and the rule of law.
5	There are rules and policies which are in line with most standards in terms of human rights, individual liberty, democratic norms and the rule of law.	There are a lack of practices which are in line with most standards in terms of human rights, individual liberty, democratic norms and the rule of law.

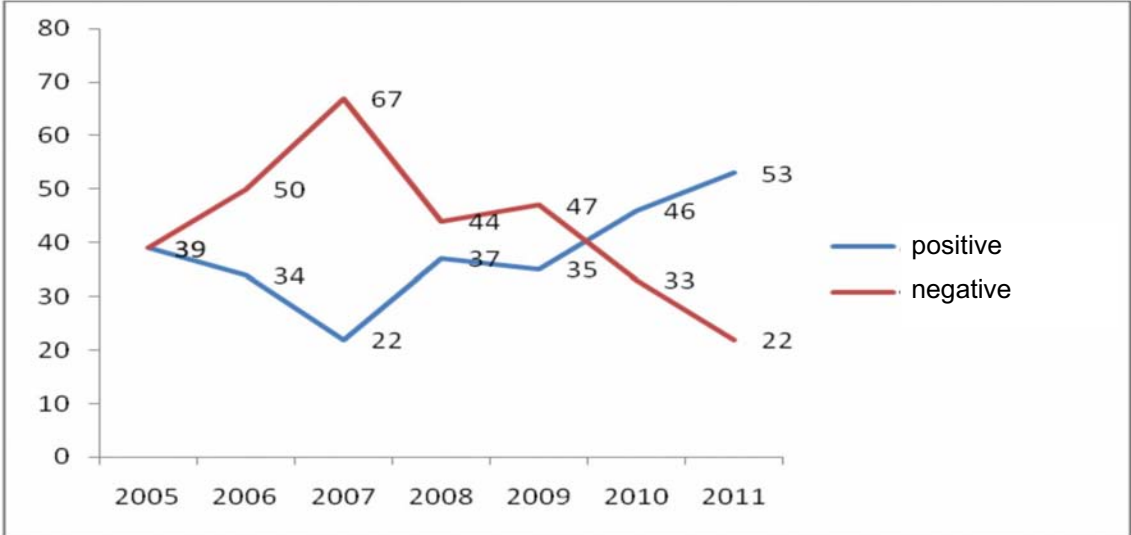
It must also be noted that in consolidated and semi-consolidated democracies (scoring between 1-3.99), there is an additional requirement that rules and policies be fit for purpose and that implementation be ideal or almost impeccable. On the other hand, in semi-consolidated and consolidated authoritarian regimes (scoring between 5-7), the quality of the political framework is far worse and formal policy and actual practice diverge widely from each other.

As we can see, in the case of Georgia, reports by Freedom House show that while the country faces challenges in terms of its policies (i.e. formal regulations and rules), the main problem is with practical implementation. And finally, it should be noted that there are limits to the use of Freedom House methodology. In this case we are not just talking about the judiciary but of human rights, the implementation of court decision and conditions in the penitentiary system.

Trust in the Georgian courts

It is commonly thought that there is low public trust in the Georgian judiciary. However, the picture is not as clear cut as it first appears. Public opinion polls conducted by the International Republican Institute (IRI) show that public trust in the courts has been increasing in recent years.

