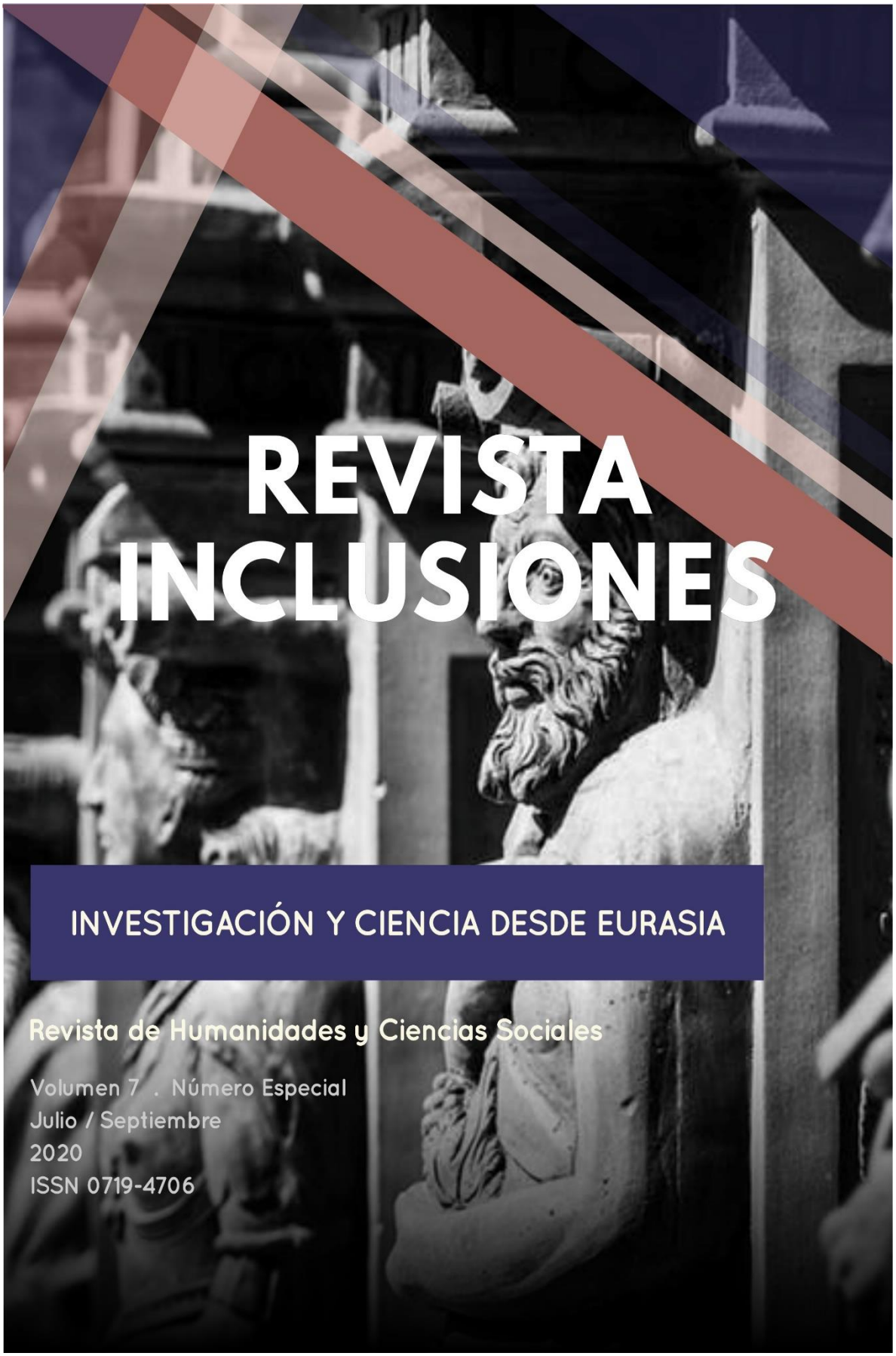

REVISTA INCLUSIONES

INVESTIGACIÓN Y CIENCIA DESDE EURASIA

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial
Julio / Septiembre
2020
ISSN 0719-4706

REVISTA
INCLUSIONES
REVISTA DE HUMANIDADES
Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA
EDITORIAL

REVISTA INCLUSIONES
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA EDITORIAL

Editorial Cuadernos de Sofía
Santiago – Chile
Representante Legal
Juan Guillermo Estay Sepúlveda Editorial

REVISTA INCLUSIONES
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

Indización, Repositorios y Bases de Datos Académicas

Revista Inclusiones, se encuentra indizada en:

BIBLIOTECA UNIVERSIDAD DE CONCEPCIÓN

REVISTA INCLUSIONES
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA EDITORIAL

ISSN 0719-4706 - Volumen 7 / Número Especial / Julio – Septiembre 2020 pp. 181-192

