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Final Analytical Report

**Constitutional right for Jury Trial:
Contributing to the process of Armenia's
democratization?**

By

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**“I consider trial by jury as the only anchor ever
yet imagined by man, by whom a government can
be held to the principles of its Constitution”**

The US President Thomas Jefferson

Abstract

Taken into consideration experience of countries that have introduced the Jury Trial institution into their judicial systems, position of eminent scholars and also perception of Armenian population, this article will argue that one of the ways for furthering the process of democratization in the country is the introduction of the institution. Besides the issue of furthering the process of democratization, it also is going to answer to such question as whether the Jury Trial system can contribute to the lessening the level of corruption in the judiciary.

The issue has broader relevance, since understanding of the current situation within the judiciary and society would allow inferring whether the institution can be introduced. Thus, it would also contribute to meeting commitments taken by Armenia upon signing the European Neighborhood Policy (ENP) Action Plan, namely “Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption”.

Using examples of former Soviet Republics (Russia and Georgia¹), that have already implemented the Jury Trial institution, and taking into consideration culture, customs and legal traditions in Armenia, this paper will try to elaborate on whether our society is ready for taking responsibility for its own well being by judging its peers. Moreover, taking into consideration culture, customs and legal traditions what specific challenges would arise in the Armenian context?

¹ Draft Criminal Procedural Code (CPC) has been adopted by the Georgian Parliament in the first reading in December 2006 and should enter into force by 2008.

Introduction

Our Republic made its first steps towards independence in an environment of collapse of the previous political system, war and extremely difficult social and economic situation. However, it proved to be well capable of finding solutions to a number of most difficult problems relating to the nation and the State.

The Constitution that is currently in force provides for separation of powers, for an independent judiciary and for human rights protection. It has played a significant role in establishing democracy, finding constitutional solutions to critical situations and ensuring constitutional guarantees for the protection of human rights. However, according to the report (Bureau of Democracy, Human Rights, and Labour on March 6, 2007) courts remained subject to political pressure from the executive and legislative branches, and judicial corruption was a problem. In the 2002 Judicial Reform Index (JRI), prepared by the American Bar Association Central European and Eurasian Law Initiative (ABA CEELI), stated that “bribery is a common problem, caused ... by low judicial salaries, mistrust of the judicial system and historical practice, judges often get telephone calls from officials, parties and ‘intermediaries’ in an attempt to influence their decision”. Moreover, one lawyer stated that “an appellate judge told him directly that he could not resist the opposing pressure to decide (the case in question) a certain way for fear of jeopardizing his professional future,” (JRI).

According to a report (Rule of Law/Anti-Corruption Assessment, 2002)² submitted to the United States Agency for International Development (USAID) Armenia's judicial system is characterized among others by: (1) a nontransparent and porous set of interactions in which judges, private lawyers and prosecutors engage in bribes and other practices to influence the outcome of cases; (2) persistent telephone justice. In the JRI respondents reported external influence on judicial decisions that are “pervasive and come in many forms”. Respondents also indicated that judges often get telephone calls from officials, parties, or “intermediaries” in an attempt to influence their

² Retrieved July 15, 2007 from <http://armenia.usaid.gov/upload/File/Armenia%20ROL-AC%20Final%20Report1.pdf>

decision. Most respondents characterized the above influences as systemic and historical practices carried over from the Soviet justice system.

Solutions to the mentioned problems can be found through a certain degree of systemic reforms. There are extensive efforts by Armenian Government to find possible solution for combating corruption. Armenia is a member of number of international organizations and conventions, such as GRECO or Istanbul Anti-Corruption Action Plan (developed for 8 former Soviet republics by the Organization for Economic Cooperation and Development), that provide a tool to fight corruption. Moreover, Armenia in November 2003 initiated the Anti-Corruption Strategy (Strategy), the goal of which is “to build a sound moral and psychological environment in the Republic, which, in turn, will power the attainment of sustainable democratic institutions, a civil society, and a state based on the rule of law...”. That paper provides the priorities in the fight against corruption. Particularly it provides number of recommendations to prevent corruption in the judiciary, for example, introduction of internationally-practiced schemes for the distribution of cases or adoption of law on administration basics and administrative proceedings as safeguards of human rights and fundamental freedoms.

In spite of 2005 Constitutional amendments and judicial reforms that have taken effect on July 1, 2006, the contemporary constitutional practice, the current problems of social relations and democracy, the need to further improve the governing system, the legal commitments assumed by joining the Council of Europe and problems of fostering the human rights' protection guarantees call for further reforms in judiciary. In spite of the number of recommendations in all above mentioned documents, there is no any word on the possibility of introducing the Jury Trial.

It can be stated that when countries choose to establish democratic style of governance, they often introduce the Jury Trial system as part of their strategy to reach the democracy. As an example can serve Russia and Georgia, both implemented the Jury Trial into their judicial systems. Although criticized by opponent scholars, it is generally recognized that the Jury Trial institution is an example of democratic governance. Moreover, this is an important institution, which according to US Supreme Court Justice Anthony Kennedy “preserves the democratic element of law”. The democratic nature of the Jury Trial system can be explained in the following two ways:

- At first the Jury Trial, through the participation in the trial, provide citizens with the opportunity to take responsibility of assessing fellow citizens and judging governmental conduct; and
- Secondly, since the jurors are drawn from a cross-section of the society, then the diversity of views coupled with the unanimity or qualified majority requirement to reach the verdict would represent lets say entire community.

It is also undisputable that courts play an important role in fighting corruption. Any branch or section of the government can be exposed to corruption. And corrupt officials that come from those agencies of the government, when caught should be tried in the court. If the court corrupt it would be difficult to bring those officials to justice, which in its turn would provoke more corruption. How the Jury Trial system can affect the level of corruption? The Jury Trial reduce corruption in the courtroom by making it difficult for litigant to find a person who will “sell the case”. It means that while the professional judge that is going to hear the case is known beforehand, the jury members are drawn just before the trial, thus making it is almost impossible for litigant to find corrupt juror. Moreover, even though there would be corrupt juror, he/she serve only one trial, he/she is not engaged into the justice system always, and his/her influence on the overall fairness of the judicial system is limited. Contary to this, the corrupt professional judge's influence on the system is systemic since he/she holds the official position³. And as a confirmation of this theory I'll bring a statistical data from the same article, which says, that: “Developed countries with jury trials score about 0.3 to 0.4 points higher (i.e., less corrupt) than those without jury trials”.

Thus, incorporation of “jury trial” institution can prove to be helpful with the existing situation with bribery among judges or pressure coming from government officials and through the population's control will enhance independence of judges from legislative or executive pressure, and lessen the level of corruption in the courtroom.

³ Stan Hok-Wui Wong (2007). *Juries, Judges, and Corruption: a Cross-National Analysis*.

As it was already stated, in this part of the article it would be discovered both sides of the coin, e.g. all problems and all positive aspects, that Russia and Georgia faced with during the process of introducing the Jury Trial institution into their judicial systems. Why these countries? Armenia during 70 years was a part of Soviet Union and has similarities in history and legal traditions with Russia and Georgia. Nevertheless, Armenia still differs in culture at least compared with Russia. And that is why I have chosen Georgia as another country to compare.

Russia and Georgia: the tendencies and current state of situation

The Jury Trial institution was reintroduced in Russian Federation from the end of 1993. But for the beginning it was introduced only in 9 of the 89 constituent subjects of the Russian Federation, and only from 1 of January of 2004 it started operate all over the country.

To understand the developments that have taken place in Russia during the process of introduction of the institution we have to comprehend the society's legal culture and traditions.

During the Soviet era, Russia and all former Soviet republics had a criminal justice system that was established to make sure that the goals of the Communist Party were carried out. Its citizens have had little or no experience with democracy, elected government, or the rule of law. The judiciary was subject to the direct supervision of the Communist Party leaders. Such ideas as attorney's duty to represent his/her client or an independent judiciary were out of the question. And the legal history and culture of the country, which was completely different from countries that have adversarial system of criminal justice, was the largest obstacle during the process of importing the Jury Trial system.

After almost 10 years of experiment and afterwards there was always a resistance in Russia among legislators, judges, and even defense attorneys to the idea of Jury Trial. Some of the problems that were mentioned by many critics of the system were budgetary constraints, technical and administrative problems, the legacy of the Soviet mentality in Russian legal institutions⁴. Others, like Vladimir Zikov – honored

⁷ Dline, I. & Schwartz, O. (2002). The Jury Is Still Out on the Future of Jury Trials in Russia.

jurist of Russia, state that the foundations for decisions of the jurors are based not on the legality, but on group perception of a justice⁵. In addition, as it is stated by Victor Filipov “the jurors cannot examine the particularities of a specific case properly because they do not have legal training”⁶. Another opponent of Jury Trial system argue that taken into consideration the fact that mostly the pensioners and/or unemployed persons are serving as jurors, it would be easy for cynical and strong attorneys and prosecutors to influence and control them. Since these people are mostly inert, easily controlled and not organized part of the population, it would be a simple task to manipulate them. At the end, Sankt-Petersburg's Governor – Valentina Matvienko, stated that people are not ready and that jurors' decisions are more emotional legal⁷.

In 2004, Jury Trial was restored in the Georgian constitution. Afterwards the new Criminal Proceedings Code (CPC) was submitted to Parliament, which passed the first reading in December 2006, and once approved by the Parliament should become effective as of January 1, 2008.

It should be mentioned that Georgia, as one of the former Soviet republics has almost the same legal traditions and history as Russia. Taken into consideration this fact it is predictable that Georgia has faced with roughly the same problems that Russia has faced. During last four years there were extensive debates regarding the Jury Trial system, its introduction and problems in that regard.

Problems that were raised by the system's critics in Georgia were mostly budgetary, regarding the national mentality and legal culture. One of them was raised by Giorgi Gogiashvili⁸, who said that “I have heard the objections people raise to the jury system—that as jurors aren't lawyers, they can't make fair decisions, or that juries can't reach fair verdicts in a place like Georgia” where families and friends can be expected to try to influence jurors. As an example of another problem can serve the question raised by the Former Supreme Court Judge Merab Turava, which is “whether Georgian society

⁵ Article by Kirillov V. Retrieved July 20, 2007, from http://gazeta.aif.ru/online/longliver/50/05_01

⁶ Filipov, V. (2003). The new Russian code of criminal procedure: The next step on the path of Russia's democratization.

