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ARTÍCULOS
UTOPÍA Y PRAXIS LATINOAMERICANA. AÑO: 25, nº EXTRA 5, 2020, pp. 187-195
REVISTA INTERNACIONAL DE FILOSOFÍA Y TEORÍA SOCIAL
CESA-FCES-UNIVERSIDAD DEL ZULIA. MARACAIBO-VENEZUELA
ISSN 1316-5216 / ISSN-e: 2477-9555

Jury Trial

Juicio con jurado

Igor Yurievich NIKODIMOV
https://orcid.org/0000-0001-9111-2881
vaslavskaya@yandex.ru; nikodimov.i.yu@mail.ru
Russian State Social University, Russian Federation

Igor Alexeevich BURMISTROV
https://orcid.org/0000-0003-3177-2698
bia962@yandex.ru
Russian State Social University, Russian Federation

Sergey Ivanovich ZAKHARTSEV
https://orcid.org/0000-0003-3389-2925
ZakhartsevSI@rgsu.net
Russian State Social University, Russian Federation

Elena Anatolevna MIRONOVA
https://orcid.org/0000-0001-7452-3216
MironovaEA@rgsu.net
Russian State Social University, Russian Federation

Tatyana Nikolaevna DOBRUSKINA (SINYUKOVA)
https://orcid.org/0000-0002-2254-280X
t.dobruskina@gmail.com
Russian State Social University, Russian Federation

Este trabajo está depositado en Zenodo:
DOI: http://doi.org/10.5281/zenodo.3984230

RESUMEN

El juicio con jurado tiene una larga historia, sus inicios se pueden encontrar en la antigüedad. Con el tiempo, el clásico juicio por jurado se ha transformado en varios modelos bajo la presión de factores inherentes a ciertos sistemas legales. En la etapa actual, funciona en la mayoría de las democracias, utilizando las características propias de cada país. Sin embargo, el nivel de viabilidad de utilizar esta institución en cada estado es diferente. Centrarse en este problema es considerar las características del funcionamiento de la institución del juicio con jurado como garante de la ley y la justicia. Este artículo analiza el concepto y las características individuales del funcionamiento de la institución del juicio con jurado.

Palabras clave: juicio, administración de justicia, jurado, veredicto.

ABSTRACT

The jury trial has a long history, its beginnings can be found in antiquity. Over time, the classic jury trial has been transformed into various models under the pressure of factors inherent in certain legal systems. At the present stage, it functions in most democracies, using the features characteristic of each country. However, the level of feasibility of using this institution in each state is different. Focusing on this problem is to consider the features of the functioning of the institution of jury trial as a guarantor of law and justice. This article analyzes the concept and individual characteristics of the functioning of the institution of the jury trial.

Keywords: trial, administration of justice, jury, verdict.

Recibido: 24-06-2020 ● Aceptado: 20-07-2020

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INTRODUCTION

The study of such a phenomenon as a jury trial is unfairly considered the prerogative of only legal sciences. The jury, in fact, is a complex system and a social phenomenon (Zhidkikh: 2001). Studying only legal and procedural aspects will not allow fully appreciating this element of the judicial system. Therefore, a comprehensive study of it is necessary for a holistic view, both from a legal point of view and a sociological, historical one.

For a full understanding of such a complex and controversial institution of the legal system, it is necessary to study it from different sides of influence. Depending on how this phenomenon is viewed, the jury trial will acquire different characteristics. Therefore, it will be possible to give different definitions of the institution.

The legislator does not define the concept of "jury trial" in regulatory legal acts that standardize its application. Therefore, theoreticians of criminal procedure law independently derive this concept, based on certain characteristic features of the institute and the requirements of the law for its application.

Problematic issues of the jury trial are raised in the fundamental works of such authors as V.I. Vlasov (2007), V.V. Koryakovtsev (2015), T.G. Kasaeva (2019), and S.A. Pashin (1995).

Certain issues of the jury trial are considered in the scientific works of the following researchers: A.A. Akimchev (2000), P.L. Mikhailov (2003), N.A. Razveikina (2007), and others.

METHODOLOGY

We were guided by general scientific and special methods of knowledge: analysis, generalization, historical and comparative, selective observation, expert assessments, content analysis of documents, comparative law, etc.

