

Jury Trial as a Form of Participation of Citizens in the Administration of Justice: a Comparative Analysis of Legislative Experience of England, Usa and Russia

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Abstract: This paper deals with organizational and operational principles of jury trial in the Anglo-American and Russian legal systems. Jury trial is considered as a form of participation of citizens in the administration of criminal justice. In view of deviation from usual practice of legal proceedings relating to a settlement of the criminal dispute board by a jury of nonprofessional trial participants, throughout the entire period of its existence in different historic periods of formation and development of the Russian criminal procedure law, the economic feasibility and functional efficiency of this form of criminal case settlement produces lively discussions. This article attempts to assess the current state and prospects for the use of juries in modern Russian conditions based on law enforcement and legislative experience of England and the USA.

Key words: Jury trial • Criminal procedure law • Jurisdiction • Justice • Verdict

INTRODUCTION

Jury trial is an integral part of the judicial systems of a large number of states, since being considered as a manifestation of democracy and providing public access to the administration of justice. Supporters of the existence and further development of the jury trial in Russia express arguments, which coincide with the characteristic of positive aspects of this form of legal proceedings in England and the USA, where it has existed for more than two centuries [1]. In particular, there are three essential points: 1) collective decision on the merits, which provides its impartial character and 2) public access to the administration of justice and 3) the ability of citizens to control the activities of bodies of the penal system [2]. In addition, a jury trial niche has been historically predetermined in the judicial system, since it displays the democratic spirit of justice, affects significantly the operation of the mechanism of the judiciary and helps to change public consciousness [3].

However, the presence of cumbersome proceeding mechanism, related to a resolution of criminal case by jury trial, raises many questions of procedural and economic

nature. As arguments for inexpedient existence of the present form of administration of justice in the Russian doctrine of criminal proceedings the inability of the state to ensure security to a jury has been cited, which calls for withdrawal of crimes, committed by criminal groups, from their jurisdiction and further progressive reduction of subject-matter jurisdiction, as well as the absence of compensatory mechanisms, balancing lack of professionalism and competence of the jury and a judge presiding, which, in turn, is expressed in the appearance of theoretical models of “mixed” court, which in the long term could replace the jury trial, according to the opinion of some litigation experts [4]. It is believed that each of these arguments deserves special consideration given the possibility of borrowing the positive experience of the functioning of the Anglo-American model of the jury trial.

Main Part: The uniform arguments in favor of social value of jury trial in Russia do not remove its functioning problems that determine the demand for this institution. One of the legally relevant factors in the context of the question posed is the competence of the jury trial. Subject to Russian legislation, the court of first instance shall

consider criminal cases consisting of a judge of the federal court of general jurisdiction and the jury represented by twelve jurors on a limited number of offenses related to the jurisdiction of the Supreme Courts of the republics within the Russian Federation, as well as regional and provincial courts, the court of a city of federal importance and the autonomous region or autonomous province. In addition, the matter of participation of the jury in considering these criminal cases is at the discretion of the accused and the proceeding of jury trial begins only upon request of such accused person. According to data of Judicial Department of the Supreme Court of Russia, only 0.1% of the total number of criminal cases is constantly considered in this order. These figures are incomparable with the judicial statistics of the USA, where criminal cases on crimes, the punishment for the commission of which is more than six months of imprisonment, are assigned to the jurisdiction of the jury. However, exemptions from the general rules of subject-matter jurisdiction on some elements of crimes are determined by the specific of regions within Russia, where the law applies. For example, nearly one and a half years were spent to form the jury box in 2005 in the criminal case of the attack on Nalchik and the court could objectively choose only 13 persons from the list of 2.5 thousand potential jurors. In other cases, all the aggressors and defenders were represented either by relatives or by witnesses of these events. As a result, no jury box was formed. Similar incidents have occurred in other republics of North Caucasus. It should be noted that such situations are also typical for countries with longer-term experience in the functioning of the jury trial. According to the law on terrorism, adopted in the UK in 2000, the proceeding of a jury trial on the relevant elements of crimes was canceled in Northern Ireland [5]. Downward trend of number of crimes under the jurisdiction of the jury trial can be also traced in recent changes of the Criminal Procedure Act, where cases of crimes, the punishment for which may be life imprisonment or the death penalty, were seized from their competence (paragr. 3 part 3 Article 31 of the RF Criminal Procedure Code, as amended by Federal law #302 of November 2, 2013).

