

Reforming criminal justice in Georgia



After the Rose Revolution in 2003, which took place following widespread protests over the disputed parliamentary elections, the new Sakaashvili Government placed criminal justice at the heart of their reform agenda.

Over the past 20 years, Sussex researcher Richard Vogler has developed theoretical principles and practical modalities of global criminal justice reform that balance the interests of state, community and individual in order to resolve social conflict. His work has provided the basis for his participation in the reform process for Georgia's new Criminal Procedure Code (CPC), which has helped transform Georgia from one of the most dangerous to one of the safest countries in the Western World.

Overview

To serve society properly, criminal justice systems should be founded on balanced principles that encourage the resolution of disputes between state, community and individuals. Processes of reform must identify and rectify imbalances in existing criminal justice systems and should be based on serving all three orders of society rather than pursuing what is politically or economically expedient for one party over another. For the past two decades, Richard Vogler (Professor of Comparative Criminal Law and Criminal Justice at the University of Sussex) has conducted research on global criminal justice reform, through detailed evaluation of historical and

contemporary data and a personal and practical engagement in reform processes.

A major outcome of Professor Vogler's work has been the development of a theory of criminal justice reform that is intended to have direct and practical influence on reform processes. This theory envisages the criminal trial as a forum in which disputes between the state, the community and the individual – the three Aristotelian orders – can be aired and resolved satisfactorily.

The participation of these three components of society is associated by Vogler with the global methodologies of inquisitorial, popular and adversarial justice, respectively. His work shows that, to be effective, criminal justice reform should not be based solely upon donor influence, treasury demands or sheer expediency, but upon clearly articulated principle that involves a balanced system founded on sequential engagement of these three trial procedures.

The inquisitorial, involving authority-driven, forensic-based investigation should dominate the pre-trial. The adversarial, that is, individual, rights-based forms of justice, should lead the trial itself, whereas popular justice or democratic participation should take over during the judgement phase. In other words, for a criminal justice system to achieve its true purpose of resolving social conflict, it must include all three social orders. An imbalance between these elements or the radical exclusion of one or other fatally undermines the essential function of criminal justice.

Professor Vogler's analysis has important implications for the design of criminal justice reform, requiring an understanding of the imbalances inherent in an existing system and that these three trial modes should be engaged sequentially but never to the exclusion of the others.

Achieving impact

The major impact of Professor Vogler's work has been to contribute substantial innovations to justice reform practices internationally. He has actively promoted his approach through numerous consultancies on behalf of the Council of Europe, the European Union and the US Department of Justice, and has worked as advisor to drafting committees and justice ministries in many countries in Eastern Europe, the Caucasus and Eurasia. He has also been involved in summer schools and training sessions for legislators and justice officials in those regions on behalf of the Organisation for Security and Co-operation in Europe/Office for Democratic Reform and Human Rights.

The opportunity for the most sustained and focused application of this approach, work that has spanned a decade, has been in an advisory capacity to the former Soviet Republic of Georgia in its reform of its CPC. In 2002, Georgia was recognised as one of the most crime-ridden, dangerous and corrupt countries in the world. Since then, with the conclusion of the criminal justice reform process initiated by the Sakaashvili Government, the country has been transformed into one of the 'safest countries in the Western world' (Jan Van Dijk, former Director of Crime Prevention at the United Nations Office on Drugs and Crime). Professor Vogler's research principles and recommendations have influenced two major phases to this transformation, by articulating the underlying principles of his research and identifying imbalances in the system, and by contributing to recommendations to correct those imbalances.

In 2002, on behalf of the British Council, he acted as advisor to a group of non-governmental organisation/ opposition activists in Tbilisi who were developing a critique of the Shevardnadze Government's proposed redraft of the CPC. Their critique drew upon Vogler's research and highlighted



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the failure of the draft to address the endemic problems of state torture, corruption and dominance in the existing justice system. Vogler's group eventually convinced representatives of the Council of Europe to withdraw their support for the draft proposals and they were subsequently abandoned.

Following the Rose Revolution in 2003, which took place after widespread protests over the disputed parliamentary elections, the new Sakaashvili Government placed criminal justice at the heart of their reform agenda. With the support of the American Bar Association and the US Department of Justice, Vogler served as overseas advisor to a government working group tasked with drafting the new CPC in 2005/2006. He made numerous visits to Tbilisi to assist in the drafting procedure and to present and commend the proposals to the Georgian Parliament. Subsequent to this involvement, provisions on arrest, pre-trial release and non-compulsion of witnesses, and the establishment of the jury trial, were all adopted in the new CPC.

Professor Vogler was invited by the Council of Europe to assess the draft CPC for compliance 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 2009 and led to a number of amendments. The CPC was finally enacted by the Georgian

Parliament in November 2009 and from 2008 to 2012 Professor Vogler helped put the new code into practice by providing recommendations on implementation and devising and conducting training for the Constitutional Court.

Future impact

Professor Vogler is currently working on a text entitled *Principles of Criminal Justice*, in which he is attempting to bring together his experience of working with drafting committees and in the criminal reform process over the last decade.

Working with us

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