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The Resurrection of Trial by Jury in Russia

STEPHEN C. THAMAN*

I. INTRODUCTION

On October 21, 1991, the Supreme Soviet of the Russian Federation approved the “Concept of Judicial Reform,”¹ a blueprint for the reform of the Russian judicial system. One of the cornerstones of this document was a call for the abolition of the traditional court with “people’s assessors”² and its replacement with a system of trial by jury.

Where stability is more important than truth, and legality more appropriate than justice, a court of professionals is enough. But when the application of the law gives rise to more horror than the commission of the crime—if the defendant is convinced of his innocence, if society is not able to stand aside and trust the state to make decisions—that is the place for the jury.³

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I would like to dedicate this study to Semion Aleksandrovich Kheifets, St. Petersburg Advocate, veteran of Stalingrad, and eloquent spokesperson for the resurrection of the pre-revolutionary Russian tradition of trial by jury, who was so brutally attacked in September 1994 and who, I dearly hope, will come back to us from his coma.


Unless otherwise noted, all translations of the Russian text are the author’s. Transcripts of interviews, copies of judicial decisions, author’s notes from court proceedings, and all other unpublished documents cited in the article are on file with the author.

² Russian (and the former Soviet) trial courts were made up of a professional judge and two lay persons chosen from social organizations, industrial enterprises, or workers’ collectives. The judge and the two “people’s assessors” were collectively responsible for deciding all questions of law and fact.

³ Concept of Judicial Reform, supra note 1, at 80-81.
On December 15, 1993, the first Russian jury since the October Revolution of 1917 convened in the region of Saratov. The twelve-person jury was empaneled to try the case of the Martynov brothers, two young Gypsies charged with the murder of three Russians in the town of Engels. Five days later, in the Moscow Regional Court, a second jury prepared to hear testimony in the trials of Slonchakov and Chernikov, defendants accused of murder and of concealing the murder of two alcoholics whose bodies were found floating in the rivers of Pavlovskii Posad, a town in the Moscow Region.

A typical Soviet court, comprised of a judge and two people’s assessors, would likely have heard the Martynov case in a single day and imposed a severe judgment, perhaps even the death penalty. Slonchakov would likely have received a sentence of at least twelve to fifteen years in a corrective labor camp.

The Soviet-era courts routinely rewarded the shoddy and often illegal investigation practices of the law-enforcement organs with severe sentences. Defendants in the new Russian courts, however, now benefit from a jury system that is more conscious of the defendant’s rights. Indeed, juries in the first trials have proven that they can transcend the sordid reality of life in the Russian provinces, returning lenient judgments despite the completely senseless and alcohol-induced nature of the crimes. In the Slonchakov case, the judge excluded improperly obtained evidence at the preliminary hearing; in the Martynov case, the judge barred the testimony of prosecution witnesses who lacked credibility. In both cases, the jurors recommended lenience; the Martynov brothers were convicted of a lesser homicide charge and sentenced to twelve and eighteen months deprivation of liberty respectively. Slonchakov was acquitted of the first murder, convicted of the second murder without aggravating circumstances, and sentenced to only six years deprivation of liberty.

This article traces the genesis of the Jury Law of July 16, 1993, and places it in the context of the criminal justice reform movement that began during the perestroika period. The law achieved its most progressive and comprehensive expression in the “Concept of Judicial Reform” and has since had important, if only partial, successes in the Russian political scene. The article then analyzes and evaluates the Jury Law on the basis of the first Russian jury trials. Much of the material for this paper is the result of the author’s personal observation of eleven of the first fourteen jury trials and parts of four more trials. The author also studied the files, accusatory documents, judgments, newspaper articles, and written accounts of other trials, and personally interviewed numerous judges, prosecutors, and defense counsel who participated in the first trials.

By introducing elements of adversary procedure into the inquisitorial structure of Russian criminal procedure and entrusting questions of fact to a panel of twelve citizens, Russian reformers hope to establish the independence of the judiciary by eliminating the institutional and procedural constraints that had made the courts mere executors of the policies of the Communist Party. Some effects of the new law are already visible. The procedural

\[ \text{SARATOV-I. See Appendix I for summaries of the first 114 jury trials in nine regions. The cases are indexed by the name of the region or the territory and a number indicating the chronological order of the case. Appendix II contains statistical information on Supreme Court cases. For the convenience of our readers, Russian names in the article will include only the initial of the patronymic.} \]

\[ \text{MOSCOW-I.} \]

\[ \text{Valerii Rudnev & Leonid Nikitinskii, Dovereiu sud’bu sudu prisizhnykh, oboiiasemye, pokhache, ne progulai (Having Trusted Their Fate to the Jury, the Defendants, It Seems, Made the Right Choice), Izvestiia, Dec. 17, 1993, at 5.} \]

\[ \text{Interview with A.P. Lopin, Defense Counsel for Chernikov, and former Judge, in Moscow (Dec. 21, 1993); interview with S.E. Ermakova, Defense Counsel for Slonchakov, in Pavlovskii Posad (Jan. 5, 1994).} \]

\[ \text{Leonid Nikitinskii & Valerii Rudnev, Led tvorcasia v Saratove, gospoda prisizhnye case-dates (The Ice Has Broken in Saratov, Ladies and Gentlemen of the Jury), Izvestiia, Dec. 17, 1993, at 5.} \]

\[ \text{A verdict of lenience means the sentence may not be higher than one-half of the average of the highest and lowest terms of deprivation of liberty, and the death penalty may not be imposed. Ugolovno-protessual’nii kodeks RSFSR s izmeneniami i dopolneniemi po sostoianiiu na 1 iulia 1994 g. [Criminal Procedure Code of the RSFSR]} \]

\[ \text{with Changes and Amendments as of July 1, 1994] \]

\[ \text{As of October 1, 1994, more than 100 jury trials had been held in nine Russian regions and territories.} \]
Although Russian reformers have often turned to Continental European and Anglo-American law for ideas, the main inspiration for the new Russian system has come from the 1864 legal reforms of Tsar Alexander II, which introduced trial by jury in Russia. This has resulted in verdicts and sentences that are a striking contrast to the severity of those handed down under the Soviet system.

It is too early to predict whether the new system of trial by jury and the adversarial procedure will take root in Russia and grow, given the considerable opposition voiced by law enforcement officials, government agencies, and the legal profession itself. It is also too early to know whether the Jury Law will indeed prove to be the catalyst needed to eliminate the crude and illegal practices of criminal investigators and the weak subservience of the courts. The purpose of this article is to isolate certain problem areas and pose questions which must be answered in the future.

II. Antecedents of Judicial Reform in Russia

A. The Tsarist Reforms of 1864

Although Russian reformers have often turned to Continental European and Anglo-American law for ideas, the main inspiration for the new Russian system has come from the 1864 legal reforms of Tsar Alexander II, which introduced trial by jury in Russia. The problems facing legal reformers today are strikingly similar to those faced by nineteenth century Russian reformers who attempted to inject popular democracy into an autocratic regime which had enslaved its people and turned the courts into corrupt instruments of executive power, dependent on local government patronage and instructions. The jury was seen as a vehicle to bring legal consciousness to the Russian masses, and professionalism to the legal structure.

The 1864 reforms were an island of liberalism in a sea of Tsarist autocracy. From 1864 until 1917, a legal culture at least the equal of any in Western Europe bloomed in Russia. The jury trials instituted by the 1864 reforms were virtually the only forum in which speech was uncensored and the people were allowed to participate in government decision-making. For this reason, the reactionaries and Bolsheviks could not tolerate their continuation. Thus, in 1917, with a stroke of the pen, the 1864 reforms were reversed, abolishing trials by jury, resurrecting the supervisory powers of the Procuracy, destroying the independent bar, and reestablishing executive (party) control of the courts.

It is true, of course, that the jury system has effectively been abolished in many continental European countries, and that even in England, serious fraud trials may soon be removed from the competence of the jury. But those countries have undergone their anti-feudal, bourgeois revolutions and have successfully established independent judiciaries. The Russian Federation, much like Continental Europe in the eighteenth and nineteenth centuries, is in the process of establishing an independent judicial system following the collapse of totalitarianism. Russia perceives the jury system as an effective tool in this enterprise. Moreover, given the survival of severe punishments (including the death penalty), the Russian jury may well be a crucial corrective tool against the abuse of state power.
B. Legal Reform During the Soviet Era

1. Soviet Legal Structure and Criminal Procedure

The Soviet criminal justice system was condemned not only because it was responsible for convicting and executing innocent people, but also because it routinely violated the rights of the accused in contravention to the Soviet Constitution and laws, and such international agreements as the United Nations Convention on Civil and Political Rights, which the Soviet Union ratified in 1973.

The procurator (or prosecutor) was the most powerful figure in the Soviet justice system, enjoying high social, political, and party status. The prosecutor directed a purely inquisitorial process in which coerced confessions, false, politically-motivated prosecutions, and falsifications of evidence were routinely carried out. Criminal suspects had virtually no protection against the often illegal methods of criminal investigators. The accused did not have a right to counsel until the end of the preliminary investigation, and preventive detention could be extended to eighteen months with the approval of the Procurator General.

The Soviet courts were ill-equipped to act as a corrective to these pretrial injustices. Investigators often covered for the illegal actions of the police by giving them the legal formality theoretically required in the Soviet system. The prosecutor's office, in turn, consecrated the shoddy and often illegal results of these investigations in the indictment which it presented to the court. Judges were poorly paid and often under-educated professionals whose living and working conditions, and nominations to another five-year term, depended upon the good will of local party bosses and government officials. They were bound to follow the orders of these officials, whose telephone calls enjoyed more probative value than any evidence or argument presented in court.

Acquittals were almost unheard of in the Soviet criminal justice system. Judges were known for their prosecutorial bias and, indeed, assumed the accusatorial function in nearly half of all criminal cases in which the procurator would merely present the indictment and then disappear. In cases in which the evidence was insufficient to convict the accused, the court would nevertheless pass a judgment for a lesser-included offense and sentence the defendant with credit for time served, or return the case to the investigator for “supplemental investigation” (often a kind of pocket acquittal).

The two people's assessors, introduced by the Bolsheviks to replace the jury, never quite functioned as a genuine popular counterweight to the professional judge. Theoretically possessing rights and powers equal to those of the judge, the people's assessors were to decide questions of law and fact in consultation with the professional judge. Ironically, Russians commonly called them the “nod-deers’; whether due to their selection from social organizations and worker's collectives controlled by the Communist Party, or due to their intimidation by, or deference to the judge, they virtually always agreed with the judge in their rulings.

The blurry separation of powers in the Soviet criminal justice system thus perpetrated illegality and injustice. It is this system that

28 See John Quigley, The Soviet Conception of the Presumption of Innocence, 29 Santa Clara L. Rev. 301, 317-18, 324-25 (1989); Peter Solomon, Jr., The Role of Defense Counsel in the USSR: the Politics of Judicial Reform Under Gorbachev, 1988 CRIM. L.Q. 76, 89-94; David Simmon, Recognition of Ineligibilities, Proposals for Reform, and Implemented Reforms in the Soviet Criminal Justice System Under Gorbachev, Glasnost und Perestroika, 5 As. U. J. INT'L. L. & POL'Y 921, 937-38 (1990). Even today, in a trial before a court with lay assessors, it is still possible for the procurator to be absent during the trial, to make no objections to the way in which it is being handled, and yet to protest a judgment if he or she is dissatisfied with the results of the trial.
29 Peter H. Solomon, Jr., The Case of the Vanishing Acquittal: Informal Norms and the Practice of Soviet Criminal Justice, 39 Soviet Stud. 531, 543 (1987); see also Interview with N.A. Ponomarenko, Judge, Krasnodar Territorial Court, in Krasnodar Territorial Court (Sept. 14, 1994) (recalling that in over 10 years as a judge, she had not handed down a single acquittal).
30 See, e.g., Dina Kamenskaya, Final Judgment: My Life as a Soviet Defense Attorney 57 (1978); statement of the Presiding Judge of the Krasnogorsk People's Court (Moscow Region), at Russian Law Academy (Mar. 19, 1995) (maintaining that in over 10 years on the bench, she had never been outvoted by the people's assessors).

21 The Procuracy is a large, national, vertically organized institution responsible for ensuring the adherence of all governmental and social organizations to the rule of law. Along with this (highly criticized) function, the Procuracy acts in the area of criminal justice as the supervisor of criminal investigations (or as the investigator in particularly serious cases). It also serves as prosecutor and as guarantor of the legality and appropriateness of court judgments. Gordon B. Smith, The Procuracy, Citizen's Rights and Legal Reform, 28 Colum. J. Transnat'l L. 72 (1990).
23 UPK RSSR § 97. Preventive detention could be extended beyond 18 months with the consent of the Supreme Soviet.
Gorbachev inherited and set out to reform during his perestroika, or restructuring.

2. The Jury and Judicial Reforms of the Perestroika Period

Although the reintroduction of trial by jury was part of Mikhail Gorbachev’s package of criminal justice reforms, isolated voices advocating this idea had been heard during the thaw following Krushchev’s ascension to power. In the late 1950s, Soviet jurists such as R.D. Rakhunov suggested expanding the panel of people’s assessors and entrusting it with the sole responsibility for deciding the guilt or innocence of the accused, a suggestion tantamount to the reintroduction of the classic jury. Rakhunov continued writing on this subject well into the 1960s. He maintained that such an enlargement of the bench would increase also the educational importance of sentences which, even to a greater extent, would rely on the wisdom and common sense of the people and heighten the moral weight, the power and authoritativeness of the sentences not only in the eyes of the public, but also of the higher courts.

G.Z. Anashkin, Chairman of the Judicial College on Criminal Affairs of the USSR Supreme Court, also recommended that the use of expanded panels of people’s assessors responsible for deciding guilt or innocence be introduced and evaluated in a limited number of courts.

Logic seems to suggest that the complete transfer of the responsibility to a great number of assessors of the decision of such questions as guilt or innocence, the character of intent and the presence of mitigating or aggravating circumstances, must really heighten the activity of people’s assessors, increase the exactness of the court toward the collected evidence and increase the cultural level of the court investigation.

The suggestions of reformers like Anashkin and Rakhunov in the 1950s and 1960s resurfaced during the course of Gorbachev’s introduction of the perestroika-era program of creating a “socialist rule-of-law state.”

Criminal justice reform was a central part of this program, and as a result of the politics of glasnost, the inadequacies and cruel injustices of Soviet criminal justice were proclaimed in newspapers and discussed in a 1986-87 plenary session of the Supreme Court of the USSR.

In 1988 and 1989, the Gorbachev regime advanced specific proposals to address the overall inadequacy of the Soviet legal system. Chief among these was an effort to empower and professionalize the role of the judge. As a result, the Soviet Constitution was amended to extend judicial terms to ten years in order to grant the judiciary a measure of independence from the local Soviets.

In 1989, the Supreme Court of the USSR also enacted the Law on the Status of Judges, designed to further strengthen the judiciary’s professional, social, political, and economic independence. During this period, the Supreme Court also issued “guiding principles” aimed at eliminating the practice of returning cases for supplementary investigation in lieu of pronouncing acquittals or dismissals.

