

Court of Jury in Russia/ Gennady Esakov*

Trial by Jury in Russia: An Overview

I. Introduction. The purpose of this article is to present the current state, some problems and some perspectives of the trial by jury in modern Russia. The current system of the court of jury is not a completely new legal innovation. In 1864 trial by jury was established for the first time in Russia as an integral part of reforms carried out by Emperor Alexander II (1856–1881). In course of these reforms there were also created the prosecution service and the bar, the judges became non-removable and formally independent. The jury became a highly developed and respected feature of Russian society in 1860s–1910s but were abolished in 1917 by Soviet government. The system of jury reinstated in course of democratic reforms in modern Russia in 1993 has many common features with preRevolutionary jury system, and the basic concept of such trial is the same one as in 1864: the jury consisted of 12 persons being separated from the professional judge should deliver by unanimous vote or, if it is impossible after deliberation, by simple majority the ‘special’ verdict without any legal qualification of the charged and proven act.

II. The Mechanism of the Court of Jury. The mechanism of the court of jury is governed today by two principle legislative acts: Law on jurors of the federal courts of the general jurisdiction (hereinafter Law on jurors) enacted in 2004¹ and Criminal Procedure Code of Russian Federation (hereinafter CrPC) enacted in 2002.

The Law on jurors settles the qualifying requirements to potential jurors, legal status of the jurors and mechanism of forming of potential jurors' list.

The principal document in this sphere is CrPC and particularly its ‘Proceedings on Criminal Cases Tried by a Court with the Participation of Jurors.’ The CrPC states

* 現任俄羅斯莫斯科國立法律學院教授

¹ See Federal' nii zakon ‘O prisiazhnykh zasedatelayakh federal’ nykh sudov obschey yurisdikzii Rossiyskoi Federazii’, adopted on August 20, 2004, No 113–FZ, available at <http://www.supcourt.ru/index.php>.

the list of crimes which may be tried by the court of jury,² sets the specific provisions on hearing the case in the court of the first instance sitting with the jury,³ and defines the special restricted grounds for reversal of acquittal or con-viction in the court of the second (kassazia) and third (nadzor) instances.⁴

The principal specific feature in course of the jury trial in Russia as opposed to Anglo-American jury system is connected with facts of the case which are presented in the court and should be proved by the parties before the jury. According to s 334 (1) of CrPC the jury should decide three main questions: whether it is proved that the act, the perpetration of which is incriminated to the defendant, has actually taken place; whether it is proved that the act in question was committed by the defendant; whether the defendant is guilty of committing this act. Any other circumstances of the case especially connected with legal qualification of the charged and proven acts are not presented to the jury.

It should also be mentioned that the verdict may be delivered by a majority of jurors' votes. The length of the jury's conference is not limited but if after 3 hours deliberations the verdict cannot be passed unanimously the jurors should begin the procedure of voting (s 343 (1) of CrPC). In this case a guilty verdict is passed if majority of jurors (7 or more) voted in its favour; 6 votes are enough for an acquittal (s 343 (2) – (3) of CrPC). The jury may alleviate the accusation e.g. stating in the verdict that the defendant is 'guilty but without intention to kill' (s 343 (6) of CrPC). The defendant which is found guilty may be also found to deserve the leniency i.e. the mitigation of punishment.

Unlike the general approach of Anglo-American jury system to appellate contesting of sentences passed after the jury trial Russian law permits a cassation (kassazia) procedure in the court of the second instance as against the sentence of guilty as against the sentence of acquittal. The cassation hearing conducts by the Supreme Court of

2 See ss 30 (2) (2), 31 (3) (1) of CrPC.

3 See ss 324–353 of CrPC.

4 See ss 379, 381–383, 385, 405,409 of CrPC.

Russian Federation, and the court of the second instance is composed of three justices of its Criminal Division. The grounds for reversal of the conviction coincide with the grounds for reversal of the sentence passed in ordinary trial procedure ie a violation of criminal procedural law; a wrong application of criminal law; the injustice of the punishment (s 379 (1) (2) – (4) of CrPC) . The acquittal may be reversed only by motion of the prosecutor or the victim. The formally sole ground for reversal is formulated in s 385 (2) of CrPC: ‘The sentence of acquittal, passed on the ground of the verdict of not guilty passed by the jury, may be reversed by a motion of the prosecutor or the victim (his representative) only if there are such violations of the criminal procedure law that have restricted the right of the prosecutor, of the victim or of his representative to submit evidence, or that impacted upon the content of the questions put to the jurors and of the answers supplied to them.’

