

CRIMINAL PROSECUTION OF TERRORIST CRIMES IN JURY TRIAL: LEGALITY AND APPROPRIATENESS

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Abstract

Purpose: Scientific views of processualists concerning Institute of jurors are given in the article. Some experts defend activity of jury, others - categorically against such form of legal proceedings.

Methodology: The methodological basis of this research is made by a dialectic method. Special methods of knowledge were used: logic-legal; comparative, historical, sociological, system and structural, statistical, method of the analysis and synthesis, legal modeling.

Result: On the basis of the analysis of statistical data and materials of jurisprudence the author's position of rather a criminal prosecution in court with the participation of jurors on criminal cases of terrorist orientation, in the conditions of absence at defendants of the right to petition on such court is stated. The need for differentiation of legality and expediency of restriction, constitutional rights of defendants on the jury is proved. The concrete measures directed to an increase in efficiency of criminal prosecution in the conditions of the constitutional state are proposed. Results of a poll of practical workers are given: investigators, prosecutors, and judges who spoke in favor of the made offers directed to an increase in efficiency of criminal legal proceedings.

Applications: This research can be used for the universities, teachers, and students.

Novelty/Originality: In this research, the model of Criminal Prosecution of Terrorist Crimes in Jury Trial: Legality and Appropriateness is presented in a comprehensive and complete manner.

Keywords: *criminal prosecution, court, jurors, law, judicial proceedings, charge, verdict.*

INTRODUCTION

The operational situation both in the world, and in the territory of modern Russia, continues to remain difficult, and in some regions, first of all, in the North Caucasus, the tendency to its aggravation remains.

As shows the analysis of official sources lately, apparently, some decrease in crimes of terrorist orientation is observed. So, in 2017 it is committed 1871 similar crime, for 2018 - 1679 crimes ([Melnik, 2000](#)), however, and this quantity causes concern in society.

The vigilance of the public is clear: crimes of terrorist orientation cause not only the destruction of constructions and buildings, dishome innocent people, and the most important - life and health. It is enough to remember on September 11, 2001, as a result of terrorist attack total of the victims in buildings of the World Trade Center in New York and around them according to official figures made 2974 persons. Terrorist attack flight from Sharm el-Sheikh (Egypt) to St. Petersburg 224 dead ([Devine, 2012](#)). This list can be continued on October 31, 2015.

The persons who committed terrorist crimes proceeding from the principle of inevitability of punishment in the course of criminal prosecution without fail have to be revealed, detained and prosecuted because only the court can establish guilt and define a punishment measure for deeds.

METHODS

The methodological basis of this research is made by a dialectic method. Special methods of knowledge were used: logic-legal; comparative, historical, sociological, system and structural, statistical, method of the analysis and synthesis, legal modeling.

RESULTS AND DISCUSSION

In earlier works with us it is proved, criminal prosecution of crimes of terrorist orientation represents through function, is initiated by the investigator in a stage of initiation of legal proceedings, further for the purpose of fair judicial proceedings is transferred to the order of the prosecutor designed to hold the state charge of court formulated in a stage of pre-judicial production.

Rather fair judicial proceedings the international legal acts establish "the right, without any distinction, on equal protection of the law" and also in consideration of the case by "fair independent and impartial trial" ([Cockburn, & Green, 2014](#)).

Still, pre-revolutionary Russian processualist noted the importance of the jury. About it, S. I. Viktorsky wrote: "it is impossible to take away the most important from national judges - the ability to logically think also of knowledge of life". From modern processualist, V. V. Melnik notes: "knowledge accumulated by knowledge of life and representations of jurors promotes the prevention of logical and legal mistakes", foreign authors on the matter take a similar position ([Gataullin, 2016](#)).

Developers of the draft constitution of the Russian Federation 1993 considering need of implementation of the international obligations of Russia following from the ratified documents for the draft of the country constitution put the norms guaranteeing judicial protection (Art. 46) and also the right to be the judged court with participation of jurors (Art. 47).

On the basis of these constitutional precepts of law the Federal law No. 174-FZ of 18.12.2001 was the Code of Criminal Procedure of the Russian Federation providing the right of the defendant to petition for consideration of its case by a jury of assessors is adopted.

So, in 2007 2021 persons on 925 criminal cases used such rights. In 2008 vessels with the participation of jurors considered with adjudgement 468 criminal cases, are condemned 900, 236 persons (their number included also criminal cases about crimes of terrorist orientation) are acquitted ([Belyaev, 2017](#)).

However, defendants in cases of such crimes by the right for the jury could use only before the adoption of the Federal law of 30.12.2008 No. 321-FZ which withdrew from the jurisdiction of a jury of the criminal case on separate categories of crimes of terrorist orientation. So, at the will of the legislator, criminal cases about the crimes provided by articles 205, 205.1, 205.2, 205.3, 205.4, 205.5, 206, the p. 4 211, p.1 Art. 212, 275, 276, 278, 279, h the p. 2, 3 of Art. 281 of the Criminal Code of the Russian Federation can be considered only by the court as a part of three professional judges, that is without the participation of jurors.

The made attempts of the appeal not of the constitutionality of deprivation of the right for consideration of the case of the defendant in the commission of the crime of terrorist orientation by the court with the participation of jurors in the Constitutional Court of the Russian Federation were not crowned with success. This decision of the supreme court of the country caused an ambiguous reaction in Russian society. For the purpose of the definition of relation to these short stories, we interviewed the practicing workers.

