

## Formation and development of jury trials in post-Soviet states

Formación y desarrollo de juicios con jurado en estados postsoviéticos

Nina Dudko<sup>1</sup>

Altai State University - Russia  
dudkona@yandex.ru

Mariya Neymark<sup>2</sup>

Altai State University - Russia  
neymark.m@mail.ru

Evgeniy Petuchov<sup>3</sup>

Altai State University - Russia  
petuchove@mail.ru

### ABSTRACT

The article deals with the issues of normative and theoretical validity of the establishment of jury trials in the Russian Federation, the Republic of Kazakhstan, the Kyrgyz Republic, Ukraine, Georgia, and the Republic of Azerbaijan. We carried out the comparative legal analysis of powers of court structures at the consideration of criminal cases and defined the models of the court of the jury. We noted that the legislative bodies of the post-Soviet states chose different models of jury trial: the CPC of the Russian Federation, the Kyrgyz Republic, Georgia, and the Azerbaijan Republic are regulated by the classical model of jury trial; the CPC of the Republic of Kazakhstan and Ukraine are regulated by the mixed model of a jury trial. We suggested the conclusions and proposals on the expediency of further expansion of jury trials in the Republic of Belarus, the Republic of Azerbaijan, and the Kyrgyz Republic.

**Keywords:** Jury trial, post-Soviet states, composition of the court, powers of jurors.

### RESUMEN

El artículo aborda las cuestiones de validez normativa y teórica del establecimiento de los juicios con jurado en la Federación Rusa, la República de Kazajstán, la República Kirguisa, Ucrania, Georgia y la República de Azerbaiyán. Llevamos a cabo el análisis jurídico comparativo de las competencias de las estructuras judiciales en el examen de las causas penales y definimos los modelos del tribunal del jurado. Observamos que los órganos legislativos de los estados postsoviéticos eligieron diferentes modelos de juicio con jurado: el CPC de la Federación Rusa, la República Kirguisa, Georgia y la República de Azerbaiyán se rigen por el modelo clásico de juicio con jurado; el CPC de la República de Kazajstán y Ucrania se rigen por el modelo mixto de juicio con jurado. Sugerimos las conclusiones y propuestas sobre la conveniencia de ampliar los juicios con jurado en la República de Bielorrusia, la República de Azerbaiyán y la República de Kirguistán.

**Palabras clave:** juicio con jurado, estados postsoviéticos, composición de la corte, poderes del jurado.

### RESUMO

O artigo trata das questões de validade normativa e teórica do estabelecimento de julgamentos por júri na Federação Russa, República do Cazaquistão, República do Quirguistão, Ucrânia, Geórgia e República do Azerbaijão. Realizamos a análise jurídica comparativa dos poderes das estruturas judiciais na consideração dos casos criminais e definimos os modelos do tribunal do júri. Observamos que os órgãos legislativos dos estados pós-soviéticos escolheram diferentes modelos de julgamento do júri: o CPC da Federação Russa, da República do Quirguistão, da Geórgia e da República do Azerbaijão são regulados pelo modelo clássico de julgamento do júri; o CPC da República do Cazaquistão e da Ucrânia são regulados pelo modelo misto de julgamento do júri. Sugerimos as conclusões e propostas sobre a conveniência de uma maior expansão dos julgamentos por júri na República de Belarus, na República do Azerbaijão e na República do Quirguistão.

**Palavras-chave:** Julgamento do júri, estados pós-soviéticos, composição do tribunal, poderes dos jurados.

1 PhD, Associate Professor, Department of Criminal Procedure and Criminalistics, Altai State University, Law Institute, Russian Federation.

2 PhD, Associate Professor, Department of Criminal Procedure and Criminalistics, Altai State University, Law Institute, Russian Federation.

3 PhD, Associate Professor, Department of Criminal Procedure and Criminalistics, Altai State University, Law Institute, Russian Federation.

Recibido: 17/06/2019 Aceptado: 19/08/2019

## INTRODUCTION

The subject of the study is jury trial as a criminal procedure institute and an element of the judicial system in the post-Soviet states. The former Soviet republics have chosen different directions of reforming their judicial systems. The establishment of jury trials was assumed in preparation for the judicial reform in eight (Russian Federation, Republic of Kazakhstan, Kyrgyz Republic, Ukraine, Republic of Belarus, Georgia, Azerbaijan Republic, Republic of Armenia) out of 15 post-Soviet states.

