INTRODUCTION

It has been almost thirty years since the jury trial began to function in Russia, but discussions about the necessity and expediency of this institution continue to this day. Consequently, it is necessary to study the experience of other federal constitutional states. The analysis of their judicial problems will allow us to determine prospects and directions in the development of this institution for considering and resolving criminal cases with the participation of lay magistrates (jurors) on the merits.

Giving a speech at a round-table discussion dedicated to the anniversary of the jury trial in Russia, K. Kosik claimed that the strengthening of this institution in criminal proceedings was facilitated by the fact that the jury’s decision did not depend on departmental indicator reports. Thus, their view of a criminal-legal conflict is not influenced by the “functional position” (THE PUBLIC CHAMBER OF THE RUSSIAN FEDERATION, 2020).

Being an element of civil society in the system of law enforcement agencies administering justice, the jury trial aims at strengthening interaction and increasing public confidence in the judiciary. Despite independence in decision-making and publicity which help avoid judicial errors and abuse of power when considering cases, the effectiveness of the jury is ambiguous not only in Russia but also in foreign countries.

While studying the fundamental constitutional role of the jury, S.A. Thomas noted that this form of legal proceedings had almost no authority with the US society despite a very popular image of the jury trial and the scope of powers inherited from the traditional Anglo-Saxon jury. However, this institution is assigned a major role in the system of checks and balances (THOMAS, 2016).

A. Dzur believed that inactive civil participation in the consideration of cases makes the institution of criminal justice inhuman, bureaucratic and formalistic. These conditions complicate the achievement of the goals of justice (DZUR, 2012). Assessing the scientific conclusions of A. Dzur, R. Gargarella (2014) shared his viewpoint.

The joint study of jurors in criminal proceedings in Eastern and Western Europe conducted by J.D. Jackson and N.P. Kovalev shows a similar trend towards a decrease in the participation of lay magistrates in the consideration of criminal cases. The scholars also highlighted a decrease in the ability of the jury to make independent decisions (JACKSON, KOVALEV, 2016).

In the Russian Federation, like in other democratic countries, where the right of citizens to a jury trial is enshrined at the constitutional level, it is important to maintain a high level of trust in this institution and create a culture of civil participation in the administration of justice. This is not facilitated by a large number of verdicts of acquittal delivered by the jury. This circumstance conditions a decline in the authority of the judiciary and the lack of trust in the court.
LITERATURE OVERVIEW

The analysis of legal sources of the above-mentioned states has demonstrated that people’s participation in the administration of justice in criminal cases is an important element of democracy and plays a special role in the system of checks and balances despite the different legal nature of this institution in such countries. This circumstance is exemplified by the US Constitution (Constitution of the United States, Article III, Section 2, Clause 3) (KONSTITUTSIYA SOEDINENNYKH SHTATOV AMERIKI, 1787), where the jury is mentioned as an important element of the judiciary. The jury jurisdiction includes all criminal acts, except for impeachment cases.

In the Federal Republic of Germany, courts with the participation of non-professional judges are part of the judicial system, which is enshrined in the “Courts Constitution Acts” (Gerichtsverfassungsgesetz – GVG) (ZAKON FRG, 1950). On the one hand, the jury in the Russian Federation is a constitutional procedural guarantee of a committed crime for which capital punishment can be imposed (Constitution of the Russian Federation, Article 47). On the other hand, it is the right to participate in the administration of justice (Constitution of the Russian Federation, Article 32) (KONSTITUTSIYA ROSSIISKOI FEDERATSII, 1993).

In the course of the research, we relied on J.D. Thomas’ study of restoring the fundamental constitutional role of the jury in the United States (THOMAS, 2016) and D. Lehmann’s overview of the German legal system (LEHMANN, 2020). We studied several foreign and Russian scientific works on the issues of reforming the institution of jury in Russia. For example, the independence of lay magistrates in making decisions in criminal cases in Europe, Russia and the United States was considered in the works of J.D. Jackson and N. Kovalev (JACKSON, KOVALEV, 2016; Crosby, 2013). O.V. Kachalova and M.V. Belyaev’s (2017), R. Gargarella’s (2014) and A. Dzur’s (2012) studies are concerned with the issues of forming a culture of civil participation in the administration of justice and the needs of society for a jury trial. The study of theoretical developments has demonstrated that people’s participation in the administration of justice plays an important role in the functioning of democratic institutions, increases confidence in the judicial system and reduces the risk of judicial errors in legal proceedings. However, the functioning of this institution in the existing socio-political conditions has similar problems: the independence of lay magistrates in making decisions, a decrease in the authority of courts, a large number of reversed judgments delivered in these legal proceedings, the need to form and maintain a culture of participation at the level corresponding to the development of this institution. This requires a scientific analysis and substantiation of conclusions about possible solutions to the urgent issues.

