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# Historical stages of the transformation of the judicial system and legal procedures in the Russian Empire: case of judicial reform of 1864

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## Abstract

The relevance of the study consists in the fact that the changes in the 1860-70s in the Empire determine the beginning of positive developments within the judicial system. Consequently, the objective of the article was to study the historical stages of the transformations in the judicial system and procedure in the Russian Empire in 1864. The main research method was deductive that allowed to study the nature and the key historical stages of the transformations in the judicial system and legal procedure in the Russian Empire in 1864. The solution to the problem posed was based on studying the legal foundations of the significance (place and function) of the judicial reform of 1864 within the general historical development of Russia. It is concluded that the key judicial principles include democratic foundations such as publicity in the oral process, frankness, and the right to a lawyer. Furthermore, it highlights that the authors of the Judicial Regulations of 1864 studied not only English and French law, but also examined the codes of procedure of Geneva and the Kingdom of Sardinia. Thus, the Russian jury trial became a new step in the development of European legal culture.

**Keywords:** judicial system in the Russian empire; Legal procedure; judicial reform; peasant reform; judicial modernization.

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## *Etapas históricas de la transformación del sistema judicial y los procedimientos legales en el Imperio ruso: caso reforma judicial de 1864*

### **Resumen**

La relevancia del estudio consiste en el hecho de que los cambios en la década de 1860-70 en el Imperio determinan el inicio de desarrollos positivos dentro del sistema judicial. En consecuencia, el objetivo del artículo fue estudiar las etapas históricas de las transformaciones en el sistema y el procedimiento judiciales en el Imperio Ruso en 1864. El principal método de investigación fue deductivo que permitió estudiar la naturaleza y las etapas históricas clave de las transformaciones en el sistema judicial y el procedimiento legal en el Imperio Ruso en 1864. La solución al problema planteado se basó en estudiar los fundamentos jurídicos de la trascendencia (lugar y función) de la reforma judicial de 1864 dentro del desarrollo histórico general de Rusia. Se concluye que los principios judiciales clave incluyen fundamentos democráticos como la publicidad en el proceso oral, la franqueza y el derecho a un abogado. Además, destaca que los autores del Reglamento Judicial de 1864 estudiaron no solo el derecho inglés y francés, sino también examinaron los códigos de procedimiento de Ginebra y del Reino de Cerdeña. Por tanto, el juicio con jurado ruso se convirtió en un nuevo paso en el desarrollo de la cultura jurídica europea.

**Palabras clave:** sistema judicial en el imperio ruso; procedimiento legal; reforma judicial; reforma campesina; modernización judicial.

### **Introduction**

The judicial reform was part of the radical changes in the 1860-70s. After the abolition of serfdom in 1861, there was an urgent need to adjust the political system of the Russian Empire to new capitalist relations. The creation of new judicial bodies and the organization of their operation and actual implementation of the judicial reform in various regions of the state were important aspects in the history of the reform. During further development, the ruling elite's attitude towards the reform became clear – the strong wish to limit democratic institutions and restrict the field of their application (Kurbanov and Gurbanov, 2019a).

Judicial power became autonomous from administrative power, the principles of independence and irremovability of judges were enshrined in law. Social estate courts were abolished, and the all-estate court was

introduced. The number of judicial authorities was reduced, and there were different judicial bodies depending on the gravity of the offenses (magistrates' courts handled minor offenses whereas important cases were heard by general judicial settlements) (Kurbanov and Gurbanov, 2019b). The institute of jury trials was introduced for some cases in district courts. For the first time in Russia, the bar association ("barristers") was founded, "without whom it would be impossible to introduce adversariality in oral arguments during criminal proceedings for the litigant and the defendant to reveal the truth and present the full defense before the court" (Tsykova, 2005).

The prosecutor's office that used to be part of the judicial department underwent a major reorganization. The prosecutor's office had to ensure uniform compliance with laws, initiate criminal prosecution and participate in criminal proceedings in cases provided for by law. The prosecutor's office acted as a defender of the interests of the state, as a force that should resist any attempts to use democratic institutions of the judicial reform in the interests of the destructive forces of society (the Narodniks) (Kurbanov and Gurbanov, 2019a). In accordance with the judicial regulations, the positions of the judicial chamber prosecutor and the prosecutor's associates were established. The prosecutor's office was organized according to the principles of strict hierarchy, single authority and interchangeability in the process. Prosecutorial supervision was carried out under the supreme leadership of the Minister of Justice as the Prosecutor General. The Ober-Procurators of the Senate and judicial chamber prosecutors were directly subordinate to the Prosecutor General, the prosecutors of the district courts acted under the authority of the judicial chamber prosecutors. The number of assistant prosecutors and the distribution of their duties depended on the size of the judicial district (Koni, 1914).

