



## Lay judges to reduce the blindness of justice-fight against crime by changing the punishment system in the states of Moldova and Israel

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### Abstract

The subject of this article is to light a green light to Assist developing countries such as the Republic of Moldova to upgrade the system of law and justice that infected with bribery - To make the institution of side judges as representatives of the public in the criminal courts in Moldova. In recent years we are witnessing the restoration of the "classical theory" focuses on the system of punishment for criminal offences. It is recommended that this small reform, by adding side judges as representatives of the public in the criminal courts -to be implemented in Moldova, a state that ranks 103 out of 174 countries in the global corruption index of Transparency International (Israel ranks is 37th). The subject of this article is to light also a green light to the Israeli legal authorities as a developed country. The sweeping recommendation is to make the institution of side judges as representatives of the public and the Israeli society extremely effective in the glorious rule of law in Israel, which glorify the specialize courts and the criminal courts in the eyes of the general public, and will contribute to improving the justice sense of Justice and not only law.

**Keywords:** side judges, jury, bribery, criminal courts, representatives of the public and society, improving the justice sense, Justice, law, changing the trials system

### Introduction

In criminology, the Classical School usually refers to the 18th-century work during the Enlightenment by the utilitarian and social-contract philosophers Jeremy Bentham and Cesare Beccaria. Their interests lay in the system of criminal justice and penology and, indirectly, through the proposition that "man is a calculating animal", in the causes of criminal behavior. The Classical School of thought was premised on the idea that people have free will in making decisions, and that punishment can be a deterrent for crime, so long as the punishment is proportional, fits the crime, and is carried out prompt.

Classicism slowly grew less popular. It has seen revival through the Neo-Classical School and the theories of Right Realism such as the Rational Choice Theory.

In recent years we are witnessing the restoration of the "classical theory" focuses on the system of punishment for criminal offences.

Democratic nations should conduct the struggle against crimes with a proper balance between two conflicting values and principles. On one hand, we must consider the values and principles relating to the security of the state and its citizens. Human rights are not a stage for national destruction; they cannot justify undermining national safety in every case and in all circumstances.

To our opinion, the level of effectiveness, decency and justice of the national Courts in its rulings is not clear, since it is unlikely that a professional judge without public representatives or suitable jurors will issue maximal justice. The importance of reasoning of public representatives in the social aspect, as reflecting the atmosphere in society, in understanding the position derived from understanding the goals of ruling, in great.

Public representatives serve as an example in criminal

courts in USA, the UK and Eastern-European countries in positions of judges in criminal instances or as jurors in instances of murder, for example.

In several high-profile terrorism cases, Dagestani judges and juries have failed to convict suspected terrorists brought to trial by the authorities. In a system that once found nearly everyone brought to trail guilty this outcome is unexpected. These cases show that Russian law does matter: juries and judges are throwing out terrorism cases. [1, p.7-10]. Trial by jury was first introduced in the Russian Empire as a result of the judicial reform of Alexander II in 1864, and abolished after the October Revolution in 1917. [2] Lay judges were in use in the Soviet Union. [4] After a 1958 reform they were elected for 2 years at general meetings of colleagues at their place of work or residence, or at higher levels appointed by the soviet. [4] The incidents of lay judges overruling professional judges was rare, and was officially reported in only 1 case by the late 1960s. [3, p.641-642] Unlike the juries of the United States, lay judges were not selected from panels that are cross-sections of the entire population, but selected by institutions in each district. The jury trial was reintroduced in Russia in 1993, and extended to another 69 regions in 2003. [4] Fabricated Evidence and Fair Jury Trials.

In the USA, a jury dealt with a claim of terrorism victims against the Palestinian Authority. The trial of the claim conducted against the Palestinian Authority and PLO due to execution of terrorist attacks in Israel opened in January 2015 in New York. The legal strategy of the Palestinian Authority was: the Intifada terrorism attacks and shooting incidents in the years of 2001-2004 were done by individuals that acted on their own without any connection to the Authority itself. The Palestinian Authority will have to defend against dozens of testimonies of terrorism victims,

