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THE HISTORY AND CHALLENGES OF REINTRODUCING TRIAL BY JURY IN RUSSIA

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Abstract
This article examines the history of trial by jury as practiced in Russia from 1864 to the present. While implementing court reforms, Alexander II intended to eliminate deficiencies in Russia's Justice System, such as the slow consideration of cases, disenfranchisement of the accused and incessant corruption. Introduction of jury trials in post-Soviet Russia became possible due to democratic changes in the early nineteen nineties and the rejection of totalitarianism. In nine regions of Russia, the re-introduction of trials by jury and the practical implementation of this institution were considered to be an evolutionary tool for reforming Soviet legal precedent, which was institutionalized in form and repressing by nature, especially with controversial proceedings. In particular, the introduction of jury trials made it possible to legitimize the rule that evidence obtained in violation of legal norms is inadmissible in procedural law. It also made the process of abolishing the death penalty in Russia irreversible.

In this article, the author analyzes current trends in the development of Russian trials by jury. Among them is a tendency for the increased competence of jury trials. The method that appeared during judicial system development is the method for misleading the juror during consideration of a case. What's more, it's worth mentioning that the accused is not currently allowed to speak in the presence of the jury.
during the preliminary investigation about tortures inflicted upon him/her designed to solicit confessions. Prosecuting authorities carry out "operational support" of the processes. The article is also concerned with the problem of "nullification".

Keywords
People, nullification of law, judicial system, jurors, judicial reform, trial by jury

The institution of trial by jury was established in Russia in 1864. It was an integral part of democratic reforms carried out by Tsar Alexander II, who released peasants from serfdom in 1861. A few bodies of the judicial system, such as the Office of Public Prosecutor and the bar appeared at the same time. Inquest was delegated to investigators — members of circuit courts. The judges became irremovable and formally independent. An independent system for Justices of the Peace was created. The basics of jury trials that could be found in the ancient Russian legal documents, such as the Novgorod Court Certificate and the Court Books of 1497 and 1590 were eliminated with the growth of absolutism in Russia. In 1715, Peter the Great approved the Brief Description for Case Consideration process, which affirmed an inquisitorial type of consideration for criminal cases. This practice remained in effect for over 150 years.

While developing and practically implementing those court reforms, Alexander II intended to eliminate deficiencies in Russia’s Justice System, such as the slow consideration of cases, the disenfranchisement of the accused and rampant corruption. Judicial consideration of cases became open. Written consideration was replaced with verbal case discussions. The new principle that evidence should be evaluated based on personal judgment replaced established rules, such as being required to trust a man more than a woman or a church representative more than a secular individual. The Tsar-Reformer declared his objectives in the slogan: “Let truth and discretion reign in courts!”

At first, jurors were required to either own real estate or have significant income. However, representatives of government and nobility avoided working in the justice system. Therefore, peasants were invited to work in the circuit courts instead. Sometimes they begged for food during the trial processes. Many of them were not even able to read or write! However, most of their verdicts were fair and full of humanity and society started to trust the jurors.

In 1866, the first trial with jurors' participation took place. During the next 40 years the notion of having trials by jury took root in various parts of the Russia. However, trials by jury were not practiced in all of the Empire. In the Caucasus, the Arkhangelsk governonate and Siberia, jurors were not used in trials.

Activities of the Russian trial by jury were curtailed during the First World War. Subsequently, the collapse of Russian trials by jury began with the February Revolution, in March 1917, when the Provisional government approved temporary trials, which included a Justice of the Peace, as well as representatives of the army and proletariat.

By the Decree of the Council of People's Commissars (dated November 24, 1917) — so-called Lenin's Decree on Court, No. 1 — all judicial bodies established by Alexander II were eliminated. Instead, local courts, consisting of a judge and two assessors, were established, as well as revolution tribunals.

On February 15, 1918 left-wing social revolutionaries insisted on the establishment of circuit courts. These were to consist of a judge and 12 People's Assessors. These circuit courts, however, were not trials by jury. The judge would not pronounce the parting words. He would only provide the assessors with the information on the appropriate punishment. The assessors still participated in the trial even though they didn't have the right the vote; they could express their misgivings about the case to the judge. Circuit courts only existed from March to November 1918; they were then abolished for political reasons. Over the next seventy years no attempts were made to reintroduce trials by jury in the USSR.