Diagram 3: Attitudes towards the Georgian judiciary 2005-2011

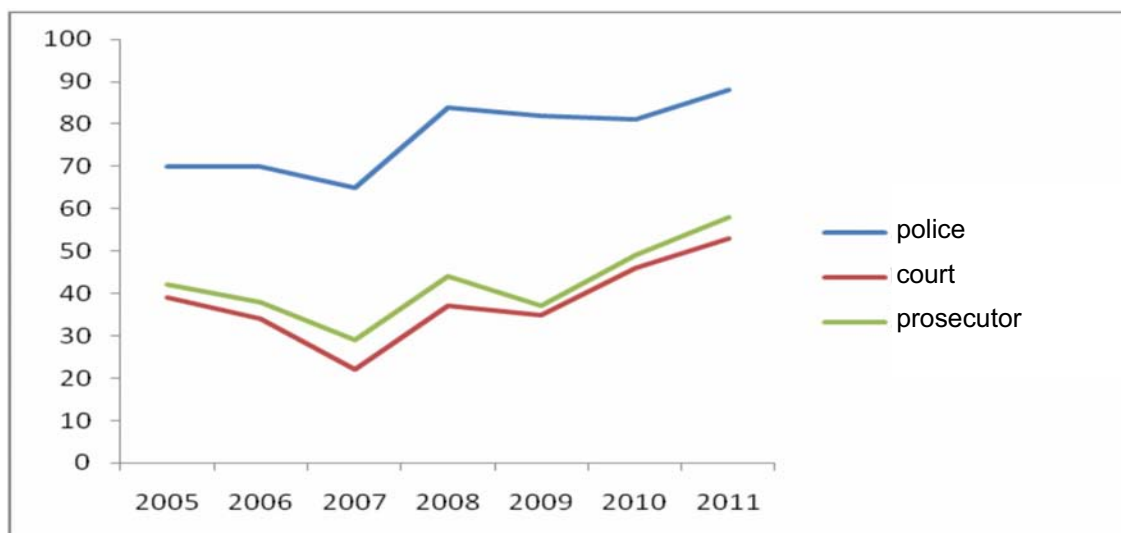


Source: International Republican Institute, Public Opinion Polls
<http://www.iri.org/explore-our-resources/public-opinion-research/public-opinion-polls#three> (16.10.2011)

Diagram 3 shows that in 2011, 53% of respondents trusted the judiciary while just 22% did not trust the system at all. Just 4 years ago, these figures were the opposite way round – 67% did not trust the judiciary while 22% said that they trusted the courts.

However, it should be noted that trust in the courts still lags behind public confidence in other state institutions. For example, if we take these figures and compare them with trust in the police, we will see a clear difference. Interestingly, public trust in the prosecutors has always been higher than towards the courts.

Diagram 4: Attitudes towards Georgian institutions 2005-2011



Source: International Republican Institute, *Public Opinion Polls*

<http://www.iri.org/explore-our-resources/public-opinion-research/public-opinion-polls#three> (16.10.2011)

According to the received wisdom on this matter, before the 2003 Rose Revolution, the courts in Georgia were corrupt but maintained a higher level of independence than has been the case since then. So, while corruption has been much reduced since 2003, the influence of the executive government on the judiciary has grown.³ This is one possible reason for the growth in trust in the courts.

However, these kinds of opinions do not say anything about the development of the justice system and its effectiveness, despite the fact that it is an important factor, as public opinion is influenced by the effectiveness of the system. It would be better to assess the effectiveness of the judiciary through other, more measurable criteria such as institutional structure, available resources and the work of the courts themselves and their effectiveness.

The institutional design and resources of the Georgian judiciary

The Georgian judiciary currently enjoys significant institutional and financial guarantees. The reform of the Georgian system began in 1998 when, alongside a number of other measures, compulsory exams for judges were introduced. However, the reforms only affected the courts and did not extend to the other parts of the justice system. From 2004 onwards, reforms began to encompass other institutions. An important change occurred in 2006 when the High Council of Justice (which nominates judges to be appointed by the president) was reformed to be made up of a majority of judges without representation for the prosecutor's office. The High Council of Justice is no longer a consultation body for the president, but an independent

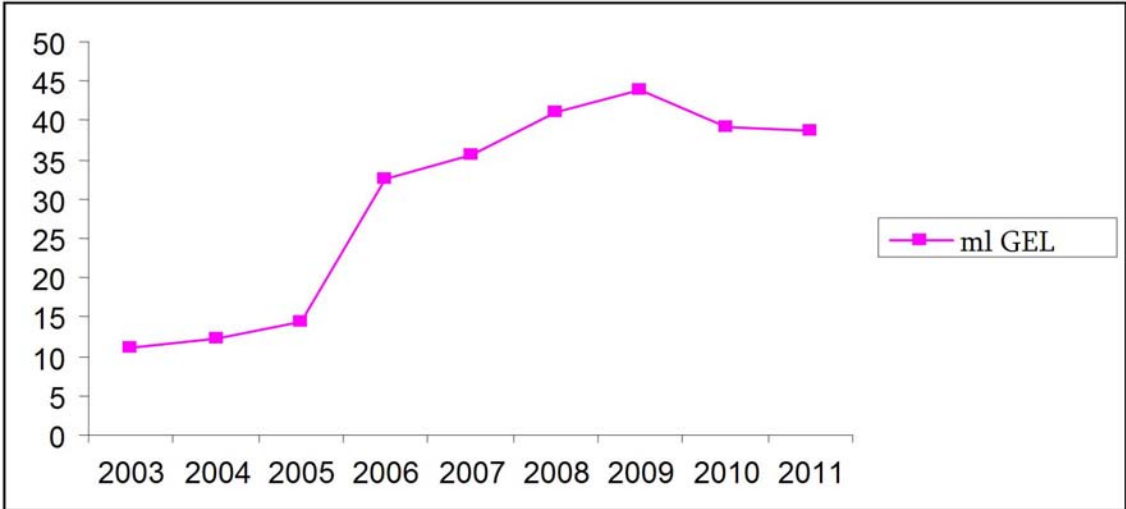
³ Transparency International- Georgia, *Assessment of the Georgian national anti-corruption system*, Tbilisi, 2011 pp 69-84. http://transparency.ge/sites/transparency.ge.nis/files/TIGeorgia_NISReport_ka.pdf (20.10.11)

