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Coping with the undesired consequences of jury reform: How does the Russian criminal justice system control an acquittals spike over the reform 2018-2020?

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Abstract

The historical development of the Soviet-Russian Criminal Justice System shows that there are ongoing negative attitudes towards acquittals amongst law enforcement agencies in Russia. Each period of acquittal rate rise is scrupulously monitored and controlled. Today, an acquittals spike in modern Russia is happening by virtue of Jury Reform, which has broadened the jury trial to the level of District Courts. By drawing on qualitative data from the observation of trials by jury, this paper explores the set of strategies and tactics, which the Criminal Justice System deploys to increase chances of reaching a guilty verdict by jury. The most frequently used strategies include manipulation in communication, trial "recursion", trial acceleration, and system's learning. The theoretical basis of research acknowledges N. Luhmann's theory of autopoietic social systems and the Crime Control Model of H. Packer.

Key words

Russian criminal justice system; jury reform; crime control model; autopoiesis; acquittals prevention strategies

Resumen

El desarrollo histórico del sistema de justicia penal soviético-ruso muestra que hay una actitud negativa permanente hacia las absoluciones entre las fuerzas del orden de Rusia. Cada período de aumento de la tasa de absolución es escrupulosamente vigilado y controlado. En la actualidad, el aumento de las absoluciones en la Rusia moderna se produce en virtud de la Reforma del Jurado, que ha ampliado el juicio con jurado al nivel de los Tribunales de Distrito. A partir de datos cualitativos procedentes

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de la observación de juicios con jurado, este trabajo explora el conjunto de estrategias y tácticas que el Sistema de Justicia Penal despliega para aumentar las posibilidades de alcanzar un veredicto de culpabilidad por parte del jurado. Las estrategias más utilizadas son la manipulación en la comunicación, la "recursividad" del juicio, la aceleración del juicio y el aprendizaje del sistema. La base teórica de la investigación reconoce la teoría de los sistemas sociales autopoiéticos de N. Luhmann y el Modelo de Control del Crimen de H. Packer.

Palabras clave

Sistema de justicia penal ruso; reforma del jurado; modelo de control de la delincuencia; autopoiesis; estrategias de prevención de absoluciones

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1. Introduction

The Russian Criminal Justice System (hereafter referred to as "the RCJS") is experiencing, at least at the level of law on books, broadening adversarial elements. The current Jury Reform, which began in 2018, was the expected step to legitimizing the Justice System through an adversarial logic. As legislators put it, "A draft law is aimed to broaden jury trials in order to develop and refine democratic foundations of criminal procedure, to increase openness of judicial proceedings and public confidence in the judiciary" (The State Duma of the Russian Federation –RF– 2016). As a result of these intentions, trials by jury have started to function at the level of District Courts[1] (*rajonnye sudy*) since 2018.

Although the reform has only been going on for two years, it has already posed some crucial challenges for the domestic criminal justice system. The main disturbance to the system is that the acquittal rate from juries at the district level has risen sharply. According to the Institute for the Rule of Law at the European University at Saint-Petersburg (hereafter referred to as "the IRL at EUSP"), this acquittal rate was 25.7% in the half-year of 2018, 24.6% in 2019 (Khodzhaeva 2020a) and 29.8% in the half-year of 2020 (Khodzhaeva 2020c). This distinctly differs from the acquittal rate in standard Russian, non-jury trials, which sits around 0.2%–0.3% (Judicial Department at the Supreme Court of the Russian Federation – JDASCORF – 2020).

The high rate of conviction is no surprise as the RCJS has been operating within the Crime Control Model since 1950. Before that timepoint acquittals had been more frequent phenomenon in the Soviet Criminal Justice. However, due to the introduction of the plan fulfillment idea into the criminal justice and stigmatizing acquittals as defective goods: "... [I]n the late 1940s the rate of acquittals in Soviet courts started a decline so drastic that by the 1970s and 1980s acquittals had 'practically disappeared'" (Solomon 1987). From the late 1940s, this statistical fluctuation – when an acquittals spike is ordinarily followed by substantial acquittals reduction – has continued till nowadays. For instance, focusing on the first years of jury trial in the Russian Federation (hereafter referred to as "the RF"), S. Thaman likewise takes notice of declining acquittals: "In 1997 the acquittal rate rose to 22.9% but the Supreme Court of the Russian Federation [hereafter referred to as "the SCRF"] reversed 48.6% of those appealed. By 2003, the first year that the jury trial began expanding throughout Russia, only 15% of cases ended in acquittal" (Thaman 2007b).

In line with the IRL at EUSP's statistics mentioned above, a similar pattern of "rise-fall" acquittals is emerging over the recent Jury Reform. Although in the first half of 2020 acquittal rate was higher than in previous terms, it is misleading because 88% of exonerations were reversed by appellate instances,[2] as opposed to 55% reversed in 2019

[1] These courts are one of the basic elements of the courts system in the Russian Federation (hereafter referred to as "the RF"). They handle most civil, criminal and administrative cases. District Courts are primarily courts of the first instance.

[2] At the most basic level, the part of the Russian court system that handles criminal cases includes the Justices of Peace, District Courts, Regional Courts (sudy sub"ektov), Circuit Courts and the SCRF. As noted above, District Courts are primarily courts of the first instance, which handle most criminal cases. They also review the decisions of the Justices of Peace as courts of appellate instances. Regional Courts jurisdiction also includes original and appellate cases, "as courts of first instance, regional courts handle the more complex civil cases and the more serious criminal cases that are not considered appropriate for the district courts"

and 21% overturned in 2018.[3] On the one hand, in the first half of 2020 there was a slight rise in acquittals (from 24.6% to 29.8%), but on the other hand, there was an even more drastic increase of annulled acquittals.[4] It is explicable due to Crime Control thinking forcing law enforcement agencies to pursue a high conviction rate. The system's effectiveness defined by its reflexive units (e.g. Regional Courts, Circuit Courts, the SCRF) depends on such indexes. In producing such a high acquittal rate, newly introduced jury trials go against the Crime Control logic. They irritate the Criminal Justice System and, in some ways, destabilize it.

Although the decrease of acquittal rate is expected, it remains unclear how the system prevents verdicts of not guilty from being returned. Given that, the purpose of this paper is to explore what tools the RCJS employs to maintain the high conviction rate and by doing so to stabilize itself. If the system is essentially striving to decrease the likelihood of acquittal, what strategies does it deploy to get a guilty verdict rendered and, consequently, control the acquittals spike over the Reform 2018-2020? The research findings show that the system has developed a set of strategies that allow it to uphold an acceptable acquittal-conviction ratio, which serves as a bureaucratic effectiveness measure.

This paper is divided into six sections (including introduction). It starts by exploring the significance of the results of the work and laying out the theoretical framework of the research. The third section describes basics of Russian criminal procedure and the Jury Reform of 2018 and explains perplexing aspects of procedural peculiarities of the Russian jury trial for foreign readers. The fourth section describes research methodology. Research findings are expounded in the fifth section. The final section details the most crucial conclusions of the paper and discusses ways of developing the Criminal Justice System in Russia.

The scope of research has been limited to the operation of jury trials at the level of District Courts. There are no reasonable assumptions that the routine of Regional Courts transformed due to the reform, inasmuch as the reformation concentrated on District Courts[5]. Since the vast majority of all changes occur during the trial stage, it is still unclear how exactly the real reform affects the preliminary investigation. The separate research is required to answer this question. However, the current hypothesis is that expanding jury trials in the main influences the final stage of the preliminary investigation, wherein the accused may make a request for a trial by jury. Since the aim of the research is to explore how the Criminal Justice System controls the acquittals spike in Russian jury trials, this paper is mostly devoted to analyzing practices of judges and procurators.

(Terrill 2016). Circuit Courts act as courts of cassation and those of appeal, while the SCRF deals with original, appellate cases and the cassation.

[3] Khodzhaeva 2020c. One of distinctive features of the Russian system is that it is possible to reverse an acquittal verdict in the course of the appeal or the cassation.

[4] Overall, in the half-year of 2018 trials by jury returned 29 verdicts of not guilty (6 were reversed by the appellate instance), in 2019 they returned 154 verdicts of not guilty (84 were reversed), in the half-year of 2020 there were 57 acquittals (50 of them were overturned). As it is possible to see, for this time period the total number of acquittals was 240 and 140 (58%) of them were reversed by the higher instance.

[5] There are a set of papers to which readers can be referred to get information on the trial by jury in Regional Courts (Thaman 1995, 2007a, 2007b, 2008).

2. Theoretical orientation and state of the research field

There are many research papers about jury trials and jury decision-making (Weisberg 2005, Bornstein and Greene 2011, Goldbach and Hans 2014, Sherrod 2019). V. Hans has noted that, "The jury decision-making process has been one of the most frequently studied research topics in the field of psychology and law" (Hans 1992). Although this statement dates back to 1992, it remains correct to this day. It is appealing for social scientists to explain how jurors reach their verdict, especially if they deal with the jury system in a country (for instance, Russia) that imposes certain limitations on jury research. Moreover, if scholars manage to reach some reliable conclusions about jury decision-making, findings can be used by trial lawyers to direct the jury's decision making. All these factors increase the value of scholarly papers about jury decision-making. At the same time, the topic of the impact that a jury reform has on the functioning of the Criminal Justice System is as intriguing for study as jury decision-making, since a reform can make dramatic changes, which can, in turn, lead to a new phase in the Justice System evolution.

Reviewing jury systems around the world, V. Hans lists different questions, which can be subjects of future comparative research, such as "the impact of lay legal participation on democracy, legal consciousness, and the unique perspectives and contributions that lay citizens bring to legal decision making" (Hans 2008). Notably, this list does not contain subjects concerning the Criminal Justice System transformation because of jury reform. It also shows the extent to which this topic is underrated, especially in the Russian context. The RCJS is reluctant enough towards innovations and different disturbances as it still operates in the traditional mode, which goes back to the Soviet time. Reforms that may change such a state of affairs are perceived by the system as a threat to its conventional functioning and lead to an appropriate response. A harsh reaction of the Russian system to the reformation and perturbations makes the research on the Criminal Justice System in the state of transition more appealing.

