

THE JURY TRIAL IN RUSSIA

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I.	INTRODUCTION	1
II.	BASIC STRUCTURE OF RUSSIAN JURY PROCEEDINGS	2
III.	JUROR INDEPENDENCE, IMMUNITY, PAY, AND JOB PROTECTION	5
IV.	GENERAL JUROR QUALIFICATION	7
V.	JURY SELECTION IN COURT	8
VI.	RIGHTS AND RESPONSIBILITIES OF THE JUROR	11
VII.	THE JURY TRIAL	13
VIII.	POST-TRIAL PROCEDURES AND SENTENCING	18
IX.	APPEALS	20
X.	CONCLUSION	21

I. INTRODUCTION

Jury trials existed in Russia from 1865 to 1917, but were abolished after the Communist revolution.¹ On November 1, 1993, the Russian

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1. Steven Erlanger, *Discovering Justice: Russia and the Law: A Special Report: Two Novelties in Russian Courts: Defense Lawyers and Jury Trials*, N.Y. TIMES, May 11, 1992, at A1.

Federation of Republics implemented trial by jury.² Many reasons for this systemic change exist, including, *inter alia*, the desire to promote a sense of fairness, to assure integrity in the legal system, to create and protect the independence of the court, to control the power of the courts and judge, to promote citizen participation in the administration of justice, and to create respect for the administration of justice both domestically and internationally.³

Russian criminal procedure is rooted in the continental western European systems of Germany and France.⁴ The recent amendments are innovative and progressive. Many of the reforms are fashioned after the Anglo-American system, while others are fashioned after systems that employ a mixed, lay-juror professional-judge format.⁵ The context and background information of the rules indicate that they were modified to accommodate and comply with the existing legal culture, as well as the institutions and the psyche of the Russian citizens. What follows is a comprehensive review of Russian jury reform.

II. BASIC STRUCTURE OF RUSSIAN JURY PROCEEDINGS

The current law provides for an experiment in both civil and criminal cases in district and regional courts; however, only criminal cases will be tried before twelve-person juries in regional courts.⁶ During the experiment, a criminal defendant will be given the option of having his case heard by a single judge and a twelve-person jury, or, as

2. Law on Amendments to Law on Judicial System in Russia, July 16, 1993, at 1-39, in FBIS-USR-93-007-L, Aug. 13, 1993.

3. Erlanger, *supra* note 1.

4. RENE DAVID & JOHN E.C. BRIERLEY, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY 143-44 (2d ed. 1978). See also JOHN H. LANGBEIN, COMPARATIVE CRIMINAL PROCEDURE: GERMANY 61-86 (1977).

5. *Id.*

6. KONSTITUTSIYA RF [Constitution of the Russian Federation] art. 164, reprinted in XVI ALBERT P. BLAUSTEIN & GIBBERT H. FLANZ, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1, 55 (1993) [hereinafter KONST. RF]. All courts in the Russian Federation are made up of elected judges and people's assessors. The judges are elected by the Supreme Soviet of the Russian Federation. The people's assessors of municipal courts are elected at assemblies of citizens by place of residence or employment by open ballot. The judges are elected for a term of 10 years, and the people's assessors are elected for a term of 5 years. Judges and people's assessors are responsible and accountable to the bodies electing them and may be recalled as prescribed by law. *Id.*

was the case under the Communist Regime, by a professional judge and two people's assessors.⁷

Russia has retained a three-phase process in criminal matters.⁸ The first phase is the preliminary investigation, in which the police agencies and the prosecutor jointly conduct an evidence-gathering investigation of the alleged crime.⁹ At this stage, the search for both the evidence and the person who has committed the crime begins.¹⁰ The purpose of the preliminary investigation is to collect all evidence, and to create the conditions for a speedy trial and a just sentence.¹¹ At the end of the preliminary investigation, the accused is informed of the possible charges and given the right to examine all the materials of the case.¹² The accused may then petition for a jury trial.¹³ The prosecutor and the victim, on the other hand, may not request a jury trial.¹⁴

During the preliminary investigation, Russian procedure requires that the investigator familiarize the accused with all materials of the case.¹⁵ In addition, the investigator must explain the accused's right to petition for a jury trial, as well as the legal consequences of the granting of such a petition, the peculiarities of the appeal process, and the effects of sentences in a jury trial.¹⁶ The investigator must also reveal the effects of requesting or rejecting a jury trial or any other position taken by the accused in a separate record, which both the investigator and the accused sign.¹⁷ If the request was initiated properly, it cannot be denied

7. *Id.*

8. HAROLD J. BERMAN, *JUSTICE IN THE U.S.S.R., AN INTERPRETATION OF SOVIET LAW* 302-8 (1963).

9. *Id.* at 302.

10. *Id.*

11. *Id.* at 302-5.

