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Hindering the Development of the Jury Trial in Russian Federation and the Problems of Court Independence

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Abstract

The relationship between the judiciary power and the jury is historically not simple in Russia. Despite the fact that after a long period of oblivion, this institution was returned still to the domestic legislation, the attitude to it continues to be ambiguous. This article attempts to find out the reasons for this state of affairs. Based on the analysis of modern scientific literature reflecting the opinions of practical employees of the judiciary power, such reasons are summarized in the appropriate categories: organizational, technical, material, personnel, psychological, procedural and political. In more detail, the article considered the material and the political circumstances. And if almost all studied sources focus their attention on the material aspect, the political reasons that impede the development of the jury trial in RF are similar to the hidden part of the iceberg: they are also large and hidden. The work emphasizes the need for a jury trial, the stabilization of the legislation developing it and its popularization among the population. Based on the results of the analysis, the main conclusion is drawn that the judiciary power in Russian Federation suffers from the process of power centralization, and thus it often fulfills the political will of the state.

Keywords: Jury trial, Court independence, Political interests of the state.

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INTRODUCTION

According to the official report by the International Independent Non-profit Organization "World Justice Project" (WJP), Russian Federation occupies 89th place out of 113 in the rating of legal states during the period of 2017-2018. The top three are represented by the following countries: Denmark, Norway and Finland. The index of the rule of law in Russian Federation is 0.47 of the maximum possible 1, and, for example, the Danish index is estimated at 0.89. It should be noted that Russia rating has decreased by 3 positions relative to 2015, and the worst indicators are the restrictions by state power (102nd place), criminal justice (97th place) and the protection of fundamental rights (95th place). In general, it should be noted that for a number of indicators RF position is far from being "ideal", and it also far from the average indicators of the countries in Eastern Europe and Central Asia. Unfortunately, it is necessary to recognize that our state can hardly be called legal.

The lowest rating of Russia is indicated by the indicator of criminal justice, which is of a special interest and especially sad, since the sphere of criminal legal relations is most closely interconnected with the real lives and destinies of people. It is important here to observe the objectivity, the impartiality, the fairness of the process, for every sentence is a significant interference and the restriction of inalienable human rights.

The indices by categories within the abovementioned indicator are defined as follows:

1. The effectiveness of criminal investigation - 0,27;
2. The timeliness and the effectiveness of the judgment - 0.39;
3. The efficiency of the correctional system - 0.37;
4. The absence of discrimination - 0.35;
5. The absence of corruption - 0.46;
6. The lack of state influence on decision-making 0.12;
7. The respect for the rights of the accused one - 0.37.

If you follow the mathematical calculation and set the goal to increase the place of Russian Federation in criminal justice, the average figure can be improved by raising either the minimum or the maximum value in the corresponding category. RF rating indicators are such that the highest is indicated in the category of "corruption absence" (0.46 out of 1), and the lowest is "the absence of state influence on decision-making" (0, 12 of 1). And it is sad, since the judicial independence is most important and vital in the criminal justice system [2].

It is obvious that both of these indicators are directly correlated with the topic of our study and can be raised by using the institution of the jury trial, the peculiarities of the development and the procedure for making a decision which mostly excludes the corruption component and the possibility of a third-party influence on the outcome of the criminal investigation.

METHODS

The following methods of scientific cognition were used as the main methods of the work:

- 1) Analysis. Using this method, authors determined the specific problem research sectors. In particular, they revealed the reasons for the pretentious attitude of the judiciary power to the jury, the circumstances that hamper the development of this institution in Russian Federation are considered in detail.

2) Abstraction. After the determination of the jury trial essence, the evaluation of its positive and negative aspect weight for the judiciary power and ordinary citizens, a general conclusion has been made about the expediency of its existence, the need to stabilize its regulatory legislation, and to take measures to popularize it.

3) Generalization. Based on the study of literature reflecting the view of scientific and practical personnel of the judicial system, and a direct work experience with the jury trial, the specific claims were classified into the appropriate categories.

4) The system method of the study. Authors determined the specifics of the relationship between some participants of the criminal process during the consideration of the criminal case by the jury.

5) The methods of deduction and induction. Through the use of these methods of scientific cognition, authors considered the individual reasons for the instability of the legislation regulating the institution of the jury trial, and they established the regularity of certain amendment introduction conditioned by political necessity.

