

Study on Russian Jury System

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I. Introduction

In many Hollywood movies and also in the works of Tolstoy and Dostoevsky, we have seen judgments made by the jury. This jury system which has been seen only in foreign movies or in literature became the topic of legal reformation in our society.

Along with *Schöffengericht* (Full Bench), jury system is executed in many developed countries. Jury system is practiced in approximately 50 countries, such as in Great Britain, USA, Canada, Australia, Spain, Hong Kong, Sri Lanka, and Saipan. Russia and Spain restored the jury system in 1990s. *Schöffengericht* (Full Bench) is in practice in leading European nations like France, Germany, Italy, Sweden, Denmark, Norway and Finland and Japan recently confirmed its introduction.¹⁾

Trial by jury means the jury, the group of people who have been chosen from the general public, inquires into any matter of fact (in a criminal case, they decide whether the person accused is guilty or not) and gives their verdict according to the evidence apart from professional judges.²⁾ It is true that some matters of procedure are pointed out in USA and Great Britain where the Jury System was first introduced. However, this is not a criticism that denies on the jury system itself but a voice that demands more constructive trial by jury.³⁾ Legal participation of people through jury system is a national right that should be naturally given to the people in order to raise the trust of the people in the practice of law by increasing national understanding of law and to reflect the common sense and values in the trial.

Schöffengericht (Full Bench) is a system where a citizen participates in decision making of both the matter of fact and of law as a member of judges with the equal right as a professional judge.⁴⁾ Introduction of either of these systems will contribute to the improvement of judicial system through legal participation of people.

In Russia, restoration of jury system was discussed in early 1990s along with the transition from communism to market economy. In 1996, criminal laws were revived and in 2001, trial by jury is executed nation wide with the total revision of both the Criminal and Civil Procedure Code. In Great Britain and USA, jury system has been developed through the time. However, in Russia, it is recently reintroduced in a

transitional situation without legal consolidation and completion of legal process system. Thus Russian jury system implies some significance in our society where we discuss about the introduction of the system. Further more, the fact that Russian government tried to introduce the jury system as a reformation shows a similarity in our situation. Although Russia already had the experience of jury system in the middle of 19th century and former soviet was based on *Schöffengericht* (Full Bench), still it would be of help to study revived jury system in Russia so as to overcome procedural errors or problems of application.

The historic fact that Russian jury system successfully accomplished the legal participation of people and national consent beyond social classes in conservative feudalism in mid 19th century could be of importance in our society. The introduction of jury system in 1864 through the legal reformation was an unexpected change. It eventually played the role to change the society as a whole and I will mention about it in detail later on.

II. Historic Study of Russian Jury System

1. Background of legal reformation in Imperial Russia

To be able to understand Russian jury system at present, it is necessary to have a historic study of jury system. Because modern Russian jury system is a revival of jury system from Imperial Russia in the past.

To comprehend Russian society in the late 19th century, we have to understand the unique situation of Russian society. And that is, in the late 19th century Russia, differentiation of private ownership was not realized and basic medieval social class structure based on serfdom system was kept.

Many scholars researching political and social culture of late 19th century Russia explain that its difference or backwardness compare to the rest of Europe is caused by its unique social structure premised by peasant community.⁵¹ That is to say, in those days in Europe, voluntary peasant community (also referred as Mir) had been disappeared through feudalism but in Russia, it still existed as a common organization in rural area.

Peasant community in rural area executed various function in place of government. It was in charge of basic administration and public peace such as maintenance of public order, discipline and standard of the community, rescue in case of disasters like fire and flood, punishment of misdeeds of peasant and imposition of forced labor to tax

delinquents. ⁶⁾ Also it provided food to neighbors in need in case of famine, did many cherish works, prepared religious festivals and supported educational establishments. In late 19th century, this multi-functional peasant community became a conventional organization that controlled the lives of its members. ⁷⁾ In reality, most of the peasants belonged to individual peasant community and social relationship was made in the community. ⁸⁾ The government even reinforced the function of peasant community after the abolition of serfdom system. Upon announcement of the abolition of serfdom system, Russian government gave freedom to individual peasant and divided the land to the community. The reasons were to prevent the degradation of peasant to proletarian class after the loss of land, to securely assure tax collection and to control if the government-led emancipation of peasant and reformation would maintained smoothly. ⁹⁾

As mentioned earlier, due to the preservation of peasant community, reformation in Russia demonstrated its limit as to reformation led by the government.