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2 Dekret Soveta Narodnych Komissarov ot 24.11.1917 // Sobranie uzakonennyh i rasporoyazheniy Rabochego I Krest'yanstkoj pravitelstva (SU RSPSR) 1917. No. 4. Art. 50. (Decree of the Council of People's Commissars from 24.11.1917 (1917) 4 Collection of Statutes and Directions of Workers' and Peasants' government 50).
but Soviet scholars criticized the institution of the jury trial. They considered it to be in contradiction with the ideas of the socialist justice system.

Reintroduction of Jury Trials in Post-Soviet Russia

In 1990, a new government declared the independence and sovereignty of the Russian Federation. On October 24, 1991 under the initiative of the President of the Russian Federation, Boris N. Yeltsin, the Supreme Council approved the Concept of the Court Reform. One of the major aspects of the court reform was the reintroduction of the trial by jury. The concept makers pointed out the following advantages of trials by jury: their collective nature, unquestionable independence, lower risk of a mistake and abuses by judicial bodies, implementation of common sense ideas and the people’s gained insight into the bureaucratic legal system. The Concept states “…The trial by jury is a tool for reaching a conclusion in non-typical situations, in which because of potential consequences it is better to violate abstract legal norms than sin against fairness.”

By the Law of November 1, 1991 amendment to the Constitution established a legal basis for the introduction of trial by jury. However, it remained nothing more than a declaration for almost two years because of the Prosecutor’s Office, Ministry of Internal Affairs and general resistance in the judicial system.

The practical implementation of the institution of trial by jury in Russia started in 1992 by the adoption of Presidential Decree No. 330-р, dated September 22. Before the adoption of this Decree, this institution had only been applied in part. First of all, the trials by jury were established in those regions of Russia where there were adequate conditions. The heads of Moscow, Stavropol, Ivanovo, Ryazan and Saratov regions were responsible for the arrangement of jury trials, including maintaining the lists of jurors, providing the provisions of premises and developing standard procedural forms. Soon after, four more regions joined (Altai, Krasnodar, Rostov and Ulyanovsk). On July 16, 1993 a relevant bill was approved by the Supreme Council of the Russian Federation.

A new Constitution, ratified on December 12, 1993, declared the right of the accused to the benefit of jury trial in the cases specified by the federal law (Article 32, Section 5; Article 47, Section 2 of the Constitution).

The Federal Law of 2004 “On Jurors of Federal Courts in the Russian Federation” determines the requirements for jurors. Any fully capable citizen of the Russian Federation, who is at least 25 years of age, without a criminal record, is eligible to become a juror. Based on the mentioned criteria, local administrations develop general and additional lists of jurors based on random selections from the electoral list. It is worth mentioning that there is no any penalty for failure to appear. There are two methods of compensation for jurors: either an average wage at their workplace or half of judge’s salary is paid.

Nowadays jurors may consider the following cases: murders committed under aggravated circumstances; attempts on the lives of officials; highly dangerous cases of smuggling and drug trafficking, gangster related activity and the organization of criminal groups, and the hijacking of aircraft. What’s more, such crimes as genocide, ecocide, mercenary, and piracy are also considered by trial by jury.

The specific features of Russian jury trials are the following:

1) Distribution of power between a judge (assignment of punishment) and jurors who determine whether the guilt of the accused is proved and the indulgence might be applied;

2) Organizational separation of the jury from the professional judge;

3) Ungrounded nature of verdicts passed by juries and absence of any responsibility for their decisions;

4) Possibility to acquit the accused if he/she is not guilty from society’s point of view;

5) Strength of verdicts passed by juries. The verdicts passed by juries can be canceled only in cases of violations while a case is being considered.

