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IMPROVING THE CRIMINAL PROCEDURE LAW OF THE REPUBLIC OF KAZAKHSTAN ON THE RIGHTS TO PROFESSIONAL PROTECTION OF A SUSPECT (ACCUSED) OF THE DEFENDANT AT THE PRESENT STAGE

Abstract. The inalienable content of the rule of law is to protect and safeguard the rights and legitimate interests of those involved in criminal proceedings and particular suspects (accused) and defendants. In the current conditions of development and improvement of the rule of law, the individual's freedom, rights, and guarantees increase; hence, it is typical of criminal proceedings. The problems of ensuring the suspect's rights and legitimate interests (accused) and the defendant, improving the preliminary investigation and investigation bodies' activities, the Prosecutor's office, the court, and the bar are relevant. It was impossible to combat crime without paying due attention to the individual's rights in the criminal process. Building a state of the law in Kazakhstan involves strengthening the guarantees of citizens' rights, freedoms, and legitimate interests. This provision takes on particular importance in the field of criminal proceedings, which involves intrusion into the privacy of citizens, restriction of freedom and personal integrity, and the use of criminal-procedural coercion measures. The need to investigate the problems of professional protection is also caused by the consistent implementation of the Constitution's norms of the Republic of Kazakhstan, which holistically formulated the introductory provisions of the Concept of the rule of law to ensure the realization of human rights and freedoms.

Keywords: accused, suspect, right to protection, restriction, the legal status of the suspect, criminal procedure law.

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АҚШ-ТА ЖӘНЕ ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА АЛҚАБИЛЕР ШЫҒАРҒАН ҮКІМДЕРДІ ҚАЙТА ҚАРАУ НЫСАНДАРЫ МЕН НЕГІЗДЕРІН САЛЫСТЫРМАЛЫ-ҚҰҚЫҚТЫҚ ТАЛДАУ

Аңдатпа. Ресми статистикаға сәйкес Қазақстан Республикасы Жоғарғы Сотының жанындағы Соттардың қызметін қамтамасыз ету департаменті (Қазақстан Республикасы Жоғарғы Сотының аппараты) сотталушылардың алқабилер сотына өз қызметінің басынан бастап қызығушылығы тұрақты жоғары деңгейде қалып отыр. Қазақстан Республикасы бойынша орташа есеппен жыл сайын алқабилердің қатысуымен қылмыстық істер жөніндегі мамандандырылған ауданаралық сотта және қылмыстық істер жөніндегі мамандандырылған ауданаралық әскери сотта қаралуға жататын қылмыстық істердің 10,6% - ға жуығы қаралады және олардың үлесі соңғы 4-5 жыл ішінде осы деңгейде қалады. Алқабилердің өздерінің сандық және сапалық көрсеткіштері бойынша қызметі тек қана қылмыстық іс жүргізу санаты емес, ол көбінесе қазіргі заманғы мемлекет пен қазіргі заманғы қоғамның өзара қарым-қатынасының көрсеткіші болып табылады. Сотталушылар мен олардың қорғаушыларының алқабиге жүгінуі - бұл қазақстандық соттарда істі қараудың әдеттегі тәсілі кезінде іс жүзінде жоқ болатын ақтау үкіміне деген үміт.

Түйін сөздер: АҚШ және Қазақстан Республикасының сот жүйесі; АҚШ Жоғарғы Соты; Қазақстан Республикасындағы алқабилер институты; АҚШ және Қазақстан Республикасындағы үкімдерді қайта қарау нысандары; алқабилер соты; елеулі заң қателігі; іс жүргізу нормаларын бұзу.

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СРАВНИТЕЛЬНЫЙ ПРАВОВОЙ АНАЛИЗ ФОРМЫ И ОСНОВАНИЯ ПЕРЕСМОТРА ПРИГОВОРОВ, ПОСТАНОВЛЕННЫХ СУДОМ С УЧАСТИЕМ ПРИСЯЖНЫХ ЗАСЕДАТЕЛЕЙ, В США И РЕСПУБЛИКЕ КАЗАХСТАН

Аннотация. Согласно официальной статистике, Департамент по обеспечению деятельности судов при Верховном Суде Республики Казахстан (аппарат Верховного Суда Республики Казахстан) интерес подсудимых к суду присяжных с самого начала его деятельности остаётся на стабильно высоком уровне. В среднем по Республике Казахстан ежегодно рассматривается около 10,6% уголовных дел, подлежащих рассмотрению в специализированном межрайонном суде по уголовным делам с участием присяжных заседателей и специализированном межрайонном военном суде по уголовным делам, и их доля остаётся на этом уровне в течение последних 4-5 лет. Деятельность присяжных заседателей по своим количественным и качественным показателям является не только и не столько уголовно-процессуальной категорией, она во многом является показателем взаимоотношений современного государства и современного общества. Обращение подсудимых и их защитников к присяжным — это надежда на оправдательный приговор, который при обычном способе рассмотрения дела в казахстанских судах практически сводится на нет.