The main method used was a system-structural method, which allowed justifying the conclusion that the procedural and legal position regarding the jury trial clearly defines it as a type of legal proceedings, where issues of fact are decided by jurors (elected from among the citizens of the state) and issues of sentencing are decided by a professional judge. The jury trial is an integral institution that ensures that the interests of social actors are legally agreed upon in relation to safe and fair living conditions. At the same time, the jury trial is a democratic phenomenon that has a long history of development and the distinctive features of judicial proceedings, which include transparency, collegiality, and secrecy of voting. This allows characterizing it as a fair and open institution. A long history of development indicates the need and productivity of its application.

RESULTS

It was revealed that the jury is an integral institution that ensures that the interests of social actors are legally agreed upon in relation to safe and fair living conditions.

We believe that the jury trial is a democratic phenomenon with a long history of development and the distinctive features of judicial proceedings include transparency, collegiality, and secrecy of voting, which allows characterizing it as a fair and open institution. Its long history of development indicates the need and productivity of its application.

It was determined that the genesis of the jury trial occurred over time from Antiquity to the end of the Middle Ages. Only the sources of judicature could be considered in the ancient period in Greece and Rome (such elements as public participation in legal proceedings, collective decision-making). In the Middle Ages in England, on the contrary, a court was formed that had the features of a modern jury, while still not being completely identical to it.

It was established that the jury trial in Russia was legally fixed by the Judicial Reform of 1864, but in practice, it began to function much later. At the same time, the reform laid down the basic principles of the judicial process: transparency, oral presentation, competition, and equality.

To improve the legislation, there is a need to include an article on the establishment of a special commission that performs the function of selecting members of the jury, indicating the main functions in the Federal Law "On jurors of federal courts of general jurisdiction in the Russian Federation" dated August 8, 2004, N 113-FL, stating the following edition:

"Article 4.1 Jury Selection Panel

1. The Jury Selection Panel shall verify the lists of jurors, certifying their compliance with the requirements of this law.
2. The Jury Selection Panel checks compulsory secondary education for jury candidates".

DISCUSSION

To define the concept of jury trial in its legal meaning, it is necessary to refer to the main legal acts regulating the application of this institution. The Constitution mentions a jury trial in part 2 of Article 47, proclaiming the right of a person accused of committing a crime to a jury trial in cases provided for by federal law. This rule gives the accused a choice: whether the criminal case will be considered by a professional judge alone or by a jury trial. Part 5 of Article 32 proclaims the right of citizens to participate in the administration of justice. It follows from this that every citizen can exercise their right to participate in legal proceedings and this will contribute to monitoring the implementation of judicial functions, thereby increasing the authority and confidence in the judicial power on the part of the population, which is necessary for a democratic society.

The Code of Criminal Procedure of the Russian Federation gives only the concept, according to which, a "jury" is a person involved in the procedure established by the Code of Criminal Procedure to participate in a trial and issue a verdict (Ugolovno-protsessualnyi kodeks Rossiiskoi Federatsii: 2001).

At the same time, several requirements are presented to the jury, only upon compliance with which they can participate in the trial.

The Code of Criminal Procedure describes in detail the jury trial regarding the terms, rights, and obligations of the parties, evidence, and jury verdict. Federal law dated August 20, 2004, N 113-FL (as amended on July 1, 2017) "On jurors of federal courts of general jurisdiction in the Russian Federation" also does not define a jury, but regulates in detail the compilation of lists of candidates for jurors. Based on the norms listed in the legislation, the concept of a jury trial can be formed.

According to the norms of the Code of Criminal Procedure regarding the jury trial, first of all, it is possible to assert that a jury is a form of criminal proceedings, the judicial investigation of which is conducted by the presiding judge with the participation of the jury, who consider the issues of the guilt of the defendant and subsequently reach a verdict by voting.

In the legal literature, there are other concepts, for example, "jury trial is a form of legal proceedings, which consists in the fact that the consideration and resolution of a criminal case in court is carried out by both a professional judge and a jury consisting of people's representatives" (Kudryavtseva: 2007).

Paying attention to the main features of judicial proceedings with the participation of jurors, it is possible to give the following definition of a jury trial as a legal institution. The jury trial is a special type of proceedings conducted following the procedural rules, the distinctive feature of which is the resolution of issues of law by a professional judge and issues of the fact of the commission of a crime by a jury whose members are selected from among the citizens of the state that meet the requirements of the law.

The jury trial is a historical phenomenon, and the study of any historical phenomenon should be approached with consideration for the factors that affect its development. The jury trial has been changing over time and has evolved, therefore, it is necessary to approach the study of this phenomenon, considering the principle of historicism (Demichev, Isaenkova, 2005). The need to consider a jury trial from a historical point of view is justified by the fact that to determine the main characteristics of an institution, it is necessary

to know the features of its origin and formation over time. Turning to the origins of the jury trial, it is necessary to consider the ancient states where collective law and justice appeared.