APPEALING AGAINST JURY TRIALS

Dr. Boris Gavrilov
Academy of Management of the Ministry of Internal Affairs of the Russian Federation, Russia
ORCID ID: 0000-0003-2599-7145
bo.gavrilov@mail.ru
Ph. D. Alexey Alexandrovich Ilyukhov
Smolensk State University, Russia
ORCID ID: 0000-0003-1379-1633
alexsmol672019@yandex.ru
Ph. D. Anatoly Evgenievich Perov
Regional Court of Smolensk, Russia
ORCID ID: 0000-0001-9208-1941
perov.a.e@mail.ru
Ph. D. (C) Marina Vladimirovna Kurpas
Judge of the Regional Court of Smolensk, Russia
ORCID ID: 0000-0003-0712-1529
kurpas.m.v@mail.ru

Fecha de Recepción: 21 de marzo de 2020 – **Fecha Revisión**: 11 de mayo de 2020

Fecha de Aceptación: 17 de junio de 2020 – **Fecha de Publicación**: 01 de julio de 2020

Abstract

The article examines the relevant issues of criminal proceedings considered in jury trials that are related to the appeal against verdicts delivered by a jury. The study considers different scientific opinions on the feasibility and effectiveness of appeals against verdicts delivered by a jury. In addition, it conducts a comparative-legal analysis in the framework of foreign law and a historical retrospective. While working on this article, the authors used the comparative-legal, historical, legal and statistical methods, as well as the method of systemic analysis. The study has concluded that the existing appeal model contradicts the institute of appeal correlating with cassation proceedings. Therefore, it is advisable to revise its legal nature and move from the model of "incomplete" appeal to a model in which a court of three professional judges forms a jury who will examine these factual circumstances again. The opposite verdict serves as the basis for repealing a sentence by a court of appeal. The procedure the authors have developed will strengthen the guarantees of individual rights in jury trials and reduce the prosecutorial bias in the Russian legal system. It is also necessary to compile a list of unconditional violations of criminal procedure law as the grounds for the remission or amendment of sentences by verdict.

Keywords

Jury trial – Criminal proceedings – Appeal

Para Citar este Artículo:

Gavrilov, Boris; Ilyukhov, Alexey Alexandrovich; Perov, Anatoly Evgenievich y Kurpas, Marina Vladimirovna. Appealing against jury trials. Revista Inclusiones Vol: 7 num Especial (2020): 181-192.

Introduction

The revival of appeal proceedings in Russia started with the Conception of Judicial Reform in the Russian Soviet Federative Socialist Republic in 1991[1]. This document notes that appeal should correct and alter sentences that have not become effective, without submitting criminal cases to new legal proceedings and establishing new or previously rejected facts.

The Criminal Procedure Code of the Russian Federation introduced the idea of appeal proceedings to review sentences given by magistrate's courts. Since January 2013, appeal proceedings have applied to all categories of criminal cases, including those considered by a jury that could be reversed upon new litigation.

Based on the specifics of jury trials resolving factual issues and passing verdicts without proving their position, the court of appeal reconsiders the lawfulness and reasonableness of verdicts delivered by a jury, as well as the proper application of criminal and criminal procedure law rather than the verdict itself. In case of any violations, the court of appeal revers or alters the initial sentence of the first-instance court.

The main objective of this study is to analyze scientific opinions on the feasibility and effectiveness of initiating appeal proceedings in relation to verdicts delivered by a jury.

Methods

The study object is public relations regulated by criminal procedure law that arise in the process of appealing against verdicts delivered by a jury, as well as the procedures and grounds for appealing against such decisions of the court.

While conducting the study, we used the dialectic and comparative-legal methods, as well as the method of systemic analysis.

The dialectical method of cognition enabled us to establish the interconnection between appeal and cassation proceedings and similar grounds for appealing verdicts delivered by a jury, which indicates the need for their revision.

The method of systemic analysis revealed the imperfection of appeal procedures in relation to verdicts delivered by a jury. The above-mentioned method helped us consider the specifics of jury trials and develop an appeal procedure for revising verdicts of a jury.

The comparative-legal method was used to analyze criminal laws and other legal acts of foreign countries regulating the revision of verdicts delivered by a jury to determine the most developed legal models and increase the effectiveness of the Russian appeal proceedings in relation to this category of criminal cases.

The historical-comparative method aimed at examining typical features of the pre-revolutionary and modern model of appealing against verdicts delivered by a jury and improving the existing criminal procedure legislation.

[1] Postanovlenie Verkhovnogo Soveta RSFSR ot 24.10.1991 No. 1801-1 O Kontseptsii sudebnoi reformy v RSFSR: [Resolution of the Supreme Court of the RSFSR of October 24, 1991 No. 1801-1 The Conception of Judicial Reform in the RSFSR]. Vedomosti SND i VS RSFSR. 1991.

Results

The discrepancy between the court's findings set out in some judgment and the actual circumstances of a certain criminal case established by the first-instance court cannot serve as the basis for appealing against verdicts delivered by a jury.

For example, the court's findings are not supported by any evidence or such a court did not consider circumstances that could significantly affect or influence the above-mentioned findings in conformity with Clause 1, Part 1, Article 389[15] of the Criminal Procedure Code of the Russian Federation. Resolution of December 24, 2013 No. 2003-O of the Constitutional Court of the Russian Federation also indicates this legal phenomenon:

> "the specifics of some verdict comprising only concise answers to the questions posed and jury conclusions without any arguments, excludes the possibility of checking it in accordance with factual grounds. Consequently, the remission or amendment of the verdict delivered by a jury cannot be conditioned by the inconsistency of the conclusions stated and the actual circumstances of the criminal case"[2].