12. *Id.*

13. *Ugolovno-Protsessual'nyi Kodeks* (Code of Criminal Procedure, Russian Soviet Federalist Socialist Republics), *Vedomosti Ayezda Narodnykh Deputatov Rossiyskoy Federatsii I Verkhovnogo Soveta Rossiyskoy Federatsii* [Vedomosti RF] No. 25, at 1,389; No. 27, art. 423 at 1,560 (1992) [hereinafter UPK RSFSR].

14. UPK RSFSR art. 432. Because the amended articles to the Code of Criminal Procedure are silent on whether the victim or the prosecutor may request a jury, it is presumed that Article 423 is intended to deny that right to those respective parties. See *id.* art. 423.

15. UPK RSFSR art. 424.

16. *Id.*

17. *Id.*

and must be confirmed by the judge at the preliminary hearing.¹⁸ Once the preliminary investigation has been completed, the accused is precluded from requesting a jury trial.¹⁹

The second phase of a criminal matter is the closed, mandatory preliminary hearing before a judge.²⁰ Only the prosecutor, the victim, the accused, and the defense attorney may participate in this hearing.²¹ Once sufficient evidence to indict or charge the accused of a crime is presented during the preliminary hearing, the judge must determine whether the accused understands the charge.²² If the accused understands the charge and has petitioned for a jury trial, the judge will ask the accused if he or she acknowledges such petition.²³ If acknowledged, the judge must publicly grant the request, which, as a final order, is recorded and irreversible.²⁴ The judge may also fix a jury trial date at the preliminary hearing and determine the number of jurors to be summoned for the trial.²⁵

The third and final phase is the jury trial itself, which is based on the adversarial principle.²⁶ The Russian Code of Criminal Procedure (Code) defines the adversarial system as one that ensures the equality of rights between the parties, as controlled and regulated by a judge, who shall be objective and dispassionate.²⁷ Although the Code defines "adversarial procedure," those words were not intended to adopt the Anglo-American meaning of the adversarial trial form.²⁸ During the trial, the judge questions witnesses employing the Russian inquisitorial form, rules on evidence, and generally plays an active role.²⁹ The judge,

18. *Id.* art. 423.

19. *Id.*

20. BERMAN, *supra* note 8.

21. UPK RSFSR art. 432. Note that the extent of the rights of victims is beyond the scope of this article.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* art. 433.

26. UPK RSFSR art. 429.

27. *Id.*

28. John H. Minan & Grant H. Morris, *Unraveling an Enigma: An Introduction to Soviet Law and the Soviet Legal System*, 19 GEO. WASH. INT'L L. & ECON. 1, 41-56 (1985).

29. *Id.*

not the parties, frames the legal issues for resolution.³⁰ Furthermore, the Code requires the judge to establish conditions for a comprehensive and complete investigation of the circumstances involved in the case.³¹

Under Russian law, the right to counsel in criminal proceedings is guaranteed.³² An accused may choose private counsel or accept court-appointed, publicly-funded representation.³³ The exact moment the right to counsel becomes operative is unclear.³⁴ The general rule is that defense counsel must participate in pre-trial proceedings upon completion of the preliminary investigation.³⁵ The Code also mandates that a defense attorney participate in the jury trial, in addition to the pre-trial proceedings.³⁶

Once admitted to a case, the defense counsel is entitled to full access to all materials, defense and prosecution materials alike, collected and obtained in the preliminary investigation.³⁷ This right to receive and review all evidence in the possession of the government is consistent with the constitutional concept of fairness.³⁸ It can be assumed that the right is designed to encourage the defendant's cooperation or admission of guilt.

III. JUROR INDEPENDENCE, IMMUNITY, PAY, AND JOB PROTECTION

Juror independence is guaranteed by law in Russia.³⁹ The jurors, the members of their families, and their property are all under special state protection during the time the jurors are performing their duties.⁴⁰ Jurors are protected from personal threats, as well as any kind of political intervention or influence from leaders of enterprises, institutions, or

30. *Id.*

31. *Id.*

32. KONST. RF art. 67.

33. UPK RSFSR art. 427.

34. *See id.*

35. *Id.* art. 426.

36. *Id.*

37. *Id.* art. 426.

38. UPK RSFSR art. 426.

39. RF Law on the Judicial System, Vedomosti RF No. 27, at 1560; No. 30, art. 87, at 1794 (1992) [hereinafter Judicial System Law].

40. *Id.*

organizations.⁴¹ Additionally, the jurors are protected from other officials and citizens who may impede the performance of their duties.⁴² Anyone who attempts to influence a juror is subject to criminal penalties, although such penalties are not specifically defined.⁴³ Overall, the protection provided is greater than that provided to jurors in the United States.