terrorism specialists and eye witnesses that will represent the claims of the prosecution. The chosen jurors, ordinary American citizens, may hold in their hands the key to international legal statements on the subject of terrorism damages responsibility in general, and in the Israeli Palestinian arena in particular. The plaintiffs are 11 families, casualties of acts of hostilities with Israeli and American citizenship, represented by Israel Law Center organization, and sues by power of American Law that enables American citizens to sue terror organizations in the US due to terrorist attacks that have happened outside the USA as well. The families accuse the PLO leadership and the Palestinian Authority in financing, planning and execution of seven terrorist attacks and shootings against Israeli citizens in Israeli territory, through the activation of clerks, officers, security personnel and other paid employees that are working for them. The compensation sum sued is more than one billion dollars, based on legal precedents in the USA in terrorism suits. The jury – with neither Muslims nor Jews, and that are very distant from the Israeli- Palestinian dispute [4].

In JAPAN On May 28, 2004, the National Diet passed a law requiring selected citizens to participate as judges (and not juries) in trials for certain severe crimes. Citizens chosen for such service, called “saiban-in” (裁判員?, "lay judge"), are randomly selected out of the electoral register and, together with professional judges, conduct a public investigation of the evidence in order to determine guilt and sentencing. In most cases, the judicial panel is composed of six saiban-in and three professional judges. In cases where there is no substantial dispute over guilt, the panel is composed of four saiban-in and one professional judge. Unlike under the older jury system, the defendants are not allowed to waive trial by saiban-in. The saiban-in system was implemented in May 2009. [5, p.12]

The Silent Lay Judges Influence in the Community Falls Short of Expectations Germany for example, has a mixed court system: lay assessors and professional judges form part of the panel of judges.<sup>1</sup> They hear the cases and together they decide on all procedural matters that arise during the main hearing. In the end, they deliberate and rule as one body.<sup>2</sup> tellingly, lay judges at criminal court are called "Schbffen," which derives from the German verb for "to make something." They "make law," recognizing that a peoples' law is not only formulated by parliaments, but also specified in daily court rulings. At other branches of the courts, lay judges are called "honorary judges" which emphasizes the significance of the office and the absence of material interests. There are a number of reasons that are commonly given for the participation of lay judges. Lay judges provide special knowledge in some more specialized branches of the courts, like the juvenile courts. Or they represent the public in courts with general jurisdiction-administrative secure a careful deliberation of cases. Lay judges should also contribute to the "education of the public" on the law and the legal system.<sup>3</sup> broadly conceived, lay judges could provide others with information about the law and its application, about professionals working in the area of law, and about the inner workings of the courts. Ultimately, such knowledge could enable citizens to make a more competent use of the law, which might also have repercussions on legal policy. Armed with this knowledge, citizens may be better suited to influence political decisions as voters or as members of political

associations. In a narrower sense, lay participation is seen as a source of legitimacy for the courts and the legal system; it can enhance the trust of the parties and of the broader public. <sup>4</sup> According to Max Weber's famous definitions the "legitimacy" of a social order means a belief in its exemplariness and the "legitimacy" of a social order means a belief in its exemplariness and validity; a "legitimate rule" means that orders of an authority have to be obeyed even if their content is resented.<sup>5</sup> The eminent politician and judge Rudolf Wassermann viewed the legitimating function as supported even by those jurists who otherwise disregard lay judges.<sup>6</sup> In the past, empirical studies showed that citizens wanted courts to involve a lay element. [6, p.769]

Another example the system of lay judges in Sweden.

Unlike a jury system, where laymen are selected from a cross-section of society, Swedish lay judges differentiate themselves with regards to age, gender, profession and income from the rest of the population. A poll in 2008 by the SOM Institute in Gothenberg revealed that 37% of Swedish people consider the competency of lay judges to be low. A poll in 2011 by Swedish state television revealed that 60% of the professional judges have no confidence in the lay judge system. The dangers of having lay judges from a xenophobic party (SD) deciding in court cases became a hotly discussed issue in September 2010. The debate came about after the Sweden Democrat party (SD) soared in the Swedish general elections. Asylum determination cases were cited as an example in which party bias could compromise the outcome of the trial. Christian Diesen, Lecturer in Procedural Law at Stockholm's University, said: "It is possible that the SD [Sweden Democrat party] lay judges can influence the atmosphere in court and eventually create a harsher climate, especially for immigrants. If this happens it won't be discernible in the reasoning of the court, but it will be visible through longer term statistics of legal decisions... with NY Democratic [New Democracy, an extreme right-wing party in the 1990s] one could see a pattern: their lay judges made more reservations than the other lay judges from other parties, and their dissenting opinion had to do with giving immigrants from outside Europe harsher sentences than the rest. They also wanted to combine the sentence with deportation to a greater degree than the other judges. There are good reasons to carefully monitor what happens with the SD (Sweden Democrat party) lay judges." In 2008 a lay judge for the Moderate party, Cecilia Uggla, was forced to resign. She was judging at the Arboga murder trial. Uggla stated to the tabloid Expression that she believed that the person who was accused in the trial she was adjudicating was guilty, while the trial was still ongoing. In 2010 a lay judge for the district court in Örebro, Katrin Tensmyr, revealed to the magazine Misstänkt that she wasn't so much interested in the evidence produced in the proceedings as she was in studying the body language of the defendants <sup>[7]</sup>.