It is also worth noting additionally that although there are scattered thoughts amid scholars about the state of Criminal Justice over the jury reform, as a rule, these are limited to general observations, such as an acquittal rate fluctuation, the state of societal sentiments towards the jury (Smith 1994, Duff and Findlay 1997) and the "avoidance of jury trial" phenomenon.[6] Contributing to systems theory as well as criminal procedure theory, this article develops the understanding of processes which the Justice System (not the political or economic ones) undergoes over jury reform.

[6] M. Jimeno-Bulnes asserts that this effect acknowledges two facts: "(1) the restriction of the competence of jury courts, and (2) the settlement of particular agreements between the accused and prosecution in the form of "plea bargaining" (2011). She additionally mentions other interesting reactions of the Spanish Justice System to jury reform. The first concerns the slowness of lawyers' (judges, magistrate-presidents, prosecutors) adaptation to trial by jury. "Their language, manner, and attitudes are still conventional and they are still used in a classic professional justice sense" (Jimeno-Bulnes 2004). The second one reflects the different attitudes of the clerks of Spanish courts, which were revealed during a set of interviews. As M. Jimeno-Bulnes and V. Hans have laid out, some clerks were enthusiastic about jury trial, however others "recommended as a desirable reform the 'suppression of the institution of the jury itself'" and noted various challenges posed by reform – the extent to which the jury slows down the criminal process and the increased amount of administrative work for clerk (Jimeno-Bulnes and Hans 2016).

To give an objective perspective of field state on the jury reform, it is worth paying particular attention to S. Thaman's works.[7] He has been studying the problems of introducing the jury system to Russia for many years, and came up with a set of conclusions, which are, to some extent, similar to mine. The scholar also alleges that Russia actively exploits a "no-acquittals" policy and tries to suppress acquittals in jury trials to keep the criminal justice conveyor belt going (Thaman 2008). The SCRF and appellate courts are eager to overturn acquittals until convictions are guaranteed. This situation is the consequence of what the criminal justice reforms in Russia "appear to be democratic window-dressing for a system that functions in the same manner as its forerunner" (Thaman 2007b). Courts, the legislature have nullified the independency of the Russian jury, which has had to "counteract the old, acquittal-free criminal jurisprudence" (Thaman 2007b). Although Thaman's observations have already described certain features of the Russian Justice System, these are limited to the level of Regional Courts. Furthermore, his findings are based on conventional notions of criminal jurisprudence, such as "adversarial process", "inquisitorial process", "truth-seeking", "independence of the judiciary".

By undertaking the current research, I extend his analysis to the level of District Courts, which handle the majority of criminal cases as courts of first instance. In so doing, I employ a theoretical framework that encompasses sociological and juridical notions. Sociological systems theory, which will be explained below, adds new facets to a traditional perspective of the Soviet-Russian Criminal Justice System. This theory allowed me to reveal strategies of acquittal prevention that were not discovered by Thaman. Herein, the current paper has its value, as it explores new territory and doesn't fully replicate existing ideas. The research design introduced here is not rooted into Russian law and can be applied by overseas scholars to disenchanting Justice System reactions to jury reforms in other countries.

To thoroughly analyze patterns and schemes of the RCJS evolution triggered by the jury reform, it was essential to merge Niklas Luhmann's theory of autopoiesis and H. Packer's Crime Control Model. The conducted research set out from a presupposition that the RCJS operates as an "assembly line", the ultimate aim of which is to maintain a high conviction rate. Such a desired rate is attributed to an idea of system effectiveness. As the RF has maintained the "crime control" policy since the Soviet time, the logic behind its criminal process has been simple enough. The more people that get convicted, the more effective the system is. It is surprising how H. Packer's ideas about the US criminal process can be fitted to Russian realities.

Speaking about the Crime Control Model, he supposes that the conveyor belt of the criminal process "moves an endless stream of cases, never stopping, carrying the cases to workers who stand at fixed stations and who perform on each case as it comes by; the same small but essential operation that brings it one step closer to being a finished product, or, to exchange the metaphor for the reality, a closed file" (Packer 1964). Needless to say, this description perfectly reflects the main features of the Russian Criminal Justice System, as well as the Japanese, Chinese, Saudi Arabian, Iranian and Turkish ones (Terrill 2016).

[7] See supra note 5.

However, what happens with the "assembly line" of the system, which is reluctant to innovations, when it experiences a new wave of jury system introduction? How does the system in particular react to such an irritation?[8] These questions stay unresolved within the body of H. Packer's theory, insomuch as they are empirical and, therefore, should be conceptualized through sociological concepts.

The collocations "Justice System" and "Criminal Justice System" already allude to which sociological theories can be applied to answer the aforementioned questions. Due to the necessity to examine the evolutionary shifts of the Russian Justice System as a single entity rather than different law enforcement agencies, systems theories will provide a great deal of help. Nonetheless, not every theory of systems has the potential to synthesize with the Crime Control Model. Since the essence of this model is the conveyor belt idea, it is vital to choose a theory that includes and enhances features of the assembly-line metaphor – autonomy, the repetitiveness of operations, closure from the external world.

Amid several approaches (Smelser 1963, Parsons and Shils 1964, Parsons 1991), N. Luhmann's autopoiesis theory meets these requirements. Foundations of H. Packer's theory are inherently compatible with Luhmann's, as a concept the "Crime Control Model" is the embodiment of Parsons' system theory.[9] N. Luhmann was a student of Parsons and aspired to create a theory that would include all advantageous aspects of his mentor's ideas, whilst simultaneously being free of their disadvantages.

An autopoietic approach postulates that "A system's operative closure is the basis for its autonomy or autopoiesis. The term autopoiesis means literally self-production" (Baxter 2013). This core of Luhmann's theory perfectly resembles the cyclical nature of the conveyor belt. The Crime Control Model in general – and the Soviet-Russian Criminal Justice System in particular – self-produces itself through the endless circle of convictions. Since this thrust on convictions appeared, as noted above, in the late 1940s, the Soviet Criminal Justice can also be regarded as having the traits of the Crime Control Model. Under this continuity in the Criminal Justice from the Soviet period, while the convictions circle goes on, the Crime Control System maintains its effectiveness and, in doing so, exists. The ideal conditions for such a system presuppose absence of any obstacles for conviction. By obstacles, I mean everything (due process protection, independence of the judiciary, jury trial functioning and so forth) that can impede the circle of accusatory operations and lead to an acquittal.

[8] Broadly speaking, this set of questions is similar to some extent to McCarthy's research question on the reluctancy of law enforcements agents to apply new human trafficking laws. In the case of the Jury Reform and the implementation of human trafficking laws, we may observe the same pattern of the system's inclination towards the already existed routine and the certainty instead of the uncertainty and innovations. The system has experienced different irritations, but responded in the similar way, maintaining the certainty and the stability. This direction of the RCJS development turns it, from the sociological perspective, into the trivial machine, which, not reproducing indeterminacy, links "particular inputs with particular outputs in a fixed, ordered way. Trivial machines are synthetically determined, analytically determinable, independent of the past, and predictable" (Teubner 1993).

[9] Writing about T. Parsons' academic heritage and comparing different system models of criminal justice, R. Vogler has concluded that "systems theory has found its most enduring expression in the work of Herbert Packer" (Vogler 2006).

As the completely unobstructed operations are utopian, the system constantly observes itself in order to efficiently eliminate obstacles and irritations. Irritations are system-internal events triggered by the environment, which "may present anomalies, surprises, or disappointments, relative to the expectations that have arisen 'from the history of the system'" (Baxter 2013).

Though systems in Luhmann's theory are autonomous, it does not mean that they cannot form connections between each other. Moreover, the systems evolution occurs due to the mutual influence because the system "evolves through processes of co-evolution in which the co-evolving systems exert an indirect influence on each other" (Teubner 1993). Coevolution becomes possible by virtue of structural couplings between systems. For instance, the constitution is traditionally considered as a coupling between the law and the politics, while the taxation structurally connects the politics and the economics (Hendry and King 2017). As J. Hendry and C. King stress, "When systems are structurally coupled, mutual perturbations and irritations occur that influence systemic structural development" (2017). The latter statement implies that structural coupling is a source of irritation.

In general, Luhmann's theory allows us to sociologically understand that within the juxtaposition "Russian Criminal Justice System – Jury Trial – Political System" the medium "jury trial" precisely acts as the structural coupling between two systems, and by functioning as this, the jury trial irritates the RCJS because of the acquittal rate spike. When the autopoietic approach is applied, one becomes enabled to conceptualize the Russian Jury Reform influence on the Criminal Justice System as the irritation and, as the hypothesis derived from theoretical statements, expect the appearance of the system's reaction to such an irritation. Since each system responds to its environment (King and Thornhill 2003), the RCJS's reaction to the broadening jury trials takes form of strategies, which the system deploys to cope with the acquittal rate increase. Using the systems theory is the prerequisite step from the idea of exploring the Criminal Justice System's transformation due to different factors (e.g. the jury reform) towards the theory driven empirical research.

In the section after "Methodology," I will scrutinize some of acquittals prevention strategies and exemplify my own findings with empirical data "filled" the theoretical design of the current research.

3. Context of jury trials in Russia

3.1. Baselines of the Russian criminal procedure

According to the Criminal Procedure Code of the Russian Federation (hereafter referred to as "CrPC RF"), the criminal process in Russia generally consists of three stages: the institution of criminal proceedings, preliminary investigation and trial. A criminal case has to pass the first two stages to be brought to the court. The trial by jury is an alternative, which becomes available to an accused person at the end of the preliminary investigation. The accused has to make a request for a jury trial to have one.[10] Besides the jury trial, other options are as follows: regular criminal trial, trial by the three-judge

[10] It is only available for certain crimes and, meanwhile, the accused can waive of the right to a trial by jury till the end of preliminary hearing (CrPC RF Article 325 [5]).

panel and plea bargaining. As most of the cases (60% in 2019) are resolved through plea bargaining (JDASCORF 2020), the number of criminal trials, overall, diminishes.