The legal position of the Constitutional Court of the Russian Federation formed the basis for Plenum of the Supreme Court of the Russian Federation of November 27, 2012 No. 26-P "On the application of the Criminal Procedure Code of the Russian Federation governing appeal proceedings". It indicates that verdicts delivered by a jury are not revised by the court of appeal on the basis that the court's findings set out in the verdict do not match the actual circumstances of the criminal case subject to Article 389[27] of the Criminal Procedure Code of the Russian Federation.

Therefore, the court of appeal does not verify the evidence relating to the actual circumstances of charges against a person[3]. According to O.A. Sukhova, the basis presented above is more relevant to the subject verified by the court of cassation[4].

Discussion

However, the mechanism of appeal proposed by the legislator causes an ambiguous response in the scientific community. Many scholars believe that the legislator introduced

---

[2] Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Markova Vasiliya Aleksandrovicha na narushenie ego konstitutsionnykh prav chastyu pyatoi stati 348 i statei 379 Ugolovno-protsessualnogo kodeksa Rossiiskoi Federatsii: Opredelenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 24.12.2013 № 2003-O [On the dismissal of a request for considering an appeal of Vasilii Aleksandrovich Markov against the violation of his constitutional rights by Part 5, Article 348 and Article 379 of the Criminal Procedure Code of the Russian Federation: The decision of the Constitutional Court of the Russian Federation]. Sobranie Zakonodatelstva Rossiiskoi Federatsii. 2014.

[3] O primenenii norm Ugolovno-protsessualnogo kodeksa Rossiiskoi Federatsii, reguliruyushchikh proizvodstvo v sude apellyatsionnoi instantsii: Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 27.11.2012 № 26-P (red. ot 01.12.2015) p. 19 [On applying the Criminal Procedure Code of the Russian Federation on appeal proceedings: Resolution of the Plenum of the Supreme Court of the Russian Federation of November 27, 2012 No. 26-P (amended on December 1, 2015) p. 19]. Sobranie zakonodatelstva RF. 2015.

[4] O. A. Sukhova, “Prigovor, postanovlennyi na osnove verdikta prisyazhnykh zasedatelei, kak predmet obzhalovaniya i proverki v apellyatsionnom poryadke”, Sotsialno-politicheskie nauki, num 4 (2017): 120.

this procedure for appealing against jury trials but did not consider the legal nature of a jury[5].

Thus, V.V. Koryakovtsev believes that there is no guarantee that the violations committed by a jury will allow for the revision or remission of their verdicts due to drawbacks of appeal proceedings[6].

Moreover, an ambiguous attitude to the institute of appeal was formed back in the Soviet period when processualists criticized this procedure, noted its complexity and the diminished role of the first-instance court and emphasized the direct and oral nature of trials, which resulted in slowness, red tape and general extension of litigation proceedings[7].

The authors of the Conception of Judicial Reform in the RSFSR of 1991 proposed that verdicts delivered by a jury should be revised by the court of cassation that defines the compliance with law without examining the evidence[8]. This proposal is conditioned by the complex procedure of revising judicial decisions when it is impossible to analyze and assess evidence since such a judicial decision is based on a jury verdict. While considering the expediency of appeal as part of the revision of verdicts delivered by a jury, A.A. Tarasov and O.R. Rakhmetullina highlight the inability of appeal to reveal violations that affected the answers of jury members, without intruding on the motivation of the verdict and interfering with the secrecy of their meeting[9].

---

[5] I. S. Bobrakova y N. N. Kovtun, Apellyatsiya v ugolovnom protsesse: osoznannaya neobkhodimost ili vzleleyannyi mif (Moscow: Mezhdunar. issled. in-t, 2012); N. A. Kolokolov, Apellyatsiya: "Osuzhdennyi, nakazanie vam udvoeno!", Ugolovnoe sudoproizvodstvo, num 4 (2013); L. A. Voskobitova, “Osnovaniya otmeny ili izmeneniya prigovora v apellyatsionnoi instantsii”, LEX RUSSICA, num 5 (2012); S. A. Nasonov, “Modeli peresmotra ne vstupivshikh v zakonnuyu silu prigovorov, postanovlennykh na osnovanii verdikta prisyazhnykh zasedatelei, v Rossii i zarubezhnykh stranakh”, LEX RUSSIA, num 4 (2013); A. A. Tarasov, “Ob apellyatsionnom proizvodstve resheniya suda prisyazhnykh”, Ugolovnoe sudoproizvodstvo, num 3 (2011): 18–20; A. R. Belkin, “Apellyatsiya: nekotorye strannosti”, Ugolovnoe sudoproizvodstvo, num 2 (2014): 24-25; N. N. Kovtun, “Apellyatsionnoe, kassatsionnoe i nadzornoe proizvodstvo po ugolovnym delam v kontekste sootvetstviya mezhdunarodno-pravovomu standartu”, Mezhdunarodnoe ugolovnoe pravo i mezhdunarodnaya yustitsiya, num 3 (2012): 3-9; S. A. Trukhin, “Sut sovremennoi rossiiskoi apellyatsii v ugolovnom sudoproizvodstve”, Rossiiskaya yustitsiya, num 5 (2014): 26-29; O. A. Kalyakin, “Apellyatsiya v sisteme sovremennykh proverochnykh proizvodstv”, Ugolovnoe sudoproizvodstvo, num 3 (2014): 19-24; M. T. Ashirbekova, “Novye dokazatelstva v sude apellyatsionnoi instantsii”, Rossiiskaya yustitsiya, num 5 (2013): 22-24 y S. A. Pashin, “Sudebnaya sistema Rossii: perelitsovka”, Otechestvennye zapiski, num 3 (2014).