The first jury trial took place in the Saratov regional court on December 15–17, 1993. About 500 cases have been considered by jury trials since 1993. The ratio of “not guilty” verdicts to “guilty” verdicts in jury trial courts is 1:14 (while the same ratio in traditional courts is 1:200). In 1998, Russian jury trials considered 538 criminal cases, which comprised 5% of the total number of criminal cases. 617 individuals were convicted and 165 were acquitted. In spite of a relatively small share of criminal cases considered by jury trials, reformers
have pinned great hopes on this form of legal proceedings. Most of those hopes have thus far been justified.

The reintroduction of the institution of trial by jury in Russia and its practical implementation in 9 regions of the country was considered to be an evolutionary step away from soviet legal procedure, which was inquisition-type by its form and a reprisal by nature.

Section X of the Criminal Procedure Code introduces the term "controversy" and describes the controversial proceedings. Under the introduction of jury trials some norms of law of evidence that had been in force since 1961 were modified. In particular, the grounds for the exclusion of illegally obtained evidences were listed. It was assumed that the parallel functioning of inquisitional and controversial legal proceedings would make judges, prosecutors, counsels for the defense and legal scholars accept democratic types of proceedings more objectively. The lawyers who used to deal with the traditional system of legal proceedings got a chance to look more closely at controversial proceedings and get used to a new system of justice.

In spite of the fact that the public prosecutors insisted on the strict observance of laws, jurors selected from the local population managed to resist unfairly strict laws. However, since 1996 the Supreme Court has adopted a number of decisions and implemented a few procedures. Those decisions and procedures made it possible to nullify "not guilty" verdicts passed by jurors under certain pretexts. Thus, in 1996 a temporary insanity plea (a circumstance that significantly mitigates judicial assessment of a murder) was almost withdrawn from the jurors' jurisdiction. In 1999, "an extremely liberal verdict" passed by a jury was canceled only because the judge did not interrupt the accused when he spoke about tortures, which the police had subjected him to in order to make him plead guilty. As it was pointed out by the Supreme Court, after it cancelled an acquittal of the Moscow court, the judge was not entitled to explain to the jurors "what they might have in mind," and "whether they testified under the pressure or not." According to judges of the Supreme Court, such an evaluation of testimony of a witness is not in the jurors' competence.

Decision of the Judicial Collegiums on Crim Cases of the Supreme Court of the RF No.5-007-193SF "The Verdict Decided upon by the Court, with the Help of the Jury, has been Canceled due to a Violation of Art. 340 of the Crim Code of the RF" (2007).
This conclusion, in fact, removes from jurors a critical tool for evaluating the reliability of evidence. According to a Supreme Court decision dated March 24, 2006 the jurors "should not take into account information provided by the defense witness regarding crimes committed by other individuals." This negative trend is still currently taking place.

As was expected, the introduction of jury trials influenced law theory and practice in a positive way. On the one hand, the clemency of jurors was one of the reasons for the mitigation of criminal law in 1996. On the other hand, some procedures and ideas of controversy were also applied to traditional ("Soviet") legal proceedings. For example, traditional courts started to consider solicitations for the exclusion of inappropriate materials. When studying the precedents of trials by jury, judges with the Soviet experience and their young colleagues began to think about the presumption of innocence and some ethical issues, such as keeping defendants in metal cages installed in each court room.

Almost all practitioners and scholars acknowledge that the preliminary investigations of criminal cases, which are forwarded to jury trials, are carried out more thoroughly and with better law observance. Thus, it was planned to introduce jury trials in all regions of the Russian Federation on a gradual basis. In 1995, officials from 12 more regions, including the Karelia Republic, Kaluga, Nizhny Novgorod, Belgorod regions and the city of Saint Petersburg, expressed interest in the introduction of trials by jury. However, the State Duma did not approve the appropriate law because federal funds were not allocated to this purpose.

The resolution of the Constitutional Court of 1999 recognizes the right of every individual who might be sentenced to death to a trial by jury trial of the region. However, realization of this right was delegated to lawmakers instead of law-practitioners. Lawmakers returned to the idea of further dissemination of trial by jury only in 2001. As a result, the constitutional right (Article 20 of the Constitution of the Russian Federation) of a human being and a citizen to appear in a jury trial was not practically realized despite the declared provisions.