In Norway, in the district courts of Norway, lay judges sit alongside professional judges in mixed courts in most cases. <sup>[8]</sup> In most cases, 2 lay judges sit alongside 1 professional judge. The court leader (Sorenskriver) may decree that a case have 3 lay judges sitting alongside 2 professional judges if its workload is particularly large or if there are other significant reasons <sup>[9]</sup>. Decisions are made by simple majority <sup>[8]</sup>.

Lay judges also serve during criminal cases in the appellate courts. For smaller cases, the court is convened with three

professional and four lay judges. If the crime carries a maximum sentence of six years imprisonment or more, the lay judges are replaced with a jury. The jury is chosen from the same list as the lay judges, meaning that lay judges in the appellate courts also serve as jurors. If the jury finds the defendant guilty, three of the jurors are selected at random to serve as lay judges during the sentencing. In the few cases there the professional judges overturn the jury's verdict, regardless of whether the original verdict was one of guilt or innocence, the case is re-tried with three professional judges and four lay judges. In the Supreme Court, there are no lay judges. Lay judges are not considered to be representative of the population [8]. About 75% of lay judges are nominated by the political parties in Norway.

For the purpose of Fight against crime by trial punishment discussion - we have made a research in the states of Israel and the republic of Moldova.

A. following are the findings of an earlier statistical survey on an existing situation in the field of public representatives in Israel, conducted by the author of current article. The survey was conducted for the purpose of current article, regarding effectiveness of the functioning of public representatives in the Regional Court of Labor and Social Security. The survey was by a questionnaire of 45 questions, during December of the year 2014. The research population numbered 41 people, about 70% of those who have filled out the questionnaire are lawyers and 30% are managers in companies attending a session in the Regional Court for Labor and Social Security. Following are main findings of the survey. The most obvious and dominant data in the survey is that compatibility test are to be conducted upon acceptance to duty of all the public representatives, while 73% on the respondents state a total agreement and 15% state low agreement.

- On the other hand, it was found that 49% of the questionnaire respondents think that there is a difficulty in public representatives to understand the legal proceeding and content of the subjects deliberated in the Court.
- A sweeping tendency was found by rate of 77% that justice can come to light in trials with public representatives.
- It was found that 46% of the respondents think from a low to complete agreement that the opinions of public representative affect the outcomes of a legal discussion, and that the legal proceeding in Labor Court is fair (34% can't decide.)
- There is a sweeping agreement of 78% that the public representatives are not dismissed from an obligation to some sort of decision.
- It was found to a level of 56% that participation of public representatives in trials socially reflects the "common sense" to a greater extent, than a trial with a professional judge alone.
- It was found that 46% of the respondents claim that they would rather personally be in a trial in which public representatives are involved, in a personal case as a "defendant" in any legal proceeding.
- It was found that should public representatives serve in criminal court there is no conclusive finding whether they will have difficulties or feel uncomfortable in determining guilt.
- It was found that public representatives will not have a

tendency to acquit the defendant.