body headed by the chairman of the Supreme Court. Representatives of the president and parliament are also present in the High Council, including representatives of the parliamentary opposition. Judges also make up a majority in the disciplinary committee. This is an important change as it is thought that the disciplinary committee served as a significant mechanism for pressure on judges in 2005-6.⁴

Currently, the chairman and members of the Supreme Court are appointed by the president and nominated by parliament. All other judges are appointed by the High Council of Justice. All judges have to pass an exam and attend a course at the High School of Justice in order to be appointed. It should be noted that from 2013 judges will be appointed for life (until pension age) which is also an important institutional guarantee.

Since 2004, funding of the courts has increased exponentially. In 2003, the courts received a total of just 11.1 million lari of funding, while, in 2011, the figure was 38.8 million lari. Funding for court infrastructure also rose and the salary of a regular judge was 2,300 lari in 2011. Also, the amount of administrative resources increased, which has helped judges in their work and ensured that they give a better service to the public.

Diagram 5: The budget of the court system 2003-2011.



Source: Official website of the Georgian Supreme Court <http://www.supremecourt.ge/files/upload-file/pdf/budget.pdf> (12.11.2011)

Overall, institutional reform (including internal reform aimed at improving the interrelationship of different levels of the court system, the effective use of resources) and the increase in funding are significant guarantees of the independence of the judiciary from the executive. However, it is also true that institutional guarantees do not always work in practice.

⁴ For statistics on disciplinary proceedings against judges see the Georgian High Council of Justice website <http://hcoj.gov.ge/?l=2&i=113> (02.11.2011)

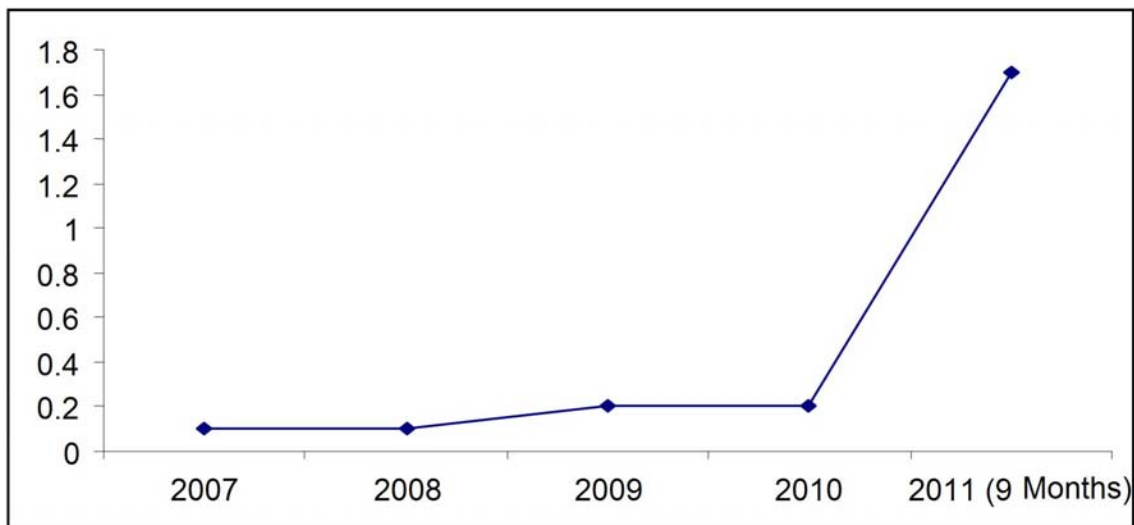
Court practices: Acquittals and imprisonment