Finally it would be interesting to summarize the statistical data on the jury trial in Russia in 2004–2010.

Table 1. The jury trial in the first instance court⁵

Year	Total number of criminal cases sent to courts	Total number of criminal cases tried in the regional courts / total number of persons tried in the regional courts ⁶	Number of cases tried by the jury (in percentage to total number of criminal cases tried in the regional courts) / number of persons tried by the jury (in percentage to total number of persons tried in the regional courts)	Total number of acquitted persons in all courts (in percentage to total number of all defendants) / number of acquitted persons in the regional courts sitting without the jury (in percentage to total number of defendants in these courts)	Total number of convicted persons in the regional courts sitting with the jury (in percentage to total number of defendants tried by the jury)	Total number of acquitted persons in the regional courts sitting with the jury (in percentage to total number of defendants tried by the jury)
2004	1 059 000	5500 / -- ⁷	572 (10.4%) / 1212 (--)	7700 (0.7%) / -- (--)	1008 (83.2%)	204 (16.8%)
2005	1 164 000	5100 / 8722	531 (10.4%) / 1159 (13.3%)	8200 (0.7%) / 108 (1.2%)	955 (82.4%)	204 (17.6%)

5 The tables of statistics are compiled from open sources of the Supreme Court of Russian Federation and the Judicial Department of the Supreme Court of Russian Federation (administrative body responsible for financial and organizational functioning of the courts) available online at <http://www.supcourt.ru/second.php> and <http://www.cdep.ru/index.php?id=5> respectively.

6 The year of 2004 was chosen as the first year when the court of jury was finally created in all regions of Russia except Chechnya.

7 Till 2009 all these cases might be tried by the court of jury; after narrowing the competence of the jury in 2009 the such number may be estimated as no less than 90%.

2006	1 225 000	5100 / 8665	607 (11.9%) / 1306 (15%)	8700 (0.6%) / 96 (1.1%)	1079 (82.6%)	227 (17.4%)
2007	1 174 000	4200 / 7333	535 (12.7%) / 1158 (15.8%)	10216 (0.8%) / 80 (1.1%)	919 (79.4%)	239 (20.6%)
2008	1 123 449	3617 / 6746	467 (12.9%) / 1131 (16.8%)	9975 (0.8%) / 85 (1.3%)	894 (79.1%)	237 (20.9%)
2009	1 119 361	3601 / 6087	551 (15.3%) / 1301 (21.4%)	9277 (0.8%) / 46 (0.8%)	1060 (81.3%)	244 (18.7%)
2010 (January – June)	541 360	1821 / 3323	289 (15.9%) / 778 (23.4%)	4372 (0.8%) / 33 (1%)	662 (85.1%)	116 (14.9%)

III. Current Problems and Perspectives of the Court of Jury. The rein-troduction of the court of jury in 1990s and its expansion on all Russian regions in 2000s were framed by the massive theoretical discussion on its advantages and disadvantages, its social acceptability in modern Russian society, its role in the judicial and, more globally, social and legal reforms, etc. It would be interesting to concentrate in this part on current actual problems of the jury in Russia.

1 High Acquittal Rates in Jury Trials. In stark contrast to the almost non-existent acquittal rates of the ordinary courts (less than 1.5%), the average acquittal rate in the jury trials in last years is about 18% (see table 1). In 1990s when the court of jury was a new institute for old-fashioned courts' system, the issue of high acquittal rates was really crucial one for future existence of the jury, nowadays an acquittal is accepted by the society and legal community as a legitimate outcome in court proceedings.

The high acquittal rates in jury trials may be easily explained by the controversial nature of the criminal cases tried by the jury. If the defendant chooses not to be tried by the jury it may be supposed that he will prefer to plead guilty in course of trial and to get a more lenient punishment, and vice versa. So the rates of acquittals and convictions

8 As it is correctly stated '[c]ross-system comparisons of acquittal rates should be undertaken with caution. Counting guilty plea cases, 0.99% of US defendants whose cases are adjudicated on the merits (whether by trial or plea) are acquitted. This is a higher rate but not radically higher than Russia's. The acquittal rate in the tiny percent of cases that are tried to a jury (about 4% of the total) is 17%.' See William Burnham and Jeffrey Kahn, *Russia's Criminal Procedure Code Five Years Out (2008)* 33 *Review of Central and East European Law* 1, 76.

are not indicative in itself;⁸ the basic point here is the guaranteed right to choose the mode of trial in disputed cases. Furthermore the original jurisdiction of the court of jury comprehends the potentially disputed cases; more than 90% of cases tried without the jury in the lower courts are uncontested trials for such crimes as theft, robbery, bodily injury, possession of narcotics, etc. And the scanty acquittal rates in these courts are fully understandable.