Naturally, prosecutors were much more dependent on the government both due to the direct subordination to the Minister of Justice, and because prosecutors were not subject to the principle of irremovability. The prosecution and the defense engaged in public contests in the correct understanding and application of the law, in wit, in the brilliance of phrases and in comprehending the subtlest zigzags of the human soul. The prosecutor's office flaunted "impartiality", the defense relied on resourcefulness and pathos.

## 1. Methodological Background

The methodological background of the existing need to study the historical stages of the transformation that occurred in the judicial system and legal procedure in the Russian Empire in 1864 is based on the

importance of past historical experience for understanding the legislator and law enforcement authority's elaboration of directions for improving the modern judicial system of the state. The work on the preparation of the judicial reform began in the 1850s and intensified after the proclamation of the peasant reform and after the accession to the throne of Alexander II in 1855. One of the main wishes written in the Tsar's Manifesto read, "May justice and mercy reign in the courts". By the beginning of 1861, 14 draft laws had been submitted to the State Council for consideration. The materials of the judicial reform amounted to 74 volumes. The culmination of this long-term work was sent out at the end of 1862 to all judicial bodies – the draft of "The Basic Provisions of the Judicial System". To implement the program of the judicial reform presented in the report approved by Alexander II on 19 Oct. 1861, a commission was organized that included the most prominent legal professionals.

The legal framework of the judicial reform of 20 Nov. 1864 included the Establishment of Judicial Settlements, the Regulations of Criminal Proceedings, Regulations of Civil Proceedings and the Regulations of Punishments Imposed by Justices of the Peace.

## **2. Results**

The strengthening of the position of the defense in court trials as a result of the Judicial Reform of 1864 was evidenced by the establishment of the institution of the Bar. Prominent lawyers-professors, prosecutors, ober-procurators of the Senate and the best commercial court lawyers strived to join the bar. A.M. Unkovskii, a prominent member of the peasant emancipation movement and M. Saltykov-Shchedrin's friend, also joined the bar association. Newspapers and magazines would increasingly feature the names of lawyers: F.N. Plevako, V.D. Spasovich, K.K. Arsenev, N.P. Karabchevskii, A.I. Urusov, S.A. Andreevskii, P.A. Aleksandrov, V.M. Przhevalskii, A.Ya. Passover and others. According to the judicial Regulations, there were two types of lawyers. Barristers were lawyers of the highest category that joined the bar according to the districts of judiciary chambers. Barristers elected the Council that was responsible for admitting new members and overseeing individual lawyers. The other, lowest category of lawyers consisted of private attorneys who handled insignificant cases and could only work in the courts where their license was issued.

### 3. Discussion

On 20 Nov. 1864, in Tsarskoye Selo, Emperor Alexander II approved the judicial Regulations and the “Establishment of Judicial Settlements”. Judicial bodies were divided into two main parts: magistrates’ courts (courts with elected judges – justices of the piece and assizes of the peace) and general judicial settlements (with appointed judges – district courts, judicial chambers and the Governing Senate as the Supreme Court of Cassation). Moreover, there were special jurisdiction courts: courts-martial, volost, commercial courts and others, the creation of which was provided for by other legislative acts. Every uyezd with the city it was formed around and, in some cases, a large city individually became a circuit that was divided into several districts. Each district had an acting and an honorary justice of the peace. Justices of the peace – acting and honorary – were elected for three years by local and zemstvo self-government bodies (uyezd representative councils and city Dumas) from the residents who could meet the requirements related to age, education, position and real estate possession (Tsykova, 2005; Lebedev *et al*, 2017).

The judicial reform of 1864 stipulated that judicial inquiry should become part of the criminal trial and should not be conducted by the police. The main principles of judicial procedure were such democratic foundations as publicity, adversariality, oral proceedings, directness and the right to counsel (Kurbanov and Gurbanov, 2019b). The new legal proceedings were based on the following principles: 1) the concept of formal evidence was abolished, and the rules on the strength of evidence from the judicial regulations served only as a guide in determining the guilt or innocence of the defendants according to the inner conviction of the judges, which, in turn, was based on the totality of the circumstances discovered during the investigation and court proceedings; 2) the defendant could either be condemned or acquitted (in other words, the defendant could not be left under suspicion).

The justice of the peace handled minor criminal, civil cases that could result in the following punishments: reproof, reprimand, fine in an amount not exceeding 300 rubles, arrest for a term not exceeding three months, imprisonment for a term up to one year. Justices of the peace (acting and honorary) of this district gathered at the assize of the peace or the congress of justices of the peace, which was the final court of appeal. The cases of justices of the peace were further considered only in cassation in the Senate (Lafitskii, 2012a). The courts of the first instance were the district courts. Each district court was established to handle civil and criminal cases outside the jurisdiction of a justice of the peace. The second instance in the general court system was the judicial chamber. There, one could appeal the sentences and decisions of district courts passed without a jury. Moreover,

the jurisdiction of the judicial chamber encompassed especially dangerous crimes – crimes against the state and crimes of officials. These cases were to be heard by the Crown court with estate representatives, one from each estate: the governorate (or uyezd) leader of the nobility, the mayor and the head of the volost (Koni, 1914).

