

Trial jury in Russian Federation and the Republic of Kazakhstan: comparative legal analysis

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ABSTRACT

The article deals with the issues of normative and scientific substantiation of trial juries in Russian Federation (RF) and the Republic of Kazakhstan (RK). We analyzed the general provisions and peculiarities of the proceedings in criminal cases considered by courts with the participation of jurors. In the RF, there is a classical model of trial jury with the division of powers of professional judges and jurors on “law” and “fact” issues in the resolution of criminal cases. In the RK, there is a mixed model of trial jury with joint resolution of “law” and “fact” issues by professional judges and jurors. Mutual trends in the improvement of trial juries are outlined, such as relocation of trial juries to the district (inter-district) level of the judicial system; changes in the number of jurors; changes in the procedure for forming a jury panel; changes in the procedure for appealing verdicts.

Keywords: Judicial reform, trial jury, Republic of Kazakhstan, Russian Federation

RESUMEN

El artículo aborda los temas de la justificación normativa y científica de los jurados de primera instancia en la Federación de Rusia (RF) y la República de Kazajstán (RK). Analizamos las disposiciones generales y las peculiaridades de los procedimientos en casos penales considerados por los tribunales con la participación de jurados. En la RF, existe un modelo clásico de jurado de primera instancia con la división de poderes de los jueces y jurados profesionales en asuntos de «derecho» y «hechos» en la resolución de casos penales. En RK, existe un modelo mixto de jurado con resolución conjunta de asuntos de «ley» y «hechos» por parte de jueces y jurados profesionales. Se describen tendencias mutuas en la mejora de los jurados de primera instancia, como la reubicación de los jurados de primera instancia al nivel distrital (interdistrital) del sistema judicial; cambios en el número de jurados; cambios en el procedimiento para formar un jurado; cambios en el procedimiento para apelar veredictos.

Palabras clave: reforma judicial, jurado, República de Kazajstán, Federación de Rusia

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INTRODUCTION

The Russian Federation and the Republic of Kazakhstan were the first post-Soviet countries, including the CIS countries, to establish a trial jury, which is in line with the global practice of developing judicial systems.

In Russian Federation, jury has heard criminal cases since 1 November 1993 (Resolution, 1993), and in the Republic of Kazakhstan since 1 January 2007 (The Law, 2006). This leads to a comparative legal study of the organization and activities of trial juries in the Russian Federation and the Republic of Kazakhstan.

Conceptual program documents became the political and normative basis for the creation of trial jury in the Russian Federation and the Republic of Kazakhstan: The concept of judicial reform in the RSFSR of October 24, 1991 (Resolution, 1992); the State Program of Legal Reform in the Republic of Kazakhstan of February 12, 1994 (State, 1994); Concept of Legal Policy of the Republic of Kazakhstan dated September 20, 2002 (Concept, 2002).

The Supreme Soviet of the RSFSR, having discussed the Concept of Judicial Reform in the RSFSR, decided “to consider the implementation of judicial reform as a necessary condition for the functioning of the RSFSR as a democratic law-governed state and as one of the priority areas of legislative activity”, to consider as the most important direction of judicial reform “the recognition of the right of every person to trial of his case by jury in cases established by law” (Resolution, 1992). The authors of the Concept of Judicial Reform in the RSFSR noted that “the attitude to the trial jury is an indicator of legal consciousness and readiness for profound reforms” (Concept, 1992), that “the trial jury acts as a means of resolving non-standard situations, where, because of the severity of possible consequences, it is more dangerous to sin against justice than against the dictates of an abstract legal norm” (Concept, 1992). “The legal significance of the Concept of Judicial Reform in the RSFSR lies in the fact that its main ideas are mandatory as criteria for assessing any draft law” (Concept, 1992). The reformers placed great hopes on trial juries as a form of legal proceedings, and most of these hopes have been met (Pashin, 2001; Pashin, 2014).

The State program of legal reform in the Republic of Kazakhstan in 1994 provided: “The new procedural legislation should focus the attention of law enforcement agencies on ensuring the principle of adversarial process, personal integrity, respect for honor and dignity, presumption of innocence, the right to professional legal assistance and protection at any stage of legal proceedings, as well as improving the efficiency of justice, freeing it To this end, it was proposed to differentiate judicial proceedings, reorganize the judicial system and judicial proceedings, and abolish the institution of people’s assessors (State, 1994).