Perhaps most importantly, the perestroika-era legal reformers recognized that a system of trial by jury could potentially assist in the development of judicial independence. The Nineteenth All-Union Conference of the Communist Party of the Soviet Union (CPSU) broached the idea of expanding the panel of people’s assessors in July 1988, resolving that “with the aim of raising the objectivity of justice, and the role and responsibility of people’s assessors, their number should be increased when courts are handing...
by calling the jury an "expanded panel of people's assessors." The portion of the Draft Code of Criminal Procedure dedicated to procedures before a jury makes it unambiguously clear, however, that the jury will be the sole arbiter of guilt and innocence, and will deliberate with the professional judge only at the sentencing stage.

A second group of jurists in the Institute of State and Law, organized by Viktor M. Kogan, was simultaneously publishing theoretical proposals for reform based on the 1864 Tsarist reforms. The Kogan group posited that a jury should not only be mandatory in all serious felony cases, but should also be available at the request of the defendant in all cases threatening deprivation of liberty. The jury would determine questions of guilt or innocence, and deliberate with the judge only at sentencing. For jury determinations, the Kogan group proposed a unanimous or qualified majority vote, whereas the Institute of State and Law Draft called for a simple majority vote.

Representatives of both groups found an opportunity to implement their ideas in 1990. In March of that year, free elections to the Supreme Soviet of the Russian Republic brought a new group of reformers to power, including Boris Yeltsin who was subsequently elected Speaker of the Parliament. Boris A. Zolotukhin, a lawyer who had been disbarred and expelled from the Party for his defense of the dissident Aleksandr Ginzburg twenty years earlier, was also elected to Parliament on a platform of judicial reform. Elected vice-chairman of the Legislative Committee of the RSFSR Supreme Soviet under the chairmanship of Sergei Shakhrai,
Zolotukhin organized a group of jurists in the summer of 1990 to draft a blueprint for judicial reform for the new Parliament.52

At the same time, Gorbachev began to side with the conservatives in the Communist Party,53 causing the locus of legal reform to shift from the Party and the Soviet Parliament to the RSFSR Supreme Soviet. Zolotukhin's working group, consisting of three members of the Kogan group,54 two members of the Savitskii group,55 and others,56 completed its work shortly before the August 1991 coup attempt.57 The result of this group's efforts, entitled the "Concept of Judicial Reform," was nothing less than the definitive blueprint for judicial reform in post-Soviet Russia.

III. JUDICIAL REFORMS IN POST-SOVIET RUSSIA

A. The "Concept of Judicial Reform"

The "Concept of Judicial Reform" (the "Concept") was introduced by President Boris Yeltsin and nearly unanimously approved by the Supreme Soviet of the RSFSR on October 21, 1991.58 It constituted the first comprehensive plan for judicial and criminal justice reform since 1864. With its strong support for human rights and democratic principles, the Concept represented a break from the tentative reforms of the perestroika era, which were reluctant to challenge the primacy of the Communist Party.

The Concept describes the decline of the Soviet courts into instruments of repression and implementation of Party policies,59 and recapitulates the criticisms of the Soviet system discussed during perestroika. Endeavoring to bring Russia "back to the breast of world civilization,"60 the authors of the Concept looked both forward and back for inspiration. Looking forward, they hoped to harmonize the penal laws and the Constitution of the Russian Federation with universally recognized concepts of human rights.61 Looking back in history, they followed the cornerstones of the Great Reforms of 1864: an independent judicial branch with non-transferability and lifetime tenure,62 elimination of the supervisory functions of the Procuracy,63 popularly elected justices of the peace to act as courts of first instance for minor civil and criminal cases,64 appellate de novo review for judgments rendered by a single judge;65 and trial by jury.66

The Concept further advocated the following specific reforms:

- the establishment of judicial control over acts by the police, investigators, and prosecutors, constituting intrusions into constitutionally protected rights of citizens;67
- the establishment of an independent investigative committee designed to free criminal investigators from supervision of the Procuracy and from their institutional dependence on the police;68
- the reduction of the maximum length of pretrial detention from eighteen months to approximately six to nine months;69
- the introduction of adversarial proceedings;70
- the formal statement, in the Declaration of Rights of the Constitution, of the presumption of innocence and of the right to remain silent;71
- the elimination of all accusatory functions of the judge;72
- a simplified procedure in cases in which the defendant pleads guilty and no dispute exists as to the evidence underlying such guilt;73

52 Interview with Boris Zolotukhin, supra note 51; interview with Sergei A. Pashin, Head of the Section on Judicial Reform, at the State Legal Department of the President, in Moscow (Mar. 17, 1995); interview with Inga B. Mikhailovskaya, in Moscow (Mar. 9, 1993).
53 See, e.g., Justin Burke, Gorbachev Shifts to the Right, Soviet Leader Aligns Himself with Army, Conservatives, Enabling Him to Use Force with Republics, CHRISTIAN SCI. MONITOR, DEC. 6, 1990, at 8.
54 Inga B. Mikhailovskaya, Tamara G. Morschchakova (later elected to the Constitutional Court), and Sergei E. Vitsin (appointed to the Constitutional Court in November 1994).
55 Igor L. Petrukhin and Aleksandr M. Larin. See INSTITUTE OF STATE AND LAW DRAFT UPR, supra note 45.
57 Interview with Sergei A. Pashin, supra note 52.
58 The overwhelming support was a result of the post-coup euphoria and consensus in the reformist government. As will be shown below, the liberal reformers' honeymoon in the Russian Parliament was to be short-lived, and implementation of the reforms enumerated in the Concept would prove more difficult than its passage.
59 Concept of Judicial Reform, supra note 1, at 8-30.
the guaranteed independence of the bar and the promotion of competition in legal practice from all qualified lawyers; and

the complete elimination of trials with people’s assessors and their replacement with trials by jury, single judges, and three-judge panels.

B. Criminal Procedure Reform

Since 1992, three groups of experts, seeking guidance from the “Concept of Judicial Reform,” from recent amendments to the Code of Criminal Procedure (CCP) and from the new Constitution of December 12, 1993, have been working on drafts of a new Code of Criminal Procedure. The first group, originally organized within the now-defunct Legislative Committee of the Supreme Soviet, includes several of the authors of the “Concept of Judicial Reform.” This group, which has received support from the Ford Foundation, now meets under the aegis of the State Legal Department. The State Legal Department group published part of its proposed code and submitted it for evaluation at a conference examining the results of the first jury trials in Sochi on October 4, 1994.

The second group, organized within the Ministry of Justice under the direction of Sergei B. Romazin, a former judge on the USSR Supreme Court, is composed of jurists from various legal institutions such as the Procuracy, the Ministry of Justice, the Interior Ministry, and the Supreme Court of the Russian Federation. As a basis for its work, the Ministry of Justice group used the draft CCP of the Institute of State and Law and a draft CCP prepared by the Procuracy Institute in late 1991. The Ministry of Justice group published its own draft Code of Criminal Procedure in October 1994, drawing on critiques of earlier versions which had been circulated among government agencies and academics. The third group of experts, working within the Procuracy Institute and led by A.D. Boikov, revised its 1991 draft CCP and published the most recent version of it in 1994.

In addition, both the State Legal Department and the Ministry of Justice have prepared draft laws to conform the organization of the courts with the new Constitution, including specific provisions relating to juror qualification and the creation of jury lists.

C. Insuring the Independence of Judges

Since one great criticism of the Soviet justice system was the subordination of judges to Party politics, it is not surprising that reformers chose to address the shortcomings of the judiciary directly. Accordingly, on June 26, 1992, the Supreme Soviet of the seeva, the head of the Russian Legal Academy’s seminars for judges on trial by jury. The author participated in some of their meetings.

81 The author attended many sessions of this working group in late 1992 and early 1993.

82 All-Union Scientific Research Institute for Issues Concerning the Strengthening of Legality and the Legal Order, Project. Ugolovno-protsessual’nyi kodex Rossiskoi Federatsii (All-Union Scientific Research Institute for Issues Concerning the Strengthening of Legality and the Legal Order, Draft Code of Criminal Procedure of the Russian Federation) (1991) [hereinafter Procuracy Institute, 1991 Draft UPK]. This draft went further than the Institute of State and Law Draft and included more detailed sections on areas outlined in the Concept of Judicial Reform such as trial by jury, appellatiia, etc.


Russian Federation passed the Law on the Status of Judges of the Russian Federation, which replaced the 1989 Soviet law. Representatives of all three branches of government—the Supreme Court of the Russian Federation (judicial branch), the Legislative Committee of the Supreme Soviet (legislative branch), and the State Legal Department of the President (executive branch)—rewrote the law originally drafted by the newly-created Union of Judges of the Russian Federation, and presented it to the Parliament for approval. The new Law on the Status of Judges increases the social and legal protection of the judiciary and guarantees the non-transferability and non-removability of judges until they reach the retirement age of sixty-five. The law also guarantees the highest salary in the administration of justice and promises free housing to judges.

In addition, the 1993 Constitution of the Russian Federation guarantees the independence and non-transferability of judges. The Constitution also gives the President (rather than the Soviets) the power to appoint judges in the lower People’s Courts and the intermediate regional and territorial courts (including the City Courts of Moscow and Saint Petersburg). Accordingly, the Law on the Status of Judges is in the process of being amended to adjust to the changes imposed by the Constitution, such as presidential appointments.

D. Protecting the Rights of the Accused

On April 21, 1992, the Sixth Congress of People’s Deputies of the Russian Federation incorporated a Declaration of Rights—a catalogue of basic rights and freedoms—into the 1978 Brezhnev-era Constitution of the RSFSR. These constitutional modifications required judicial acquiescence to issue an order for preventive detention to search a dwelling, or to intrude into the private lives of citizens by intercepting mail, eavesdropping, or telephone tapping.

These protections, however, proved inadequate because the Supreme Soviet passed a proviso suspending the enforcement of these articles until the appropriate technical and organizational preconditions had been met and the Supreme Soviet had passed implementing legislation. Although the police, criminal investigators, or the procurator retained the power to order the arrest of a suspect without a judicial warrant, the Supreme Soviet amended the CCP on May 23, 1992, to give a detained suspect the right to appeal his or her detention to a judge within three days of arrest.

The new Constitution of the Russian Federation revived the Declaration of Rights earlier adopted by the 1978 Constitution, and, in addition, reaffirmed the following rights of the accused: the presumption of innocence; the right to remain silent; the right to have illegally gathered evidence excluded; the right to counsel upon arrest, detention, or the initiation of criminal proceedings. The 1993 Constitution also included the right to adversarial proceedings (which was also amended into the 1978 Constitution in December 1992), and the right to trial by jury to the extent provided by law. It added the provision that the death sentence would be imposed only if the defendant has a right to a jury trial. The provisions on jury trial are not self-executing, however, and the Jury Law (discussed below) has only partially implemented them.

The new Constitution, like the old one, requires judicial approval for invasions of privacy and increases the protection against unlawful detention. For instance, Article 22 provides that no one may be held in detention for more than forty-eight hours without judicial approval. But, like the earlier reforms, this pro-

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95 Id. at art. 41.
96 Id. at art. 40.
97Id. at arts. 23-25.
98 UPK RSFSR, §§ 220-1, 220-2.
99 KONST. RSFSR, supra note 94, at art. 123.
100 KONST. RSFSR, supra note 94, at art. 67; KONST. RF, supra note 22, at art. 51.
101 KONST. RSFSR, supra note 94, at art. 67; KONST. RF, supra note 22, at art. 50.
102 KONST. RSFSR, supra note 94, at art. 67(1); KONST. RF, supra note 22, at art. 48. On May 23, 1992, this provision was enacted into the Code of Criminal Procedure. UPK RSFSR § 47.
103 KONST. RSFSR, supra note 94, at art. 128(2).
104 KONST. RSFSR, supra note 94, at art. 123.
105 KONST. RSFSR, supra note 94, at art. 68; KONST. RF, supra note 22, at art. 123.
106 KONST. RF, supra note 22, at art. 20.
107 KONST. RF, supra note 22, at art. 20.
The approval of the Jury Law was subject to political battles within the Russian institutional structure. The first drafts of the legislation\(^\text{114}\) were discussed with the representatives of twelve interested agencies and institutes.\(^\text{115}\) As a result of strong criticism, especially from the Ministry of Justice, the Procuracy, and the Supreme Court, the emphasis of the project shifted.\(^\text{116}\) The project no longer called for the introduction of justices of the peace, a standard protocol for preliminary investigations, or simplified trial procedures. Instead, it concentrated on implementing the system of trial by jury. As further alternatives to the court with people’s assessors, it foresaw single-judge and three-judge courts, with “appellate” procedures set up to review decisions made by single judges.\(^\text{117}\)

On March 3, 1993, Ministry of Justice official Boris V. Panferov, who had joined Sergei Pashin in presenting the draft Jury Law to the Soviet of Nationalities, the upper house of the Supreme Soviet, said that he personally did not support the bill. This statement revealed the less than ardent support for the law. Procurator General Valentin G. Stepanov, a deputy of the Supreme Soviet, also spoke in opposition to the law, causing its defeat by a narrow margin.\(^\text{118}\) This friction had an institutional side as well. The State Legal Department, staffed by many young jurists, was perceived as an unwelcome competitor by the Ministry of Justice, which consid-

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\(^\text{108}\) Id. Part II, § 6 (Concluding and Transitional Provisions).


\(^\text{110}\) Interview with Iurii V. Smirnov, President of the Ivanovo Regional Court, in Ivanovo, (Dec. 15, 1993); interview with Evgenii N. Sidenenko, Vice-Minister of Justice for Judicial Reform, at the Ministry of Justice, in Moscow, (Apr. 12, 1993).


\(^\text{112}\) The author took part in these discussions.


\(^\text{114}\) The author is aware of three major drafts which were discussed by justice agencies before the law was presented to the Supreme Soviet for the first time on March 3, 1993. The first draft was prepared toward the end of October 1992, the second one toward the end of November 1992, and the third one in late December 1992 [hereinafter November 1992 Draft Jury Law, November 1992 Draft Jury Law, and December 1992 Draft Jury Law].

\(^\text{115}\) Among these agencies were the Ministry of Justice, the Procuracy, the Supreme Court, the Ministry of the Interior, the Ministry of Finance, the Ministry of Press and Information, the Union of Judges, the Union of Advocates, and the Russian Legal Academy.

\(^\text{116}\) Discussions in the State Legal Department, in Moscow, (Nov. 10, 12 and 17, 1992).

\(^\text{117}\) December 1992 Draft Jury Law. By appellatia, the Russians mean review which permits a re-litigation of factual evidence, similar to a trial de novo. The term kassatsia is used for review of the record for legal error, more akin to appellate review in the United States.

erred its mandate to be the drafting of legislation proposed by the executive branch.119

During 1992 and 1993, Procurator General Stepankov became the most vocal opponent of judicial reform, particularly of proposed laws that called for changes in the role of the Procuracy.120 After the initial defeat of the jury trial bill in the Soviet of Nationalities, the heads of the different agencies interested in the bill held a meeting at the State Legal Department. Ministry of Justice officials admitted that they opposed the bill in its current form. They insisted that jury trials should be reintroduced only in the regional courts, rather than in the people’s courts (lower courts of general jurisdiction) as the proposed Jury Law had contemplated.121

Following the second failure of the bill in May 1993, Sergei Pashin and Valentin Stepankov met and reached a compromise: they agreed to limit the application of the Jury Law to the regional courts, but increased the number of regions and territories in which it would be applied from five to nine. This draft passed the combined panels of the Supreme Soviet on July 16, 1993.122

Other compromises were also made to pass the bill. In the first drafts, the alternative procedures were to apply only in trials of forty-one selected criminal offenses, twenty-two of which would be tried in the people’s courts.123 The final version of the law makes trial by jury, presided over by one judge, available to defendants charged with one of thirty-five serious felonies and subject to the jurisdiction of the regional and territorial courts only.124 Three-

119 Interview with Evgenii N. Sidorenko, now Deputy Minister of Justice, at the Ministry of Justice, in Moscow (Apr. 12, 1993).


