THE ESTABLISHMENT OF TRIAL BY JURY IN RUSSIA IN SECOND HALF XIX CENTURY – THE DEMOCRATIC BREAKTHROUGH IN JUDICIAL AND POLITICAL SYSTEM

Sakhapov R.R.

Naberezhnye Chelny Institute, branch of the Kazan Federal University, Naberezhnye Chelny, e-mail: rentsakhapov@ya.ru

In the given article we prove, that the court with participation of jurors is the best form of judicial proceedings and trials. This court was the best guarantee of freedom, equality and justice in the second half of the XIX century in Russia.

Keywords: guarantee, publicity, independence, spontaneity, continuity, principle, publicity, equality, freedom, competitiveness, court, jury, the judicial reform of 1864, Judicial charters of 1864

The jury – is rather a difficult form of legal proceedings, urged to protect freedoms, rights and legitimate interests of the accused people and the victims. This form of legal proceedings promoted the development of the fundamental principles of domestic legal proceedings.

Judicial charters, November 20, 1864, proclaimed such advanced principles of legal proceedings as: independence of people of any class, court independence of administration, an irremovability of judges and investigators, equality of all human beings before the law and court and some others. The process itself became competitive and public. The accused had the right for protection – the domestic Bar system was created. Jurors were involved to consideration of criminal cases, on which serious sentences could be imposed (the long term of imprisonment, the exile). The above mentioned attempts were developed in England, on which the work of courts of jurors was based. The same method was used before the revolution in Russia. Today, the work of courts of jurors is generally done everywhere in the same way and on the same principles.

Undoubtedly, the majority of scientists saw «the best guarantee of civil liberty» [1] in a jury. In the professor I.Y. Foynitsky opinion: the jury is «the best ornament and the firmest support of our new judicial system» [2].

Dmitry Aleksandrovich Rovinsky was one of supporters and direct participants in drawing up the project of Judicial reform of 1864, he also made the official proposal about the implementation of the jury in Russia. In February, 1862, he was attached to the commission as a lawyer, being in a position of the Moscow provincial prosecutor at the same moment.

In his note D.A. Rovinsky introduced the idea that, first of all, the general success of judicial reform is caused by the good structure of criminal court, as: « first of all, thanks to publicity, the society will go to the criminal court, but not to the civil one, and on the basis of the seen there, they will make their general opinion about the judicial reform [3].

D.A. Rovinsky, criticizing the old court, refers to one case on which the court pronounced three different sentences, and draws a conclusion, that the basis of the old court and its relation to proofs are the following: judges just make decisions under the influence of their personal mood [3].

The implementation of the jury in Russia was more necessary than anywhere else, as nowhere else the historical life, as itself, didn't make such deep differentiations between various classes of society as in our country, that is why there is the whole abyss between concepts, customs and the way of life of the crown judges, belonging in the highest estate, and defendants from the lowest estate. They say, that the Russian people are too little developed to have a jury. But, this quality of the people, i.e. its backwardness, represents the basis to absolutely opposite conclusion, the matter is, that exactly such people are in need of the special guarantees in the court and judges who would quite understand it and were as close to the people as possible [3].

However, participation of the national element can more fully provide realization of all democratic transformations, realization of all principles of criminal legal proceedings and the judicial system. Just participation of the public in the criminal court can more fully eradicate bureaucracy, bribery and another negative phenomena, which were inherited in the former court in Russia.

In due time, N.V. Muravyev, the minister of Justice, concerning a question of a public element in the criminal court, claimed that it is impossible to do without the assistance of citizens, inhabitants in the field of criminal justice. Jurors, as the nonprofessional judges, called

from society and the people, divided government powers of trial of violators of the criminal law with judges [4].

There is no doubt, that the profession of the crown judge dulled an objectivism of the crown judges who were not completely capable to consider specific features of the case, that was compensated for the account of the entered public element. Thus, both the accusatory beginning and the attraction of a national element to criminal justice provided the correct judgment on the case and the correct administrations of justice, by division of labor between various factors, that certainly is possible to refer to the basic principles of a jury.