The Jury Court is considered to be one of the most democratic forms of legal proceedings, which ensures direct participation of representatives of the people in the administration of justice. It is a rather complex form of legal proceedings designed to protect the rights and legitimate interests of persons accused of committing crimes. The Jury Court is both a “new word” of modern law of the post-Soviet states and an expression of those legal ideas and principles that have been formed and successfully implemented for several hundred years in the judicial systems of many states.

Despite the fact that there is no unambiguous attitude to this form of legal proceedings in the society, the jury court has undeniable advantages: with the help of the jury court the application of the law is ensured in accordance with the public legal consciousness; international standards on the right of the accused to a fair trial by the court created on the basis of the law are implemented in the jury court; legal novels on the equality and competitiveness of the parties are more effectively implemented in the jury court; one of the most complete expressions is found in the jury court.

The development and improvement of the activity of the Jury Court is an important component in the protection of the rights and legitimate interests of the individual, in establishing a balance of interests between the individual, the state and society.

Jury trial turned out to be one of the most important and most controversial legal institutions of judicial reform, carried out in the post-Soviet states. Even after the introduction and successful functioning of jury trials in the Russian Federation, the Republic of Kazakhstan, Ukraine, and Georgia, disputes “for” and “against” jury trials have not lost their relevance. The practice of jury trials in criminal cases in courts of, for example, the Russian Federation and the Republic of Kazakhstan confirms the need for further study of issues related to the organization and operation of jury trials. These studies will help to develop proposals for further improvement of jury trials on the basis of analysis of legislation and investigative and judicial practice. This is necessary not only for the further development of the existing jury trials, but also, we believe, will be useful for other post-Soviet states, where jury trials may also be introduced.

### Aims and objectives

The aim of the study is to identify the regulatory and theoretical feasibility of establishing a jury trial in the Russian Federation, the Republic of Kazakhstan, the Kyrgyz Republic, Ukraine, Georgia, the Republic of Azerbaijan to develop proposals on the feasibility of further expansion of jury trials in the post-Soviet countries.

In order to achieve this goal, the following objectives should be achieved:

- To study the constitutional and criminal procedure legislation of the post-Soviet states regulating the consideration of criminal cases by the courts with the participation of jurors;
- Conduct a comparative legal analysis of the powers of court composition in criminal cases in post-Soviet states;
- To conduct a comparative legal analysis of the criminal procedure legislation of post-Soviet states to determine the type of established or functioning jury trial.

## DEVELOPMENT

### Methods

We used data from the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Constitutions, and Codes of Criminal Procedure of the post-Soviet states, as well as various scientific literature.

### Results and discussion

Judicial reform is an important area for the formation of a sovereign state in post-Soviet countries. In preparing for judicial reform, the legislative bodies of the post-Soviet states, first of all, had to decide whether to establish a jury trial and what type of jury trial to choose. This could be done only on the basis of studying the legislation and judicial practice of successful and long-term functioning of jury trials in foreign countries. In addition, judicial reforms in post-Soviet states had to comply with generally recognized principles and norms of international law.

The generally recognized principles and norms of international law contain the Universal Declaration of Human Rights of 1948 (Universal, 1948), the International Covenant on Civil and Political Rights of 1966 (International, 1966) and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950

(Convention, 1950).

The provisions of these international instruments are considered international human rights standards (Jackson, Kovalev, 2006). With regard to human rights, which are the subject of criminal charges, international instruments enshrine the following provisions.

Article 10 of the Universal Declaration of Human Rights: “Everyone has the right, in order to determine his rights and obligations and to establish the validity of criminal charges against him, on a basis of full equality, to a fair and public hearing by an independent and impartial tribunal” (Universal, 1948).

Article 14 of the International Covenant on Civil and Political Rights: “All persons are equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” (International, 1966).

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” (Convention, 1950).