Jurors are additionally protected from any harm to their employment status.⁴⁴ For example, jurors are shielded from demotion, dismissal or loss of any employment benefits while serving as jurors.⁴⁵ Furthermore, jurors enjoy the same legal immunity while performing their duties in court as do Russian judges.⁴⁶ Such immunity appears to be absolute.⁴⁷

The Law on the Judicial System of the Russian Federation also mandates that jurors be paid.⁴⁸ The standard rate is one-half of the salary of the judge in whose court the juror is selected to serve.⁴⁹ Under no circumstances, however, is the juror to be paid less than the average earnings of the juror's primary employment in relation to the number of work days the juror appears in court.⁵⁰ Furthermore, the juror is reimbursed for all travel expenses at the same rate as that for judges.⁵¹ The pay and travel expenses are calculated at the market rates of those services at the time the juror performs his or her duties.⁵²

41. *Id.* arts. 87-88.

42. *Id.* art. 88.

43. *Id.* art. 88.

44. Judicial System Law, art. 86.

45. *Id.* Such a provision may have been influenced by the long history of worker protection during the Socialist period.

46. *Id.* art. 87.

47. In contrast, state court judges in the United States may be sued for injunctive and declaratory relief and held personally liable for money judgments in the form of costs and attorney fees based on erroneous decision making. See, e.g., *Pulliam v. Allen*, 466 U.S. 522 (1984).

48. Judicial System Law, art. 86.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

IV. GENERAL JUROR QUALIFICATION

In order to qualify for jury service, an individual must be a citizen of Russia and more than twenty-five years of age.⁵³ A person who has been convicted of a crime may not serve on a jury, unless his conviction has been annulled.⁵⁴ Moreover, a judge may excuse a person who has been suspected or accused of having committed a crime from jury service.⁵⁵ Additionally, a person who has been judicially declared to be physically or mentally disabled or to have a limited disability is ineligible for jury service.⁵⁶

A prospective juror may apply for and receive exclusion from service, if that person does not understand the language in which the court proceedings are conducted.⁵⁷ For instance, persons who are deaf, dumb, or blind, or who have other disabilities are considered incapable of successfully performing jury duty, as are people who suffer from medically diagnosed physical or psychological defects.⁵⁸ Others who are ineligible for jury service include: persons more than seventy years of age, leaders and deputy leaders with representative or executive powers over certain organizations, military servicemen, clergymen, judges, procurators, investigators, lawyers, notaries, and leadership or operational personnel for internal affairs and state security organs.⁵⁹ Social origin, race or nationality, property ownership, position, affiliation with public associations and movements, gender, and religious convictions are not considered grounds for disqualification from jury service in Russia.⁶⁰

Certain persons may request a release from jury duty, orally or written from the president of the court or from the presiding judge.⁶¹ Those eligible for release include: persons more than sixty years of age, women with children under three years of age, individuals with religious convictions which make it impossible for them to serve as objective jurors, and individuals whose absence from their jobs could significantly

53. Judicial System Law, art. 80.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. Judicial System Law, art. 80.

59. *Id.*

60. *Id.*

61. *Id.*

harm public and state interests, such as physicians, teachers, and airline pilots.⁶²

V. JURY SELECTION IN COURT

The trial judge conducts the entire voir dire examination of the prospective jurors.⁶³ The procurator, the victim, the accused, and the defense attorney may submit suggested questions for the judge to ask the prospective jury.⁶⁴ First, the judge must make a brief introductory statement to the jurors, stating the type of case to be tried and explaining the duties and responsibilities of the jurors.⁶⁵ The judge then explains the jurors' obligations to answer the questions asked of them and to provide information about themselves and their relations with any individuals participating in the trial.⁶⁶ In addition, the judge is required to inform the jurors of their liability for juror misconduct.⁶⁷

After the general voir dire examination, the presiding judge must excuse the following persons from jury duty: those whose objectivity is impaired because of any illegal influence, those who hold a prejudicial opinion, and those who have knowledge of the circumstances of the case from outside sources.⁶⁸ The judge is also given the power to excuse persons "for other reasons."⁶⁹ Article 438 does not define these reasons which may, in turn, lead to potential abuse by a judge.⁷⁰

Thereafter, the remaining jurors have the right to disqualify themselves from jury duty.⁷¹ The prospective jurors either announce or submit, in writing, a list of the reasons that would prevent or disqualify them from performing jury duty.⁷² The judge then determines the validity of those requests and excuses those whose reasons are valid.⁷³

62. *Id.*

63. UPK RSFSR art. 438.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. Judicial System Law, art. 80.

69. *Id.*

70. *Id.*

71. UPK RSFSR art. 438.

72. *Id.*

73. *Id.*

From the remaining pool, the names of eighteen prospective jurors are randomly drawn.⁷⁴ The right of the court to disqualify jurors and the right of the prospective jurors to seek self-disqualification based on a legal ground are the equivalent to individual cause challenges.⁷⁵