As the practice of the Supreme Court of Russian Federation shows in majority cases the grounds for reversal of acquittals are the errors of the presiding judges in rulings on inadmissibility of evidence (where legally acceptable evidence are wrongly excluded) and in formulating of questionnaire form for jury and also the misbehaviour of parties in course of proceedings which is not suppressed by the presiding judge. As one of justices of the Supreme Court of Russian Federation stated ‘the quality of trials of criminal cases the jury ending in acquittals is not high. It is obvious that partly this may be associated with novelty of this form of trial. But it should also be made a deplorable conclusion that ineffectiveness is work of professionals not juries. They should in particular be addressed by the reproach connected with high number of reversed acquittals. ...However these facts should not and could not undermine values of the court of jury itself...’⁹

2 Restricting the Scope of Jury Trial. In 2008 the possibility of jury trial was removed from specially limited in CrPC cases of terroristic crimes. The main argument advanced for the change is that, in the southern regions of the Russian Federation, jurors or due to fear for its lives and lives of its relatives, or due to widespread kinship with the defendants¹⁰ are becoming more lenient towards and acquitting defendants who, according to official investigations, are members of illegally armed groups or criminal organisations engaging in terrorist and criminal activities. The enacted law

9 See Valery Stepalin, *Pochemu otmenyayutsaya opravdatel' nye prigovory* [Why are acquittals reversed] [1998] *Rossiskaya yustizia*, No 8, at 9.

10 It is widely known that in the southern regions of Russia the relative links are very remote; they might cover the persons as to whom no one could exactly stated the exact degree of kinship. This system of kinship is sometimes called clan' s (or tribal) system.

automatically transferred these cases to trial by three judges. However the enacted law preserved the jury trial for other serious crimes such as aggravated murder, aggravated kidnapping, aggravated rape, etc.

This restriction of the scope of jury trial in 2008 was immediately contested by several defendants accused in terroristic crimes in the Constitutional Court of Russian Federation. Its decision delivered by the full court (the significant fact itself) on April 19, 2010,¹¹ upholds the enacted law and reveals the constitutional role of the court of jury and states the limits for the legislator in enacting laws restricting the scope of jury trial.

In 2009 President Medvedev stated that in his opinion ‘there is potential to get carried away, superfluously increasing the capacity of trials by jury.’ At the same time he stressed the complexity of this problem and unacceptability of the abolition of this institution.¹² In his other speech he has proposed to remove the jury trial in cases of organized criminal groups.¹³ These President's proposals do not take the legislative form yet, and the situation is not so pessimistic. If the federal legislator could find the constitutionally acceptable reasons for the removal of jury trial from cases of terroristic crimes and similar ones it would be more difficult to prove the necessity of such restriction in cases of non-political, non-extremist crimes such as murder, rape, kidnapping which form today the over-whelming majority of cases tried by the jury. And any further restriction of the jury's competence will be tested by the Constitutional Court and hardly it will be again so lenient to the federal legislator.

IV. Conclusion. The trial by jury is the constitutionally guaranteed mode of trial in Russia (ss 20 (2) and 47 (2) of Constitution enacted in 1993) . It is now firmly

11 See Resolution of the Constitutional Court of Russian Federation No 8-P (April 19, 2010) ‘In case of the investigation of the constitutionality of sections 30 (2) (2) , (3) and 325 (2) of Criminal Procedure Code of Russian Federation in connection with a complaint of citizens R.R. Zainagutdinova, R.V. Kudaeva, F.R. Faizulina, A.D. Khasanova, A.I. Shavaeva and an inquiry of Sverdlovsk regional court’ , available at <http://www.rg.ru/2010/05/07/upk-konst-dok.html>.

12 See Transcript of Meeting with Council for Civil Society Institutions and Human Rights, November 23, 2009, available at http://archive.kremlin.ru/eng/speeches/2009/11/23/1826_type82912type82917type84779_222954.shtml.

13 See Speech at Meeting on Measures to Stabilise the Socio-Political Situation and Neutralise the Terrorist and Extremist Threat in the North Caucasus, August 19, 2009, available at http://archive.kremlin.ru/eng/speeches/2009/08/19/1857_type82912type82913_221060.shtml.

established in the legal practice and in the legal conscience of Russian society. Its advantages obviously outweigh its negative sides, and the task for the new future is improving of its mechanism.