International standards on fundamental human rights and freedoms do not provide for the establishment of a jury trial as a prerequisite for the protection of rights and freedoms. However, these international norms concentrate on international standards for the consideration of criminal cases by the courts and apply to all possible options for the composition of the court. “...a jury trial is not a “mandatory”, from the point of view of the Convention, procedural institution. To be or not to be a jury trial is a matter for domestic law, and if it does not give the accused the right to this form of proceedings, there is no problem under the Convention” (Dick, 2010).

It is generally recognized that it is the jury court that most closely matches the international standards for the consideration of criminal cases by the courts. “But in any discussion of issues “for” and “against” the jury trial, all over the world, and in the same England, always prevails supporters of the court of “equal” or, as it is also called, “people’s” court, because the symbol of true freedom and true democracy was considered to be equal to itself. And, based on the same international standards, in order to better protect human rights, to ensure the rights of the accused in criminal proceedings, the principle of “presumption of innocence”, the state turned to the institution of jury trials” (Basimov, 2005).

Other international instruments also contain international standards defining possible options for the composition of the court. For example, Recommendation No. 6 R (87)18 of 17 September 1987 on the Simplification of Criminal Justice: adopted by the Committee of Ministers of the Council of Europe (Resolution, 1991) expresses the position of the Council of Europe on the composition of the court. The Committee of Ministers of the Council of Europe, bearing in mind that joint action to expedite and simplify criminal justice should take due account of the requirements set out, inter alia, in Articles 5 and 6 of the European Convention on Human Rights, recommends that governments of member states, taking into account their own constitutional principles or legal traditions, take all necessary measures to apply the principles set out below:

(d) Composition and specialization of courts

1. As a general rule, the composition of the court, to the extent permitted by the constitutional and legal traditions of Member States, should be determined with due regard to the gravity, nature, legal and technical details and complexity of the offence charged.
2. When a panel of professional judges participates in a hearing, the number of judges should be kept to a minimum, and if the complexity of the case permits, a single judge should participate in the hearing.
3. In the case of a jury trial, such a trial should be conducted only for serious crimes of a certain type. The process should be organized in such a way as to facilitate the task of the jury, and at the beginning of their meeting the judge must explain to them the issues to be solved and the law relating to the case in question.
4. When the degree of guilt is determined by a jury or bar association or lay judges together with professional judges, the decision should be made by a simple or qualified majority without any requirement of unanimity.

The Committee of Ministers of the Council of Europe has thus formulated the rule that the composition of the court, to the extent that the constitutional and legal traditions of the member states permit, should be determined with due regard to the gravity, nature, legal and technical details and complexity of the offence charged. In the case of jury trials, such trials should only be held for serious crimes of a certain type.

The introduction of jury trial as one of the directions of judicial reform in the post-Soviet space was envisaged in the Russian Federation, Georgia, Belarus, Ukraine, Azerbaijan, the Republic of Kyrgyzstan, the Republic of Kazakhstan (Martinovich, 1997; Kovalev, 2006; Sotsanyuk, 2009; Teyman, 2004; The institute, 2018a; The institute, 2018b; Fundamentals, 1989).

The foundations for reforming the judicial systems of the union republics were laid as early as in the USSR. Not

only were active scientific discussions held, but also the development of appropriate legislation. For the first time, at the legislative level the idea of revival of the jury trial was fixed in the Fundamentals of Legislation of the USSR and the Union republics on judicial system of November 13, 1989.

Article 11 of the Fundamentals provided: "In the order established by the legislation of the Union republics, in cases of crimes for which the law provides for the death penalty or imprisonment for a term of more than ten years, the question of guilt of the defendant can be decided by the jury (extended panel of people's assessors)" (Pashin, 1995).

Then, beginning in 1991, the political changes in the state led to the fact that "...the center of reforms moved from the union level to the republican one rather quickly..." (Pashin, 1992). For example, in the Russian Federation, jury trials have become a priority area of judicial reform. In the Resolution of the Supreme Soviet of the RSFSR "On the Concept of Judicial Reform in the RSFSR", the recognition of the right of every person to have his case examined by a jury in cases established by law was considered as one of the most important areas of judicial reform (Martinovich, 1997). [The authors of the Concept of Judicial Reform proceeded from the fact that "a jury court acts as a means of resolving non-standard situations, where, due to the severity of possible consequences, it is more dangerous to sin against justice than against the dictates of an abstract legal norm" (Concept, 1995).

