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Collegamenti marittimi e aerei della Sardegna

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Nomos della Terra di Carl Schmitt

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A settant'anni dal *nomos della Terra*. Riflessioni sulla filosofia del diritto internazionale di Carl Schmitt

Victims of Domestic and Gender-Based Violence

PAOLA SECHI – Università di Sassari

Protecting Victims of Domestic and Gender-Based Violence: Strengths and Weaknesses of the so-Called «Red Code».

Diritto romano nella legislazione della Sardegna Medioevale

FRANCESCO SINI – Università di Sassari
già Preside della Facoltà e Direttore del Dipartimento di Giurisprudenza

Dal diritto romano alla legislazione penalistica della Sardegna Medioevale: capitolo della Carta de Logu de Arborea «Qui ochirit homini»

Zuavi del Papa

MARIA TERESA GUERRA MEDICI – Roma
già Professore nell'Università di Camerino

Gli zuavi del Papa. 1860-1870.
La "Questione romana" e i Romani

Criminal Proceedings with Jury

ELENA V. BARKALOVA – St. Petersburg Law Institute
Academy of the General Prosecutor's Office

Particularities of Criminal Proceedings with Jury in pre-revolutionary and contemporary Russia

БАРКАЛОВА ЕЛЕНА ВЛАДИМИРОВНА – Санкт-Петербургского юридического Института
Академии Генеральной прокуратуры РФ, Россия

Особенности Уголовного Судопроизводства с Участием Присяжных Заседателей в дореволюционной и современной России

Art. 50 della Carta dei Diritti fondamentali UE

MARIA CRISTINA CARTA – Università di Sassari
Ricercatrice di Diritto dell'Unione Europea

Il principio del *ne bis in idem* nell'art. 50 della Carta dei Diritti fondamentali UE e nella recente giurisprudenza della Corte di Giustizia

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PARTICULARITIES OF CRIMINAL PROCEEDINGS WITH JURY IN PRE-REVOLUTIONARY AND CONTEMPORARY RUSSIA

ELENA V. BARKALOVA
Academy of the General Prosecutor's Office
St. Petersburg Law Institute

Both in theory and in practice, a number of urgent questions arise about improvement of the efficiency of criminal proceedings with participation of jurors, the reasons for the annulment of court sentences based on their verdicts. The most common reasons include significant violations of the criminal procedural law committed at the stage of preliminary investigation[1], verdict of the unlawful composition of the jury[2], violations of the criminal procedural law committed during consideration of the criminal case by the court[3], lack of evidentiary support of alleged crime and others. In this regard, it is relevant to compare the stages and features of criminal proceedings with participation of jurors under pre-revolutionary and current legislation.

1. – Jurisdiction of jury trials

In the Russian Empire, jury trial was introduced by the Charter of the Criminal Procedure of 1864, as well as by the Institution of Judicial Establishments of 1864 [4], and lasted until 1917, when this type of legal proceedings was abolished by the Decree of All-Russian Central Executive Committee of the RSFSR "On Court" of 24 November 1917.

The jurisdiction of jury trial was determined by the Article 201 of the Criminal and Correctional Penalties Code of 1845 (as amended in 1866) and included cases of crimes or misconduct, for which the law imposed penalties, combined with the deprivation or restriction of the rights of the state. The Criminal and Correctional Penal Code of 1845 (as amended in 1866), under the restriction of the rights of the state meant loss of the nobility, deprivation of

titles, ranks, and insignia; prohibition of being in the state and civil service for nobles; deprivation of rank for clergy; prohibition to participate in elections and to be elected "in honorary or combined with the authorities positions" for merchants and honorary citizens (Articles 22, 23, 43). In fact, they included moderate and serious crimes. According to the calculations of the pre-revolutionary researcher of jury A.M. Bobrishchev-Pushkin, about 410 articles of the Criminal and Correctional Penalties Code were judged by jury, which amounted to about one fifth (or 20%) of all punitive articles of Russian law[5].

During the crisis of jury in 1877 – 1889 a number of crimes were sequentially removed from the jurisdiction of jury: cases on crimes of the office, against the management order, abuse of public and private bank officials, double-marriage, murder and attempted murder, violence against officials in the exercise of their official duties, cases on the manufacture and storage of explosives[6].

A jury has ceased to consider criminal cases of misconduct due to the incompetence of jury in a number in special issues related to the performance of a particular official activity and the possibility of exerting influence on them, as well as in passport cases due to the disproportionate punishment of the damage caused, absence of victim[7].

Citizens of Russia received the constitutional right to a jury trial on November 1, 1991 - from the moment of amending part 1 of article 166 of the Constitution of the RSFSR (1978). However, bringing the criminal procedure legislation in accordance with the basic law of the country lasted almost two years. Only on July 16, 1993, the Law of the Russian Federation No. 5451-1 "On Amending and Adding to the Law of the RSFSR" On Judicial System of the RSFSR", the Code of Criminal Procedure of the RSFSR, the Criminal Code of the RSFSR and the Code of the RSFSR on Administrative Offenses" was adopted, which provided for jury trial. A special XX section was introduced in the Code of Criminal Procedure of the RSFSR, which provided for consideration of cases by jury trial. By Resolution of the Supreme Council of the Russian Federation on July 16, 1993 No. 5451 / 1-1 "On the Procedure for Enforcing the mentioned above Act" in five regions of Russia (in the Stavropolsky Region, Ivanovskaya Region, Moscow, Ryazanskaya and Saratovskaya Regions), jury trials were envisaged from November 1, 1993 [8]. Gradually, this type of legal proceedings was practiced in other regions of Russia.

Based on the analysis of the reasons for acquittals decided on the basis of jury verdicts conducted on the basis of a summary of judicial practice, a measure was passed to reduce the number of crimes attributed to the jurisdiction of jury. Criminal cases concerning the most dangerous crimes were seized from the jurisdiction of a jury - terrorist act (Article 205 of the Criminal Code of the Russian Federation), taking of hostages (parts 2 - 4 of Article 206 of the Criminal Code of the Russian Federation), organization of an illegal armed group or participation in it (part 1 of article 208 of the Criminal Code of the Russian Federation), riot (part 1 of article 212 of the Criminal Code of the Russian Federation), treason (article 275 of the Criminal Code of the Russian Federation), espionage (article 276 of the Criminal Code of the Russian Federation), forcible seizure of power or forcible retention of power (Article 278 of the Criminal Code of the Russian Federation), armed rebellion (Article 279 of the Criminal Code of the Russian Federation) and sabotage (Article 281 of the

Criminal Code of the Russian Federation)[9]. Later was expanded the jurisdiction of criminal cases to be considered with participation of jurors, with introduction of this form of proceedings in the district and equivalent courts[10].

On June 1, 2018, the Russian Federation introduced a list of crimes considered by jury, on the level of a district court, including murders, qualified murders (parts 1 and 2 of article 105 of the Criminal Code of the Russian Federation), sale of narcotic drugs and psychotropic substances with aggravating circumstances (part 2 of article 228.1 of the Criminal Code of the Russian Federation), causing grievous bodily harm, resulting in the death of the victim by negligence (part 4 of article 111 of the Criminal Code of the Russian Federation) and other offenses[11]. Until that time, only criminal cases of grave and especially grave crimes were examined by jury on the level of the Court of a constituent entity of the Russian Federation in the first instance[12].

