Information Technologies in Jury Trials: International Experience and the Possibility of Its Implementation in the Russian Legal Field

Pavel A. Lutsenko[1][a] and Genrikh S. Devyatkin[2][b]
[1]*Candidate of legal Sciences, associate Professor, Department of Humanities, Civil and Criminal Law, Humanities and Law faculty , Voronezh State Agrarian University named after Emperor Peter the Great, Voronezh, Russia*
[2]*National Research University of Electronic Technology*
Legislation, The Government Cipher Commission, Hanoi city, Vietnam

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Abstract: Introduction. Trial jury is a dynamically developing form of administering criminal justice. The Russian legislator has expanded the scope of this institution, extending its effect to the level of federal district courts and garrison military courts. The complexity of the procedure, which lengthens the time for considering cases in court, the necessity to attract significant material resources, organizational costs are the factors that do not contribute to the effectiveness of justice administration. However, in assessing the usefulness of maintaining this institution in the Russian criminal process, it is necessary to proceed from the priority of values related to the protection of individual rights. Materials and methods. Using the comparative legal method of scientific research, a foreign experience of applying certain informational techniques is analyzed. This experience allows to prepare preliminary a citizen for the performance of juror duties and to carry out the function of administering justice during the trial. Research results. Going away from the problems that have been discussed in the science of the criminal process that accompany the formation and the development of the trial jury in Russia, the author suggests and proves the thesis that the main direction for its further improvement should be the model changing of juror cognitive activity by the implementation of information technologies that can turn a citizen from a passive observer of what is happening in the courtroom into an active participant in the evidence process. Discussion and conclusion. The authors conclud that the trial jury as a procedure ensuring the making of independent and fair decisions has certain advantages, which allows us to accept the inevitable costs connected with the organizing of legal proceedings. Some of the simplest information technologies, such as keeping written records during a judicial investigation, using videoconferencing and etc., are already partially used in court practice, but their scope can be expanded significantly. Other technologies within the general policy of informatization and digitalization, conducted in Russia, haven't been mastered yet.

1 INTRODUCTION

The experience of the jury trial functioning abroad and in Russia testifies to the relevance of this institution, its permanent dynamic development. The numerical composition and the jurisdiction are changing, the procedure is becoming more complicated, but the task of the jury to decide on the guilt or innocence of the defendant remains unchanged. At the same time, there is a lack of any significant changes in world practice that would expand the tools provided by the legislator to members of the public for the realization of procedural function (Jackson Brian A. etal., 2016). Moreover, the obvious complication of the process of criminal procedural knowledge in the conditions of rapid information technologies development have complicated significantly the work of the jury. The legislators of individual states have chosen to limit the powers of the jury, for example by reducing the list of matters within their competence, the protection of jury from excessive emotional stress by preventing

[a] https://orcid.org/0000-0001-6838-4846
[b] https://orcid.org/0000-0003-1543-4402

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the production of certain investigative and judicial actions with their participation (Travis Hreno, 2007), expanding the limits of intersystem judicial control over the validity and motivation of jury decisions made by a court (Landsman Stephan, James F. Holderman, 2010). All significant changes in the procedural form of legal proceedings in this case are accompanied by a discussion of the traditional issues for both the representatives of legal science and civil society about the viability of the institution (Dann B. Michael, 1993; Tanford J. Alexander, 1991). The essence of the problem is connected, among other things, with the need to increase the efficiency of the jury, turning them from passive observers of the evidence process into its active participants which are able to make decisions even in complex and long trials.

The specialized literature has repeatedly raised the question of "active jurors", providing them with new tools to fulfill their tasks (Bykov V. M., Mitrofanova E. N., 2009; Grinenko A.V., 2015), but it has not found an adequate solution yet. The problem of the information equipment of the jury is updated today, during the period of rapid development of relevant technologies, which also affected the judicial system. In particular, the Concept of the federal target program "Development of the Russian judicial system for 2013–2021" provides a set of actions aimed at informing the judicial system and the implementation of modern technologies into its activities. These actions include: providing citizens with the opportunity to use information technology both in obtaining information about the courts, and at each stage of the trial, beginning from the date of appeal to the court until the end of the trial; creation of modern information and telecommunication infrastructure; improving the quality of courts based on information and communication technologies through the use of video and audio protocolling of court proceedings, software and hardware for digitizing documents and video conferencing equipment . As a result, the beginning of justice transparency is highlighted in combination with other actions aimed at increasing the level of openness, accessibility and effectiveness of the judiciary. It is recognized as an essential condition for increasing the level of public confidence to representatives of the judiciary as a whole and, accordingly, to their decisions.