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6 Decision of the Judicial Collegiums on Crim Cases of the Supreme Court of the RF No. 31-006-3SP (2006).
7 Decision of the Constitutional Court of the RF No. 3-P (1999).
The process of introducing trials by jury on a step-by-step basis really started in 2001 when the Criminal Procedure Code was adopted. This process was finally completed in 2010 when the opportunity for case consideration by the Supreme Court of the Chechen Republic with jurors' participation appeared.

The Procedure of Consideration of Criminal Cases by Russian Trials by Jury

At the end of a criminal investigation, the accused has the right to file a petition for consideration of his case by jury. Otherwise, a judge or judicial committee will consider his case.

Prior to the court session, the judge conducts a preliminary hearing to consider solicitations of the parties, including solicitations for exclusion of inadmissible evidence from the proceedings.

The parties shall have a right for motivated and non-motivated rejection of jurors. Each party is entitled to cross-out two individuals from the list without any explanation of the reasons for their decision; the judge has the right to increase the number of jurors subject to non-motivated rejection. Selected jurors elect their leader and read their rights.

Court investigation begins with opening statements by both parties. At first, the prosecution submits the evidence. Then the defendant's evidence is examined. The judge asks the victim, witnesses and accused questions. The accused has the right to refuse to testify. A juror shall put his questions in writing and provide a note to the judge. When so-called "legal" issues are reviewed, the jurors are removed from the courtroom.

At the end of the trial the accused pronounces "the last word." After the jurors conclude the necessary courtroom proceedings, the judge formulates questions for them. The questions are summarized in a questionnaire. Then the judge gives a parting speech, in which he covers both legal and factual aspects of the case. In particular, the judge reminds the jurors about evidence reviewed during the court investigation and clarifies requirements for the presumption of innocence.

Jurors should do their best to agree on a unanimous verdict. However, after a three hour-long meeting jurors have the right to vote. The decision supported by a majority of the jury is adopted. If a vote is equally divided (6-6), the decision that is the most favorable to the accused shall be adopted. The verdict is declared publicly and the judge lets the jurors go. Afterwards,
additional evidence might be examined. It may include information about the
civil or criminal record of the accused, information characterizing the accused,
or mitigating and aggravating circumstances.

The judge is obliged to reflect the jurors’ verdict in the sentence. However,
there can be some exceptions. Firstly, the judge is entitled to forward the case
for a new examination, if, in his opinion, the accused is innocent. Secondly, the
guilty verdict does not prevent an acquittal when the violation of the accused
is not a crime. Finally, the judge can mitigate a punishment if the jury did not.
Acquittal verdict that entails the acquittal sentence is mandatory for judges.

According to the appealing procedures, the parties can appeal the jurors’
verdict. However, the parties cannot refer to the contradiction of the trial
conclusions to the circumstances of the case. The appeals or submission of the
Prosecutor can only refer to a violation of the criminal procedure law, incorrect
application of the criminal law or unfair punishment. The acquittal by jury trial
appealed by the Prosecutor or the victim may be cancelled only in the case of a
violation of the law by the court. Such a violation usually limits the right of the
prosecution to present evidence.

It is worth mentioning that trials by jury in Russia are significantly different
from the ones established in accordance with the Anglo-Saxon model. First of
all, a mixed form of legal proceedings is preserved. Investigation is carried out
on an inquisitional basis. Intermediate results are kept in secret. All evidences
“in support” and “against” of the accused are forwarded by accusatory bodies
to court. Secondly, the Russian legal proceedings do not consist of 2 separate
stagess: a verdict and a sentence. The judge determines punishment immediately.
Thirdly, the accused, regardless of whether he/she pleads or does not plead
guilty, has the option to choose between traditional legal proceedings and a
jury trial. What’s more, in contrast to the rules of the US federal justice system,
the judge’s parting words summarize the evidence. Finally, in contrast to their
Spanish and Austrian colleagues, Russian jurors do not justify their decisions.