One of the critical traits of the Russian criminal process is the preliminary investigation. It is a vast, separate stage of procedure which is conducted by the investigative body. This law-enforcement organization is different from the prosecutorial authority and judiciary. In turn, another layer, which is underneath the investigative work, is police work. Along with the investigative authority, police work forms the mainstay of the RCJS.

It is similarly essential that the defense lawyer in the Russian process already has access to some criminal case materials during the preliminary investigation. However, it is necessary to wait till the end of this stage to get access to the full *dossier*. Although the adversariness principle is enshrined in the CrPC RF's Art. 15, evidence gathered by the defense counsel should firstly be accepted by the judge or investigator to become a part of *dossier*. This means that defense lawyers cannot conduct their own investigation. It is one of the distinctive features of the RCJS, which is uncommon for the Western countries with the jury system. It lowers the ability of Russian defense lawyers to get an acquittal verdict in jury trials.

Besides these juridical characteristics, there is another important trait of the Russian criminal process. This is the system of performance incentives, which forms the institutional environment of law enforcement practice (McCarthy 2015). It is called *"palochnaya sistema"* (stick system), consists of statistical indicators used for the performance evaluation, and preestablishes practices of prosecutors, judges and other officials engaged in the administration of justice. According to E. Paneyakh, the incentives system may be described as "internal systems of evaluation" under which "officers from different agencies strategically bargain with one another to balance their 'performance-evaluation-related' interests at the expense of other parties"[11] (Paneyakh 2014). In order to do so, officials select the 'right' cases and manipulate charges. Moreover, they "fake evidence and impose pressures on defendants, victims, and even courts" (Paneyakh 2014). Incentives encourage them to process cases quickly "while minimizing the risk of nonconviction or nonclearance"[12] (McCarthy 2015).

Thus, an amount of time spent on the case investigation and the conviction prospects are the most important factors law enforcement agents take into consideration. Not meeting these requirements badly affects the salary and the agents' reputation as well as the income and the reputation of their superiors. The performance assessment system and the fear of punishment (disciplinary actions, reprimands, loss of bonuses, etc.) force them to "look for the first "good enough" solution that will get them to the end goal

[11] Before Paneyakh and McCarthy came to these conclusions, P. Solomon had likewise stressed the key role of reference points by which bureaucratic and political superiors assessed the performance of Soviet legal officials (Solomon 1987). The acquittal-conviction ratio served as one of these criteria and, therefore, the Soviet officials tried to avoid "failures in court, that is cases that had been investigated and sent to trial but failed to produce a conviction" (Solomon 1987).

[12] Speaking about the relation between the performance incentives of the crime control campaign and the existence/absence of acquittals, I.L. Petrukhin has clearly pointed out that, "there are strict directives of 'judicial bureaucracy' discouraging exonerations. It is based on a false opinion that the acquittal represents the obstacle to the crime control campaign, the sign of judicial power weakness, criminals' means of the punishment avoidance" (Petrukhin 2009).

rather than weighing the entire universe of possible alternatives to find the optimal one" (McCarthy 2015).

3.2. The Jury Reform of 2018

Against a background of criminal procedure peculiarities noted above, the Jury Reform started in 2018. Before the reformation, jury trials had exclusively functioned at the level of Regional Courts. The juries there had been composed of 12 jurors and could have heard an array of different cases: from lesser crimes to ones with aggravated circumstances.[13]

Within the historical context, establishing jury trials in Regional Courts was not an unexpected innovation. The right to the trial by jury was even enshrined in the Part 2 of Article 47 of the Russian Constitution under which "The accused shall have the right to a jury trial in the circumstances provided for by the federal law". In general, this reformation, as well as the enactment of the CrPC RF in 2001, was gravely politically motivated step taken in the adversarial logic. R. Vogler has rightly noted that

> since US financial support for the *Perestroika*[14] program was crucial, it was inevitable that north American forms of procedure should figure significantly in discussion… The code [the CrPC RF of 2001] was intended to 'transform the Russian criminal justice system' and 'facilitate the integration of Russia into the western community'. (Vogler 2006)[15]

Given this historical reference, it seems to me that the current reform is just a logical stage of the process which began in *perestroika* time – the process of introducing the adversarial system in Russia. So, what is the essence of present reform?

From 1st June 2018, jury trials emerged in District Courts. The number of jurors is now 8 (in Regional Courts) and 6 (in District Courts). In District Courts, trials by jury are held for different crimes – against human life and health, human health and public morality, state power and so forth.[16] Apart from legislation amendments, the reform preparation also meant training judges, prosecutors, defense lawyers and court staff about the peculiarities of jury trials, as well as modernizing courtrooms.

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[13] Aggravated murder (the Criminal Code of the RF (hereafter referred to as "CC RF") Article 105 [2]), aggravated forming of a criminal organization (CC RF Article 210 [4]), aggravated drugs dealing (CC RF Article 228.1 [5]), aggravated drugs smuggling (CC RF Article 229.1 [4]), attempt on the life of a state or public figure (CC RF Article 277), attempt on the life of a person engaged in the administration of justice or in preliminary investigations (CC RF Article 295), attempt on the life of an official of a law enforcement agency (CC RF Article 317), aggravated kidnapping (CC RF Article 126 [3]) and others.

[14] The literal meaning of this term is "reconstruction". It refers to the set of steps (the development of freedom of speech, the introduction of contested elections etc.), which were taken by Mikhail Gorbachev during the 1980s in order to restructure the political and economic system of the USSR.

[15] Thaman (2008) similarly supposes that "jury trial and adversary procedure were already articulated as principles for criminal justice reform during the Soviet perestroika period and became the keystones of the 1991 Concept of Judicial Reform of the Russian Republic".

[16] Murder (CC RF Article 105), death caused by the intentional infliction of grievous bodily harm (CC RF Article 111 [4]), aggravated drugs dealing (CC RF Article 228.1 [5]), aggravated drugs smuggling (CC RF Article 229.1 [4]), attempt on the life of a State or public figure (CC RF Article 277), attempt on the life of a person engaged in the administration of justice or in preliminary investigations (CC RF Article 295), attempt on the life of an official of a law enforcement agency (CC RF Article 317), genocide (CC RF Article 357).

Since the reform is still underway, the legislation is continuing to develop. On the first reading (23rd June 2020), the legislative body adopted a bill requiring police to inform state bodies of any criminal record of potential jurors, as well as of their statuses as suspects or accused persons (The State Duma of the RF 2020b). This amendment, which introduces (at least at the level of law in books) a fairly common international rule, is considered to be a necessary step for forming an objective jury because previously the police did not have to transfer this information to other officials and could even decline such a request. According to the explanatory note to the bill, the concern was that not informing state bodies by police of criminal records would cast doubts on objectivity and legality of the jury selection process (The State Duma of the RF 2020a). This initiative was also supported by Russian defense attorneys. From their standpoint, the failure to provide this information had already led to unfortunate consequences when acquittals had been reversed if a layperson on the jury was found to have a criminal record and concealed it (Korobka 2020).

3.3 Peculiar rules of the Russian jury trial

Although the jury trial in Russia is generally well-described in scholarly literature, there is an oddity that should be clarified for foreign readers. The trial by jury in the RF has a certain number of rules that vastly limit communication between parties. For instance, in front of jurors it is forbidden – even if jurors themselves ask[17] that sort of question – for all trial participants (lawyers, defendants, victims, witnesses, etc.) to: mention inadmissible evidence or the use of illegal methods by law enforcement during the investigation; to discuss "procedural moments" (motions, infringements of the CrPC RF, questions of witnesses' appearance etc.); to refer to statistics, legal precedents or the criminal situation in the country; to make an emotional speech.

Breaking one of these (or other) limitations is enough for the second instance courts to overturn a judgment. It is believed that all these rules are compulsory to prevent the jury from delivering a biased verdict. Notably, the CrPC RF itself only comprises a few prohibitions,[18] so most of them are products of the high courts' interpretation. For instance, the SCRF ruled that it was forbidden to mention the use of illegal methods by law enforcement during the investigation before the jury (2005). Then it reiterated this ruling in the number of other cases (2015, 2016). Speaking about the Case of Soskov, the problem was that, during the examination of Soskov, the latter and his lawyer repeated

[17] It is worth noting that according to the Part 4 of Article 335 of the CrPC RF jurors can ask questions during the trial in general and in particular examinations. However, they do not do that directly, but with the help of the presiding judge. This process consists of several stages. At first, the juror who is willing to ask a question has to write it down on a piece of paper and hand it to the jury foreperson. Then the latter passes it to the judge, who reads out loud the question. Though, at first sight, judges act only as media between the jury and other trial participants, they have power to reformulate the question or rule it out as an irrelevant one to the merits of case. Speaking about acquittals prevention, these empowerments may become the potent tool for guiding the trial and influencing the outcome of it, since when jurors ask the questions, the original version of them is fixed nowhere – only the judge and jurors know the original questions. Thus, in the case of reformulating or ruling out the questions, it is incomprehensible what particular questions were ruled out or how particularly they were changed.

[18] To give an example of this, the Part 6 of Article 335 of the CrPC RF posits that it is forbidden to discuss the inadmissibility of evidence before the jury. The Part 8 of this article also prohibits to divulge information about previous criminal records, drug or alcoholic addiction of the defendant in front of the jury.

many times before the jury that Soskov made testimony under pressure at the stage of the preliminary investigation (SCRF 2013). Limiting the range of information available for jurors, the Constitutional Court of the RF (hereafter referred to as "the CCRF") additionally prohibited to disclose the information on the personality of witnesses and victims before the jury, since it would make a verdict biased[19] (CCRF 2012).