2 MATERIALS AND METHODS

The methodological basis of the study is the dialectical method of cognition, as well as the general theoretical methods based on it: analysis, synthesis, induction, deduction, ascent from the abstract to the concrete and etc. The validity of the conclusions and recommendations contained in the article is ensured by the complex application of general and specific scientific methods: logical, comparative legal, statistical, sociological and others.

Through the study of information technologies which are acceptable for using in jury trials in the author's opinion, a system-logical analysis and synthesis were applied. It has made it possible to single out several informatization areas of the considered form of administering justice. The study of the theoretical problems of the judicial investigation with the participation of jurors was performed using the method of rising from the abstract to the concrete, which made it possible to define the determining signs and limits of evidence in the Anglo-American and continental systems of law. The comparative legal method was used in studying the foreign experience of preliminary jury instruction, performing certain judicial actions, as well as preliminary jury instructing of the presiding judge, as well as their Russian counterparts.

3 RESEARCH RESULTS

Considering the problem of jury informatization, it must be taken into account that jurors are representatives of the judiciary in a specific process, and today it has a significant information resource that is used to perform the main function of administering justice. In this context, even with the existing division of competence between the presiding judge and the jury, the information jury support seems clearly insufficient.

In this regard, the retrospective studies conducted in the USA, Great Britain, Canada, Germany and other countries are quite interesting. With varying degrees of historical detail, the retrospective studies indicate the increasing importance of the party activities carried out under the control of the judiciary, noting that the jury remains information dependent on the quality of the evidence performing by the prosecutor and the counsel (for example, Stephen C. Yeazell, 1990; Langbein John H., 1993; Niamh Howlin, 2014). Moreover, the independence of the cognitive process which is conducted in a

criminal case by public memebrs within the implementation of the function assigned to them is close to zero. It is connected not only with the presiding judge's obligation to advise and instruct jurors on substantive law and procedural form, but rather with their dependence on persuasiveness and the ability to conduct public discussions, demonstrated by professional participants in criminal proceedings on the part of the prosecution and the defense. «In a modern courtroom, a lawyer and a defense attorney have control over the presentation of the collected evidence, and the judge has control over the court trial, and all that remains for the jury in these conditions is to sit back and listen» (Nancy S. Marder, 2001). Such a situation seems unacceptable and causes criticism, including from the judiciary, whose representatives participate in the discussion of the raised problem. It points to the fact that expanding the boundaries of cognitive juror activity will allow them to assimilate a greater amount of information examined during the trial, analyze it, summarize and draw their own conclusions and it will enhance significantly the independence of the panels (Dennis J. Devine, 2012). For example, Arizona Judge M. Dunn, as Chairman of the Jury Reform Committee of the State, took the initiative to introduce procedural changes to the law that would allow jurors not only to make notes during the trial, but also to have a list of material evidence as well as witnesses, summoned to court due to the initiative of the parties; participate in the preliminary hearing of the criminal case, received the instructions of the chairman; to request and receive from the prosecutor and the defense counsel additional argumentation of their position in case of difficulties in giving a verdict. Partially indicated suggestions were implemented by the legislator not only in Arizona, but also in some other states (James Oldham, 2006).

An analysis of the various approaches suggested in special studies allows us to identify several promising directions for raising the level of juror awareness, which can be implemented in Russian legislation in length of time.