121 Meeting at the State Legal Department, in Moscow, (Mar. 30, 1993). The author was present at this meeting.


124 Id. §§ 36, 421.

125 Law on Court Organization § 10.

126 Interview with Sergei A. Pashin, supra note 52. Pashin wrote the Law on the Constitutional Court, was the main editor of the Concept of Judicial Reform, co-authored the Law on the Status of Judges, wrote the Law on Judicial Control of Pretrial Detention, and was the main author of the Jury Law.

127 Interview with Boris A. Zolotukhin, supra note 51 (mentioning his rallying the support of nationalist deputies Isakov and Baburin for the cause of judicial reform).

128 The Legislative Committee was abolished, and its functions divided between two new committees in the summer of 1998, before the dissolution of the Supreme Soviet by

able in the five regions originally targeted and that after January 1, 1994, it would also be available in the regions of U’lianovsk and Rostov-on-the-Don, and in the Altai and Krasnodar territories. 131

Beginning in January 1993, the Legal Academy of the Ministry of Justice hosted six ten-day seminars to prepare judges and prosecutors from the nine regions for jury trials. The faculty of the Legal Academy, along with Sergei Pashin and other jurists in the State Legal Department, gave lectures on the history of trial by jury in Russia, Europe, and America, explained the provisions of the new law, 132 and arranged mock trials and workshops. Defense lawyers participated only in the last course in November 1993. 132

Assistance from overseas was also available. The Ford Foundation, for example, financed the production of a handbook for judges working with juries. 133 Similarly, the CEELI Program of the American Bar Association financed the creation of a second judge’s jury trial manual. 134 The American government also invited several groups of judges and officials to the United States to attend seminars and training sessions on jury trials, and to watch American trials. 135

130 Order of the Supreme Soviet Implementing the Jury Law, supra note 122.
131 The first seminars were based on the draft law as it was before the final changes of May 1993. The author was a lecturer at the first seminar in January 1993.
132 The Central and East European Law Initiative (CEELI) of the American Bar Association financed the attendance of 27 lawyers, three from each of the nine regions. In April 1994, after trials had already begun, CEELI organized two jury trial workshops for advocates who had already participated in trials or who were preparing cases. One of the workshops took place in Suzdal’ on April 18-21, 1994. The other one met in Sochi on April 25-27, 1994 [hereinafter CEELI Jury Trial Workshop].

The Legal Academy trains judges and prosecutors, who are government officials. Defense attorneys were free to attend at their own expense (which was prohibitive in all but the Moscow Region).


134 The first draft of the manual (a “benchbook”) was prepared by American lawyers. It was distributed to Russian judges about the time the first trials were being set [hereinafter CEELI Draft Benchbook]. A revised jury trial manual was financed by CEELI and co-authored by professors Lidia B. Alekseeva, Eleonora F. Kutsova, Inga B. Mikhailovskai a, and Sergei E. Visin. It was published in Moscow in October 1994. See Lidia B. Alekseeva, et al., SUD PRISIAZHNYKH POSOBIE Dlia Sudei [JURY TRIAL: MANUAL FOR JUDGES] [hereinafter JURY TRIAL MANUAL].

135 The author participated in one of these sessions in Washington, D.C., in July 1993.

136 See Appendix I for brief summaries of jury trials held in Russia from December 15, 1993, until October 1994.
138 Law on Court Organization § 80.
139 Statutes of Judicial Institutions, supra note 137, § 104.
140 Law on Court Organization § 85.
141 In the United States the daily pay for jurors is substantially lower in terms of purchasing power. California, for instance, provides a $5 per day statutory minimum. CAL. CIV. PROC. CODE § 215 (West 1982). In the first Ivanovo trial, jurors were paid 3500 rubles a day for their three days of service (at this time the exchange rate was 1300 rubles per U.S. dollar); one juror was paid 13,000 rubles per day because she could confirm that this was her salary. Conversation with Iurii V. Smirnov, President of Ivanovo Regional Court, in Ivanovo (Jan. 13, 1994).
142 The author participated in one of these sessions in Washington, D.C., in July 1993.
In the earliest draft legislation of the perestroika era, the reformers assumed that the “expanded panels of people’s assessors” would be chosen from the lists of people’s assessors, even though the lists of people’s assessors were not the result of random selection but rather were controlled by the Communist Party. Earlier versions of the Jury Law more closely followed the pre-revolutionary model, providing for jury commissions composed of deputies from the local soviets, members of social organizations, worker’s collectives, or Ministry of Justice officials, who would compile jury lists based on random selection from voter registration lists. In the final version of the Jury Law, local administrative officials replaced the soviet-controlled commissions, thereby reflecting the political developments which culminated in Yeltsin’s abolition of most of the local soviets in the wake of the October 1993 events in Moscow.

After the local administrative officials compile “general lists” of prospective jurors in their municipalities, the president of the regional court orders the preparation of an “annual list,” with proportional representation from each area of the region, to correspond to the particular needs of the regional court in the upcoming year. To provide for emergencies, the officials also prepare reserve lists of prospective jurors from the regional capitals where the courts are located. This practice of using three lists also existed before the revolution.

B. Preconditions for the Right to Trial by Jury

The Concept of Judicial Reform proposed trial by jury for all crimes punishable by deprivation of liberty for a year or more. While the Concept served as the model for the new Russian Jury Law, under the new law trial by jury is only available in criminal cases, which usually includes only serious felonies punishable by death or ten to fifteen years imprisonment. Nevertheless, the right to trial by jury extends further than it did in the first drafts of the law prepared by the working group in the Ministry of Justice, which foresaw its application only in capital cases.

Under the new law, the court with people’s assessors will continue to function alongside the new structures of a jury with a single-judge and the three-judge panel. Upon conclusion of the preliminary investigation, the investigator will advise the accused of his or her right to be tried by a jury or by a panel of three judges, as an alternative to a trial with people’s assessors. The right to

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144 Institute of State and Law Draft UPK, supra note 45, § 527; Procuracy Institute 1991 Draft UPK, supra note 82, § 546.

148 Law on Court Organization § 81.

147 Id. §§ 81-82

146 Law on Court Organization § 81.

149 Concept of Judicial Reform, supra note 1, at 81.

150 UPK RSFSR §§ 85, 421. Russian reformers have been wary of making the right to jury trial too expansive, for they believe the procedure will be much more costly than the old procedure. In the United States, for example, the right to trial by jury, guaranteed by Article III, Section 2 of the Constitution, generally applies to cases punishable by imprisonment of six months or more. Baldwin v. New York, 399 U.S. 66 (1970). But in the United States, the universality of trial by jury, coupled with a structural inability to actually guarantee such a trial for all the accused, has led to a system based on plea bargaining, which most Russian reformers want to avoid.

The maximum sentence of deprivation of liberty in Russia is 15 years. A death sentence, however, may be commuted to a sentence of life imprisonment.


152 The draft Codes of Criminal Procedure of the Institute of State and Law and of the Procuracy Institute also limited trial by jury to the most serious felonies. Institute of State and Law Draft UPK, supra note 45, § 527-1; Procuracy Institute 1991 Draft UPK, supra note 82, § 345.

153 The right to trial by jury applied before the Revolution to all serious felonies in which the punishment included loss of social, property, and family rights. See Ustav ugolovnogo sudoproizvodstva [Code of Criminal Procedure] § 201 (1864), in POLNYI svod SUDERNYKH USTAVOV (1865) [hereinafter 1864 UPK].

154 Opponents of the jury system succeeded in eliminating its application in political cases or in cases involving state officials or the press following 1864. See Kasier, supra note 18, at 485-86; see generally Kuchervo, supra note 15.

155 UPK RSFSR § 423. The decision of the Supreme Court, reversing SARATOV-2, has made it clear that the admonition must include an explanation of the limited right to appeal a jury verdict. Supreme Court Decision of Apr. 18, 1994 (Case of Semychenyev), Case No. 32 kp-004-11sp. In that case, the defendant, when demanding trial by jury re-
choose a jury, or the other alternative forms, lies exclusively with the accused. Co-defendants, however, must unanimously agree before the case may be heard by a jury.153

Earlier drafts of the Jury Law denied some classes of defendants the option of trial by jury. Among them were juveniles, the psychologically or physically disabled,154 and defendants charged with multiple offenses, any of which was not otherwise an offense triable before a jury.155 These provisions, designed to limit the numbers of cases demanding juries,156 were rounded criticized and removed from the bill after its first defeat in the Supreme Soviet.157

The Jury Law calls for a jury composed of twelve regular and two alternate jurors158 who sit with one professional judge.159 The first drafts of the law prepared by the working groups in the Ministry of Justice and the Legislative Committee of the Supreme Soviet called for juries composed of nine citizens.160 In its early draft Law on Judicial Power and in its 1994 Draft CCP, the Procuracy Institute proposed a jury of seven citizens who were to sit with a panel of three professional judges.161

"marked, "I don't want communists to try me, I want a jury." Statement of G.S. Pal'sui, at CERLE Jury Trial Workshop, in Sochi (Apr. 27, 1994).

153 UPK RSFSR § 425. The Russian reformers saw this as an added protection for defendants of non-Russian origin facing trial in predominantly Russian regions. Ironically, the first to demand a trial under the new law in SARATOV-1 were two Gypsy men accused of murdering three ethnic Russians.


157 UPK RSFSR § 422.

158 UPK RSFSR § 440.

159 Before the October Revolution, a three-judge panel presided over the jury. 1864 UPK, supra note 15, § 425. The Concept of Judicial Reform also foresaw a jury with three professional judges in the higher courts for cases punishable by more than 10 years deprivation of liberty. Concept of Judicial Reform, supra note 1, at 55; see also October 1992 Draft Jury Law (UPK RSFSR § 430); November 1992 Draft Jury Law (UPK RSFSR § 430); December 1992 Draft Jury Law (UPK RSFSR § 433).

160 Ministry of Justice 1992 Draft Jury Law, supra note 151, § 434. The author of this section, Vasili P. Dvortsevoi, favored the French jury system in which the judge and the jury decide all questions of law or fact together. Interview with Vasili P. Dvortsevoi, Member of the Ministry of Justice Working Group, in Moscow (Mar. 31, 1993). Inga B. Mikhailovskaia of the Legislative Committee working group allowed the author to review the unpublished early draft of that group in November 1992.

161 A.D. Boikov & Igor' L. Karpet's, O zakonodavstvenye, sudodehi vlasti i pravovudit [On the Creation of Law, Judicial Power and Justice], 11 Gos. i pravo 92 (1992). Although juries of 12 persons are the rule in the United States, the U.S. Supreme Court has ruled that Florida's six-person juries are large enough to promote group discussions, to deter attempts at outside interference with the jury, and to guarantee a representative cross-section of the community. Williams v. Florida, 399 U.S. 78 (1970).

From the time the investigator advises the accused of his or her right to trial by jury at the end of the preliminary investigation, the accused must be represented by counsel.162 If the accused has not or cannot retain counsel, the court has the obligation to appoint one.163 Appointed counsel have represented defendants in the overwhelming majority of the cases, sometimes stepping in only a few days before the trial begins.164 They earn one-fourth the minimum monthly wage for each day in court.165 Thus well-known lawyers seldom serve as appointed counsel,166 leaving a large number of these cases in the hands of relatively inexperienced lawyers.167

The Russian Bar has strongly criticized the low pay afforded to appointed counsel.168

Between January 1 and September 1, 1994, defendants opted for trial by Jury in only 254 of the 1465 cases which were filed in the nine regional and territorial courts.169 Although it has been suggested that investigators discourage many defendants from opting for jury trials before they meet with their appointed counsel, an

160 UPK RSFSR § 426.

161 Id. § 426(2).

162 In MOSCOW-2, the court appointed defense counsel on the day before the trial began because the original attorney was ill. Interview with Vassilen A. Aset'eva, Defense Counsel in MOSCOW-2, in Moscow Regional Court (Jan. 10, 1994). In MOSCOW-3, defense counsel had only two days to prepare due to conflicting assignments of the previous attorney. Interview with Vlasteslav N. Shar'kov, defense counsel in MOSCOW-3, in Moscow Regional Court (Jan. 18, 1994). Defense counsel had three days to prepare in RIAZAN'-1. Interview with Georgi A. Kisev, Defense Counsel in RIAZAN'-1, in Riazan' Regional Court (Mar. 23, 1994). Defense counsel had two days to prepare in RIAZAN'-4 because the defendant had not gotten along with the previous lawyer. Interview with Sergei Iu. Kochetkov, Defense Counsel in RIAZAN'-4, in Riazan' Regional Collegium of Advocates (Aug. 12, 1994).

163 UPK RSFSR § 427.

164 A noted exception is the participation in MOSCOW-10 of Elena Iu. L'vova, defense counsel in the trials of both the August 1991 coup-plotters and the October 1993 defendants of the Russian White House (author's note).

165 Interview with Svetlana E. Ermakova, appointed to represent Slonchakov in MOSCOW-1, who had worked as an advocate for two years and had not yet appeared in the Regional Court. Interview with Svetlana E. Ermakova, in Pavlovskii Posad People's Court (Jan. 5, 1994). Valerii V. Kolessnik, who represented defendant Evenko in KRASNODAR-1, was defending his first case ever. The jury sentenced the co-defendant, Shevchenko, to death. Interview with Valerii V. Kolessnik, Defense Counsel, in Krasnodar (Sept. 13, 1994).