- It was found that the public representatives will fear making a decision due to fear of the defendant: 34% of the respondents tend to think there is fear amongst public representatives and 25% think they will fear completely.
- It was found that should public representative serve in a criminal court, they will almost tend to not convict innocents (39% agree totally, and 29% can't decide on the subject), and they will tend to respect the rights of casualties/victims to a little extent by rate of 39%, and to a complete extent by rate of 17%.
- A prominent finding is that 71% of the respondents claim that from little extent to completely, that it will not be easy to public representatives to judge other people, in a criminal court and that it will be hard for them to judge whether a person is guilty or not guilty. More to be said: In the Labor Courts in Israel, some judges have positive attitude towards public representatives, however, others see them as redundant and unnecessary. And so, there is a deficiency in a legal proceeding since there is often room for interpretations, there is room for a choice between alternatives and there is even room for proposing alternatives. Every legal system needs social legitimacy. Without it, its rulings have no right to exist; without it only use of sheer force will guarantee social order. A modern society is not based on existence of a uniform and consolidated value system but rather on agreed-upon and acceptable system of rules.

Our recommendations in current article is to pass by legislation an application of a substantial change (structural and administrative) in general, in the role of public representatives or jurors in courts of law.

As an opening, it will be said right away that expertise in the aspect of the law in state courts should be saved for judges and the public representatives should be specialized in achieving the goals of Law, as reflectors of the atmosphere in society and social justice from the aspect of "reasonable justice" rather than the Law.

Therefore our unambiguous recommendation is to train public representatives to appear as judges for every matter also in criminal aspects of the state courts and particularly in crime trials as it happens in non-democratic democratic European countries and the USA. The public representatives or the jury should be free than a judge from Evidence Law and different precedents that encumber a proceeding, and to represent more moral aspect in the direction of justice rather than the Law. [15]

### Conclusion

Current article should turn on a red flashing light in towards Law Authorities in Israel and in the Republic of Moldova, about promoting and changing the trials system by adding the public representatives as lay judges in those countries.

**B. For the purpose of discussion on the issue, following are the findings of an earlier statistical survey on an existing situation in the field of public representatives in the republic of Moldova:** conducted by author of current article. The survey was conducted for the purpose of current article, regarding effectiveness of the functioning of public representatives in the criminal Court of Moldova. The

survey was by a questionnaire of 34 questions, during December of 2014 and May 2015. The research population numbered 41 law students of USM University.

**Following are main findings of the survey**

**Introduction (Was enclosed to the questionnaires')**

- The judicial system needs social legitimacy. Without it, there is no right for its decisions to exist; only without the use of force will social order be ensured. Legitimacy of the judicial system, general rule and social system in developed countries are well established by the division of state authorities and tradition. A court is competent for ruling over disputes, usually in a particular field. The court is the general system of state to discuss disputes. In addition to courts operating in different countries, there are international courts, which are typically deal in violations of international law concerning war crimes.
- Representatives of the public are an elected body of people selected following educational requirements, work experience, etc. They are serving alongside lawyers, or even in their place, and have knowledge and unique understanding of subjects discussed in court, but who are laymen in legal issues, as they often are not lawyers, as in a military court which also includes officers who are not lawyers. Court personnel serve all public representatives along with a judge, whose

decision will be the judgment and sentence! Public representatives serve in countries as Israel, Norway, Sweden, Japan and other tribunals of courts in Russia, Croatia, Spain and South America.

- A jury is a body of people elected to give judgment, to determine a fact so that it will serve as a basis for establishing legal decisions or to determine a person's sentence. Many legal systems require that a statement of fact in a criminal case be made by a jury – a group of selected adult residents of the province, who number 12 in USA and 9 in England for example.
- Many legal systems require that a statement of fact in a criminal case must be made by a jury. According to some legal systems in the United States, for example, the jury must determine both the verdict and the sentence. In light of the US Supreme Court ruling, when it comes to death penalty, only a jury can impose it on a defendant. US citizens are obliged to report, should they receive a summons by local court to serve as members of a jury. In England, the jury can determine only the factual determinations as basis for the judgment, and the judge alone can decide upon a sentence. In English civil law, the jury recommended the scope of compensation in cases of libel or slander. A jury functions in criminal proceedings in Austria, Belgium, Denmark, Malta, Norway, Russia, Spain, Sweden and Switzerland.

