

**Institution: University of Sussex**

**Unit of Assessment: UoA 20**

**Title of case study:** Criminal justice reform in Georgia

### 1. Summary of the impact

Research conducted by Vogler between 1993 and 2013 on the theoretical principles and practical modalities of global criminal-justice reform led to specific influence on the Georgian Criminal Procedure Code (CPC) 2009, e.g. Arts 170–176 (arrest), 196–208 (pre-trial release), 49–50 (non-compulsion of witnesses) and 219–224, 226, 231–236 (jury trial). This was achieved through sustained and direct influence on the criminal-justice reform process in Georgia 2002–13. In addition, following the enactment of the new CPC, Vogler provided recommendations on implementation, and devised and conducted training for the constitutional court on the new CPC.

### 2. Underpinning research

Vogler has been conducting research on criminal justice reform around the world for the last 20 years, whilst based at Sussex. This has involved detailed evaluation of the historical and contemporary research data as well as personal engagement in the reform process in countries as diverse as Kyrgyzstan, Brazil and Malawi. The outcome has been the development of a theory of criminal justice reform, first set out in 2005, which is intended to have a direct, practical impact on the process. It envisages the criminal trial as the location in which disputes between the three Aristotelian social orders (the state, the community and the individual) can be worked out and resolved. The participation of these three elements is associated by Vogler with the global methodologies of inquisitorial justice, popular justice and adversarial justice respectively. His research has traced the history of each trial mode from its origins to the present day. As a result he is able to show that that criminal justice reform should not (as hitherto) be based upon donor influence, treasury demands or sheer expediency but, instead, requires a strong theoretical basis. In short, for a criminal justice system to achieve its purpose in resolving social conflict, none of the three social orders should be excluded from the procedure.

This analysis has important practical implications for the design of criminal-justice reform programmes, requiring that the three major methodologies should be engaged sequentially but never to the exclusion of the others. Inquisitoriality should be dominant in the pre-trial, adversariality in the trial and popular justice in the phase of judgement. An imbalance between these elements, or the radical exclusion of one or other (as for example, the exclusion of adversariality in Soviet criminal justice or popular justice from the International Criminal Court) would therefore fatally undermine the essential function of criminal justice.

In published work, Vogler has applied this perspective to an analysis of contemporary reform practices around the world, especially in Europe, and to the international criminal courts.

The practical implications of this work for criminal justice reform are as follows:

- Criminal justice reform should be based on clearly articulated principle, not on expediency or donor influence.
- There should be a balance in any given system, based on sequential engagement through the process, between the three trial procedures: the inquisitorial (authoritarian, forensic methods), the adversarial (individual, rights-based forms) and popular justice (democratic participation).
- It is important in any reform process first to identify the existing imbalances and discontinuities between different trial modes in the unreformed procedure.

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Reform measures should be aimed primarily at correcting these imbalances at each stage.

### 3. References to the research

- R1** Vogler, R. (2005) *A World View of Criminal Justice*. Aldershot: Ashgate.
- R2** Vogler, R. (2008) *Criminal Procedure in Europe*. Berlin: Duncker and Humbolt.
- R3** Vogler, R. (2011) 'Making international criminal procedure work: from theory to practice', in Henham, R.J. and Findlay, M. (eds) *Exploring the Boundaries of International Criminal Justice*. Aldershot: Ashgate, 105–28.
- R4** Vogler, R. (2012) 'Due process', in Rosenfeld, M. and Sajo, A. (eds) *The Oxford Handbook of Constitutional Law*. Oxford: Oxford University Press, 186–217.
- R5** Vogler R. (2009) *Report on the 2009 Draft Criminal Procedure Code of Georgia Prepared on Behalf of the Directorate General of Human Rights and Legal Affairs of the Council of Europe*. Strasbourg: Council of Europe.
- R6** Vogler, R. and Jokhadze, G. (2011) *Plea Agreements in the Georgian Criminal Justice System: A Utilitarian Perspective*. Tbilisi: US Embassy.

Outputs can be supplied by the HEI on request.