166 In August 1994, a court-appointed advocate earned 5000 rubles a day (exchange rate: $1.00 = 2140 rubles as of Aug. 13, 1994), of which one-third was payable to the local law office and collegium for overhead, leaving approximately $1.57 per day for the lawyer before taxes. Interview with Ivan I. Markov, President of the Riazan' Regional Collegium of Advocates, in Riazan' Region (Aug. 12, 1994). These calculations remained valid as of October 1994. Presentation of Albert S. Bulichov, President of the Ivanovo Collegium of Advocates, at the Sochi Jury Trial Conference, in Sochi (Oct. 4, 1994).
equally likely explanation is found in the advocates’ own reluctance to support the new procedure.\[170\]

Because of the change to an adversary system of criminal proceedings, the drafters of the new Jury Law were intent on compelling the procurator to be present in all cases heard before a jury.\[171\] The first drafts of the Jury Law included a provision requiring the automatic dismissal of a case in which the procurator twice failed to appear in court.\[172\] Opposition from the Procuracy and other agencies led to the elimination of this provision. The failure of witnesses, advocates, prosecutors, and victims to appear in court is one of the reasons that criminal procedures in Russia are extremely slow.\[173\]

C. The Preliminary Hearing in Jury Cases

After the accused demands trial by jury at the close of the preliminary investigation, the judge sets a preliminary hearing during which the judge must confirm the defendant’s choice. The judge also takes one of the following actions based on the dossier of the case: (1) sets a trial on the charges contained in the prosecutor’s indictment or on lesser-included charges supported by the evidence; (2) dismisses the case for lack of sufficient evidence or on procedural grounds; (3) refers the case to another jurisdiction; or (4) returns the case to the investigator for supplementary investigation.\[174\] These are the same choices a judge faces at the preparatory phase of a non-jury trial.\[175\] Another function of the judge during the preliminary hearing is ruling on motions to exclude from the trial evidence gathered in violation of the law or otherwise deemed inadmissible.\[176\]

Of the 254 cases in which defendants requested jury trials, judges returned nearly twenty percent for further investigation at the preliminary hearing stage,\[177\] upon a motion from the prosecution,\[178\] the defense,\[179\] or upon the court’s own motion.\[180\] Many prosecutors are understandably reluctant to present poorly or illegally investigated cases to juries. Thus, at the preliminary hearing, many choose either to return such cases for more thorough investigation or to reduce the charges to better reflect the alleged conduct of the accused.\[181\] Moreover, in those cases in which defendants filed requests for jury trials, defendants withdrew their requests in forty-two of the cases during the preliminary hearing.\[182\] Half of the defendants who “changed their minds” did so in cases in the Stavropol’ and Krasnodar Territorial Courts.\[183\]

In one Krasnodar case, judges at the preliminary hearing talked the defendant and defense counsel out of exercising the right of trial by jury. In this case involving three serial murders, judges ar
In the United States, common grounds for motions to suppress evidence are violations of the constitutional right to counsel, of the right to remain silent, and of the right to be free from unlawful searches and seizures. The Russian law is more expansive for it allows evidence to be excluded for non-constitutional violations of the Code of Criminal Procedure which governs the gathering of evidence during the preliminary investigation. Thus a Russian court may suppress evidence for the investigator’s failure to follow certain statutory procedures, even if the procedural defect does not implicate the constitutional rights of the accused.

It is often difficult for judges to decide the legality of a piece of evidence on the basis of the dossier alone. Only an ignorant or careless investigator would include clearly illegally gathered evidence in the dossier. Yet judges have found evidentiary violations at the preliminary hearings in several of the first cases.

Judges in MOSCOW-1, MOSCOW-2, MOSCOW-11, SARATOV-3, and SARATOV-4 have excluded statements taken by investigators who had questioned the accused “as a witness” in violation of Article 51 of the Russian Constitution, because the investigators did not advise the alleged “witnesses” of their right to remain silent. The Russian Supreme Court cast doubt on the future of such exclusions, however, by reversing the jury’s acquittal in ALTAI-6. Judges in MOSCOW-1 and MOSCOW-3 excluded the statements of defendants’ wives when the investigators had not advised them of their right not to testify against their spouses. The judge in MOSCOW-2 excluded statements taken from juveniles who were not represented by counsel.

Many investigators have tried to circumvent the law requiring mandatory appointment of counsel in cases of aggravated murder by first charging suspects with lesser offenses which do not require appointment of counsel, and then using their statements to develop a case of aggravated murder. In RIAZAN'-1, police first

187 See MOSCOW-1 (the judge suppressed an alleged murder weapon and the fruits of a theft because of violations of UPK RSFSR §§ 164, 165, prescribing investigative identification procedures).

188 Kostr. RF, supra note 22, at art. 51; see also UPK RSFSR §§ 46, 52 (enumerating the rights of the accused and of suspects); § 150 (governing the questioning of the accused at the preliminary investigation); § 158 (addressing the questioning of witnesses). Compare Miranda v. Arizona, 384 U.S. 436 (1966) (suppressing evidence obtained in statements from witnesses who were not advised of their right to remain silent).

189 See Supreme Court Decision of Sept. 1, 1994 (Case of Bulochnikov), Case No. 51-kp-094-68p. The trial judge had excluded all of the defendant’s statements at the preliminary investigation because he had not been admonished of his right to remain silent in violation of Article 51 of the 1993 Constitution. The Supreme Court held that it was enough to advise a criminal suspect or defendant of his right under UPK RSFSR §§ 46 and 52 to give a statement, because this implicitly conveyed the right not to give a statement. The Court added that the questioning of the defendant occurred before the December 1993 referendum enacted the new Constitution with Article 51.

190 See KOIINST. RF, supra note 22, at art. 51; see also ROSTOV-13 (excluding the testimony of the defendant’s sister because of a violation of Article 51).

191 See UPK RSFSR § 49 (mandating that juveniles be represented by counsel during the preliminary investigation and the trial); see also SARATOV-6 (judge excluded the statements of two juveniles which had not been taken in the presence of a teacher as required by UPK RSFSR § 159).

192 UPK RSFSR § 49(5) (providing mandatory representation by counsel).
arrested all three murder suspects for petty hooliganism, allowing a judge to impose administrative detention for up to fourteen days. Each suspect underwent seven days of administrative detention. During that time, the police, according to the testimony of the three defendants, beat them into talking about the murder.

Another law enforcement tactic to elicit confessions is to advise suspects that “turning themselves in” (izvoka s povinnoi) and “clean-hearted remorse” (chistoserdechnoe raskaihane) are statutory mitigating circumstances that will help them in sentencing. Thus in SARATOV-3, the judge excluded from the trial all of the defendant’s incriminating statements except a “declaration” (zaiavlennie) that he had written during a four week period while denied access to counsel.

In Russia, the suppression of illegally acquired statements is especially important because criminal investigations appear to revolve around obtaining such statements from suspects and witnesses. Rather than requesting the judge to exclude allegedly involuntary confessions and statements, defense lawyers have usually chosen to argue the validity of the evidence in front of the jury. This strategy apparently arises from the fear that the judge, rather than to dismiss the case for lack of evidence, may return it for further investigation, possibly to the same investigators who “obtained” the original statement or confession.

Law and practice are also unclear about the issue of standing to exclude evidence. Prosecutors in several of the cases have moved to exclude evidence acquired in violation of the law at the preliminary hearing, usually without objection from the defense. Critics have warned that prosecutors could move to exclude exculpatory evidence gathered in violation of defendants’ rights at the preliminary examination, thereby using their position as “guarantors of legality” to achieve unjust results. Indeed, the law provides that illegally gathered evidence cannot be used to prove the basic elements of the crimes charged in the indictment, thus casting doubt as to whether prosecutors could engage in such a tactic.

Nonetheless, this tactic was successfully employed over the objection of the defense in ROSTOV-17 to suppress exculpatory defense evidence. In that case, the defendant was charged with two counts of attempted murder. The defense for the first charge was self-defense: following a game of roulette, the victim had chased the defendant into an underground passage and attacked him, injuring him and caused the defendant to stab him in self-defense. The defendant was seen by a doctor who prepared a report documenting his wounds. The prosecutor successfully moved to suppress the evidence of the defendant’s wounds because the doctor violated the CCP in preparing his report. The defense for the second charge claimed misidentification. The bartender in the hotel in which the defendant allegedly shot and wounded a customer viewed a line-up including the defendant but did not identify the defendant. At the time of the lineup, the defendant was held in custody in violation of his right to counsel. The victim’s wife could not positively identify the defendant either, remarking only that he looked similar to the assailant. Furthermore, the victim, who had described the gunman as a person from the Caucasus with long dark hair, was shown a picture of the defendant, who looks more like a fair-haired Baltc resident, and was told: “He shot you.” Later, the six-by-nine centimeter photograph of the defendant was put in a photo-lineup with much smaller photographs of other persons, and the defendant was finally identified. Over defense objection, the judge allowed the photo-lineup, but the failure to identify at the physical lineup was excluded upon motion by the prosecutor.

199 Statements of defendants were excluded upon motion of the prosecutor in ROSTOV-4 and ROSTOV-5 because of a violation of the right to counsel. In MOSCOW-11 they were excluded because of a violation of Article 51 of the 1993 Constitution, while the defendant was questioned as a “witness.” The President of the Federal Union of Advocates, A.P. Galaganov, lamented the practice of prosecutors moving to protect the rights of defendants in the face of silent defense counsel. Statement of A.P. Galaganov, at the Sochi Jury Trial Conference, in Sochi (Oct. 4, 1994).

200 UPK RSFSR §§ 68, 69(3).

201 Professor V.M. Savitskii stressed this position at the CEELI Jury Trial Workshop, in Sochi, (Apr. 26, 1994).
tor. The defense moved to exclude the statement of the victim’s wife at the preliminary examination where she had described the defendant as being the gunman without identifying him at the lineup, but this motion was also denied.202

Traditionally, police in Russia have acted with impunity in their dealings both with criminal suspects and with law-abiding citizens. The constitutionally mandated exclusion from the trial of all illegally gathered evidence may have dramatic effects on law enforcement procedure.205 Many Russian legal scholars, however, believe that only “substantial” violations of the law should lead to exclusion of otherwise admissible evidence.204 The Ministry of Justice has incorporated this reasoning into its Draft Code of Criminal Procedure.205

Despite efforts to exclude illegally obtained evidence from the proceedings before or during the preliminary hearing, however, some allegations of illegal police conduct do not surface until the actual trial.206

E. Preparatory Part of the Trial

The new law has not changed the procedure of the preparatory stages of the trial. The old Code of Criminal Procedure remains in force, except to the extent that it contradicts the new Jury Law.207

Before jury selection begins, the judge announces the case,208 determines that all of the parties and witnesses are present,209 and

202 Interview with L.A. Gel’fand, Defense Counsel in ROSTOV-17, in Rostov Regional Court (Sept. 9, 1994). Defendant was acquitted of the 1993 attempted murder, but the issue in the 1988 case is presently on appeal to the Supreme Court.

205 See ROSTOV-18 (defense counsel successfully moved at the preliminary hearing to discover medical reports of injuries sustained by the defendant allegedly at the hands of investigators, while he was in pretrial custody; defendant was later acquitted of the crime to which he had “confessed”); see also MOSCOW-15 (judge suppressed prior statements of the defendants, claiming investigators had obtained them through coercion).

204 See Sergei A. Pashin, Lecture at the Russian Legal Academy (Nov. 11, 1993). Professor Inga B. Mikhailovskaya believes that all merely technical violations of the Code of Criminal Procedure, such as missing signatures on documents, should be corrected by returning the case to the investigator. She believes, however, that cases involving substantial violations of the rights of the accused should be suppressed. JURY TRIAL MANUAL, supra note 154, at 43 n.38.


206 UPK RSFSR § 435(3). At the trial, either party can move for a hearing out of the presence of the jurors to admit evidence previously suppressed at the preliminary hearing. Id. § 446(5). Although the procedure for this provision is not absolutely clear, judges uniformly allow such motions during trials.

207 UPK RSFSR § 420.

208 Id. § 267.

209 Id. § 268.

then questions the defendant as to identity and personal information.219 The judge advises the defendant, the aggrieved,211 civil plaintiffs and defendants,212 and expert witnesses of their rights and duties.213 The judge then hears any pretrial motions, including challenges to the composition of the court.214

F. Selection of the Jury

At the preliminary hearing, the judge issues an order requesting the appearance of a given number of prospective jurors (in no case less than twenty) on the trial date. The court administrator issues the appropriate summonses and draws by lot the number requested by the trial judge from those appearing in court.215

When the prospective jurors appear on the trial date, the judge informs them of the type of case before the court and explains the procedure of jury selection and the criteria for jury eligibility.216 Certain prospective jurors can request to be excluded from serving.217 At this time, the judge may ask questions designed to determine whether any of the jurors may be subject to a challenge for cause.218 Although most of the cases heard before juries in Russia

210 Id. § 271.

211 Under Russian law, an aggrieved party (potpecpeshch) in a criminal case possesses nearly all the procedural rights of the prosecution and defense. The aggrieved person can participate in the preliminary investigation, receive full discovery of the results of the investigation, and participate in the trial. Id. § 53. In homicide cases the aggrieved is usually a close relative of the victim. Id. § 53(4).

212 The court may attach civil suits, usually for restitution of material damage, to criminal cases. In such circumstances, the court gives the plaintiffs and the defendants of the civil suit substantial rights as parties to the criminal proceeding. Id. §§ 54, 55. Civil plaintiffs, defendants, and the aggrieved were full parties in pre-1917 criminal cases as well. 1864 UPK, supra note 151, §§ 5 to 7.

213 UPK RSFSR §§ 273-275.

214 Id. §§ 276, 277.

215 Id. § 276.

216 Id. § 434.

217 The following groups may request to be excused from jury duty: persons who are 60 years old or older, women with small children, persons whose religious beliefs prevent them from serving, and persons whose professions are deemed necessary to the public, such as doctors, teachers, and pilots. Law on Court Organization § 80(6).

218 UPK RSFSR § 438(5). In addition to the statutory reasons for being ineligible for jury duty, some judges in the first jury trials also inquired into: whether the prospective jurors were acquainted with the case, parties, or witnesses; whether friends or relatives of the prospective jurors worked in law enforcement or law-related occupations; and whether prospective jurors had been charged with, convicted of, or were victims of similar crimes. In SARATOV-1, the judge asked if anyone had experienced serious conflict with the Gypsies. In Moscow cases, judges asked whether anyone had previously served as a people’s assessor. In MOSCOW-3, the judge asked questions about the jurors’ feelings about the presumption of innocence, the burden of proof, their inclination toward resolving disputes in favor of the defendant, and their attitudes toward alcohol consumption.
are punishable by death, and the jury will be advised of possible punishment before their deliberation, Russian jurors have thus far not been questioned about their opinions regarding the death penalty and are not subject to challenges for cause on this ground.220

Parties to the proceedings, including the aggrieved and parties to pendent civil litigation, may challenge a juror for cause if the juror has an interest in the case or cannot be impartial.221 Parties to a trial submit questions in written form to the judge, who then decides if they are pertinent to the development of a challenge for cause before posing them to the jury.222

After challenges for cause, the court must reduce the number of potential jurors to eighteen.224 Both the prosecution and the defense are allotted peremptory challenges.225 The challenge process begins anew. If the selected jury remains unchallenged, the jurors proceed to elect a foreperson.226 They then swear to decide the case honestly and impartially, based on the evidence adduced in court, and "according to [their] inner conviction and conscience as befits a free citizen and just person."229

 Jury selection in the first Russian trials has usually lasted no more than one or two hours. The jury list given to the parties at the outset includes the age, occupation and place of residence of the jurors. The cursory proceedings have uncovered little more. As the next section will show, however, these relatively anonymous jury panels have responded with remarkable sympathy towards defendants, even those charged with the most heinous crimes.

220 Of the first 109 jury trials which proceeded to judgment, all but 12 have been potential capital cases. Seventy-seven were aggravated murder cases, UK RSFSR § 102; 10 involved aggravated rape or rape of a child under 14, id. § 117(4); and 10 were attempts to commit aggravated murders, id. § 15.

221 Since Russian jurors may not impose the death penalty but may only negate it by recommending lenience, there is no need to "death-qualify" the jury, a process which produces a jury more likely to render a guilty verdict on the facts. Cf. Witherspoon v. Illinois, 391 U.S. 510 (1968) (holding that U.S. jurors are subject to challenge for cause if opposed to the death penalty). The fact that verdicts may be less than unanimous also obviates the necessity to weed out jurors who would be unable to render a particular penalty.