[6] V. V. Koryakovtsev, “Osnovaniya peresmotra reshenii suda s uchastiem prisyazhnykh zasedatelei v apellyatsionnoi instantsii”, Pravoprimenenie, num 2 Vol: 3 (2018).

[7] M. M. Strogovich, Sovetskii ugolovno-protsessualnyi zakon i problemy ego effektivnosti (Moscow: Nauka, 1979); A. V. Pobedkin, “Apellyatsionnoe proizvodstvo v ugolovnom protsesse Rossii: problemy stanovleniya”, Gosudarstvo i parvo, num 3 (2001); V. Doroshkov, “Peresmotr reshenii mirovogo sudi po ugolovnym delam v apellyatsionnom poryadke”, Rossiiskaya yustitsiya, num 7 (2002); A. S. Aleksandrov, “Apellyatsionnoe proizvodstvo v ugolovnom protsesse Rossii: problemy i resheniya”, Gosudarstvo i parvo, num 3 (2003); T. P. Kuras, “K voprosu o predostavlenii dopolnitelnykh dokazatelstv v sud apellyatsionnoi instantsii: istoricheskii analiz i sovremennye aspekty”, Sibirskii yuridicheskii vestnik, num 1 (2001): 50-52 y B. Bazarov, “Pri apellyatsionnom proizvodstve vozmozhno narushenie printsipa sostyazatelnosti”, Rossiiskaya yustitsiya, num 3 (2012).

[8] S.A. Pashin. Kontseptsiya sudebnoi reformy v Rossiiskoi Federatsii. [The Conception of the Judicial Reform of the Russian Federation]. (Moscow: Respublika, 1992).

[9] A. A. Tarasov, Sud prisyazhnykh i problemy narodnogo uchastiya v pravosudii: monografiya (Moscow: Izd-vo "Rusains", 2016).

V.A. Davydov, V.D. Potapov and B.T. Bezlepkin take a more radical position and highlight that verdicts delivered by a jury cannot be revised on appeal, which means that the introduction of such a form of revision for this type of court is ineffective. However, such examples are little known to criminal procedure law[10].

The procedure of appeal was not used by the pre-revolutionary jury and the verdicts delivered by a jury were revised by the court of cassation (Articles 854-855 of the Statute of Criminal Procedure)[11]. The procedure of cassation did not verify the correctness of the decisions made by jury members since they examined only facts and did not conduct their legal assessment[12]. The court of cassation evaluated the proper application of law and its forms, while sentences were reversed on evaluative grounds. As a result, the decision of any court could be revoked if superior authorities considered it unacceptable. In addition, verdicts could be reversed if some district court unanimously recognized that the jury convicted the innocent and then submitted the criminal case to a new jury for trial (Article 818 of the Statute of Criminal Procedure)[13].

In general, V.A. Davydov, V.D. Potapov, B.T. Bezlepkin and D.V. Sharapova believe that the current appeal proceedings with specific litigation and sentencing have some features of cassation[14] since appeal prohibits to reverse a groundless sentence and the court does not review the actual circumstances of cases necessary for jury members to deliver a verdict (Part 1 and 2, Article 348 of the Criminal Procedure Code of the Russian Federation). Sharing the opinion of their colleagues, B.Ya. Gavrilov and V.P. Bozhiev indicated that appeal did not contribute to the identification of judicial errors despite the promises of its supporters[15]. Furthermore, some scholars believe that appeal is a new round of criminal proceedings that verifies legal and factual aspects of the sentence but the ban on appealing against the initial verdict eliminates this advantage[16]. This state of affairs is explained by the fact that professional judges are not entitled to determine the degree of ambiguity and consistency of the above-mentioned verdict as the basis for reversing the judgment of acquittal since they did not study the circumstances of a particular case together with jury members.

---

[10] V. A. Davydov, “Peresmotr sudebnykh reshenii po ugolovnym delam: o nekotorykh zakonodatelnykh novellakh nakanune ikh primeneniya”, Ugolovnyi protsess, num 11 (2012); V. D. Potapov, Osnovnye nachala proverki sudebnykh reshenii v kontrolno-proverochnykh stadiyakh i proizvodstvakh ugolovnogo sudoproizvodstva Rossii: avtoref. dis. … d-ra yurid (Moscow: 2013) y B. T. Bezlepkin, Nastolnaya kniga sudi po ugolovnomu protsessu (Moscow: Prospekt, 2014).