⁷ Interview to RIAN Retrieved July 25, 2007, from http://www.rian.ru/defense_safety/investigations/20060726/51856688.html

⁸ The former head of Tbilisi City Court

can afford to reimburse citizens for the time and expense of serving on juries”⁹. Inga Alavidze a journalist for “24 Hours” has doubts regarding to the jurors immunity to corruption. As evidence, she cited the case of Russian gangster Viachislav Ivankov, who was acquitted by a Russian jury. “The prosecutors expressed suspicion that the jury was bribed,” she says. Shalva Papuashvili¹⁰ says, “The draft law does not spell out any criteria for choosing juries to ensure that they are competent”. He doubts that since jurors are not professionally trained lawyers will easily manipulate them. Moreover, he fears that “a low-paid night watchman will be far more likely to be tempted by a bribe than a highly paid judge is now”¹¹. According to him the Jury Trial project is far from being realistic.”

Nevertheless, the Jury Trial institution in Russia proved to have better results and the fear to be groundless. As a confirmation of this can serve several statements made by prominent jurists. For example, it was stated by Genri Reznik¹² “Nothing better was invented for justice than Jury Trial. To decide whether there was a fact or not, there is no need to have professional knowledge, and that the Jury Trial makes attorneys and prosecutors to become increasingly professional”¹³. A retired judge, Sergei Pashin, in the interview to RIA Novosti made another statement: “Obviously, the state and society are ready for jury trials, which should become an instrument of improving society”. Here it can be stated that the process of improvements is in the progress. It also can be inferred from an article “The Jury is still out on the future of Jury Trials in Russia” written by Irina Dline and Olga Shwartz “The jury-trial system as an element of judicial reform is having a significant influence on the traditional system of justice. The culture of the adversarial process is spreading and penetrating into traditional trials. Those judges presiding over trials by jury are applying the same quality standards in traditional trials”¹⁴ Finally, to prove the effectiveness of the Jury Trial system, I’ll bring as an example a

⁹ Maisuradze T. (2006). People power: Jury trials to come to Georgia. Retrieved July 22, 2007, from <http://www.circ.ge/newsletter.php?newsid=Issue2-May-2006.html&lan=en>

¹⁰ Shalva Papuashvili is a lawyer with the German Technical Cooperation (GTZ) aid organization, which has worked to improve Georgia’s court system.

¹¹ Maisuradze T. (2006). People power: Jury trials to come to Georgia

¹² Genry Reznik is the President of the Moskow Bar Association

¹³ Interview REGNUM (01.03.2006). Retrieved July 25, 2007, from <http://www.regnum.ru/>

¹⁴ Veir F. (March, 2003). Russia embraces trial by peers. Retrieved July 26, 2007, from <http://www.csmonitor.com/2003/0305/p06s01-woeu.html>

statement made by Olga Solovyeva, a sociologist at Moscow State University, who says that "Jurors demand to see evidence. Russian criminal investigators have this saying that "confession is the queen of evidence," and once they have extracted a confession they do not bother probing much further. However, juries do not accept that. They want to see the murder weapon, hear the opinions of experts, and be told the results of scientific tests taken at the crime scene, and so on. The fear that juries would act on their first impressions or emotional sympathies have proven groundless".

Concerning to Georgia, the proponents of the Jury Trial system believe that the factors mentioned above are outweighed by the benefits of the system. Particularly, Akaki Minashvili from the Liberty Institute says "Jury trials would ensure public involvement in the system and increase the degree of its independence"¹⁵. Others mention that jurors are analyzing the facts, and as the final decision of the judge depends on the jury's verdict, it means that this is not a one-person decision but a decision by society. Another argument in favor of the system's introduction was made by Levan Ramishvili, executive director of the Liberty Institute, who said, "It's harder to pressure 12 people than it is to pressure one judge"¹⁶. He believes that juries will move society closer to democracy, and will reduce judicial corruption. Giorgi Gogiashvili thinks that participation in the administration of justice will educate and raise jurors' sense of civic responsibility. He says, "Citizens will learn to make judicial judgments, which is very important for civil society".

Armenia: the current situation

In the previous paragraph we discussed the main problems that faced Russia and Georgia on their way of introducing the Jury Trial systems. Now let see what the situation in that regard in Armenia. To find out potential problems that Armenia might face with while introducing the Jury Trial it was a survey¹⁷ conducted among the

¹⁵ Liberty Institute for speeding judicial reform (March, 2006). Retrieved July 26, 2007, from http://www.liberty.ge/eng/page.php?genre_id=90§ion_id=3&news_id=231&from=index#1#1

¹⁶ Maisuradze T. (2006). People power: Jury trials to come to Georgia

¹⁷ In August – September 2007 I have run quantitative survey among the residents of Yerevan. The randomly selected households covered all districts of Yerevan.

residents of Yerevan. It was also organised three meetings¹⁸ with different focus groups: law school students, NGO sector representatives and legal field practitioners.

Survey results:

In general, more people gave their voice for the jury trial, than for the investment of that institution in Armenia. Only 63% from all who has positive attitude toward the Jury Trial institution finds that it would be completely correct to use that institution in Armenia. Those, who thought that it is wrong or wrong at all to introduce the institution, commented their answers in the following way:

Table 1. Appropriateness of usage of jury trial in Armenia

Comment	Number of answers
<i>The country is small/the number of population is small</i>	80
<i>National mentality/psychology will impede the investment of this institute</i>	46
The society is not ready yet	39
According to negative sides	11
There will be a great possibility of bribe-taking	11
Not professional approach; a wrong decision can be made	9
Comparatively easy will fall under the influence	7
Rule of law should be established in Armenia	7
No need of new, strange things	7
It will not work in Armenia	5
It's impossible to secure jurors	4
The pressure will increase over the courts	3
Would not reach to unanimous consent	3
Bribe-taking will decrease in judicial system/ will eliminate	3
Unacceptable for Armenia	3
Don't believe that fair/lawful decisions will be made	3
No comments	2
The country is not ready economically	2
<i>Other answer</i>	19

In case of these comments there is a need to explain the following answers: *The country is small/the number of population is small* and *National mentality/psychology will impede the investment of this institute*.

¹⁸ During the October – December 2007 I organized three round table discussions with different groups.

Under the answer: *The country is small/the number of population is small* are grouped answers which are simply formulated with alike phrases, as well as those answers which jointly with that answers had some explanations as to what kind of influence can have that *being small*.

Therefore, inappropriateness of the investment of the institution in Armenia, because of the small number of the population, was commented by 61-person, as it would be difficult to find 12 jurors who will not have any affiliation with the accused. Others commented that because of the small number, jurors might get enemies that might bring additional pressure. In a word, in all mentioned cases respondents think that it would be impossible to draw an unbiased and objective decision. It worth to mention point of view expressed by some focus-group meeting participants regarding the *small number* issue: it was stated that due to small number of population, coupled with the mentality of the nation it is not worth to introduce the Jury Trial into our judicial system.

The next answer that needs to be explained is that *national way of thinking/psychology will impede the investment of this institute*. Thirty respondents from those 46 who gave this answer did not specify their answers. The rest 16 define what aspects of the *national way of thinking* might impede the introduction of this institution. The interesting thing is that sometime the respondents provided completely opposite aspects, such as “*Armenians would not harm each other*” and “*Armenians can only betray and trick each other. What else about justice?*” There is an interesting implication in the first comment: in fact, to bring someone to trial means to harm that person.

Let also present other aspects of the *national way of thinking* that would impede to the system's introduction. They are: “*Armenians are more emotional and hardly they will make objective decision*”, “*are not independent in their way of thinking*”, “*inter personal links ranked higher than law*”. It should be noted also, one more answer related to the *national way of thinking*, which has some gender things: “for it to work it should mostly women sit on the bench”.

During the second meeting¹⁹ one of the participants was arguing against the introduction of the institution by stating that the issue differs from that how many people would do the justice: 12 jurors or 1 judge. The issue is whether our society wants to live

¹⁹ Meeting with the NGO sector representatives

according to laws or not, whether they want the justice to be or not. He thought that if the society positively answers to that questions then there is no need for the institution and that the society will find ways for one judge to draw just and objective decisions. Therefore, according to him, we need at first answer these questions.

During the survey it was also asked to provide the impeding circumstances that would hamper the introduction of the institution. The following table provides all those answers that were given regarding to impeding circumstances:

Table 2. Impeding circumstances of jury trial introduction in Armenia

Impeding conditions	Number of answers
State power	104
Judicial system is not interested in	73
State power will not allow	57
Corruption	27
National mentality/ psychology	20
The society is not ready	16
Corrupted judicial system	11
Clan system	10
The rich	8
Constitution/legislative field doesn’t allow	6
Society’s indifference	5
Imperfection of legislative/legal field	5
No requirement	4
Relative/friendly relationship	3
Imperfection of judicial system	3
Existence of numerous parties	2
Not awareness of the nation about that institute	2
Nation may not want	2
Society’s not being united	2
Do not know/can’t say	42
No impeding circumstance	27
Other answer	15

If we generalize, the main impeding circumstance - is not corresponding functions of the Jury Trial institution to the interests of state power or other layers of the society. Another important factor is specificities of the “national way of thinking”.

Regarding to the “national way of thinking”, one of the focus group members²⁰ defined it in the following way: “while one grows he/she understands that the policemen are bad (by many reasons), there are many slogans about policemen. The police officers associated with bad thoughts, cruelty and unjust behavior. The same picture can be observed with prosecutors and judges. There are values such as: *hi is doing it for his family, which means hi is doing it right*, or the family is a highest value in the life, etc. And when you are on the juror’s bench, you can not judge otherwise, because you were grown in the same system of values”. Another member agreed to this example and added that it is because of absence of legal culture and the low level of legal consciousness of our society. Moreover, that is why when one faces a problem; he/she tries to solve it with the help of money, acquainted or relatives, rather than by legal means.

Another participant mentioned the low level of socio-economic conditions in the country as an impeding circumstance for Jury Trial introduction. He thought that it would motivate jurors for taking bribes.

One more problem that was identified, which might hinder the introduction of the institution, is financial aspect (salaries for jurors, redecoration of facilities, etc.), and the issue of providing security for jurors.

As in the case of Russia and Georgia, there are also proponents for the institution’s introduction in Armenia. During the survey, respondents were asked to provide those circumstances that are favorable for introducing the Jury Trial institution into Armenia’s judicial system. The following table provides those circumstances:

Table 3. Favorable circumstances of jury trial introduction in Armenia

Favorable circumstances	Number of answers
No favorable circumstances	249
Process of Euro integration	15
Nation’s desire	11
Social organizations	11
There is social requirement	11
Existence of international structure and organizations	11
Present youth	11
Nation’s displeasure about /of present situation	10
Society became adult	9

²⁰ Meeting with the law school students

Nation's displeasure about /of judicial system	6
Development of democracy in the country	5
State power's possible benevolence	5
Corrupted judicial system	2
Wrong verdict	2
Do not know/cannot say	55
Other answer	15

As we see more than half of the respondents think that there are no favorable conditions for the usage of the institute in Armenia. It should be stated that 12 respondents who gave that answer mentioned also that there is no impeding circumstance as well, and 31 mentioned *do not know/can't say* answer. Seven respondents mentioned neither *favorable* nor *impeding circumstance*.