The legislative basis for the introduction of jury trials in the CIS countries can be considered the "Concept of the Model Criminal Procedure Code for the CIS Member States", developed in accordance with the resolution of the Council of the Interparliamentary Assembly of the Commonwealth of Independent States dated February 14, 1995 (Model, 1996). In accordance with the "Concept of the Model Code of Criminal Procedure for CIS Member States" in some CIS countries the possibility of participation of citizens in the administration of justice, including the creation of a jury trial, was provided.

At the time of the development of the CIS model code, the CIS member states were faced with state and legal differences and uneven development of judicial reform in the CIS countries. This was manifested in various variants of the legislative solution of the question of the composition of courts hearing criminal cases: a single judge; collegiums of 2 and 3 professional judges; collegiums of representatives of the people consisting of 1 judge and 2 people's assessors, 1 judge and 4 people's assessors, as well as 2 judges and 3 people's assessors; jury court: 1 judge and 12 jurors (Model, 1996).

As one of the principles of criminal proceedings, the Concept provided for the participation of representatives of the people in the verdict and contained recommendations on the creation of two variants of the judicial composition (Model, 1996):

- 1) Consideration of the majority of criminal cases by the court of first instance consisting of a judge and 2 equal jurors, resolving all issues jointly;
- 2) Consideration of criminal cases in which the defendant pleaded not guilty by the jury, composed of a judge and 12 jurors, resolving issues under the jurisdiction of the court in accordance with its legal competence; the verdict, that is, the decision on the guilt or innocence of the defendant, is the prerogative of the jury of jurors.

In addition to these "most characteristic judicial compositions", the working group considered it possible to design other panels resolving criminal cases: consisting of 3 professional judges, 3 judges and 12 jurors, as well as the European continental model, referred to as the jury in Italy and France (Model, 1996).

Thus, the Model Code of Criminal Procedure for the CIS Member States, adopted by the Interparliamentary Assembly of the CIS Member States on February 17, 1996, established the following compositions of the court in the administration of justice: single-handedly, three judges, a judge and 12 jurors (Articles 64, 65, 71) (Dudko, 2014).

To establish a jury trial in the course of judicial reforms in the post-Soviet states it was necessary to develop a theoretical substantiation of the expediency of jury trial (Pashin, 2001; Constitution, 1978), as well as to form a regulatory legal framework: to make appropriate changes in the constitution, laws on judicial system and criminal procedure codes.

However, not all post-Soviet countries have established jury trials as a form of administering justice at the legislative level in their constitutions or criminal procedure codes.

Of course, the constitutional enshrinement of the institution of jury trials is of paramount importance. The establishment of jury trials was provided for in the Constitution of the RSFSR of 1978 (Constitution, 1978) and the Constitution of the Russian Federation of 1993 (Articles 20, 32, 47, 123) (Constitution, 1993), the Constitution of Kazakhstan of 1995 (Article 75) (Constitution, 1995), the Constitution of Georgia of 1995 (Article 82) (The Constitution, 1995), the Constitution of Ukraine of 1996 (Articles 127, 129) (The Constitution, 1996), the Constitution of the Kyrgyz Republic of October 21, 2007 (Articles 15, 82) (Constitution, 2007) and June 27, 2010 (Articles 26, 93).

Legislative activity on the introduction of jury trials in the Russian Federation, in pursuance of the Concept of Judicial Reform, began at the constitutional level through amendments and additions to the Constitution (Basic Law) of the RSFSR in 1978. The Law of the RSFSR of November 1, 1991 "On Amendments and Additions to

the Constitution (Basic Law) of the RSFSR” changed the wording of Part 1 of Article 166 of the Constitution of the RSFSR in 1978 and fixed the possibility of consideration of criminal cases with the participation of jurors: “Consideration of civil and criminal cases in the courts is carried out to

By the beginning of 1993 the necessary prerequisites for the revival of jury trials in the Russian Federation were created. The Law of the Russian Federation of July 16, 1993 “On Introduction of Amendments and Additions to the Law of the RSFSR “On the Shipbuilding of the RSFSR”, the Criminal Procedural Code of the RSFSR, the Criminal Code of the RSFSR and the Code of Administrative Offences of the RSFSR” (On introducing, 1993) the jury trial was introduced pursuant to Article 166 of the Constitution of the RSFSR (Demichev, 2000).