METHODS

The methodological basis of this study comprises such general scientific methods as the dialectical method, analysis, synthesis and analogy. Specific scientific methods are as follows: formal-logical, systemic-structural and comparative-legal. They allowed us to compare different views on the jury trial as a special legal phenomenon.

RESULTS AND DISCUSSION

Within the framework of this article, the objects of comparison are federal constitutional states: the Russian Federation, the United States of America and the Federal Republic of Germany. The research subject is criminal proceedings with the participation of lay magistrates, i.e. citizens in the structure of courts. Although the legal systems of Russia, Germany and the USA historically belong to different legal families, which affects their sources of law, these states recognize the leading role of the Basic Law or Constitution in determining the fundamental legal principles. The United States belongs to the Anglo-Saxon legal family. As in the Russian Federation, the right to a jury is a constitutional guarantee. In addition, citizens in smaller juries consider cases on the merits, which allows transferring the experience of the US jury institution onto the Russian legal reality.

The Russian legal system also has some features typical of the Romano-Germanic legal family. For example, the German system of criminal proceedings allows people’s participation in the
consideration of cases on the merits as an institution of “Schöffen” regulated by the "Courts Constitution Acts". This institution functions as the composition of a court, where professional judges and common citizens are members of a single judicial collegium considering and resolving a criminal case on the merits. The positive experience of the Federal Republic of Germany in this matter can also be considered in the further reforming of the jury in the Russian Federation.

According to many scholars and practicing lawyers, the positive aspect of the constitutional right to a jury trial is that this form of criminal proceedings provides more reliable protection of civil rights and freedoms, imposes higher requirements on proving the guilt of a person and appointing criminal punishment, minimizes the risks of unfair decisions in comparison with other procedural forms. For example, V.V. Melnik believed that jury trial could ensure an innocent person a better chance of acquittal. This form of legal proceedings better protects human rights and civil freedoms from illegal and unfounded accusations if compared with the general procedure for passing the final court decision (MELNIK, TRUNOV, 2017).

O.V. Kachalova and M.V. Belyaev (2017) indicated that the widespread use of the jury institution increased the level of confidence in the court on the part of citizens, affected the quality of justice and reduced the risk of judicial errors when passing sentences. The institution of jurors is being reformed in the Russian criminal proceedings. The reform aims at involving citizens in the administration of justice. The legislator believes that this goal can be achieved through expanding the competence of the court with the participation of jurors. It is also expected that the number of motions for a jury trial in criminal cases would increase.

Nowadays it is difficult to assess what expectations of the legislator and reformers will be justified regarding the increase of petitions for considering criminal cases by courts with the participation of jurors due to the expansion of their jurisdiction. However, the statistics presented on the website of the Judicial Department at the Supreme Court of the Russian Federation indicate that there has been no growth but rather a decline since the latest reform that expanded the jurisdiction of jury trials. In the first half of 2018, the accused sent 398 petitions for the consideration of criminal cases by a jury trial. In the first half of 2019, there were 332 petitions. In the first half of 2020, courts received only 308 petitions.

In our opinion, there is a need to improve the organization and functioning of a modern court with the participation of jurors. The legislative regulation and application of this institution in criminal proceedings by other countries with a similar form of government allow determining the shortcomings of a modern jury trial and factors that affect the decisions made by jurors. This can serve as a basis for further reforming the current legislation on jury trials in the Russian Federation.

Scholars have determined the most pressing issues in the civil realization of one’s right to participate in the administration of justice as a juror. In particular, there is still a tendency towards a low turnout of citizens invited to courts as jurors: no more than 5% of citizens accept invitations to participate in criminal proceedings (VASYUTKIN, 2019). J. Bröder noted that the participation of lay magistrates in criminal proceedings in Germany decreased but did not state the reason. In this case, it is difficult to assess whether this circumstance is the result of a decrease in confidence in the court, reflects a low level of legal culture of citizens or is conditioned by any other reasons. It is also not clear whether the scholar sees this as a problem. He claimed that this was a general trend in the development of the German judicial system that did not pose any problem (BRÖDER, 2019).