It also should be stressed characteristics given to the young generation, which are auspicious to the jury trial introduction: active; freethinkers; educated, especially in the west; out of the soviet way of thinking. As another favorable circumstance, it was considered also the fact that there is no public confidence in the judicial system.

Proponents (whether survey or focus-group participants) of the institution were arguing for institution's introduction by stating that:

- The jury trial accomplishes its duties as a body of people's justice. The reason behind that is that through jurors the society participates in the process of justice;
- Another participant thought that since the judiciary is one of the branches of state power, the jurors' participation would be a way of fulfilling one of the principles of democracy – that is society's direct participation in the government;
- Corruption related risks will decrease;
- Society's control over the judicial system will increase;
- The institution will educate people, and the legal consciousness of society will grow;

Recommendations:

As to that what steps should be done for guaranteeing effective usage of the Jury Trial institution, 63 respondents answered that can’t tell, 46 – mention that there is nothing to do, and 2 respondents mentioned that there is no need for that institution. Let us present answers of those respondents, who have particular suggestions for effective usage of the Jury Trial institution.

Table 4: the necessary steps for efficient usage of the Jury Trial

What may be undertaken	Number of answers
Work with the society	119
Work over legal field	84
Changes in judicial system	30
Change of the state power	21
Establish rule of law and implement the law	20
Fight the corruption	17
Establish democracy	13
To do experimental trials	11
Ask for assistance of international organizations	7
To finance	7
The State power should demonstrate a will	6
To organize the methods of protection for jurors	5
Improve the economy of the country	4
Fight of people against injustice	3
To give more authority to jurors	3
Continuous steps toward Euro integration	3
State approach	2
It should be formatted social need	2
Other answers	21

In the case of the first three answers let present also subgroups of the answers with more concrete suggestions.

Work with the society includes such answers as: to inform the society about the jury trial (moreover, three person stated inform through public organizations); to advertise/to spread propaganda about jury trial; increasing overall educational level of the population, and particularly to secure some legal knowledge; increasing the society’s consciousness; change of the way of thinking; and unite the nation against the clan system.

Works over legal field are: to work out and pass the corresponding law; to put the question on referendum and make constitutional changes. It is also interesting that some of the participants mentioned that the president or the government must volitional make a decision and pass the law.

Here is necessary also mention that the respondents differentiate passing the law from its execution, and the last one is mentioned as separate important step for the usage of jury trial (for example “to pass the law and it should not stay on the paper but should be applied”).

By saying **changes in judicial system**, the respondents meant in general the professional training of the members of judicial system, replacement of members of judicial system, and securing the real independence from the government.

Regarding to this issue let present ideas that were stressed by the focus-group meeting participants. First two group participants mentioned that there is a need to establish some kind of institution like witness protection program; to carry out kind of work (basically through media) to inform population about the institution; then to look for international practices and find a model that will best fit to our country, then present it to our society. The third group participants suggested two more steps: increasing the legal consciousness of the society; and the second important thing is that Armenia should become stronger socio-economically.

Conclusion

The legal system of any country is derived from, and rooted in, the customs of its people, history, and legal and political traditions of that particular country. A judicial system can be effective only if it reflects the country's culture and traditions. These considerations are important whenever an attempt is made to introduce a new institution²¹.

If we try to summarize the prospects of investment of the jury trial institution into Armenia's judicial system, the results of inquiry show that there are many impeding circumstances. At the same time it is considered as an improvement of situation in Armenia by mitigation of some hindering circumstances. If corruptions, clan system, the non complete independence of judicial system are considered as obstacles for the investment of jury trial, then at the same time the investment of jury trial is considered as a tool for decreasing corruption in judiciary, and ensuring independence of judicial system.

In case of Armenia, national mentality considered as another important condition connected with the investment of jury trial. Besides that the mentioned factor is considered by interviewee as an impeding circumstance, and for the investment of jury trial it makes importance for the works directed to change that mentality, some national mentality elements also can be noticed in answers given to other questions. By summarizing we can say that the main impeding element of the national mentality is the predominance of interpersonal attitudes over legality.

Another factor that survey and focus-group participants indicated as an obstacle and which is non subject to changes is the small number of population in Armenia with the following consequences, which are: everyone knows each other, by all means acquainted will be find, will acquire enemies and etc. Armenia's territory and number of population of course will not be changed, at least in near future; consequently other ways to mitigate that obstacle should be found, as well as have a long and consistent explanatory work with society.

²¹ James Diehm (2001). The Introduction of Jury trials and adversarial elements into the former Soviet Union and other inquisitorial countries.

What concerns to corruption, it is obvious that one of the ways to limit corruption is to strengthen the judicial branch. Previously it was shown that the Jury Trial institution can serve as a tool to reduce corruption in judicial branch. As it was stated by”It fulfils that task by decentralizing judicial power, which makes corruption—an illegal business transaction between a litigant and an arbitrator—extremely difficult”²². That study showed that “countries that inherit “corruption-prone” legal traditions are not necessarily locked in a bad equilibrium”. Thus, incorporation of Jury Trial institution can prove to be helpful with the existing situation with bribery among judges or pressure coming from government officials and through the population’s control will enhance independence of judges from legislative or executive pressure.

To conclude I want to say that the idea of Jury Trial introduction is not a sole and unique solution to the problems that exist in the judiciary. It is rather to be an addition to the reforms initiated in the judicial system, and together with them should have its incentive to strengthen independence of judiciary. The institution of Jury Trial proved to be efficient throughout history and the experience of countries such as Brazil, Japan or Russia and Georgian in the post Soviet territory that uses this system suggests that it will have positive impact in our efforts to combat corruption in the judiciary and to become a rule of law country.

²² Stan Hok-Wui Wong (2007). *Juries, Judges, and Corruption: a Cross-National Analysis*.

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Appendix

Chances of the jury trial application in Armenia

The survey results

The survey was conducted in the city of Yerevan and 839 residents were questioned. The survey has pursued two general goals: 1) to comprehend citizens' level of awareness regarding the jury trial, and 2) to comprehend citizens' opinion and attitude regarding the jury trial in general, and in particular, concerning the jury trial introduction in Armenia. Before presenting the results of the survey let us, present the socio-demographic composition of survey participants.

Figure 1. Gender of survey participants

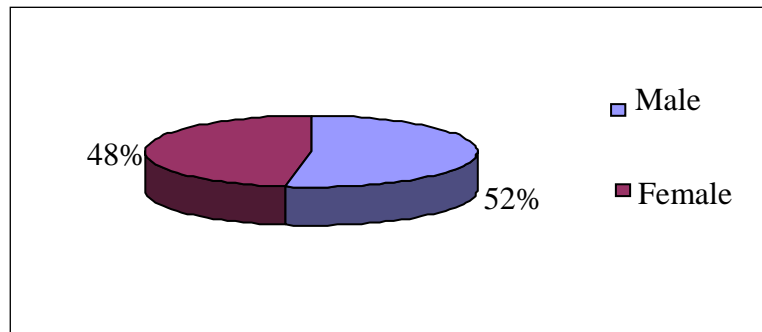


Figure 2. Age of the survey participants

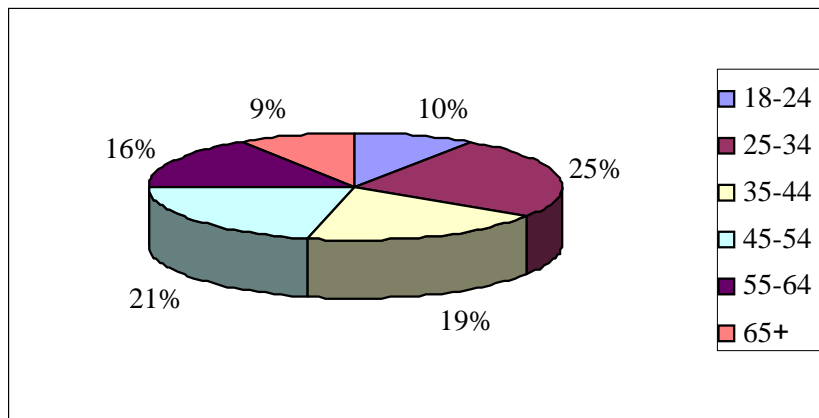


Figure 3. Education of the survey participants

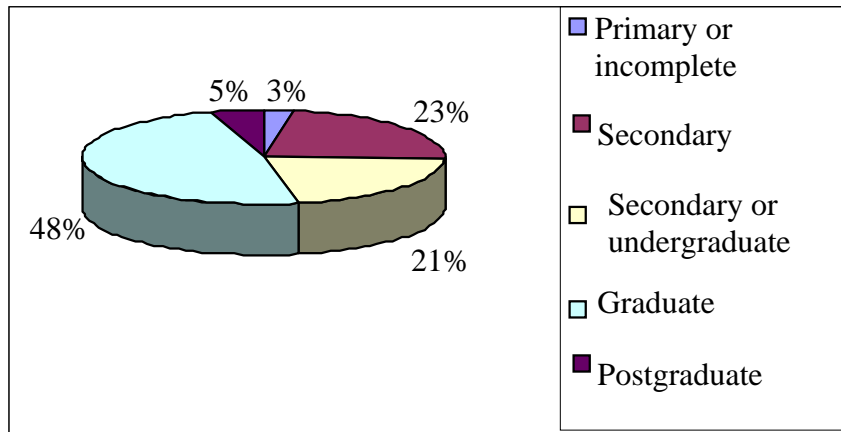
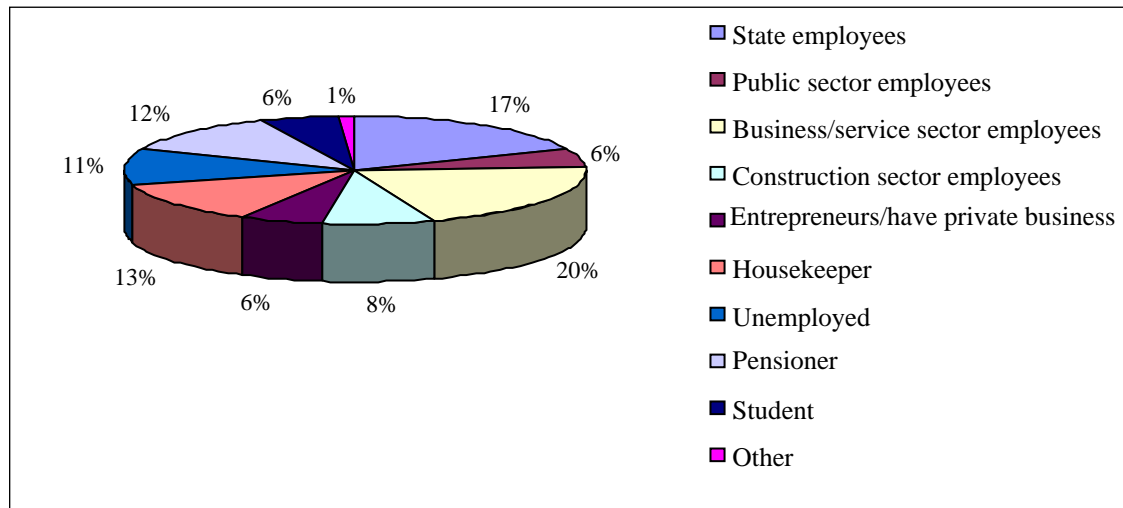