The decision to create a trial jury has a revolutionary significance for the emerging democratic state and Kazakhstani society: the trial jury in the Republic of Kazakhstan was designed to increase the efficiency of the justice system, to implement the principle of independence of the court, to form the legal consciousness of society (Akylov, Kapizova, 2017). In the Concept of Legal Policy of the Republic of Kazakhstan in 2002 it was noted that “the main result of the implementation of the State program of legal reform in the Republic of Kazakhstan (1994) was the adoption of the Constitution of the Republic of Kazakhstan (1995), which defined the strategic directions of development of society and the state, which enshrined the fundamental rights and freedoms of man and citizen, as well as a new system of state institutions” (Concept, 2002). The Concept has established as an important direction for further development of the legal system of the Republic of Kazakhstan further improvement of the criminal procedure legislation and the need to consider the possibility of conducting criminal proceedings with the participation of jurors (section 2) (Concept, 2002).

The provisions of conceptual program documents on the need to establish a trial jury in the future were enshrined in the constitutional and criminal procedure legislation: the Constitution of the RSFSR of 1978 (Changes in 1991) (Law, 1991) and the Constitution of the Russian Federation of 1993 (Constitution, 1993), the Constitution of the Republic of Kazakhstan of 1995 (Changes in 1998) (Constitution, 1995), CPC of RSFSR 1960 (Changes in 1993) (Resolution, 1993), CPC of the Republic of Kazakhstan 1997 (Changes in 2006) (The Law, 2006).

During the period of functioning in the judicial systems of the Russian Federation and the Republic of Kazakhstan the trial jury did not remain unchanged, it was improved. Moreover, taking into account the problems identified by the practice of consideration of criminal cases by courts with the participation of jurors, new codes of criminal procedure were developed and adopted: CPC of the Russian Federation 2001 (Criminal, 2001), CPC of the Republic of Kazakhstan 2014 (Criminal, 2014). This makes it necessary to continue the comparative legal study of the legislation of the Russian Federation and the Republic of Kazakhstan regulating the organization and activities of the Jury Court Institute in order to develop reasonable proposals for the further development of trial juries.

Methods.

The purpose of the study is to identify general provisions and peculiarities of the proceedings in criminal cases considered by courts with the participation of jurors, based on a comparative legal analysis of the criminal procedure legislation of the Russian Federation and the Republic of Kazakhstan.

In order to achieve the goal the following tasks should be solved:

- to study the constitutional and criminal procedure legislation of the Russian Federation and the Republic of Kazakhstan regulating the consideration of criminal cases by courts with the participation of jurors;
- to carry out a comparative legal analysis of issues related to the organization and activity of trial juries in the Russian

Federation and the Republic of Kazakhstan;

- Identify trends and prospects for the development of trial juries in the Russian Federation and the Republic of Kazakhstan.

Data: Concept of judicial reform in the Russian Federation in 1991, State program of legal reform in the Republic of Kazakhstan in 1994, Concept of legal policy of the Republic of Kazakhstan in 2002, Constitution of the RSFSR in 1978, Constitution of the Russian Federation in 1993, Constitution of the Republic of Kazakhstan in 1995, Criminal procedural codes of the Russian Federation and the Republic of Kazakhstan: CPC of the RSFSR in 1960 (As amended in 1993), CPC RF 2001, CPC RK 1997. (As amended in 2006), CPC RK 2014, as well as scientific literature on the topic of research.

The methodological basis of the conducted research is a set of methods of scientific cognition: the method of comparative jurisprudence in the study of legal norms of the Russian Federation and the Republic of Kazakhstan; system-structural method, which allows to identify the issues of organization and activities for their comprehensive study; statistical method in the study of statistical data of the practice of trial juries; dialectical method of cognition, which allows to study the stages of production in trial juries in their relationship.

DEVELOPMENT.

Results

Analysis of the CPC of the Russian Federation 2001 (Criminal, 2001) and CPC of the Republic of Kazakhstan 2014 (Criminal, 2014) makes it possible to identify general provisions and peculiarities of criminal proceedings in trial juries.