Another interdiction was made by the SCRF regarding the analysis of witnesses' testimony during the trial. According to Decision No 18-O10-18sp on the Case of Zabunyan, the parties cannot comment on testimonies and express their opinion about, for instance, the reliability of testimonies until the closing arguments start. Otherwise, it would distort the information by mixing the parties' opinions with the content of information (SCRF 2010).

Although these rules have to be the same in each jury trial, the practice of applying communication rules, which has not yet become routine, is, periodically, vastly different between courtrooms and cases. For example, during the observation, there were cases when the judge strictly forbade all trial participants to refer to the criminal situation in the country, statistics, to show any schemes or diagrams to the jury, and there were also cases wherein the judge allowed the courtroom procurator to use a diagram of a human's head to illustrate a point, and refer to statistics during closing arguments. The issue is that an inconsistent application of procedural rules provides a fertile ground for using strategies of acquittal prevention. When there is no consistency in application, judgement calls and discretion, which may be used for the acquittal prevention, come into play.

4. Methodology

4.1. The methods description

To determine evolutionary shifts in the Crime Control System, the method of observation of jury trials was employed, as well as the observation of lawyers' working groups outside the courtroom – their reflection on the trials, discussions of defense tactics and preparation for forthcoming trials. There were lawyers' working groups in two cases. The first group consisted of two defense attorneys, a jury consultant and two paralegals. The second one included three defense attorneys and a jury consultant.[20] Only the attorneys were participating in court sessions. All members of these groups were jurists, but none of them, including the jury consultant, had ever had jury trial experience before. The research focus on the trial instead of the preliminary investigation

[19] It is also inadmissible to negatively characterize the personality of trial participants to undermine the confidence of jury in witnesses, victims, and defendants. For example, the SCRF overturned the acquittal in the Case of Rylov and Hadzhaev, because, after the examination of the latter, Rylov told jurors that Hadzhaev was the "rat" and gambler, who gambled away his money (SCRF 2017).

[20] In the Russian context, the jury consultant, at least the person whom I was observing, was the adviser more versed, in comparison with defense attorneys, in the judicial practice of Regional Courts, the CCRF, and the SCRF regarding jury trials and who studied this legal institution as a scholar. The function of the consultant was to observe the defense attorneys' actions and guide them over the preparation to trials. The consultant helped them do the jury selection, prepare for the witnesses' examination, closing arguments, etc.

is accounted for by the fact that the trial is the central stage, where irritations to the system and reactions to them take place.

So as to detect strategies and certain tactics within them, each of the observed trials is described as a set of communication patterns with different results (CP+CP…+CP = guilty or acquittal verdict). Communication patterns within specific strategies are divided into a number of topics. For instance, patterns associated with the strategy of the manipulation in communication corresponded to the themes, such as ruling out the question, interruptions to participants' speech, reprimands and warnings. That is, when the judge interrupted the speech of the defense attorney or the courtroom procurator, I marked that interaction as a pattern with the theme "interruptions to participants' speech". It is worth mentioning that some manipulation in communication communication patterns could correspond to several topics at a time (such as ruling out the question and the interruption of speech), as the judge could simultaneously interrupt the speech and rule out the question. Others only matched one topic (e.g. ruling out the question).

The theoretical framework based on the use of "communication pattern" made it possible to detect a number of strategies and define their elements, as well as the moments when they start and close. With the help of that notion, it becomes possible to single out the first operation of communication, the second one, the third one, etc. It allows us to say that the second one connects with the first one, in turn, the third one connects with the second one and the like. The close attention to communication is accounted for by Niklas Luhmann's opinion, which is that communicative operations constitute social systems.

Six trials – 5 in District Courts and 1 in a Regional Court – were observed during fieldwork in 2019-2020 in one federal subject[21] of the RF. Of the 5 trials in District Courts, 4 resulted in a guilty verdict, and 1 is at the stage of evidence examination. The trial in the Regional Court led to a guilty verdict as well. The observation took 135 hours and 30 minutes in total (45 court sessions), which included 26 hours and 20 minutes of lawyers' working groups observation. Besides trials, the fieldwork meant observing the general situation in courthouses before and after the trials, as well as having conversations with judges, prosecutors and defense attorneys. During fieldwork, the researcher was writing field notes and audio recording proceedings. All examples of dialogues between participants in the trials that are used in this article are translated transcripts of those recordings.

4.2. Research challenges

As jury trials for criminal cases are still rare for Russian justice,[22] the researcher observed all such trials for which information was available during fieldwork. The word "available" is used here, because, during the observation, there was not an easy access

[21] "Federal subject of the RF" refers to one of 85 federated states, which form Russia as a federation.

[22] According to the statistics of the Judicial Department at the SCRF, after the reform began and the jury trials were expanded, the number of cases resolved by a jury was 773 (0.095%) cases out of 806,114 cases cleared in 2019 (2020) and 745 (0.099%) cases out of 748,853 cases cleared in 2020 (JDASCORF 2021). Before the reformation, those figures were even lower. Khodzhaeva (2020b) notes that from 2014 the total sum of cases handled by the jury was not higher 300 cases per year.

to information about jury trials (e.g. about the time and place of court sessions). The hindrance was that courts did not place information about current or forthcoming trials by jury on their websites or stands in courthouses. Thus, if one does not have information in advance that this case with that particular defendant is held by the jury in that particular court, it is highly unlikely to find the jury trial by using courts' websites or looking at stands.

In order to get this "unique" information beforehand, fieldwork required building the web of communication between the researcher, legal scholars, and lawyers (judges, procurators, defense attorneys) who knew about these trials. Despite the different level of trust achieved between me and trial lawyers – some of them were more willing to reveal details of cases than others – informal connections with them helped hugely in obtaining first-hand information on the time and place of court sessions and gaining access to trials for observation. Connections with the legal scholar who organized training on jury trials for the defense attorneys and, therefore, had the necessary information were especially helpful for the research.

However, even with that help, there were still other challenges. Initially, judges were suspicious about my presence in the courtrooms. They traditionally asked who I was, why I was there, what I was going to do with the data and so on. In one case, despite the trials transparency (CrPC RF Article 241), the judge decided to discuss the possibility of trial observation by me with the courtroom procurator, defendant and defense attorney. Though the defendant and his lawyer were against my participation, the procurator, being acquaintance of mine, supported me, and the judge finally gave me permission to observe the trial.

Contrary to that, in other case (apart from the six mentioned above) the judge denied access to court proceedings. Initially, when I came to the courthouse and spoke on the phone with his assistant, the latter, after asking many questions about my background and source of my information about this case, told me that I needed to wait until she would confer with the judge and call me back. After 40 minutes passed and nobody got back to me, I called the judge again and, to my surprise, was told that the trial had already begun and because of that they could not let me in. I was advised to come back another time.

In the second time, something similar happened again. However, when the assistant told me to wait her calling back, I refused and explained the previous situation. This time she called me back within 5 minutes and said that the judge rejected the request of mine to observe the trial, as the defendant was against that. Although after my motion to a chairman of the court he eventually gave permission to observe a trial by jury, it was not beneficial for research. As the decision on the motion took approximately two weeks, at this point, all prime court sessions had already finished.

By and large, the court sessions observed were taking place in a capital of the RF's federal subject (2 cases) as well as in its cities and villages (4 cases). Due to vast distances between settlements, 19 trips were made over the course of fieldwork, and periods of time residing in those settlements was also necessary. These trips were periodically also challenging because of the sudden information change, especially when it took more than 8 hours to cover the distances between settlements. As trials were often occurring

in different cities and villages, it was necessary after the end of one court session to go immediately to the next settlement to observe another court session.

However, the most troublesome situations were ones wherein trips were taken to observe only the five-minute court session. For instance, before the trip, there had been information that the next court session would be devoted to the examination of witnesses. However, when I arrived at the court after 8 or more hours being on the road the court clerk said that due to the non-appearance of witnesses (occasionally, even some jurors did not come) the trial would be adjourned. Naturally if the follow-up court session was on the next couple of days, there was no problem to stay at the settlement and wait for that. Nevertheless, in other cases there were only one alternative available: to return back and make the trip once again later. Since problems with the appearance of witnesses and jurors are common for towns and villages in Russia, long trips for the sake of five-minute court sessions were not rare things.

Another challenge that hugely limits opportunities for gathering information about the Russian Jury Reform is the jury secrecy. Under Part 4 of Article 341 of the CrPC RF, jurors must not disclose statements regarding their deliberations of a verdict. The jury secrecy is one of the reasons why Russian scholars are unwilling to do interviews with jurors, including post-trial ones. Even when researchers tell jurors that they are, for instance, interested in the process of interaction between them and judges, not in their statements, jurors cannot help divulging some pieces of information about deliberations. A fear of possible negative consequences for research (for example, the refusal of judges and procurators to get interviewed by researchers and judges imposing restraints on researchers' access to other jury trials) can also prevent scholars in the RF from conducting juror interviews.

All in all, challenges mentioned above vastly restrict the amount of information, which may be gathered during the socio-legal research on jury trials. That is the reason why in the Russian context the rule "some information is better than no information" is still applicable.

5. Getting acquittals prevented

5.1. The manipulation in communication strategy

The system aimed at reducing acquittal rate steadily reacts to any irritations with the following strategies. The first strategy utilizes the ability of the Russian Criminal Justice as an autopoietic system to transform the communication and provides the system's adaptation of the aforementioned specific communication rules, which are ordinary for Russian jury trials. This is about blocking unwanted communication and providing the preferable option (manipulation in communication). This strategy implies a number of tactics detected in the five trials:

1. Ruling out the question asked by one of the parties
2. Interruption of a speaker
3. Warnings and reprimand
4. Advising the jury to disregard comments

All of the five trials, wherein these tactics were used, centered around the especially grave crimes against human life and health (CC RF Article 105 [1;2], and Article 111 [4]) for which the punishment presupposes the imprisonment over the 10 years (CC RF Article 15). All defendants were males of middle age. Only in one case the jury deliberation lasted for two hours, but in the rest the guilty verdict was reached in less than one hour. It is also worth noting that only in one case all lawyers (the judge, courtroom procurator, and defense attorney) had participated in jury trials before. There was also the case wherein only the procurator had jury trial experience. In the other three cases jury trials were the first experience for everyone.