The exercise of super-governmental right, jurisdiction, of peasant community meant conflict with government. That is to say, in peasant community, there existed a habitual practice of justice called “samosud”. ¹⁰⁾ Some scholars in history of laws in Russia say that the ruling party saw samosud, habitual punishment costumes of peasant to criminal, very cruel and harsh, empathized that samosud was illegal under the positive law, criticized the weak law-abiding spirit of peasant and claimed the necessity of legal reformation. ¹¹⁾ On the other hand, Russian government felt the necessity for a legal reformation of to take the jurisdiction back to the government. The most commonly used court by the peasant was various unofficial court existed according to the customs. Village chief court (Sud Sel'skogo starosty) and court of mayor of town are the most common unofficial courts. When legal dispute arose, peasants solicited arbitration to the village chief where he belonged. In this case, the judgment by the village chief was the first instance. If the arbitration was not done properly, peasants took the case to mayor who ruled a bigger area. In addition, village senior court (Sud starlike) and arbitration tribunal functioned unofficially. Village senior court was composed of elderly peasants of the village. Village chief led the legal procedure and usually he selected the judges for the court. Village senior court and arbitration tribunal solved problems through mediation and reconciliation, thus most of the peasants could solve the problem without going through the case with the official legal institute. ¹²⁾ Commonly performed punishment in village community was summary justice which disciplined the peasant who was guilty of crime without any legal trial. ¹³⁾ This unique punishment samosud existed in most of rural areas of Europe Russia but according to the Russian positive law, it was considered illegal. But the peasants followed samosud and it didn't change even

after the legal reformation in 1864.

After announcing the emancipation act for serfs, Russian government established town court (volostnoi sud) with the intention of providing official court to alternate unofficial courts mentioned above. The legal jurisdiction of town court was restricted to civil cases and light criminal cases. Grave crimes like theft, arson, murder were heard in ordinary court. However, some town courts followed the customs of village court and heard grave cases against their legal jurisdiction power. ¹⁴⁾

Town court was consisted of selected rich male peasants who lived in the town, each town had to elect four to twelve judges according to the emancipation act for serfs. Many towns did elect six to twelve town judges and their term of office was one year. It was done to prevent illegal trial done habitually.¹⁵⁾ Town court's main principal was to resolve the civil case via arbitration and reconciliation according to the customary practice of law. Some town court postponed its verdict several weeks so that the parties of a suit think twice about the case and they could draw the conclusion by themselves.¹⁶⁾ After all the tries of arbitration and reconciliation failed, to solve a civil case, it let judgment be done by "peasants' customs" not by the positive law. In criminal case, town court had right to sentence punishment such as fine, detention, force labor and whipping, and whipping was the most commonly used punishment. However, town court which had been admitted as a legal court for dispute settlement couldn't function properly because the peasants already had their own unofficial but authoritative court. Actually for most peasants, village court was their court of the first instance and town court remained rather a court of the second or third instance. The verdict from town court was not to be appealed.¹⁷⁾ In conclusion, town court estranged peasants from legal rights of the positive law by not applying normal criteria of the positive law.¹⁸⁾ The reasons that peasants used various unofficial courts instead of official town court were that the peasant community was at the foundation of their lives and that they didn't trust the official court. There were questions of serious irregularities and corruption was raised and considering most of peasants were illiterate, arbitration and reconciliation by unofficial courts were most convenient and harmless way of solving the problem. Because the case was brought to town court after failure of arbitration and reconciliation through village court, even if the town court delivered the verdict to demand official arbitration, for the parties in suit meant the final battle. In that case, the community risked to experience unnecessary conflict from the intervention of people from other villages. Therefore, peasants had to be more dependent on judgment by unofficial courts which emphasized arbitration and reconciliation. Moreover, because unofficial courts had village chief or seniors as arbitrators, they were more closely connected to villagers'

lives and had more understanding of the village's problem than town court. Considering that town court was far from each village, village court was a court that had easy access and it had more intention to solve the dispute within social and cultural boundary of the community.

2. Legal Reformation in Russia in 1864 and Peasants' Participation in Jury System

Fundamental legal reformation in Russia in 1864 introduced to Russian legal system modern western principals such as separation of the Judicature from the Administration, systemization of criminal procedure, trial by the jury and equality of all citizens at court.¹⁹⁾

Under the new system, 108 district courts which governed the first instance of both civil and criminal case, 14 high courts of justice which governed first instance of political case and second instance of district court verdict and the senate for the final instance were established. Apart from it, justice of the peace ((J.P.)) system was instituted to deal with minor offenses and small civil cases.²⁰⁾ Along with it, prosecutor system has been reformed, lawyer system was instituted and preliminary court judge attached to the court instead of the police. Also they publicly announced the verdict in periodical publications. One of the most important reformations was the introduction of jury system. It was used in hearing of grave offense in criminal cases in district court but the appeal was allowed only to the senate.

Thanks to the introduction of jury system, justice became independent to the administrative authority for the first time, openness of trial, parties voluntarism and innocence presumption principles were respected and free deliberation was considered more important than conventional evidence.²¹⁾ Also the government leading legal reformation made possible for the government to understand rural culture and use jury system as a systematical frame to use its understanding.

In the beginning, summons of jury was not followed democratic procedure. With the introduction of jury system, Russian government obtained unintentional improvement in legal system and legalization.

The discussion on introduction of jury system was by C. E. Desnithkii in 1767 under Ekaterina II ' s ruling. In 1809 under Alexander I , M. M. Speranckii emphasized the need of introduction of jury system and legal reformation in Russia. At the same time, Decabrists including Russian novelty suggested in the "new constitution" and "Russian Law" the introduction of jury system overcoming backwardness of Russia. But their reformation failed and the legal reformation in Russia came under Alexander□.