Peremptory challenges exist for both the prosecution and the accused.⁷⁶ The victim, however, does not have the right to exercise peremptory challenges, even though the Code allows the victim to actively participate in the trial process, with or without an attorney.⁷⁷ The peremptory challenges operate as follows: The jurors' eighteen names are first given to the prosecutor, who has no more than two peremptory challenges.⁷⁸ The defendant and the defense attorney then have the right to peremptorily challenge the remaining jurors so that at least fourteen jurors remain.⁷⁹ Ultimately, the defendant and his attorney can have four challenges, provided the government elects not to exercise any challenges. Under no circumstances will the defendant have less than two peremptory challenges.⁸⁰

To exercise peremptory challenges the prosecutor or the accused, or his defense attorney, without stating any reason, writes the word "disqualified" next to the juror's name on the ticket containing the names of the jurors, and signs it.⁸¹ The defendant also has the right to instruct his defense attorney to exercise his right to disqualify jurors.⁸² If the defendant renounces his right to disqualify jurors, the defense attorney shall not have the right to participate in the disqualification of jurors, without the defendant's consent.⁸³

When multiple defendants are charged in the same case, they must agree upon the exercise of their peremptory challenges.⁸⁴ If they are unable to agree, they divide the number of peremptory challenges equally

74. *Id.*

75. Judicial System Law, art. 80; UPK RSFSR art. 438.

76. UPK RSFSR art. 439.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. UPK RSFSR art. 439.

82. *Id.*

83. *Id.*

84. *Id.*

among themselves.⁸⁵ If a defendant renounces the right to disqualify any jurors, the other defendants may exercise the challenges, as long as at least fourteen jurors remain.⁸⁶

After the selection process has been completed, the judge places the names of the fourteen jurors in a box and randomly selects twelve jurors who are then seated to render the verdict.⁸⁷ The remaining two jurors are alternates.⁸⁸ The twelve jurors are placed in an area across from the defendant's bench, separated from the public.⁸⁹ The two alternate jurors are assigned special seats within the same area.⁹⁰ During the trial, the alternates are selected by random lot to replace jurors who may be removed or who are unable to serve until the verdict is reached.⁹¹ In the event a jury vacancy occurs and alternate jurors are unavailable, the court must declare the proceedings invalid and reset the jury selection process.⁹²

After the final jury selection, the prosecutor and the victim, or the victim's attorney, may challenge the panel as a whole on the ground that it is unable to render an objective verdict.⁹³ The challenge is heard in chambers, out of the jury's presence.⁹⁴ Presumably, this is to allow the court to consider whether the panel can decide the case fairly, notwithstanding any political or economic pressure, or pretrial publicity that may be related to the case. If the charges are substantiated, the judge shall dismiss the panel and either immediately begin the jury selection process again or reschedule the trial.⁹⁵

85. *Id.*

86. UPK RSFSR art. 439.

87. *Id.* art. 440.

88. *Id.*

89. *Id.*

90. *Id.*

91. UPK RSFSR art. 440.

92. *Id.* One interesting difference between the Anglo-American system and the Russian system is that the alternate jurors in the Russian system participate "up until the verdict is rendered," which literally means that they participate in jury deliberations. *Id.* My experience is that this clause will be clarified to mean that the alternate jurors will remain in the court until the verdict is rendered and will not engage in verdict deliberation, unless needed as a replacement.

93. *Id.* art. 441.

94. *Id.*

95. *Id.* art. 442.

The jurors then retire and select their foreman by majority vote before receiving any evidence.⁹⁶ The foreman presides over the deliberations, makes requests of the presiding judge on the jury instructions, informs the jurors of the judge's response, writes down the jury responses to the interrogatories, and makes the jury verdict public in court.⁹⁷

The final step is the administration of the oath to the jurors.⁹⁸ This is noteworthy because neither parties nor witnesses in Russia take an oath before testifying.⁹⁹

VI. RIGHTS AND RESPONSIBILITIES OF THE JUROR

After the jury is sworn, the presiding judge must explain to the jurors their rights and responsibilities.¹⁰⁰ As in the Anglo-American tradition, the jurors are informed that they must observe the trial proceedings and follow the judge's legal instructions.¹⁰¹ They are told that they must return timely after a recess or a continuation of the trial.¹⁰² In addition, they are not permitted to leave the courtroom during the trial, they may not talk about the case with individuals not involved in the trial, and they may not gather information about the case outside the courtroom.¹⁰³ All participants in the proceedings, including parties, witnesses, and translators, are prohibited from communicating

96. UPK RSFSR art. 442.

97. *Id.*

98. *Id.* art. 443. The oath in UPK RSFSR Article 443 states as follows:

I swear to perform my duties honestly and dispassionately, to pay attention to all the evidence, arguments, and circumstances considered in the trial and nothing but them, and to decide the case according to my own internal conviction and conscience as befits a free citizen and a fair person.