The general rules of trial juries under the Russian Federation Code of Criminal Procedure and the RK Code of Criminal Procedure include, for example, the following provisions: the categories of cases to be tried by a jury (Article 31 of the Russian Federation Code of Criminal Procedure, Article 631 of the RK Code of Criminal Procedure); the consideration of cases by a jury court, if at least one of the accused makes a request for a trial jury (Article 325 of the Russian Federation Code of Criminal Procedure, Article 631 of the RK Code of Criminal Procedure); the procedure for explaining the right to a trial jury (Article 217) CPC RF, Article 634 of the CPC RK); impossibility to refuse from trial jury after the appointment of the court session (Article 325 of the CPC RF, Article 634 of the CPC RK); procedure of formation of jury panel (Article 328 of the CPC RF, Article 639 of the CPC RK); peculiarities of judicial investigation (Article 335 of the CPC RF, Article 650 of the CPC RK); content of the questionnaire (Article 339 of the CPC RF, Article 654 of the CPC RK).

Special attention should be paid to the main distinctive features of trial juries under the CPC of the Republic of Kazakhstan, namely: gradual introduction, distribution of powers between professional judges and jurors, and quantitative composition of the court. In Russian Federation, trial juries were introduced in stages (gradually) over several years: from 1993 to 2010, as well as in 2018 in the new constituent entities of the Russian Federation (Dudko, 2013; Dudko, 2018). "The Concept of Judicial Reform deliberately introduces the ideas of gradualism and preliminary social experimentation in order to avoid the destructive consequences of the mistakes made in the design of transformations reproduced on a gigantic scale. Feedback mechanisms will also be provided, which will allow us to promptly assess the state of the justice system after each innovation and quickly correct the situation" (Concept, 1992).

However, the systematic introduction of trial jury is mistakenly considered as an experiment. Constitutional provisions cannot have an experimental character. Constitutional provisions are a program of activity and development of the state. Constitutional norms are not always implemented immediately, but their effect is always designed for a long period. Therefore, it is fixed in Article 166 h. 1 of the Constitution of the RSFSR of 1978 (as amended on November 1, 1991) (Law, 1991) the possibility of consideration of cases in the court of first instance with the participation of jurors has outlined the prospect of development of the judicial system, gave the jury court programmatic importance.

At the same time, in order to differentiate the concepts of "experimental" and "stage-by-stage" introduction of trial jury it is necessary to address the scientific research of questions about the concept and features of legal experiment. The analyzed theoretical approaches to the concept and conditions of the criminal procedure experiment allow us to conclude that the conditions of the experiment and the conditions of gradual introduction of trial jury do not coincide. The difference is as follows: the trial jury was created as a permanent, not a temporary criminal procedure institute, the effect of the norms of which was planned to be extended gradually (in stages) both in time and across the territory of the Russian Federation (Dudko, 2013).

At gradual introduction of trial jury (unlike experiment), it was supposed longer and constant activity which has come to the end with introduction of trial jury on all territory of the Russian Federation. Thus, trial juries in the Russian Federation were introduced not experimentally, but in stages. The "Stage" (stage-by-stage) "Concept of judicial reform" defines as a general approach to the democratic development of legal institutions, as a tactic of reform, as the most reasonable and economical variant of structural changes in the judicial system (Concept, 1992). Distribution of powers on resolving a criminal case between professional judges and jurors determines the model of trial jury. In the Russian Federation, the classical model of trial jury with division of powers of a professional

judge and jurors on the issues of “law” and “fact” (Articles 334,343,348 of the Criminal Procedural Code (CPC) of the Russian Federation) is in force when resolving a criminal case.

The CPC of the Russian Federation regulates the following procedure for the distribution of powers of judges and jurors. In the course of the criminal proceedings, jurors resolve only questions of “fact” and are formulated in a questionnaire: whether it has been proved that an act of which the defendant is accused has been committed; whether it has been proved that the defendant; and whether the defendant is guilty of committing this crime have committed the act. In the event that the defendant is convicted, jurors also indicate whether the defendant deserves leniency.

When discussing the issues before them, jurors should strive to make unanimous decisions. If the jurors fail to reach unanimity during the discussion within 3 hours, the decision is taken by voting. A simple majority of jurors’ votes determines answers to other questions. If the votes are equally divided, the answer is the most favorable to the defendant. The senior juror makes answers to the questions to the questionnaire immediately after each of the relevant questions. If the answer to the previous question eliminates the need to answer a subsequent question, the Petty Officer, with the consent of the majority of jurors, enters the words “unanswered” after the previous question. If the answer to the question is accepted by the vote, the petty officer shall indicate the result of the vote count after the answer. The verdict is binding on the presiding officer. The presiding officer qualifies the acts committed by the defendant in accordance with the indictment, as well as the circumstances established by the court, which are not subject to the determination of the jury and require the legal assessment itself.