There is an opinion that the courts are mostly independent in civil and administrative cases where key government interests are not at stake but that in criminal law the courts are subject to the influence of the executive and the prosecutors.⁵

This opinion is based on three pieces of evidence. The very low proportion of innocent verdicts in criminal cases, the significant increase in Georgia's prison population since 2004 and the high proportion of cases decided with the use of plea bargains. We will discuss plea bargaining in the next section. Here we will discuss the number of acquittals and the increase in the number of prisoners.

Acquittals are given very rarely in Georgian criminal cases. Between January-September 2011, judges in lower-level courts acquitted just 1.7% of defendants. In absolute terms, this is just 30 out of 13,319 defendants. In addition, 23 people were partially acquitted, while court proceedings were discontinued in a further 29 cases. In 2010, lower-level courts acquitted just 8 out of 19,956. In the diagram below, it can be seen that the situation in 2011 may slightly change. Interestingly, Transparency International Georgia found that while Georgian courts issued just 37 innocent verdicts out of a total of 16,911 in 2006, courts in Estonia there were 7881 guilty and 193 innocent verdicts in the same year.⁶

Diagram 6: Proportion of acquittals in cases fully considered by the court



Source: Georgian Supreme Court, previous years statistics <http://www.supremecourt.ge/statistics/> (12.11.2011)

There is an opinion that the low acquittal rate is linked to the increased professionalism of the investigative authorities and also to the fact that, unlike in previous years, prosecutors do not take cases to court unless they are convinced of an individual's guilt. This means that only "unlosable" cases go to court, although it is

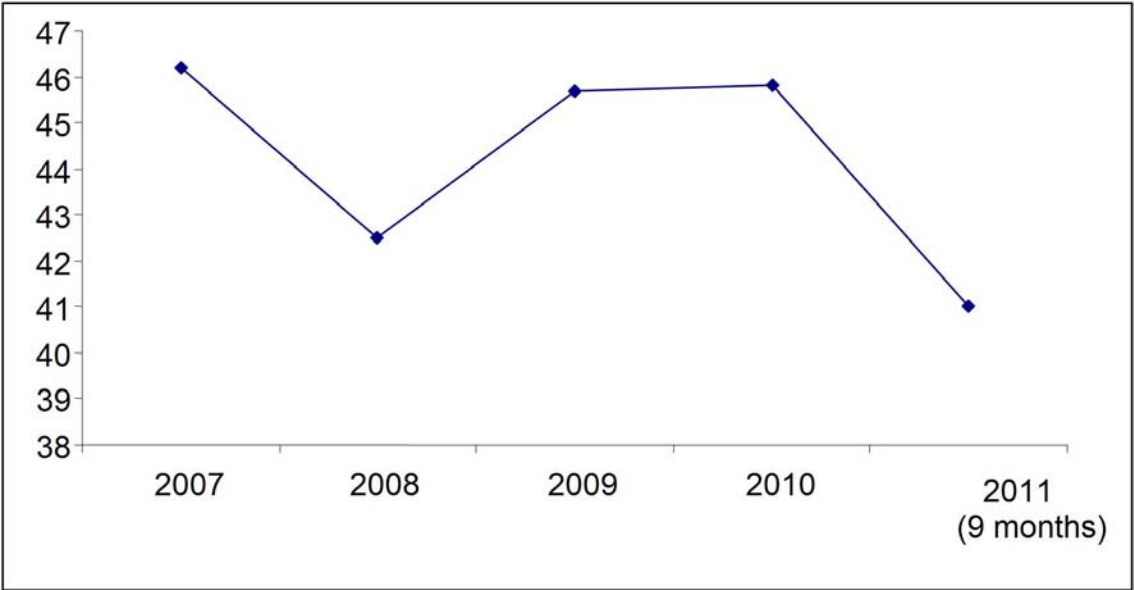
⁵ See footnote 3

⁶ Transparency International-Georgia, Plea Bargaining in Georgia, Tbilisi 2010 http://transparency.ge/sites/default/files/post_attachments/Plea%20Bargaining%20in%20Georgia%20-%20Negotiated%20Justice%20-%20GEO%20%282%29.pdf (16.10.2011)

also interesting that the overall number of criminal cases has risen sharply since 2004 which is probably linked to the state's stricter policy on criminality. Whatever the reasons, the low acquittal rate is a subject of criticism by local and international organisations.⁷ It has also been linked to the rise in the use of plea bargaining (see below).