First of all, it should be noted that a jury candidate is a person who does not have a procedural status, selected as a result of random sampling as required by law, who has the obligation to appear in court to participate in the formation of a jury. The above thesis is confirmed by an analysis of the current Russian legislation provisions. So, jury candidates are selected to consider a specific criminal case from the general and reserve lists that are in court by random sampling. In accordance with Art. 4 of the Federal Law "On jurors of federal courts of general jurisdiction in the Russian Federation" , the highest executive body of state power of a constituent entity of the Russian Federation makes general and reserve lists of juror candidates every four years, including the number of necessary citizens to work in the court and they are permanently resident in the Russian Federation. Then, the candidates are examined to identify the presence (absence) of circumstances that prevent the participation in the criminal process as a jury. A list of such circumstances is contained in Art. 3 of the Federal Law "On jurors of federal courts of general jurisdiction in the Russian Federation". When making a preliminary list of jurors, the courtroom secretary or assistant judge must take into account the requirements of Part 3 of Art. 326 of Criminal Procedure Code of the Russian Federation (CrPC RF), according to which the same person cannot participate in jury trials more than once during a year. After the completing of the selection procedure for jury candidates, taking into account the existing legislative restrictions, a preliminary list is made indicating their last names, first names, patronymics and home addresses in order to the random sample. Jury candidates included in the preliminary list no later than 7 days before the start of the trial are given notices with the date and time of arrival in court, which are currently the only form of information work with potential jurors.

The lack of procedural status for the jury candidate, in our opinion, expands the scope of his possible informing, because it cannot affect the future consideration of the criminal case and consists in providing information of general and orienting nature. Preliminary information of jurors, including some training elements, has been tested for a long time by the courts of Great Britain (for example, Johnson Dick Lansden, 1948). In modern conditions, the widespread use of Internet technologies has made it possible to draw on their help to provide jury candidates with general background information about the location and internal organization of the court where they are going to work. For these purposes, the vast majority of US courts use websites to provide jurors with basic information such as maps and directions to the court-house . This simple decision is essential because it allows jury candidates not only to find the address indicated on the notice, but also, most importantly, to feel immediately their need and relevance in the trial, the state's attention to their future role, and, accordingly, its significance and the responsibility assigned to them. In some countries, they go even further by providing jury candidates with virtual tours around the court-house so that they can freely navigate and not feel

constrained and awkward (Shelton Donald E., Kim Young S. And Barak Gregg, 2006).

In addition, informing in advance may include a memo for potential jurors in the form of answers to frequently asked questions, a glossary, a list of rights and obligations of a juror, which a person can get familiar with before the first appearance in court. Until now, such activities have been carried out using the jury guidance, which was sent to candidates by mail, however, the impossibility of prompt correction of useful information and its updating with new information was recognized as one of the significant shortcomings of this method of informing. Currently, such type of guidance is posted on the court's website and are sent to jury candidates by e-mail . It is also important to provide candidates with jury video information about their future role in the court session. In several states of the USA and in Great Britain, a demonstration of a training film for jury candidates upon their arrival in court has entered into judicial practice. In some countries, online broadcasts are practiced, which, according to experts, has a positive effect on the psychological mood of jury candidates when they can improve their educational level and prepare for a future hearing in their own homes, in a relaxed atmosphere, at convenient time for them, and it also has a positive impact on the degree of video series uptake, as jury candidates can watch the video several times, come back to certain episodes that caused difficulties, etc. (Mar Jimeno-Bulnes, 2011, p.593..; Robert M. Bloom, 2006).

Internet orientation, in our opinion, is a very economical way to increase the awareness of potential jurors, it makes it possible to coordinate information relatively easily and without significant material costs, combining the guide with video broadcasting, thereby ensuring high-quality preliminary preparation of each jury member for performing jury duties.

The preliminary informing of candidates for the jury trials using the Internet is also of one significant significance: a person does not have to appear in court in person to receive a large amount of information, including eligibility to participate in a criminal case, i.e. compliance with the legal requirements for juror candidates, grounds for challenge and recusation, frequency of court hearings, potential dates of their employment, possible working hours, etc. First of all, it significantly saves private time of a citizen, therefore demonstrating the court respect, which, in our opinion, should encourage the performance of the functions of a jury. Secondly, according to psychologists, such approach gives a person a sense of control over their activities at the very beginning of the performance juror duties (The Psychology of Juries, 2017).