RESULTS

It would seem that it would be better for the jury to exist and function properly for society as a whole and for justice in particular, but the attitude of our "independent" judiciary power to this institution is steadily pretentious.

We will try to determine what is the "range of claims" of a professional court to the court with the participation of jurors. And to this end, let us turn to the sources in which the acting or the retired judges express their position on a given issue, that is, to the individuals who have a direct experience of working with the jury.

The reasons for the domestic justice to dislike the processes with the participation of the jurors are numerous. One can conditionally single out the following ones:

1) Organizational and technical (the problems of the jury development, the duration of trials in connection with the need for an advance notification of each juror and the provision of time for attendance, the lack of suitable premises for such processes);

2) Material (significant expenses are required for the organization of the trial with the participation of jurors: the sending of mail correspondence at the stage of the jury development, the payment of remuneration for the participation in the process, the compensation for travel and residence, construction, re-equipment or a courtroom rent for the relevant process. In addition, in view of the trial peculiarities concerning the cases involving juries, a higher qualification of judges is required leading such a process. Considering that since July 1, 2018 the jury trials can be considered by the district courts certain expenses will be required for the organization of educational process to improve the qualifications of the corresponding judges);

3) Personnel (considering that the organization of work to send correspondence to the applicants for jurors and the subsequent work with candidates is sufficiently long and can substantially distract current professionals from a number of other job functions, it is advisable to either involve a separate court specialist in this type of cases or revise duties of acting personnel).

4) Psychological (in view of the lack of appropriate qualifications and the features of the subject composition of the jury, the final decision in the case depends on the juror's personal attitude to everything that happens in the process, rather than on a clear understanding of the case essence. The threat of making an emotional decision, but not on the basis of common sense increases. Besides, a jury

trial is often called a "situational court". In judicial practice, there are the cases where different juries render different decisions on the same case).

5) Procedural (the difficulties in the discussion of a number of evidences on the case, the impossibility of appealing against an acquittal verdict of jurymen except for the violation of procedural law norms);

6) Political (recognizing the constitutional right of citizens to a jury, many note that the insufficient qualification of the collegium makes it impossible for the authorities to trust this institution since the adoption of a number of decisions on criminal cases is not only the fate of a person, but the stability of statehood. The lack of a pragmatic approach by jury and the guidance solely by internal conviction can lead to a situation when the state authority is affected, not only for our public, but also for the world community, and this is not permissible, because it can lead to unrest and chaos and to the foreign interference into the state affairs).

DISCUSSION

Belyaev M.V., the Deputy Chairman of the Supreme Court of the Republic of Tatarstan on criminal cases cites the following statistics for 2016. Up to 1000 invitations are sent in order to ensure the appearance of 30-40 candidates to the jury. By directed invitations about 8-10% of invited appear in Tatarstan, of which 30% declare self-withdrawal [2, p.16]. The Deputy Chairman of the Perm Krai Court Zalyayev M.S. notes that 5,800 invitations were sent to jury candidates in 2016 for the consideration of 3 cases only. The actual appearance of jury candidates in the Perm region amounted to 2.4% from the invited ones on the average [2, p.26].

In accordance with the current legislation, a juror is paid the remuneration in the amount of half of the judge salary, but no less than the average earning of a juror at the place of his main work. Actually, in Tatarstan, this amount makes slightly over 500 rubles per day [2, p.17], because the salary of a judge is largely formed due to various kinds of extra charges. In 2016, one day of participation in the jury was paid from the budget in the amount of 620 to 6,328 rubles in the Perm region. In total, 522,249 rubles were spent in 2016 to compensate a juror, including per diem, hotel costs and the reimbursement of transportation expenses to non-resident jurors [3, p.30]. The Deputy Chairman of the Supreme Court of the Republic of Mordovia Martyshkin V.N. points out that the expenses in the Republic of Mordovia to 192 jurors amounted to 3,218,000 rubles for the last 3 years [4, p.41]. Thus, the participation of one juror in the case makes 5,586 rubles for the state budget.

As for the low activity of citizens in their striving to become jurors, in our opinion, this is only the matter of this institution popularization. It is difficult to expect support from the public, when the authorities doubt the need for a jury trial or constantly transforms the type and the form of its functioning. Taking into account the low level of population legal awareness and legal culture, the constant reforming of this institution excludes even the possibility of the public accustoming to the perception of jury trials as an integral element of domestic justice. Many citizens continue to remain unaware of the very fact that there is a jury trial in Russia, and of the participation procedure in such a process.