On September 29, 1862, basic reform bill was decided and on November 20, 1864, after two years of deliberate discussion,

‘Legal Reformation Law’ was announced. It took two years of discussion to announce the introduction of jury system, but actual application was not easy. The nobility claimed that it was impossible to attend the trial in the same place with the serfs and was suspicious if nationwide jury system would be successful in rural areas where most of the population was illiterate. Despite of the objection, the first trial by jury was held in a local court in Petersburg on April 14, 1866 and one week later, minister of justice held a trial by jury in national assembly court in Kremlin, Moscow. ²²⁾ However, until 1870, due to fiscal problem, Russian government had to be satisfied with introduction of jury system in 23 states instead of 44 states. Yet, 20 years after the introduction, 90% of Europe Russia was able to participate as jury and at the early 20th century, it was spread to almost in whole Russia.

The biggest distinguishing feature of Russian jury system was that it showed very different operation between cities and rural areas. That means, in big cities like Moscow, Petersburg and Kiev, most of jury were consisted of nobilities, government officials and handicraftsman. Considering the fact that most 2/3 of jury in Russia was peasants, it showed the regional gap.

It is proved in statistical data of Moscow and Petersburg. In the jury list of Moscow in 1875, only 10,000 out of 200,000 men between the ages of 25 to 70 were given the right to be part of the jury. And among these 10,000, only 5 % was actually on the jury list and they were wealthy farmers from Moscow and Petersburg. ²³⁾ This didn’t change much after 10 years in 1883. According to the research in 1883, nobilities and government officials took the most part of jury as 54%, merchants 14.6% and peasants 5%. Taking the circumstance that in those days, most of the population in Russia and 1/3 of population in the city were peasants, jury system was operated biased. However, despite of this tendency in the cities, jury system in rural areas drew the leading participation of peasant. ²⁴⁾ Especially in rural areas far from cities, peasant participation was high. For example, according to the jury list of Belicaruscom, a typical Russian rural town, from 1872 to 1882, 85 % of jury were peasants and they were belonged to peasant community. ²⁵⁾

Initially only 15% of population met the requirements of being a jury- must belong to a chief or representative group of peasant community, to have more than 100 hectares, to have more than 200 rubles of annual income. It could mean that legal requirements were not strictly observed but the environment of courts in rural area was so poor that during the trial, jury were not allowed to go out and spent whole time in a place where is might

not be equipped with beds and toilets. And it was a service without any compensation so only the peasants would volunteer to do it. As an expedient way, landlords would send their servant. Moreover, due to serious illiterate rate, there were times that the jury couldn't elect the head because there was no one who met the requirement to be illiterate. On 50 Europe Russian states' jury list in 1883 only 24.5% could read and write. ²⁶⁾ As some media satirized that the requirement to be a jury was "being proletariat", jury system was generalized among peasants. In 1887, a provision was passed that allowed voluntary exemption from the duty to be called as jury. ²⁷⁾

Concerning Russian jury system administration, there were critics about the fact that other races were excluded from being a jury and the limitation they had for a proper judgment because of their illiteracy or the persuasion by professional judges. Also they demonstrated much exclusiveness towards the ruling class. Nevertheless, Russian jury system eventually functioned as a bridge between nobilities and peasants cultures which showed much gap. ²⁸⁾

To compose a jury, 30 jurymen were called in reserve. After the challenge of the prosecution and the defense, 12 jury and 2 jurors in reserve were selected. Jury questioned the defendant and the witnesses with the permission from the judge, requested further explanations necessary and decided the verdict by majority. Hearing by jury was done not only in district courts but also in the senate and high courts of justice. It meant almost all trials were done publicly by the hearing of jury and as said by A. F. Koni, it was three times more in number than that of in France or in Austria in 1880. ²⁹⁾

As participation of peasants expanded, the requirements of becoming a jury tended to be lightened. So to speak, at the beginning, the majority was male ages between 25 and 70, who worked as government officers, selected government employees, representative or member of the executive of peasant community and middle class merchants. They approved eligibility to those who made certain some of income but yet, most of women and peasants were excluded. ³⁰⁾ However, in the provinces, regardless of their social class, all men age between 25 and 70 with Russian citizenship with more than 2 years of habitation in the area were qualified to be a jury if they were never accused as a quasi-incompetent nor sentenced guilty for any crime.

Despite of all the problems mentioned above, introduction of jury system established the foundation for understanding of Russian peasant culture, ripened peasant culture by drawing participation of peasants which had been excluded by Russian politics and legalization led by westernization and opened the potential of transforming peasant culture to popular culture. I'd like to discuss it more in the next chapter.

3. Functional Unification of Unofficial Courts in Peasant Community through Peasant Participation in Jury System

Introduction of jury system on the assumption of Russian legal reformation became an important opportunity to infuse the functions of unofficial courts into official machinery of law. The lives of peasants in the center of peasant community were based on unique legalization. Their view on crimes, the methods of punishment and also their way to resolve problems with arbitration and reconciliation were their wisdom of life to survive in a community avoiding extreme methods. Russian peasants' culture and their legal sense that preferred the settlement of dispute via unofficial courts flew in official courts through jury system. Introduction of jury system had significance as it acted as a power that changed the whole Russian society.