Thus, the legal reality of the jury trial became before the adoption of the current Constitution of the Russian Federation in 1993, after the introduction of changes to Part 1 of Article 166 of the Constitution of the RSFSR in 1978, which fixed the possibility of consideration of cases in the court of first instance with the participation of jurors.

The Constitution of the Russian Federation adopted on December 12, 1993, confirmed and concretized the provisions on jury trials (Articles 20, 32, 47, 123). Unlike the Constitution of the RSFSR, the Constitution of the Russian Federation enshrines not only the right of citizens to participate in the administration of justice (Art. 32, Part 5; Art. 123, Part 4), but also formulates the right of the accused to be tried by a court with the participation of jurors (Art. 20, Part 2; Artm 47 Part 2) (Constitution, 1993).

The Constitution of the Russian Federation contains in Chapter 2 “Human and civil rights and freedoms”, in the list of human and civil rights, two independent constitutional rights, which are implemented in criminal cases considered by the court with the participation of jurors.

First, the personal (civil) right of an accused person to a jury trial (Article 20 Part 2: “The death penalty may, until its abolition, be established by federal law as an exceptional measure of punishment for particularly grave crimes against life when granting the accused the right to have his case heard by a court with the participation of a jury”; Article 47 Part 2: “The accused person accused of a crime has the right to have his case heard by a court with the participation of a jury in cases provided for by federal law”).

Second, the political right of citizens to participate in the administration of justice (art. 32, para. 5: “Citizens of the Russian Federation have the right to participate in the administration of justice”, Art. 123, paragraph 4: “In cases provided for by federal law, proceedings are conducted with the participation of jurors”).

The constitutionality of the provisions on jury trials (enshrined in the Constitution of the RSFSR of 1978 and the Constitution of the Russian Federation of 1993) is of fundamental importance. The fixation of a jury trial in the Constitution of the Russian Federation predetermined the impossibility of abolishing a jury trial in Russia (Demichev, 2003), because “the rejection of a jury trial without changing the Constitution is simply impossible” (Dudko, 2017).

For the successful functioning and further development of a jury trial, in particular a jury trial in the Russian Federation, not only the constitutional fixation of its status is important, but also the legal position of the Constitutional Court of the Russian Federation on the application of criminal procedure norms in the consideration of criminal cases by courts with the participation of jurors (Dudko, Neymark, 2018; Auberekov, 2005).

The Constitution of the Republic of Kazakhstan of 1995 enshrines that in cases provided by law, criminal proceedings are carried out with the participation of jurors (Part 2 of Article 75) (Constitution, 1995).

The Constitution of Georgia of 1995 stipulates that in general courts cases are considered by jurors in cases and in the order provided by law (Article 82) (The Constitution, 1995).

The Constitution of Ukraine of 1996 enshrines that justice is administered by professional judges and, in cases determined by law, by people’s assessors and jurors (Article 127); court proceedings are administered by a judge alone, by a panel of judges or by a jury (Article 129); Article 127 in the edition of 2016: Justice is administered by judges. In cases defined by law, justice is administered with the participation of a jury (there are no changes - no people’s assessors) (The Constitution, 1996).

According to the Constitution of the Kyrgyz Republic of 2007, everyone has the right to trial by a court with the participation of a jury in the cases provided for by law (Article 15); in cases and according to the procedure provided by law, citizens of the Kyrgyz Republic have the right to participate in the administration of justice (Article 82) (Constitution, 2007). In the Constitution of the Kyrgyz Republic in 2010 these provisions are fully preserved (Article 26, 93) (Constitution, 2010).

At the same time, the Constitutions of Ukraine, the Republic of Kazakhstan and Georgia stipulate only the right of citizens to participate in the administration of justice as jurors. The Constitution of the Republic of Kyrgyzstan, as well as the Constitution of the Russian Federation, enshrines both the right of citizens to participate in the administration of justice as jurors and the right of the accused to be tried by a court with the participation of jurors.