Ключевые слова: Судебная система США и Республики Казахстан; Верховный суд США; институт присяжных заседателей в Республике Казахстан; формы пересмотра приговоров в США и Республике Казахстан; суд присяжных заседателей; существенная юридическая ошибка; нарушение процессуальных норм.

Introduction

The new Code of Criminal procedure, aimed at simplifying and improving the criminal process's efficiency, amended the section «Proceedings in cases involving jurors».

Following the innovations in cases specified in part 1 of article 631 of the Code of criminal procedure, a preliminary hearing is mandatory regardless of the presence or absence of a request from the suspect or accused to consider the case with the jury's participation. Accused petitions for trial by jury were more often made in court during the case's preliminary hearing. There were cases when the charged, after the initial investigation, refused to hear the case in court with jurors' participation, but later at the preliminary hearing said petition for the consideration of the case by jury.

The jury court is one of the oldest procedural institutions of criminal justice, which acquired its main features in the periods preceding the recognition of modern values of criminal procedure. The evolution of criminal justice, its emphasis on the importance of human rights in the second half of the XXI century, accompanied by the diligent work of international bodies, has led to a particular interest of the professional community in ensuring the fairness of the case review process and the objectivity of judicial decisions. The creation of new standards and ideas about the proper protection of individual rights has led to a rethinking of historically formed features of many procedural institutions, including the jury court. An unmotivated verdict is one of the standard features of the jury trial institution, which is currently undergoing scientific rethinking to meet modern standards of the process's fairness.

In the search for ways to improve production in the jury trial, the unmotivated verdict is evaluated by scientists as both an obstacle and a guide in determining acceptable ways to reform. Its understanding as an obstacle to achieving the optimal form of the process has led to the jury's transformation into a mixed jury or the emergence of motivated verdict models. Awareness of the independent value of non-motivational jury decisions, on the contrary, determines the interest of researchers in improving the procedure for judicial review of criminal cases.

Achieving a fair verdict has always been accompanied by risks of external influence on the jury and their obtaining information outside of the trial. With the development of information technologies, these risks have developed and transformed, creating new forms of influence that require a response and adaptation of the procedural way to level them. For this reason, ensuring the objectivity of the verdict, taking into account modern information risks, is a significant direction for the development of criminal proceedings.

Research methods. The study's subject is a set of legal and social relations that arise and develop in connection with the Institute of jurors' functioning in the Republic of Kazakhstan and the United States. The study's subject is the United States' legislation, the Republic of Kazakhstan, and pre-revolutionary and modern legislation on jury trials in Kazakhstan. At the same time, we analyzed the practical activities of the Institute based on materials describing its activities.

The study's scientific novelty lies in the fact that for the first time at the level of a monograph, the jury court's structure was structured to streamline the judicial stages and make proposals to improve the legislation regulating it ensures the effectiveness of criminal proceedings.

Main part

A hallmark of the institution of jury trials, which was first introduced in the USSR in the pre-revolutionary period connected with the adoption of the

Charter of Criminal Proceedings of 1864 (UUS), was the impossibility of appealing and reviewing decisions made based on the jury's verdict on appeal. The rulings decided by the jury were considered final. They could only be overturned in cassation (Article 663 of the CPC of the Republic of Kazakhstan), as they were based on the opinion of ordinary people, their wisdom, everyday experience, and sense of justice. At the same time, «the correctness of the jury's decisions was excluded from the subject of the appeal, as they (the jury) discussed only the actual side of the case and, in any case, should not have concerned the legal assessment of the facts.»

Meanwhile, features that reflect the jury trial's legal nature were not considered by the legislator in reforming appeal and cassation institutions in the modern Kazakhstan criminal trial. In light of the novels of the Criminal Procedure Code of the Republic of Kazakhstan (From now on the CPC of the Republic of Kazakhstan) since January 1, 2015, the appeal proceedings have embodied several traits inherent in «pure» (formal) cassation. This explains the regulation in the Republic of Kazakhstan's current CPC of the possibility of appealing and reviewing the sentence, which is decided based on the jury's verdict on appeal.

I.S. Babrakova and N.N. Kovtun, in this regard, very accurately notes that «the theory of criminal procedure science is almost unknown when decisions made in court with the participation of jurors, could be the subject of verification on appeal» [1, p. 178-191]. A.A. Tarasov also draws attention to the fact that «the impossibility of appealing review of jury decisions in the history of different states was determined precisely by the inadmissibility to control the processes of persuasion and mutual persuasion within the panel of non-professional judges by professional lawyers» [2, p. 18-20].