The legislator has repeatedly changed the jurisdiction of cases examined by jury, which was caused by the presence of violations during their consideration and a certain political and socio-economic situation. In the 90-s of the XX-th century, this type of legal proceedings was introduced gradually on the territory of Russia, as the judicial system of the regions was ready. In general, the jurisdiction of cases judged by jury trials in pre-revolutionary Russia was similar to criminal proceedings pended today.

2. – Requirements for Jury Candidates

First of all, it is necessary to analyze requirements for jury candidates, established restrictions, procedure for preparing lists of jurors, and then procedure for the formation of a jury, and some stages of a criminal trial by jury.

Article 81, sub. 5 of the article 84, articles 87, 88 of the Institutions of judicial establishments provided for a number of qualifications in relation to candidates for jurors: citizenship of the Russian Empire, age (25 - 70 years), sexual (men), sedentary life (residence in the county at least two years), property (income of a certain size or the presence of real estate of a certain type, area and cost), literacy. Moreover, initially it was enough that at least one jury of twelve members of the collegium possessed elementary writing and reading skills. Soon, this requirement was introduced for all candidates.

The legislator provided for a number of restrictions on jury candidates. According to sub. 1 - 6 of the article 82 of the Institutions of judicial establishment they could not be persons who were under investigation or trial, convicted; persons who have shown themselves negatively in terms of compliance with labor discipline; also unable to properly dispose of property and live within their means; having specific physical disabilities and mental disorders. The Russian pre-revolutionary legislation did not provide for the institutions of extinguished or withdrawn criminal record. Persons sentenced to imprisonment or more severe sentences could not become jurors.

In contradistinction from the current legislation, the article 99 of the Institutions of judicial establishments regulated the need to take into account the moral qualities of candidates for jurors during formation of the lists. The

requirements of a respectable lifestyle in terms of the absence of vices for which a person could be expelled from the clerical department, the environment of societies and assemblies, according to the sentences of those classes to which they belong, and also the impeccable conduct of labor activity were fixed in subsection 2 of article 82 of the Institution of judicial establishments.

Current criminal procedure legislation does not indicate a violation of labor discipline, in particular, dismissal of an employee on the initiative of an employer, or failure to fulfill obligations of a civil law nature as an obstacle to a jury. Of course, depending on the nature of the criminal case under consideration, in some cases it is undesirable to include such a candidate in the jury, and the presence of such a circumstance should be clarified by the parties when deciding whether to declare challenges at the stage of formation of the jury.

Insolvent persons (incapable of living within their means and properly managing property) could not become members of a jury. As in current law, the Institution of judicial establishments prohibited the performance of a jury by clergymen, military personnel, and persons holding certain government posts, including law enforcement officials, teachers, and servants. According to O.N. Tisen, "contrary to property and official qualifications, peasants predominated in the jury, and small officials and petty bourgeoisie prevailed in cities"[13].

Researchers of the pre-revolutionary criminal process in Russia noted the problem of the representativeness of the estates in the jury, which in practice was not provided. "The representatives of the local element and the merchant's estate were practically absent from the lists. And the officials included in these lists, after being included in the regular lists, appeared at the beginning of the court hearings armed with evidence from the authorities about fictitious business trips or sudden special orders. Those non-employees who were included in the lists often found themselves generously supplied with evidence of an illness that did not prevent them, however, sitting out evenings and nights at cards in provincial and district clubs and sitting in chairs not in the courts, but in theaters"[14]. Other candidates in jurors submitted certificates of illness. Unwillingness to perform the proposed functions was caused by non-payment of participation in the administration of justice as a jury.

Subsequently, in 1887, people who fell into extreme poverty were eliminated from the jury (article 82 of the Institution of judicial establishments), since it was virtually impossible for peasants in the absence of income and savings to live even in a small county town. In a number of provinces of the Russian Empire, local authorities began to give small allowances to peasants-jurors for the duration of their stay in the city. In 1972, such expenditure of budget funds was prohibited. Only forty years later after the creation of the jury in Russia, the relevant law was passed on the remuneration of underserved jurors[15]. The article 388 of the Charter of Criminal Procedure provided for valid reasons for the failure to appear at the call of the court for all participants of the criminal process, and additional for the jury (article 650 of the Charter of Criminal Procedure). They included untimely receipt of a judicial notice - later than a week before the date of the court session.

According to V.G. Rumyantseva and L.Yu. Panfilenko, "admitting a broad democratic element in the jury in general criminal cases, the legislation made substantial exemptions in relation to state crimes. Representatives from the

estates, leaders of the nobility, the mayor, the district foreman were invited to consider them in the courtroom”[16].

Despite the fact that subsequent researchers, as well as drafters of the Judicial Regulations, noted the influence of the jury's social composition on the subjectivity of decisions on certain categories of cases, such subjectivity was considered as a merit of the jury, indicating that, unlike the crown court, the jury upon verdict could be guided by "the closest known to them behavior and inclinations of the defendant, as well as local morals, customs and orders of domestic life"[17].

V.A. Voronin noted the tendency of the jury to subjective verdicts, when there was a real danger of becoming a victim of a similar crime, as they belonged to the same social group as the victim. Thus, the commonality of the social group of the victim and the jury was a serious factor influencing the verdict[18], which should have been taken into account by the parties during selection of panel members.

The current legislation in many respects establishes similar requirements for jurors. According to the article 3 of the federal law “On jurors of federal courts of general jurisdiction in the Russian Federation” dated August 20, 2004 No. 113-FL, they include the citizenship of the Russian Federation, practical acquaintance with a Russian language, age from 25 to 65 years, legal capacity, lack of physical and mental diseases that impede the performance of a jury, lack of addiction (alcohol, drug).

Jurors cannot be clergy, some public servants, including law enforcement officers, military personnel; the same persons who terminated their work less than 5 years before the compilation of the jury lists, suspects, accused persons, persons with an unexpunged and outstanding conviction (article 7 of the federal law “On jurors of federal courts of general jurisdiction in the Russian Federation” of 08.20.2004 No. 113-FL). Part 1 of the article 10 of the federal Law of 20.08.2004 No. 113-FZ established a restriction on the performance of the function of a jury not more than 1 time per year, as well as in the article 104 of the Institution of judicial establishments of 1864.

Despite clearly defined by the legislator requirements for jurors, it is a significant challenge to determine whether candidates meet the criteria established by the legislator, and therefore sentences imposed on the basis of the verdict of such a jury are canceled due to a violation of the law on the requirements for jury members[19]. The Criminal Procedure Code of the Russian Federation provides for the procedure for the formation of a jury board (article 328 of the Code of Criminal Procedure of the Russian Federation), during which the court and the parties find out restrictions and the obstacles to the performance of the functions of the jury from the persons who were called from the pre-compiled lists. Nevertheless, the legislator does not provide methods for verifying the validity of the information provided by candidates, despite the requirement that the answers of candidates to questions posed to them would be truthful. If the public prosecutor collects the relevant information using his official position and then submits it to the court in the form of certificates (for example, prints from the IC of the Regional Department of Internal affairs about the criminal record of the candidates and (or) their relatives), the court has the right to issue a private ruling and resolve the issue of removal from participation in a criminal case with the replacement of the

public prosecutor. Thus, this issue has not yet been resolved, although in practice there are certain ways to "eliminate" an objectionable candidate. Depending on the alleged crime and the defendant's characteristics, scientific and methodological literature provides recommendations on the selection of jurors for state prosecutors[20], and lawyers representing the interests of the defendants[21]. Specialists, including psychologists, are often involved in this procedure in order to select the optimal composition and possibly predict the behavior of members of the jury in the future.