Id.

99. *Id.*

100. *Id.* art. 444.

101. UPK RSFSR art. 437.

102. *Id.* art. 437.

103. *Id.*

with the jurors participating in the trial except according to established procedure.¹⁰⁴

Unlike Anglo-American proceedings, Russian procedural rules provide jurors with the right to participate in the investigation of all evidence presented in court, through the presiding judge.¹⁰⁵ The jurors may ask questions of the defendant, the victim, the witnesses and the experts, and may participate in the inspection of substantial evidence and documents.¹⁰⁶ Additionally, the jurors may inspect the location and premises at issue and may participate in all other investigatory actions taken by the court.¹⁰⁷ Finally, the jurors may ask the presiding judge to explain, *inter alia*, the meaning of the law pertaining to the case, the content of the documents presented to the court, the attributes of the crime with which the defendant is accused, and the meaning of concepts that are unclear to the juror.¹⁰⁸ Jurors are also permitted to take notes during the trial.¹⁰⁹ This rule is intended to promote juror comprehension, independence, and evaluation of the circumstances of the case in order that the jurors may intelligently answer questions submitted to them for resolution.¹¹⁰

Jurors who violate their duties may immediately be fined up to the amount of the minimum wage.¹¹¹ The imposition of such fines is final and is not subject to appeal or protest.¹¹² This summary penalty is controversial but seems to be a strong incentive for proper juror behavior. The judge may also dismiss a juror at any time if given reason to believe that the juror has lost the objectivity necessary to decide the case as a result of the exertion of illegal influence.¹¹³ The apparent underlying purpose of this provision is to nullify the Communist tradition of calling

104. *Id.* art. 445.

105. *Id.* art. 437.

106. UPK RSFSR art. 437.

107. *Id.*

108. *Id.* Jurors in American judicial proceedings are prohibited from participating in the trial in any meaningful way and simply are required to hear the evidence as it is presented by the attorneys involved. JACK H. FRIEDENTHAL ET. AL., CIVIL PROCEDURE 474-9 (1985).

109. UPK RSFSR art. 437.

110. The American rule generally prohibits jurors from taking notes. See, e.g., LA. CODE CIV. PROC. ANN. art. 1794 (West 1992).

111. UPK RSFSR art. 437.

112. *Id.*

113. *Id.*

and contacting judges and people's assessors before or during the trial to influence the court's verdict.

VII. THE JURY TRIAL

Russian jury trials differ in form from Anglo-American jury trials. The reason for their peculiar form is the unique Russian criminal procedures and legal culture. The trial, called an "inquiry," begins with a reading of the indictment by the prosecutor, who mentions neither the facts of the case nor the defendant's prior criminal record, if any.¹¹⁴ Opening statements are not permitted.¹¹⁵

If the defendant or defendants have admitted to their guilt, the judge offers the defendants the opportunity to testify regarding the accusations or other circumstances of the case.¹¹⁶ If the defendant testifies and the judge is satisfied as to the defendant's guilt, the judge has the discretion, with the consent of the parties, to restrict the presentation of any further evidence.¹¹⁷ The evidentiary portion of the trial is thus concluded, and the parties proceed to oral argument.¹¹⁸ If, however, insufficient evidence of guilt is offered, or the defendant desires to introduce evidence, the court will permit the evidence to be introduced into the record.¹¹⁹

If the defendant or defendants have denied their guilt, the defendant is the first witness given the opportunity to testify.¹²⁰ Before the interrogation of the defendant, the judge explains the defendant's right to give or not to give testimony regarding the accusations that have been made and other circumstances of the case.¹²¹ After testifying, the defendant is then questioned by the prosecutor, the victim and, finally, the defense attorney.¹²² Thereafter, unlike the American model of direct and cross examination, the judge and the jurors, through the presiding judge, are allowed to ask questions of the defendant; however, the judge

114. *Id.* art. 446.

115. *Id.*

116. UPK RSFSR art. 446.

117. *Id.*

118. *Id.* art. 447.

119. *Id.* art. 446.

120. *Id.*

121. UPK RSFSR art. 446.

122. *Id.*

has the discretion to exclude juror questions that are irrelevant, leading, or offensive.¹²³

Following the defendant's testimony, the victim, other witnesses, and expert witnesses may be questioned.¹²⁴ In practice, the same order of questioning that applies to the defendant applies to all subsequent witnesses.¹²⁵ The amendments are vague regarding the order of witnesses, but customarily the prosecution's witnesses and evidence are presented first, followed by the defendant's witnesses and evidence.¹²⁶ Any witness, however, can be called to testify at any time during the trial.¹²⁷