Thus, the fact that regulation in the current criminal procedure code of the Republic of Kazakhstan of the possibility of appellate review and verification of justness is not an enforceable sentence pronounced based on the verdict of the jurors, contrary to the essence of the institution of appeal designed for review the judgment for the facts of the criminal case in terms of direct research evidence according to the rules characteristic of the court of the first instance.

It is no accident that in the Concept of judicial reform of the Republic of Kazakhstan, it was proposed to extend only the cassation procedure to the decisions of courts that were adopted with the participation of jurors, which should only be limited to checking compliance with the law in the proceedings in the court of the first instance and carried out without direct research of evidence. In the submission of the authors of the Concept of Judicial Reform of the Republic of Kazakhstan, the appeal should not have been allowed in criminal cases considered by the jury. Contacted it seems that the request (i.e., for the actual parties to a criminal case) should not review the court decision that contains no analysis and evaluation of evidence-based on the opinion of the jury, consisting of representatives of companies, guided with the verdict their life experience and established in these society notions of justice.

Taking into account the approach of the modern legislator, who provided for the mixing of two historically formed and essentially different institutions of judicial review – «classic» appeal and «pure» cassation, appeal and thought of a verdict that has not entered into legal force, based on the judgment of a jury, in the light of the provisions of the current CPC of the Republic of Kazakhstan, are permissible but have features due to the specifics of judicial proceedings with the participation of jurors. In this regard, it is rightly noted in the criminal procedure literature that in modern Kazakhstan criminal proceedings, there is a unique model of appeal against sentences decided by a court with the participation of jurors, one of the aspects of which «is a specific set of grounds for the cancellation or modification of the sentence, which are exclusively formal and procedural» [3. p. 2316-2319].

First of all, this sentence is not subject to appeal and revision on the grounds established by part 1 of article 396 of the criminal procedure code, i.e., due to the inconsistency of the court conclusions presented in the sentence, to actual circumstances of the criminal case established by the court of the first instance (Article 662 of the CPC RK).

It is noteworthy that when the representative of the Supreme Court voiced the opinion that a state body, for some reason he is silent about the existence of an official document adopted by the Plenum of the Supreme Court in 1999, the provisions of which directly contradict the positions, as well as «the French project» as a whole. Thus, after discussing proposals and comments on the draft State program of legal reform in the Republic of Kazakhstan, the Supreme Court's Plenum issued its decision on July 9, 1999. No. 11 made the following suggestion: Recognizing the need for the institution of jurors, we believe that this will contribute, in our opinion.

The organization of justice in the United States, according to most authors, is «archaic» and has a certain «complexity» [4, p. 1088]. American Professor D. Carlen gave her the following characteristics: «The entire judicial system in the United States as a whole is so complex, so chaotic and, like Hydra, multi-headed that ordinary citizens do not even try to understand or control it» [5, p. 125].

State shipbuilding and how to implement justice in their courts, including the forms and grounds for reviewing the sentences decided by a jury trial, is governed in each state by its procedural legislation, which is subject to federal (but not modeled) on federal provisions. Foreign law experts note that «the states' judicial systems are quite diverse and have

features, which are not repeated in any other city or state. Judicial systems vary in number and type of courts, the delineation of jurisdiction between them, the methods of appeal and the number of judges at different levels» [Judicial systems of Western States 199: 240]. The dualism of the U.S. legal and judicial systems, in the words of K.F. Gutsenko, «aggravates» the already «one of the most complex institutions of the U.S. criminal process» - the review of court verdicts in criminal cases [8, p. 207].

Thus, this work's format allows us to consider only the institution's general features of the review of sentences decided by the court with jurors' participation, mainly at the federal level. The right to a jury trial is one of the most important guarantees of individual rights, which has been enshrined in the federal constitution and state constitutions. Thus, the current U.S. Constitution of 1787 stipulates that it «must involve a jury in all crimes except impeachment cases» (Section 2 of Article III) [7, p. 795]. Paragraph 1861 of titles of 28 United States Code, affirming the right to a jury trial, indicates that such proceedings should occur in the United States district courts [9, p., 177].

Thus, at the federal level, jury cases are heard in the Federal District Courts, the first instance courts in federal jurisdiction. They may review convicts in the appeals courts and the latter's decisions to the U.S. Supreme Court.

In the United States, as it was until recently in England, may file an appeal against the conviction, and the sentence imposed only on convictions decided by a jury. The inability to appeal acquittals is due to a constitutional provision under which «no one should be at risk of criminal responsibility for the same crime» (V amendment of the U.S. Constitution 1789).

In paragraph 27 and 29, the Supreme Court of Kazakhstan's Ruling of August 23, 2012, No. 4 on the practice of the courts applying legislation regulating criminal proceedings involving jurors in the event of the annulment of the sentence imposed by the jury, with the referral of the case for a new trial from the main trial stage, the issue is heard with the participation of jurors. If the sentence is overturned and the case is sent to a new trial from the preliminary hearing stage, all issues under article 321 of the CPC, including the case involving jurors, are resolved at this stage.