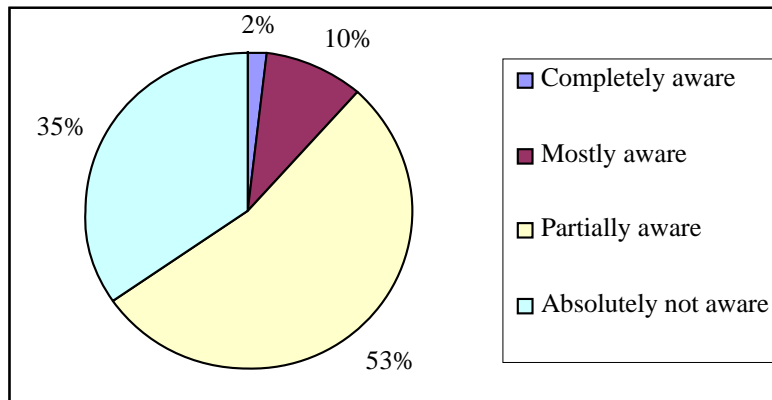
Figure 4. Occupation of the survey participants



1. Citizens' level of awareness regarding the jury trial

Before questioning respondents about the jury trial, they were asked whether they are aware about the judicial system of Armenia. Majority of the survey participants were at least partially aware about the Armenia's judicial system.

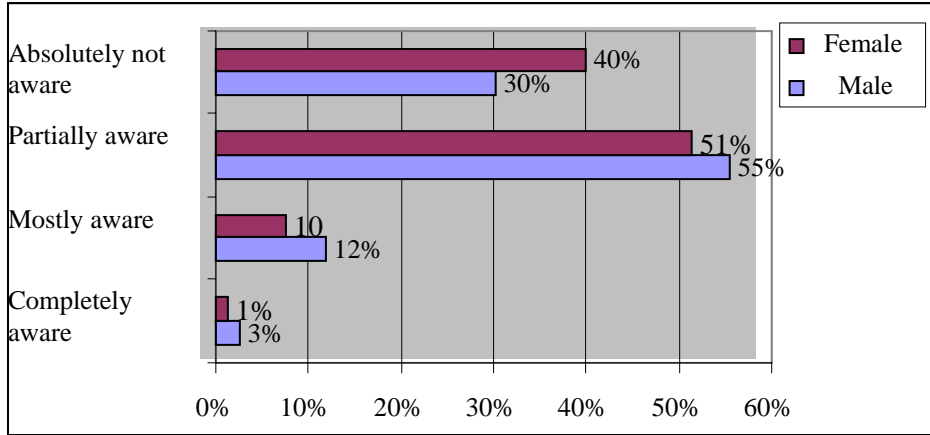
Figure 5. The level of respondents' awareness regarding the judicial system in Armenia



According to the survey results, women are less aware than men.

Figure 6. The level of respondents' awareness regarding the judicial system in Armenia by gender

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The level of awareness regarding the judicial system also depends on the age and educational census of respondents.

Figure 7. The level of respondents' awareness regarding the judicial system in Armenia depending on age

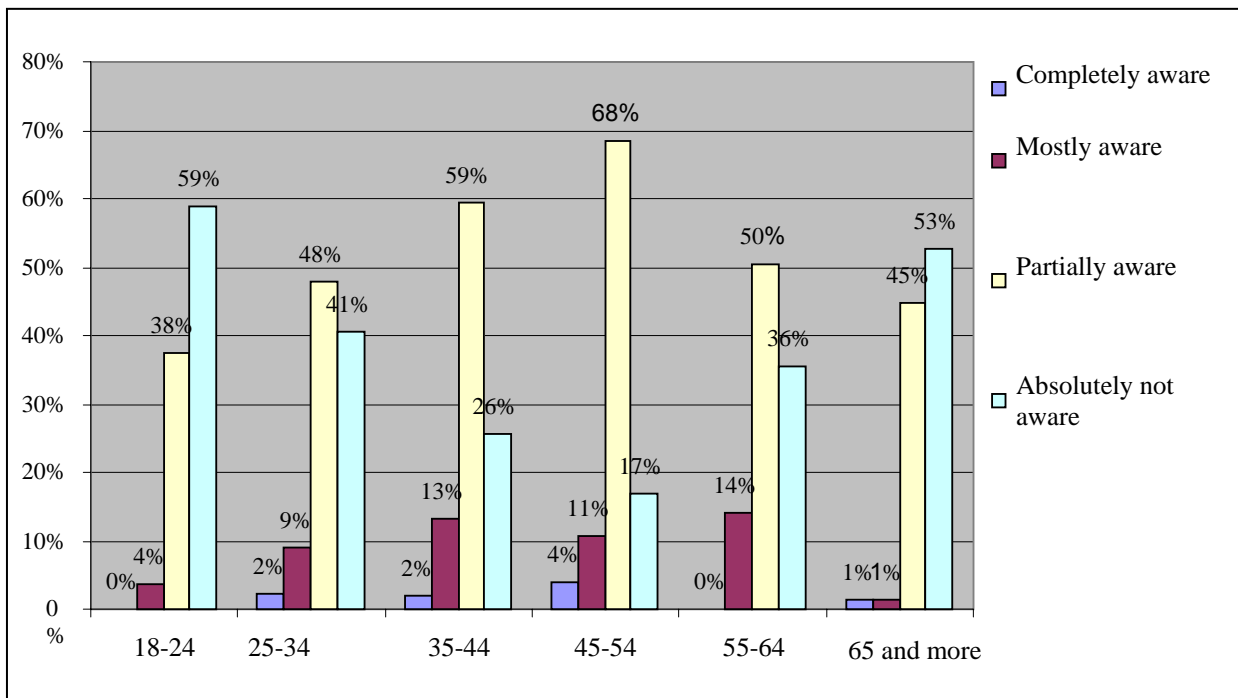
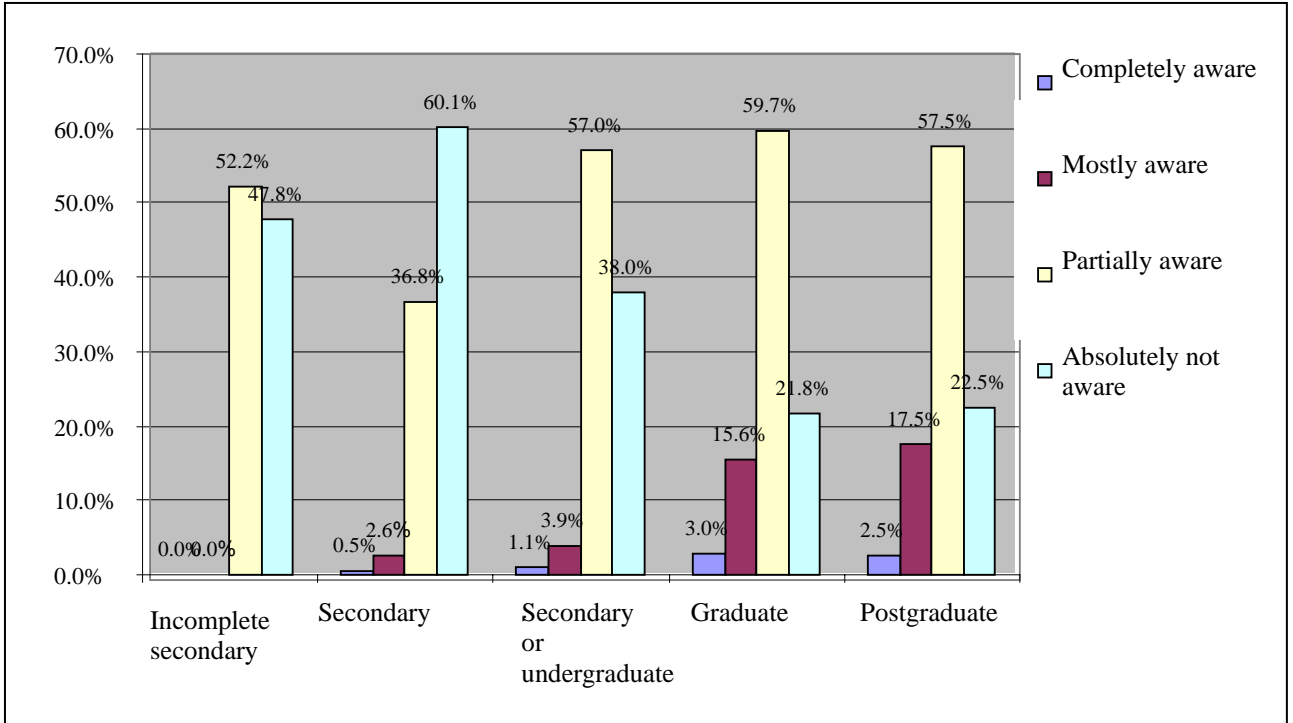


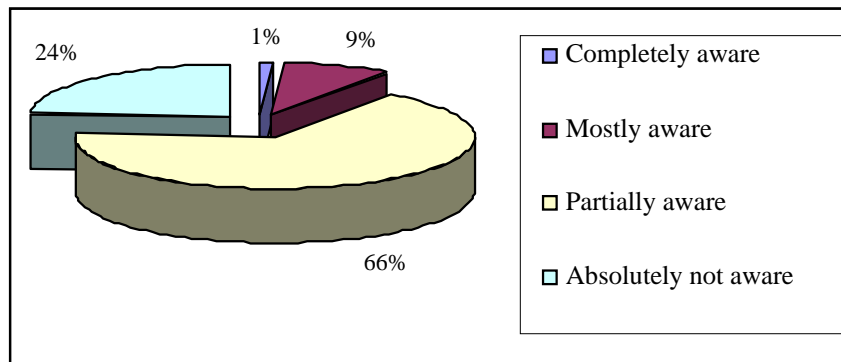
Figure 8. The level of respondents' awareness regarding the judicial system in Armenia depending on educational census



For to once again to verify the accuracy of the level of awareness regarding the Armenia’s judicial system respondents were asked whether the jury trial exists in Armenia. Sixty-eight percent of respondents answered “no”, 27% - “not aware”, and 5% - “yes”. It should be noted here that the respondents who answered “partially aware” and “mostly aware” to the previous question gave last two answers.