After analyzing the "image" of a jury candidate in legislation, it can be concluded that the current criminal procedure legislation of the Russian Federation establishes similar requirements (previously - qualifications) and restrictions on jury candidates.

However, the differences are obvious, including restrictions on gender, class of society, some professions and lifestyle characteristics, due to the class nature of the society in the XIX-th century in the Russian Empire, the absence of a number of legal institutions (for example, criminal records) and the influence on legislation of the prevailing political and legal opinions (in particular, about the goals and types of punishment)[22].

3. – Compilation of lists of candidates in jurors

Further, it is advisable to compare the number of candidates included in the lists and in jury according to the pre-revolutionary and current legislation of Russia. The pre-revolutionary legislation of the Russian Empire provided for the notification of 36 jurors (30 main ones — to be present during the entire judicial session to form a collegium and 6 spare ones — in case one of the main ones does not appear) (articles 550 - 553 of the Charter of Criminal Procedure). The law of 12.06.1884 reduced the number of candidates to be called up to 24 [23]. Candidates to the list of jurors were selected by lot by the presiding judge from lists drawn up by the interim commissions. Temporary commissions consisted of persons appointed annually by county authority assemblies for this purpose, and in capitals - by combined sessions of general city councils and local district authority assemblies (article 89 of the Institution of judicial establishments, article 45 of the Regulation of local authority institutions). They gathered under the chairmanship of the county leaders of the nobility and with participation of one of the magistrates of the county town (article 97 of the Institution of judicial establishments).

In accordance with the articles 82 - 102 of the Institution of judicial establishments, general, regular and reserve list of jurors were drawn up. Annually by September 1, were updated general lists of candidates from among the local residents of the province. In its turn, regular lists included persons from the general list who were called during the year to participate in court hearings: 1,200 residents of St. Petersburg and Moscow, in counties with more than 100,000 inhabitants - four hundred people, less than 100,000 inhabitants - 200 people. The special list included only persons with a place of residence in those cities where jury trials were held, in St. Petersburg and Moscow - 200 people, in other cities - 60. A.F. Koni pointed out the unacceptable negligence of members of the Temporary Commissions to compile lists of jurors who did not

examine potential jurors in accordance with legislative restrictions, since the lists often included "... crazy, deceased, blind and deaf people, who were tried, did not know the Russian language, were over 70 years of age, etc."[24].

In modern Russia, lists of jurors are compiled from general lists of district residents maintained by the territorial administrations of local governments, by a random access computer system. In accordance with the articles 4, 5, 5.1 of the federal law "On jurors of federal courts of general jurisdiction" of August 20, 2004 No. 113-FL, a general and reserve lists of candidates for jurors are compiled. According to the part 4 of the article 4 of the federal law "On jurors of federal courts of general jurisdiction", the number of citizens to be included in the general list of candidates for jurors of a constituent entity of the Russian Federation from each municipality should approximately correspond to the ratio of the number of citizens permanently residing in the territory of the municipality and the number of citizens permanently living in the territory of the region of the Russian Federation. This rule is established to determine the number of jurors in the reserve list. Clause 7 of the Decree of the Plenum of the Supreme Court of the Russian Federation "On the application by courts of certain provisions of the Federal Law "On jurors of federal courts of general jurisdiction in the Russian Federation" dated February 13, 2018 No. 5 also regulates the rules for compiling a reserve list of candidates for jurors. They are similar to those specified in the article 101 of the Institutions of judicial establishments of 1864.

Similarly to the judicial practice of Russia in the 19th century, the chairmen of the courts control the compilation of lists of jury candidates, being in direct contact with the executive authorities. Not later than three months before the expiration of the term of office of jurors, previously included in the lists of jurors, the chairmen of the courts shall submit to the supreme executive body of state power of the corresponding region of the Russian Federation offers about the number of candidates for jurors necessary for the work of the respective courts (part 1 of the article 5 of the federal law dated 20.08.2004 No. 113-FL). The general and reserve lists of candidates for jurors of municipalities, districts and constituent entity of the Russian Federation shall be sent to the executive court of the municipal entity or the highest executive body of state power of the constituent entity of the Russian Federation no later than one month before the expiration of the term of office of the previous jurors (part 1 of the article 8 of the Federal Law of 20.08.2004 No. 113-FL).

In the event that jury candidates cannot perform these functions due to restrictions established by law or who submit a written application to remove them from lists are identified in court lists, the chairmen of the courts shall submit a corresponding submission regarding amendments to the lists to the body responsible for the formation of lists.

Whereas previously the main jury consisted of unemployed and housewives with free time, in recent years it has been more common for people with higher education to participate in juries in major cities of Russia. Changes in the composition of the jury are related to reimbursement by the jury of not only travel expenses, but also the payment of material compensation for the time the jury performs the duties of administering justice. According to the part 1 of the article 11 of the Federal Law of 20.08.2004 No. 113-FL the court pays the jury at the expense of the federal budget compensation in the amount of

one second part of the official salary of the judge of this court in proportion to the number of days the jury participated in the administration of justice, but not less than the average jury income place of his main job for such a period. However, researchers continue to note the need for lawmakers to encourage citizen participation in the administration of justice by exempting jurors from paying taxes for a specific period, etc.[25].

4. – Formation of a jury

In the second half of the XIX-th century, the procedure for the formation of a jury was governed by the first section of the second division of the sixth chapter of the Charter of Criminal Procedure of 1864. The presiding judge after establishing the appearance of the candidates for jury on the lists submitted, resolved the issue of imposing a penalty on persons who did not appear without good reason, in presence of more than 30 people from the main list transferred it to the public or private prosecutor, as well as to the defendant. The valid reasons for the failure to appear at the call of the court were indicated for all participants in the criminal process in the article 388 of the Charter of criminal proceedings, additional for the jury - in the article 650, including untimely receipt of a subpoena - later than a week before the opening of the court session.

Considering the features of jury trials under the legislation of pre-revolutionary Russia, including the procedure for the formation of a jury, A.A. Ilyukhov points to a combination of the distinctive features of the Anglo-Saxon and Continental legal systems. The first one was characterized by an adversarial type of process and was manifested in the Russian criminal process by the possibility of challenging when forming a jury. The second one was distinguished by the features of the Inquisition process and was manifested in the possibility of studying information about the identity of the defendant, which undoubtedly had a significant impact on the jury's verdicts[26].

Unlimited number of admissible challenges of candidates for jurors established upon adoption of the Charter of criminal procedure often led to inability to form a college due to the mentioned above reasons for the reluctance of candidates to perform these functions, and sometimes to the formation of a biased collegium, as mentioned A.F. Koni[27], in connection with which a further restriction was introduced on the number of claimed unmotivated bends.

Both parties had a right to withdraw no more than 6 assessors each, so that out of a total of 30, at least 18 non-designated persons remained. The presiding judge dropped the tickets with the name and surname of the remaining 18 candidates into the box and took 14 tickets by lot, proclaiming each name taken out, which was put on the list by the secretary. The first 12 on the list were the presence of the jury, and the last two became spare. The process of forming a jury was completed by swearing in each member of the jury according to the ritual of his religion.