A review of the conviction and the resolution of the court of cassation in connection with the necessity of application of the criminal law on more grave crime, because of the softness of punishment or on other grounds entailing the deterioration of the condemned, and also a revision of an acquittal or a court ruling on termination of a criminal case are not allowed.

In other words, given the varied nature of the institution, which in modern Russian criminal proceedings is called «appeal», but contains several purely causational features, the prohibition of appeal and review on appeal of a verdict decided based on a jury verdict, from its unreasonableness, is because the court of appeal when reviewing such a sentence, given the unshakeable verdict of jurors, guided by its discretion, it is not authorized to intrude into the sphere of activity of «judges of fact,» namely, to give its assessment of the actual circumstances of the criminal case established by the verdict (part 9, 10 of article 656 of the CPC of the Republic of Kazakhstan).

Since jurors are not obliged to motivate their verdict, which forms the basis of the judgment on its factual side, it is also excluded that the superior court should assess the jury's validity or unreasonableness to establish the facts of the criminal case.

The parties to the case have the right to appeal: the convict, his defense counsel, and the attorney involved in the trial, but the scope of the exercise of that right varies from party to side. K.F. Gutsenko points out that the defendant's right to appeal depends on several conditions [10, p., 480].

Under the general rule, the basis of the defense's appeal is a «substantial legal error» made by the court of the first instance. The 7th Amendment of the 1789 U.S. Constitution stipulates that no fact reviewed by a jury can be re-examined in any United States court other than under standard law rules. S.V. Bobotov and I.Y. Jigachev point out the following: **«If the losing party appeals to the Court of Appeal, the latter must consider proved all the facts on which the jury was based in the verdict, and it is assumed that they correctly applied to them the legal norms explained by the judge»** [11, p. 333].

E.V. Miryasheva explains [12, p. 152] the limited review of the jury's verdicts' facts in the American courts of appeal several reasons. Firstly, «the belief in the superiority of direct oral testimony over indirect written evidence.» Secondly, «the right to a jury trial would not mean much if an appeals court judge could easily overturn the jury's findings if they disagreed... a jury's verdict can only be reviewed if there is no substantial reliable evidence to support such a verdict... In determining the «materiality of evidence», the court of appeal must be careful not to substitute its point of view for that of the jury's point of view».

Despite the lack of precise legislative regulation in the CPC of theRepublic of Kazakhstan, it is thought that the current criminal procedure legislation provides the court of appeal, in reviewing the verdict decided based on the jury's verdict, can examine during the judicial investigation evidence that has been reviewed by the jury, or in their absence, to verify their admissibility, based on the requirements of the jury, 112 of the CPC of Kazakhstan, as well as to verify the relevant conclusions of the court in the verdict in terms of their legality and fairness.

However, we believe that the envisaged articles 662, 665 of the criminal procedure code of the Republic of Kazakhstan a ban appeal the sentence imposed by the court with the participation of jurymen, on the ground of inconsistency of the court conclusions presented in the sentence, to actual circumstances of a criminal case, from the outset negates the «classic» purpose of the appeal – direct verification by the court of appeal of the authentic side of the sentence. It seems that for this reason alone, the legislator should not have referred sentences decided based on the verdict of a panel of jurors to the subject of review on appeal but should have extended the cassation procedure to them.

As general examples of «substantial legal error» enshrined as a basis for the abolition of sentences in state law, the violations committed by the presiding judge in the drafting and approval of the indictment, the resolution of motions of the parties, the presentation of evidence in the case, the clarification of legal norms to the jury can be called [13, p. 88].

Thus, the grounds for reviewing a criminal case under the law of the state of California are:

– the trial was held in the absence of the accused, except for the admissibility of such cases;

– the jury retired without judicial permission;

– the verdict was passed without a fair expression of opinion on the part of the jury;

– the court misinterpreted the law to the Grand jury;

– the accused was convicted of a crime that is not supported by evidence or for a more severe crime than the evidence presented [14, p., 264].

V. M. Nikolaichik notes that the legislation states that recognize a legal error as grounds for annulment, there is no single approach on whether actual mistakes that led to an unwarranted conviction may be grounds for appeal [15, p., 224]. For example, in Massachusetts, after the high-profile conviction of activists of the workers' movement, Sacco and Vanzetti adopted a rule on the possibility of reviewing and admonition of the sentence in connection with an unjustified conviction, and the latter refers to all cases where, from the court's point of view, «the interests of justice require it».

Under the general rule, may grant an appeal against the court's sentence in the event of non-compliance with the limits of the sanction imposed by the criminal law or the Federal Sentencing Authority. A turn to the worst is not allowed (the exception is a possible increase in the punishment of those who have applied those, as mentioned earlier, «frivolous» appeals).