To get answers that are more objective for coming queries one more question-filter was used: that is how much they were aware about the jury trial at all. Again, the majority of respondents were partially aware about the jury trial.

Figure 9. The level of respondents’ awareness regarding the jury trial



In this situation, as well there is a difference between the answers depending on the sex, age, and educational census of the respondents.

Figure 10. The level of respondents' awareness regarding the jury trial depending on sex

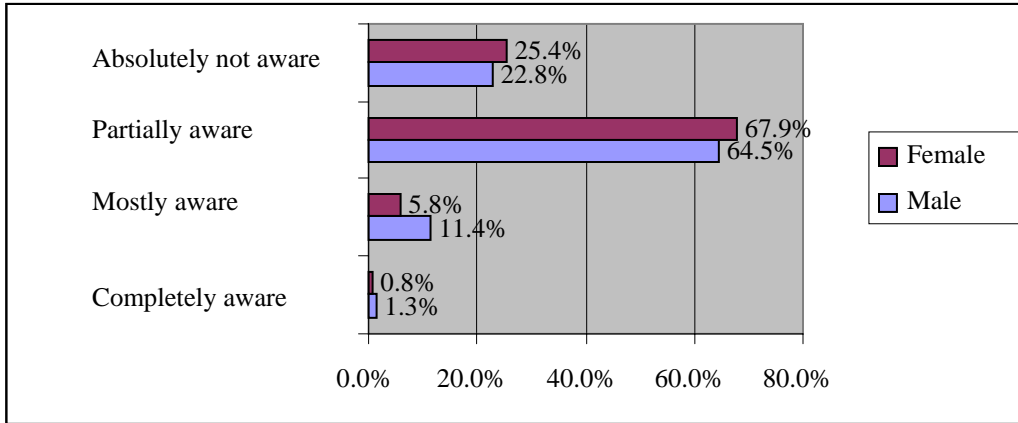


Figure 11. The level of respondents' awareness regarding the jury trial based on age

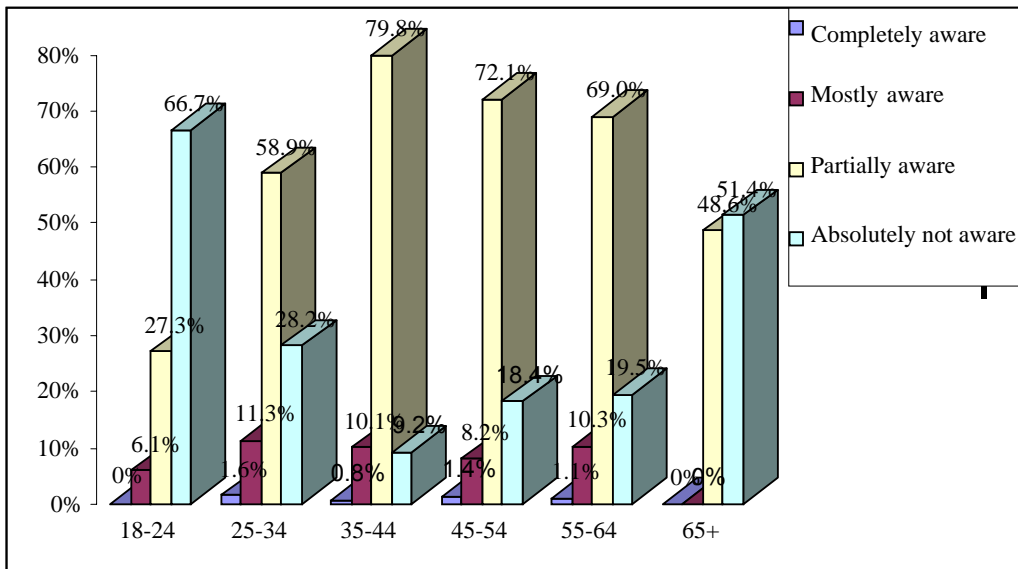
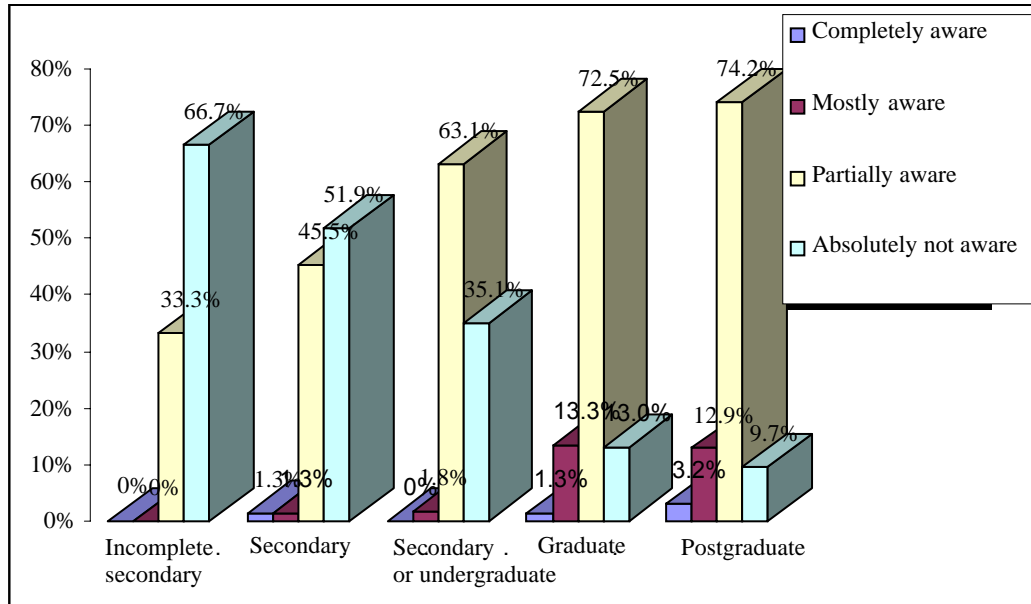


Figure 12. The level of awareness of respondents regarding the jury trial depending on educational census



To the following questions of the questioner were answered only by those, who at least were partially aware about Armenia's judicial system and about jury trial institution: that is 416 respondents.

As to the main sources of awareness about the jury trial, it should be stated that the absolute leaders were movies and mass media.

Table 1. Main sources of awareness about the jury trial

The source of information	Answers	Percent ²³
Movies	274	65.9%
Mass media	206	49.5%
Friends, relatives	76	18.3%
Professional literature	72	17.3%
Internet	14	3.4%
Public organizations	11	2.6%
Dealt with the system	3	0.7%

In the case of information, sources there is present some sexual differentiation. Men marked much more movies, scientific literature and Internet then women. Women marked much more news programmed, friend/colleague/relative and non-governmental organizations.

If the answer will be reviewed in connection with, age differences so here are also present some securities. Almost in all age groups the priorities are given to movies and on the second place are news programs, but in 55-64 age group difference is much smaller and in 65 and more age group the percentage of this two information sources are almost the same. Scientific literature, as information

²³ As far as participants could provide more than one answer, the total sum is more than 100%.

source, is on the third place for 18-42, 35-44 and 55-64 age groups, but 65 and more age group did not mark at all this answer.

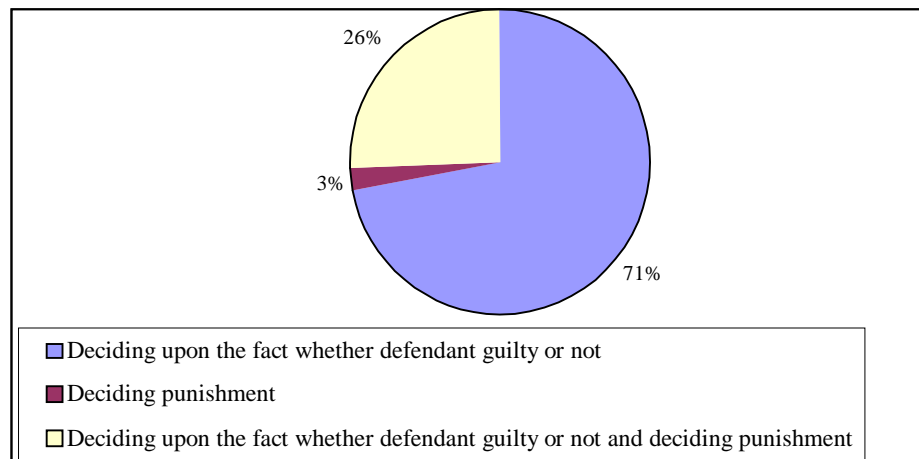
Friend/colleague/relative, as information source, is on the third place for 25-34, 45-54, 55-64 (together with scientific literature) and 65 and more age groups, but on the fourth place for 18-24 and 34-44 age groups. Internet as information source was marked only by 25-54 years-old persons, from which the highest number marked by 25-34 years old. All age groups, except 18-24 and 55-64 age groups, marked non-governmental organizations as information source. In addition one more interesting interconnection: three persons who belong to 55-64 age group, marked Personal experience from court of jury trial as information source.

If information sources will be discussed from the point of view education in that case, movies and news programs will stay on the first and second places for all groups, but here will appear also some interconnections. Questioned persons, who have primary or not full secondary education, have on first place together with news programs friend/colleague/relative, but other information sources – internet, scientific literature, non governmental organizations, haven't marked. The importance of scientific literature is increasing for persons who have international education and has fourth place. Persons, with secondary and not full high education, and graduate and postgraduate education, marked scientific literature, non-governmental organizations and Internet. Moreover, Internet as information source was marked much more depending on increase of educational level

Some questions were involved in questionnaires connected with activities of jury trial for checking if questioned persons in reality have any idea on their activities.

As a result, on the question which role have work of jury trial the majority - 71.6%, marked decision-making on the fact if defendant guilty or not, 2,6% marked, that they are deciding the punishment, but 25,7% find, that they are deciding the fact if defendant guilty or not and punishment.

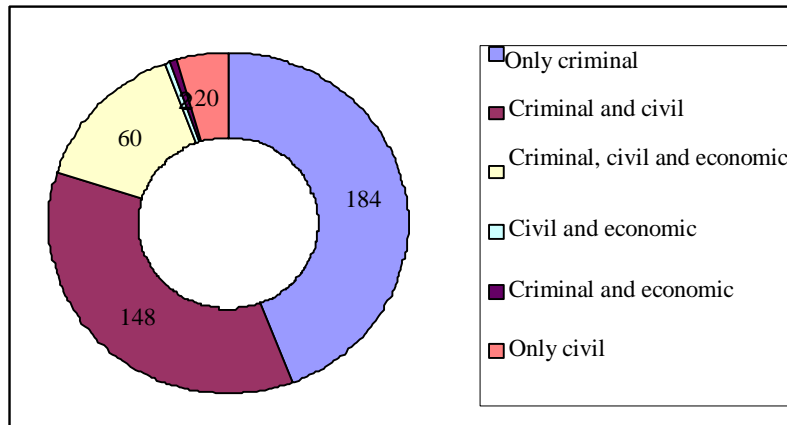
Figure13. Duties of a jury trial



In addition, the majority of questioned persons that marked last two answers are the persons who are not familiar with the work of jury trial in the court. Only one person for each, who marked that fully or almost familiar with this system, marked in this question answer number three. In reality the work of jury trial consists on making decision regarding on being guilty or not, and as a result the majority of questioned persons have right idea on this topic.