If we consider the reforming of legislation on jury trials, it becomes obvious that numerous withdrawals of juries from the jurisdiction were dictated precisely by political considerations. Thus, the Federal Law No. 321-FL (30 December, 2008) "On the Amendments to Certain RF Legislative Acts on Countering Terrorism" 9 crimes are excluded from the criminal cases that can be examined by jurors: an act of terrorism (art. 205 of RF Criminal Code), the taking of a hostage (part 2-4 of the article 206 of RF Criminal Code), the organization of an illegal armed group or the participation in it (part 1, Article 208 of RF Criminal Code), mass riots (part 1, article 212 of RF Criminal Code), high treason (art.275 of RF Criminal Code), espionage

(Article 276 of RF Criminal Code), violent seizure or forcible retention of power (art. 278 of RF CC), an armed uprising (art. 279 of RF CC) and a diversion (Art. 281 of RF CC). At the same time, the reasons for such a legislative decision adoption are obvious to a number of researchers - the authorities feared massive acquittals against anti-state actions against the background of an unstable political situation and the activation of terrorist groups [5; 6].

The desire to make the criminal trial with the participation of jurors more controllable is evidenced by the legislative initiative of RF Supreme Court, which provided for the joint meeting of the jury and the presiding judge in the advisory room for a final decision. A professional judge admitted to the jury could undoubtedly control the course of the discussions: to place the "necessary" accents on the analyzed evidence, to demonstrate his authority and professional experience, to anticipate the negative consequences of the jury decision and so on. However, if the desire to make the trial with the participation of the jury more controllable is quite clear for the power pursuing the political interests of the state, then it is the issue concerning the judiciary power, which reveals another painful topic for our justice - the independence of the court, or rather, the actual absence of this independence.

CONCLUSIONS

The main argument of the current judiciary power is unchanged - the trial with the participation of jurors is an expensive event. Indeed, the process with the participation of jurors is more expensive than the traditional process, however, the data given indicate that it is the issue of quite an acceptable amount in fact. Given that the trial with the participation of jurors is a rare phenomenon, it is difficult to name these expenses significant for the judicial system.

It should be noted that the option of strengthening the public confidence in the judiciary power through a regularly functioning jury is also expressed by foreign researchers [7, p.11]. The development of a clear and uncompromising position of the state on the need for the existence of this institution, the stabilization of legislation, its formulation, the popularization of its activities is seen as topical. However, it is not necessary to count on the support of the authorities, on the contrary, many changes introduced into the legislation illustrate the desire of this very government to minimize the scope of the criminal legal relations considered by the jury. It is difficult to put pressure on the jury in the process, it is problematic to predict the outcome of the criminal investigation, which means it is not possible to guarantee a certain political decision.

For the judiciary system and the direct representative of this system - the judge any negative costs of working with jurors are absent, on the contrary, it is even easier to work with them psychologically. As John Ferejohn rightly points out, from a normative point of view, judges should be autonomous agents that can be relied upon when they carry out their public duties regardless of ideological considerations [8; p.353]. An independent judge is not bound by the interests of law enforcement agencies or advocacy. He is a fair arbiter who objectively and impartially assess the results of these parties work as they are, therefore the proposed initiative of RF Supreme Court more likely confirms the thesis that the court has become the vassal of the state political interests and suffers from the process of power centralization.

SUMMARY

Judicial proceedings with the participation of jurors continue to be a real mechanism of criminal proceeding effectiveness and impartiality increase. Taking into account the presence of "outside observers", on whom the outcome of the criminal investigation also depends, all those persons participating in the trial (a judge, a prosecutor, a lawyer) begin to work particularly carefully and thoughtfully, because one thing is a professional judge, whom you may know during work and who is

ready to forgive much, another thing is the numerous jury for which the process is a novelty and which concern all the details of the process with interest.

The principle of the judiciary body independence should be based on the principle of a fair and an impartial trial, but not politics, ideology or a special interest [9].

It is necessary to understand that there is no need to expect a special interest of the authorities in this institute. The only positive moment of its presence is the opportunity to speak from the stands about the existence of democratic institutions within the country and the reality of the constitutionally fixed rights for Russian citizens. A jury is needed only by a citizen. This is an institution designed to exclude political lobbying and to resolve the issue of fairness and legality in favor of the justice legitimately.

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FOOTNOTES

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