[11] O. I. Chistyakov, Ustav ugolovnogo sudoproizvodstva ot 20 noyabrya 1964 g. Rossiiskoe zakonodatelstvo X-XX vekov. In nine volumes. Volume 8 (Moscow: Yurid. lit., 1991).

[12] N. A. Butskovskii, Ocherk kassatsionnogo poryadka otmeny reshenii po Sudebnym ustavam 1864 g. (Saint Petersburg: Tipografiya Vtorogo Otdeleniya Sobstvennoi E.I.V. Kantselyarii, 1866), 187.

[13] N. A. Butskovskii, Ocherk kassatsionnogo poryadka otmeny…

[14] V. A. Davydov, “Peresmotr sudebnykh reshenii po ugolovnym delam: o nekotorykh zakonodatelnykh novellakh nakanune ikh primeneniya”, Ugolovnyi protsess, num 11 (2012); V. D. Potapov, Osnovnye nachala proverki sudebnykh…; B. T. Bezlepkin, Nastolnaya kniga sudi po ugolovnomu protsessu (Moscow: Prospekt, 2014) y D. V. Sharapova, Osnovaniya apellyatsionnogo obzhalovaniya prigovora, postanovlennogo sudom s uchastiem prisyazhnykh zasedatelei”, num 10 Vol: 47 (2014): 2316-2319.

[15] V. P. Bozhev y B. Ya. Gavrilov, Ugolovnyi protsess (Moscow: 2016).

[16] A. A. Vasyaev, “Chto ponimaetsya pod proverkoi pri proizvodstve po ugolovnomu delu v sude apellyatsionnoi instantsii?”, Sovremennoe parvo, num 1 (2013): 84-86; Yu. A. Lyakhov, “Vvedenie apellyatsii v ugolovnom sudoproizvodstve Rossii – usilenie garantii pravosudiya”, Rossiiskaya yustitsiya, num 10 (2011): 23-25 y A. A. Tarasov, “Ob apellyatsionnom proizvodstve resheniya suda prisyazhnykh”, Ugolovnoe sudoproizvodstvo, num 3 (2011): 18–20.

The above-mentioned and other scholars indicate that the existing procedure for appealing against verdicts delivered by a jury contradicts the concept of appeal which consists in reviewing a judicial decision based on factual data, i.e. the evidence is examined according to the rules of the first-instance court.

The legislator introduced special grounds for reversing or amending verdicts delivered by a jury but they were exclusively formal and procedural[17].

The criticism of appealing against verdicts delivered by a jury and the development of proposals on amending the existing procedural rules make us refer to foreign experience where the French model serves as an alternative to the Russian model of appeal. This model implies the re-examination of the criminal case in question according to the rules of the first-instance court but with the participation of a new panel of jury members and three professional judges authorized to recall a sentence by a majority of votes[18].

Not all scholars accept this model of appeal because they believe that a verdict is an interlocutory judgment and professional judges consider an appeal rather than the verdict, without interfering with judicial decisions[19]. While criticizing this position, we should note that no sources describe the verdict as an interlocutory judgment. Although it is not a final judicial decision, it is the basis for sentencing, i.e. a special form of adopting a judicial decision without which such a sentence is not valid.

Some scholars support the French model of appeal. In particular, V.V. Koryakovtsev admits the possibility of reversing or amending judicial decisions by a new panel of jury members[20].

A similar model for reviewing verdicts delivered by a jury is utilized by the United Kingdom. The only difference is that appeal of this kind is allowed if witnesses or jury members experienced intimidation or pressure. The guilty verdict can be also reversed if it lacks reasonable grounds, is not supported by evidence, does not correctly resolve the issue of law or somehow violates the interests of justice[21].

The subject of appeal is much narrower in the US legal system since it can be applied to the guilty verdict if there is no sufficient accusatory evidence[22]. The narrower subject is

---

[17] D. V. Sharapova, "Osnovaniya apellyatsionnogo obzhalovaniya prigovora, postanovlennogo sudom s uchastiem prisyazhnykh zasedatelei", Aktualnye problemy rossiiskogo prava, num 10 Vol: 47 (2014): 2-319.

[18] L. V. Golovko, "Reforma ugolovnogo protsessa vo Frantsii", Gosudarstvo i parvo, num 8 (2011).

[19] A. V. Agabaeva, "Protsessualnye osobennosti apellyatsionnogo obzhalovaniya prokurorom prigovorov, postanovlennykh pri proizvodstve v sude prisyazhnykh zasedatelei", Kriminalist, 1 (2014): 112 y S. A. Trukhin, "Apellyatsionnyi peresmotr prigovora, protivorechashchego verdiktu prisyazhnykh", Rossiiskaya yustitsiya, num 6 (2015).

[20] V. V. Koryakovtsev, "Osnovaniya peresmotra reshenii suda s uchastiem prisyazhnykh zasedatelei v apellyatsionnoi instantsii", Pravoprimenenie, num 2 Vol: 3 (2018): 119.

[21] I. I. Belozerova y S. O. Saneev, "Istoriko-pravovoi analiz instituta suda prisyazhnykh v anglosaksonskoi pravovoi seme i Rossii", Probely v rossiiskom zakonodatelstve. Yuridicheskii zhurnal, num 3 (2012) y A. M. Wilshere, Ugolovnyi protsess (Moscow: Gos. izd-vo inostr. lit., 1947).