“Nullification” of Law – Public Protest
against Bureaucratic Justice

An option of “nullification” of law that is available to jurors is of special
theoretical and practical interest. In the practice of Russian courts such practices
are relatively rare, but the author was able to learn about twenty such stories.
Here are two examples of acquittals that would be unrealistic in modern courts without jurors’ participation.

In Arkhangelsk oblast court a murder case was considered. At night in the house where the baby stayed with his drunken parents, the child was strangled. In the role of the accused was the father, and mother gave testimony. The couple made the most unfavorable impression to jurors: “Cruel, degraded people.” The accused was trying to protect his wife. Jurors admitted that a child could be killed by mother, and gave a negative answer to the first basic question, recognizing the unproven crime. Of course, following the verdict the baby did not come back to life. Jurors had a different goal in their minds. If they found the accused not guilty, the case would be forwarded to the Prosecutor and an investigator was obliged to find another murderer. They saved the mother of the dead child from a favor of investigation, which, in their opinion, would not reveal a real murderer.

Another example took place in a court in the Voronezh region. A criminal group committed a bloody robbery. The jury acquitted one of the accused, “because he acted under the pressure.” He was a businessman, and in the jurors’ opinion, he was not interested in income from raids. But, according to the jurors, “if he had refused, he would have lost his business and life.” Professional judges have a different view. Application of mental coercion to an individual that retained an ability to control his actions relieves this individual of criminal responsibility.

Judicial practices of punishment and legal doctrine that serve the regime have always tried to dilute a human nature of trials by jury, turning it into a flat makeweight to the bureaucratic judicial machine. I. Ya. Foinitskii declares: “…in the era of government absolutism there were such judges as Jeffreys who limited jurors authority to resolution of actual circumstances in a case. Today the followers of this trend continuously talk about the judges of facts” that are exclusively adapted to find out the circumstances of past events.

Thus, the decision of the Cassation Chamber of the Supreme Court of the Russian Federation dated February 24, 1998 states that “…in a trial by jury the jurors participate in the review of case circumstances and resolve questions

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about facts only. All legal and procedural issues are in the exclusive competence of the judge.

It is obvious, however, that jurors cannot just review criminal case circumstances without looking at a human being. Their "based on facts" verdict has not only legal value, but also legal nature.

First of all, the jurors make a legal decision based on the guilt of a particular individual. Secondly, all the circumstances identified by jurors as denial of certain circumstances are not useless information related to the proceedings ("noise") but serve as legal facts. The judge asks about the presence or absence of the relevant circumstances because those circumstances relate to the accusation and are important for the outcome of the hearings to be interpreted in the official documents. Finally, 'when the jurors make an acquittal verdict but there is clear evidence of the guilt of the accused, the jurors do so because they do not agree with the legal regulations or its application in that particular case.'

Jurors extend the boundaries of law by considering circumstances that are not so important for the court. They can justify the accused or mitigate him/her just because he/she did not have the best lawyer, or because certain behavior is common for certain communities, as well as for the members of certain social groups. The example can be not-guilty verdicts for the bribes received by the traffic police. Jurors have the right to criticize and punish the government that tortured the accused.

Trends of Development of Trials by Jury in Russia

Current data on criminal proceedings by jury trials is summarized in the following table.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
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<tbody>
<tr>
<td>Number of cases considered by jury trials</td>
<td>617</td>
<td>707</td>
<td>606</td>
<td>535</td>
<td>607</td>
<td>533</td>
<td>537</td>
<td>573</td>
</tr>
<tr>
<td>&quot;Guilty&quot; (numbers)</td>
<td>952</td>
<td>1027</td>
<td>918</td>
<td>899</td>
<td>1066</td>
<td>1127</td>
<td>1046</td>
<td>818</td>
</tr>
<tr>
<td>&quot;Not Guilty&quot; (numbers)</td>
<td>204</td>
<td>227</td>
<td>239</td>
<td>236</td>
<td>244</td>
<td>228</td>
<td>182</td>
<td>157</td>
</tr>
<tr>
<td>&quot;Not Guilty&quot; (%)</td>
<td>17.6</td>
<td>17.4</td>
<td>20.7</td>
<td>20.8</td>
<td>18.6</td>
<td>16.5</td>
<td>14.8</td>
<td>16.1</td>
</tr>
</tbody>
</table>

In 2012, as well as in the previous years, the most of considered cases by jury trial were murders (32.3%), rapes (10.9%) and briberies (21.1%).