In the Republic of Kazakhstan, there is a mixed model of trial jury with joint resolution of “law” issues and “fact” issues by professional judges and jurors (Articles 655,656 of the Criminal Procedural Code of the Republic of Kazakhstan). In accordance with the CPC of the Republic of Kazakhstan, the content of the issues to be resolved by the court with the participation of jurors (Art. 654) fully coincides with the issues under the CPC of the Russian Federation. The essential difference is in the order of holding a meeting and voting in the jury room (Article 656).

After the end of the debate and the formulation of questions, the judge and the main jury are removed to the jury room for sentencing. The presiding judge presides over the meeting of jurors, consistently puts questions to be resolved for discussion, votes on answers and counts votes. In the jury’s deliberation room, jurors have the right to receive explanations from the presiding officer regarding the ambiguities they have in relation to the questions posed. Voting on the main and additional questions shall be conducted secretly and in writing. Judges and jurors may not abstain from voting. The votes of judges and jurors are equal. The judge and jurors shall receive for voting blank ballot papers with the stamp of the court, each of which contains the following words: “My conclusion is based on my honor, conscience and inner conviction...”, on the number of defendants and the number of questions to be answered by them. Ensuring the secrecy of the vote, each of them writes in the ballot the answer to the question put on the question sheet and subject to resolution. The answer should be an affirmative “yes” or a negative “no” with a mandatory explanatory word or phrase that discloses the essence of the answer (“yes, proven”, “no, not proven”, “yes, guilty”, “no, not guilty”). The judge and jury put their ballot papers in the ballot box. After the end of voting on the first of the questions, the presiding judge opens the ballot box and counts votes of each ballot in the presence of jurors, the result of the vote count is immediately recorded in front of the first of the three main questions specified in the questionnaire. In the same order, jurors and judges vote sequentially on each of the main and then additional questions put in the questionnaire.

The judge without the participation of jurors determines the qualification of the defendant’s act under the relevant article of the Criminal Code of the Republic of Kazakhstan. Further, the judge with the participation of jurors without interruption by open voting solves the following issues: whether there are circumstances mitigating or aggravating his responsibility and punishment, whether the defendant is subject to punishment for a criminal, offense committed by him, what punishment should be imposed on the defendant. Decisions are deemed to have been taken if a majority of voters has voted for them.

Processualists of the Republic of Kazakhstan consider it necessary to define conceptually the model of trial jury and note that the introduced in the Republic of Kazakhstan trial jury is a mixed model of trial jury (Suleimenova, 2016; Kogamov, 2005; Suleimenova, 2006). They consider the mixed model of trial jury in the Republic of Kazakhstan to be unique, as its formation was influenced by the French and Russian systems of court proceedings (Kovalev, Suleymenova, 2010). Russian legislation has been used because Kazakhstan and Russia are geographical neighbors and share a common post-Soviet heritage. The reason for the use of the French model is that Kazakhstan has developed a draft Constitution of 1995 based on the French Constitution of 1958 (Kovalev, Suleymenova, 2010).

According to G.Zh. Suleimenova, the Law of the Republic of Kazakhstan dated January 16, 2006 contradicts paragraph 2 of Article 75 of the Constitution of the Republic of Kazakhstan, because it does not provide for trial juries, but a mixed expanded composition of the court with the participation of people’s assessors. “...the elements of trial jury are united into one procedural form (before the removal of judges and jurors into a deliberative room the criminal proceedings are conducted according to the rules of legal proceedings with the participation of jurors) and the court with the participation of people’s assessors (the decision of the verdict is made by professional judges together with jurors), which led to significant contradictions between the norms of the bill itself and the norms of the CPC RK” (Suleimenova, 2016).

Although some countries (Germany, France) have renounced the classical form of trial jury while retaining its name, but notes G.J. Suleimenova, the constitutions of these countries have no provisions on the consideration of criminal cases with the participation of jurors. The Constitution of the Republic of Kazakhstan provides for criminal proceedings with the participation of jurors (Suleimenova, 2016; Kogamov, 2005).