The prosecution's right to appeal convictions is usually enshrined in the relevant legal acts in the form of a list of cases where such an appeal is possible. Thus, the federal attorney has the right to appeal: to reject the indictment (i.e., the court's termination of the proceedings in the case); to appoint a new trial after the judge overturned the jury's verdict jurors if such an appointment contradicts the principle that it should not be re-prosecuted for the same crime; to the court's decision on the admissibility of evidence obtained in violation of the constitutional rights of citizens.

V.D. Potapov very accurately refers to the inclusion in the subject of appeal review of the verdicts handed down by the jury as a «clear error of criminal procedural law» [16, p. 68].

In light of the provisions of the current CPC of the Republic of Kazakhstan, appeals and revisions of the sentence, which has not entered into force based on the jury's verdict, are possible only because of the significant violation of the criminal procedure law, misuse of the criminal law and unfairness of the sentence. Regarding these appeals grounds, the Republic of Kazakhstan's current CPC does not establish prohibitions in appealing and verifying the legality of penalties imposed based on the jury's verdict.

Meanwhile, it is impossible not to pay attention to the fact that the unfairness of the sentence is a «classic» appeal basis for the cancellation or modification of a court decision, and therefore not typical for penalties decided by a court with the participation of jurors, based on the mechanism of their decision, due to the legal nature of the institution of a jury. It appears that the presence of injustice in the list of grounds for cancellation or modification of the sentences of the court with the participation of jurors in the criminal procedure code of Kazakhstan is caused both by the fact of distribution of the appellate order in these sentences. The legislator recognized the need to evaluate such corrections for the correct application of judge professional norms of the General part of the Criminal Code of the Republic of Kazakhstan, particularly part 3 of the article 52 of the Criminal Code of the Republic of Kazakhstan.

Because of the above, the following provisions of the Republic of Kazakhstan's CPC are of interest. According to part 2 of article 662 of the Code of criminal procedure, in compliance with the requirements of section 5 of part 1 of article 662 of the Code of criminal procedure, the appellate court may allow following the verdict of the jury verdict as contrary to the judgment. However, part 2 of article 662 of the Republic of Kazakhstan's criminal procedure code regulates the possibility of eliminating the contradiction of the verdict to the verdict only by changing the sentence. In cases where it is impossible to change the ruling, the court of appeal, based on part 1 of article 663 code of criminal procedure, shall only overturn the verdict and direct the case for a new trial, following the passing of the ruling.

In the words of T. Vladykina, «if the verdict ordered by the judge contradicts the verdict, can argue that not only the law is violated, but also the

rules of logic (the law is not contradictory)» [17, p. 78-84].

The grounds for reviewing sentences on which can appeal are exhaustive in the State Criminal Procedure Act, New York. Under Texas law, a prosecutor can appeal an acquittal when necessary « to formulate legal norms for the future» and when the sentence was handed down by a court that does not have the right to hear a case in «Regarding this crime».

As a result of consideration of complaints, the appellate court accepts one of the following decisions: to leave the court's conclusion in force, change or cancel with the termination of the case or forward the topic to the court of the first instance for retrial.

Decisions of the courts of appeals (and decisions of the highest state courts) can be appealed to the Supreme Court's highest judicial authority. The French statesman, historian and writer Alexis de Tocqueville defined the place of this court in the organization of the state power of the United States as follows: «When, having examined the Constitution of the Supreme court in detail, one proceeds to examine the whole body of prerogatives which it possesses, it is easy to find that no nation has ever had so powerful a judicial power... It may even be argued that, although the Supreme Court of the United States is a purely judicial institution in its organization, almost all of its powers are political» [18, p. 554].

Judicial review proceedings lower courts were no exception to such «political powers». In reviewing only court cases involving a «federal issue» involving an assessment of the constitutionality of a law or classified by statute as exceptional jurisdiction by the U.S. Supreme Court, as well as cases in which the implementation of criminal policy in the country is coordinated and set the tone for the performance of justice throughout the U.S. judicial system.

Formulating fundamental approaches and principles in appellate proceedings are carried out by disclosing the meaning of the constitutional requirement for due process. Thus, the 14th Amendment of the U.S. Constitution of 1789 prohibits the deprivation of «life, liberty or property without due process». In each case, the U.S. Supreme Court, based on fundamental constitutional principles and their compliance in criminal proceedings, i.e., compliance with «due process of law», makes its own decision, binding on all U.S. courts in such subsequent cases.

In this case, only the «error» of the lower court's decision on issues cannot be the basis for the reconsideration of the case. In 1949, chief justice Vinson of the United States Supreme Court, in a speech to the Association of American lawyers, emphasized this feature of the court's activities: «The Supreme court is not and has never been primarily concerned with correcting errors in decisions of lower courts... To effectively carry out its tasks, the Supreme court must, as before, consider only cases involving issues of direct significance that go far beyond the circumstances and interests of the parties in a particular case».