Other question connection with information was referring to which types of cases are discusses by jury trial and were given the following answers: criminal, civil and economic. They were allowed to mark several answers. The following result came out.

Figure 14. What kind of cases are heard by jury trial



It can be pointed here also that questioned persons mainly were aware on the functional specificities of this system. If the answers will be discussed not with combination of answers, but as simple marked frequency it will appear that 394 out from 416 marked criminal cases. Two hundred eight from them marked with criminal cases civil and 62 also economic.

For evaluation the level of public awareness regarding jury trials, they were also asked the question which criteria should jurors have according to the following criteria: age, education, sex, occupation, citizenship, nationality and possibility for additional answer.

Bellow presented answers of questioned persons according to the marked criteria.

Figure 15.1 Preferred education of jury trials

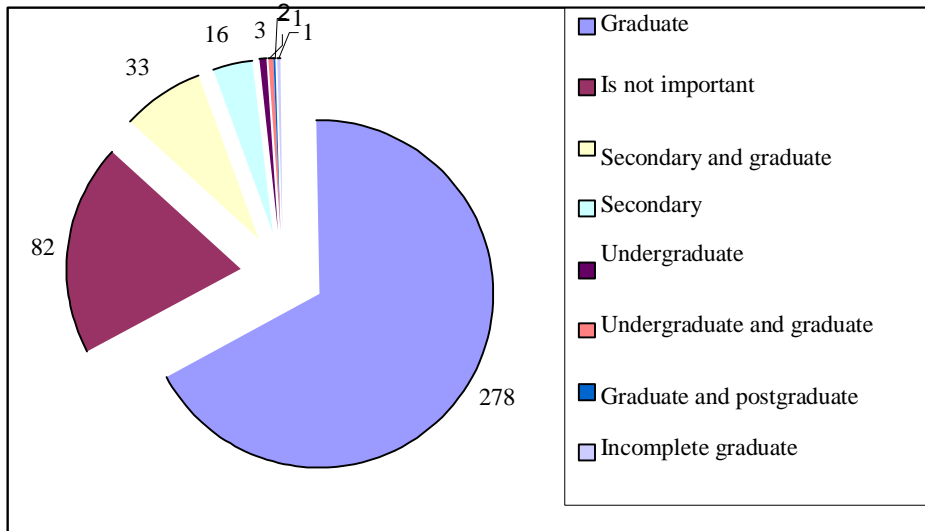
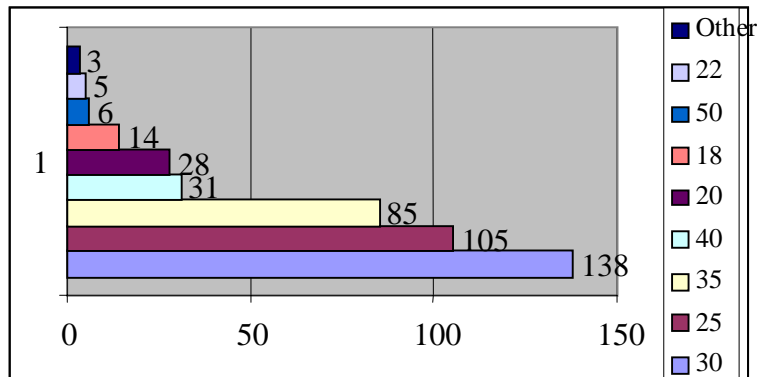


Figure 15.2 Preferred age of jury trials

Minimal age limit



Maximal age limit

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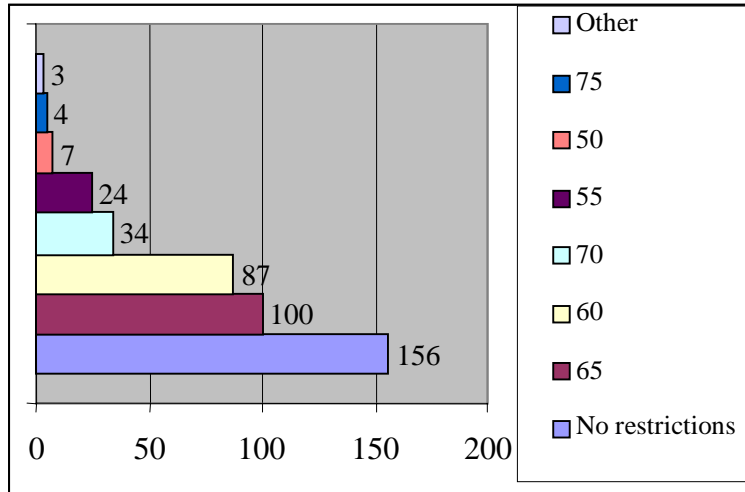


Figure 15.3 Preferred occupations of jury trials

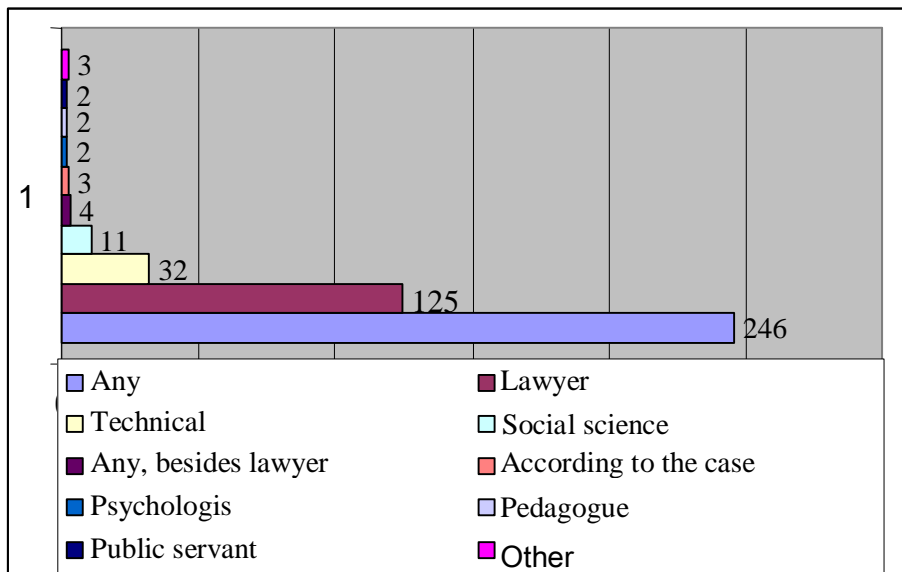


Figure 15.4 Preferred sex of jury trials

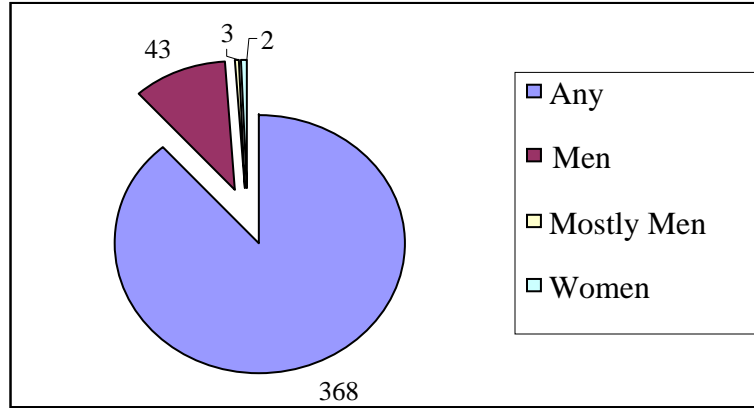


Figure 15.5 Preferred citizenship of jury trials

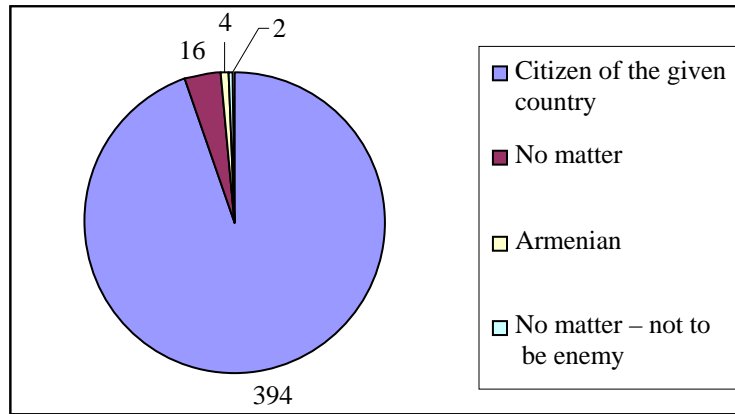
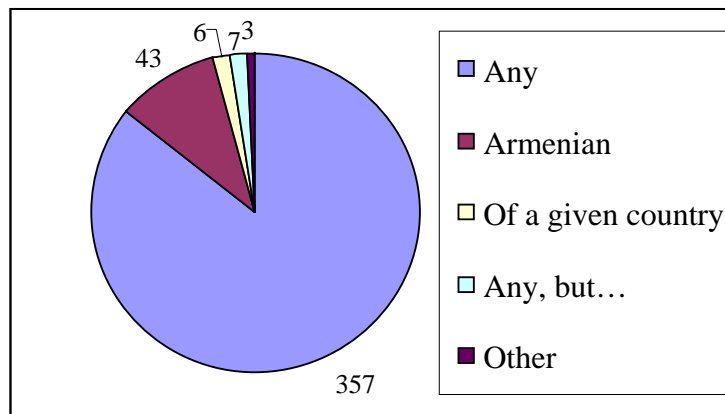


Figure 15.6 Preferred nationalities of jury trials

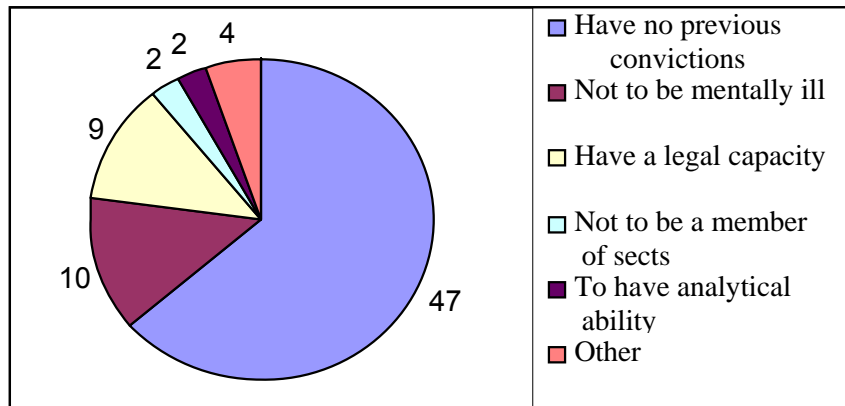


Any, but... answer is very interesting and needs additional explanations in this range of answers. Seven questioned persons marked that nationality should

not have any meaning, but somehow they should not be enemy, not Turkish, Azerbaijani, Muslim or any, but in our case only Armenian.