The criteria of crime and punishment for Russian peasants were formed specially to maintain peasant community. That is to say, whether the act of crime and punishment would benefit the community or not was an important criterion. It was totally normal behavior for even in late 19th century, the community had an organic connection to their economy and daily lives. Crime within the community regardless of seriousness had potential to cause conflicts between members of the community and the aftereffect related to individual and public good. Thus peasants participated collectively in samosud in order to diminish enmity and to strengthen the unity. Another reason that they kept the judgment by unofficial courts was that they thought the official courts weren't strict enough to punish the criminals who were dangerous to the community's survival. ³¹⁾

This legal sense of Russian peasants went through a change as they started to participate as jury and also it gave them confidence that they could preserve their community as they judge the case that threatened the community. This trust seemed to be the motive force that kept the jury system in Russia until the Soviet.

4. Revival of Jury System in Soviet Union

Despite of many strong points of Russian jury system that was introduced as a part of legal reformation in 1861, it was suspended with the establishment of Soviet Union. There were problems of critics on judgment by simple majority vote of those who lacked legal knowledge and of financial difficulty to continue jury system. Majority of

ruling party who didn't participate in jury due to poor court system claimed the termination of jury system.

Even after the success of Bolshevik revolution, jury system was kept until 1922. In 1936, they officially nullified jury system and guaranteed *Schöffengericht* (Full Bench) in the constitution. All first instances for civil and criminal case were heard by one professional judge and two civil judges. In case of grave offense, the case was heard by three professional judges exceptionally. Civil judges had equal voting right as professional judge so there was a possibility to use the advantage of Full Bench.

However, Russian *Schöffengericht* (Full Bench) operation was criticized because civil judges, without any special knowledge in legal matter, just followed the decision of professional judge. In addition, because the civil judges were called with little financial support, hearing the case during whole legal procedure with professional judge became annoying without any passion. In fact, during Soviet Union, it was considered honorable to serve as a civil judge for 2 weeks per year with the permission from a company. But after taking a step to transfer the economy to market economy, it was not easy to find people to fill *Schöffengericht* (Full Bench) except for those who lived with a pension after retirement. So in Soviet Union, after their transition to market economy, along with the discussion for democracy, there arose public opinion about the revival of jury system. In reality, until the revolution in 1917, as shown by 750 verdicts by jury, even under the imperialism, Russian judicial system was like an island in liberalism and it was not behind compare to other judicial system in Western Europe.³²⁾ The discussion on revival of successful jury system started when High Council of People's Commissars approved the legal reformation bill suggested by President Boris Yeltsin on October 21, 1991. Main part of reformation was to reintroduce the jury system. January of 1992, reformation group of Ivanovo state judge, administrative officials and chief public prosecutor comprehensive presented a petition to President Yeltsin to allow jury system as an experiment. On July 16, 1993, Yeltsin government announced the law that revived jury system in 9 regions of Russia.³³⁾ On October 27, 1993, the Ministry of Justice, Ministry of Finance, Ministry of Internal Affairs and the prosecution held conference to expand the jury system nationwide³⁴⁾ and through the new constitution in 1993, the legal basis of executing trial by jury was prepared when decided by the federal law.³⁵⁾ However, it is prescribed in the constitution that until the decision in federal law on hearing process, the previous procedure would be respected. Thus the jury system was nationally expanded upon the revision of the Criminal Procedure Code to federal law in December 2001. In some parts of the regions, they took time for preparation and executed the jury system from 2003.³⁶⁾

The revival of jury system in Russia was not simple. It took almost 10 years for the jury system in 9 states to be expanded to nationwide. In December 1999, the law on Schöffengericht (Full Bench) was passed in commerce court and they considered taking Schöffengericht (Full Bench) back.³⁷⁾ Their tenure was for 5 years and working days were 14 days per year, their position and average salary at work should be kept and 1/4 of judge's indemnity was to be given from the federal budget. However, the Constitutional Court made a decision on February 2, 1999 that it was unconstitutional to the new constitution of year 1993 not to execute jury system nationwide and the expansion of jury system nationwide was under discussion.

The most important matter in a nationwide jury system was that compensation should be given to the jury not like during Imperial Russia time and they made this to be supplied by the local budget. Many regions in Russia were against the idea of maintaining jury system with local budget and some republics made petition to postpone the revival of jury system.³⁸⁾ Or compare the rate of 1% judgment of acquittal, the fact that 18.5% of judgment by jury was decision of "not guilty" seemed to be a problem and had critics that it was a system for the lawyers. Some scholars persisted that jury system had a meaning only when it is accompanied by reformation of total machinery of law and said the time for introduction of jury system was not mature yet.³⁹⁾