According to the parts 1 and 2 of the article 326 of the Criminal Procedure Code of the Russian Federation after appointment of a court session by order of the presiding judge, the clerk of the court session or assistant judge

makes a selection of candidates for jurors from the general and reserve lists in court by random selection and checks for the circumstances provided for by federal law. The initial lists of jury candidates consist of a different number of citizens of the Russian Federation. They can include from 20 to 200 candidates, taking into account the size of the territory of the subject of the Russian Federation and the number of residents[28]. For example, according to paragraph 2 of the Guidelines for the organization of judicial proceedings in criminal cases considered by jury members approved by the Presidium of the Yamal-Nenets autonomous region on 05.17.2017, an analysis of the existing practice showed that less than 100 candidates are inappropriate to invite. More than 20% of them will not be delivered letters of invitation, 15% of them will not appear at the hearing, 15% of them cannot be jurors[29].

According to the part 4 of the article 326 of the Criminal Procedure Code of the Russian Federation, after selection of candidates for jury trials for participation in the criminal case is completed, a preliminary list of their names, first names, patronymics and home addresses is drawn up, which is signed by the court clerk or assistant judge who composed it. Lists of jurors who appeared at the trial, without indicating their home address, are handed to the parties with a simultaneous clarification of the right to declare an unlimited number of motivated challenges to candidates in case the circumstances are identified that impede the performance of functions by candidates (clause 10 of the article 328 of the Criminal Procedure Code of the Russian Federation) and one unmotivated challenge for each of the parties (parts 4, 5 of the article 327, paragraphs 12 – 16 of the article 328 of the Criminal Procedure Code of the Russian Federation).

Currently, the jury of the district court includes 6 people, while at the level of the court of the constituent entity of the Russian Federation the collegium consists of 8 people (paragraphs 2, 2.1, part 2 of the article 30 of the Criminal Procedure Code of the Russian Federation).

The procedure for the formation of a jury is regulated by the 328 of the Criminal Procedure Code of the Russian Federation. After a brief opening statement by the presiding judge, the jury candidate has a right to recuse himself, which is discussed with the participation of both parties and resolved by the presiding judge. Then a general jury survey is conducted, after which the parties proceed to discuss each of the candidatures and declare motivated challenges in writing. Experienced psychologists can be connected to the jury selection to draw up a psychological portrait of each candidate and predict the course of his behavior during the trial[30].

General requirements for posing questions to jury candidates are given in the second abstract of the paragraph 13 of the Resolution of the Plenum of the Supreme Court of the Russian Federation "On the application by the courts of the norms of the Code of Criminal Procedure of the Russian Federation governing jury trials" of 22.11.2005 No. 23. In scientific and educational works are provided recommendations on the preparation of questions for jury candidates[31]. However, there is always a risk of concealment of information from the parties and the court that could affect the formation of the board. So, V.M. Bykov and E.N. Mitrofanov rightly point out the common reasons for the annulment of court sentences involving jurors: 1) violation of the order of priority when compiling a list of jurors; 2) family relations between members of the jury[32]; 3) concealment of information about the convictions of their

relatives[33]. Despite the procedure established by the legislator for the formation of a jury, during which the court and the parties find out from the jury candidates that they have limitations and obstacles to the performance of this function, there are no statutory methods to verify that the information they provide is true. The collection by the public prosecutor of such information using his official position, followed by submission to the court of information (for example, prints from the IC of the Department of Internal Affairs about the criminal record of the relatives of the candidates) may be the basis for the court to issue a private ruling. Today, this problem remains open. Unmotivated challenge of the jury is done by deleting the name of the candidate on the list. The college includes the first eight (ten) people according to preliminary lists of non-nominated candidates (six or ten core and two reserve members). The parties have the right to make a statement on the bias of the formed jury by virtue of the artcile328 of the Criminal Procedure Code of the Russian Federation (for example, a jury of women or men alone is supposed to consider a criminal case on rape, however, if the court rejects the petition to dismiss the jury on this basis, the jury will have a negative feeling of distrust of them from one party or another, what may be reflected in the final decision when deciding the verdict. A.F. Koni noted that he also did not use this right, trusting the composition of the board[34].

Comparing the mentioned above norms of the Criminal Procedure Code of the Russian Federation with the provisions of the Charter of Criminal Procedure of 1864, the following differences in the procedure for the formation of a jury can be identified:

(1) Only pre-revolutionary criminal procedures provided for unmotivated challenge of candidates, which could lead to the formation of an illegal composition of the college. Moreover, initially their number was unlimited, which often confused the jury selection process due to the shortage of candidates on lists.

(2) An insignificant number of candidates to be summoned to court on lists led to the impossibility of forming a college and the need for repeated repetition of the procedure or the formation of a biased college, unlike modern practice;

(3) The presiding judge did not give a short introductory speech, and therefore the jury candidates were not oriented towards the purpose of their presence in court (nature of the case to be considered, identification of awareness, duration of the case, etc.);

(4) The choice of the presence (panel) of the jury by the presiding judge by lot from among the non-nominated candidates, in contrast to the established rule of the article 328 of the Criminal Procedure Code of the Russian Federation - the first ten (eight) candidates from among the unlisted candidates;

(5) Various composition of the district court and the court of a constituent entity of the Russian Federation with a jury (clauses 2, 2.1. part 2 of the article 30 of the Criminal Procedure Code of the Russian Federation), while under pre-revolutionary legislation juries for various parts of the judicial system were not provided;

(6) The number of members of a jury is 12 according to pre-revolutionary legislation and 6 in the current criminal procedure for a district court (8 for a court of a constituent entity of the Russian Federation), although when a jury

was introduced in 1993, a collegium with only 12 members was envisaged (part 22, article 328 of the Criminal Procedure Code of the Russian Federation).

Common features of the jury selection process for pre-revolutionary and modern Russia are: (1) the ability to declare the college biased; (2) upon completion of the formation of the college, the oath of the members of the college and the choice of foreman.

The need to verify compliance with the requirements for jury candidates when compiling lists of candidates before they are brought to the court, the lack of representation of the population on jury trials, ensuring the appearance of candidates in court, checking the validity of reasons for failure to appear, guaranteeing the safety and independence of jurors, and other problems were touched upon in the writings A.F. Koni[35], which were partially resolved in the legal practice of pre-revolutionary Russia, and were also taken into account by the legislator when introducing a jury in the Russian Federation in the 90-s of the XX century.

5. – Features of the judicial investigation and debate of the parties when considering a criminal case with participation of jurors

In the Russian judicial practice of the second half of the 19-th century after formation of the jury, adoption of the oath and election of the foremen of the jury, the presiding judge had to explain to the jury their rights and obligations (articles 671-677 of the Charter of Criminal Procedure). Similarly, this procedure is provided for the current criminal process and is regulated by the part 6 of the articles 332, 333 of Criminal Procedure Code of the Russian Federation.

However, in practice, the presiding judge very often drew attention only to the technical side of the jury's work, without properly explaining to the latter what was the assessment of internal conviction, doubts about guilt, consequences of the verdict; there was a lack of published samples of the presiding address. Currently, there is a technical opportunity to find recommendations and similar samples in the scientific and methodological literature[36].

Significant impact on the work of participants in the trial have working conditions and its organization. A.F. Koni mentioned in his works “poor hygienic and expensive cooking conditions”, the absence of a jury lounge. In order to avoid negative impact on the jury, the legislator constantly changed the legal regulation on the possibility of the jury leaving the courthouse for a night's rest, admitting it in cases where not a criminal but a corrective punishment should be decided, then excluding it altogether[37].

At present, jury trials in courtrooms are by no means adequately equipped in all courts, not to mention the organizational work of a jury, which could negatively affect the performance by jurors of their functions, especially in light of the expansion of the jurisdiction of cases dealt with by jury, and the introduction of this institution in the district and equivalent courts of general jurisdiction from 06.01.2018.