### 4. Details of the impact

As a result of the approach developed in his research, Vogler contributed substantial innovations to the Georgian CPC, enacted in 2009, and provided recommendations and training on its implementation from 2008–12. Vogler has actively promoted this approach through numerous consultancies over recent years, on behalf of the Council of Europe, the European Union and the US Department of Justice. He has worked as an adviser to drafting committees and justice ministries in many countries of Eastern Europe, the Caucasus and Eurasia, including Ukraine (where he was awarded the national Medal of Honour for services to the drafting committee which produced the 2012 Criminal Procedure Code). He has also been able to articulate these principles in summer schools and training sessions to legislators and justice officials in the region on behalf of the Organisation for Security and Co-operation in Europe/Office for Democratic Reform and Human Rights.

But the opportunity for the most sustained and focused application of this approach was in Georgia, during a period of rapid and radical transition over the last decade. In 2002 this former Soviet republic was amongst the most crime-ridden, dangerous and corrupt countries in the world. By 2011, at the conclusion of the criminal-justice reform process undertaken by the Sakaashvili government, it was found by the Former Director of Crime Prevention at the United Nations Office on Drugs and Crime, Jan Van Dijk, that the country had metamorphosed into one of the safest countries in the Western world.

#### *Items 1–3: Articulating Principle and Identifying Imbalance*

In 2002, on behalf of the British Council, Vogler was the adviser to a group of NGO/opposition activists in Tbilisi developing a critique of the Shevardnadze government's proposed redraft of the Criminal Procedure Code (CPC). The critique that was advanced drew on Vogler's international research and in particular focused on the failure of the draft to address the endemic problems of state torture and corruption and the dominance in all stages of authoritarian Soviet-style inquisitoriality. Vogler chaired meetings between opposition NGOs, the drafting committee and government ministers in 2002–03 in which these critiques were forcefully made by the opposition group. Vogler's group eventually managed to convince representatives of the Council of Europe to withdraw their support for the draft proposals and they were abandoned.

*Item 4: Correcting the Imbalances*

Criminal justice reform was at the heart of the reform agenda identified by the new Saakashvili government after the 'Rose Revolution' in 2003. With the support of the American Bar Association and the US Department of Justice, Vogler served as a principal overseas adviser to a small government working group drafting the new CPC in 2005/2006 and made numerous visits to Tbilisi to assist in the drafting process and to present and commend the proposals to the Georgian Parliament. The provisions on arrest (Arts 170–76), pre-trial release (Arts 5, 196–208), and non-compulsion of witnesses (Arts 49–50) represented principled attempts to reinvigorate adversarial elements in the pre-trial. The establishment of jury trial (Arts 219–24, 226, 231–36) was an attempt to introduce more popular justice in the trial phase. The innovations were all the outcome of debates in which Vogler was able to provide extensive data on practice elsewhere, directly from his 'World View' research.

In 2009 Vogler was asked by the Council of Europe to assess the draft for conformity with the European Convention on Human Rights and to develop further critiques which were presented at the 'Experts Review Panel on the Georgian CPC' in Paris in February 2009 and which led to a number of amendments. The CPC was finally enacted by the Georgian Parliament in November 2009 and, in December 2010, Vogler was invited by the Council of Europe to present recommendations on the implementation of the Code to the Georgian Justice Minister and representatives of the Ministry of Justice at a round-table meeting in Strasbourg. These recommendations were based substantively on Vogler's 'World View' research [R1].

In January 2011, on behalf of an American Bar Association project, Vogler chaired a meeting with the Georgian Justice Minister and Justice Ministry Officials in Batumi, Georgia, on changes to the Plea-Bargaining system. Between 2008–12, Vogler devised and conducted annual summer–school training for the Constitutional Court on the principles of the new CPC. All these interventions have been directly informed by the research conducted for the 'World View' [R1] and 'CPE' [R2] projects and these data facilitated an evaluation of the proposals which has had a direct impact on the final CPC text and its implementation. He continues to work for the new Ivanishvili administration on the reform of the Criminal Code, visiting Tbilisi for ministerial round-table meetings in December 2011 and March 2013.

**5. Sources to corroborate the impact**

The following two sources corroborate the entirety of the case study, including the process leading to the 2009 reforms and Vogler's involvement with implementation and training.

**C1** Vice-President of the Constitutional Court of Georgia

**C2** Head of Georgian Civil Service Bureau