[22] U. Burnham, Pravovaya sistema Soedinennykh Shtatov Ameriki (Moscow: Novaya yustitsiya, 2006) y A. S. Kamnev, "Formy i osnovaniya peresmotra prigovorov, postanovlennykh sudom s uchastiem prisyazhnykh zasedatelei, v SShA", Vestnik Tomskogo gosudarstvennogo universiteta, num 378 (2014).

also conditioned by the high amount of plea bargaining, where up to 98% of criminal cases are examined with its help. The US Supreme Court recognizes this legal institute as an important and appropriate part of criminal proceedings[23].

These foreign models of appealing against verdicts are similar because they are based on the unreliability of judicial decisions and erroneous conclusions of a jury, i.e. incorrect results of the investigation conducted. However, S.A. Nasonov believes that an appeal letter cannot serve as the basis for reviewing the whole case and the new evidence provided by the parties is attached to the case at the court's discretion[24]. This viewpoint is consistent with the position of the Constitutional Court of the Russian Federation set out in Resolution of July 2, 2013 No. 1052-O. This document states that "granting professional judges during the procedure of appeal which does not imply the participation of jury members with the right to dispose of some accusatory judgment if they disagree with jury members on matters within their competence would not only limit their authority to make decisions independently, but would also be contrary to the spirit of jury, allowing citizens to participate 'in the administration of justice and at the same time exercise the function of public control, which ensures democratic, open and independent judicial authority, as well as the administration of justice'"[25]. The approach of the Constitutional Court of the Russian Federation is based on the position of the European Court of Human Rights and notes that jury trials are built over the certainty of a verdict since a professional judge is not involved in sentencing[26]. Therefore, Article 389[25] of the Criminal Procedure Code provides for cassation of an acquitting but not the verdict of acquittal.

Conclusion

If we consider the possibility of maintaining appeal proceedings for jury trials, we should amend them and move from the model of "incomplete" appeal to a model in which the basis for reversing some judicial decision is the injustice of the initial verdict, and the actual circumstances that form the jury's verdict are investigated by the newly formed jury. S.N. Nasonov takes a similar position and refers to modern studies of historically established forms of reviewing jury trials that have not entered into force, in particular the experience of Norway. The scholar points to the appeal model where the case in question is reviewed by other jury members. This model is more consistent with the conceptual understanding of appeal as the re-examination of the criminal case[27].

---

[23] S. Bibas, "Taming Negotiated Justice", Yale Law Journal, num 122 (2012). Available at: http://www.yalelawjournal.org/forum/taming-egotiated-justice#footnote4

[24] I. I. Luchinin y V. V. Doroshkov, Sravnitelnyi analiz instituta prisyazhnykh zasedatelei v SShA i Rossii. Gosudarstvo i pravo: teoriya i praktika: proceedings of the 5th International scientific conference (Saint Petersburg, January 2019) (Saint Petersburg: Svoe izdatelstvo, 2019) y S. A. Nasonov, "Modeli peresmotra ne vstupivshikh v zakonnuyu silu prigovorov, postanovlennykh na osnovanii verdikta prisyazhnykh zasedatelei, v Rossii i zarubezhnykh stranakh", LEX RUSSIA, num 4 (2013).

[25] Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Miroshnichenko Vladimira Ivanovicha na narushenie ego konstitutsionnykh prav chastyu vtoroi stati 379 Ugolovno-protsessualnogo kodeksa Rossiiskoi Federatsii: opredelenie Konstitutsionnogo Suda RF ot 02.07. 2013. № 1052-O. Sobranie Zakonodatelstva Rossiiskoi Federatsii. 2013.

[26] Postanovlenie Evropeiskogo Suda po pravam cheloveka ot 16 noyabrya 2010 goda po delu "Taske (Taxquet) protiv Belgii", Byulleten ESPCh, num 2 Vol: 154 (2011): 2-14.

[27] S. A. Nasonov, "Modeli peresmotra ne vstupivshikh v zakonnuyu silu prigovorov, postanovlennykh na osnovanii verdikta prisyazhnykh zasedatelei, v Rossii i zarubezhnykh stranakh", LEX RUSSIA, num 4 (2013): 379-390.

Due to the analysis of the foregoing, we propose to alter the existing model of appeal to a "horizontal" (full-fledged) one, in which a different jury reviews the initial criminal case. This model helps to realize the right of citizens to appeal against judicial decisions. Since any verdict is the same kind of judicial decisions, it can also be reversed or altered.

According to this model, when appealing against verdicts delivered by a jury that are unreasonable and unfair or caused by erroneous findings of the jury, the court of appeal consisting of three judges forms a new jury to re-examine the circumstances of the initial case. The new verdict will serve as the basis for reviewing the verdict by the court of appeal.

Accordingly, the verdict issued by the newly formed jury will serve as the basis for reviewing the verdict of the first-instance court which is based on the verdict of the previous jury. The proposed procedure will strengthen the guarantees of individual rights and reduce the prosecutorial bias in the Russian legal system. It is also necessary to determine the list of unconditional material violations of the existing criminal procedure law that can be regarded as the basis for reversing or amending verdicts.