224 UK RSFSR §§ 59, 60, 438(7). In none of the nine cases in which the author observed jury selection has a party challenged a juror for cause. To the author's knowledge, only one prospective juror in a murder case has expressed concern over his or her ability to remain impartial. RIAZAN-1.

225 November 1992 Draft Jury Law (UK RSFSR § 443) allowed both the defense and the prosecution to directly question the prospective jurors to develop grounds for a challenge.

226 In the 18 cases in which the author has information about the final makeup of the jury, women have outnumbered men in nine cases, men have outnumbered women in four cases, and in five cases, the numbers have been equally balanced. Men outnumbered women in only one of seven Moscow cases (MOSCOW-3) and in none of the five Saratov cases. In Ivanovo, called the "city of brides" due to its preponderance of women residents working traditionally in the textile industry, men outnumbered women two to one in the juries in IVANOVO-1 and IVANOVO-3. See also Elena M. Levina, Defense Counsel in SARATOV-3, Comment at the CEELI Jury Trial Workshop, in Sochi (Apr. 26, 1994); see also Elena M. Levina, Defense Counsel in SARATOV-3, Comment at the CEELI Jury Trial Workshop, in Sochi (Apr. 26, 1994).

227 UK RSFSR § 441. To the author's knowledge, only one defendant has challenged the composition of the jury under this section. See KRASNODAR-5 (defendant charged with raping his stepdaughter successfully challenged a panel of 10 women and two men, claiming a jury with so many women would not give him a fair trial, especially since the judge with the prosecutor were also women). Other advocates have expressed similar concerns, although not in the context of challenging the composition of the court. Two advocates remarked that they sought, for instance, more women on the jury due to the type of case, and a third complained about having too many "housewives" on the panel. See Interview with Svetlana E. Ernakova, Defense Counsel in MOSCOW-1, in Pavlovskii Posad (Jan. 5, 1994); Vera I. Afanas'eva, Defense Counsel in SARATOV-1, Statement at the CEELI Jury Trial Workshop, in Sochi (Apr. 26, 1994); see also Elena M. Levina, Defense Counsel in SARATOV-3, Comment at the CEELI Jury Trial Workshop, in Sochi (Apr. 26, 1994).

228 USP RSFSR §§ 439-440. In the 18 cases in which the author has information about the final makeup of the jury, women have outnumbered men in nine cases, men have outnumbered women in four cases, and in five cases, the numbers have been equally balanced. Men outnumbered women in only one of seven Moscow cases (MOSCOW-3) and in none of the five Saratov cases. In Ivanovo, called the "city of brides" due to its preponderance of women residents working traditionally in the textile industry, men outnumbered women two to one in the juries in IVANOVO-1 and IVANOVO-3. See also Elena M. Levina, Defense Counsel in SARATOV-3, Comment at the CEELI Jury Trial Workshop, in Sochi (Apr. 26, 1994).

229 Id. § 443. Cf. UK RSFSR § 71 (stating that the court with people's assessors is supposed to evaluate evidence "according to its inner conviction, based on an all-sided, complete and objective analysis of all circumstances of the case in its totality, guided by the law and socialist legal consciousness" (emphasis added)).
G. The Trial


The new Jury Law enacts into law several constitutional principles which had previously lain dormant in the Russian Constitution. These include the principle of adversarial procedure,230 the presumption of innocence,231 the privilege against self-incrimination,232 and the exclusion of illegally gathered evidence.233

2. The Role of the Judge

The return to adversarial procedure in Russian courts234 changes the role of the judge from that of truth-seeker who, along with enforcing the law, was bound to take all legal measures towards the all-sided, complete and objective investigation of the circumstances of the case, and produce incriminating and exonerating evidence, mitigating and aggravating circumstances affecting responsibility.235

The new language outlines the judge's new role:

The preliminary hearing and the jury trial are based on the principle of adversariness. Equal rights are guaranteed the parties, for whom the judge, while maintaining objectivity and impartiality, creates the necessary conditions for an all-sided and complete investigation of the facts of the case.236

230 "Judicial Proceedings shall be conducted on the basis of adversary procedure and equality of the parties." Konst. RF, supra note 22, at art. 123(3).

231 See id. at art. 49(1); see also Konst. RSFSR, supra note 94, at art. 65; UPK RSFSR § 451 (obligating judge to instruct jurors about the presumption of innocence in summation).

232 See Konst. RF, supra note 22, at art. 51(1); see also Konst. RSFSR, supra note 94, at art. 67; UPK RSFSR § 446 (requiring judge to advise defendant of right to give or withhold testimony); id. § 451 (stating duty of judge to instruct jurors in summation that defendant's failure to testify is not evidence of guilt).

233 See discussion supra Part V.D.

234 Pre-revolutionary Russian criminal procedure recognized the equality of arms. 1864 UPK, supra note 151, § 630. The principle of adversariness (prigovornost' k sostaisaniu) was understood as giving the opposing side a chance to respond to all evidence produced by the other. Id. § 734.

235 UPK RSFSR § 20. See Kommentarii k уголовно-процессуальному кодексу РСФСР [Commentary on the Code of Criminal Procedure] § 20 n.11 (1988) (emphasizing that the duty of the judge, procurator, investigator, and police outlined in this section is fundamentally the duty to establish the truth).

236 UPK RSFSR § 429(1).

Thus the new law aims to strip the judge of all accusatorial functions related to charging, dismissing, and prosecuting cases.237 In contrast, the court with people's assessors can, on its own motion, return a case for supplementary investigation,238 initiate new charges at trial if the evidence warrants it,239 and continue to prosecute a case despite a prosecutor's motion to dismiss for insufficient evidence240 or failure to be present during the trial.241 Furthermore, in the court with people's assessors, the judge assumes a quasi-prosecutorial role by virtue of being the first to question the defendant, the witnesses, and the experts.242

3. The Presumption of Innocence and Supplementary Investigations

Despite the recent reforms, the provisions governing supplementary investigation threaten to undermine the presumption of innocence in Russia. Under the new law, after trial has begun, the court can return a case for supplementary investigation upon a motion of the prosecutor, defendant, defense counsel, or the aggrieved, if there is new evidence that cannot be investigated at trial.243

The judge must grant the prosecutor's motion to dismiss due to insufficiency of evidence if the aggrieved does not object, but the judge cannot dismiss over the veto of the aggrieved.244 The final text of the Jury Law, giving the aggrieved veto power over the prosecutor's motion to dismiss,245 and resurrecting the much criticized power to return cases for supplementary investigation, may com-
promise the presumption of innocence and the equality of arms\textsuperscript{246} in the new Russian jury trial.

MOSCOW-2 clearly illustrates this problem. In that case, the prosecution charged three juveniles with the aggravated murder of an invalid alcoholic. The prosecution based its case on the confession of one juvenile, who, during the preliminary investigation and subsequent trial, alleged that illegal police conduct coerced his confession. No other evidence corroborated his confession. The defense moved the court to allow the testimony of two alcoholics whom the investigator interviewed but who were not included in the witness list attached to the indictment. At least one of them testified that he saw the victim the day after the juveniles had allegedly killed him.

At the conclusion of the taking of evidence, the prosecutor moved to dismiss the case, declaring that the uncorroborated confession of the juveniles provided insufficient evidence of guilt.\textsuperscript{247} Supplementary investigation could not easily resolve the alcoholics' conflicting testimony, as sixteen months had elapsed since the murder. The prosecutor even voiced his personal doubts as to the defendants' guilt. But the aggrieved, the wife of the murdered man, asked that the judge not dismiss the case and instead return it for supplementary investigation. Over the objection of the prosecution and defense, the judge sent the case back to the investigator and discharged the jury.\textsuperscript{248}

\textsuperscript{246} "Equality of arms" refers to the procedural equality between defense and prosecution.
\textsuperscript{247} See id. § 77.
\textsuperscript{248} The judge, prosecutor, and defense counsel all interpreted the judge's decision to return the case for supplementary investigation as a Soviet-style slow dismissal which sought to avoid the blemish of an acquittal on the investigative apparatus. They all assumed the investigator would dismiss the case within six months. Interview with Valentin V. Belich, Prosecutor, and Anatolii N. Rozhkov and Raisa V. Shvarsikiene, Defense Counsel in MOSCOW-2, in Moscow Regional Court (Jan. 18, 1994); interview with Judge Valerii G. Leitagan, in Moscow Regional Court (Jan. 19, 1994).

Although the supplementary investigation developed no new evidence, a new prosecutor brought the case back for trial. The judge overseeing the second trial had watched the first trial and had disagreed with the decision to suppress a videotape, which showed the murder scene. At the second preliminary hearing, the new judge denied the renewed motion to suppress. Telephone interview with Raisa V. Shvarsikiene, Defense Counsel for defendant Gusev in MOSCOW-2 and in the retrial, MOSCOW-21 (Aug. 11, 1994). The author also reviewed the judge's order from the preliminary hearing.

At the second trial, the prosecution played the previously suppressed videotape, the alcoholics testified that perhaps they had not seen the victim after the alleged time of the murder, and the court convicted all defendants and sentenced them to prison terms; see also MOSCOW-8.

As MOSCOW-2 illustrates, treating the aggrieved as a party not only violates the equality of arms between defense and prosecution, as the aggrieved usually sides with the prosecution\textsuperscript{249} but also the presumption of innocence. The problem is particularly acute in murder cases in which the aggrieved is a relative of the deceased who often knows nothing of the circumstances of the crime.\textsuperscript{250}

Following the mistrial in MOSCOW-2, this author repeatedly criticized the practice of returning the case for supplementary investigation as being a serious violation of the presumption of innocence and of Article 47 of the Russian Constitution,\textsuperscript{251} especially after the judge had sworn the jury and taken evidence. In doing so the author called attention to the concept of jeopardy, which prevents the state from repeatedly trying to convict a defendant and protects the defendant from repetition of the emotional and psychological ordeal of a trial.\textsuperscript{252}

Many defense counsel still consider the return of a case for supplementary investigation a "victory," as it was in Soviet times. These advocates have not yet learned to rely on the presumption of innocence and argue the clear inadequacy of the prosecution's proof.\textsuperscript{253}

The practice of supplementary investigation is a vestige of an inquisitorial system which presumes the defendant's guilt and gives law enforcement repeated chances to prove it. Decisions to return cases to the investigators will undermine the legitimacy of trial by jury in the eyes of the public. If judges dismissed cases or acquitted defendants because of sloppy or illegal investigations, criminal investigative work would likely improve.

\textsuperscript{249} Occasionally, the opposite is true. See discussion infra Part V.G.5. on the role of the aggrieved during the trial, especially in MOSCOW-I.
\textsuperscript{250} The State Legal Department Draft General Part UPK renames the aggrieved the "private prosecutor" (chastnii obrashchitel') and would accord him or her full participatory rights only upon motion to participate in the trial in that capacity. STATE LEGAL DEPARTMENT, DRAFT GENERAL PART UPK, supra note 75, § 75.
\textsuperscript{251} Article 47 of the Constitution provides: "1. No person may be deprived of the right to have a case examined in the court or by the judge whose jurisdiction it is referred by law. 2. A person accused of committing a crime shall have the right to have a case heard by a court with the participation of jurors in the cases provided for by federal law." KONST. RF, supra note 54, at art. 47.
\textsuperscript{252} See Green v. United States, 355 U.S. 184, 187-88 (1967); see also Stephen C. Thaman, Formirovanie skom's prisiazhnykh v Rossii i SShA, 7 ROSSIJSKAIA IUSTITSIIA 5 (June 1994).
\textsuperscript{253} See MOSCOW-8 and KRASNODAR-2.
4. The Role of the Jury

After the evidentiary phase of trial, the jury decides the following questions: (1) Were the acts charged in the indictment committed? (2) Did the defendant commit the charged acts? (3) Is the defendant guilty of the crime alleged? and (4) Does the defendant deserve leniency or special leniency? The judge decides all other questions of fact and law.

Although the statute does not so command, several judges have given lengthy, American-style, introductory instructions to the jurors. These instructions have explained the rules of evidence, the presumption of innocence, the burden of proof, the trial procedure, and the principles of adversarial procedure. The judge also advises jurors of their rights and duties before the procedure for the taking of evidence begins.

5. Evidentiary Procedure

The judge must exclude illegally gathered evidence at the trial. The prosecutor begins the evidentiary portion of the trial by reading the conclusion of the indictment, which summarizes the charges and the alleged conduct underlying the commission of the crime. Russian reformers considered a judge's reading of the indictment an accusatorial function inconsistent with an adversary trial and therefore eliminated the practice in the Jury Law. Substantially more detailed than an American indictment, the indictment in a Russian murder case typically includes the defendant's alleged method of committing the murder, the defendant's motive, the victim's injuries, and the cause of death. Reference to the defendant's prior convictions or status as an especially dangerous recidivist must be omitted.

The judge then asks the defendant to state whether he or she understands the indictment and, if so, to enter a plea either of guilty or of not guilty to all or part of the indictment. The consequences of a guilty plea are different in Russian courts than in American courts. In American courts, a guilty plea constitutes a complete admission of all legal elements of the crime, of the right to confront and cross-examine the witnesses, and of the privilege against self-incrimination. A guilty plea, therefore, amounts to a knowing and intelligent waiver of the right to trial by jury. In Russia, a guilty plea is considered just one incriminating piece of evidence which the jury (or court with lay assessors) must weigh in the context of the totality of the evidence.

Next, the judge advises the defendant of his or her right not to testify or to make a statement on his or her behalf. The court, in consultation with the parties, then decides the sequence of the taking of testimony and other evidence in the trial.