According to V.N. Rudenko (2011), jurors in the United States consider the merits of criminal cases in federal district courts, the so-called US District Courts. Under the US Constitution, the jury has jurisdiction over all criminal cases, except those that are subject to impeachment (Constitution of the United States. Article III, Section 2, Clause 3). In the Federal Republic of Germany, jury trials are not a specific form of criminal justice, i.e. lay magistrates (die ehrenamtlichen Richter – Schöffen) consider criminal cases together with professional judges. Depending on the category of cases and the judicial level to which it has jurisdiction, the structure and amount of mixed judicial collegiums vary. The specifics of criminal proceedings in Germany were described by D. Lehmann (2020).
Assessing the experience of the United States and Germany (in the first case, the jury trial forms a special type of court; in the second case, it serves as a mixed form), we believe that it can be applied to the Russian criminal proceedings. In Russia, a renewed court with people’s participation considers a criminal case: the jury analyzes facts and a professional judge resolves legal issues.

In the legislation of the Russian Federation, there is no mechanism for holding responsible citizens who have not accepted the invitation to become a jury member, therefore the issue of forming a panel of jurors is quite acute. Different viewpoints are expressed about ways to solve this problem: from providing the legislative possibility of changing the jurisdiction if it is impossible to form a panel of jurors to introducing fines for unjustified refusal to consider a criminal case as a juror. It seems that penalties can be an effective measure only if a “culture of participation” is formed in Russian society and punishment is significant.

To form a culture of people’s participation in the administration of justice, it is important not only to declare participation in a jury trial as a civic duty (FEDERAL’NYY ZAKON ROSSIYSKOY FEDERATSII, 2004) but also to consolidate in law and legal consciousness the fact that “the position of a people’s assessor is an honorary position”, as is common to Germany (GVG, §31) (ZAKON FRG, 1950).

Regarding the responsibility of citizens for evading the duties of a people’s assessor (juror), the Russian legislator could benefit from the existing practice of holding US citizens liable for evading their jury duties. The Code of Laws of the United States of America has severe penalties for evading jury candidates. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $1,000 imprisoned not more than three days, ordered to perform community service, or any combination thereof. Any person who willfully misrepresents a material fact on a juror qualification form to avoid or secure service as a juror may be fined not more than $1,000 imprisoned not more than three days, ordered to perform community service, or any combination thereof (28 U.S. Code CHAPTER 121 – JURIES; TRIAL BY JURY § 1864 (b) (LEGAL INFORMATION INSTITUTE, n.d.).

The formation of a jury in the Russian Federation gives rise to another problem, i.e. the qualitative composition of the jury that mostly consists of the unemployed and housewives. Reducing the number of jurors to six people in district courts and eight people in regional and equivalent courts did not solve this problem. This reform has much in common with a trend towards a decrease in the number of juries in the United States of America, where several states halved the number of juries. Given the high cost of such legal proceedings and taking into account the re-formation of a panel of jurors, courts concluded that they did not allow the jury to make a decision unanimously, retaining the requirement of unanimous decision-making only for the minimum panel of six people. In the Russian Federation, the decrease in the number of jurors did not solve the problem of forming a panel of jurors.

Perhaps it would have been more efficient to further reform the composition of the jury, by analogy with the court of “Schöffen”. A mixed panel of jurors could solve several problems at once: its formation and qualitative composition, legal costs for such criminal proceedings, resentencing the verdicts delivered by the jury trial. There is still a pending issue of whether jurors are truly independent if they act within the limits established by the judge. This issue was analyzed by K. Crosby (2013) and is undoubtedly subject to further scientific consideration.

In our opinion, a significant advantage of the German model of people’s participation in the administration of justice is a mixed panel of jurors responsible for considering criminal cases on the merits from the perspective of both law and fact. The honorary mission of “Schöffen”, the procedure for their appointment, high requirements for lay magistrates, as well as the fact that they are elected as judges for several criminal cases to be considered in a certain period, minimize bias risks, ensure the formation of a panel of jurors and optimize legal costs for this type of legal proceedings. In this context, the activities of courts with people’s participation become more understandable to common people.