In the first 9 months of 2011, 41% of convicted individuals were sentenced to prison terms (5,443 people). In 2010, this figure was 45.8% (9135) while in 2009, it was 45.7% (8384). As we can see, the picture has been stable in this respect over the last few years.

Diagram 7: The proportion of convicted individuals given prison sentences.

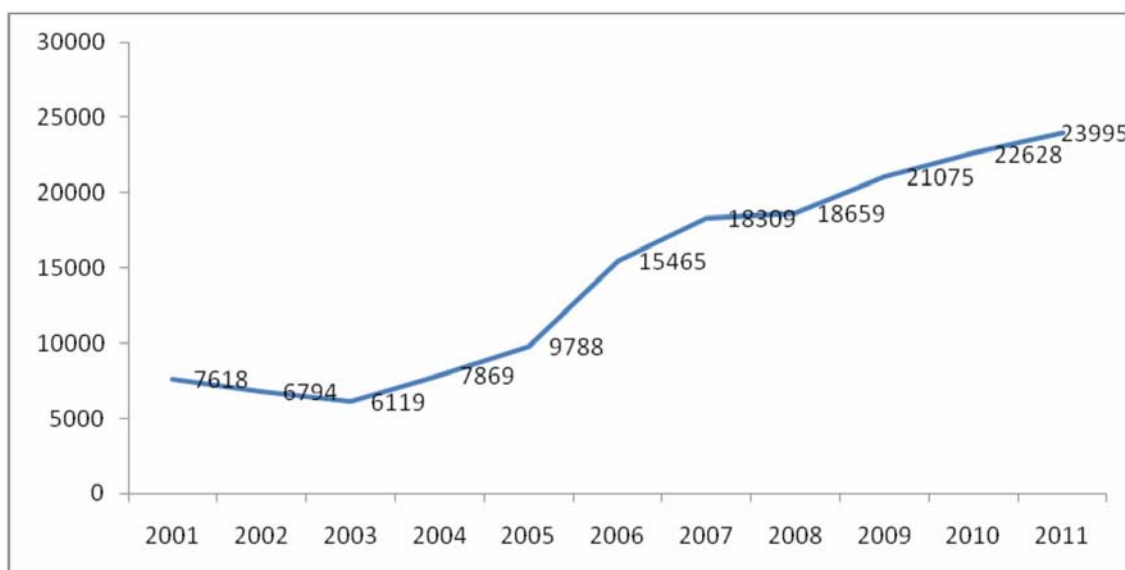


Source: Previous years statistics from the Georgian Supreme Court <http://www.supremecourt.ge/statistics/> (12.11.2011)

Government policy implemented since 2004 has meant that the crime situation in Georgia has improved. However, this has also resulted in increased numbers of prisoners. As of 2011, there were 23,995 people in Georgian prisons as opposed to 7,869 people in 2005.

⁷ Hammarberg sums up visit to Georgia, Civil Georgia, 20 April 2011 <http://www.civil.ge/geo/article.php?id=23915&search=> (23.10.11)

Diagram 8: Georgia's prison population 2001-2011.



Sources: -*Transparency International-Georgia, Plea Bargaining in Georgia, Tbilisi, 2010*
http://transparency.ge/sites/default/files/post_attachments/Plea%20Bargaining%20in%20Georgia%20-%20Negotiated%20Justice%20-%20GEO%20%282%29.pdf (16.10.2011)
 -*International Center for Prison Studies, Georgia*
http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=122 (16.10.2011)

As of April 2011, 547 of 100,000 people were prisoners, making Georgia number 4 country in the world in terms of the number of prisoners per capita. This, however, is unrelated to the degree of democracy in Georgia. The USA and Russia are also among the leaders in terms of the number of prisoners per 100,000 population. The following five countries take the lead:

Table 1: Top 5 countries for number of prisoners per 100,000 people

USA	743
Rwanda	595
Russia	550
Georgia	547
Virgin Islands (USA)	539

Source: *International Center for Prison Studies, Entire world – Prison Population Rates per 100,000 of the national population,*
http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poprate (16.10.2011)

There is yet another interesting aspect to increase in the number of prisoners. Interpreting its causes reveals differences of opinion over policy on the courts and crime. On the one hand, the growing number of prisoners shows that the state has been considerably active in the fight against crime since 2005-2006. If we compare the growing number of prisoners with the obvious fall in crime, we will see that the state has been sufficiently successful in this respect. On the other hand, some critics believe that the growing number of prisoners is linked to the courts' dependence on the executive branch and the Prosecutor's Office specifically.

Plea bargaining

The practice of plea bargaining is one of the most divisive issues related to the activities of the judiciary in Georgia. Plea bargaining was introduced to Georgia at the beginning of 2004 and was initially used in high-profile cases relating to important officials of the previous government. By arresting these former officials and releasing them in exchange for large sums of money, the government was achieving several aims at once. The new government gained much needed revenue and fulfilled its promise to the electorate that the fight against corruption was more than empty words. To an extent, this was also linked to the fulfilment of justice – that criminals would have to face punishment for their crimes and/or return illegally accumulated property. But the most important aim was to assert the authority of the state. The new government said that it wanted to govern and that it would not be satisfied with just a formal status. In the post-revolutionary dynamic of the period, the practice of plea bargaining was introduced before it was legally institutionalized (the first examples of people being released in exchange for payment into the state budget happened in December 2003). Also, the form this took differed from that today as plea bargaining changed significantly in subsequent years.

Today, plea bargaining serves a number of functions. It ensures fast and effective justice, saves human and physical resources and assists investigations because it incentivizes suspected criminals' cooperation with police. It is also believed that without plea bargaining, the courts would be more inundated with cases and that prisons would be even more full than today.

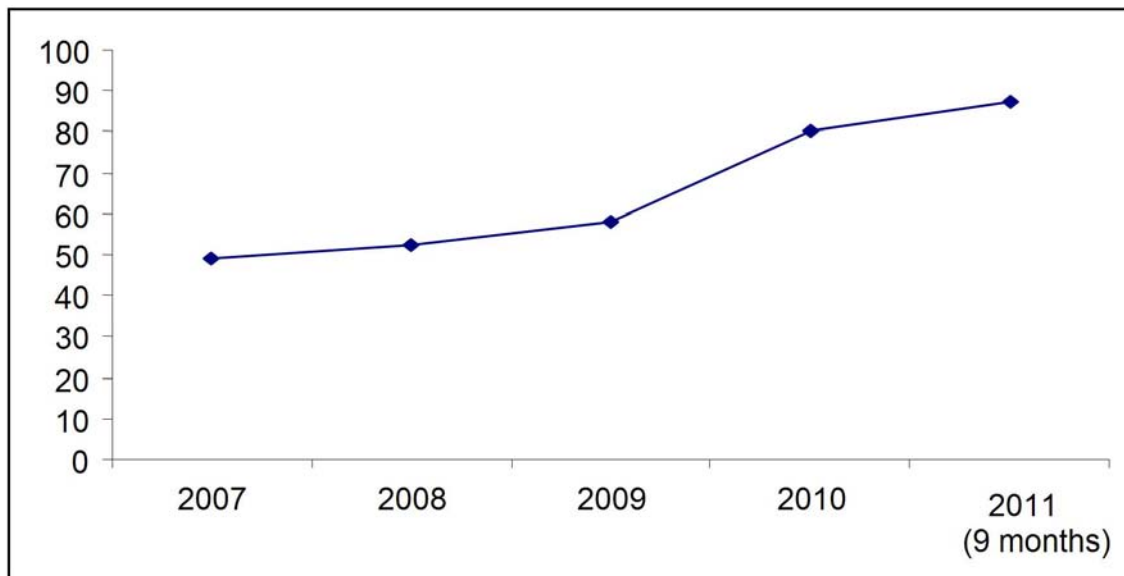
There exist differences in opinion on plea bargaining even in its homeland of the USA. A plea bargain occurs between a defendant and prosecutors which mean a reduced role for the courts. While it is true that a court must approve the plea bargain and push for an agreement, but it cannot be involved in the process nor can it alter the terms of the bargain. The courts have the final say in approving any deal but cannot be involved in the process itself. This is fully logical from the point of view of saving resources. If the court itself were involved in the process, how would a plea bargain be different to an ordinary court case? Despite this, it is also logical that some are disapproving of the fact that the sides are not equal – the prosecutors have the upper hand while defendants do not have a trustworthy alternative and the courts do not have anything but a formal role.