As for the model of trial jury introduced in the Republic of Kazakhstan, the position of A.Zh. Kurkbaev, one of the developers of the draft Law of the Republic of Kazakhstan dated January 16, 2006, is interesting. He explains that the model of trial jury is designed “taking into account customs, historical traditions and peculiarities of our people ...” and is not a continental, not Anglo-Saxon, and Kazakhstani model (Kurkbaev, 2005).

After the introduction and successful functioning of trial jury in the Republic of Kazakhstan, the discussion of the issue of trial jury model continues (Turanjanin, 2015; Akhmetzharov, 2017; Zheldikova, 2014; Goldbach, Hans, 2014) and substantiates the proposals to replace the mixed model of trial jury with a classical, similar to the Russian model of trial jury (Kovalev, Suleymenova, 2010; Akhmejanov, Birzhanova, 2017; Kovalev, 2006).

Since the operation of the Jury Court (from 1 January 2007), the 1997 CPC of the Republic of Kazakhstan has been repeatedly amended, and in 2014 a new CPC of the Republic of Kazakhstan was adopted (effective from 1 January 2015) (Criminal, 2014). The most significant changes were made to the rules governing the jurisdiction and composition of the court in criminal cases involving jurors (art. 58, 290, 290-2, 290-3, 291, 544 of the 1997 Criminal Procedural Code of the Republic of Kazakhstan, Articles 52, 306, 308, 309, 310, 632 of the 2014 Criminal Procedural Code of the Republic of Kazakhstan).

First, the jurisdiction of criminal cases of regional and equivalent courts (city court of the capital of the Republic of Kazakhstan, city courts of cities of republican importance) was changed. Law No. 227-IV of the Republic of Kazakhstan dated 10. 12. In 2009, which came into effect on January 1, 2010, the powers of regional and equivalent courts to consider criminal cases in the first instance were transferred to district courts (Article 291 of the Criminal Code of Russia 1997) (Law, 2009). Only the powers of appeal and supervisory authorities remained within the competence of regional courts and courts of equal status. The current CPC of the Republic of Kazakhstan in 2014 was amended with regard to the competence of regional and equivalent courts (Law No. 378-V of the Republic of Kazakhstan dated 31.10. 2015, which came into force on January 1, 2016): the regional and equivalent court acts as a court of appeal (Law, 2015).

Second, the system of district courts was reorganized. District courts have replaced: specialized inter-district juvenile courts (Article 290-1 of the CPC of the RK 1997 (Law, 2008); Article 307 of the CPC of the RK 2014); specialized inter-district criminal courts (Article 290-2 of the CPC of the RK 1997 (Law, 2009); Article 307 of the CPC of the RK 2014); specialized inter-district military criminal courts and military garrison courts (Article 290-3 of the CPC of the RK 1997 (Law, 2009); Article 307 of the CPC of the RK 2014).

Third, consideration of criminal cases involving jurors from regional and equivalent courts was transferred to inter-district specialized criminal courts and specialized inter-district military criminal courts (Article 544 of the CPC of the RK 1997 as amended on 10.12.2009 (Kovalev, 2006) Article 632 of the CPC of the RK 2014).

Fourth, the composition of the court was changed. From 1 January 2007 to 1 January 2010, the jury was composed of two judges and nine jurors (article 58 of the 1997 Code of Criminal Procedure, as amended on 16 January 2006 (The Law, 2006), and from 1 January 2010, it was composed of one judge and ten jurors (article 58 of the 1997 Code of Criminal Procedure, as amended on 10 December 2009 (Law, 2009), and article 52 of the 2014 Code of Criminal Procedure).

The number of jurors participating in the resolution of a criminal case is of no fundamental importance. This is also confirmed by the world practice of jury composition. At the same time, there is a well-founded opinion that the reduction in the number of jurors reduces the degree of confidence in the legality and fairness of the verdict (Kozhakhmetov, Rakhimgulova, 2017). Thus, a partial reform of the trial jury was carried out in the Republic of Kazakhstan. However, this did not fundamentally change the essence of the institution of trial juries. The reform of the Jury Court was conditioned by the problems revealed by the practice of consideration of criminal cases by the court with the participation of jurors, as well as by the general trends of development and improvement of the judicial system of the Republic of Kazakhstan.