Russian rules of evidence are based upon European rules of procedure.¹²⁸ Generally, all evidence is admissible except evidence relating to privileged information and evidence concerning the defendant's prior criminal record.¹²⁹ The parties must move at the preliminary hearing for suppression and exclusion of any evidence that was obtained in violation of the law or is inadmissible on other grounds.¹³⁰ At trial, the parties may petition the judge, out of the jury's presence, for review of any previously excluded evidence.¹³¹ The trial judge then has the discretion to affirm or reverse the decision rendered at the preliminary hearing at which evidence was excluded.¹³²

Once the evidentiary phase of the trial has been completed, the parties give their oral statements, the Russian corollary to Anglo-American closing arguments.¹³³ The oral statements are presented first by the prosecutors, then by the victim, and finally by the defense attorney or the defendant.¹³⁴ The scope of the closing oral statements is limited to the facts in evidence and the applicable law.¹³⁵ No reference may be

123. *Id.*

124. *Id.*

125. *See id.*

126. UPK RSFSR art. 446.

127. *Id.*

128. Minan & Morris, *supra* note 28, at 2-3.

129. UPK RSFSR art. 446.

130. *Id.* arts. 432-33, 435.

131. *Id.* art. 446.

132. *Id.*

133. *Id.* art. 447.

134. UPK RSFSR art. 447.

135. *Id.*

made to circumstances not in evidence or to excluded evidence.¹³⁶ Rebuttal oral statements are permitted; however, the defendant is always given the last word.¹³⁷

After the completion of oral statements, the judge formulates written questions to be answered by the jury.¹³⁸ He submits the questions to the parties for discussion and determines their final content and form.¹³⁹ The verdict form, called the "question sheet," is made public and given to the jury foreman before final instructions are given.¹⁴⁰

The question sheet must, at a minimum, include the following interrogatories:

1. Has it been proven that the corresponding act occurred?
2. Has it been proven that this act was committed by the defendant?
3. Is the defendant guilty of committing this act?¹⁴¹

Questions relating to any circumstances that increase or decrease the degree of guilt, change the character of the crime to a lesser offense, or relieve the defendant of any criminal responsibility based on criminal intent may also be included.¹⁴²

The trial judge delivers the final instructions on the law to the jury panel.¹⁴³ The judge is prohibited from expressing any opinion regarding possible responses to the questions submitted to the jury.¹⁴⁴ In the final instructions, however, the judge is required to present the content of the accusation, explain the applicable law the defendant is accused of violating, review the evidence presented in court, both incriminatory and exculpatory, state the positions of both the prosecutor and the defense, and explain the basic rules for evaluating evidence in its totality, including the essence of the principle of presumption of innocence and

136. *Id.*

137. *Id.* art. 448.

138. *Id.* art. 450.

139. UPK RSFSR art. 450.

140. *Id.*

141. *Id.* art. 449.

142. *Id.*

143. *Id.* art. 451.

144. UPK RSFSR art. 451.

the requirement that all unremoved doubts be interpreted in favor of the defendant.¹⁴⁵ If the defendant refused to testify or remained silent in court, the judge is also required to explain to the jury that this fact has no legal significance and may not be interpreted as evidence of the defendant's guilt.¹⁴⁶ The judge additionally instructs the jury that its verdict may be based only on the evidence directly examined in open court, and that its conclusions may not be based on presumptions or on excluded evidence.¹⁴⁷

The judge must also inform the jury of the applicable procedure for their deliberations, the preparation of responses to the raised questions, the method of voting on the questions, and the rendering of the verdict.¹⁴⁸ The jurors are told that they may request clarification of the law, instructions, or question sheet during their deliberations.¹⁴⁹ The final instruction reminds the jurors of the content of the oath taken and of their ability to recommend leniency if they return a guilty verdict.¹⁵⁰

The parties have the right to object to the legal charges in open court if the judge has violated the principle of objectivity.¹⁵¹ Failing to make a contemporaneous objection to the final instruction, however, prevents a party from challenging the legal charges on appeal.¹⁵²

Thereafter, the jurors deliberate in private.¹⁵³ They cannot be required to deliberate longer than daylight hours or the end of a work day.¹⁵⁴ The foreman regulates the deliberations, votes last, and records the votes on each question.¹⁵⁵ No juror has the right to abstain.¹⁵⁶ Jurors must strive to adopt a unanimous decision.¹⁵⁷ In the event the jury panel is unable to arrive at an unanimous response to the question sheet within three hours, the jury may then decide the responses to the

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. UPK RSFSR art. 451.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* art. 452.

154. UPK RSFSR art. 452.

155. *Id.* art. 453.