Some critics of the system say that the very low acquittal rate prompts defendants to fear that going to a full trial is futile as the court will find in favour of the prosecution. This means that a plea bargain is a shorter and more effective way for defendants to maximise their interest. They prefer to make a deal with the people who have the real power – the prosecutors. This means that defendants lose the opportunity to defend their position in court.⁸

It is a fact that plea bargaining is a very popular method, something evidenced by its increasing use in Georgia. In the first 9 months of 2011, 87.3% of criminal cases ended with a plea bargain, while this figure was 49.2% in 2007.

⁸ Interview with lawyers. Interviews were conducted with two lawyers independently in October 2011.

Diagram 9: Proportion of criminal cases concluded with a plea bargain of all cases that finished with a court verdict.



Source: Previous years statistics from the Georgian Supreme Court <http://www.supremecourt.ge/statistics/> (12.11.2011)

It is also a fact that the government has seen a significant monetary gain from plea bargaining. According to Justice Ministry information, the Georgian state budget gained 112 million lari from plea bargaining and fines imposed by courts.⁹ In 2009, the state budget got over 32 million lari from plea bargaining alone.¹⁰

It is generally the case that despite early doubts, many people now recognize the necessity for plea bargaining in the context of strict criminal laws and congested courts. However, this system must be further reformed, especially with regard to its transparency.

Jury trials

The legal basis for jury trials in Georgia was established in the new Criminal Procedural Code on 1 October 2010. At the initial stage, jurors can only gather in Tbilisi and only to consider aggravated homicide. The first jury trial began in November 2011. Later on, juries will be introduced to other Georgian regions and will deal with a wide range of crimes.

Discussions about the need to introduce juries began in 2004, although its implementation was postponed on a number of occasions. It is expected that jury trials will result in increased public trust in the judiciary in general. Apart from this, the jury does not reduce the accountability of the judiciary. Conversely, it demands a more effective system which will eliminate its abuse. At the moment, it is impossible

⁹ 112.7 million lari from court fines and plea bargaining, Civil Georgia, 6 July 2011 <http://www.civil.ge/geo/article.php?id=24292> (10.10.11).

¹⁰ Transparency International-Georgia, Plea Bargaining in Georgia, Tbilisi 2010 <http://transparency.ge/en/post/report/plea-bargaining-georgia>

to assess effectiveness of juries in Georgia and their impact on the system will become known a little later.

Conclusion

The effective functioning of the judiciary is key to eradicating the democracy deficit in Georgia. It is also essential for the modernization and development of society. An ineffective judiciary would render futile all steps taken towards economic development and would challenge the effectiveness of the results achieved in terms of the improvement of the business environment.

The reform of the judiciary has been lagging behind other reforms of state institutions, including of the law enforcement agencies. At the moment, the judiciary has institutional and material guarantees, which create solid grounds for it to become free from other branches of government branches or various political influences. In addition, the judiciary cannot be detached from the political and public context. The current asymmetry between the political forces in Georgia certainly has an effect on the independence of the judiciary from the executive government.

The further development of the judiciary, including in terms of the balancing of the difficult relations between the court and the prosecutor's office, can be achieved through enhancing its professionalism and effectiveness. Increasing of finances and the development of infrastructure helps the court provide better services. Greater efforts aimed at improving the conditions and education of judges have had an appropriate effect. This eventually has an impact on society's attitude to the courts, which has improved, albeit slightly, over the past years.

Plea bargaining has had a varying effect in this respect. On the one hand, it limits the court's area of operation, but protects the system from being overloaded, something which would be inevitable under the existing policy and the current number of judges. The jury institution is a significant innovation and it is possible that it will result in increased public trust in the system. Therefore, it would be preferable for this institution to be extended quickly, with due consideration of possible risks, into other articles of the Criminal Procedural Code, as well as geographically outside Tbilisi and Kutaisi.

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