The trial by jury was set limits to felony from the beginning and on Item 2 of Para. 1 and Para. 3 of Art. 30 on revised the Criminal Procedure Code, the objects were prescribed. According to this, about the felony case belonged to autonomous district, jurisdiction, Supreme Court of each republic⁴⁰⁾, at the request from the accused, the case became an object of jury trial with 1 federal judge and 12 jury. With the legislation of jury, chapter 5 (article 80 to 88) was added on Russian Court Organization Law which prescribed requirements of jury, methods to fill out jury list and to send it to the court and calling procedure, tenure and salary of jury. About the salary, they received higher amount between their basic income (ten percent calculation) and 1/2 of income of the judge. Take the financial situation of Russian government into consideration, it seemed to be considerable amount and it seemed to aim successful settlement of jury system at an early stage.⁴¹⁾ At the first trial by jury, the jury was paid 3,500 rubles per day (approximately 120,000 KRW) for salary and traveling expenses after 3 days of service. One female jury proved her actual salary and was paid 13,000 rubles per day. Most of the rules were revivals of jury system during Imperial Russia and the service was limited to once per year for maximum of 10 days. The selection of jury was the same as law in 1864, which composed jury with 12 jurymen and 2 jurors in reserve.⁴²⁾ (Clause

328, Art. 21 on the Criminal Procedure Code) Especially important change was that they made it a rule for unanimity. When it is not attained within three hours, for conviction, votes for 7 out of 12 were needed according to the decision by majority.

If the votes were 6 to 6, according to innocence presumption principle, it was considered a decision of "not guilty" and it seems to be open to discussion. (Article 343) In case of decision of “not guilty”, the accused was acquitted. In case of conviction, the accused was found innocent. However, upon the decision that there is a sufficient evidence of giving a verdict of “not guilty”, there was a possibility to ask another trial by jury ⁴³⁾ (The decision was not to be appealed.) If the necessary composition of crime was deficit, they could acquit the charge. (Article 343)

During discussion, jury could review the submitted data, ask for more detailed explanation about the questions or applied law.

But comparing that all American states require unanimity, there was disagreement on the effectiveness of majority vote system taken by Russian jury system.

Despite of many negative opinions, the demand for trial by jury was very high since its enforcement by way of showing an example. ⁴⁴⁾ This is caught easily from the following chart.

Chart 1. Actual result of trials by jury (9 federations) ⁴⁵⁾

year	rate of trial by jury demanded	number of cases	number of the accused	rate of judgments "not guilty"
1994	20.4%	173	241	18.2%
1995	30.9%	305	544	14.3%
1996	37.0%	336	618	19.1%
1997	37.0%	419	825	22.9%
1998	43.0%	405	800	20.1%
1999	44.0%	422	867	16.0%
2000	38.2%	359	774	15.2%

These numbers are results of experimenting jury system in 9 district courts out of 89 and were evaluated by the state court which had only limited jurisdiction, not federal court which had overall jurisdiction. Thus it is difficult to generalize but still , even with the numbers are tending downwards after 1997, the argument on jury’s tendency to give a verdict of “not guilty” seemed to be appropriate. ⁴⁶⁾ Knowing that most of the cases

for trials by jury were felony cases with potential death penalty, it seems to be a matter of grave concern comparing that the rate for judgment “not guilty” by judges of *Schoffengericht* (Full Bench) was never higher than 0.5 %. (Comparing USA and other European countries where the jury system is successfully managed, the rate of judgment “not guilty” is approximately 10%, the result cannot be disregarded.) As mentioned early, it had tendency to decline noticeably and it could be explained as a special reflection of society during transitional social order in Russia. That is to say, Russia experienced the change from communism to market economy and people’s distrust on society and judicial system and discontent on government officials were reflected on national sentiment. Also the experience from formal Soviet could have been negative. It is an example of people’s expressing their antipathy of authoritarian judicial system which derived from Soviet *Schoffengericht* (Full Bench) that didn’t fulfill its role. The statistics were changing as the Russian society finds its security and as the ruling by law which Putin stands on. The bigger problem than high “not guilty” judgment was that in case of appealation by public prosecutor, the rate of annulations of the original decision by Federal Supreme Court was reached 30.7 % (20 accused) in 1996 and 48.6% (50 accused) in 1997. ⁴⁷⁾ This problem was derived not from systematical error but from the lack of understanding on jury system. The problem of annulations of original decision should be studies more hereafter.

Thus, Russian jury system model reminds us of the reflection of national sentiment through jury system and the importance of legal participation of people. Russian government executes jury system nationwide regardless of opposite views. In the process, people came to have confidence different from the past in judicial system and it contributed a lot to democracy of criminal persecution process.

III. Historical Significance of Revival of Jury System in Russia and Its Meaning to Our Society

Compare with general American model (every state shows a little differences.) of jury system where trials by jury are actively done in both the civil and criminal cases, Russian jury system has its distinguishing characteristics. First, most of American states set unanimity as a principle but in Russia, the verdict can be drawn from the majority vote. Russian jury system didn’t give up on unanimity but after 3 hours of trial, the judgment is made with majority vote. Simple majority principle speeds the judgment but it lacks persuasion and deep discussion on the case to obtain unanimity. We should

observe more with the time if the simple majority vote principle is reasonable choice in Russia when the cases concerned are limited to grave offense like murder, rape, terrorism and violence committed by criminal organization.