On the question asked by us to respondents: Whether "The legislator of restriction of a constitutional right of the defendant for consideration of the case by the court with participation of jurors the Law of 30.12.08 N 321-FZ allowed, having eliminated affairs which can be considered by jury, criminal cases about crimes of terrorist character?" 71, 43% of prosecutors, 80,34% of investigators and 76,99% of judges do not see in this Law of restriction of the constitutional right ([Appleman, 2009](#)).

In the researches, we carried out an attempt to be determined in reasons for refusal of the legislator of the jury by cases of terrorist crimes.

In our opinion it is necessary to distinguish from the reasons which defined a similar position of the legislator:

1. The unpreparedness of the Russian society to institute of the jury. On the one hand, citizens not willingly agree to be jurors, at a certain part of the population, the level of sense of justice wishes to civil activity and responsibility the best. On the other hand - lack of the positive attitude of the employer towards the worker on release from direct duties for a stay in the status of the juror. ([Beckman, J. \(2016\)](#)).
2. Increase in quantity of not-guilty verdicts of the jury. During judicial proceedings jurors, for example, from performances from protection learn about the violations of the law allowed in pre-judicial production from charge. Unfortunately, violations of legality quite often happen in criminal procedure activity. These and other circumstances promote the formation of mistrust from jurors to the produced evidence of charge. Practical workers in questioning pointed to the following reasons for numerous violations of the law during conducting special operations (cleaning): a) the imperfection of the legislation is not always possible to observe the law; b) lack of due public prosecutor's supervision and departmental control; c) full confidence of impunity; d) legal nihilism. ([Beckman, J. \(2016\)](#)).
3. Low-quality investigation of the criminal cases connected with terrorism speaks a) lack of evidence-based techniques of disclosure and investigation of terrorist crimes; b) insufficient professional readiness of law enforcement officers.
4. Inefficient preparation and maintenance of the state charge of the court. In practice cases when the state charge of the court is held by unprepared prosecutors are frequent, some of them do not trouble themselves with making up the text of the performance, use contents of the indictment made by the investigator. At such an approach to resist the bright and reasoned oratorical performance of the defender, to talk over participants of court and to achieve removal of a damning verdict by jury very difficult. Our position is shared by 66,46% of prosecutors, 41,88% of investigators and 39,82% of judges interviewed by us ([Villalobos, 2015](#)).

A more rational approach to the maintenance of the jury of assessors in other countries deserves attention. In Germany and France, jurors resolve issues of guilt together with the professional judge. In the Republic of Kazakhstan jurors in a number

of 9 people together with two professional judges make the board. In Russia, the jury is separated from the presiding judge and renders a verdict in the consultative room separately from the judge. [Beckman, J. \(2016\)](#).

However, in legal literature, row domestic and foreign authors call in question a statement that court with the participation of jurors in such structure as today initially is not able to carry out justice.

The constitutional court of the Russian Federation and the legislator limiting the constitutional right of the crimes of terrorist orientation accused of commission on jury proceeded from the principle of expediency. However, questions remained, for example, how to explain, availability on one category of crimes of the jury, and on others - no? How to realize the principle of equality of all before the law and court (Art. 19 of the Constitution of the Russian Federation)? Why similar cases against civilians have to be considered by warships?

One of the problems of effective consideration of the case is ensuring the safe participation of the jury and other participants to process for this category ([Lee, Capraro, & Capraro, 2018](#)).

The carried-out analysis of legal literature and materials of jurisprudence demonstrates that not a small part of judicial proceedings come to an end with not-guilty verdicts of jurors. So, in 2007 by vessels with the participation of jurors on criminal cases, including about crimes of the terrorist orientation of 919 persons it is condemned and 239 - it is justified (26%); in 2008 - 900 persons are condemned, and 236 - it is acquitted (26,2%) ([Matandare, 2018](#)).

Perhaps, the similar decision of jurors is promoted by identification in judicial proceedings of the facts of violation of the law from charge by pre-judicial production. The facts of violation of the law when carrying out counter-terrorist operations by persons of law enforcement agencies are not excluded, it is confirmed by the Decrees issued by the European Court of Human Rights according to complaints of citizens of the Russian Federation, the number of cases coming from Russia to the European Court of Human Rights tends growth ([Tagay, & Ballesteros, 2016](#)).

SUMMARY

On the basis of the conducted research it is possible to draw the following conclusions:

1. Crimes of terrorist orientation pose a threat to the stability of any society. Taking into account a significant amount of the registered terrorist crimes the criminal and legal and criminal procedure activity directed to their minimization at strict observance of the law in ensuring compliance with the rights and freedoms of the person and citizen has essential value.
2. The majority of processualist expresses the positive relation to the activity of court with the participation of jurors, support the constitutional right of defendants on the jury on all categories of crimes. The independent status and the accumulated knowledge of the life of jurors allow rendering the correct verdict concerning the accused persons.
3. Deprivation of the crimes of the terrorist orientation of the right for jury accused of commission contradicts the constitutional norms (Art. 47). The legality and justice have to triumph in ensuring the right for a jury of the crimes accused of this category.
4. It is necessary to remove the causes promoting pronouncement of verdicts of not guilty by the court with the participation of jurors; to strengthen control and supervising activities for prevention of violations of the law, as in pre-judicial criminal cases production, and in holding counterterrorist actions.

CONCLUSIONS

Thus, the permission of the existing problems of ensuring the right of the crimes of terrorist orientation accused of commission for the jury is not possible without the legal nature of the Russian state (p.1 to Art. 1 of the Constitution of the Russian Federation). Therefore, actions and decisions in criminal legal proceedings can and have to be carried out only at strict observance of the law, thereby the state and its officials in a criminal prosecution will achieve the main objectives at the guaranteed observance by the fundamental law of the rights and freedoms of the person and citizen.

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