In the first half of 2013, trials by jury considered 272 cases with sentencing. There were 484 accused. 375 (77.5%) of them were convicted and 109 (22.5%) justified.

Every year the courts in the Russian Federation consider about 1 million criminal cases, so the percentage of those that are considered by jury is not very significant. Trials by jury account for about 12-14% of the cases heard in a given year. Nowadays, the constitutional right of Russian citizens to participate in the administration of justice (Part 5, Article 32 of the Constitution) has been decimated.

Currently there are two negative trends in the legal regulation and activities of trials by jury. These are the reduction in types of cases within the jurisdiction of trials by jury and manipulations towards jurors.

Reduction of the jurisdiction of jury trials began in 2008. The justification was to protect jurors of the North Caucasus from the pressure of relatives of the accused. As a result, the cases on terrorism, hostage-taking, mass riots, treason, espionage, rebellion, sabotage, and other such activities are processed by a panel of three judges.

The new wave of reduction in the authority of trials by jury is associated with Federal law № 433 dated December 29, 2010. According to that law, criminal cases on crimes against justice, transport offences, and bribery were transferred to the jurisdiction of district courts. As a result, whoever was accused of the aforementioned types of criminal acts lost the right to choose the jury trial because only one judge is possible in the district court. What's more, Federal law № 217 dated July 23, 2013 transferred some more groups of criminal cases, including crimes committed by minors and murder attempts to the jurisdiction of district courts.

The criminal prosecution authorities developed tactics that allow for avoiding the forwarding of cases to trials by jury. The authorities revised the qualifications of crimes so that the case falls under the jurisdiction of district courts.

Starting on Jan 1 2013, cases on bribery were transferred to jurisdiction of regional courts where there are no jurors.
Manipulation of the jurors is first of all based on so-called "technical support of processes" and the artificial selection of jurors, including individuals that are not on the list of jurors. In addition, due to the legal authority of the Supreme Court, jurors are eliminated from review and resolution of certain issues. It turns out that jurors express their opinion, considering only some evidence of the case (but not all of it), while the other part and evaluation of the crime in general is left to the discretion of judge. For example, jurors are not authorized to determine the selfish purpose of the accused, type of guilt, or the confidentiality of information which disclosure the accused is blamed of. The rights of the defense are artificially reduced. In particular, it is prohibited to speak about the falsification of evidence during the preliminary investigation, and about using tortures. An extremely complex and cumbersome structure of questionnaires complicates the work of jurors.

Unfortunately, the law allows multiple revisions of sentences, taken on the basis of jurors' verdicts, including acquittals.

Being aware of the current challenges to Russian trials by jury, the accused keep considering this institute to be the best tool of protection against false and unsubstantiated accusations and a guarantee of objectivity and impartiality of court.

In Russia, trials by jury have not exhausted their possibilities. As the concept of judicial reform in 1991 planned, the accused should have the right to apply this tool of protection in regional courts as well, and in the future to certain types of civil cases.

Following Russia's experience, many states that declared sovereignty in the former Soviet Union intended to introduce trials by jury, but not every state succeeded. For example, in Belarus, even though it was ratified into law, it was not put into practice. In fact, only trials by jury operate in Georgia and

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*Review of Judicial Practice of the Supreme Court of the RF "The Rev of Cases Processed by Trials with Jurors' Participation in 2003".

*When cancelling the acquittal of SPb city court by the decision dated Nov 2, 2006, Judicial Collegiums on Crim Cases of the Supreme Court of the RF, among the reasons for cancellation, mentioned the words of the accused that said: "on the question of the lawyer M. regarding the reasons for discrepancies in his testimony, that ... at the preliminary investigation... he would have admitted the crucifixion of Jesus Christ as well".
Kazakhstan. In Georgia, they borrowed the principles of legal regulation from the US, while Kazakhstan took Russia’s example, considering some national aspects in both countries.

Bibliography