This state of Affairs explains why only 100 of the 8,000 cases submitted to the Supreme Court each year are subject to review [19, p., 351].

For this reason, the chief judge of the Federal court of appeals, George A. McKinnon, said the following: «Of course, the Supreme Court can reject our decision, as well as all state courts, but in a world of harsh reality, we are almost always the court of last resort in reviewing decisions».

In practice, however, there are cases in which a professional judge's verdict is considered factual, significantly different from the actual circumstances indicated in the jury's verdict, or where the crime qualification does not correspond to the actual events established by the ruling. Depending on whether such significant violations are eliminated in the court of appeal, this court's types of decisions (cancellation or change of sentence) differ.

By analyzing these legislative provisions, S.A. Trukhin proposes «to eliminate the need to return the case to the court of the first instance ... to enable the Court of Appeal to bring the verdict into line with the verdict not only by amending it but also by overturning the appeal within the facts established by the lawful verdict of the jury» [20, p. 35-38].

In turn, we believe that expanding the powers of the court of appeal, both in terms of providing it with the opportunity to verify the validity of a verdict decided based on a jury verdict and in terms of giving it the right to determine a new sentence based on a jury verdict, is not appropriate. Such legislative changes are either otherwise affect the firmness of the ruling, the jury, will significantly affect the right of the convict (acquitted person) for protection, will allow worsening his situation directly to the court of appeal, albeit on the initiative of the subjects of the prosecution, but without taking into account the fact that the choice of the court with the participation of jurors following the rules of jurisdiction depends on the will the accused himself (part 3 of article 52 of the criminal procedure code of the Republic of Kazakhstan), and objective truth in a jury trial is not always achievable. Also, the authors as mentioned above are talking about significant violations of the criminal procedure law, which are allowed when a verdict is passed based on a jury verdict, as the basis for its cancellation in the appellate procedure, which should not be replaced by ground for the unfounded nature of such a judgment.

In the context of the issues under consideration, we should pay attention to the specifics of the judicial review of judicial decisions operating in the modern Kazakhstan criminal court process.

Even though the Institute of cassation in the new Kazakhstan criminal process is designed to verify only the legality of a court decision that has entered into force (article 62 of the CPC of the Republic of Kazakhstan), namely, it is intended to identify and eliminate the criminal case significant violations of the criminal law (improper application) and (or) the criminal procedure law that affected the outcome of the case, and offenses that distort the very essence of justice and the meaning of the judicial decision as an act of justice, except for the cassation review of issues of fact, this institution contains several appeal features.

In particular, the court of cassation instance is allowed to decide the form of a change of sentence (article 500 of the CPC of the Republic of Kazakhstan), which is typical for the appeal form of verification. As follows from paragraph 4 of part 7 of article 494 of the criminal procedure code of the Republic of Kazakhstan, the court of cassation may reduce the sentence imposed on the convicted person or apply the criminal law on less serious crime, i.e., review the ruling on the grounds of injustice.

According to paragraph 1254 titles, 28 Vault United States Supreme Court laws may review criminal cases, including those ordered by a jury, in two instances: through the issuance of a claim order (order certiorari) and on the certificate of the Federal Court of Appeal.

The first type of review of sentences under an order to reclaim a case is a discretionary power of us Supreme court, implemented on the petition of one of the parties and if there are «special» and «serious» reasons for this. Rule 17 of the laws of the Supreme Court of the United States of 1980 establishes a list of these grounds:

– the Federal court of appeal has issued a decision that contradicts another court of appeal on a similar issue if violated the accepted and standard procedure of legal proceedings or a similar violation by a lower court has been authorized, requiring the exercise of the Supervisory powers of the Supreme court;

– errors related to the violation of the jurisdiction of the courts of last resort of the States and the Federal court of appeals;

– a state court of last resort or a Federal court of appeals «decides an important matter of Federal law» that was not resolved but should have been resolved by the U.S. Supreme court, or if the matter is resolved in «certain conflict» with an existing decision of the U.S. Supreme Court [21, p. 768].

Can grant a petition by one of the parties to issue an order to claim the case from the Federal Court of Appeal before the last final decision in the case only on one condition: «if the case contains a matter so urgent a public matter that justifies a deviation from the usual appellate order and requires an immediate settlement in the U.S. Supreme Court» (Rule 18 of the 1980 U.S. Supreme Court Rules). An order is issued for the petition's satisfaction or rejection to claim the case, which is immediately reported to the lower court and the parties in the topic (Rule 23 of the 1980 U.S. Supreme Court Rules).

The second type of review is initiated on a certificate by the Federal court of appeals when it is desirable to obtain the U.S. Supreme Court's direction to make a correct decision «on any issue or the rule of law». The certificate may contain only the legal issues; the case's facts can be given only to justify law questions (Rule 24 (1) of the Rules of the U.S. Supreme court 1980). Based on the certificate review results, the Supreme Court of the United States may issue binding instructions to the relevant court or request the case and consider it on its merits (section 1254 of title 28 of the United States Code of laws).