The examination of criminal cases by jury took a long time, during which defendant was detained. A.F. Koni noted the “long-term preliminary detention of

the accused," and despite the fact that "there is a man in the dock who is undoubtedly guilty in their eyes, but it is also certain that he has already been punished, sometimes even more than that which would have been appointed by the court by law. The whole difference was that he was subjected to this punishment not by the court's verdict, but by the decision of the investigator..."[38]. This problem was resolved in current legislation by offsetting the time spent in custody of the defendant, both at the pre-trial stages of criminal proceedings and during the court proceedings at the time of serving the sentence of imprisonment (part 3 of the article 72 of the Criminal Code of the Russian Federation).

In addition, in view of the widespread practice of recovering money from the Russian Federation as compensation for claims before the European Court on Human Rights in connection with unreasonably prolonged detention in cases of termination of a criminal case on exonerating grounds, the lack of grounds for applying this preventive measure and inadequate conditions of detention in places of pre-trial detention[39] and, in general, the length of legal proceedings in certain criminal cases, the Criminal Procedure Code of the Russian Federation included the principle of a reasonable period of criminal proceedings (article 6.1).

Violations committed during the trial by jury also consisted in violating the limits of the judicial investigation caused by the improper activity of the judicial investigator and the court chamber as an indictment chamber, insufficient understanding of the corpus delicti and its necessary features, overloading the list of witnesses, clarification during interrogation of procedural participants of information not relevant to the case under consideration[40].

A.F. Koni gives a vivid example of ethical violations during interrogation of witnesses in the case on charges of Prasolov in the murder of his wife. "Witnesses were asked questions that convicted themselves of reprehensible behavior; one of them, for example, was asked what prevented him from engaging in a relationship with the murdered woman — her own unwillingness or her virtue; the speeches of the defense indicated that gentlemen such as one of the witnesses did not fight a duel, and the famous artist-singer was called the "idol of brainless girls"[41].

A judicial investigation involving a jury, as well as when considering a criminal case in the usual manner, begins with the opening remarks of the public prosecutor and defense counsel (part 1 of the article 335 of the of Criminal Procedure Code of the Russian Federation). Further, the parties submit evidence in accordance with the approved procedure by the presiding judge, including separate judicial actions (interrogation, examination of objects and documents, and others)[42].

The Code of Criminal Procedure of the Russian Federation does not regulate the tactics of interrogation of witnesses and other participants in criminal proceedings when considering a criminal case with a jury, focusing on procedural issues of the possibility of announcing the testimony of an unappeared witness and complying with the necessary requirements (article 281 of the Criminal Procedure Code of the Russian Federation, clause 4 of the resolution of the Plenum of the Supreme Court of the Russian Federation "On the court verdict" of 29.11.2016 No. 55)[43], the possibility of interrogation as witnesses the persons, who were not included in the indictment (part 8 of the

article 234 of the Criminal Procedure Code of the Russian Federation), compliance with the composition of the subject during interrogation of certain categories of persons, for example, minor victims or witnesses (article 280 of the Criminal Procedure Code of the Russian Federation).

It is necessary to remember about the established restrictions in the conduct of trial with participation of jurors.

1. If during the trial arises the question of inadmissibility of evidence, it is considered in the absence of jurors (part 6 of the article 335 of the Criminal Procedure Code of the Russian Federation).

2. At present, one of the distinguishing features of jury trials is the ban on the investigation of data on the identity of the defendant (part 8 of the article 335 of the Criminal Procedure Code of the Russian Federation), since information about a criminal record, bringing a person to administrative responsibility, alcohol or drugs abusement can create a prejudice against him by jury.

3. In the course of a judicial investigation in the presence of jurors, only those factual circumstances of the criminal case shall be examined, the evidence of which shall be established by jurors in accordance with their powers (part 7 of the article 335 of the Criminal Procedure Code of the Russian Federation).

4. During the process of judicial investigation and other stages of criminal proceedings, the parties should not use legal terminology, including when setting out the charges and raising questions to the participants in the process, in speeches in the debates of the parties, etc.

If these violations are reflected in the protocol of the court session, a reference to them in the appeal (presentation of the prosecutor) may become one of the grounds for the cancellation of the sentence, which was decided on the basis of a jury verdict.

In contemporary judicial practice, violations of the criminal procedural law committed both during preliminary investigation[44] and in criminal proceedings with the jury, are one of the common reasons for the annulment of court sentences based on jury verdicts[45]. Thus, while during a judicial investigation in a criminal trial with jurors in pre-revolutionary Russia the violations mainly amounted to the ineffective organization of the trial, its delay, now the violations are more likely to violate the norms of criminal procedure law and affect the creation of jury prejudices regarding one or another procedural party.

When comparing the debates of the parties in the criminal trial with the jury regulated by the Charter of the Criminal Procedure of 1864 and the Code of Criminal Procedure of the Russian Federation, it should be noted that both regulatory legal acts provided for a similar procedure for the parties to speak. Moreover, in judicial practice of pre-revolutionary Russia, the reason for the annulment of the sentence could be various inappropriate statements, in particular, in the defender's speech "when the criminal perspective is perverted, thanks to which the accused and the bad act committed by him almost completely disappear, and on the dock there are distracted defendants who are not subject to the punishment of the law and are usually called the "environment", "order of things", "temperament", "passion", "interest", and sometimes the victims themselves, who have forgotten the proverb: "Do not

put bad, do not lead the thief into sin". The prosecutor's speech pointed to unacceptable "indications by the jury of the harm that could result from an acquittal; "deliberate one-sidedness in covering the criminal side of the matter ..., stinging ridicule and inappropriate irony at the adversary's address and, finally, the interpretation of the task of the jury, as well as the meaning and purpose of the law in a sense contrary to the public order and intentions of the legislator"[46].

In contemporary criminal trial involving jurors, the parties, when preparing speeches, turn to the speeches of famous pre-revolutionary lawyers, give proverbs and aphorisms, not only from literature, but also from films[47]. Thus, in one of the criminal cases examined by a jury in the St. Petersburg City Court, characterizing the role of the defendant as a mediator in assasiation, the state prosecutor drew a successful parallel between defendant's functions with caporegime and other mediators with Don Corleone (the customer) and the murders (executors) from the book of Mario Puzo, and even more famous movie "The Godfather". In another criminal case, characterizing the testimonies of witnesses in a criminal case, previously convicted of complicity in the sale of narcotic drugs on especially large scale as part of an organized criminal group, the state prosecutor cited the famous proverb: "Swans are not found in sewage." However, it is worth to remember that one should not overload speech with such distractions, and they should not be inappropriate. Statements in criminal cases about the murder "How much cost the life of a person?!" are inappropriate and simulated from either party of the process.

Modern researchers note the particular importance of the content of the prosecutor's speech and the way it is delivered[48], citing statistical evidence as a result of a survey of members of the jury that 30% of respondents formed the opinion that the defendant was guilty precisely after speaking in the debate of the public prosecutor[49]. Likewise, considerable attention should be paid to the preparation of the speech of the defendant.

6. – The wording of the questionnaire and valedictory of the presiding judge to the jury

Since the introduction of the jury institute in Russia, the structure of the questionnaire to the jury has undergone a number of changes. So according to the Charter of the criminal proceedings of 1864 jury was proposed to answer the following questions: Has the crime been committed? Is the defendant guilty? Did he act with prejudice? Articles 801 - 815 of the Charter regulated in detail the content and form of questions that should be drawn up in commonly used terms, and not in the form of definitions adopted by law. At the same time, the legislator emphasized the need for actual investigation and resolution of the issue of criminal liability of the defendant by establishing differences between the meaning of the words "committed" and "guilty".