“It is necessary to emphasize that the inclusion in the constitutions of a number of countries - former Soviet



republics of the USSR - of the norms on jury trials is a progressive moment declaring the creation of a system of independent judiciary with the participation of the people in the administration of justice" (Demichev, 2000). "The comparative analysis of the constitutionalization of the institution of jury trial in the post-Soviet countries, where it is only developing in the judicial proceedings, and countries with a long tradition of its application shows the importance of this form ... because the existence of a constitutional norm guarantees the introduction of jury trial in the administration of justice as its full participant, providing an effective and independent judiciary" (Auberekov, 2005).

Similar provisions on jury trials were also contained in the 1995 Constitution of Armenia (Art. 91, see Constitution, 1995) and the 1992 Constitution of Latvia (Art. 85, see The Constitution, 1992). Nevertheless, these constitutions were amended to exclude the constitutional provisions on jury trials in 2005 and 1996 respectively.

The next stage of legislative consolidation of the Jury Court was the introduction of amendments to the criminal procedure legislation. The corresponding sections regulating the peculiarities of consideration of criminal cases by the courts with the participation of jurors were included in the CPC of the RSFSR in 1960 (amendments of 16 July 1993, see On introducing, 1993), the CPC of the Republic of Azerbaijan of 14 July 2000 (CPC, 2000), CPC of the Republic of Kazakhstan 1997 (changes of January 16, 2006), CPC of the Kyrgyz Republic 1999 (changes of June 25, 2007), CPC Georgia of October 9, 2009), and Ukraine (April 13, 2012).

At present, in the post-Soviet space the jury is functioning in the Russian Federation (since November 1, 1993), in the Republic of Kazakhstan (since January 1, 2007), in Georgia (since October 1, 2010), in Ukraine (since November 19, 2012).

The Russian Federation is the first post-Soviet state in which courts began to consider criminal cases with the participation of jurors. Moreover, the organizational peculiarity of the Russian Jury Court is its gradual and gradual distribution among the constituent entities of the Russian Federation (Dudko, 2013).

In the Kyrgyz Republic, the introduction of jury trials was planned from 2012, but was postponed for three years until January 1, 2015, and then until 2019 (Kyrgyzstan, 2019) after the entry into force on January 1, 2019 of the new CPC of the Kyrgyz Republic, adopted on 02.02.2017.

The CPC of the Republic of Azerbaijan (approved on 14 July 2000) provides for the right of the accused to a jury trial (Article 24.1) and regulates first instance proceedings with the participation of jurors (Articles 359-380) (CPC, 2000), although the jury trial in Azerbaijan has not yet been introduced. According to the Law of the Republic of Azerbaijan No. 310-IG "On Courts and Judges" dated 10 July 1997, it was supposed to establish the institution of jury in Azerbaijan, but with a reservation that the provisions on jurors will come into force after the completion of the judicial reform, without defining the terms. The Criminal Procedure Code of the Republic of Azerbaijan of July 14, 2000 contains the chapter XLVI on the court with the participation of twelve jurors who decide on the guilt of the defendant (Article 79). However, the government of Azerbaijan continues to postpone the introduction of jury trials due to a lack of national budget.

The concept of judicial-legal reform in the Republic of Belarus of April 23, 1992 provided for the introduction of jury trial as the most democratic form of justice developed by civilization, but the 1996 Constitution of the Republic of Belarus did not include a provision on jury trial. The Law of January 13, 1995 "On the judicial system and the status of judges in the Republic of Belarus" contained a section devoted to jury trials. The Jury was to consider in the composition of one judge and seven jurors criminal cases on crimes for which the penalty is up to 10 years, if the accused does not confess guilt; in the composition of three judges and nine jurors - to consider cases on crimes with more than 10 years' punishment or the death penalty, if the accused denies guilt.

Initially, the introduction of the jury trial was supposed to take effect in January 1996, and then it was postponed until 2000. The law of May 11, 2000 completely excluded from the legislation the jury trial due to the fact that the Parliament could not overcome the veto of the President of the Republic of Belarus (Martinovich, 1997; Sorkin, 2005; Tisen, 2010; Rzayev, R. (2019); The possibility, 2011). After 17 years, the issue of jury trials is again being discussed in Belarus. The President of the Republic of Belarus has signed a decree which states that he will study the possibility of introducing jury trials as a new form of justice. The Chairman of the Supreme Court of the Republic of Belarus explained that it is planned to first apply the jury trial for a very limited category of cases: serious crimes, for which there is a penalty of life imprisonment or death penalty (The possibility, 2011).