Secondly, in USA, when the accused admits that he or she is guilty of crime, they proceed with examination of the offense and trial by jury is performed only in case when the accused claims his or her innocence. However, in Russia, trial by jury can be done when the accused admits its guiltiness. It seems to be a result of Russian legal tradition of “Making allowances for the circumstances under the presumption of guiltiness” Thirdly, in USA, the appellation for the judgment “not guilty” is not allowed. Because if the verdict given by the citizen is annulled at appellate court where there is no citizen participation, it means the denial of the jury system itself. However in Russia, in special cases, it is allowed. In USA, trial by jury is done both for civil and criminal cases but in Russia like in Great Britain, trial by jury is not performed in civil suit. Because it is more burdensome for the judge to explain details and procedures in civil cases and it might cause the delay of judgment that would increase the charge of the parties to a suit. Besides, the verdict by professional judge is bound to the precedent (on the contrary, jury is not restrained). It is more predictable and certain and it prompts the settlement of dispute a part from the trial. Nevertheless, in USA, around 100,000 criminal cases and civil cases in twice in number (200,000) are heard by the jury.

In Russia, civil cases don't hold jury but cases related to economy and foreign investment, specialist citizen participates in hearing at the arbitration tribunal. Arbitration tribunal is newly established in the early 1990s as formal lawsuit court and the highest arbitration court not a simple arbitration organization for counsel. Russian high arbitration court is the highest judicial organization that adjudges the hearing case of arbitration tribunal such as dispute between firms and other cases. According to the formalities prescribed in the federal law, it inspects courts and presents guiding principles to practical legal affairs. Introduction of Specialist in *Schoffengericht* (Full Bench) is practiced since July 2002 after revision of code of arbitration lawsuit and experiments in some areas. If one party requests, from the list prepared for the court, each party selects arbitration specialist in the bench meaning the bench is composed of one professional judges and total of two arbitration specialists. This specialist should be in management level in economics, finance, law and administration or have at least five years of experience in business. The list is made with the recommendation of chamber of commerce or consumer associations.

In USA, jury system is a general form of legal structure but in Russia, jury system and *Schoffengericht* (Full Bench) are carried out side by side and it seems to be en

effort to make up for jury system's defect. In USA, the minimum age to be a jury is 18 years old. But in Russia, there isn't any specification on age. It is the question of our day to study the differences in American and Russian jury system and to consider which system would be appropriate to our reality while we prepare for improvement in judicial system.

V. Conclusion

As the discussion on legal reformation starts in Korean society, many ideas on legal participation of people are presented. The most representative idea was the agenda to introduce jury system which we have studied so far and it became more interesting with the appearance of Judiciary Reform Committee in the second half of year 1999. It is true that there is a public opinion that the time is not yet mature but it would not be a big concern if it goes through a gradual but thorough preparation as shown in the Russian model.

The necessity and adequacy of jury system especially the claim that jury system should be introduced in criminal cases and the advantages of jury system were already presented by many scholars. ⁴⁸⁾ Especially it is a very impressive idea that jury system has been developed as original form of people's legal participation and fundamental countermeasure for legal democratization and acquirement for adequacy. ⁴⁹⁾

Under jury system, daily hearing is necessary and to be thorough prepared, whole presentation of evidence is needed and to help the understanding of jury, simple way of evidence investigation would be done. At trial, first hand principle and verbalism would be realized so that verifiable inspection will be done and eventually it will be an important opportunity to increase the human right of the accused, public and legal awareness of jury participating. In case of having professional judges, one judge has to deal with fact finding and evidence adoption. The judge tends to take all the evidence and it is hard for him or her to take the evidence that is contrary to his or her presumption later on. In jury system, the role of judge and jury is clearly divided. Therefore, the judge free from fact finding can concentrate on fair legal interpretation, unbiased procedure management and especially on exact evidence interpretation. These are the concrete examples of advantages of jury system.

Introduction of jury system in civil cases need more discussion in many aspects.

Yet introduction of jury system in criminal cases is an important social task and it will contribute to realization of democracy with participation through legal participation of

people. Still, whether to take unanimity principle in American jury system or compromised Russian jury system requires more positive studies on Russian jury system. Even in all the 89 districts execute trial by jury, it shows very less demand for it compared to the time when it was done experimentally. In 2003 when the jury system was introduced nationwide, the total number of trials by jury was only about 400. This number brought up many people who claimed the nullification of jury system in Russia.

Upon visit of the justice of the Supreme Court last march, I remember feeling somewhat unsatisfied by not receiving reasonable answer to the question 'why the rate of trial by jury became lower than it was before?' Russian government spent huge expenditure on building two tribunals for each court where the trial by jury be heard. However, the low demand rate for trial by jury remains as a problem awaiting solution.

If Korean society will introduce jury system, before its real execution, several mock trials should be done with both American and Russian model to choose a scheme that is more adequate to our society.