Currently, the application of information technology in the courtroom is in its formative stage. The procedure of verbal investigative activities using video conferencing has been widely introduced into Russian judicial practice, which increases the informative accessibility of participants in the process regardless of their location, as well as the implementation of the principle of directness in terms of examining the testimony of the victim and witness (Article 240 of the Russian Federation Code of Criminal Procedure), and in some cases, the defendant (Part 6.1 of Article 241 of the Russian Federation Code of Criminal Procedure). However, it seems that this is not enough to form an active jury. The Criminal Procedure Law extremely limits the panel in examining the evidence submitted by the parties. In accordance with Part 1 of Art. 333 of the Russian Federation Code of Criminal Procedure, cognitive array of tools comes down to the existence of three rights of a jury member: to ask interrogatee questions through the chairman, to participate in the examination of material evidence, documents and other investigative activities; to ask the presiding judge to clarify the norms of the law related to the criminal case, the content of documents announced in court and other issues and concepts that are not clear to them; keep their own notes and use them when preparing answers to the questions in the jury room. In the literature, the similar approach of the legislator has been repeatedly criticized (for example, S. Nasonov, 2014), however, this approach is traditional for the considered form of proceedings and is accepted in the vast majority of judicial investigation models with the participation of the jury. Shifting away from the generally accepted norms is always accompanied by continuous debates and takes time. In this sense, such a simple way of evidence documentation as drawing up written records in the course of a judicial investigation (paragraph 3 of part 1 of article 333 of the Code of Criminal Procedure of the Russian Federation) is an illustrative example. It should seem a very common technique, but its introduction into judicial practice at one time was controversial. The main argument in favor of establishing a ban on the written recording of information was the fact that the juror is distracted from the direct perception of what is happening in the courtroom, which can lead to incorrect perception of, for example, testimony, affecting the quality of the assessment in the jury room (David L. Rosenhanetal., 1994). And at present, some experts indicate that the jury in the process of returning a verdict pay more

attention to their own written records than to other information left in mind, even after the presiding judge delivers a parting word (Dunn B. Michaeland Hans Valerie P., 2003). However, drawing up of written notes has become common practice, which is, in our opinion, quite justified, because as well as judges who record certain information during the trial, the jury more deeply delves into the subject of the investigation, record significant, facts, circumstances and issues which they can return to later in the jury room, as well as uncertainties arising in the course of the evidence presentation. The simplest information technology using a pencil and paper in this case plays a significant role in the formation of an active juror, who can critically consider the evidence presented by the parties, establish a connection with the previously investigated evidence, highlight problems that require thorough understanding and discussion.

In a judicial investigation, a general rule works - information is provided in one form and only once. If this is enough for professional participants who are previously familiar with the materials of the criminal case, the jurors may have formidable difficulties owing to this. It is believed that a cognitive technique can be implemented in the Russian judicial practice which has been used successfully in other countries for a long time. This technique gives the jury another opportunity to examine the video of the investigative-judicial activities in the jury room. In a similar way, a study of material evidence can be carried out, which is currently being demonstrated by the jury in the courtroom. The study of objects and documents is carried out not only by demonstrating them, which often leads to a superficial examination, but by visualizing them on a widescreen monitor, which allows focusing on individual details, which means making the material easier to perception, taking into account the fact that the vast majority of citizens are accustomed to receive information on television or via the internet.

It should be noted that such practice in foreign legislative realities is still extremely limited. For example, in the USA, the use of video-screens and monitors in the courtroom has been a “pilot project” in some states since 1999 (Lederer Fredand Richard Brust, 1999), but is still positioned as a promising direction of the development of judicial practice in criminal cases involving jurors. In this respect, an empirical study conducted by D. Tate and M. Rossner is of particular interest. Within the study the changes in the jury’s perception of evidence-based information visualized using visual materials (tables, diagrams, video-screens), as well as computer technology have been analyzed. The authors came to controversial conclusions. On the one hand, the presentation of evidence in this way positively affects the jury’s perception of the evidence, stimulates more active debates, “giving the minority the opportunity to be heard and ultimately making it easier to reach a compromise in making a decision.” On the other hand, if evidence is visualized by only one party (for example, the prosecution), this can lead to a diminution of the principle of fair trial, since the jury is more active in responding to “an intense and memorable information flow, without evaluating the reliability of the information provided” (Eaccessto justice, 2016). We believe that both arguments are significant and require further discussion.