By and large, this lack of experience, which was predominant, hugely shaped the manner and modus of trials. To illustrate this, when in one case only the procurator was well-versed in the trial by jury, she took the leading role and guided the trial, having, virtually, more power than the judge. When the judge was more experienced, the prosecutor handled him as a superior and periodically asked him whether this or that action was allowable in the trial by jury. It seems that during the reform process, when the trial participants lack knowledge and experience, the common rule that the more experienced agent has literally more influence and power is getting more manifested. Four tactics noted above were exactly applied in the context of agents' inexperience. These were used singly or in combination. Examples of singly used tactics:

> The defense attorney examining the witness: Did you have the opportunity to call the police that day?
>
> The judge: Procedural moment. Ruled out. **(1)**
>
> The defense attorney: Your honor, this is not a procedural moment.
>
> The judge: Procedural moment. Ruled out.

The interesting thing about this case (CC RF Article 111 [4]) was that the prosecution was primarily based on the testimonies of two eyewitnesses, who allegedly saw how the defendants were beating the victim at the crime scene. Therefore, defense attorneys persistently tried to disprove their testimonies. By asking the question about the police, the attorney was implying that if the witness really eyed the criminal event, why she did not go to the police that day.

The next example is the presiding judge's summation appealed to the jury:

> The presiding judge draws your attention to the fact that all the information you received regarding this criminal case and assessing the parties' evidence, such as the testimony given by the witnesses, the victim, the defendant, and the procedure of investigative actions, such as whether M. gave testimony using polygraph testing, cannot be used by you when reaching the verdict on this criminal case. **(4)**

Such judge's summations are standard for the Russian jury trials. In each observed trial the judge was obliged to mention things which according to the Russian legislation jury had not to take into consideration while reaching a verdict.

The subsequent example illustrates a combination of tactics. Under examination, the defendant called the victims "pyromaniacs", which caused the following reaction by the judge:

> The judge: Stop here **(2)**, please. Defendant, I warn you **(3)** once again that it is unacceptable to characterize the victims' personality. Is that clear?
>
> The defendant: I said nothing.
>
> The judge: You said nothing, but called the victims 'pyromaniacs'? It's unacceptable to make such statements. I ask the jury not to take into consideration the aforementioned information characterizing the victims **(4)**.

In this example the system is likewise blocking the unwanted communication and transforming it into the desirable one, however it is now using three tactics: the interruption of a speaker, warning, and advising the jury to disregard comments. In general, the case (CC RF Article 105) where this example came from was the perfect opportunity for the observation of the tactics combination phenomenon, since during the trial the judge interrupted and warned the defendant 35 times. It was also the case, wherein the judge was knowledgeable about the jury trial and did not hesitate to employ these tactics.

Calculations show that manipulation in communication occurs most often at the stage of witness examination and closing arguments. There was not a trial where this strategy would not be applied. The figures for the four trials that reached the stage of verdict rendering are as follows:

TABLE 1

1	Ruling out a question asked by one of the parties	23
2	Interruption of a speaker	39
3	Warning or reprimands	23
4	Advising the jury to disregard comments	60

Table 1. The application of the strategy according to types of tactics.

The strategy was applied 145 times at the following stages:

TABLE 2

Witness examination	119
Closing arguments	13
The defendant's last word	8
Analysis of other pieces of evidence (for example inspection reports, schemes, photocopies, records on examination, forensic medical reports, exhibits)	5

Table 2. The application of the strategy according to the trial stages.

The strategy was addressed to the defense 120 times:

TABLE 3

Concerning the defense attorney	51
Concerning the defendant	52
Concerning the defense's witnesses	17

Table 3. The application of the strategy against the defense.

Comparatively, on only 25 occasions was a communication manipulation strategy deployed against the prosecution:

TABLE 4

Concerning the prosecutor	9
Concerning the victim	10
Concerning the prosecution's witnesses	6

Table 4. The application of the strategy against the prosecution.

The initiative to apply the tactics was taken as follows:

TABLE 5

The prosecutor	26
The court itself	115
The defense	4

Table 5. Initiators of the tactic application.

From the numbers above I can draw the following statements:

1.**(4)** is the most widespread tactic and only used by the judge;

2. Stages of witness examination is the primary source of irritations and reactions of the system. Contrary to that, the lowest number of reactions is detected at the phase where other pieces of evidence are presented to the jury. Such differences are accounted for by the fact that verbal communication generates more undesirable uncertainty within the system than written. The judge, prosecutor and attorney have the opportunity to get acquainted with written evidence before the beginning of the trial. This vastly decreases the extent of unexpectedness which arises during the presentation of written evidence.

Meanwhile, the chance of immediate witness examination appears only in trial. Before that, parties cannot officially ask witnesses for their testimonies and get information in advance. Thus, in the case of verbal communication in general, and in particular witness examination, the trial becomes the arena where everything can happen, as no one can foresee the demeanor and answers of witnesses. This state of affairs destabilizes the system, since it is trying to remain predictable and determinable regarding its traditional "output" – "output" in the form of the conviction.

3. Most frequently, the strategy of communication manipulation is addressed to the defense. However, in some cases it can be addressed to the accusing party.

4. The judge is the leading initiator of the tactics.

The analysis of one trial that did not reach the closing arguments phase proves the conclusions above:

TABLE 6

1	Ruling out a question asked by one of the parties	12
2	Interruption of a speaker	6
3	Warning or reprimands	3
4	Advising the jury to disregard comments	4

Table 6. The application of the strategy according to types of tactics.

The incidents took place 25 times at the following stages:

TABLE 7

Opening Statement	1
Witness examination	23
Analysis of other pieces of evidence (for example inspection reports, schemes, photocopies, records on examination, forensic medical reports, exhibits)	1

Table 7. The application of the strategy according to the trial stages.

The strategy was addressed to the defense 20 times:

TABLE 8

Concerning the defense attorney	14
Concerning the defendant	4
Concerning the defense's witnesses	2

Table 8. The application of the strategy against the defense.

Again, only on 5 occasions was a communication manipulation strategy deployed against the prosecution:

TABLE 9

Concerning the prosecutor	1
Concerning the victim	0
Concerning the prosecution's witnesses	4

Table 9. The application of the strategy against the prosecution.

The judge applied the tactics most frequently on their own initiative: 18 times, to be exact; although it was the prosecutor's suggestion on five occasions, and the defense's on two.

However, the non-application of any tactic in particular situations may be interpreted as a deliberate non-response to the breaching of communication rules (reticence tactic). Non-response can be qualified as a procedural infraction and can be a reason for the higher authority to overturn the acquittal. At the first sight, it appears to be the separate strategy, but it is in essence connected with the manipulation in communication strategy and based on its constitutive tactics. The reticence tactic is breaching rules by the non-application of necessary tactics to the facts of breaching rules. Breaching rules consists

in not reacting to breaching rules. As a whole manipulation in communication strategy, the reticence tactic likewise blocks the undesirable communication, however it keeps intact that until the perfect moment (e.g. the appeal proceedings), which may bring the major consequences (the acquittal reversal), comes.

For instance, at one of the trials, the defense mentioned several times that the victim had suffered from alcohol abuse, in front of the jury. At the beginning of the trial, the procurator reacted to each of these statements, asking the judge to interrupt the defense; this was upheld. At the same time, in the subsequent court sessions, the procurator had no reaction to such statements of the defense. In a conversation with the researcher, the prosecutor commented on the situation by saying that in the preparation course for jury trials she was taught not to react to every unacceptable question or statement (e.g. about alcohol abuse). Two or three objections would be enough. In a case of the judge not taking any measures, it was advised not to interfere because this could serve as a ground for acquittal reversing due to the violation of the procedure by the defense and the judge (the absence of a proper reaction).

It is worth mentioning that a similar practice was described by Thaman when he was examining the routine of Regional Courts. The scholar discovered that, "prosecutors and judges can intentionally commit errors at the pretrial and trial stage and, in the event of an acquittal, later raise them on appeal" (Thaman 2007b). His observation combined with my one serves as a ground for speculation that a transmission of practices occurs between Regional Courts and District ones. The system's strategies for controlling the number of acquittals that had been devised during the first wave of jury trial resurrection (in the 1990s) disseminate across the District Courts level. By distributing them, the RCJS is mobilizing its memory,[23] which allows it to mark irritations as the already known ones and deploy the previously developed strategies of the acquittal rate control against them. This process is called "banalisation of irritations" (Philippopoulos-Mihalopoulos 2009) and it differs from the system's intelligence, which is responsible for inventing new means of reaction to irritations – tactics that had not existed before the current Jury Reform came.

5.2. The trial recursion

As well as manipulation in communication, the strategy of unexpected returning to the evidence examination stage (trial "recursion") is also widespread. Prosecutors, after their evidence is examined, let the defense present its case. After the defendant is questioned and evidence of the defense is presented, prosecutors say they have additional information and present new pieces of evidence that disprove the defendant's testimony. At one trial, the judge explained that the procurator's tactic was to let the defense present its evidence first, and then the accusing party "would twist all things to their advantage…like a psychological feint meant to impress the audience, the jurors".

[23] The system's memory is closely related to the path dependency phenomenon described by McCarthy regarding the willingness of law enforcement officials to rely on the old practice when encountering something new. Meaning the implementation of new, human trafficking laws in Russia, the scholar stresses that "initial decisions made at the local level during the early years of implementation can thus have persistent effects on the understanding and application of the new law over time" (McCarthy 2015).