**Table 1**

Subject	Index *no.	Slightly agree –Agree (%)
A defendant judged by common people "as an equal", will feel more comfortable than being judged from an altitude of throne of judgment, and will feel that justice has been made in his regard.	7	48
To my opinion, public representatives in courts of law will contribute less to justice than a jury.	5	69
To my opinion, it will be good as giving the jury the possibility to declare that a certain law is not constitutional and to acquit the defendant will contribute to safeguarding of the constitution from dictatorship governments.	1	56
A criminal trial is a social trial that deals with behavior norms of an individual versus those of his companions. That is the reason why people that comprise the society are those who should discuss it, and not just elite judges, that on the most part will be estranged from the environment and its hidden feelings.	7	81
I think that if public representatives will serve in courts of law, they will not have tools for judging other people, and they will find it hard to judge whether an individual is guilty or not.	3	
Should I as a citizen encounter to a legal discussion on a subject I have no knowledge about – I will prefer the trial to be conducted with public representatives.	2	83
The opinions of public representatives will affect the outcomes of legal discussion.	2	86
Knowing Moldova – it is more suitable to have a jury in a court of law, for instance of 10 people, that is comprised from people from all walks of the population – rather than 2 public representatives that judge alongside with a single judge and whose opinion can overcome his opinion.	5	81
I think that a trial with public representatives is more preferable than with professional judges.	2	39
A jury combined of average civilians, will be able to determine in complicated and complex issues like terrorism, murder, manslaughter and so forth.	1	43
I think that a jury is more suitable than public representatives for creation of justice in a court of law.	5	52
A jury will be more reliable than public representatives in courts of law.	5	79
To my opinion, accepting a decision of public representatives in a court might be affected by the media or majority opinion.	3	79
In a case of a single judge facing 12 jurors – the opinion of the 12 is preferable over a single opinion. "Juror" is not just a word. Its meaning is broad and profound, as it concerns discussing and determining fates under the oath that justice will be revealed. Moreover, this term receives a 12 times bigger meaning.	1	76
In general, trials with public representatives are more suitable to principles of justice than trials with professional judges only.	1	52
To my opinion, a professional judge has no advantage over the jury in anything concerned their impression from witnesses, and it can even be said that there is a decisive preference to the impression of jurors for instance, over a single judge.	1	64

Conducting a trial with professional judges only without public representatives will not always guarantee a correct evaluation of verdicts.	2	55
A trial with participation of public representatives will guarantee fair decisions than trials with professional judges only.	2	62
Justice cannot be revealed in trials with public representatives or a jury.	3+4	
A trial with a jury that represents all parts of the nation – reflects socially to a greater extent the "common sense", than a trial with a professional judge and two public representatives.	5	71
The professional judges will not change their ways and their attitude towards witnesses that appear before them. Following that, their impression will always be the outcome of their subjective values stemming from their personality, their opinions and personal preferences.	6	76
Civilians are not fit to serve as jurors, since there is a fear that a local jury will receive hostile and problematic decisions, due to the fact that a jury from a particular ethnic origin will judge an individual from a different ethnic origin with which there is a dispute in the country, and vice versa. Therefore, it is an issue with a potential to fail in revealing of justice and a potential of failing the entire system.	4	76
If public representatives will serve in a court of law, they will tend to respect the rights of victims.	2	74
Service of a jury in a trial is pluralism. This principle gives legitimacy to the expression of different cultures and the state of mind stemming from this. The establishment of a jury fulfills this principle, as each juror decides in accordance to his viewpoint which he formulates in accordance to his cultural background. However, the expression of a single opinion of a professional judge, fails the implementation of this enlightened principle.	1	80
To my opinion, a trial will be fairer, should public representatives have a status of judges.	2	57
There is a danger that prejudices of public representatives in courts will affect the results of trials.	2	
To my opinion, it is called for that juries will serve in courts, as judges hear too many witnesses every day and "close" numerous cases during their service. The assumption is that judges also come to a state of "fatigue" as they perform every day the same routine work, of determining fates.	1	74
To my opinion, there is a difficulty for public representatives and for jurors to understand the legal process and the content of subjects discussed in court as they have not studied law.	3+4	76
In general, if I were a defendant in any court, I would have chosen a trial in which public representatives or juries are involved.	1+2	68
I think that public representatives contribute from their knowledge and experience to the rulings of court.	2	71
When there are juries in a court, there is a fear of distortion of judgment that in the future may be expressed in depriving freedom of the innocent, or alternatively, giving freedom to a defendant who was supposed to be convicted.	4	88
Studies prove that the majority of the professional past of criminal judges is pro submission of claims, their role as prosecutors is over, and they continue this role within the walls of the court. Therefore, it is desired that there are juries.	6	71
The jury will express the spirit of justice, as there is no need for making justice in a trial to be written in law.	1	67
Trial and justice can coexist, when the combined system of a professional judge and public representatives or a jury, brings about a situation in which the "disadvantages" of each party becomes its advantages, as a result of the combination, as the judge is invited to contribute his professionalism, his experience and his broad knowledge in judgment proceeding to direct the jury towards a correct viewpoint. Nonetheless, a jury will contribute to the work of justice.	1+2	81