The directions of trial jury reform in the Republic of Kazakhstan coincided with the directions of development of trial jury in the Russian Federation. In accordance with the Federal Law N 190 of June 23, 2016 “On Amendments to the Code of Criminal Procedure of the Russian Federation in connection with the expansion of the use of trial juries” from June 1, 2018, not only regional / oblast courts, but also district courts will consider criminal cases with the participation of jurors (Federal, 2016; RAPSİ, 2016). In addition, as well as in the Republic of Kazakhstan, there are plans to change the number of jurors: criminal cases in the supreme court of the republic, regional or oblast court, the court of federal significance, the court of autonomous oblast, the court of autonomous okrug, the district (navy) military court will be considered by a judge and a panel of eight jurors; criminal cases in the district court and the garrison military court will be considered by a judge and six jurors.

The practice of the Republic of Kazakhstan in establishing inter-district specialized criminal courts is of particular

interest for the implementation of the program to expand the use of trial juries in the Russian Federation. Continuing the gradual introduction of trial juries, it is possible at the first stage (from June 1, 2018) to provide for the consideration of criminal cases with jurors not in every district court, but in the most prepared district courts (taking into account the logistics, availability of equipped courtrooms, the staffing of courts, sufficient population for the formation of lists of jurors). These district courts shall vest the authority in an inter-district court (an inter-district specialized court for criminal cases) to hear criminal cases with the participation of jurors. Similar courts have been established in the Republic of Kazakhstan. In accordance with Article 632 of the 2014 Criminal Procedure Code of the Republic of Kazakhstan, which came into force on 1 January 2015, criminal cases involving jurors are heard by an inter-district specialized court on criminal cases and a specialized inter-district military court.

The proposed amendments to the legislation of the Russian Federation on the creation of inter-district specialized criminal courts to consider criminal cases with jury participation are aimed at achieving the following objectives: to prevent possible organizational problems in the introduction of trial juries in district courts; to prevent possible problems in the formation of lists of potential jurors in municipalities; to prevent possible problems in the formation of a jury panel, taking into account

In addition, the proposal to establish inter-district specialized criminal courts to hear criminal cases with jury participation is in line with the plans to change the system of courts of general jurisdiction (creation of five appeal and nine cassation courts in the system of courts of general jurisdiction - similar to the system of arbitration courts).

A common problem for the existing jury courts in the Russian Federation and the Republic of Kazakhstan is the issue of the number of crimes within the jurisdiction of the jury court (substantive jurisdiction). In the Russian Federation and the Republic of Kazakhstan, the list of crimes under the jurisdiction of the jury has been reduced, and the right of accused persons to trial by jury has been significantly restricted. This problem was discussed at the level of the President of the Russian Federation and the President of the Republic of Kazakhstan, which confirms the need to develop reasonable changes to expand the substantive jurisdiction of trial juries.

For example, in the Russian Federation, the list of crimes under the jurisdiction of the jury (paragraph 1 of part 3 of article 31 of the Code of Criminal Procedure of the Russian Federation) has been changed several times: in 2002 - 77 compositions, in 2008 - 61 compositions, in 2012 - 79 compositions, in 2013 - 25 compositions, in 2014 - 30 compositions. In general, this does not contradict the Constitution of the Russian Federation, which gives the accused the right to be tried by a court with the participation of jurors in cases provided for by federal law (Part 2, Article 47 of the Constitution of the Russian Federation). However, the Federal Law of 23.07.2013 N 217-FZ (Federal, 2013), aimed at improving the appeal proceedings, unreasonably reduced the list of crimes under the jurisdiction of the jury, from 79 compositions to 25 compositions.

The question of the need to ensure the accused person's right to be tried by a jury was discussed at the meeting of the President of the Russian Federation with the members of the Council for the Development of Civil Society and Human Rights, Ombudsmen for Human Rights, Children's Rights and Protection of Entrepreneurs' Rights, which took place on December 5, 2014 (Transcript, 2018), and was included in the President's Message to the Federal Assembly on December 3, 2015 (President's, 2015), and in the list of instructions for the implementation of the President's Message to the Federal Assembly (List, 2015).

Instructions of the President of the Russian Federation contained the following provisions: to prepare and submit proposals for amendments to the legislation of the Russian Federation, providing for an increase in the number of crimes under the jurisdiction of the court with the participation of jurors; reduction in the number of jurors in the jury, while maintaining the independence of the panel in decision-making (List, 2015).