One of the defense attorneys stated that he had experienced this once, whilst working in a trial by jury in the District Court.

This strategy occurred at three trials. At one of them, the prosecutor continued the trial by questioning the witness and presenting a phone transcript to the jury:

> The judge: The defense finished with its evidence at the last trial. Considering this, do the parties have anything to add to the trial? The accusing party?
>
> The prosecutor: Yes, your honor, we do have additional information. We present witness A and ask to examine him. We also apply to demonstrate to the jury the report from the inspection of the crime scene from 8th October 2018, Volume 7, pages 41-53, according to which the optical disk with the audio recording of the telephone conversations was reviewed in the presence of defendant A. We are ready to present the report partially: pages 43 and 46 only, which contain circumstances relevant to the case.

In spite of the fact that the defense lawyer did not expect such a procurator's move, he reacted to adducing new evidence by noting that it would be biased to present the report partially, since this evidence was not mentioned in the indictment and had not been even discussed. As a countermove, the defense decided to examine the inspection report in its full form.

In the second case, the examination of a paramedic and forensic scientist was added to the trial:

> The prosecutor: Your honor, the prosecution considers the judicial investigation may be finished. We can't add anything new.
>
> The judge: No more evidence?
>
> The prosecutor: No evidence.

However, the next court session appeared to be radically different:

> The judge: Do the parties have anything to add to the judicial investigation?
>
> The prosecutor: We do, your honor. The prosecution would like to examine the ambulance paramedic on the subject of the ambulance report and its contents, to examine the forensic scientist K., who performed the autopsy of the victim and all the forensic examinations, in order to clarify his conclusions.

In that case the courtroom procurator understood that the prosecution's position lacked evidence and the only way for winning the case was to persuade the jury emotionally. Pursuing this aim, the procurator postponed the forensic scientist examination till the end of the trial, hoping that his detailed testimony about the results of the victim autopsy would shock laypersons.

At the third trial, the trial "recursion" was practiced after questioning the witness and showing her the knives found at the crime scene:

> The judge (after finding out that the defense has no more evidence): If you don't, we move to *adding to the judicial investigation*. Does the prosecution have anything to add?
>
> The prosecutor: We do, your honor. The witness is present. I plead to let the witness take the stand. Here's witness A. Her personal circumstances were changed during the preliminary investigation. In this present trial, the witness wants to speak openly.

The system's irritation was stronger in that case, insomuch as the defense attorney had already faced that strategy at jury trials. He was ready for it and tried to resist.

> The defense (objecting to the prosecutor's suggestion to move to the defense's evidence): First of all, the procurator suggests that we should move to the defense's evidence. But at the beginning of the trial, if I'm not mistaken, we decided on the definite plan. According to it, the prosecution speaks first. The procurator said that himself, if I'm not mistaken. He said what evidence he is going to present, after that the defense presents its. If the procurator has no evidence, the defense may present its evidence.

Overall, the trial "recursion" is one of the most effective strategies. Using the opportunity to add new information to the judicial investigation, the prosecution presents its most persuasive evidence. The examination of witnesses occurred in all three cases. This choice corresponds to the classical argument, according to which the speech of an eyewitness makes a better impression than abstract information (Myers 2002). For instance, in the third case, the prosecution invited the eyewitness who had witnessed the whole criminal event (the time of the struggle, the number of stabs, the wounded areas, the knife being used as an instrument of crime, the faces and clothes of the victim and defendant etc.).

5.3. The trial acceleration

The "trial acceleration" is another strategy. Working on one of the cases, a defense attorney gave this situation the following explanation: the faster the trial develops, the more likely it is that the jury keeps in mind the circumstances and returns a guilty verdict. In his view, if the prosecution tried accelerating the trial, he would stall it. The defense attitude was simple there – if it was allowable for the procurator to do different things, why the defense could not do other ones.

The prosecutor also confirmed,

> A jury trial is a speedy trial. It cannot last long. A month will be enough. But the trial's postponed till the closing arguments. The trials on the 17th and 24th fall down. When there's a long weekend and the jurors forget everything. And eventually you need to elucidate all the stuff before them over closing arguments because they can't concentrate for too long, they don't get long speeches well.

The judge likewise noticed that:

> The jurors also tend to forget. We wanted to speed up the trial, but the court sessions were adjourned. The defense attorney was working in another court. We wanted to speed up the trial, so that they had all the stuff updated.

The observations of trials identified the set of tactics related to this strategy – providing a tight schedule of trials; judge's remarks about the trial protraction by the defense; the prosecution refusing to examine their witnesses / victims who regularly miss the trials; replacing a juror who misses more than one trial or replacing an ill juror at the phase of the closing arguments; finishing a trial just before the jury foreperson was going on vacation.

I shall illustrate the four typical communication patterns detected by virtue of observations.

At the end of the court session, the judge addresses the jury:

> The next trials are on the 10th and the 13th at 10, too. The more often we meet, the clearer you keep all that you hear in your memory.

The next pattern emerged when the schedule of a trial was being discussed:

> The prosecutor: Is it true that one of the jurors is going on vacation?
>
> The jury foreperson: At the end of February.
>
> The prosecutor: Well, at the end of February.
>
> The jury foreperson: On the 24th.
>
> The prosecutor: So, by the end of February we need to be through with it, come hell or high water.

In the third case, the tactic was used by the prosecution when the defense applied for a break to formulate its statement.

> The judge: I'm trying to make it clear about the attorneys' position. I don't get what exactly is wrong with the record. Do you approve it or not?
>
> The defense attorney: Your honor, just a little break for 3-5 minutes.
>
> The prosecutor: Your honor, there has, as far as I know, already been a delay for the defense to study the evidence. The trial, I beg your pardon, has lasted for 15 minutes, and it's going to be adjourned again.
>
> The defense attorney: Just a break, no adjournment.
>
> The prosecutor: It's all the same.

In another case, an adjournment was being discussed due to a juror's illness. The prosecutor's position was:

> …as we actually have two alternate jurors. Due to the fact that one of the jurors is not present for a good reason (…) there is Article 329 of the Russian Criminal Procedure Code according to which there can be a replacement on the jury panel. Taking into consideration the stage of the trial, by which I mean the forthcoming closing arguments, I think we should replace the absent juror for someone from the reserve list.

The trial acceleration correlates with the fact that the time spent on getting a person convicted is of great importance for the Crime Control System, which speeds up its operations. There are two reasons for it: first of all, the intrinsic value of speed, which is a demonstration of the system's effectiveness. Secondly, the jury trials in Russia are not occasionally fast ones due to different reasons: problems with forming a jury, the appearance of witnesses and jurors, defense actions for protracting the trial, etc. Moreover, there is not a time limit set by the CrPC RF for the trial by jury. There are just the time limit of thirty days for starting the jury trial after the judge's ruling to schedule the trial (CrPC RF Article 233 [1]) and the principle of the reasonable time period (CrPC RF Article 6.1). Given such conditions, it is natural that the RCJS, which has been processing a large number of cases for a long time, accelerates jury trials that slow it down.

5.4. The system's learning

As well as the aforementioned strategies, there is one more, namely "system's learning". Since jury reform is in its initial stage, the system uses all the emerging jury trials to reflect, detect and correct its errors. Observation of trials at this stage – especially when they are held more than once for this or that reason (jury dismissal, reversal of acquittal) – gives an opportunity to witness the system's evolution and recognize what programs it realizes to remove obstacles for the convictions cycle. The following criminal case illustrates the idea of system's learning.

According to the indictment, the defendant shot at the car aiming to kill the victim inside. Since the latter was not wounded, the defendant was accused of an assassination attempt (Part 3 of Article 30 of the Criminal Code (CC) of the RF, item, (e), (g) of Part 2 of Article 105 of the CC RF) and malicious damage to property (Part 2 of Article 167 of the CC RF). The defendant's position – he did not deny the shooting – was that he had attempted only to damage, but not to assassinate. His motive was accounted for by the fact that the victim had burnt the defendant's car some time before.

On that case, a jury trial was held twice. According to the defense attorney, the prospects of acquittal were very high in the first trial. Among the jurors there was a professional shooter who asked essential and relevant questions. After the defense attorney's speech during closing arguments, the jury seemed to sympathize with the defense. On the day when the jury had to start deliberations, one of the jurors did not come (and there were not any on the reserve list). The jury was dismissed due to the panelist's absence, and the trial was held again with the same judge, procurator and defense attorney, but with a new jury.

Concerning the system's learning, this case is peculiar because of the fact that the judge's conduct changed at the second trial. The defense attorney and the defendant noticed a few restrictions which had not been imposed before.

> The judge (addressing the parties): … you are not entitled to present any personal information regarding the defendant (…) you are also not entitled to demonstrate any schemes, plans or records on the examination of the crime scene, exhibits such as those mentioned above can have an impact on the jury.

When the defense attorney asked if he could demonstrate photographic materials that had already been presented in the trial, the judge refused. However, the defense had been allowed to do just that in the first trial.

Later,

> The judge (addressing the defense): By no means do I dare to obstruct your right of defense. You should have noticed that over the trial. In spite of this (…) in spite of this, when preparing for the closing arguments, I want you to correct them a little. There are a number of, you know, questions that should not be asked. So that I don't have to interrupt you and it doesn't turn into when, for example, the defendant got nervous, or something else. So that it looks normal and your speech is not jerky, but coherent and solid, try to get rid of various figures of speech, allusions and historical references and concentrate on the analysis of the evidence. I don't mean, you see, to obstruct your right of defense. Yes, it was announced by the Supreme Court that the defense is entitled to speak emotionally and be critical about objectiveness, but all that doesn't diminish the general principles, according to which you have to comply with at this very moment:

> evidence analysis only. In closing arguments at the first process, the accusing party sounded more or less like it should. I warn you that you should be well-prepared.