An example of successful visualization of evidence by the prosecution is a lawsuit against members of the organized criminal community “29th complex” (Naberezhnye Chelny), which lasted 1 year and 8 months. The prosecution used various technical means: a stationary computer with a printer and a scanner, a laptop, a digital voice recorder, a video camera, and a mixing console was installed in the courtroom with the ability to change voice data to interrogate witnesses to ensure their safety, with an appropriate set of microphones and speakers , a TV, a large projection screen with a projector, etc., which ultimately nullified the efforts of 27 defendants' lawyers and led to delivering a guilty verdict, as well as the assignment of punishment of the Supreme Court of the Republic of Tatarstan, according to which they were sentenced to significant terms of imprisonment. According to the data cited by M.V. Belyaev, a survey of 23 jurors, including the main jury, showed that the vast majority of respondents answered that “the visual series presented to their attention, accompanying the speech of the state prosecution, significantly helped them recall the previously investigated evidence and form their opinions on the accusation presented.”(Belyaev M.V., 2017).

In addition, it cannot be ignored that the jury is a group of people in a stressful situation, since they are obliged to make a decision that has significant legal consequences, while not being able to conduct their own research in a criminal case, being under the burden of the need to reach consensus, they have to discuss the circumstances of the crime, enter into a discussion, while not knowing each well. Undoubtedly, in such a situation, any informational assistance that can be provided without prejudice to the legitimate interests of the parties is appropriate.

An important issue of the jury’s perception of the presiding judge’s parting word also requires

discussion. Currently, it is pronounced orally without being recorded on audio and video devices. Moreover, unlike foreign practice, the Russian legislator does not stipulate for the possibility of presenting the presiding judge's speech in a written form for the jury's re-examination in the jury room. We believe that the video recording of a parting word will significantly facilitate the work of both the jury itself and the court, because if there are difficulties in delivering a verdict or simply while discussing issues with insufficient information, for example, on the basic rules for evaluating evidence, the jury will no longer need to return to the hall court, and the presiding judge does not need to call the parties to discuss issues. Audio and video recording will allow the jury to reconstitute any part of the parting word as many times as necessary, stopping at any time to discuss what they have seen or heard.

4 DISCUSSION AND CONCLUSION

In our opinion, the introduction of information technology in the activities of the jury should be carried out taking into account several fundamentally important points. Firstly, any legal tools that expand the boundaries of cognitive activity of the jury should contribute to the formation of the status of an active juror participating in the organization and analysis of information about the circumstances of a criminal case almost immediately from the start of the trial. Secondly, means of information technology should be carefully filtered, since the "wholesale" transfer of all existing technologies to the courtroom is impossible and impractical. The means and methods of information perception should be sufficient for the jury to fulfill their functional role. In this case, the term "technology" is used in a purely practical sense, including both simple technological tools that allow jurors to take notes during the trial, and, for example, computer equipment that allows such records to be organized and used more efficiently. And finally, the expansion of the information space that is allowed in a legal proceeding for those brought in as jurors should not be accompanied by a violation of the rights and legitimate interests of other participants, those who are particularly interested with in the outcome of a criminal case - the defendant and the victim.

Without doubt, the introduction of information technology in the jury activities is not a panacea that allows you to solve many problems that arise while applying this form of a criminal case settlement, but it can significantly facilitate the jury performance. This will allow not to limit the jurisdiction of the jury, not to moderate subjection to a jurisdiction, but to update the range of information technology means available to non-professional judges, taking this form of legal proceedings as a fact. The results will be a transition from the passive role of a jury, which is a characteristic of the vast majority of existing models, to an active one, raising public interest in participating in justice administration and raising the level of judicial power as a whole.

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