156. *Id.*

157. *Id.*

interrogatories based on majority vote.¹⁵⁸ A majority vote, namely seven votes, is sufficient to convict.¹⁵⁹ A verdict of six negative responses to any of the three basic questions is sufficient for an acquittal.¹⁶⁰ If the responses to other questions are determined by a simple majority of the votes of the jurors, and if the votes are divided evenly, the response most favorable to the defendant shall be adopted.¹⁶¹ After completing and signing the question sheet, the jurors return to the courtroom and the foreman delivers the question sheet to the judge.¹⁶²

The judge then examines the question sheet.¹⁶³ If the judge finds that the verdict is unclear or contradictory, he explains the reasons why it is unclear or contradictory to the jury panel and orders the jury to return to the conference room to make the appropriate clarifications.¹⁶⁴ The judge, under a unique Russian procedure, is allowed to make "necessary changes" on the question sheet when the verdict is unclear or contradictory, after hearing arguments from the parties.¹⁶⁵ Article 456 does not define the scope or standards for the authority granted to the judge to change the question sheet.¹⁶⁶ Instead, this authority is intended to permit changes to the question sheet interrogatories and to allow the judge to reinstruct the jury regarding any such changes.¹⁶⁷ Thereafter, the jury panel is returned to the deliberation area and given an opportunity to clarify the verdict.¹⁶⁸

If the judge has no remarks concerning the question sheet, it is returned to the foreman, who renders the verdict by reading the questions and responses in open court, while everyone in the courtroom stands to hear the verdict.¹⁶⁹ The secretary records the reading.¹⁷⁰ The judge

158. *Id.*

159. UPK RSFSR art. 454.

160. *Id.*

161. *Id.*

162. *Id.* art. 456.

163. *Id.*

164. UPK RSFSR art. 456.

165. *Id.*

166. *See id.*

167. *Id.*

168. *Id.*

169. UPK RSFSR art. 456.

170. *Id.*

thanks and discharges the jurors.¹⁷¹ The consequences of the verdict are then discussed without the participation of the jury panel, although the jurors may remain in the courtroom until the end of the case.¹⁷²

VIII. POST-TRIAL PROCEDURES AND SENTENCING

In general, if the jury finds the defendant guilty, its decision is binding on the judge, with some exceptions.¹⁷³ The judge then imposes the sentence.¹⁷⁴ If a verdict of complete innocence is rendered, the judge must immediately release the defendant.¹⁷⁵

If the defendant is found guilty, after the jury has been discharged, the judge is required to classify the action of the defendant, by commenting upon the evidence that was excluded from the jury.¹⁷⁶ This requirement mandates the personalizing of the defendant's background, such as the employment status, prior record, and other circumstances required to assess the crime and sentence.¹⁷⁷

The judge then offers the parties an opportunity to examine the excluded evidence and discuss the legal consequences of the verdict rendered.¹⁷⁸ This discussion, or oral argument, includes the classification of the defendant's act, the penalty, and the resolution of any civil suit relating to the criminal action.¹⁷⁹ The parties may also comment upon the applicable law of sentencing and refer to the defendant's previous criminal record.¹⁸⁰ The order of examination of the evidence and discussion is as follows: the prosecutor, the victim, the

171. *Id.* art. 457.

172. *Id.*

173. *Id.* art. 459.

174. UPK RSFSR art. 449. Although Russian sentencing procedures are beyond the scope of this article, it must be noted that the jury determines whether the defendant is entitled to leniency or special leniency. *Id.* art. 460. The judge is then required to impose a sentence according to the sentencing guidelines and the jury's findings. *Id.* If the jury determines that the defendant is not deserving of leniency or special leniency, then the judge must take into account aggravating and extenuating circumstances and the personality of the defendant. *Id.*

175. *Id.* art. 459.

176. *Id.*

177. *Id.*

178. *Id.*

179. UPK RSFSR art. 458.

180. *Id.* art. 458.

plaintiff in a civil suit, the respondent in a civil suit, their representatives, the defendant, and the defense attorney.¹⁸¹ Once the court imposes a sentence, the parties may not comment upon the correctness of the jury verdict or upon issues not related to the legal consequences of the verdict or ask any further questions.¹⁸²

If the excluded evidence is found insufficient for the jury to conclude that a crime has been committed or that the defendant participated in such crime, the judge may dismiss the jury verdict or forward the case to a different court beginning with a new preliminary hearing.¹⁸³ The judge does not have the prerogative to enter an acquittal.¹⁸⁴ The ruling of the court is final and is not subject to appeal.¹⁸⁵ The court, however, does have the power to enter a judgment of acquittal when no *corpus delicti* exists.¹⁸⁶

The judge concludes the case by issuing one of the following types of judicial orders: (1) a dismissal of the case; (2) an acquittal of the defendant, when the jury has given a negative response to at least one of the three basic questions, or when the judge has declared the absence of a *corpus delicti* in the case; (3) a conviction with no indication of punishment; (4) a conviction with an indication of punishment; or (5) a dismissal of the jury panel, accompanied by an order sending the case to a different court for reconsideration, when the judge concludes that grounds for acquittal exist in spite of a guilty verdict.¹⁸⁷ The judge also has the power to terminate a jury trial before a verdict is rendered, if sufficient evidence is presented that the defendant is insane or is psychologically impaired to the extent that he cannot be held criminally liable.¹⁸⁸

Included in the ruling is the mandatory written opinion of the court, excluding the names of the jurors.¹⁸⁹ Russian procedure requires the judge to substantiate the jury verdict or to explain why the prosecutor

181. *Id.*

182. *Id.*

183. *Id.*

184. UPK RSFSR art. 459.

185. *Id.*

186. *Id.*

187. *Id.* art. 461.