254 UPK RSFSR §§ 435(1), 503(1, 3, 4).
255 Id. § 435(2, 3).
256 The judges in IVANOVO-1, MOSCOW-1, and SARATOV-1 were invited to the United States by the U.S. Government, took part in seminars on trial by jury, viewed trials, and used the CEELI Draft Benchbook in preparing their instructions and closing statements. Interview with Natalia V. Grigor’eva, Judge in MOSCOW-1, in Moscow Regional Court (Jan. 26, 1994). Interview with Vladimir L. Solovyov, Judge in IVANOVO-1, in Ivanovo Regional Court (Jan. 13, 1994). The judge in MOSCOW-2 also used the CEELI benchbook. Interview with Aleksandr A. Dayban, Judge in MOSCOW-1, in Moscow Regional Court (Jan. 25, 1994). The judge in SARATOV-5 gave a comprehensive introductory instruction using the CEELI Draft Benchbook, but also relied on a judge's manual for trial prepared by Aleksandr I. Galkin, President of Saratov Regional Court and the judge in SARATOV-1. Interview with Evgenii V. Druzin, Judge in SARATOV-3, in Saratov Regional Court (Feb. 16, 1994).
257 UPK RSFSR § 444. Jurors may take written notes during the trial, may submit written questions through the judge for the defendant and witnesses, may participate in the taking of all evidence, and may ask for explanations of the law. They may not leave the courtroom without permission of the judge, talk with anyone about the case, or gather evidence about the case. Id. § 457.
258 In RIAZAN'-10, the defense counsel saw a juror talking to a prison transport officer about the case and moved to dismiss the entire panel. The judge refused to excuse the entire panel but did excuse the offending juror and chose an alternate juror. Interview with Nikolai P. Lezhnev, Acting President of the Riazan' Regional Court, in Riazan' Regional Court (Aug. 12, 1994).
259 The charging document in Russian trials is called the "accusatory conclusion" (obvinitel'noe zakluchenie) [hereinafter "indictment"] and is divided into a descriptive and a conclusory part (razvitie i razum.)
260 In cases before a court with people's assessors, the trial judge reads the entire indictment, UPK RSFSR § 278, the descriptive part of which includes a summary of the evidence, testimony of witnesses, conclusions of expert witnesses, other information discovered by the investigation, and character evidence for the defendant and victim, including the prior criminal record of the defendant. See id. § 275.
261 In the trial of the 1991 coup plotters, the court with people's assessors invited the prosecutor to read the indictment, but the prosecutor refused to do so, citing UPK RSFSR § 278. Instead, the secretary of the court read it. Due to the complexity of the case, the reading lasted approximately one week. See Valerii Rudnev, Delo GKO: Okhranenie schitvist proigrailo debat [Case of the State Committee of the State of Emergency: Prosecution completely blew its debut], VECESTA, Oct. 20, 1993, at 8.
262 An earlier draft of the law gave both the prosecution and defense the opportunity to make a short opening statement after the reading of the conclusory part of the indictment. October 1992 Draft Jury Law (UPK § 401). The Ministry of Justice Draft of the UPK would provide for opening statements. Ministry of Justice 1994 Draft UPK, supra note 263, § 303(1). The State Legal Department working group also considered such an innovation in its early drafts. State Legal Department Drafts, supra note 79.
263 UPK RSFSR § 446.
264 UPK RSFSR § 278.
266 Id. § 446(3). In trials before a court with people's assessors, the defendant is advised only of his right to "give an explanation as to the indictment." Id. §§ 46, 273.
If all defendants fully admit their guilt and no doubts exist as to the foundations of the plea, the judge, with the consent of all parties, may limit the trial to disputed items of evidence, if any, or to a determination of whether the defendant is entitled to lenience or special lenience. The judge may then proceed directly to argument of counsel. Although several defendants have entered a guilty plea at the beginning of the trial, no judge has yet invoked the abbreviated trial provision.

In MOSCOW-1, for example, the defendant fully admitted guilt to a burglary charge unrelated to the murder charges, but the prosecution called witnesses to prove all of the elements of the charge, and the jury returned a guilty verdict. Similarly, the defendant in MOSCOW-4 pleaded guilty to intentional murder, but the judge allowed evidence for the purpose of litigating the aggravating factor of “hooliganistic motivation” and the charge of threat of murder.

The most remarkable outcome from a guilty plea occurred in IVANOVO-3. The defendant, a young man with no criminal record and excellent character references, pleaded guilty to malicious hooliganism, aggravated murder, theft, and attempted rape of a minor. He claimed that he was so drunk on the night in question that he could not remember anything he had done, yet he was convinced that he had in fact committed the acts. The case proceeded

266 See ROSTOV-3 (defendant expressed a desire to plead guilty, and the jury in the ensuing trial convicted him but granted him special lenience).


268 The court convicted the defendant of hooliganistic murder and acquitted him of the threat charge.

269 See IVANOVO-3.

270 The court convicted the defendant of malicious hooliganism and the infliction of minor bodily injury and sentenced him to five and a half months with credit for time served. A combination of factors led to this astonishing result: a sloppy preliminary investigation, the very sympathetic, remorseful posture of the defendant, the brilliant final argument of the defense counsel, and the inflexibility of the young prosecutor who did not have the courage to amend the charges. The prosecutor insisted on pursuing the more serious charges, even though it became clear that it would be difficult to prove a murder committed for personal gain and in an attempt to conceal a theft, UK RSFSR § 102(a, c); an aggravated robbery, id. § 146(a, b, c, v); and attempted rape, id. § 117(5).

271 The defendant is not a “witness” and, unlike a witness, is not advised of the duty to tell the truth upon penalty of perjury. UK RSFSR §§ 280, 282, 283.

272 UK RSFSR § 446(3-4).

273 The author is aware of only one case (RIAZAN-9) in which a defendant refused to testify. Judge S.M. Tsipliaev, Address at the Russian Legal Academy Jury Trial Conference (Sept. 15, 1994).

274 UK RSFSR § 281. Reading prior statements from the case dossier takes up a significant portion of the Russian trial. In MOSCOW-1, the prosecutor read from the case file, chanted with the jurors, showed jurors parts of the dossier, and explained the applicable law relating to dossier documents, all without objection from the defense or the bench. In MOSCOW-3, on the contrary, the judge carefully controlled attempts by the prosecutor to use the dossier to impeach witnesses by keeping it with him at the bench. The judge in MOSCOW-1 felt she should not keep the dossier, for it would associate the court with the prosecution’s side of the case. Interview with N.V. Grigor’eva, in Moscow Regional Court (Jan. 4, 1994). But she later kept the file at the bench in MOSCOW-5 and MOSCOW-4.

275 In ALTAI-1, two juveniles confessed to the murder committed by Berggodov because police officials had falsified documents and pressured them. Interview with S.A. Buorina and E.V. Okorokova, Defense Counsel in ALTAI-1, at the CEELI Jury Trial Advocacy Workshop, in:Suždal’ (Apr. 18, 1994), for documentation of such practices, see Igor’ Korol’kov, V sledovatel’nykh izlozit’akh Rossi i premenitat’ priznki [Testimony Is Used in Russian Investigative De...
beginning of the trial any inaccurate statements in the dossier in order to win the jury's sympathy. After the defendant has decided to testify and has given his or her narrative, he or she must submit to questioning by the parties. 276 Although it appears to contradict such principles as the prosecution's burden of proof, the presumption of innocence, and the defendant's right not to testify, 277 this practice is consistent with the inquisitorial nature of Russian criminal procedure and its almost exclusive reliance on the defendant's confession.

After testifying, the defendant and witnesses, unless they are excused by the court, may be questioned at any time during the trial to resolve conflicting evidence or testimony. 278 When the parties finish questioning the defendant or witness, jurors may ask additional questions. 279 The jurors must submit their questions in writing to the judge, who can overrule a question if it is leading, insulting, or irrelevant. 280 In some cases, jurors have quite actively used their right to ask questions. 281

The free narrative form of witness testimony and the generally wide-open character of Russian trials have led to some difficulty in excluding illegally gathered evidence 282 and defendants' prior criminal records. 283 In the first cases, the aggrieved and the witnesses repeatedly alluded to the defendants' prior criminal records in the course of their testimony. In SARATOV-2, the aggrieved mother of the murder victim told the jury about the defendant's prior conviction for attempted murder. 284 A policewoman in MOSCOW-10 testified that she saw in the defendant's passport that he had previously been convicted. In RIAZAN'-1, a witness yelled to the jury while sitting in the audience: "It's the second person he killed and he says he didn't kill!" 285

With few exceptions, the first Russian jury trials have been less tightly controlled than American trials. Witnesses have related pure hearsay; lawyers have asked witnesses for their opinions of the victim and the defendant; judges and lawyers have read transcripts of testimony during the preliminary hearing in place of live testimony 286 and both family members and friends in the audience have helped witnesses in remembering events. 287

The role of the aggrieved has created unique problems. Generally not represented by counsel, the aggrieved have the right to question all witnesses and express opinions as to all motions and legal questions. Since most of them lack proper education and often know little about the circumstances surrounding the deaths of their family members, they usually defer to the prosecution. When not themselves material witnesses, the aggrieved usually describe their deceased family members and often cry. 288 In SARATOV-2, the aggrieved widows of the two men who were allegedly strangled to death by the defendant Storshakov actually undermined the prosecution's case. The first widow, Kulagina, testified that her husband, Kulagin, had beaten her and had threatened to rape their daughter. She purportedly went next door to ask the defendant...
TOV-8, the aggrieved hired an attorney to represent him, but according to the trial judge, the attorney was more effective than the defendant’s own lawyer in proving that the killing occurred in the heat of passion and was not an aggravated murder.290

Most courts have allowed Russian juries to hear character evidence. Previously, courts with people’s assessors decided collegially all questions of guilt and the length of sentence, and had the defendant’s entire dossier at their disposal. Under the new Jury Law, the jury decides only whether a crime occurred, whether the defendant committed it, whether he or she is guilty of the crime, and whether the defendant merits lenience or special lenience.291 The judge then determines the appropriate sentence.292 Evidence of the defendant’s character generally does not relate to the question of guilt, although it could affect the jury’s determination of lenience or special lenience. The law, however, strictly prohibits references to the defendant’s prior criminal convictions or his or her recidivist status.293 No Russian evidentiary rules allow the court to admit otherwise inadmissible evidence if the defendant lies or “opens the door” by offering evidence of good character.294

One example of the potential difficulties with this approach appeared in RIAZAN’-1. In that case, the defendant was charged with strangling an eighty-year-old man to death to get his vodka. The defendant admitted his guilt but later retracted his confession, claiming that the investigators had beaten him. He allegedly told the police he could not have strangled the man because he had no for help.295 Defendant Slonchakov and co-defendant Chernikov proceeded to beat the drunk Kulagin. Slonchakov allegedly strangled him to death. They left him submerged with rocks in his pockets under the ice of the Kliazma River. Kulagina testified that her husband was a dangerous person who for two years constantly threatened and beat her and her children, and that since his death her life had improved a great deal.

The other aggrieved, Novikova, also helped Slonchakov’s case. Following Slonchakov’s admission that he beat and strangled the woman’s husband, she testified that her husband threatened her and attacked her to get her pension money to buy vodka. She also testified that her husband had tried to strangle one of his daughters and that another daughter so badly that she suffered from epilepsy. Then she turned to the prosecutor and bellowed: “You said my husband was a human being. He was not a human being! He was an animal! They should have hanged him twice and shot him three times!” She also testified that her husband had tried to strangle one of his daughters and that another daughter so badly that she suffered from epilepsy. Then she turned to the prosecutor and bellowed: “You said my husband was a human being. He was not a human being! He was an animal! They should have hanged him twice and shot him three times!” She also testified that her husband threatened her and attacked her to get her pension money to buy vodka. She also testified that her husband had tried to strangle one of his daughters and that another daughter so badly that she suffered from epilepsy. Then she turned to the prosecutor and bellowed: “You said my husband was a human being. He was not a human being! He was an animal! They should have hanged him twice and shot him three times!” She also testified that her husband threatened her and attacked her to get her pension money to buy vodka. She also testified that her husband had tried to strangle one of his daughters and that another daughter so badly that she suffered from epilepsy. Then she turned to the prosecutor and bellowed: “You said my husband was a human being. He was not a human being! He was an animal! They should have hanged him twice and shot him three times!”

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Fingers.295 But the defendant had been convicted in the Moscow Regional Court in 1981 of strangling, with his fingerless hands, another octogenarian in order to rob the man to buy vodka. The defendant did not repeat his alleged statement at trial, but Russian legal commentators hold different opinions as to what circumstances would render prior convictions admissible in such a case.296

Old practices prevailed in the early jury trials.297 In later trials, however, judges, on their own initiative, have held certain types of testimony about the defendant’s character to be irrelevant.298 Several courts have admitted evidence of the defendant’s good character through the testimony of family members,299 victims,300 or the defendant himself.301 In ROSTOV-19, the judge reserved “characteristics” and other aggravating and mitigating evidence for the hearing following the jury’s verdict, a practice that has been adopted by the Rostov Regional Court.302

295 During an exceptionally cold winter, the defendant had passed out drunk in the snow and had lost all of his fingers and toes to frostbite (author’s note).

296 The trial judge discussed with the author his perplexity about this issue as he was preparing the case. Interview with N.P. Lezhnev, Vice-President of the Riazan’ Regional Court, in Riazan’ (Mar. 3, 1994). Although the statute appears to categorically exclude this kind of evidence, Professor L.B. Alekseeva favors the admissibility of prior convictions or bad acts if the defendant brings his or her good character into question. JURY TRIAL MANUAL, supra note 154, at 299.

297 See, e.g., IVANOVO-1 (the prosecutor, without objection from defense counsel, admitted evidence that the defendant had a bad work record, that he drank too much, that he kept a gun, and that he had threatened the victim who worked for his brother); see also IVANOVO-3 (defendant killed his brother; the aggrieved, the aunt of both men, testified that the defendant had a bad work record, that he was an alcoholic, and that he kept a gun). The defendant did not repeat his alleged statement at trial, but Russian legal commentators hold different opinions as to what circumstances would render prior convictions admissible in such a case.296

298 No Russian evidentiary rules allow the court to admit otherwise inadmissible evidence if the defendant lies or “opens the door” by offering evidence of good character.294

299 Because of the internecine character of the wanton, drunken violence in some of these cases, the aggrieved has occasionally taken the defendant’s side. See, e.g., MOSCOW-1 (the aggrieved was the co-defendant’s mother-in-law and made a speech thanking the defendant for his actions); see also MOSCOW-5 (the defendant killed his brother; the aggrieved, the aunt of both men, asked for lenience for the defendant); SARATOV-5 (the defendant killed his cousin, and the aggrieved, the aunt of both men, asked for lenience for the defendant); UL'IANOVSK-3 (the aggrieved widow requested lenience for the defendant and her brother and nephew—for because of the 18 years of abuse to which her husband, the victim, had subjected her). See, e.g., SARATOV-6 (the defendant told the jury that he was a veteran of the cleanup in the aftermath of the Chernobyl nuclear disaster and of the relief effort following the earthquake in Armenia).

300 See, e.g., IVANOVO-8 (defendant’s mother testified that he was a splendid boy in every way until entering the army and serving in the Caucasus and in Moscow during the failed 1991 coup).
6. Overcharging and Amending the Indictment to Conform to Proof

The need to convince a jury has forced prosecutors to examine more critically the charges contained in the investigator's indictment. Many cases before the first Russian juries have been "overcharged," raising intentional or even unintentional murders to the status of aggravated murder by alleging "hooliganistic motivation," exceptional cruelty, the motive of personal gain, or other aggravating circumstances. Although the nearly universal inebriation of both defendants and victims makes it extremely difficult to ascertain a motive in many killings, investigators sometimes try to create a cohesive story that includes one of the statutory aggravating circumstances. Stubborn or inexperienced prosecutors occasionally insist on illogical renditions of events and suffer for it at the time of the verdict.