As L.A. Zakhozhy and A.V. Poshivaylova stated, the main arguments of revival of a jury were: its democratism, big collective nature in comparison with the other forms of participation of the people in administration of justice, objectivity, orientation to wisdom and justice of national representatives, inexperienced in a legal formalism, an exception of passivity of jurors at the solution of the questions raised before them, etc. But the most important, advantage of a jury was that the jury provides independence of judges [4].

A.S. Koblikov wrote: «It is unlikely to imagine such a situation when one judge is able to persuade twelve called human beings on a lot (jurymen) to declare a sentence, concerning the innocent, contrary to their belief or to justify a crime» [4].

The Minister of Justice N.V. Muravyev in the State Council stated, that only thanks to participation of a public element, such as assessors, in the criminal trial on equal with professional judges, we may reach the inaccessible possibility for the crown court to consider the case from the point of view of truth and justice. There is the beginnings of ingenuousness, verbal ability, publicity and equality of the parties are strictly observed in court. That is why, sentences are independent and objective that causes their internal authority based on inseparable communication between administration of justice by public authorities and by legal views of the people [5].

However, the perfect court is the one, where realization of the principles of criminal legal proceedings is possible the most fully. It is the court, which is quite independent and capable to resolve all arising issues and may inspire trust to its decisions and to its whole activity.

There are no doubts, that the crown court is more independent in comparison with the court of jurors. Independence is the basis of bases of Judicial reform of 1864 in Russia and the integral principle of a jury.

Jurors are independent both of the state, and of society. Jurors can’t be renounced from their position; deprived of their wages or transfer to the other position. Besides, jurors are absolutely independent of professional judges, they confer independently and secretly. The opinion of public representatives can’t influence on jurors. The number of jurors also allows them to remain quite independent, unlike professional judges, class or other national representatives [6].

It is necessary to refer wide collective nature and smaller risk of a mistake and a miscarriage of justice to the principles of a jury. Also, it is necessary to refer to the principles of a jury the following: democratism, nationality, removal bureaucratic and official spirit from the court, originally public legal proceedings, strengthening of the competitive beginning in the criminal trial and increase the prestige of legal profession. «For an objective assessment of proofs on the criminal case one needs big knowledge of life, not connected with the stereotypes which are developed in the court, integrity and moral purity. The juror should possess all these qualities» [7].

The value of the principle of democracy is defined by the correct application of laws and right judgment sentences as far as it promotes.

Any new form of the of court organization makes sense only when the task is set and there is a real hope for decrease in probability of miscarriages of justice, but not vice versa.

According to S.A. Pashin’s opinion, introduction of a jury is valuable as it guarantees the right of an accused on protection, competitiveness and a presumption of a innocence. It is impossible to speak simply about these things, but they are in need of being realized in activities for consideration of criminal cases. Revival of a jury in Russia is «not only a procedural innovation, but it can and has to be considered in the context of the carried-out democratic transformations. At last, the jury excludes possibility of self-incrimination, biased expertise, illegal proofs or their insufficiency» [4].

The critics of the court with participation of jurors place emphasis on two important moments. The first is that jurors have no special knowledge for the solution of the question of guilt of the defendant. The second moment concerns the existence of a significant amount of verdicts of not guilty, by results of the rendered verdict by jurors. However, those, who point out the above-mentioned defects of the court with participation of jurors are deeply are mistaken, as the practice itself testifies only positive influence of participation of the public in the criminal court without the existence of special legal knowledge. Besides, the practice

also testifies to equal quantity of both verdicts: accusatory and guiltlessness, pronounced on the verdict of jurors and professional judges.

In our view, all sense of the jury is in its independent opinion from the court, in independence at decision-making, in lack of pressure from government and other public institutions. The decision of the most important question – guilty or innocent, made by society, not administration, – guaranteed objective and fair sentence and realization of all rights, provided by the legislation, and what is more important – the belief in justice and legality. All this was possible only thanks to the principle of division of labor between professional judges and jurors.

The second argument, which opponents of the court with participation of jurors apply, is the excessive number of the verdicts of innocence, pronounced in the end.