In this instance, the system's learning was that, at the previous process, the defense counsel had been allowed to speak emotionally. The change of the court's manner of handling the trial and stronger restrictions similarly manifested through the following dialogue:

> The judge: Defendant, several reprimands have been addressed to you today. This is not my will and not because I treat different parties well or badly. This is stated by the law. So, I remind you once again before you start the closing arguments. During the closing arguments and last word try not to reproduce what we've heard today, so that your speech remains solid and not interrupted, and doesn't lose any sense. Is that clear?
>
> The defendant: Yes, I got it, your honor, but I seem to have spoken much less than the last time, to be frank. Each time there are more and more restrictions.
>
> The judge: I act as a guarantor of the Law, you see, as is stated in the Criminal Procedure Code. This is the first jury trial in this court. So, it's like that today, so to say.

The second trial finished with the guilty verdict.

For another case, which was remanded for retrial after the acquittal reversal, the system's self-reflection and learning was revealed through the change of tactic of using anonymous witnesses.[24] The prosecutor working in the first trial was told by senior colleagues that anonymous witnesses should not be examined at jury trials, and that it had led to the acquittal. Thereafter, at the second trial, the secret witness spoke openly before the jurors, giving a detailed testimony about the process of committing a murder. In that case, the second trial also ended in the guilty verdict.

Considering another type of system's learning, it is worth analyzing how new experience disseminates through the system. Reflexive structures play the central role here, namely Regional Courts of the RF, the SCRF, the CCRF, Regional Public Prosecutor's Offices of the RF and the Prosecutor General's Office of the RF. These reflexive units function as the system's observers, and being a single part of it, have a better reflexive capability than the system as a whole. These structures provide self-observation and set standards of effective functioning for the whole system. Thus, Regional Courts may transmit certain tactics used at jury trials to District Courts, as happens with the reticence tactic mentioned above.

Passing around the knowledge about jury trials may happen at different places. As a rule, Regional Courts organize training courses for District Courts' judges. However, not each judge who is going to deal with the jury has gone through such courses. Some of them need to learn mainly from the first-hand experience. In one case, the judge said that she had not had special courses unlike her fellow-workers. Because of that she needed to learn while presiding at the jury trial, by reading the SCRF's decisions and asking advice from more experienced colleagues. In order to diminish the uncertainty of

[24] By the term "anonymous witness" I mean that the personal information of this witness (for instance, the name, the surname, the home address etc.) was anonymized. Thus, nobody (the defense, the victim and other participants), except the judge and the prosecution, knew the true personal details of this witness.

jury trials, judges also phone to each other, conferring about various intricacies of the jury institution.

Apart from training judges, Regional Courts may likewise provide courtroom procurators with jury courses. Actually, the Regional Court of the federal subject where the trials observation was conducted hosted courtroom procurators in its building and organized training to prepare them for the Jury Reform innovations. Speaking about procurators, there was also a practice of experience sharing when the Regional Public Prosecutor's Offices sent an experienced procurator into villages to help prosecutors on the ground to win the case.[25]

As it has already become clear, the Regional Court has enough power to guide the adaptation process over the Jury Reform. In a personal conversation, a defense attorney clarified that a question list had to be approved by the Regional Court, which controlled everything. The Regional Court "made a prescription" not to give the defense much time to get ready for the closing arguments, because a long break between prosecution (who speaks first) and defense would make the jury forget the prosecutor's speech, and the defense's performance, as a result, would be more convincing. According to the attorney who had worked on one of the cases before the present research, the defense had had two weeks for preparation, and the "forgetting effect" caused by this time lag had led to a not-guilty verdict.

Additionally, from a conversation with a judge it became clear that the Regional Court claims for the most severe punishments at jury trials that ended in guilty verdicts. It is accounted for by the desire to eradicate jury trials. The attorney said the same, "There is a prescription by the Regional Court and the Supreme Court for the "heaviest" sentencing at jury trials. It is done deliberately in order to get rid of this institution". Workers in the Public Prosecutor's Office also confirmed that there should be a "… punishment for using the right to a jury trial. The jury trial is a very expensive procedure, so, in case of a guilty verdict, the punishment should be as severe as possible".

Besides the above-cited strategies, which are regularly used, some have been detected having only emerged in a single case. These occasional strategies, nevertheless, contribute a great deal to the reproduction of the system through the operation of conviction. Examples of these rare incidents are: procurators using the aggrieved party to persuade laypeople (victims asking questions that are inadmissible in jury trials; an emotional speech of a victim in closing arguments); court assistance to the accusing party in adducing evidence (advice how to present evidence before the jurors in a clearer way, suggestions on the examination of victims, the court itself asking questions of a witness if the victim struggles to formulate a question; providing witnesses with an opportunity to look at their testimony given 15 years before, so that they can recollect specific facts).

6. Conclusion

The current Jury Reform aimed to legitimize the RCJS, but a side effect appeared. Paradoxically, the acquittals spike delegitimizes the system, since the latter is based on the effectiveness concept constituted by the prevailing conviction rate.

[25] As well as officials, defense attorneys have various opportunities for experience sharing, such as lectures (online or face-to-face) of well-known attorneys, training courses, mock trials, etc.

The purpose of this article has been to describe various strategies that the Crime Control System in Russia employs to keep the acquittal rate under control and stabilize itself over the Jury Reform 2018-2020. The usage of theoretical framework based on N. Luhmann's sociology has allowed for the conceptualizing of the trial by jury as a structural coupling between the Crime Control System and the Political one. This structural coupling irritates the Russian system, and at the same time stimulates the elaboration of several strategies for increasing the chances of reaching a guilty verdict.

The most frequently used strategies include the manipulation in communication, trial "recursion", trial acceleration, and system's learning. There are also occasional strategies such as procurators using the aggrieved party to persuade laypeople, and the court's assistance to the accusing party in adducing evidence. Research findings also lead to the assumption that due to the system's learning phenomenon there is the transmission of acquittal prevention tactics (for instance, the reticence tactic), devised during the first wave of jury trial resurrection in the 1990s. This occurs between two levels of the Russian court hierarchy – from Regional Courts to District ones.

To conclude, the Soviet-Russian conveyor belt keeps running. In spite of an acquittals spike spurred by the modern Jury Reform, the Criminal Justice System successfully develops, selects and retains different strategies and tactics so as to continue the cycle of convictions. It is understandable as the autopoiesis of a system cannot be stopped by structural couplings. These only trigger the system's evolution, which implies that there are improving mechanisms of autopoietic reproduction. A visible change of the RCJS requires a drastic reformation not limited by creating another coupling. The first step should be aimed at avoiding the stigmatization of acquittals as "defective goods". From the system's theory perspective, it means saving the subsystem of performance assessment – because there is no way to organize the law enforcement activity without the performance evaluation whatsoever –, however, at the same time, changing the incentive structure. Besides that, even more radical transformation should concern the essence of the RCJS: the conveyor belt metaphor. Drifting away from the Crime Control Model is the possible solution of the current challenges.

References

Baxter, H., 2013. Niklas Luhmann's theory of autopoietic legal systems. *Annual Review of Law and Social Science* [online], 9, 167-184. Available from: https://scholarship.law.bu.edu/faculty_scholarship/140 [Accessed 12 December 2019].

Bornstein, B.H., and Greene, E., 2011. Jury decision making: implications for and from psychology. *Current Directions in Psychological Science* [online], 20(1), 63–67. Available from: https://psycnet.apa.org/doi/10.1177/0963721410397282 [Accessed 2 February 2022].

Duff, P., and Findlay, M., 1997. Jury reform: of myths and moral panics. *International Journal of the Sociology of Law,* 25(4), 363–384.

Goldbach, T.S., and Hans, V.P., 2014. Juries, lay judges, and trials. *Cornell Law Faculty Working Papers* [online], 122, 1-15. Available from: https://scholarship.law.cornell.edu/clsops_papers/122/ [Accessed 14 April 2020].

Hans, V.P., 1992. Jury decision making. *In*: D.K. Kagehiro and W.S. Laufer, eds., *Handbook of Psychology and Law* [online]. New York: Springer, 56-76. Available from: https://doi.org/10.1007/978-1-4757-4038-7_4 [Accessed 2 February 2022].

Hans, V.P., 2008. Jury systems around the world. *Annual Review of Law and Social Science* [online], 4, 275-297. Available from: https://scholarship.law.cornell.edu/facpub/305/ [Accessed 27 July 2020].

Hendry, J., and King, C., 2017. Expediency, legitimacy, and the rule of law: a systems perspective on civil/criminal procedural hybrids. *Criminal Law and Philosophy* [online], 11, 733-757. Available from: https://doi.org/10.1007/s11572-016-9405-6 [Accessed 2 February 2022].

Jimeno-Bulnes, M., 2004. Lay participation in Spain: the jury system. *International Criminal Justice Review,* 14(1), 164-185.

Jimeno-Bulnes, M., 2011. Jury selection and jury trial in Spain: between theory and practice. *Chicago-Kent Law Review* [online], 86(2), 585-611. Available from: http://scholarship.kentlaw.iit.edu/cklawreview/vol86/iss2/7/ [Accessed 8 November 2020].

Jimeno-Bulnes, M., and Hans V.P., 2016. Legal interpreter for the jury: the role of the clerk of the court in Spain. *Oñati Socio-Legal Series* [online], 6(2), 197-215. Available from: https://opo.iisj.net/index.php/osls/article/view/552 [Accessed 31 October 2020].

Judicial Department at the Supreme Court of the RF (JDASCORF), 2020. *Otchet o rabote sudov obshchej yurisdikcii po rassmotreniyu ugolovnyh del po pervoj instancii* [The report on the work of general jurisdiction courts in handling criminal cases as courts of first instance] (online). Available from: http://www.cdep.ru/index.php?id=79&item=5258 [Accessed 10 April 2020].