Certain elements of the jury trial can be observed in the ancient period, and it is important to distinguish the emerging features of the jury trial and the rudiments of tribal courts.

To study in detail the nature of the jury trial, it is necessary to explore the origins of the institution – the legal proceedings of Ancient Greece. The judicial system of Ancient Greece consisted of the highest judicial body of Athens – the Heliaia (which included the geliasts), the Areopagus, which examined cases of intentional killings, and the Court of Ephets. Studying the genesis of the courts of Ancient Greece, it is necessary to pay special attention to the court of geliasts and the courts of justice (Bobotov: 1995).

The court of Ancient Greece consisted of citizens older than 30 years, which indicates the presence of age restrictions. Most likely, it was important for the Greeks that the judges had life experience. In addition to the age limit, there was also a gender qualification. The jury could only be men, and this applied not only to the court but also to other bodies in Athens. The jury should have the qualities of trustworthiness, have no debts to the state, and be not deprived of civic honor (Gorbunova: 2009). The educational qualification also mattered – jurors had to pass a course of military training. The Heliaia was also characterized by the presence of a residential qualification and state.

It is important, however, to note the absence of a property qualification, which indicates an element of democracy in the process itself. Although this is a very controversial statement, on the one hand, the lack of high financial status is a sign of equal opportunities for all citizens to participate in jury trials.

At the same time, it can be noted that participation in the court could be a source of income for the poor citizens of Athens. This fact indicates that they are more interested in the role of a juror. Therefore, the existence of an interest in the monetary compensation of the juror calls into question the existence of his interest in making a fair decision. It is interesting to note that such problems concern modern researchers (Globenko: 2007).

The geliasts participated in cases where crimes were committed against the state: high treason, official embezzlement, participation in a conspiracy. They were responsible for the most serious crimes, for which even the death penalty was intended as a punishment.

The geliasts were organized into judicial divisions, most of which consisted of 501 members. Especially serious cases were considered in the double division – 1,001 people, and cases of exceptional importance – 1501 people (Krasheninnikova: 2003). The formation of jury divisions was made by drawing lots, which eliminated the possibility of predicting the composition of the division and, therefore, bribing jurors (Gorbunova: 2009). Before the beginning of the meeting, the geliasts swore an oath where they pledged to judge by the laws, in accordance with the highest justice (Kudryavtseva: 2008), and also not to accept "gifts".

To make a decision by voting, the judges were provided with balloting stones of various colors, which, without consulting, were secretly lowered into one of the amphora standing in the hall, thereby expressing their opinion on the guilt or innocence of the accused. After the vote, all the stones were counted and the decision was announced.

Trials were divided into those where the punishment was provided by law and those where the punishment was established by voting (Gutsenko et al.: 2002). Judges had to choose the amount of punishment from those proposed by the plaintiff and defendant, and this time they could consult before giving their vote (Kudryavtseva: 2008). Geliasts, in this case, were assigned the role of determining the guilt of the accused and the amount of punishment imposed for them. As we will see later, the solution of issues of fact and the law of juries became a feature of the jury in France on the Reform of 1941.

The judicial system of Ancient Greece shows that the court already at that time contained elements of two important principles of legal proceedings: nationality and publicity. A separate feature of the proceedings was collegiality, which had a philosophical justification.

In Ancient Greece, among the political and legal views, the teachings of the senior sophists – Plato and Aristotle, which laid the foundations of democracy, were most successful. Starting from the ideas of moral

freedom of the individual, representatives of this period of ancient philosophy developed doctrines about the equality of citizens and the contractual origin of the state. Hence the idea of collective government: each individual was considered to be involved in justice and political art.

The idea of equal participation of people in justice justified the participation of all citizens in the government. "No state can resist if few are proficient in political art", Protagoras concluded. (Vorotilin et. al.: 2002). Studying the system of government in Ancient Greece, we note that all governing bodies are collegial. It seems that the Greeks realized that collective decisions have greater fairness and validity, so they established boards for public administration, decisions in which were made by a majority vote.

The next stage in the development of public justice is the Roman State of the Republican period. The most important people's courts were in the early period of the Republic. As for the later period, their role became insignificant (Pokrovsky: 1999). Two people's collegiums appear as special forms of legal proceedings in Rome: the Centuriate Assembly and the Assembly of Tribes.