Despite categorically formulated in the Code of criminal procedure subject of the cassation check, which is only the legitimacy of judicial decisions, the legislature simultaneously established a «turn for the worse» about the convicted, acquitted person.

Thus, the present interpretation of the norms of the Code of the criminal procedure indicates the possibility of a review in cassation of judgments only from substantial breaches of the criminal law (improper use) and the criminal procedure law, but also for compliance with the lower court the order of examination and assessment of evidence and based on the injustice of the sentence.

By reviewing the sentences of lower courts, the Supreme court of the United States formulates «standards of due process,» failure to comply with, resulting in the cancellation of both Federal and state courts' rulings. As an example, the following violations of legal procedure can be cited, which are grounds for the cancellation of sentences issued by a court with the participation of jurors:

– the accused is denied the right to a speedy and public trial, and his right to a lawyer is restricted (Gideon v. Wainwright, 1963);

– a conviction based on illegally obtained physical evidence (MAPP case, 1961);

– sentencing to death of persons who committed crimes when they were minors or those who are in a state of insanity;

– pressure on jurors and judges;

– awareness of the case before the jury (Irvin V. Dowd, 1961).

The Supreme court of the United States, through «due process of law,» has mostly unified Federal and state law in the field of criminal procedure, and according to some authors, even «revolutionized» the system of «American federalism».

After exercising the right to appeal in the above forms, the convicted person can resort to an extraordinary appeal of the sentence, which essentially amounts to issuing a writ of habeas corpus and reopening the case for newly discovered circumstances (error Coram Nobis).

The «habeas corpus» procedure has its roots in the Middle Ages' English law, namely, the Act on the best guarantee of the subject's freedom and the prevention of imprisonment beyond the seas (Habeas Corpus Amendment Act, 1679). The Act provided the possibility of judicial review of custody decisions made by «sheriffs, jailers, and other officials persons.»

In the United States, the procedure under review has undergone significant changes. Thus, a request for the issuance of a writ of habeas corpus can be made by both a defendant who has been subjected to a preventive measure in the form of arrest and a person who has already been sentenced to imprisonment. May appeal such a motion file with the court that issued the decision, and the decision to the higher courts of the relevant state, and then in the Federal courts: district, appeals, Supreme court of the United States. If the requested grant, the appropriate sentence is considered overturned, and the case is usually sent for a new trial.

The filing of a request for review of the case on newly discovered circumstances, as well as for the issuance of a writ of habeas corpus, is not limited to any time frame. May file a motion after the verdict of the jury and before the judgment is pronounced. In this case, only the verdict of the jury is subject to appeal. May also file the petition under consideration to a court review with the participation of a jury. Newly discovered circumstances are understood as «circumstances that were not known at the time of the trial, but which, if they knew them, would have prevented the imposition of a guilty verdict».

In the context of such legislative regulation and its interpretation by the Plenum of the Supreme Court of the Republic of Kazakhstan, it is even more incomprehensible that the Russian legislator extends the appeal procedure for appeals and review sentences decided based on a jury verdict.

Seeing, in turn, as a prospect for further development of appeals and cassation in the modern Kazakhstan criminal process, their synchronous transformation into «classic» forms of these institutions, we believe that for sentences decided based on a jury verdict should provide only the cassation procedure for their appeal and verification in terms of significant formal violations of the norms of criminal and criminal procedure legislation.

The petition is submitted to the court that passed the sentence. If it is satisfied, the previous sentence is canceled, and the case is sent for a new trial, taking into account the newly discovered circumstances.

In addition to appeals and extraordinary ways to appeal verdicts decided by a jury, U.S. criminal procedure law provides several means of removing jurors from the case or overturning their ruling in first-instance proceedings:

– motion for acquittal (motion for judgment of acquittal). Following rule 29 (a) of the Federal Rules of criminal procedure, the activity in question is filed after the prosecution's presentation or after investigating all the evidence in the case. Its purpose is to terminate the proceedings in the criminal case;

– a renewed motion for acquittal, which is a repeat of the movement for compassion (motion for judgment of acquittal), but it is filed in the following manner: after the jury's verdict (rule 29 (C) of the Federal Rules of criminal procedure). The basis of the considered petitions is «the fact that the evidence presented to the court was insufficient to find the accused guilty beyond any reasonable doubt»;

Checking the voting results by polling the jury (poll the jury) can be requested by the «losing» party. When the request is granted, the court interviews each juror: whether the verdict read corresponds to the ruling that all the jurors agreed with, if not the court's recognition of the trial as «legally invalid» and the convening of a new panel of jurors.