A.F. Koni noted that the indulgence "according to the circumstances of the case" was influenced by the personality of the defendant, with his good and bad qualities, with his calamities, moral suffering, and trials. But where the question of suffering arises, there next to it is the question of atonement"[50]. Currently, the legislator has imposed a ban on examining at the trial data on the identity

of the perpetrator, which are not relevant to the criminal case under consideration and can create prejudice among jurors (part 8 of the article 335 of the Criminal Procedure Code of the Russian Federation). Despite the restriction established by the legislator, both the defense and the prosecution parties sometimes violate this rule in the form of a reservation, "randomly" during interrogation of the defendant or in the debate make the appropriate reference, for example, "Remembering your many previous convictions..." Despite the brick-bat of the presiding judge and his appeal to the jury with a request not to take this information into account, especially when passing a verdict, a certain thesis in the mind from the heard is postponed by the members of the board.

A.F. Koni recommended on compiling the questionnaire and criticized the existing practice of using legal terms in the questionnaire ("violence", "secret kidnapping", "insult", etc.) and, at the same time, not using common words that do not raise any doubts, such as "mistake", "embezzlement" (instead, the word "spending" was recommended), "arson" (replaced by "fire damage")[51]. The Cassation Senate gave clarifications regarding the formulations in the questionnaire to the jury[52].

According to T.Yu. Markova, "the questions were to establish the identity of the defendant and the specific corpus delicti for which he was prosecuted. The identity of the defendant should have been determined as in the court judgment, i.e. indicating his title, first name, patronymic, last name or nickname and date of birth. In those cases where the profession of the defendant was of particular importance, the type of his occupation, craft, skill or handicraft industry were also established. To determine the specific corpus delicti it was necessary to indicate: place and time of the commission of criminal offense; the individual or legal entity against which this act was directed, and the attitude of the defendant to it; the actual corpus delicti of its legitimate characteristics (this was the only guarantee for the defendant that he would be convicted of an act prohibited by criminal law under penalty of punishment). At the same time, those signs were indicated that distinguished the defendant's crime from homogeneous criminal acts; and if the law did not contain an exact definition of this crime, then its distinctive features should have been determined by comparing it with other border structures"[53].

The formulation of issues to be resolved by jurors and their content are regulated by the articles 338, 339 of the Criminal Procedure Code of the Russian Federation[54]. The difference between the content of the questionnaire regulated by the Criminal Procedure Code of the Russian Federation and that proposed by the Charter of the Criminal Procedure of 1864 consists in supplementing the question of whether it was proved that the act was committed by defendant. At the same time, the question of guilt, divided into two questions in the Charter of the Criminal Procedure regarding generally guilty of committing an act and its form, in the Criminal Procedure Code of the Russian Federation can be detailed by private questions about the circumstances that affect the degree of guilt or change its character, entail the release of the defendant from liability. In necessary cases, questions are also raised separately about the degree of implementation of the criminal intent, the reasons why the act was not brought to an end, degree and nature of the complicity of each of the defendants in the commission of crime. Questions are

permissible to establish the guilt of the defendant in the commission of a less serious crime, if this does not worsen the position of the defendant and his right to defense is not violated (part 3 of the article 339 of the Criminal Procedure Code of the Russian Federation).

At present, in spite of the 4 main questions indicated by the legislator to be included in the questionnaire (parts 1, 4 of the article 339 of the Criminal Procedure Code of the Russian Federation), in practice the number of questions included in it can reach several hundred, especially in multi-episode criminal cases involving several defendants. Practicing lawyers are inclined to the need to simplify its content. There are errors associated with the inclusion of conflicting questions in the questionnaire[55]. In accordance with the part 5 of the Article 339 of the Criminal Procedure Code of the Russian Federation, questions cannot be raised separately or as part of other issues that require jurors to have the legal qualification of the status of a defendant (about his criminal record), as well as other issues that require a proper legal assessment when a jury passes its verdict. Proceeding from this, it is unacceptable to pose questions to be resolved by jurors using such legal terms as murder, murder with special cruelty, murder from hooligan or mercenary motives, murder in a state of sudden strong emotional disturbance, murder when exceeding the limits of necessary defense, rape, robbery, etc.[56]

When a party disputes the defense of certain circumstances and there are doubts about unanimous verdict, the presiding judge often makes the establishment of these disputed circumstances either a separate question or a part of the question. For example, is it proved that Ivanov seized ten thousand rubles from Petrova against her will in order to enrich himself, as well as the Samsung Galaxy S7 mobile phone? At the same time, the defence party disputes the theft of the mobile phone from the victim, and the charge of robbery is not the only one, since robbery itself is not included in the list of crimes considered by the jury. Or the question of whether it is proved that the victim was stabbed 12 times, including 2 in the neck.The last two injuries were disputed by the defense party, since this part of the body belongs to vital organs, which indicates the intent of the defendant, and it was precisely these injuries that, according to the forensic medical examination, citizen Ivanov died. In a number of cases, qualifying features of corpus delicti are presented in separate questions, for example, on the motive and purpose of depriving a person of life of a defendant, especially if, according to the jury, they are not established. For example, is it proved that Ivanov has killed Petrova? And Is it proved that Ivanov killed Petrova because of her political activity in the New Russia social movement in a service conflict? Pre-revolutionary lawyers did not point out the problem of using these formulations of questions by jury in their writings.

Replacing legal terms, especially with regard to the form of guilt of a person or the description of certain crimes, is particularly difficult. For example, one can describe the qualifying signs of a murder committed in a generally dangerous way as follows: is it proved that Ivanov fired several Kalashnikovs from a window of his apartment located on the second floor of a house at a specific address at citizens passing by in the daytime and realizing that it could to harm their life and health? Currently, such recommendations are absent in the Code of Criminal Procedure of the Russian Federation and are provided only

by practitioners at meetings and in separate methodological recommendations of limited access.

A.F. Koni paid close attention to the content of the parting words of the chairman. According to his opinion, it was unacceptable to improvise the chairperson or to think about the upcoming parting words during the debate of the parties and not to respond to violations of the parties during delivery of speeches; unnecessary repetitions of the articles of law by the presiding judge and discussions on legal categories, for example, "an uninvited, thoughtful explanation of the difference between a statement about the forgery of an act and a dispute about its invalidity, an explanation, listening to which one could honestly admit that there is no difference between them or an authoritative explanation of the difference between a seizure and a search, which boiled down to the fact that when they search, it is a search, and when something is found, it is a seizure"[57].

The presiding judge should clarify the corpus delicti, its essential features, provide evidence, including the testimony of witnesses, but not evaluate the actions of the (non) guilt of the defendant. A.F. Koni in his work cited examples from judicial practice, when the presiding judge gave the jury wrong advice "not to bother comparing the conflicting testimonies of the witness, but to leave them without consideration at all." In another case, the presiding judge assessed the evidence, insulting the participants in the process, characterized the case to be resolved as a proverb: "Pike in the sea so that carp wouldn't doze," and repeatedly called the defendant a "pike"[58].