**\* Questions related to each metric selected in the study are above-mentioned in table**

**Examining correlations of research**

Index No. 1: Potential contribution of jury

Index No. 2: Potential contribution of Side judges

Index No. 3: Mismatching of Side judges to judge

Index No. 4: Mismatching of Juries to judge

Index No. 5: The difference between a Jury and Side judges.

Index No. 6: The problem with a professional judge as a single judge.

Index No. 7: The justification of the Side judges OR the Jury, as representatives of public in the courts.

**Analysis of the findings (According the distribution of students answerers), about the potential contribution of the side judges and jurors as representatives of the public in the Republic of Moldova Court:**

About the side-judges students believe that the side judged will not have the tools to judge others, they may be

influenced in their decisions by the mass media or from multiple views, and that it is difficult to them to understand the justice process and legal content because of the absence of legal education. On the other hand. They would prefer that the trial be conducted with side judges that have the influence on the results of the trial and that this process is more appropriate principles of justice.

Students agree that the trial side judges with the presence of a judge will be ensuring fair decisions than trials with only professional judges. They point out that they would prefer to be judged in a court where side judges are serving, and they think that Side Judges will contribute their knowledge and experience with the court rulings.

Like their opinion of the jury - 81% of the students are agree that the court system with side judges, it will contribute to the fact that law and justice will live with harmony. According the jury - the findings are, that students believe that professionals judges will not change their ways and

attitudes to the witnesses in court, and as a result, their impression will always be a function of their subjectivity because of their personalities, their world of view and their private preferences –the students prefer that the must serve in courts, because most The professional judges past in criminal courts are as prosecutors in courts. They believe that the social public should judge the perpetrators and not just the elite judges which are mentally remote from the environment and feelings of the social public - because the criminal trial is a Social trial and deals with social - behavioral norms of one person against another person.

Although the students did not agree that a jury will be able to decide with complex issues and complex as the terror, murder, killing and the like, because it is a distortion of justice that a jury of local make decisions can be hostility and problematic, and despite the fear of judgment ethnic, when there is an ethnic conflict or that it is difficult to jury understand the legal process and the content because they did not learn law – Although all this, to the students opinion, the tenure of the jury is important in determining the Fluted fates in court. Fatigue of judges affects the Fluted fates in court, when they hear many witnesses every day Andre closing up a lot of cases. Jury tenure mindset legitimacy expression of different cultures. A jury will express a spirit of justice because there is no need that justice is found only in the book laws. To the opinion of the students there is an advantage to their impression of jury from the witnesses. Finally, students of Moldova would prefer a term of jurors if they had any trial defendants, when 81% agree that the courts system which will contribute to the justice.

About the suitability of the term of the grand jury or Side judges in the Republic of Moldova - Although it was found that the law students in Moldova support the representatives of the public in the form of a jury or Side judges of the party in the justice system - when they were asked about the choice between these two functions are in favor of the jury- In their view, side judges in the courts for justice will contribute less than a jury.

And Indeed,

### **The Contribution of Side Judges and the contribution of jury's**

Analysis of correlations, differences and descriptive statistics analysis, it was found the support that: About the contribution of the tenure of side judges (Alpha Cronbach=0.601333) and the jury's tenure (Alpha Cronbach=0.595592) contribution. About Correlation - Pearson Correlation Coefficients, N = 42  
0.0002 Prob > |r| under H0: Rho=0

It means that it was found that there is a clear, positive and quite strong correlation between the indexes: The Contribution of Side Judges and the contribution of jury - which means: the values contribution of side Judges tend to be higher, so the values contribution of the jurors tends to be higher

### **Difference**

T test was performed to compare the indexes. It was found that there is no clear difference between the indexes. In other words: the values of the indexes (average) that were built tend to be similar. Average difference is - 0.0176. The statistic test is: T (41) = - 0.33, p = 0.7398

### **Mismatch of index side judges to judge and jurors mismatching to judge**

It was found that the correlation between the indexes of the side judges to judge mismatching and judgment jury mismatching to judge, shows a failure of clear link linear between the variables. In other words, there is no difference between the potential of jurors and between side judges In terms of non - suitability for the tenure. Both with the same status.