In the place for other answers questioned persons filled out also answers.

Figure 15.7 Other preferred criteria for jurors



Presented above graphic is separate result of additional preferred criteria of jurors. If we will try to present the picture of a juror according to the summary of given answers then the more preferred picture is the following: *25 years old and more, higher education (graduated), any occupation, sex and nationality, and citizen of a given country*. Fifteen from all questioned persons gave the same presented answers. The following 14 and 11 answers combinations all answers are same except age (in the first case was marked 35-65 and in the second case- 30-60 years old). In other combination of answers, the changes were in age and preferred occupation – lawyer/jurist.

Summarizing the level of awareness of the questioned persons it can be stated, that they are aware on activities and specificities of jury trial court, and movies and news programs were main information sources.

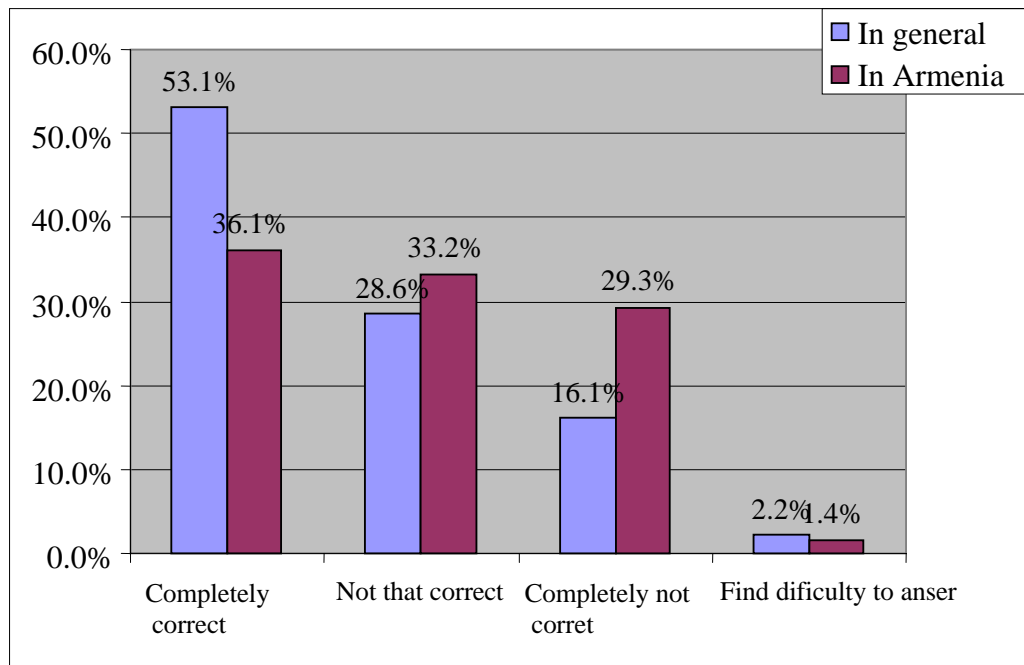
Regarding to that who can serve as a juror, the majority of participants of the survey marked correct criteria, except education, which was much more marked as graduate.

2. Citizens` opinion about the investment of jury trial in Armenia

To reveal the opinion of citizens about the investment of jury trial there are questions in questionnaire as: about positive and negative sides of that institution in general; the necessity of that institution in general and particularly the necessity of its investment in Armenia; the obstacles and favorable conditions for the investment of that institution in Armenia, about criteria for jurors.

In general, more people gave their voice for the jury trial, than for the investment of that institution in Armenia.

Figure 16
The appropriateness of jury trial in Armenia and in general



First let present the general opinion regarding to different aspects of jury trial, then we will come back to peculiarities of usage of that institution in Armenia.

The respondents answered what were in general, the positive and negative sides of jury trial.

Table 2. Positive sides of jury trial

Positive sides of jury trial	Number of answers	Percent
------------------------------	-------------------	---------

More unbiased/fair/right/objective/ impartial decision is made	121	29.1 %
Consider case and make decision jointly	102	24.5 %
The society is included in accomplishment of justice	32	7.7 %
To bribe is more difficult, impossible	22	5.3 %
Judge's possible self-will restriction	18	4.3 %
People decide but not the judge	12	2.9 %
It has a teaching matter for people	9	2.2 %
Jury is more independent	5	1.2 %
Appears as a manifestation of democracy	5	1.2 %
The society controls the judicial system	5	1.2 %
In general it's correct	4	1.0 %
It is more easy to influence on one person than on several	2	0.5 %
<i>There is no</i>	69	16.6 %
<i>I don't know/I can't say</i>	36	8.7 %
<i>Other answer</i>	12	2.9 %

Table 3. Negative sides of jury trial

Negative sides of jury trial	Number of answers	Percent
They are not professionals so they can make wrong decision	130	31.3 %
They can be guided by their feelings and make wrong decision	31	7.5 %
New opportunities of bribe	16	3.8 %
The jury is not defended from possible terror or pressure	14	3.4 %
They can made wrong decision	10	2.4 %
Consumed/ dispensable	8	1.9 %
They can be under psychological pressure	7	1.7 %
Everyone must do his work	6	1.4 %
Time consuming /may take a long time	6	1.4 %
Negative	3	0.7 %
I don't trust	2	0.7 %
<i>There is no/can't see</i>	151	36.3 %
<i>Don't know/can't say</i>	37	8.9 %
<i>Other answer</i>	9	2.2 %

From the answers of respondents it might be inferred that, in general, they see much more positive aspects than negative in the Jury Trial system. If 16.6% of respondents do not see positive aspects at all, then 36.3% don see any

negative aspects. 331 respondents from all questioned marked at least one positive aspect, 38 from which marked 2 positive aspects. 228 marked at least one negative aspect, from which 14 mentioned second negative as well.

The possibility of usage the Jury Trial system in Armenia

As we see from figure 16, that the general attitude toward the jury trial is mostly positive. Nevertheless, the negative attitude toward usage of that institution in Armenia is much more. Only 63% from all who has positively responded finds that it would be completely correct to use the Jury Trial institution in Armenia²⁴.

All, who has negative and positive attitude toward the institution's introduction, commented their answers. Let present at first comments those who has positive attitude.

Table 4. The appropriateness of jury trial usage in Armenia

Comment	Number of answers
There will be control over the judicial system by the nation	37
Bribe-taking will decrease in judicial system/ will eliminate	32
More unbiased/fair/right/objective/ impartial decision will be made	31
Nowadays judicial system will turn to positive	10
Is a democratic step	8
Trust will increase towards judicial system	7
Rule of law should be established in Armenia	7
According to positive sides	4
There will be a possibility to come out of this mess	4
No comment	3
Other answer	10

Those, who thought that it is wrong or wrong at all to use, they commented their answers in the following way.

Table 5. Inappropriateness of usage of jury trial in Armenia

Comment	Number of answers
<i>The country is small/the number of population is small</i>	80
<i>National mentality/psychology will impede the investment of this institute</i>	46
The society is not ready yet	39

²⁴ This question was given as an open-ended. Were received various answers, that were grouped based on the meaning and presented in a given way.

According to negative sides	11
There will be a great possibility of bribe-taking	11
Not professional approach. a wrong decision can be made	9
Comparatively easy will fall under the influence	7
Rule of law should be established in Armenia	7
No need of new, strange things	7
It will not work in Armenia	5
It's impossible to insure the jury	4
The pressure will increase over the courts	3
Would not reach to unanimous consent	3
Bribe-taking will decrease in judicial system/ will eliminate	3
Unacceptable for Armenia	3
Don't believe that fair/lawful decisions will be made	3
No comments	2
The country is not ready economically	2
<i>Other answer</i>	19

In case of these comments there is a need to explain the following answers: *The country is small/the number of population is small and National mentality/psychology will impede the investment of this institute.*

Under the answer: *The country is small/the number of population is small* are grouped answers which are simply formulated with alike phrases, as well as those answers which jointly with that answers had some explanations as to what kind of influence can have that *being small*.

Therefore, inappropriateness of the investment of the institution in Armenia because of the small number of the population was commented by 61-person, as it would be difficult to find 12 jurors who will not have any affiliation with the accused. Others commented that because of the small number, jurors might get enemies because of issue of mediators might bring additional pressure. In a word, in all mentioned cases respondents think that it would be impossible to draw an unbiased and objective decision.

The next answer that needs to be explained is that *national way of thinking/psychology will impede the investment of this institute*. Thirty respondents from those 46 who gave this answer did not specify their answers. The rest 16 define what aspects of the national way of thinking might impede the introduction of this institution. The interesting thing is that sometime the respondents provided completely opposite aspects, such as *"Armenians would not harm each other"* and *"Armenians can only betray and trick each other. What about justice?"*. There is an interesting implication in the first comment: in fact, to bring someone to trial means to harm that person.

Let also present other aspects of the *national way of thinking*, which would impede to the system's introduction. They are: "Armenians are more emotional and hardly they will make objective decision", "are not independent in their way of thinking", "inter personal links ranked higher than law". It should be noted also,

one more answer related to the *national way of thinking*, which has some gender things: “for it to work it should mostly women sit at the bench”.

Following questions were about the impeding and favorable circumstances of jury trial usage in Armenia.

Table 6. Impeding circumstances of jury trial usage in Armenia

Impeding conditions	Number of answers
State power	104
Judicial system is not interested in	73
State power will not allow	57
Corruption	27
National mentality/ psychology	20
The society is not ready	16
Corrupted judicial system	11
Clan system	10
The rich	8
Constitution/legislative field doesn’t allow	6
Society’s indifference	5
Imperfection of legislative/legal field	5
No requirement	4
Relative/friendly relationship	3
Imperfection of judicial system	3
Existence of numerous parties	2
Not awareness of the nation about that institute	2
Nation may not want	2
Society’s not being united	2
Do not know/can’t say	42
No impeding circumstance	27
Other answer	15

If we generalize, the main impeding circumstance - is not corresponding to the interests of state power or other layers of the society functions of the Jury Trial institution. Another important factor is specificities of the national way of thinking. The next important factor connected with societies/nation’s readiness and desire.