A.F. Koni referred to practical cases of erroneous verdicts due to the jury's misconception about the prospects of punishing the defendant, which is why he considered it necessary to disclose the punishment to which the defendant could be subjected. This rule was enshrined in pre-revolutionary criminal procedure legislation 15 years after the introduction of a jury trial. Particular attention was recommended to be given to evaluating the conclusions of the forensic psychiatric examination and the testimonies of experts in this field. The identification of a number of mental deviations of the defendant, including the state of neurasthenia, psychopathy, atavism, heredity, autohypnosis, obsessions led to the expansion of the concept of insanity and the narrowing of the concept of responsibility[59].

Currently, the chairperson does not pronounce a parting word before the jury verdict (Article 340 of the Criminal Procedure Code of the Russian Federation), expresses his attitude to the prosecution and the evidence presented, fails to clarify the norms stipulated by law, including not recalling the evidence investigated in full, and fails to clarify the punishment provided for the alleged crime may be grounds to cancel the court verdict.

Studies of pre-revolutionary legal scholars[60] and the chronicle of jurisprudence with participation of jurors had a significant impact on the resumption of legal proceedings with jurors in post-Soviet Russia and formation of valuable recommendations for law enforcement on the basis of positive and negative experience in this field. The legislator took into account many errors of judicial practice of the 19th century when introducing a jury in the 90-s of the XX-th century in Russia. Requirements for candidates have partially changed due to changes in the political and socio-economic structure of society, but many restrictions remained the same. The stages of the criminal process and

their regulation are largely similar to the Charter of the Criminal Procedure of 1864 and the Criminal Procedure Code of the Russian Federation. The very fact that in the present days state prosecutors and lawyers appeal to the speeches of pre-revolutionary lawyers shows the existence of eternal values that are relevant for contemporary society.

Per la pubblicazione degli articoli della sezione "Contributi" si è applicato, in maniera rigorosa, il procedimento di *peer review*. Ogni articolo è stato valutato positivamente da due *referees*, che hanno operato con il sistema del *double-blind*.

[1] E.N. ALEKSEEVSKAYA, *Fatal errors of a jury trial*, in *Eurasian Bar* 5, 2016, 32-35. A.A. ILYUKHOV, *The influence of investigative errors committed during criminal proceedings with jurors on the occurrence of judicial errors*, in *Transactions of the Academy of Management of the Ministry of Internal Affairs of Russia* 3 (51), 2019, 39 - 47. V.V. MIKHAILOV, *Features of the preliminary investigation of criminal cases, judged by court with the participation of jurors*, in *Criminalist* 2 (23), 2018, 38 - 45.

[2] Review of court decisions on criminal cases examined by jury, approved by the letter of the Prosecutor General's Office of the Russian Federation of 09.03.2004 No. 12/12-04. G.L. KULIKOVA, *Participation of the public prosecutor in the formation of the jury* [Manual, Academy General Prosecutors Office of the Russia Federation], Moscow 2010, 19 - 24, 43 - 54. A.N. RAZINKINA, *Features of the appeal against sentences handed down by a jury*, in *Criminalist* 2 (23), 2018, 106 - 116.

[3] V.V. VEDISCHEV, *Typical errors and consequences of procedural irregularities in criminal proceedings heard by a jury (Russian and Conventional practice)*, Moscow 2020, 352 ss.

[4] *Russian legislation of the X – XX-th centuries* [Volume. 8. Judicial reform], Moscow 1991, 120 - 251.

[5] A.M. BOBRISHCHEV-PUSHKIN, *Empirical laws of the activity of the Russian jury*, in *Russian Thought*, 1896, 49 - 50. [Cit. by: N.A. RAZVEIKINA. *On the issue of jurisdiction of jury in accordance with the Charter of Criminal Procedure and the Code of Criminal Procedure of the Russian Federation*, in *Actual problems of Russian law* 6, 2014, 1222 - 1227].

[6] N.A. RAZVEIKINA, *On the issue of jurisdiction of jury in accordance with the Charter of Criminal Procedure and the Code of Criminal Procedure of the Russian Federation*, cit., 1223.

[7] A.F. KONI, *Jurors* [Collected Works in 8 volumes. Volume 1], Moscow 1966, 333, 377 - 380, 388 - 390.

[8] H.M. SHAKHBANOVA, *Historical aspects of the development of jury trials in Russia*, in *History of State and Law* 23, 2015, 46 - 49.

[9] On Amending Certain Legislative Acts of the Russian Federation on Countering Terrorism: Federal Law of 30.12.2008 No. 321-FL.

[10] On introducing amendments to the Code of Criminal Procedure of the Russian Federation in connection with the expansion of the use of the institution of jurors: Federal Law of 23.06.2016 No. 190-FL (Section "b" part 1 of article 1).

[11] On introducing amendments to the articles 30 and 31 of the Code of Criminal Procedure of the Russian Federation and article 1 of the Federal Law "On amendments to the Code of Criminal Procedure of the Russian Federation in connection with the expansion of the use of the institution of jurors: Federal Law on 29.12.2017 No. 467-FL.

[12] For more details on the dynamics of changes in the jurisdiction of criminal cases considered by a jury, see: A.V. GABOV, N.M. KHROMOVA, *Jury trial in Russia: a new reform*, in *Judge* 5, 2016, 4 - 11.

[13] O.N. TISEN, *Features of the formation of the jury after the judicial reform of 1864*, in *Administrator of the court* 3, 2009, 44.

[14] A.F. KONI, *Jurors*, cit., 334.

[15] A.F. KONI, *Jurors*, cit., 335-336.

[16] V.G. RUMYANTSEVA, L.YU. PANFILENKO, *The experience of the establishment of the institution of jury trials in the Russian Empire*, in *History of State and Law* 20, 2008, 20.

[17] Judicial statutes of 20.11.1864, setting out the reasoning on which they are based. [Part 2], Saint Petersburg 1867, 97.

[18] A.V. VORONIN, *The problems of forming a verdict in a jury (historical aspect)*, in *History of state and law* 16, 2010, 23.

[19] G.L. KULIKOVA, The participation of the public prosecutor in the formation of the jury, cit., 19 - 24, 43 - 54.

[20] G.V. KARPOVA, *The participation of the public prosecutor in the formation of the jury*, in *Criminalist* 2 (23), 2018, 89 - 95. G.L. KULIKOVA, *The participation of the public prosecutor in the formation of the jury*, cit., 56 ss.

[21] I.B. MIRONOV, *Jury trial. Strategy and tactics of judicial wars* [Series: Academy of Law], Moscow 2015, 672 ss. V.V. MELNIK, *The art of speech in the jury [teaching and practical manual*, V.V. MELNIK, I.L. TRUNOV, 2-nd ed., revised and additioned], Moscow 2017, 662 ss.

[22] M.V. GRAMMATCHIKOV, *Criminal record: historical, criminal law and penal aspects* [Abstract of the dissertation for the degree of PhD on specialty 12.00.08], Krasnoyarsk 2002, 6.

[23] *Commentary on the Charter of criminal proceedings in Russian legislation of the X - XX centuries*, [Volume 8. *Judicial reform*], Moscow 1991, 326.

[24] A.F. KONI, *Jurors*, cit., 333.

[25] A.A. DROZDOVA, *Jury trial: history and modernity*, in *Journal of Russian Law* 11, 2014, 2478.

[26] A.A. ILYUKHOV, *Jury trial in Russia: the history of its formation and development*, in *History of state and law* 23, 2015, 36.

[27] A.F. KONI, *Jurors*, cit., 362.

[28] G.L. KULIKOVA, *The participation of the public prosecutor in the formation of the jury*, cit., 6 ss.