The aforementioned indicates the need to change the limit and subject of appealing against verdicts delivered by a jury or completely reverse this procedure.

References

Book

Bezlepkin, B. T. Nastolnaya kniga sudi po ugolovnomu protsessu. Moscow: Prospekt. 2014.

Bobrakova, I. S. y N. N. Kovtun. Apellyatsiya v ugolovnom protsesse: osoznannaya neobkhodimost ili vzleleyannyi mif. Voprosy pravovedeniya. Moscow: Mezhdunar. issled. in-t. 2012.

Bozhev, V. P. y B. Ya. Gavrilov. Ugolovnyi protsess. Moscow: 2016.

Burnham, U. Pravovaya sistema Soedinennykh Shtatov Ameriki. Moscow: Novaya yustitsiya. 2006.

Butskovskii, N. A. Ocherk kassatsionnogo poryadka otmeny reshenii po Sudebnym ustavam 1864 g. Saint Petersburg: Tipografiya Vtorogo Otdeleniya Sobstvennoi E.I.V. Kantselyarii. 1866.

Chistyakov, O. I. Ustav ugolovnogo sudoproizvodstva ot 20 noyabrya 1964 g. Rossiiskoe zakonodatelstvo X-XX vekov. In nine volumes. Volume 8. Moscow: Yurid. lit. 1991.

Luchinin, I. I. y V. V. Doroshkov. Sravnitelnyi analiz instituta prisyazhnykh zasedatelei v SShA i Rossii. Gosudarstvo i pravo: teoriya i praktika: proceedings of the 5th International scientific conference (Saint Petersburg, January 2019). Saint Petersburg: Svoe izdatelstvo. 2019.

O primenenii norm Ugolovno-protsessualnogo kodeksa Rossiiskoi Federatsii, reguliruyushchikh proizvodstvo v sude apellyatsionnoi instantsii: Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 27.11.2012 № 26-P (red. ot 01.12.2015) p. 19. Sobranie zakonodatelstva RF. 2015.

Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Markova Vasiliya Aleksandrovicha na narushenie ego konstitutsionnykh prav chastyu pyatoi stati 348 i statei 379 Ugolovno-protsessualnogo kodeksa Rossiiskoi Federatsii: Opredelenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 24.12.2013 № 2003-O. Sobranie Zakonodatelstva Rossiiskoi Federatsii. 2014.

Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Miroshnichenko Vladimira Ivanovicha na narushenie ego konstitutsionnykh prav chastyu vtoroi stati 379 Ugolovno-protsessualnogo kodeksa Rossiiskoi Federatsii: opredelenie Konstitutsionnogo Suda RF ot 02.07. 2013. № 1052-O. Sobranie Zakonodatelstva Rossiiskoi Federatsii. 2013.

Pashin, S. A. Kontseptsiya sudebnoi reformy v Rossiiskoi Federatsii. Moscow: Respublika. 1992.

Postanovlenie Verkhovnogo Soveta RSFSR ot 24.10.1991 No. 1801-1 O Kontseptsii sudebnoi reformy v RSFSR. Vedomosti SND i VS RSFSR. 1991.

Potapov, V. D. Osnovnye nachala proverki sudebnykh reshenii v kontrolno-proverochnykh stadiyakh i proizvodstvakh ugolovnogo sudoproizvodstva Rossii: avtoref. dis. d-ra yurid. Nauk. Moscow: 2013.

Strogovich, M. M. Sovetskii ugolovno-protsessualnyi zakon i problemy ego effektivnosti. Moscow: Nauka. 1979.

Tarasov, A. A. Sud prisyazhnykh i problemy narodnogo uchastiya v pravosudii: monografiya. Moscow: Izd-vo "Rusains". 2016.

Wilshere, A. M. Ugolovnyi protsess. Moscow: Gos. izd-vo inostr. lit. 1947.

Journal articles

Agabaeva, A. V. “Protsessualnye osobennosti apellyatsionnogo obzhalovaniya prokurorom prigovorov, postanovlennykh pri proizvodstve v sude prisyazhnykh zasedatelei”. Kriminalist, num 1 (2014).

Aleksandrov, A. S. “Apellyatsionnoe proizvodstvo v ugolovnom protsesse Rossii: problemy i resheniya”. Gosudarstvo i parvo, num 3 (2003): 38-45.

Ashirbekova, M. T. “Novye dokazatelstva v sude apellyatsionnoi instantsii”. Rossiiskaya yustitsiya, num 5 (2013): 22-24.

Bazarov, B. “Pri apellyatsionnom proizvodstve vozmozhno narushenie printsipa sostyazatelnosti”. Rossiiskaya yustitsiya, num 3 (2012).

Belkin, A. R. “Apellyatsiya: nekotorye strannosti”. Ugolovnoe sudoproizvodstvo, num 2 (2014): 24-25.

Belozerova, I. I. y Saneev, S. O. “Istoriko-pravovoi analiz instituta suda prisyazhnykh v anglosaksonskoi pravovoi seme i Rossii”. Probely v rossiiskom zakonodatelstve. Yuridicheskii zhurnal, num 3 (2012): 185-187.