The Centuriate Assembly appeared earlier than the Assembly of Tribes and considered cases of the most serious criminal offenses, the death penalty being provided for as punishment (Gorbunova: 2009). This is due to the quality component of the assembly, which included patricians. The Assembly of Tribes consisted of plebeians who considered cases of crimes for which a fine was provided as a punishment.

Thus, the selection of people's assessors was carried out considering the special criteria that the patricians had, which implied the presence of several qualification conditions in the court of Ancient Rome, which included age, health, reliability, and class. However, the property qualification and official position did not matter during the selection process.

There was also no educational qualification since military qualities were more important than the level of education for the Romans. The residential qualification did not matter either, due to the Roman policy of conquest, citizens living far from Rome could not be deprived of the right to participate in legal proceedings.

A large number of patricians had the right to take part in such meetings due to the state structure of the country. The list of individuals who had to bear the duty of a jury judge was compiled annually and reached 11-12 thousand people (Gorbunova: 2009). The trial began with the selection of jurors, who subsequently, by voting, decided on the guilt or innocence of the accused.

The decision of the assembly was made by voting, in the period of the early republic it was oral and open. The people's assessors, having listened to the case, made a decision without a meeting by a majority vote of the centurium or the tribe (Galanza: 1963). Later, the vote was taken secretly, by inscribing on a plate in the form of the letter "U", which meant "for", and the opposite decision "against", which was indicated by the letter "A".

Thus, during the Republican period, the judicial system in Rome was dominated by democratic sentiments. The low age and land qualification meant that almost all the inhabitants of Rome could participate in justice. At the same time, the division of assembly based on citizenship allows concluding that there was a significant difference in the rights of people's representatives. The transition from open voting to secret voting indicates the equality of votes of all participants of the board, as well as the independence of the decision made by its members.

After the collapse of the Roman Empire into the Western and Eastern parts, they became subject to barbarian tribes. In 419, the Visigothic Kingdom appeared on the territory of the Western Roman Empire (Lewandowski: 2013), the legal sources of which contain customs regulating legal proceedings.

In 506 AD, Alaric II, King of Visigothic Spain, published the Breviary of Alaric, which became an abbreviated codification of the Roman law in force in Spain in the 6th-7th centuries. Since the precept of the Breviary was written in Latin, it is possible to say that it became for the Visigoths, if not the main source of law, but equal to the Gothic. Thus, the laws of the first Visigothic Kings did not cancel the Roman legislation but supplemented it. Therefore, it is possible to state the fact of preservation and reproduction of the Roman legal culture in the territory of the Kingdom of Toulouse (Aurov: 2012).

The most interesting for our study is the legal source of Franks of the 5th-6th centuries, called the Salic law. This act describes the criminal process of the ancient Germanic tribes. The search and punishment of the criminal in this period was the business of the entire community (hundreds) (Bobrovsky: 2007). After that, the criminal was led to a gathering of free people, where the most important residents of the community, chosen by the members of the hundred, carried out justice. This court was called the Court of Rachimburgii.

Only free and wealthy Franks who were warriors could be among the Rachimburgii. All free and full-fledged residents were present at the court session. Thus, it turns out that the defendants and the Rachimburgii judging them lived on the same territory, so there is no doubt that the latter knew about the identity of the defendants by their occupation. This fact is a significant difference between the assembly of the most important people from the modern jury.

The Salic law says that the Rachimburgii "spoke the law", knew the legal norms, and participated in the meetings. The decision was made by a majority vote, and a minimum of seven persons were required to vote for it to be recognized as valid. However, Rachimburgii could be subjected to trial, as evidenced by the article the Salic law: "If the Rachimburgii refuse to tell the law, seven of them are awarded 120 den, which is 3 sol" (Skorobogatov: 2013).

The Tungin presided over the court, later the Earl took his place, and the need for Rachimburgii completely disappeared. Gradually, the king's control over the officials increases. The Rachimburgii become presidents of the courts, and their place was taken by scabins – appointed officials who knew the laws (Korsunsky: 1963).

Thus, the history of the first rudiments of jury trial began in ancient times. In Ancient Greece, this was expressed in the resolution of disputes in the main judicial body of Heliaia, consisting of citizens of Athens, in Ancient Rome – in the work of judicial committees, which included the patricians. This phenomenon is due to the theory of ancient philosophers, coming from the reasoning of which, it was believed that the decisions made by the collective mind have more justice.

A certain resemblance to the modern jury trial was present even then: as ordinary judges of the verdict, ordinary residents; the decision made by voting; presence of a qualification system. Based on these facts, it should be concluded that the courts of the ancient period are the prototypes of the modern court with the participation of jurors.