Summarizing the above, we can conclude that the distinctive features of the review of jury verdicts in the United States are:

1) the diversity of instances and forms of thought of sentences, primarily due to the uniqueness of the historical development of the legal system and its dualism;

2) formulation of the grounds for cancellation (modification) of sentences, usually in the form of generalized rules and wording («unreliability of the decision on guilt,» «significant legal error,» «violation of due process»). The source for determining violations that occurred during the consideration of a particular case as grounds for revoking (changing) the relevant sentence is judicial precedents;

3) «caution» in canceling jury verdicts by a higher court, which occurs only if there are «fundamental» violations of the rules of procedure or if this is «required by the interests of justice.» It is not enough for the verdict to be overturned if the court of a higher instance disagrees with the conclusions of the jurors regarding the actual circumstances of the case;

4) as a rule, the inadmissibility of appealing an acquittal.

Such legislative changes will logically fit into the design of the mechanism of cassation appeal and verification of the justice of judicial decisions, provided that the legislator changes the approach to mixing the features of two institutions-appeal and cassation, and will be timely as in connection with the legislative introduction of the institution of the court juries at the level of district courts and garrison military courts, and in the light of the emerging trend towards the creation of independent appellate and cassation instances in the system of courts of general jurisdiction for interregional judicial districts, similar to the existing vertical arbitration courts.

Conclusion

A feature of the proceedings in the appellate court of cases considered by the court with the participation of jurors is that the court of appeal in consideration of complaints, protests against verdicts, the rulings of the court with the involvement of the jury check the compliance of the court, the verdict, the verdict, the norms of the criminal and criminal procedure law and based on this corresponds the legality, validity, and fairness of the judgment, the verdict.

Enforceable exculpatory verdict in the case, considered with the participation of jurors, and the decision of the Appeals Board of the abandonment of its effect can be reversed by the court of appeal only if the request of the victim or a cassation protest of the public Prosecutor, except for substantial violations of the Code of criminal procedure, contested the merits of the acquittal and during the appeal process will be established the circumstances specified in clauses 1) and 2) h 1 of this article and the illegality of the clearing.

The new version of the CPC provides a new rule - the abolition of the sentence with jurors' participation with the case's referral to a new trial.

The sentence, which is decided with the participation of jurors, is to be overturned in full or in part with the referral of the case to a new trial in the court, which has decided the verdict, but in a different composition of the court on the grounds specified in the article—662 of this Code.

At the same time, the court of appeal does not have the right to prejudge questions about the proof or unbrokenness of the prosecution, the integrity or unreliability of given evidence, the advantage of some evidence over others, the application of criminal law by the court of the first instance and the punishment, and the prejudgments of the conclusions that can be made by the court.

A review of the conviction and court order of supervision in connection with the necessity of application of the criminal law on more grave crime, given the softness of punishment or on other grounds entailing the deterioration of the condemned, and also the revision of an acquittal or a court ruling on termination of a criminal case are not allowed.

The normative resolution «on the practice of applying the legislation regulating criminal proceedings with the participation of jurors» comments on this rule and draws the attention of the courts to the fact that the requirements of article 577 of the criminal procedure code (in the old version) on the inadmissibility of deterioration of the situation of the convicted person apply only to cases of review by the Supervisory Board of the Supreme Court of the sentence that has entered into force and the decision of the court with the participation of jurors.

It should be noted that American law provides for specific categories of persons who are exempt from the duty of performing the functions of jurors. Such persons include members of the armed forces in military service, police and fire departments, civil servants, and public figures.

This gradation concerning the number of persons who make up the jury is due to the following. Being a follower of England, and perceiving its historical experience of the court with a jury, the American leadership has accepted and reproduced in its judicial system the installation according to which the jury is formed of 12 people. Meanwhile, in 1970, the Supreme Court of the United States considered the case of Williams v. Florida (Williams v. Florida), as a result of the proceedings in which the court concluded that it is not necessary to form a jury of 12 members, and the possibility of completing the latter in the number of at least six persons. Judge Byron White noted that providing the accused with the right to trial by jury gives him an invaluable guarantee against a corrupt or «overreaching» Prosecutor and a malleable, biased, or eccentric judge.

It should also be clarified that according to the provisions of the American Constitution, only certain powers required for the exercise of state power are transferred to the Federal government. In contrast, other state powers that are not defined for such transfer are exercised by the United States. Therefore, States may set different rules for matters involving a jury trial.

Litigation in American courts is almost the same as in the courts of England. The prosecution informs the court and the audience of the essence of the charge, after which the testimony of witnesses presented by the parties to the process is heard. Then, if the accused person has consented, they are questioned by the Prosecutor and defense counsel. During the trial, the judge oversees the presentation of witnesses' statements, determining the order in which such witnesses will be heard. The Prosecutor and the lawyer can file objections regarding the relevance of the evidence to the case. The latter, in turn, do not form a biased opinion of the jury. After hearing the parties, the judge must decide whether to leave such information to the jury or not.

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