In a number of cases, prosecutors have amended indictments to conform to more realistic descriptions of events either after hearing testimony or after reviewing the indictment but before taking evidence. In SARATOV-1, the prosecutor drafted a new indictment and dismissed all aggravated murder charges. Similarly, the prosecutors in MOSCOW-18 and MOSCOW-19 completely dismissed all aggravated circumstances. In MOSCOW-22, the prosecutor dismissed the allegation of "hooliganistic motivation," leaving special cruelty as the only aggravating factor. In RIAZAN'-2 the prosecutor amended the charge of aggravated murder with exceptional cruelty to a charge of intentional infliction of serious bodily injury resulting in death, upon which the jury convicted the defendant. In RIAZAN'-3, the prosecutor dismissed the charge of aggravated murder with exceptional cruelty and concealment of...
makes the final presentation at trial, if he or she introduces new evidence, the judge may reopen the taking of evidence.315

Before the Jury Law, the aggrieved did not have a right to make a closing statement.314 Allowing the aggrieved to make a closing statement has proven disastrous. In MOSCOW-3, the aggravating circumstance in a murder case was the defendant's status as an especially dangerous recidivist.316 The defendant had served seventeen years in labor camps for serious crimes. Substantial evidence showed that the killing resulted either from excessive force in self-defense or from criminal negligence. The aggrieved brother of the deceased knew the defendant's prior record and illegally revealed it in his closing statement.317 The judge immediately instructed the jury to disregard the statement and repeated this instruction in his summation. But the willful violation of the law went unpunished and likely affected the jury's verdict.317

The aggrieved have contributed to the conviction of defendants through persuasive arguments or replies. In MOSCOW-4, the defense attorney pleaded for mercy for his twenty-year-old client because the defendant's grandparents had raised him in poverty after his alcoholic mother had deserted him. The aggrieved sister of the victim remarked pointedly in her reply: "We also grew up with our grandparents. But it doesn't give us the right to take such a knife and stab someone . . . to take away my brother . . . (tears)." Intentionally or not, the aggrieved also have helped the defendants in their arguments or replies. In MOSCOW-1, MOSCOW-5, SARATOV-3, and UL'IANOVSK-3, for example, the victims asked for lenience for the defendants.318

315 Id. §§ 448(2), 297.
314 Id. § 295.
316 UK RFSR § 102(L).
317 The aggrieved said: "The defendant is a dangerous man, he has already served 17 years for his crimes." (author's note)
318 The jury voted seven to five to find intentional murder. If only one vote had been affected by the victim's illegal comments, the defendant would have been acquitted of the aggravated murder charge if the comments had not been made. The Supreme Court nevertheless rejected the defendant's appeal. Supreme Court Decision of Apr. 26, 1994 (Case of Bogatyrev), Case No. 4-kp-094-61sp.
319 To MOSCOW-5, the mother of both the defendant and the victim could not come to court because of her confinement in a mental institution. The aggrieved aunt, despite the fact that the defendant had admitted killing his brother, argued for his acquittal claiming that the real culprits were the "Liuberny bandits," a well-known gang which had received significant publicity during the 1980s; see also IVANOVO-3 (defense counsel focusing on a few puzzling pieces of evidence in an otherwise strong prosecution case, successfully induced doubt in the mind of the aggrieved and consequently the jury).

319 See also UL'IANOVSK-3 (the advocate emphasized "those 18 years of terror" endured by the victim at the hands of her husband).
320 Questionnaires that the court gave to the jurors showed that the jury felt that the advocate spoke in too polished a manner. Interview with Evgenii V. Druzh, Saratov Regional Court Judge, at the CEELI Jury Trial Workshop, in Sochi (Apr. 27, 1994).
321 The lawyer then concluded: "We need to protect society against criminals. But no one protects individuals against vodka. Vodka! Vodka! Vodka! Never has the Russian government protected the individual against this poison. Never has it provided any places to cure these people . . . ." (author's note).
322 The trial judge, who had presided over five jury cases, felt that Rozhkovskii was better at the art of defense before a jury than any of the advocates he had seen. Interview with Vladimir V. Zolotykh, in Sochi (Oct. 5, 1994); see also KRASNODAR-6 (defendant charged with stabbing his wife and mother-in-law to death spoke for two and a half hours about God, the heavens, magic, his love for his wife and son, the torture he endured as a result of his mother-in-law's dislike for him, and of how he was in a disembodied state, floating above the killing as it took place; the jury recommended lenience after finding that he killed in the heat of passion and without intent, despite the multiple stab wounds to vital organs).
criminal records have been most active in their defense, perhaps due to their knowledge of the criminal justice system.232

8. Preparing Questions for the Jury

After the arguments, the judge prepares a list of questions for the jury to answer. The Jury Law gives the judge wide latitude in this respect, but the following three basic questions must be included as to each crime charged: (1) Has the prosecution proven that the charged acts took place? (2) Has the prosecution proven that the defendant committed the acts? (3) Is the defendant guilty of committing the acts? One basic question as to the guilt of the defendant may include all three of these elements.233 In addition, the judge may ask questions about circumstances that aggravate or mitigate guilt, or those that excuse or justify the defendant’s actions. Questions may also address lesser included offenses.234 Finally, if the jury finds the defendant guilty of a charged crime or lesser included offense, the jurors must determine whether the defendant deserves lenience or special leniency.235 All parties have the opportunity to examine the list of questions, to object to it, and to recommend changes.236

Some questions involving legal issues are not put to the jury. For example, questions regarding prior convictions, recidivist status, or the legal qualification of the acts found to be true by the jury are left to the judge following a guilty verdict.237

The Jury Law allows the jury to find a defendant not guilty despite its determination that the defendant committed the missed deed—a function tantamount to jury nullification. Most American jurisdictions do not encourage jury nullification,330 but Russian jurors before the 1917 revolution had the power to nullify the law.331 The drafters of the Jury Law saw this procedure as a necessary democratic corrective to state oppression, either in prosecuting an individual case or in applying unpopular laws.332

The tripartite breakdown of the fundamental question as to guilt has been followed in the majority of cases.333 The first question, which addresses the corpus delicti without reference to the identity of the perpetrator, however, has occasionally been omitted in cases in which no one but the defendant could have committed the crime,334 and in a few murder cases.335 Furthermore, in some murder cases the court jumped from the corpus delicti question to the question of guilt, omitting the second question regarding the identity of the perpetrator.336 Finally, the Supreme Court reversed the first death penalty judgment following a jury verdict in ROSTOVA-2 on grounds that the judge had failed to include the crucial question of guilt.337

Single questions regarding the guilt of the defendant as provided by section 449(2) of the CCP, are sometimes put to the jury in cases involving minor joined offenses, but are also increasingly used in murder cases.338 Such single questions have at times con-
tained considerable detail regarding motive, modus operandi, and even aggravating circumstances. The criteria for when the judge should formulate the three basic questions separately, and when it is proper to combine them into one or two questions, are not clear. Judges also disagree about the amount of detail that should be included in the jury questions. Some hold that the jury must find the truth of virtually all of the factors which must be addressed in the descriptive part of the judgment. This can lead to very complicated questions phrased precisely in the terms of the aggravating factor in the judgment, although not found in the indictment, which include details not crucial to answering the three fundamental questions.

The sheer number of questions posed to the jury can be astounding. In theft cases, for instance, some courts list virtually every item of allegedly stolen property in the questions leaving the jurors to strike out items not proven to be stolen. The same is true in every other category of crimes. In MOSCOW-3, nineteen questions were asked relating to one count of murder in which the aggravating factor was not even before the jury. Forty-one questions relating to issues collateral to the key murder charge were posed in ALTAI-1. The fifty-two questions in RIAZAN'-4 addressed four different defendants, three murders and other related charges; and the eighty-seven questions in SARATOV-18, addressed charges of theft, sodomy, murder, and attempted murder.

The desire to have the jurors decide not only the primary facts relating to guilt, but also collateral issues such as motive and aggravating factors, will likely lead to confusion and perhaps unjust verdicts. In many trials, for instance, questions to the jury include the issue of drunkenness, an aggravating factor in Russian criminal law. Yet some courts, such as the court in RIAZAN'-7, have greatly simplified the fundamental questions to include only the legal elements of the crimes. Similarly, in ROSTOV-12, all of the questions were phrased in the simplest terms, using only the guilt format.

Judges in these early cases have been plagued by the following problems in formulating the questions relating to aggravating, mitigating, and exculpatory factors: (1) To what extent are aggravating and mitigating circumstances questions of fact for the jury, or questions of law for the judge? (2) How should the question of guilt be formulated in relation to aggravating and mitigating circumstances? (3) To what degree must mitigating or exculpatory evidence be proven in order to justify a lesser offense or acquittal? Lesser degrees of murder or complete defenses involving claims of heat of passion, self-defense, or negligence have played a role in many of the first cases, but treatment of these has varied widely in the question lists, often yielding confusing results.

death of the victim due to hostile relations after an argument and a bout of drinking while he was under the influence of alcohol? In 61 of the 97 capital cases, it has been alleged that the defendant was drunk. The question lists in 27 of the 80 examined murder cases contain a question concerning the drunkenness of the defendant, 11 of which were phrased in a separate question. In other cases, such as UL'IANOVSK-2, drunkenness is referred to as an aggravating factor in the judgments, although not found by the jury to be proven as part of the question list. 

"Necessity defense" exists when a person defends the "interests of the Soviet state, social interests, and the personality or rights of himself/herself or of another" against unlawful attack, when the means are not clearly out of proportion to the force used. UK RSFSR § 13 (the phrase "Soviet state" still appears in the current code). Murder while using excessive force in self-defense, id. § 106, murder while in a condition of strong emotional disturbance ("heat of passion"), id. § 104, and negligent murder, id. § 106, are all
In the first jury trials in Moscow and Ivanovo, the judge phrased questions relating to self-defense, accident, and strong emotional disturbance in such a way as to demand proof that the defendant's version was true.\(^{348}\) In order to reach the question of affirmative defenses or lesser-included offenses in MOSCOW-I and MOSCOW-3, the jury first had to answer in the negative the question of whether the defendant intentionally killed the victim after a fight which arose from a hostile relationship. In MOSCOW-3 this led to serious confusion of the jury,\(^{349}\) because a negligent or intentional killing involving strong emotional disturbance or self-defense can also arise out of a hostile relationship or from a fight, especially when all the parties are drunk.

The court in IVANOVO-1 found a solution, putting the guilt question to the jury in the same form as in the Moscow cases, but making it plain to the jury that an affirmative answer to the intentional killing did not foreclose addressing succeeding questions about affirmative defenses.\(^{350}\) The judge did not, however, put the question of excessive force in self-defense to the jury, presumably reserving this question for himself.\(^{351}\)

In UL'IANOVSK-3, another approach was taken in connection with a defense of heat of passion. In that case, the victim was killed by a relative of his because he had once again scandalized his village by getting drunk, running his wife out of the house, and marauding through the town on horseback searching for her in other people's houses. Defendants claimed they committed the murder

lessor offenses to aggravated murder, id. § 102, and non-aggravated intentional murder, id. § 103.

\(^{348}\) IVANOVO-1, Question 4: "If the answer to question 2 was affirmative (as to intentionality), was it proven that the defendant G.N. Korolev caused the lethal knife wounds to V.K. Torepov and A.V. Efremova while defending himself from a threatened attack by the victims?"

MOSCOW-1, Question 18: "If you have answered the fourth question in the negative (as to whether Slonchakov was guilty of intentionally murdering Novikov due to a hostile relationship emerging during an argument), and have given affirmative answers to the first two questions (as to whether Novikov was strangled to death and whether Slonchakov killed him and dumped his body into the Vokhna River), then did Novikov attack Vas'kina and Slonchakov with a knife, causing a real danger to their life and health, which necessitated Slonchakov to defend them?"

\(^{349}\) The jury found with a simple majority (seven to five) that the defendant was guilty of intentionally killing the victim. See MOSCOW-3, Questions 4 and 7, supra note 344. But their unanimous answer to Question 5 was that the defendant killed the victim because of a personal conflict, after drinking liquor. Id. This foreclosed the jury from answering any of the eleven questions which dealt with self-defense, strong emotional disturbance, or non-intentional homicide.

\(^{350}\) This form was also used in ALTAI-1, ALTAI-3, and ALTAI-8, IVANOVO-4, IVANOVO-6, and ROSTOV-17, and SARATOV-9.

\(^{351}\) In IVANOVO-1, the victims had no weapons, so the judge perhaps felt it would be a case of excessive force as a matter of law.

while in a sudden heat of passion,\(^{352}\) even though the evidence clearly showed that the men had planned the killing and that it took place several hours after Akhmetzianov's shenanigans. The judge distilled this affirmative defense into a single preliminary question for the jury, asking: "Has it been proven that between Akhmetzianov's commission of illegal acts in relation to his wife, and his murder by Kamaletdinov and Khamidullin, several hours had passed?" Only by answering in the negative could the jury consider the lesser charge of murder in a sudden heat of passion.

The questions relating to defenses in the above cases asked, "Has it been proven . . . ?" or affirmatively, "Did the victim attack the defendant . . . ?" The formulation of the questions was the subject of some experimentation. In the early Saratov cases, in ALTAI-2, and in KRASNODAR-6, judges framed the questions as follows: "Is it probable that the acts of [the defendant] were carried out in self-defense?"\(^{353} \)\(^{355}\) The theory behind this form was that phrasing the question in terms of probability conformed better to the presumption of innocence and the prosecutorial burden of proof.\(^{354}\) Use of the word "probable" was criticized,\(^{355}\) however, because the judge could not be certain, after the verdict, as to whether the jury had found that lesser-included offenses had indeed been proven. More specifically, Saratov judges complained that juries were almost always finding that the defense theory was "probable."\(^{356}\) They therefore stopped using the "probable" formulation, and instead asked, for example, "Has it been established that [defendant] committed the violent act described in Question 5 because [victim] had earlier [beaten] him?"\(^{357}\)

The case of SARATOV-14 is an interesting illustration of blunders in formulating questions for the jury.\(^{358}\) The judge formu-

\(^{352}\) UPK RSFSR § 105.

\(^{353}\) Question 4 in SARATOV-1 (self-defense); see also SARATOV-2 (alibi defense), SARATOV-4 (self-defense), SARATOV-5 (self-defense), and ALTAI-2 (accident defense).

\(^{354}\) See JURY TRIAL HANDBOOK, supra note 133, at 273.

\(^{355}\) Statement of Lidia B. Alekseeva, at the CEELI JURY TRIAL Workshop, in Suzdal' (Apr. 19, 1994).

\(^{356}\) Statement of Egeni Druzin, CEELI Jury Trial Workshop, in Sochi (Apr. 25, 1994). In fact, the jury voted in the affirmative in only two of the four Saratov cases in which the formulation was used (SARATOV-1 and SARATOV-5), although they also did in ALTAI-2 and KRASNODAR-6.

\(^{357}\) SARATOV-6, Question 6. The word "probable" has been abandoned, and the word "established" has been used in the subsequent cases from Saratov: SARATOV 6, SARATOV 7, SARATOV-8, SARATOV-13, SARATOV-14, SARATOV-16, and SARATOV-17.

\(^{358}\) SARATOV-14. The allegedly drunk Efremov got into a fight with his wife and she left to go to her mother's apartment in the same building. Efremov followed her cursing. She found her neighbors Chernov, Gurin and Sarganov, and told them what had hap-
committed out of “hooliganistic motivation” or “with exceptional cruelty” and then described this state of mind to the jury in their summations. Other judges include a more detailed description of legal elements in the questions themselves.

In SARATOV-3, in which the defendant was charged with hooliganistic murder with exceptional cruelty, the judge asked three questions. The first question included all of the injuries inflicted upon the victim. The second question was whether the defendant was culpable of inflicting these wounds using his hands and feet, and other objects. The third question combined the contents of the first two questions, but did not expressly mention the elements of “hooliganistic motivation” or exceptional cruelty. During the sentencing hearing, the judge proceeded to qualify the facts which the jury had found to correspond to aggravated murder with exceptional cruelty, but did not make a finding of “hooliganistic motivation.”