Judicial Department at the Supreme Court of the RF (JDASCORF), 2021. *Otchet o rabote sudov obshchej yurisdikcii po rassmotreniyu ugolovnyh del po pervoj instancii* [The report on the work of general jurisdiction courts in handling criminal cases as courts of first instance] (online). Available from: http://www.cdep.ru/index.php?id=79&item=5671 [Accessed 22 August 2021].

Khodzhaeva, E., 2020a. *Statisticheskaya spravka "Sudy s uchastiem prisyazhnyh v 2018-2019 godah"* [Jury trials in 2018-2019. Statistics] (online). Available from:**¡Error! Referencia de hipervínculo no válida.** https://enforce.spb.ru/products/other-publications/7385-spravka-sudy-s-uchastiem-prisyazhnykh-v-2018-2019-godakh [Accessed 13 March 2020].

Khodzhaeva, E., 2020b. *Sudy prisyazhnyh v oficial'noj statistike* [The official statistics about jury trials: an analytical review] (online). The Institute for the Rule of Law at the European University, Saint-Petersburg. Available from: https://enforce.spb.ru/images/analytical_review/IRL_prisyazhnye_online.pdf [Accessed 22 August 2021].

Khodzhaeva, E., 2020c. Very prisyazhnym u sudej net [Professional Judges Do Not Trust Jurors]. *Novaya gazeta* [online], 5 October. Available from:

https://novayagazeta.ru/articles/2020/10/05/87386-very-prisyazhnym-u-sudey-net [Accessed 10 October 2020].

King, M., and Thornhill C., *2003. Niklas Luhmann's Theory of Politics and Law*. Basingstoke: Palgrave Macmillan.

Korobka, E., 2020. U gosudarstvennyh organov poyavitsya dostup k informacii o sudimostyah kandidatov v prisyazhnye zasedateli [State bodies will have access to information about criminal records of potential jurors] *Adv gazeta* [online], 10 September. Available from: https://www.advgazeta.ru/diskussii/reforma-suda-prisyazhnykh/ [Accessed 7 November 2020].

McCarthy, L., 2015. *Trafficking Justice: How Russian Police Enforce New Laws, From Crime to Courtroom.* Ithaca/London: Cornell University Press.

Myers, D.G., 2002. *Social Psychology*. 7th ed. Toronto: McGraw Hill Canada.

Packer, H.L., 1964. Two models of the criminal process. *University of Pennsylvania Law Review* [online], 113(1), 1-68. Available from: https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6428&context=penn_law_review [Accessed 10 September 2019].

Paneyakh, E., 2014. Faking performance together: systems of performance evaluation in Russian enforcement agencies and production of bias and privilege. *Post-Soviet Affairs* 30(2–3), 115-136.

Parsons, T., 1991. *The Social System*. 2nd ed. London: Routledge.

Parsons, T., and Shils, E., 1964. *Toward a General Theory of Action: Theoretical Foundations for the Social Sciences.* Piscataway: Transaction.

Petrukhin, I.L., 2009. *Opravdatel'nyy prigovor i pravo na reabilitatsiyu* [Acquittal and the Right to Rehabilitation]. Moscow: Prospect.

Philippopoulos-Mihalopoulos, A., 2009. *Niklas Luhmann: Law, Justice, Society*. Abingdon: Routledge.

Sherrod, D.R., 2019. *The Jury Crisis: What's Wrong with Jury Trials and How We Can Save Them.* Lanham: Rowman & Littlefield.

Smelser, N.J., 1963. *Theory of Collective Behavior.* New York: Simon & Schuster.

Smith, C. E., 1994. Imagery, politics, and jury reform. *Akron Law Review* [online], 28(summer), 77-95. Available from: https://www.uakron.edu/dotAsset/c7d3258c-0cca-43e3-bb52-070c76efab8a.pdf [Accessed 24 November 2019].

Solomon, P.H. Jr., 1987. The case of the vanishing acquittal: informal norms and the practice of soviet criminal justice. *Soviet Studies,* 39(4), 531–555.

Terrill, R.J., 2016. *World Criminal Justice Systems*. 9th ed. New York: Routledge.

Teubner, G., 1993. *Law as an Autopoietic System.* Padstow: T.J. Press.

Thaman, S.C., 1995. The resurrection of trial by jury in Russia. *Stanford Journal of International Law* [online], 31(61), 61-274. Available from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2573899 [Accessed 10 August 2020].

Thaman, S.C., 2007a. The good, the bad, or the indifferent: 12 angry men in Russia. *Chicago-Kent Law Review* [online], 82(2), 791-808. Available from: https://scholarship.kentlaw.iit.edu/cklawreview/vol82/iss2/18/ [Accessed 2 February 2022].

Thaman, S.C., 2007b. The nullification of the Russian jury: lessons for jury-inspired reform in Eurasia and beyond. *Cornell International Law Journal* [online], 40(2), 357-428. Available from: https://scholarship.law.cornell.edu/cilj/vol40/iss2/3/ [Accessed 13 August 2020].

Thaman, S.C., 2008. The two faces of justice in the post-Soviet legal sphere: adversarial procedure, jury trial, plea-bargaining and the inquisitorial legacy, *In*: J.D. Jackson, M. Langer and P. Tillers, eds., *Crime, Procedure and Evidence in Comparative and International Context. Essays in Honour of Professor Mirjan Damaska*. Oxford/Portland: Hart, 99-118.

Vogler, R., 2006. *A World View of Criminal Justice.* Bodmin: MPG Books.

Weisberg, R., 2005. The death penalty meets social science: deterrence and jury behavior under new scrutiny. *Annual Review of Law and Social Science* [online], 1(1), 151-170. Available from: http://dx.doi.org/10.1146/annurev.lawsocsci.1.051804.082336 [Accessed 2 February 2022].

Case law

The Constitutional Court of the RF, 2012. *Opredelenie ot 11 maya 2012 g. N 686-O "Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Kazakbaeva Mihaila Agojlinovicha na narushenie ego konstitucionnyh prav chast'yu chetvertoj stat'i 15 i chast'yu vos'moj stat'i 335 Ugolovno-processual'nogo kodeksa Rossijskoj Federacii"* [The Case of Kazakbaev (Decision No 686-O)] (online). Available from: http://base.garant.ru/70183388/ [Accessed 14 August 2021].

The Supreme Court of the RF, 2005. *Postanovlenie ot 22.11.2005 N 23 "O primenenii sudami norm Ugolovno-processual'nogo kodeksa Rossijskoj Federacii, reguliruyushchih sudoproizvodstvo s uchastiem prisyazhnyh zasedatelej"* [Plenary Decision No 23 "On the Application by the Courts of Provisions of the Criminal Procedure Code of the Russian Federation Regarding Jury Trials"] (online). Available from: http://www.consultant.ru/document/cons_doc_LAW_56702/ [Accessed 14 August 2021].

The Supreme Court of the RF, 2010. *Kassacionnoe opredelenie ot 07.07.2010 No 18-O10-18SP po delu Zabunyanina* [The Case of Zabunyan (Decision No 18-O10-18сп)] (online). Available from: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=155893#xZhzYgSs7xCti50s [Accessed 19 August 2021].

The Supreme Court of the RF, 2013. *Opredelenie ot 11 fevralya 2013 g. po delu Soskova № 2-48/2012* [The Case of Soskov (Decision No 2-48/2012)] (online). Available from: https://sudact.ru/vsrf/doc/ScCbhTEJaSHf/ [Accessed 14 August 2021].

The Supreme Court of the RF, 2015. *Obzor sudebnoj praktiki Verhovnogo Suda Rossijskoj Federacii № 4 (2015)* [A Review of the Judicial Practice. 4] (online). Available from: http://www.vsrf.ru/Show_pdf.php?Id=10648 [Accessed 20 August 2021].

The Supreme Court of the RF, 2016. *Apellyacionnoe opredelenie Sudebnoj kollegii po delam voennosluzhashchih Verhovnogo Suda RF ot 19.01.2016 N 205-APU15-15SP* [The Case of Achmiz and Vanchenko (Decision No 205-АПУ15-15СП)] (online). Available from: https://www.legalacts.ru/sud/apelliatsionnoe-opredelenie-verkhovnogo-suda-rf-ot-19012016-n-205-apu15-15sp// [Accessed 20 August 2021].

The Supreme Court of the RF, 2017. *Apellyacionnoe opredelenie Sudebnoj kollegii po ugolovnym delam Verhovnogo Suda RF ot 25.05.2017 N 25-APU17-3SP po delu Rylova i Hadzhaeva* [The Case of Rylov and Hadzhaev (Decision No 25-АПУ17-3СП)] (online). Available from: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=503847#4eWJegSFb9AsdyHA [Accessed 20 August 2021].

Legal sources

The State Duma of the RF, 2016. *Poyasnitel'naya zapiska k zakonoproektu "O vnesenii izmenenij v Ugolovno-processual'nyj kodeks Rossijskoj Federacii v svyazi s rasshireniem primeneniya instituta prisyazhnyh zasedatelej"* [The explanatory note to the bill "On amendments to the Criminal Procedure Code of the Russian Federation due to broadening jury trials"] (online). Available from: https://sozd.duma.gov.ru/bill/1016453-6 [Accessed 25 October 2019].

The State Duma of the RF, 2020a. *Poyasnitel'naya zapiska k zakonoproektu "O vnesenii izmenenij v stat'i 12 i 17 Federal'nogo zakona O policii"* [The explanatory note to the bill "On Amendments to the Article 12, 17 of Law on Police"] (online). Available from: https://sozd.duma.gov.ru/bill/706820-7 [Accessed 12 August 2021].

The State Duma of the RF, 2020b. *Zakonoproekt "O vnesenii izmenenij v stat'i 12 i 17 Federal'nogo zakona O policii"* [The Bill "On Amendments to the Article 12, 17 of Law on Police"] (online). Available from: https://sozd.duma.gov.ru/bill/706820-7 [Accessed 19 October 2020].