As an independent problem of jury functioning the imbalance of powers of a professional judge and jury trial is positioned. This question, in our opinion, refers the procedural one and illustrates the fundamental difference between the Russian and Anglo-American institutes. Thus, there is a strict division of responsibilities between

the chairperson and the jury in accordance with the provisions of the Russian criminal procedure law. A chairperson decides all matters of law and a jury trial deals with matters of fact. Substantive and procedural grounds of the verdict are out of the jury's sphere, since only three questions are placed for their resolution: whether it is proved that the offense took place; whether it is proved that the defendant committed an offense; whether the defendant is guilty of committing an offense. The questions about the extent of implementation of the criminal intent, as well as the reasons, in virtue of which such offense had not been brought to an end and the extent and nature of participation of each of the defendants in the crime are resolved whenever necessary. The questions, allowing to establish the guilt of the defendant in a less serious crime, are admissible in case if cause no worsening of the situation of the defendant or violation of his/her right to defense. In case of the defendant's conviction the question of whether he deserves leniency is submitted for resolution (Article 339 of the RF Criminal Procedure Code).

A completely different situation arises with the procedure of the verdict, made by jury trial, provided by the laws of England and the USA. Both matters of fact and matters of law are submitted before consideration of lay judges. In addition, it might be matters, concerning procedural affairs (which information can be taken as proof, or what questions can be asked, or which witnesses may appear in court and what should they testify for or against) or matters of substantive law, which define and regulate the rights of the parties. It seems that this is the very essential difference, which explains the established culture of behavior of jurors and their communication with professional participants of the criminal process. The detailed instructions to be followed by the jury, containing general rules of conduct before and during the hearing, recommendations concerning instructions to the jury, detailed specific recommendations concerning the various categories of criminal cases and the interpretation of the applicable law, have been developed and used [6]. In this case, such instructions are a part of a compensatory mechanism for leveling the lack of legal expertise and skills in the jury, which enables the court to work in unity when resolving all issues arising in criminal proceedings. Russian model assumes a two-level, progressive proceeding with two separate criminal judgments delivered - the jury's verdict and the judge's sentence -, however, it does not put matters requiring legal intricacies before the jury.

In our opinion, an attitude of the citizens to the performance of jury's obligations is also a consequence of differences between the two legal systems. It should be stated that Russia has not created any conditions, which could motivate citizens to take part in the administration of justice. There is only one potential possibility of application of enforcement measures by imposing a fine for absence without valid excuse, which is reflected in law. For example, the USA has established an administrative responsibility for failure to appear on summons to perform the duties of a juror, which is regarded as contempt of court and becomes liable to punishment either in form of fine or imprisonment [7]. However, the application of enforcement measures cannot solve a problem of lack of public activity. In our opinion, a positive experience of England, where active work on popularization of jury trial is carried out, should be implemented in Russia from the perspective of both civic duty and acquisition of important life experience. It is noteworthy that the web pages of most of U.S. judicial authorities contain an accessibly written information revealing the essence of a jury trial, as well as the value and the role of citizens in its activities [8].

Another issue is the provision of safety of jurors. There is an obvious unreasonable minimalism of a Russian legislator in a mechanism for monitoring the cases of improper influence on the jury during the trial, as well as the effectiveness of those measures, which already exist. It is considered that the ordinary security measures (ban on photographing jurors, on publishing their names and addresses, secrecy of the jury room) are sufficient [9]. A foreign legislation takes another approach. For example, a court in England may declare a "Jury sequestration", which involves the complete isolation of the jury either for the entire duration of the trial or at the time of sentencing. The USA has a Marshal's office, the responsibilities of which include: implementation of protection of witnesses, judges, jurors and defense attorney, as well as protection of the jury room from access of unauthorized persons and their accompaniment to the resting place and provision of constant personal protection in the case of claim of undue influence. Such situation minimizes danger of influence on jurors and eliminates any procedural irregularities that could be resulted from undue influence on the jury.

CONCLUSION

Generally, it should be noted that, despite the problems available, the proceedings with the jury trial is a successful form of justice, created by combining professional and public elements. Any procedure of legal

proceedings as a social instrument of resolving legal conflicts comes out under the influence of pre-existing procedures, historical experience, as well as ideal theoretical models created by science. Judicial practice helps to understand the shortcomings of legal regulation and the improvement of law helps to come closer to a better construction of procedures of criminal justice.

Summary: Subsequent changes of potential competency of jury trial in domestic criminal process have given a ground for the statement that "the legislator almost fully relegates such procedural form of justice, as the court with jury trial prior to exclusive and keeps it in the criminal proceedings of Russia only nominally. Now the court with jury trial will not have any serious influence on the administration of justice in Russia" [10]. We assume that the recognition of the value of jury trial as an institution of truly democratic justice shall not mean any extension of the scope of its application. At the same time, an inadequate demand on legal institution entails inevitably a reduction in carrying out the researches, giving recommendations for improvement of law enforcement and developing culture of applying a complicated procedure in criminal cases tried by court with jury trial.

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