188. *Id.*

189. UPK RSFSR art. 462.

dismissed the charges.¹⁹⁰ The opinion must describe the defendant's criminal act, the classification of the act, the justification for assigning the punishment, and the grounds for the court's decision regarding a civil suit or reimbursement for natural damage caused by the crime.¹⁹¹ If an acquittal was rendered, the descriptive portion of the opinion must explain the essence of the charges on which the defendant was acquitted.¹⁹² The declarations must contain a reference to the procedure and deadline for an appeal to a higher court.¹⁹³

IX. APPEALS

The Russian Code of Criminal Procedure defines the procedure for appeal.¹⁹⁴ Amendments to the Code, relating to jury trials, severely restrict the appeal of judgments that are not final, such as interlocutory judgments.¹⁹⁵ Only jury verdicts, judicial dismissal of a case, and preliminary hearing judgments may be appealed.¹⁹⁶

Four grounds exist for overturning or amending judgments on appeal:

- (1) a one-sided or incomplete judicial investigation occurring because of any of the following:
 - erroneous exclusion from examination of admissible evidence which could be of essential significance for the outcome of the case;
 - unjustified refusal to allow a party to examine evidence which could be of essential significance for the outcome of the case;
 - failure to examine evidence essential to the outcome of the case, which is subject to mandatory examination;

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. UPK RSFSR arts. 463-465.

195. *See id.* art. 464.

196. *Id.*

- examination during the court session of inadmissible evidence if it could have had essential significance for the outcome of the case;
- (2) an essential violation of criminal procedural law;
- (3) incorrect application of the law to the circumstances of the case as they were established by the jury trial; or
- (4) assignment of an incorrect punishment.¹⁹⁷

The appellate court has the right to amend a lower court ruling of conviction or acquittal, but not to the detriment of the defendant.¹⁹⁸ The appellate court may not amend an acquittal, a dismissal of the case, or any other resolution rendered in favor of the defendant on grounds of an essential violation of the defendant's rights.¹⁹⁹ Nor does the appellate court have the right to revise a judgment on grounds that the trial judge violated the principle of objectivity in the final instructions if the party failed to timely object.²⁰⁰ Finally, the appellate court has no authority to refer the case for a new investigation.²⁰¹

X. CONCLUSION

The recent amendments to the Russian Code of Criminal Procedure, in order to accommodate civil and criminal jury trials, are radical adjustments to Russia's current legal institution. A spirit of democratic reform in the country is evident in the amendments. The current developments represent an attempt to stabilize the legal system, to satisfy foreign investors, to prevent governmental abuse within the legal system, and to adopt a democratic form of government. Russian legal reformers have modeled their changes on United States jury procedures, but have attempted to integrate the jury changes into the current codes of procedure. Many of the definitions, interpretations, and operating practices will be refined after the experiment begins and the appellate courts are given an opportunity to interpret the new rules. Only

197. *Id.* art. 465.

198. *Id.*

199. UPK RSFSR art. 465.

200. *Id.*

201. *Id.*

time and political stability will determine whether these dramatic reforms will succeed.²⁰²

202. Between November 1, 1993, and February 28, 1994, nine Russian regions conducted eleven criminal jury trials. The first jury trial occurred in Saratov in December of 1993. All but one of the cases involved murder charges; the other case involved an attempted murder charge.

Preliminary indications are that Russian jurors are capable of reasoned findings based on evidence presented in court. In one case, the jury acquitted a defendant because of insufficient evidence. In the other cases, the jury found the defendants guilty, but in the sentencing phase determined that the defendant deserved leniency pursuant to Article 460 of the Russian Code of Criminal Procedure. Sentences have ranged from one year to life imprisonment.

The implementation of the jury trial has significantly altered the Russian legal system. Since the system was implemented less than 6 months ago, it is too early to draw any conclusions concerning the success of the experiment in jury trials. It can be inferred that the jury trial system has humanized criminal trials in Russia. Prosecutors and the police, however, are not yet comfortable with the new procedures and restrictions. Additionally, defense lawyers do not fully understand their roles and responsibilities and require training as trial lawyers.

Information communicated by Mr. Thomas C. Neblock Jr., First Secretary, Political Section, U.S. Embassy, Moscow, Russia (1994).