The key provision in the Instructions of the President of the Russian Federation is the requirement to maintain the independence of the jury panel. The analysis of the current CPC of the Russian Federation allows us to conclude that this requirement has been met. "The updated Russian jury is preserved in the classical model" (Tarasov, 2018). Researchers of the practice of trial juries in the Republic of Kazakhstan also note a significant reduction in the number of criminal cases considered with the participation of jurors, due to the reduction of the subject-matter jurisdiction, and that frequent changes in the list of juries does not contribute to the stable development of the institution of trial juries (Akhmejanov, Birzhanova, 2017).

In the Republic of Kazakhstan, the issue of the need to expand the substantive jurisdiction of trial juries is enshrined in the Program of the President of the Republic of Kazakhstan "Plan of the nation-100 concrete steps". "Step #21" provides for "expansion of the scope of trial juries. The legislative definition of the category of criminal cases, in which a trial jury should be mandatory" (Program, 2015).

The previously mentioned allows us to conclude that the introduction and operation of trial juries in the Republic of Kazakhstan, as well as in the Russian Federation, is accompanied by discussions on further improvement of this form of criminal proceedings. Conceptual issues are discussed, as well as issues of organization and activity of the trial jury, which allow revealing not only the "pros", but also the "cons" of the trial jury. However, the presence of certain drawbacks in the activity of a trial jury does not give grounds for discussing the issue of its liquidation

(Kozhakhmetov, Rakhimgulova, 2017).

It is obvious that the answers to all the discussed questions can be developed only because of comparative legal research and generalization of the practice of consideration of criminal cases with the participation of jurors. In reforming the judicial system, the political, social and economic conditions and national traditions of each country should be taken into account, but the experience of other countries should also be used. The researchers of the Jury Court note that during the transition periods for the states, when reforming the judicial systems, the goal of creating a fair justice is the most appropriate one (Kovalev, 2006); that the Jury Court remains one of the cornerstones of the legal and political culture (Kovalev, Smirnov, 2014). This confirms the experience of judicial reforms in 1864 in the Russian Empire, as well as the modern judicial reforms carried out in the Russian Federation and the Republic of Kazakhstan.

It should be remembered that the Russian uberlitigator I.Ya. Voynitsky characterized the trial jury through its political and legal aspects. "Like any other institution in the state, which exists and pursues its goals, the Jury has undoubtedly a political side. It even came to the fore for the Western continental states, where the issue of trial juries went along with liberal movements..." (Foinitsky, 1996), "...the institution of jury, established for the purposes of justice, has, except the political side, the legal side. The establishment of a jury cannot but affect the general political physiognomy of the country, but it pursues the objectives of justice ... if it enables the state to maintain a balance between prosecution and defense, to protect public safety ... the jury should be recognized as having carried out a high mission, which lies on it. » (Foinitsky, 1996).

CONCLUSIONS.

In Russian Federation and the Republic of Kazakhstan, the establishment of trial juries has become the focus of ongoing legal reforms in the process of formation of sovereign states. In Russian Federation and the Republic of Kazakhstan, there are different models of trial juries, which is in line with the world practice of formation and development of trial juries. In Russian Federation, there is a classical model of trial jury with division of powers of a professional judge and jurors on "law" and "fact" issues when resolving a criminal case. In the Republic of Kazakhstan, there is a mixed model of trial jury with joint resolution of "law" and "fact" issues by professional judges and jurors.

Since the introduction of trial juries in Russian Federation (1993) and the Republic of Kazakhstan (2007), the criminal procedure legislation regulating trial juries has not remained unchanged and has been constantly improved: new CPC of RF (2001) and CPC of the RK (2014) were adopted. The development of trial juries in the Russian Federation and the Republic of Kazakhstan is characterized by general improvement trends: the relocation of trial juries to the district (inter-district) level of the judicial system; changes in the number of jurors; changes in the procedure for forming a jury panel; and changes in the procedure for appealing sentences.

An important area for improving the effectiveness and further development of trial juries in the Russian Federation and the Republic of Kazakhstan is the development of substantiated amendments to the criminal procedure legislation to expand the list of crimes, as well as to the list of crimes under jury jurisdiction.

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