The scientific literature actively investigates and discusses the issue of jury trial models operating in various countries, including in the post-Soviet states (Dudko, Neimark, 2018; Kovalev, Suleymenova, 2010; Kovalev, 2010; Batyrbaev, 2017; Nasonov, 2015; Tisen, 2010; Sorkin, 2005; Kuchvalskaya, 2019; Rzayev, 2019). The issue of the jury trial model is important for the effective functioning and further improvement of this form of court proceedings.

The world practice and the theory of criminal procedure law distinguish two models of participation of representatives of the people in criminal proceedings.

First, the Anglo-Saxon (Anglo-American) model with the division of powers between professional judges and the

jury in addressing the issues of “fact” and “law”, i.e. the classical jury trial.

Second, the continental model (the Sheffen court), in which a single panel of professional judges and representatives of the people jointly resolves all issues of sentencing. This model is also called a mixed jury model. In addition, it is a continental model conditionally, taking into account the historical formation. “At present, on the European continent, the classical model of jury trials, which provides for the division of competence between a professional judge and jurors, in addition to the Russian Federation, is provided for by the legislation of nine countries: the United Kingdom of Great Britain and Northern Ireland, Ireland, Austria, Belgium, Norway, Spain, Malta, Gibraltar and Georgia”. Kovalev N.P., as a result of the study of models of non-professional legal proceedings, singles out the model of “joint or mixed court” (Kovalev, 2010; Anand, Manweiller, 2005; Thaman, 2011; Kim et al., 2013; Lee, 2016).

The main criterion for determining the model of jury trial is the distribution of powers between professional judge(s) and jurors. This is a fundamental difference between a jury trial and other forms of judicial proceedings and composition of the court when considering criminal cases. The legislative bodies of the post-Soviet states have chosen different models of jury trials when developing the criminal procedure norms regulating the proceedings in jury trials. It is obvious that the political, social and economic conditions and national traditions of each country, as well as the experience of other countries were taken into account.

Independent panels of professional judges (“law judges”) and jurors (“fact judges”), with full separation of their powers in resolving criminal cases on “fact” and “law” issues, are provided for in the 2001 Code of Criminal Procedure of the Russian Federation (Art. 334, 343, and 348), the 2017 Code of Criminal Procedure of the Kyrgyz Republic (Art. 370 and 375), the 2000 Code of Criminal Procedure (Art. 369, 378, and 379) and the 2009 Code of Criminal Procedure of Georgia (Art. 226).

The 2014 Code of Criminal Procedure (Art. 656) and the 2012 Code of Criminal Procedure (Art. 391) provide for joint resolution of criminal cases involving “fact” and “law”. Thus, in the post-Soviet states, different models of jury trials have been recognized, but the classical model of jury trials is preferred.

## CONCLUSIONS

The Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which contain international human rights standards, do not provide for the establishment of a jury trial as a prerequisite for the protection of rights and freedoms. However, it is the Jury that most closely matches the international standards for the consideration of criminal cases and ensures the right to a trial established by law for those charged with a criminal offence.

The establishment of a jury trial in post-Soviet States was preceded by a scientific justification and the formation of a legislative framework. We supposed that the consolidation of the relevant norms in the Constitutions should be done (in the Russian Federation, the Republic of Kazakhstan, Georgia, Ukraine, and the Kyrgyz Republic) and the Criminal Procedure Codes should be reconsidered (for the Russian Federation, the Republic of Kazakhstan, the Republic of Azerbaijan, the Kyrgyz Republic, Georgia and Ukraine).

Analysis of the criminal procedure legislation made it possible to determine the models of jury trials applied in the post-Soviet countries. We noted that the Criminal Procedure Code (CPC) of the Russian Federation, Kyrgyz Republic, Georgia, and the Republic of Azerbaijan regulated by the classical model of jury trials; the CPC of the Republic of Kazakhstan and Ukraine regulated by the mixed model of jury trials. The necessary theoretical and regulatory legal prerequisites have been determined for the further expansion of jury trials in Belarus, Azerbaijan, and Kyrgyzstan.

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