Table 7. Favorable circumstances of jury trial usage in Armenia

Auspicious circumstances	Number of answers
No favorable circumstances	249
Process of Euro integration	15
Nation’s desire	11

Social organizations	11
There is social requirement	11
Existence of international structure and organizations	11
Present youth	11
Nation's displeasure about /of present situation	10
Society became adult	9
Nation's displeasure about /of judicial system	6
Development of democracy in the country	5
State power's possible benevolence	5
Corrupted judicial system	2
Wrong verdict	2
Do not know/cannot say	55
Other answer	15

As we see more than half of the respondents think that there are no favorable conditions for the usage of the institute in Armenia. It should be stated that 12 respondents who gave that answer mentioned also that there is no impeding circumstance as well, and 31 mentioned *do not know/can't say* answer. Seven respondents mentioned neither *favorable* nor *impeding circumstance*.

It also should be stressed characteristics given to the young generation, which are auspicious to the jury trial usage: active; freethinkers; educated, especially in the west; out of the soviet way of thinking.

As to that what steps should be done for guaranteeing effective usage of the Jury Trial institution, 63 respondents answered that can't tell, 46 – mention that there is nothing to do, and 2 respondents mentioned that there is no need for that institution. Let us present answers of those respondents, who have particular suggestions for effective usage of the Jury Trial institution.

Table 8: The necessary steps for efficient usage of the Jury Trial

What may be undertaken	Number of answers
Work with the society	119
Work over legal field	84
Changes in judicial system	30
Change of the state power	21
Establish rule of law and implement the law	20
Fight the corruption	17
Establish democracy	13
To do experimental trials	11
Ask for assistance of international organizations	7
To finance	7
The State power should demonstrate a will	6
To organize the methods of protection for jurors	5
Improve the economy of the country	4
Fight of people against injustice	3

To give more authority to jurors	3
Continuous steps toward Euro integration	3
State approach	2
It should be formatted social need	2
Other answers	21

In the case of the first three answers, we can present also subgroups of the answers with more concrete suggestions.

Work with the society includes such answers as:

- *to inform the society about the jury trial (moreover, three person stated inform through public organizations); to advertise/to spread propaganda about jury trial; increasing overall educational level of the population, and particularly to secure some legal knowledge; increasing the society’s consciousness; change of the way of thinking; and unite the nation against the clan system.*

The main **works over legal field** are:

- To work out and pass the corresponding law, also to put the question on referendum and make constitutional changes.

It is also interesting that some of the participants mentioned that the president or the government must volitional make a decision and pass the law.

Here is necessary also mention that the respondents differ passing the law from its execution, and the last one is mentioned as separate important step for the usage of jury trial (for example “to pass the law and it should not stay on the paper but should be applied”).

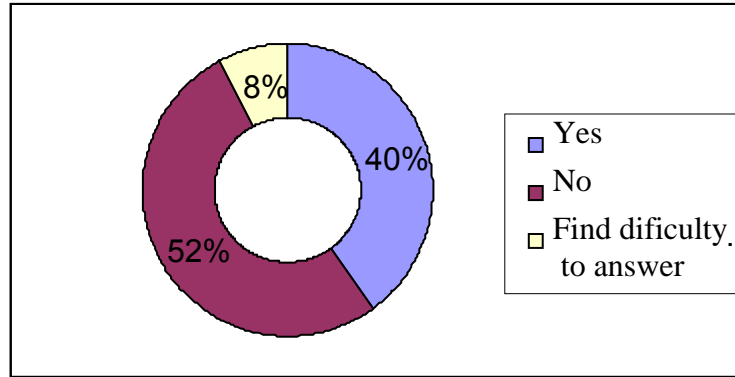
By saying **changes in judicial system**, the respondents meant in general *the professional training of the members of judicial system, replacement of members of judicial system, and securing the real independence from the government.*

It was also interesting to find out citizens` readiness to take part in trial of the case as a jury member and in case of the positive or negative answers give their comments.

It becomes clear that more than half of the citizens are not ready to take part in trial case.

Figure 15. Readiness to take part as a jury member

Constitutional right for Jury Trial: Contributing to the process of Armenia’s democratization?



Let us also present comments to the given answers. So, interviewees who were ready to be in the role of the jury commented their answers in this way:

Table 9. The comments to the readiness to be serve as a juror

Comment	Numbers of answers
To promote fairness/accomplishment of justice	64
Interesting	35
To be present at the award of the right sentence	24
To do my civil duty	10
To prevent judges` willfulness / bribery with my presence	7
For the society/to be useful to the country	6
I am specialist	5
To make my voice heard	4
Be an example	5
Only if it is my civil duty	3
To revenge upon judicial system	3
It is teaching	3
Someone must begin and it's me	2
To take a part in defending human rights	2

Two of the comments from the above-mentioned answers, seem interesting. *To be an example* were to show that *there is no anything to be afraid of, that they also can change something; things are not so bad in Armenia.*

Interesting formulation was given also to revenge upon judicial system: *“I have a grudge against the judicial system”.*

Those interviewees, who don’t want to serve as a juror, commented their answers in the following way:

Table 10. The comments to the not readiness to be serve as a juror

Constitutional right for Jury Trial: Contributing to the process of Armenia's democratization?

Comment	Number of answers
Starting from my self - defense	27
I am not a specialist	27
Not ready psychologically	25
Have no desire	22
Don't want to take responsibility to decide one's destiny	21
I am busy / have no time	14
I am against the jury trial at all	14
It's not my business	13
I have no desire to communicate with the courts	12
According to Armenian mentality	10
My age doesn't allow	6
I don't want to participate in the trial of my acquainted	4
I don't want to oppose my environment	3
I am afraid of losing my objectivity	3
My health conditions doesn't allow	2
Can't say	2
I don't believe in that court	2
Environment will not allow me to stay impartial	2
Other answer	12

Thirty-two of the respondents mentioned that it is difficult to answer whether they want to serve as a juror in trials. They commented their answers in this way:

Table 11. Comments of those who can not clarify his/her position

Comment	Number of answers
Starting from my self - defense	11
It depends from the situation	6
I am against the jury trial at all	3
I don't want to do harm to anyone because of me	3
Have no desire	3
I am not acquainted with the system	2
I am not a specialist	2
I have no time	1
I am not sure that my voice will be heard	1

The respondents also answered to questions as to what impact can have the investment of jury trial 1) on the level of corruption in Armenia, 2) confidence towards judicial system and 3) on the level of independence of judicial system.

3. Impact of the Jury Trial usage on the change of the circumstances

Figure 18.1 the level of corruption

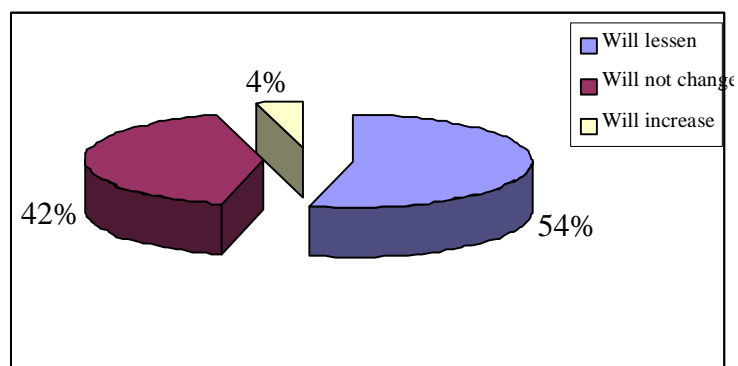


Figure 18.2 the level of independence of the judicial system

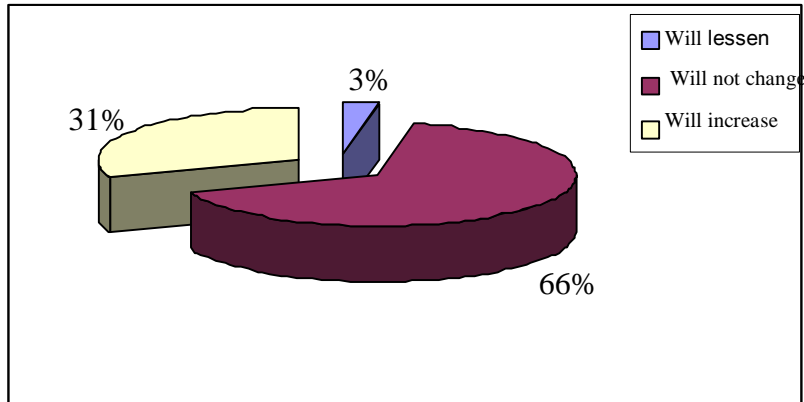
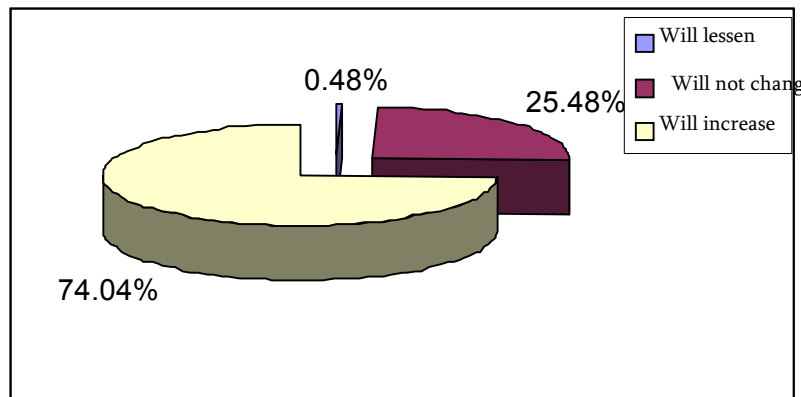


Figure 18.3 the level of confidence toward judicial system



Summary

If we try to summarize the investment of prospects of the court of jury trial in Armenia, the results of inquiry show that there are many impeding circumstances, though at the same time it is considered as an improvement of situation in Armenia by mitigation of some circumstances. If corruptions, clan system, the non complete independence of court system are considered as obstacles for the investment of jury trial, then at the same time the investment of jury trial court is considered as decreasing corruption in court system by means of ensuring of court system independence.

In case of Armenia there is another important circumstance connected with the investment of jury, which is national mentality. Besides that mentioned fact is considered as impeding circumstance by interviewee and for the investment of jury trial it makes importance for the works that are directed to that mentality changes, some national mentality elements also can be noticed in answers given in questions. Summarizing we can say that the main impeding element for the national mentality is the predominance of interpersonal attitudes towards legality. Another element that tenants indicate as an obstacle and which is non changeable is the small population groups in Armenia with the following

consequences that are- everyone knows each other, there will be relations by all means, will acquire enemies and etc. Territory of Armenian and number of population of course will not be changed, in any event in near future, so we can find other ways to mitigate that obstacle, also to have a long and serial explanatory work with society.