Pearson Correlation coefficients, N = 42

Prob> | r | under H0: Rho = 0.3994

### **Difference**

T test was performed to compare the indexes. It was found that there is no clear difference between the indexes. The average difference between the two issues = -0.2143, the test statistic = T (41) = -1.89, p = 0.0655.

### **Descriptive statistics of the indices**

**Table 2**

Variable	Mean	Std Dev	N
Subject 3 may	1.98	0.58	42
Subject 4 may	2.19	0.53	42

### **Index difference between the side judges and juries problem and between the problems with a single judge Cronbach Alpha - 0.605040**

**Correlation:** It was found is a positive, linear, medium and clear link correlation between the side judges and juries with the problem with a single judge. In other words: As one larger index - also the second index is larger. Namely: As the problem with judging by a single judge bigger, it also will increase the difference between a jury and side judges concerned their tenure in Court.

Pearson Correlation coefficients = 0.0076, N = 42

### **Difference**

It was found that there is no clear difference between the two indexes. (Averaging index items). The average between the two issues = 0.0548 T (41) = 0.65, p = 0.5214 = test statistics

### **Index of difference between the side judges and juries, and between justifying the tenure in court of juries and side judges in court.**

The correlation shows positive, linear, moderate and clear link. As one larger index - also the second index is larger. It means: As the difference between the jury's tenure and the side judges tenure of side judges will be greater - so the level of justification of the jury's tenure against the side judges tenure in the courts - will be greater.

0022. = Prob> | r | under H0: Rho = 0 Pearson Correlation coefficients, N = 42

### **Difference**

There is no clear difference between the two indexes (items indexes averaged). The average difference between the two issues = 0.1619,

**Statistical test**

T (41) = 1.81, p = 0.0781

**Descriptive statistics of the indexes built****Table 3**

N	Variable	Mean	Std Dev
subject1_may	1.93	0.36	42
subject2_may	1.94	0.35	42
subject5_may	2.09	0.47	42
subject6_may	2.04	0.53	42
subject7_may	1.93	0.62	42

**Summary and Recommendations**

The findings among law students in Moldova point to the fact that in any case they prefer representatives of the public who will serve alongside professional judge in court. Student's preference is to serve alongside jury judge.

We believe that in spite of this preference, the law courts in Moldova must to make a very important reform of the subject of two side judges, along with the professional judge in the crime courts. The same results that jury will achieve, can accomplish two side judges in courts. A very significant cost to the jury would be a burden on one of the poorest countries in Europe, if not the poorest one. (GDP of 2239 USD Per capita by 2013) .A lot of juries (6 or 12 in each case) would increase costs and the probability of any link to the jury as public representatives of the victim or criminal in any way. Even the complex procedure of constructing and implementing a jury composed for a country like Moldova. In addition, the heterogeneous population in Moldova (In the Republic of Moldova live about 700,000 Russians, 300,000 Turks and Gagauz people (Turks). 14% of the population are Ukrainians, 13% Russians, 2% Bulgarian and 2.5% others. It can cause a racial bias in the decision because of the big amount of the jury.

US cases are known in which defendants were acquitted, despite the evidence justified a conviction against, or convicted defendants despite admissible evidence against them was very weak and did not warrant a conviction.

Jury system will reduce the position of the professional judge. The establishment of a jury system in the Republic of Moldova, means giving up the power of the professional judge. This course is not healthy in a developing country. On the other hand, due to the culture of bribes to judges in Moldova, we recommend that the side judge salary will be relatively high and will allow them to function with pure mind without financial concerns and with understand that accepting a bribe in turn, could steal their jobs.

**Other reasons for changing the system of judicial / penal in Moldova and Israel through the participation of public representatives as side judges are**

- Criminal trial is social trial. The bribed elite judges will be in most cases far from surroundings feelings of the public.
- The sentencing of a defendant at eye level, instead of judgment from the top of the bench. Defendant will feel more relaxed and feel that justice was done in his case.
- Despite the fact that previous role as prosecutors is finished, the judges continue this role inside the court with legitimacy. It is time to change.
- Judges hear many witnesses every day Andre closing up "a considerable number of cases during their tenure.