The fact of temporary employment and working schedule in the so-called court of “Schöffen” is known in advance and cannot exceed the limits established by law. According to § 45 Abs 1
GVG (the "Courts Constitution Act" of the Federal Republic of Germany), the regular sessions of "Schöffen" courts are predetermined for a year. In addition, the law stipulates the amount of compensation for this type of activity. A positive aspect is that the verdicts delivered by "Schöffen" courts are motivated and can be appealed, in contrast to the sentences passed in the Russian Federation by a jury trial on the grounds of inconsistency with the actual circumstances of the criminal case.

According to the Judicial Department at the Supreme Court of the Russian Federation, 824 verdicts passed with the participation of jurors were submitted to the court of appeal for reconsidering in 2019. 86 guilty verdicts and 120 acquittals were revoked and sent for reconsideration, one guilty verdict was overturned with an acquittal (JUDICIAL DEPARTMENT, n.d.). Such statistics confirm the low efficiency of such criminal proceedings in a particular state.

In the Russian Federation, there is no legislatively enshrined system for assessing the quality of judicial decisions made in all forms of legal proceedings, including differentiated ones, which would contain criteria of consistency. At the same time, the increase in the efficiency of court decisions is one of the expected results of implementing the Federal Target Program “Development of the Russian Judicial System for 2013-2024” (POSTANOVLENIE PRAVITELSTVA RF, 2012). A large number of cassation of an acquitting delivered by the jury demonstrates the low efficiency of jury trials as a means of social control over the legality and fairness of professional judges. However, it significantly affects the interest of citizens to participate in criminal proceedings and does not contribute to the formation of a "culture of participation". This circumstance casts doubt on the independence of the jury in passing verdicts.

In the United States, a judgment of acquittal by a jury cannot be appealed by the prosecution. Despite all the positive aspects of this rule, it is hardly applicable to the Russian legal culture. However, a joint ruling by jurors and professional judges as part of a single panel of law and fact, similar to "Schöffen" courts, could have contributed to a decrease in the number of reversed sentences in general and acquittals in particular.

CONCLUSION

After analyzing the legal regulation of courts with the participation of lay magistrates in such federal constitutional states as the Russian Federation, the USA and the Federal Republic of Germany, we have proved the possibility of using the experience of other states in the Russian criminal proceedings to solve the urgent problems of the jury. We have also identified the role of jury trials in the criminal justice system of the Anglo-Saxon and Romano-Germanic legal families to consider possible options for the further reforming of the institution of jurors in the Russian Federation.

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Resumen
En el artículo se examinan diversas formas de participación en la administración de justicia en causas penales en las entidades constitutivas de la Federación de Rusia, la República Federal de Alemania y los Estados Unidos de América. Un desarrollo de 30 años de la institución del jurado en Rusia y su reforma activa desde 2016 requieren un análisis científico de varias formas de participación de las personas, la identificación de sus características, la experiencia positiva y negativa. A pesar de la ampliación de la jurisdicción del jurado que examina las causas penales, la introducción de esta institución a nivel de los tribunales de distrito y la reducción de los miembros del jurado, existe un grave problema de formación de justicia y un gran número de sentencias revocadas dictadas en esta forma de procedimientos judiciales. La experiencia positiva de otros Estados federales democráticos puede servir como ejemplo para garantizar el funcionamiento de la institución del jurado en Rusia.

Palabras-clave: Juicio con jurado. Procesos penales. Juez. Juicio por jurado en procesos penales. Magistrados legos.

Trends in developing the jury institution in the Russian Federation
Tendencias no desenvolvimento da instituição de júri na Federação Russa
Tendencias en el desarrollo de la institución del jurado en la Federación Rusa

Resumo
O artigo considera várias formas de participação na administração da justiça em casos criminais nas entidades constituintes da Federação Russa, da República Federal da Alemanha e dos Estados Unidos da América. Um desenvolvimento de 30 anos da instituição do júri na Rússia e sua reforma ativa desde 2016 exigem uma análise científica de várias formas de participação das pessoas, identificação de suas características, experiência positiva e negativa. Apesar da ampliação da jurisdicção do júri considerando os casos criminais, a introdução desta instituição no nível dos tribunais distritais e a redução dos membros do júri, há uma questão aguda de forma conselhos do júri (a relutância dos cidadãos em participar na administração da justiça) e um grande número de sentenças revogadas aprovadas nesta forma de processo judicial. A experiência positiva de outros estados federais democráticos pode servir como exemplo para garantir o funcionamento da instituição do júri na Rússia.

Palavras-chave: Júri. Processo criminal. Magistrados.