Speaking of the history of the jury trial, people most often refer to the 12th century in England, as the country where this institution originated. However, it is worth noting that the main elements of a jury trial originated earlier. When the ancient states needed judicial proceedings, the first elements of a democratic court began to appear. Collectivity, the secrecy of voting, independence of judges' decisions, and transparency are the main principles of judicial proceedings.

The modern jury was formed much later. However, even at this stage, it is possible to say that the jury trial is a democratic phenomenon with a long history of development and the distinctive features of judicial proceedings, which include transparency, collegiality, and secrecy of voting.

At the junction with legal views on the jury trial as an element of justice, there is also a social value of this institution. It is one of the persuasive arguments in the debate about its progressiveness (Blazhevich: 2005). According to sociological views, the jury trial is not only a special form of legal proceedings but also an optimally organized joint activity of millions of people aimed at maintaining a safe and just social world. It is a complex system of social and legal relations between victims of crimes and accused or defendants, plaintiffs, jurors, and professional lawyers, public and state institutions (Zhidkikh: 2001).

Special importance in the sociology of law is given to the study of the effectiveness of laws, the main social functions of law (regulatory and educational), and public opinion about law and justice.

From the standpoint of the sociology of law, the jury trial has unique procedural features. The object of research in sociology is the system of relations in the process of trial with the participation of jurors.

In this case, special attention is paid to the mechanism of the jury's perception of participants in the trial, evidence, and testimony, as well as the interaction of jurors in the conference room, their arguments,

stereotypes, and principles. Within the framework of this approach, the existence of the concept of jury trial as a social phenomenon is fully justified.

It is indisputable that the jury trial is a judicial legal concept, but there's no point to reject the social significance of this institution. It consists in the fact that the functionality of a jury trial is related to the general social context. Since crime is a subsystem of a social system consisting of people (Burmistrov, Glazkova: 2019), the consideration of crimes in a jury trial will have a socially significant purpose.

The jury trial is a social and legal institution, the practical activities of which are carried out in the system of justice bodies. As a result, a unique system of relations between participants in the trial is born.

Thus, the jury trial is a social institution that ensures that the interests of social subjects are coordinated on a legal basis concerning safe and fair living conditions in a specific historical space.

The optimal combination in the judicial system is a professional court and a court with the participation of representatives of the society (Demichev, Isaenkova: 2005). This statement is emphasized in the light of views on jury trial from a historical, social, and legal points of view.

The jury trial is a complex element of the judicial system, which is why it is so important to understand its significance for the most important areas of society. Considering the jury trial, one can notice what influence it has on various spheres of society. In this regard, for each of them, there is a certain understanding of the jury trial associated with its appointment.

From the point of view of sociology, the jury trial is an institution of self-defense of society, which has sufficient power to protect it from the arbitrariness of the authorities and preserve the safety of living conditions. However, the complexity of the jury trial is also justified by its historical development. It was in the process of the genesis of the institute that people realized that to maintain democracy, equality, and justice in the state, an open and honest court was necessary.

CONCLUSION

Thus, the analysis makes it possible to formulate a conclusion that the jury trial is not only a legal, historically formed element of the judicial system, but also an important social phenomenon, the practical activity of which is carried out in the system of justice. As a result, a specific system of relations is formed between the participants in the trial.

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BIODATA

Igor Yurievich NIKODIMOV: Doctor of Law, Associate Professor, Russian State Social University, Faculty of Law, Russia. The author of more than 30 scientific and educational works. Scientific interests: the development of the theory of state and law, the history of political and legal doctrines.

Igor Alexeevich BURMISTROV: Candidate of Law, Associate Professor, Russian State Social University, Faculty of Law, Russia. Scientific interests: the development of the theory of state and law, the history of political and legal doctrines.

Sergey Ivanovich ZAKHARTSEV: Doctor of Law, Professor, Russian State Social University, Faculty of Law, Department of Bar and Law Enforcement, Russia. Scientific interests: operational-search activity, criminal process, law enforcement, philosophy of law.

Elena Anatolevna MIRONOVA: Candidate of Law, Associate Professor, Russian State Social University, Faculty of Law, Department of Criminal Law Disciplines, Russia. Scientific interests: operational-search activity, criminal process, law enforcement, philosophy of law.

Tatyana Nikolaevna DOBRUSKINA (SINYUKOVA): Russian State Social University, Faculty of Law, Russia. Teaching disciplines: penal law, legal psychology. Scientific interests: fight against corruption, prevention of extremism and terrorism, legal awareness, legal culture, psychology of investigative actions, civil society institutions.