We assume that the judges come to "fatigue" as they perform the same daily routine work, determining the destiny.

- Justice is not changing the professional judges, but adding side Judges, which will give expression to the spirit of justice, as there is no need for justice that the trial will be written in the law. Court action will act according to the conscience of public representative and without loyalty to anyone.

Moldova enjoyed higher growth rates. The growth rate of the economy of Moldova in the last 6 years was about 7% per year in average – but we should not ignore the many problematic such as bureaucracy, poor transparency and poverty. In 2005, Moldova signed an EU Action Plan on EU front which included, among other things, economic reforms, acceleration of privatization, democratization and reforms in the judicial system. For the Republic of Moldova - We believe that the existence of side judges may reduce the incidence of bribing judges in law biased, with no evidence, and the "back protocol". When side judges are tenure, it is likely that judges and the police legal intrigues will be reduced, especially with testimony from the side judges.

Analysis of the Moldova study results is that the benefits arising from Moldova in collaboration with representatives of the public outweigh the disadvantages involved in this cooperative effort. Accordingly, it is appropriate, in our opinion, to the representatives of the public tenure in the court. There are types of interests where a single judge will be alone in trials, as is the case in other countries.

Our recommendation is that among others will be included in a public representative candidate questionnaire questions about the connection (personal, business or political) of the candidate to a Minister. Another important requirement - the candidate has not been convicted of a crime. The appointment of a representative of the public will be four years, but it is allowed to reappoint him for another term one, rather than serve as a representative of a public person more than 75 years. Sort proceedings shall be public representatives appointed candidates, determining entrance exams for testing reliability and integrity of prejudice and the like, as well as training of public officials. It is recommended that the composition of the committee will include representatives of the public regarding a retired judge and he will be the Chairman of the Committee and also a representative person of the Minister of Justice. The other members shall be chosen by them.

**Additional guidelines for the appointment of Judges will be**

- Side Judges will be the majority of the decision verdict and sentencing decisions, but the judge will have the right to vocational absolute veto if there is any violations of the law.
- In sentences of six years and above there will serve two professional judges and three side judges.
- Two side judges will also serve on the court of appeal, however, they will not be the majority. Professional judge will have absolute veto power.
- Minimum requirements to be a side judge will be: over the age of 40 years, with experience of at least five years in a job or activity in the field of law, society, economics or public administration, and the like,

including experience in teaching or research in these areas in an academic framework. Shall not serve - politicians or political activists or state legislators, government officials which are very high, judges, prosecutors, lawyers, police officers, ministers, prosecutors, and professionals dealing with court proceedings.

- Set entrance exams for testing reliability and integrity, prejudice and the like.
- Active operation in court
- Paving the way for expressing the opinion also as a single, and must be able to write his own verdict.
- However, the legislature must draft a list of objectives defined for the side judges of the criminal courts. The law must define the role of the side judge and the public representative contribution expected of him.
- Code of Ethics will be like a judge in criminal courts.

### Epilogue

#### **In recent years we are witnessing the restoration of the "classical theory" focuses on the system of punishment for criminal offences.**

The findings of both studies, in the State of Israel as a developed country and the Republic of Moldova as a country develops support the fact that the side judges are needed to upgrade the criminal courts.

We encourage reform in a pilot study for two years in a strict selection and training of side judges to the criminal tribunal party. The recommendation relates to their participation during this period only for offenses carrying penalties of more than two years of imprisonment. We suggest that these people be educated professionals and middle-level managers without economic problem. That is the top decile of Moldova. However it is proposed that remuneration shall be respected to minimize the possibility of bribery. This is the only option that seems to us to begin to the liberation of the culture of bribery and the reality that every problem in Moldova is solved by giving bribes. Education of the side Judges with the spirit of Western Europe will be the first small step to the change in the legal system. The Republic of Moldova is in a "split personality" between Western Europe joining to European Union, and on the other side, keeping in touch with Russia that supplying gas to the country, and is a destination country for Moldovan exports. Therefore, It is recommended that this small reform that we offer to a state that ranks 103 out of 174 countries in the global corruption index of Transparency International (Israel ranks is 37th), will be carried out under the "gatekeeper" to oversee the process from the European Union side, while the Republic of Moldova will approach the European Union for help with the issue.

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