- 1) Data publication (□) 2004. 5 pp. 378 by Judiciary Reform Committee
- 2) Data publication (□) 2004. 5 “Legal participation of people on trials”, p. 381 by Judiciary Reform Committee
- 3) Kim Sang Joon 『Study on American Jury System』, Ehwa Women’s University Publishment, 2003
- 4) Data publication (Ⅱ)2004.5 “Legal participation of population on trials”, p. 390 by Judiciary Reform Committee
- 5) Cathy A. Frierson, *Peasant Icon: Representation of Rural People in Late Nineteenth-Century Russia* (Oxford Univ. Pr., 1993), p. 8
- 6) Kim Young Ok, *Socialistic Origin and Succession of Russian Legal System*, Bobjo, serial number 578, p.93
- 7) William T. Shinn, Jr., “The Law of the Russian Peasant Household”, 『Slavic Review』, vol. 20, no 4 (1961), p. 605; Maxime Kovalevsky, “The Past and Present of the Russian Village Community”, The Avalon Project at Yale Law School: Modern Customs and Ancient Laws of Russia, 2004. <<http://www.law.yale.edu>>
- 8) Boris N. Mironov, “Peasant Popular Culture and the Origins of Soviet Authoritarianism”, in *Cultures in Flux*, eds. Stephen P. Fraaank and Mark D. Steinberg, p. 59; Mironov, “The Peasant Commune after the Reforms of the 1860s”, pp. 9-10.
- 9) Worobec, “Family, Community, and Land in Peasant Russia 1860-1905”, (Ph.D. diss., Univ. of Toronto, 1984), p. 49; J. Blum, *Lord and Peasant in Russia from the Ninth to the Nineteenth Century*, (Princeton, 1961), pp. 599-600.
- 10) In Russian, *samosud* is a word composed of “sam” meaning self and “sud” meaning court, judgment. i.e. literal translation would be “to judge by oneself”
- 11) representative examples) E. Kartsev, “Sel'skoe pravosudie: Iz Zhizni russkoi derevni”, *Vestnik Evropy*, no. 1(January 1882), p. 332; Thoma S. Pearson, “The Origins of Alexander □'s Land Captains: A Reinterpretation”, *Slavic Review*, vol. 40, no.3 (fall 1981), pp. 391-393; David A.J. Macey, *Government and Peasant in Russia, 1861-1906* (Northern Illinois Univ, Pr., 1987), p. 37
- 12) V. N. Tenishev, *Programma Etnograficheskikh Svedenii*, p. 19.
- 13) Frank, “Cultural Conflict”, pp. 208-209; I. Mandel, “Paternalistic Authority in the Russia Countryside, 1856-1906”, (Ph. D. diss., columbia Univ., 1978), pp. 281-282.
- 14) Czap, “Peasant-Class Court”, p.110.
- 15) Czap, “The Influence of Slavophile Ideology on the Formation of the Volost' Court of 1861 and the Practice of Peasant Self-Justice Between 1861 and 1889”, (Ph.D.diss., Cornell Univ. Pr., 1959), p. 72.
- 16) Re-quoted from *Trudy Kommissii po preobrazovaniuu volostnykh sudov* (St. Petersburg, 1874), vol. 1, pp. 2-11; vol. 2, p. 458., Czar, “Peasant-Class court”, p. 163
- 17) Czap, “Peasant-Class Court”, p.153.
- 18) V.V Tenishev, *Pravosudie*, p. 9; William E. Pomeranz, “Justice from Underground: The History of

the Underground Advokatura”, *The Russian Review*, vol. 52, no.3 (July 1993), p. 321; Shanin, *The Awkward Class*, p. 219; Moshe Lewin, “Rural society in twentieth-century Russia: an introduction”, *Social History*, vol.9, no. 2 (May 1984), p. 178.

19) Laura Engelstein, *The Keys to Happiness: Sex and the Search for Modernity in Fin-de-Siecle Russia* (Cornell Univ. Pr., 1992), pp. 17-18.

20) Legal reformation in 1864 established the unified general court system determined by district of court of assize of several states. I.E. Due to legal reformation, existing district courts were unified to circuit court. Civil and criminal cases that Circuit court dealt with were transferred to the justice of the peace ((J.P.)), newly established system through the legal reformation. Its main purpose was to lead voluntary and harmonious consent between the parties in suit. However, this system was nullified on July 12, 1889. All the legal rights of a justice of peace were transferred to local government officer and the rights of justice of peace in a city were transferred to justice of peace in corporate town ordained by the government. Exceptionally in big cities like Petersburg and Moscow, system of justice of the peace ((J.P.)) was maintained. This situation changed again with laws and ordinances of local court on June 15, 1912. Legal rights of local government officer’s were annulled and given back to the justice of the peace ((J.P.)). Sutton, “Crime and Social Change”, pp. 24-35; Samuel Kuchеров, *Courts, Lawyers and Trials Under the Last Three Tsars* (New York, 1953), pp. 43-50and 87-91

21) Park Hong Gyu, *Trial by Men*, Human Edu Book, p. 255

22) Сергей Пашин, “Краткий очерк судебных реформ и революций в России”, *отечественные записки* (2003 11)

23) Александр Афанасьев, “Суд присяжных в Росии”, *отечественные записки* (2003 11)