In the 90th of the XIX century N.V. Muravyev, the general prosecutor, in order to please the yard, formed and headed the commission on revision of the judicial right. The final goal of this invention was Abolition of a jury. But it was not fulfilled. At that time, A.F. Koni, the remarkable Russian jurist and the prosecutor of criminal and cassation department of the Senate, called on meeting of elite figures of justice: the senior chairmen and prosecutors of trial chambers. A.F. Koni, in his report before the audience, with figures in his hands broke the conjectures about corruptibility of jurors and about their excessive tendency to the verdicts of innocence. It became clear, that for some years the jury made 35% verdicts of «innocence» among the total number of verdicts, whereas in «courts without a jury» it was 32%. The divergence in 3% was insignificant in itself, that was explained by distinction of cases of different courts [8].

In one of the cases, which were in production of the senior chairman of the Kazan Trial Chamber, we have the correspondence according to the Ministry of Justice about: «bringing the data about the reasons of a large number of verdicts of innocence, in cases of crimes against an order of management and service, and the conclusions about drawing up the lists of jurors» [9]. In particular, K.I. Palen, the count and the Minister of Justice, sent the letter to the Kazan Trial Chamber addressed to the Senior Chairman with the request for an explanation of the reasons of so significant amount of verdicts of innocence in cases of crimes against an order of management and service, and, exactly, in cases of crimes on service, where from 68 defendants 40 was justified by jurors, and in cases of crimes against an order of management, where from 115 defendants 35 was justified by jurors.

By results of consideration of the above-mentioned letter, the following explanations were made: So significant amount of verdicts of innocence was explained by shortcoming or «by weakness of the proofs, when the belief of jurors in the valid guilt of the prosecuted couldn’t be formed» [9].

Besides, Chairmen of the Kazan, Samara, Simbirsk district courts paid attention to the absence of fault of jurors in a justification of a significant amount of defendants, on the responsible and objective relation of jurors to the considered cases, and on the need of more successful maintenance of charge and granting more convincing proofs [9].

So, it is impossible to agree with those who declare low repressiveness of a jury as a shortcoming. Though, the crown courts submitted a little (and besides insignificantly) smaller percent of verdicts of innocence, the force of repression of jurors was alien to fluctuations, peculiar, for example, to the court with class representatives, and besides, it gradually increased whereas at more repressive crown court there was the inclination to some decrease. Jurors in Russia, even under the most adverse circumstances, were able to make and express sensible and quite independent opinion in a verdict. However, the main qualities of the Russian jury were lack of formalism, the careful relation to the case, the clever use of proofs in general, the use of indirect clues in particular, and extremely expedient attitude to recidivists and to juvenile criminals [9].

References

1. Dzhanshiyev G.A. the bases of judicial reform: collection of articles. – M.: Statute; BRINES, 2004. – P. 85.

2. Foynitsky I.Y. Course of criminal legal proceedings. – T. I. – SPb.: Publishing house “Alpha”, 1996. – P. 359.

3. Zakhozhy L.A., Poshivaylova A.V. Theoretical models of a jury (in the West and in Russia): studies. grant. – Vladivostok: publishing house of Dalnevost. un-ty., 2000. – P. 49.

4. Nemytin M.V. The court in Russia: the second half of XIX – the beginning of the XX centuries. – Saratov: SYUI Ministry of Internal Affairs of the Russian Federation, 1999. – P. 58–59.

5. The principle of independence of jurors is expressed in the Art. of Art. 614–617 of the Charter of criminal legal proceedings.

6. Petrukhin I.L. Pravosudiye: Time of reforms. – M.: Science, 1991. – P. 42.

7. Yunusov A.A. Jury and human rights. – Chelyabinsk: Ministry of Internal Affairs Chelyabinsk legal institute of Russia, 2000. – P. 30–31.

8. Production for the Senior Chairman of the Kazan Trial Chamber (according to the Ministry of Justice about “bringing of data on the reasons of a large number of verdicts of innocence on cases of crimes against an order of management and service and the conclusions about drawing up lists of jurors”) // National archive of the Republic of Tatarstan. – Fund 51. – Inventory 1. – The case 25. – Liszt Tit. (further – HA PT. – Op.1. – 25. – L. Titus.). HA PT. – F.51. – Op.1. – 25. – L.1. HA PT. – F.51. – Op.1. – 25. – L.4ob. HA PT. – F.51. – Op.1. – 25. – L.4-24.

9. Chubinsky M.P. Jury and new practice of Senate // Messenger of the right. – 1904. – № 2. – February. – P. 75–76.