[29] Urbs: http://oblsud.ynao.sudrf.ru/modules.php?name=docum_sud&id=333.

[30] R.V. BAGDASSAROV, *A jury trial is a court of conscience and common sense (comparative legal analysis)*, in *International criminal law and international justice* 2, 2009, 9.

[31] T.A. VLADYKINA, *Problems of formation of a jury*, in *Journal of Russian Law* 5, 2014, 84 - 94. .L. KULIKOVA, *The participation of the public prosecutor in the formation of the jury*, cit., 14 - 33.

[32] For example: Foreman and a member of jury were sisters and hid this fact during the formation of the college. // Definition of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation of 30.11.2006 No. 20-O06-47SP, in *Bulletin of the Supreme Court of the Russian Federation* 2007. No. 10.

[33] For example, the Judicial Collegium for Criminal Cases of the Supreme Court has grown. The Federation canceled the acquittal of the Yaroslavl Regional Court, motivating its decision as follows: when the jury was formed, the state prosecutor asked the jury candidates whether there were any persons or their close relatives who were ever prosecuted. The jury candidate K. hid from the court the fact that his son had been prosecuted several times. Concealment of this information deprived the parties of the right to challenge this person and could influence on taking the decision on the case. // V.M. BYKOV, E.N. MITROFANOVA, *Reasons for the jury to issue unfounded acquittals*, in *Russian justice* 2, 2010, 49.

[34] A.F. KONI, *Jurors*, cit., 362.

[35] A.F. KONI, *Jurors*, cit., 331 - 391.

[36] V.M. LEBEDEV and others, *Scientific and practical commentary on the Code of Criminal Procedure of the Russian Federation* [under the general edit. V.M. LEBEDEV, V.P. BOZHIEV, 9-th ed., revised and added], Moscow 2014, 473 - 483. V.A. SUDARIKOV, *The role of the presiding judge in the administration of justice by a jury in the Russian criminal process* [Dissertation for the degree of PhD on specialty 12.00.09], Moscow 2004, 99 - 124.

[37] A.F. KONI, *Jurors*, cit., 365 – 367.

[38] A.F. KONI, *Jurors*, cit., 340.

[39] The judgment of the European Court on human rights on Complaints No. 35919/05 and No. 3346/06 "Birulev and Shishkin v. Russia" dated 06.14.2016; A review of the jurisprudence of the Supreme Court of the Russian Federation No. 4 (2017), approved by the Presidium of the Supreme Court of the Russian Federation 11.15.2017; The judgment of the European Court on Human Rights on complaint No. 63053/09 "Misyukevich v. Russia" of

04.30.2015 // *Review of the judicial practice of the Supreme Court of the Russian Federation* No. 1, 2016, approved by the Presidium of the Supreme Court of the Russian Federation 04.13.2016.

[40] A.F. KONI, *Jurors*, cit., 344 – 350.

[41] A.F. KONI, *Jurors*, cit., 349.

[42] V.S. BURDANOVA, L.T. VOLNIANSKAYA, S.G. EVDOKIMOV and others, *A guide for public prosecutor* [Training manual, under the editorship of O.N. Korshunova, 3-rd ed., rev. and add., textbook], St. Petersburg 2015, 821. R.A. MUKHAMEDZHANOVA, *Features of participation of the public prosecutor in a judicial investigation in the presence of jurors*, in *Investigative practice* 187, 2012, 78-93.

[43] For more details see: E.V. BARKALOVA, *The influence of the judicial situation on the announcement of testimonies of participants in criminal proceedings*, in *Criminalist* 2 (21), 2017, 33 – 38 (http://procuror.spb.ru/izdanija/2019_02_01.pdf). V.S. SHADRIN, *The grounds and conditions for the announcement in court of the testimony of the victim and the witness if they do not appear at the hearing*, in *Criminalist* 1 (22), 2018, 30 – 36 (http://www.procuror.spb.ru/k1207.html).

[44] On some issues of the application by the courts of the Constitution of the Russian Federation in the administration of justice: Resolution of the Plenum of the Supreme Court of the Russian Federation of October 31, 1995 No. 8 (ind. 2 paragraph 16); On the practice of applying legislation when considering criminal cases in a court of first instance (general procedure for legal proceedings): Resolution of the Plenum of the Supreme Court of the Russian Federation. Federation of December 19, 2017 No. 51 (paragraph 13).

[45] E.V. BARKALOVA, *Analysis and evaluation of the protocols of individual investigative actions* [Training manual], Saint Petersburg 2019, 112 ss. (http://procuror.spb.ru/izdanija/2019_02_01.pdf). V.M. BYKOV, E.N. MITROFANOVA, *Reasons for the jury to issue unfounded acquittals*, in *Russian justice* 2, 2010, 48. N.F. VORONINA, *The limits of judicial discretion when decreeing an acquittal by a jury*, in *Criminal Procedure* 8, 2005, 46. V.V. KONIN, *Jury trial: discussion continues*, in *Russian judge* 2, 2009, 44.

[46] A.F. KONI, *Jurors*, cit., 350 – 351, 370 - 372.

[47] For more details on the speech of the prosecutor see: G.D. BELOVA, *Participation of the public prosecutor in the debate of the parties [Lecture]*, Moscow 2010, 32 ss.

[48] R.V. BAGDASSAROV, *A jury trial is a court of conscience and common sense (comparative legal analysis)*, cit., 20. V.V. MELNIK, *The art of speech in the jury*, cit., 82 - 142.

[49] V.M. BYKOV, E.N. MITROFANOVA, *Reasons for the jury to issue unfounded acquittals*, cit., 51.

[50] A.F. KONI, *Jurors*, cit., 337, 345 - 348.

[51] A.F. KONI, *Jurors*, cit., 360 – 361.

[52] *Charter of criminal proceedings with later legalization, legislative motives, clarifications of the Governing Senate and circulars of the Minister of Justice* / Ed. M.P. Shramchenko and V.P. Shirokova, St. Petersburg 1913, 730 - 731.

[53] T.YU. MARKOVA, *Posing questions by jury according with the Charter of the criminal proceedings of 1864*, in *Actual problems of Russian law* 4, 2014, 570 - 576.

[54] For more details see: On the application by the courts of the norms of the Code of Criminal Procedure of the Russian Federation governing jury trials: Resolution of the Plenum of the Supreme Court of the Russian Federation of November 22, 2005, No. 23 (paragraphs 26–32).

[55] In particular, see: N.P. VEDISCHEV, *The content of the questions to the jury: analysis of judicial practice*, in *Criminal process* 4, 2012, 62-67.

[56] On the application by the courts of the norms of the Code of Criminal Procedure of the Russian Federation governing jury trials: Resolution of the Plenum of the Supreme Court of the Russian Federation of 22.11.2005 No. 23 (par. 29).

[57] A.F. KONI, *Jurors*, cit., 355.

[58] A.F. KONI, *Jurors*, cit., 359.

[59] A.F. KONI, *Jurors*, cit., 382 – 386.

[60] A.F. KONI, *Moral principles in the criminal process* [Selected works, Comp. A.B. Ameline], Moscow 1956, 19 - 48. A.F. KONI, *Defendants and Witnesses* [Selected works, Comp. A.B. Ameline], Moscow 1956, 116 - 162. A.F. KONI, *Witnesses at trial* [Selected works, Comp. A.B. Ameline], Moscow 1956, 153 - 160. I.YA. FOYNITSKY*, Course of criminal proceedings*, 4-th ed., vol. 1, Saint Petersburg 1912.