## Conclusion

The jury was a new institution at the first level of the general judiciary system (district courts) introduced by the reform. The jury trials were used in the cases “on crimes and misdemeanors, entailing punishment combined with the deprivation of all estate-related rights as well as all or some of the special rights and property”. Like other democratic institutions in the judicial Regulations, the jury was borrowed from European states. England is considered the birthplace of the jury where its formation falls on the 11<sup>th</sup>-15<sup>th</sup> centuries. The Great French Revolution spurred the widespread proliferation of this institution in Europe. It should be noted that the French jury, and later the German and others, were not an exact copy of the English jury (Leroy-Beaulieu, 1881). The authors of the Judicial Regulations of 1864 carefully studied not only English and French law. In particular, the procedural codes of Geneva and the Kingdom of Sardinia were carefully examined by the editorial committee. Thus, the Russian jury trial became the new step in the development of European legal culture (Lafitskii, 2012b).

The chosen model of the jury (the answer to the question “Is the defendant guilty?”) determined the organization and procedure for their work. Only men aged 25 to 70 years old, Russian subjects that met the local residency requirement (2 years) and the property ownership requirement could become a juror. One could not become a juror if one was on trial or under investigation, blind, deaf, insane, declared an insolvent debtor, in extreme poverty or a domestic servant. In addition, clergymen and monks, persons holding the positions of generals (the first four classes according to the Table of Ranks), employees of the court and prosecutor’s office, police officials, military personnel, teachers and some others were not included in the lists of the jury. For the election of the jury, general lists were drawn up that included, regardless of income or salary, honorary justices of the peace, civil servants other than professional lawyers, all elected officials, volost and rural peasant judges and other persons who had real estate or income. General lists served as a basis for compiling lists of regular and reserve jurors for the year. The waiting lists included persons that should be summoned to the court within the next year. No one could be called on a jury more than once every two years.

The judicial reform of 1864 separated the preliminary investigation from the judicial inquiry. The inquiry was divided into general (preliminary, without charges) and special (formal, with charges).

### **Recommendations**

The role of the jury in legal proceedings: three weeks before the trial, the presiding judge selected by lot 30 regular and six reserve jurors. The prosecution and the defendants had the right to a motivated and unmotivated challenge of six jurors. After challenges, a jury of 12 main and two reserve jurors was chosen by lot from the remaining number, and these jurors took part in the trial. After the formation of the jury, the jurors elected their foreman. The jury in the courtroom was separate from the crown judges. Jurors had the right to inspect the traces of the crime and other material evidence as well as the right to pose questions to the interrogated persons through the presiding judge. The jury could ask the presiding judge for clarifications on all the circumstances of the case and “in general everything that was unclear to them”.

The jury was forbidden to communicate with anyone during the trial other than members of the court under the threat of a fine. Jurors had to keep the secrecy of the jurors’ deliberations and were also fined for making the voting results public (Lafitskii, 2012a). After the parties’ debate, the presiding judge addressed the jury with charge (resume) and handed the jury foreman a questionnaire for a verdict which consisted of answering the questions posed by the court, after which the jury retired to the deliberation room. The entrance to the deliberation room was guarded. No one had the right to enter and leave it without the permission of the court. The law called on the jury to make a unanimous decision but if it could not be reached, the questions were put to a vote. The answer to each question could only consist of an affirmative “yes” or a negative “no”. If the votes were split equally, then the question was decided in favor of the defendant. The jury could only supplement their answers by indicating that the defendant deserved leniency. Based on the jury’s verdict, the crown judges acquitted or convicted the defendant, respectively. Court verdicts made with the participation of jurors could be appealed only in cassation to the Senate (Mironov, 2003).

The second instance in the general court system was the judicial chamber. There, one could appeal the sentences and decisions of district courts passed without a jury. Moreover, the jurisdiction of the judicial chamber encompassed especially dangerous crimes – crimes against the state and crimes of officials. These cases were to be heard by the Crown court with estate representatives, one from each estate: the governorate (or uyezd) leader of the nobility, the mayor and the head of the volost.

Unlike the jury, the special tribunal of the judicial chamber was a single board of crown judges and representatives of the people where the rights of all members were equal both in the trial and in the sentencing. However, this formal equality did not lead to an increase in their role compared to the jury. On the contrary, as G.A. Dzhanshiev pointed out, this form was almost no different from an ordinary crown court (Dzhanshiev, 1891). Nevertheless, one should not think that the members of judicial chambers were also silent observers who obeyed guidance from the superiors. The number of acquittals of special tribunals with the participation of estate representatives was only slightly less than in jury trials (Dzhanshiev, 1892).

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