Davydov, V. A. “Peresmotr sudebnykh reshenii po ugolovnym delam: o nekotorykh zakonodatelnykh novellakh nakanune ikh primeneniya”. Ugolovnyi protsess, num 11 (2012): 44-50.

Doroshkov, V. “Peresmotr reshenii mirovogo sudi po ugolovnym delam v apellyatsionnom poryadke”. Rossiiskaya yustitsiya, num 7 (2002): 39-41.

Golovko, L. V. “Reforma ugolovnogo protsessa vo Frantsii”. Gosudarstvo i parvo, num 8 (2011): 89-98.

Kalyakin, O. A. “Apellyatsiya v sisteme sovremennykh proverochnykh proizvodstv”. Ugolovnoe sudoproizvodstvo, num 3 (2014): 19-24.

Kamnev, A. S. “Formy i osnovaniya peresmotra prigovorov, postanovlennykh sudom s uchastiem prisyazhnykh zasedatelei, v SShA”. Vestnik Tomskogo gosudarstvennogo universiteta, num 378 (2014): 167-171.

Kolokolov, N. A. Apellyatsiya: "Osuzhdennyi, nakazanie vam udvoeno!". Ugolovnoe sudoproizvodstvo, num 4 (2013): 2-5.

Koryakovtsev, V. V. “Osnovaniya peresmotra reshenii suda s uchastiem prisyazhnykh zasedatelei v apellyatsionnoi instantsii. Pravoprimenenie, num 2 Vol: 3 (2018): 121.

Kovtun, N. N. “Apellyatsionnoe, kassatsionnoe i nadzornoe proizvodstvo po ugolovnym delam v kontekste sootvetstviya mezhdunarodno-pravovomu standartu. Mezhdunarodnoe ugolovnoe pravo i mezhdunarodnaya yustitsiya, num 3 (2012): 3-9.

Kuras, T. P. “K voprosu o predostavlenii dopolnitelnykh dokazatelstv v sud apellyatsionnoi instantsii: istoricheskii analiz i sovremennye aspekty”. Sibirskii yuridicheskii vestnik, num 1 (2001): 50-52.

Lyakhov, Yu. A. “Vvedenie apellyatsii v ugolovnom sudoproizvodstve Rossii – usilenie garantii pravosudiya”. Rossiiskaya yustitsiya, num 10 (2011): 23-25.

Nasonov, S. A. “Modeli peresmotra ne vstupivshikh v zakonnuyu silu prigovorov, postanovlennykh na osnovanii verdikta prisyazhnykh zasedatelei, v Rossii i zarubezhnykh stranakh”. LEX RUSSIA, num 4 (2013).

Pashin, S. A. “Sudebnaya sistema Rossii: perelitsovka”. Otechestvennye zapiski, num 3 Vol: 60 (2014): 82-92.

Pobedkin, A. V. “Apellyatsionnoe proizvodstvo v ugolovnom protsesse Rossii: problemy stanovleniya”. Gosudarstvo i parvo, num 3 (2001): 46-50.

Postanovlenie Evropeiskogo Suda po pravam cheloveka ot 16 noyabrya 2010 goda po delu "Taske (Taxquet) protiv Belgii". Byulleten ESPCh, num 2 (154) (2011): 2-14.

Sharapova, D. V. “Osnovaniya apellyatsionnogo obzhalovaniya prigovora, postanovlennogo sudom s uchastiem prisyazhnykh zasedatelei”. Aktualnye problemy rossiiskogo prava, num 10 Vol: 47 (2014): 2316-2319.

Sukhova, O. A. “Prigovor, postanovlennyi na osnove verdikta prisyazhnykh zasedatelei, kak predmet obzhalovaniya i proverki v apellyatsionnom poryadke”. Sotsialno-politicheskie nauki, num 4 (2017): 120.

Tarasov, A. A. “Ob apellyatsionnom proizvodstve resheniya suda prisyazhnykh”. Ugolovnoe sudoproizvodstvo, num 3 (2011): 18–20.

Trukhin, S. A. “Apellyatsionnyi peresmotr prigovora, protivorechashchego verdiktu prisyazhnykh”. Rossiiskaya yustitsiya, num 6 (2015): 35-38.

Trukhin, S. A. “Sut sovremennoi rossiiskoi apellyatsii v ugolovnom sudoproizvodstve”. Rossiiskaya yustitsiya, num 5 (2014): 26-29.

Vasyaev, A. A. “Chto ponimaetsya pod proverkoi pri proizvodstve po ugolovnomu delu v sude apellyatsionnoi instantsii?”, Sovremennoe parvo, num 1 (2013): 84-86.

Voskobitova, L. A. “Osnovaniya otmeny ili izmeneniya prigovora v apellyatsionnoi instantsii”. LEX RUSSICA, num 5 (2012): 976 - 991.

Internet publications

Bibas, S. Taming Negotiated Justice. Yale Law Journal,122 (2012): 11. Available at: http://www.yalelawjournal.org/forum/taming-egotiated-justice#footnote4

CUADERNOS DE SOFÍA
EDITORIAL