24) According to the census in 1796, 34,700,000 habitants (96.4% of population) lived in rural areas. And only 1,300,000 habitants (3.6% of population) lived in the cities. According to the other census done about 100 years later in 1897, 87.4% of population (112,700,000 habitants) still lived in rural areas. Number of habitants in rural areas included local landlords and priests but most of them were peasants. Re-quoted from Teodor Shanin, *Russia as a ‘Developing society’ The Roots of Otherness: Russia's Turn of Century*, vol. 1 (Yale Univ. Pr., 1986), p. 65; P. Liashchenko, *History of the National Economy of Russia to the 1917 Revolution* (New York, 1949), p. 273., Nicholas V. Riasanovsky, “the Problem of the Peasant”, in Wayne S. Vuciniched., *The Peasant in Nineteenth-Century Russia* (Stanford Univ. Pr., 1969), p. 263

25) В. Руднев, “Суд присяжных Возвращение в Росию” *отечественные записки* (2003 02)

26) В. Руднев, “Суд присяжных Возвращение в Росию” *отечественные записки* (2003 02)

27) Александр Афанасьев, “Суд присяжных в Росии”, *отечественные записки* (2003 11)

28) Кони А. Ф. *Собр. соч.* М., 1966. Т. 4. С. 378.

29) Кони А. Ф. *Собр. соч.* М., 1966. Т. 4. С. 377.

30) Before the emancipation of serfs, peasantry was categorized in three (serf, peasant on imperial

property and peasant on public land). After the emancipation of serfs along with the introduction of jury system, to most of peasants except for the serfs was given eligibility to be jury. The emancipation of serfs in 1861 was only for the serfs on private property. The reformation for peasant on imperial property and on public land was done in 1863 and 1866 respectively. J. Blum, *Lord and Peasant in Russia from the Ninth to the Nineteenth Century*, (Princeton, 1861), pp. 599-600.

31) Александр Ларин, “Доверяйте правосудию нравственности”, *Журнал Российская юстиция*, 2003 2

32) John Coughenour, “Carnary in the coal mine: The Importance of the trial jury”, *Seattle University of Law Review*, (winter, 2003) p.406, Stephen C. Thaman, “Resurrection of Trial by Jury in Russia”, *Stanford Journal of International Law*, winter 1995, p. 62

33) Stephen C. Thaman, *supra* note pp. 79-82

34) According to decision of the supreme council, from November of 1993 in Moscow and Ivanovo state, Razan state, Saratov State, and Stavropori state, jury system was in effect. Altai, Krasnodar, Rostov, Yulianobck, in January of 1994. They also introduced the monitoring system by legal specialists of the area.

35) New Constitution of Russia was enacted by plebiscite on December 12, 1993 and the article about the jury system is provided in Clause 3 and 4, Art. 123.

36) The law was revised in December 2002 with an aim to expand the jury system nationwide. Thus the system would be introduced gradually by January 2004, except for Chechen Republic in January 2007.

37) That means, local self-government would make the list of 156 civil judges, from citizens with over 25 years old, per 1 professional judge on basis of local poll book and send the list to each court after obtaining agreement from legislative body. Among them, six civil participants are selected at will. (This number is three times larger than that (2) of in the law.) and in each case, each judge would abstract prescribed number.

38) For example, in December 1998, Razan state denied the introduction of jury system due to financial problem.

39) Refer to C. Thaman *supra* note pp.79-82 for detailed legislation process. As many as 12 organization and associations entered into a dispute and the Public Prosecutor's Office and the Supreme Court were basically against the legislation of jury system.

40) The grave criminal act that threatened lives like murder of more than two people, murder without aggravate reason, kidnapping, rape and genocide could be an object of trail by jury and it was done only at request.

41) Choi Dong Ryul “Russian Jury System” Data publication (II) 2004. 5 pp. 677 by Judiciary Reform Committee,

Re-quoted Stephen C. Thaman *supra* note p. 84

42) Jury list was made by administrative body at state level every year by excluding people under 25

years of age and ex-convicts.

43) Choi Dong Ryul “Russian Jury System” Data publication (Ⅱ) 2004. 5 pp. 677 by Judiciary Reform Committee

44) Stephen C. Thaman, *supra* note pp. 88

45) 杉浦一孝「ロシアの司法改革と市民の司法参加—参審制の改革と陪審制の「復活」」『自由と正義』2001年6月号、Vol 52, No. 6

46) Leonard Orland, “A Russian Legal Revolution: The 2002 Criminal Procedure Code”, *Vonnecticut Journal of International Law*, Fall, 2002, p. 145: It’s only 2 % of total 89 cases.

47) Choi Dong Ryul “Russian Jury System” Data publication (Ⅱ) 2004. 5 pp. 685 by Judiciary Reform Committee

48) Especially, Park Hong Gyu, *Trial by Men*, Human Edu Book, 2000; Han In Seop, “Introduction of Jury System in Criminal Cases”, 『Criminal Policy』, 2nd Issue on 14th Volume, 2002.12, 105-146; Han In Seop, “Trial by Jury and Prospect of Change in Criminal Proceedings”, 『Law and Society』, independent volume 25, pp. 31; Moon June Young, “History of Japan Jury System and Recent Trend in Legal Participation of People”, Division of Law at Seoul National University, 『Study of Law』, Volume 8, 2001

49) Han In Seop, “Trial by Jury and Prospect of Change in Criminal Proceedings”, 『Law and Society』, independent volume 25, pp. 31