The Supreme Court spoke on the issue of juridical qualifications in its reversal of the convictions of two defendants and the acquittals of two other defendants in RIAZAN'-4. The Supreme Court’s decision could be interpreted to mean that posing questions in the conclusory language of the Criminal Code, coupled with guiding instructions in the judge’s summation, constituted reversible error. Reviewing the jury questions in RIAZAN'-4, the Cassational Panel of the Supreme Court held that the following questions constituted error because they demanded that the jury

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364 See, e.g., MOSCOW-4, Question 2: “If Question 1 was answered in the affirmative (whether the defendant stabbed the victim to death), has it been proven, that Kuzenkov committed the intentional murder of Shibaev out of hooliganistic motivation?”

365 MOSCOW-2, MOSCOW-6, MOSCOW-13, MOSCOW-22, and RIAZAN'-4.

366 In MOSCOW-4, the judge instructed in relation to hooliganistic motivation: “It is a killing for anti-social reasons, i.e., for no real articulable significant reason, i.e., because of failure to give one a cigarette or a drink.” In MOSCOW-5 the judge instructed the jury as follows: “Exceptional cruelty means the killing is accompanied by torture of the person, pain, and suffering—more suffering than caused in the usual murder. It is based on the circumstances of the killing, the amount of bodily pain caused, and the intent and knowledge that the attack will cause special torture and pain.”

367 For example, some questions give a detailed description of the factual situation that might trigger a finding of hooliganistic motivation. In SARATOV-17, the question stressed the apparent motivation behind the double murder, “[i]has it been proven that Brazhin killed the victims using the insignificant reason of their just demands that he leave their apartment (after he had broken into their apartment in order to drink vodka)?”

368 SARATOV-3, Question 3: “Is Borosov guilty, that on May 23, 1998, at about midnight near the cultural palace ‘Peace’ in the city of Saratov, following Zakopailo’s refusal to engage in sexual intercourse with him, dealt her a multitude of blows with his hands and feet, and with an empty bottle on different parts of her body, crushed the organs in her neck, hit her with a wooden object in the area of her eyes, with the intent to kill her, causing the bodily injuries described in Question 1, which led to the death of Zakopailo?”

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369 Supreme Court Decision of July 28, 1994 (Case of Efremov), Case No. 924kp-094-50sp.

370 According to the Code of Criminal Procedure, the jury must decide the basic three questions relating to corpus delicti, perpetration by defendant, and guilt. UPK RF SSR § 449(1). Following the verdict, the judge must “qualify the committed acts in relation to the guilty verdict and circumstances established by the judge which are not within the competence of the jury . . . .” Id. § 450(2).

361 UK RF SSR § 102(b). The same is true for joined charges of malicious or armed hooliganism. Id §§ 206(2), 5.

362 Id. § 102(g).

363 For the legal definition of “hooliganism,” see supra note 267.
make decisions on questions of law. Question 1, "Is [defendant] guilty of the negligent murder . . . ?" Question 2, "Is [defendant] guilty of the attempted rape of [a] juvenile . . . ?" Question 7, "Has it been proven that [defendant] committed the intentional murder of [the victim] with the intent of stealing his money, by attacking him and inflicting a multitude of bodily injuries with exceptional cruelty, from which [the victim] died?" Question 14, "Is [defendant] guilty of the murder of [the victim], committed out of hooliganistic motivation?" \(^{369}\)

The practice of the lower courts and the perplexing decisions of the Supreme Court lead this author to believe that Russian judges equate questions relating to the mental state of the accused with questions of law rather than fact. \(^{370}\) This confusion is not surprising, given that in trials before a court with people's assessors, there is no separation of the trier of fact and the trier of law.

Finally, if the jury reaches a guilty verdict, it must determine whether the defendant deserves lenience or special lenience. The majority of judges formulate a separate question for each charged crime in the following manner: "If the defendant has been found guilty, does he deserve lenience or special lenience?" \(^{371}\) A minority of judges ask only one lenience question at the end, to cover all the charged offenses of which the defendant has been found guilty. \(^{372}\) A few judges split the lenience question into two parts, first asking whether special lenience is deserved, and then whether lenience is appropriate. \(^{373}\)

Russian judges have clearly found formulating questions to be one of the most difficult aspects of the new procedure. Pre-revolutionary question lists were much simpler than those created under the new procedure. \(^{374}\) To address the problems discussed in this section, future legislation or practice will have to set better guidelines to distinguish factual questions for the jury from legal questions for the judge; determine how much detail in the explanation of the legal elements of the crimes should be included in the questions to the jury, rather than being supplied by the judge in the summation; and decide whether descriptive or aggravating factors are matters for the jury, or whether they can be left to the discretion of the judge following a guilty verdict. \(^{375}\)

9. The Judge's Summation

Before the jury retires to the jury room for deliberations, the judge delivers a summation which, in some respects, resembles instructions given by American judges. \(^{376}\) The summation must contain the contents of the indictment, an explanation of the pertinent criminal statute, a summary of the incriminating and exonerating evidence presented in court, the positions of the prosecutor and defense, and an explanation of the rules of evaluating the evidence in its totality. The judge must also instruct the jury that the defendant is presumed innocent, and that they should resolve any doubt in favor of the accused. \(^{377}\) If the defendant does not testify, the judge must instruct the jury not to interpret this as evidence of guilt. \(^{378}\) The judge must also instruct the jury that their verdict may be based only on evidence adduced in court and not on anything the court has ruled inadmissible. \(^{379}\)

Finally, the judge is prohibited from expressing an opinion as to how any of the jury questions should be answered. \(^{380}\) If any party believes that the judge improperly injected his or her own opinions into the summation, that party may raise an objection upon completion of the summation. A lack of objectivity in the

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369 Supreme Court Decision of Sept. 1, 1994 (Case of Churochkin/Anikin/ Shaposhnikov/Isakin), Case No. 6-kp-094-12sp. The Cassational Panel also found error in a question posed in ROSTOV-2, which asked the jury to determine whether the defendant had killed their victims with exceptional cruelty, thereby requiring a juridical determination. Supreme Court Decision of July 12, 1994 (Case of Panchishkin/Filippov), Case No. 41-kp-094-3-ksp.

370 Judge AN. Klimov of Altai Territorial Court, who presided over ALTAI-1 and ALTAI-8, was of the opinion that the intent to kill was a legal question for the judge, and that the jury should only be asked what physical acts the defendant perpetrated against the victim. Judge E.G. Zeidlitz and this author convinced him of his error, but after reading the Churochkin decision, the author is not sure he was convinced. Judge Klimov is soon to be elevated to the Supreme Court.

371 Of 62 cases examined involving multiple counts against the defendants, 39 contain a separate lenience question for each count.

372 Of the 62 cases examined, 23 followed this format.

373 ALTAI-8, IVANOVO-5, IVANOVO-7, IVANOVO-8, RIAZAN-4, RIAZAN-7. Inga B. Mikhailovskaya also recommends this solution. JURY TRIAL MANUAL, supra note 134, at 100.

374 Lecture of N.V. Nemytina, Doctoral Candidate at the Saratov Academy of the Ministry of Internal Affairs (writing about the pre-revolutionary jury trial), at the CEEU Trial Workshop, in Sochi (Apr. 25, 1994).

375 Ministry of Justice 1994 Draft UPK § 864(5) would leave for the judge the question of "whether the act committed constitutes a crime and under which criminal statute." This progressive feature was added in the December draft of the law. This principle of law already existed in the pre-revolutionary code, however. See 1864 UPK, supra note 151, § 68.

376 UPK RSFSR § 451(3).

377 Id. § 451(4). This progressive feature was added in the December draft of the law. See 1864 UPK, supra note 151, § 68.

378 UPK RSFSR § 451(5).

379 Id. § 451.

380 Id. § 451.
summation may be grounds for appeal only if an objection is made after the summation. 381

In explaining the rules for evaluating the evidence, some judges have been paraphrasing standard American jury instructions regarding concepts such as “reasonable doubt.” 382 In general, Russian judges have been thorough in their explanations of the substantive criminal law, explaining lesser-included offenses in as much, if not more, detail than is done in most American criminal trials. They have prepared their summations ahead of time with great care, evincing the seriousness with which they approach this critical part of the trial. They are aware that misstatements of the law and the lack of objectivity in commenting on the evidence were the chief sources of reversible error before the revolution. 383

Judges must also instruct the jury that they may recommend “lenience” or “special lenience” if they render a guilty verdict. 384 To facilitate this recommendation, the judge’s summation to the jurors includes the possible range of sentences for each crime decided. In death penalty cases, has it reached into pre-revolutionary law and the lack of objectivity in commenting on the evidence is prohibited in American trials. 385

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Judges must also instruct the jury that they may recommend “lenience” or “special lenience” if they render a guilty verdict. 384 To facilitate this recommendation, the judge’s summation to the jurors includes the possible range of sentences for each crime decided, including the possibility of the death penalty, a practice expressly prohibited in American trials. 385

...
11. Consequences of the Verdict and Judgment

After the proclamation of the verdict, the judge discharges the jury and holds a hearing to discuss the consequences of the verdict. An acquitted defendant must be released immediately. During the hearing, the parties may discuss the legal qualification of the verdict, but may neither call into question its validity, nor refer to evidence that was not admitted at trial. The judge then qualifies the verdict, taking into consideration evidence not presented to the jury, such as the official position of the defendant, any prior criminal record, and other facts demanding juridical evaluation.

The judge has the power to vacate a guilty verdict and call for a new trial if he or she believes that sufficient evidence exists for an acquittal. The judge may also enter a judgment of acquittal despite a guilty verdict if the elements of the charged crime are absent.

Before pronouncing judgment, the judge must hear the arguments of the parties and the last word of the defendant. He may also ask the defense to present evidence to support the argument that the defendant should not be convicted.

12. Appeal

The prosecutor, the defense, and the victim or the victim's representative may appeal judgments of conviction and acquittal to the Cassational Panel of the Supreme Court of the Russian Federation. Dismissals or decisions made during the preliminary hearing to return a case for supplementary investigation are the only procedural rulings of the judge that may be appealed in cassation. No other judicial decisions are subject to appeal.

or she must also take into consideration the statutory aggravating factors and mitigating circumstances and the recommendation of the jury as to "lenience" or "special lenience." Even if the jury has not recommended "lenience," in extraordinary circumstances the judge may impose a sentence lighter than the minimum required by law. In the event that there is an attached civil suit, the judge must also rule on that suit and make a finding as to damages.

Finally, if the judge has reason to believe that the defendant is mentally ill and is therefore not capable of being criminally responsible, the judge must discharge the jury and initiate psychiatric commitment procedures.

of brain trauma sustained in 1985. Both had only one prior conviction for theft and were only 21 and 24 years old respectively. Panchishkin was sentenced to death and Filippov to 15 years deprivation of liberty. The trial judge felt these disabilities were evidence that they could not be rehabilitated. Interview with Vladimir V. Zolotykh, supra note 337.

In SARATOV-5, the defendant, with a prior conviction for the murder of his father, was now convicted of the murder of his cousin using excessive force in self-defense. At the judgment hearing, the defendant made this unforgettable statement: "I told the truth that I just couldn’t kill a human being. In the case of my father, that’s another story."

1995 The Resurrection of Trial by Jury in Russia

127
The following constitute the exclusive grounds for appeal to the Cassational Panel of the Supreme Court following a jury trial:

(1) one-sided or incomplete trial due to: (a) erroneous exclusion of evidence affecting the verdict; (b) failure to hear evidence essential to the outcome of the case; including evidence that could have been gathered had the judge returned the case for supplementary investigation; or (c) erroneous admissions of evidence affecting the verdict;

(2) substantive violation of the Code of Criminal Procedure;

(3) incorrect application of the law to the circumstances of the case; and

(4) imposition of an unjust sentence.

The Cassational Panel may not modify a decision of the trial court if this would put the defendant in a worse position, or reverse an acquittal or conviction on the grounds that the rights of the defendant were violated. Nor can the Cassational Panel return a case for supplemental investigation. The objectivity of the judge’s summation may be a ground of appeal only if there was a timely objection in the trial court.

408 UPK RSFSR § 465.
409 The procurator in MOSCOW-1 unsuccessfully appealed under this section, citing the trial judge’s exclusion of the testimony of the defendant’s wife and the exclusion of pictures of a murder victim’s body. Supreme Court Decision of Mar. 2, 1994 (Case of Sionchakov) Case No. 4-kp-094-15sp).
410 See UPK RSFSR § 79. For example, evidence must be heard as to the cause of death in murder cases, as must testimony of psychological experts and other evidence about the personal characteristics of the defendant, victim, and other witnesses.
411 See id. § 465(1.3) (referred to UPK RSFSR §§ 239(2), 258, 308(2), 345(2.2), 351(4), and 352(1)), which deal with the duty of the judge to return the case for supplementary investigation any time during trial if a complete and fair trial is otherwise not possible. See id. § 429(3) (restricting return for supplementary investigation to situations of newly discovered evidence).
412 See Supreme Court Decision of Apr. 16, 1994 (Case of Bogatyrev), Case No. 4-kp-094-61sp. The defense appealed in MOSCOW-3 on the grounds that the aggrieved informed the jury of the defendant’s prior prison record. Despite the slim seven-to-five vote calling for a guilty verdict, the Supreme Court ruled that the corrective instruction of the judge eliminated the error and affirmed the judgment. Supreme Court Decision of June 28, 1994 (Case of Bogatyrev), Case No. 4-kp-094-61sp.
413 Id. § 465. The power to do so exists in cases tried by a court with people’s assessors. See id. § 339(2). ALTAI-6, SARATOV-2, and STAVROPOL-7 had all been reversed by the Supreme Court following trials before a court with people’s assessors, and sent back for further investigation before being tried by a jury.
414 UPK RSFSR § 465(28).
415 UPK RSFSR § 465(4).
416 Id. §§ 371, 466. Special review (so-called nador) of a judgment of acquittal is permissible only within a year from the time the judgment was final. Id. § 373.
417 See Appendix II. One of these cases was MOSCOW-10, in which the Plenum of the Supreme Court agreed with the prosecutor that determining whether or not forcible oral copulation with a minor was a "sexual act" or "lewd conduct" was a legal question for the judge, not a question of fact for the jury.
418 The Plenum of the Supreme Court exercises supervisory functions with respect to decisions of the Cassational Panel and can annul any of its decisions. Decisions of the Plenum may be reviewed by the Presidium. See LAW ON COURT ORGANIZATION; see also JOHN N. HAZARD ET AL., THE SOVIET LEGAL SYSTEM: THE LAW IN THE 1980s, at 41 (1984); see generally M.S. STRIGOVICH, PROVERBA ZAKONNOSTI I OBOSNOVANNOSTI KORENEVNYKH PREGOVOROV [REVIEW OF THE LEGALITY AND JUSTICIAIBILITY OF JUDICIAL JUDGMENTS] 278 (1956).
419 Supreme Court Decision of Apr. 18, 1994 (Case of Semenychev), Case No. 32-kp-094-11sp. Upon retrial, the defendant requested a trial before three professional judges, but since neither Altai, Saratov, nor Ulanovsk were yet capable of offering such trials, his retrial was before a court with lay assessors and he was convicted and sentenced, for a third time, to 15 years.
420 Supreme Court Decision of June 28, 1994 (Case of Denisov), Case No. 51-kp-094-61sp.
421 Supreme Court Decision of July 12, 1994 (Case of Panchishkin/Filipor), Case No. 41-kp-094-3-sp. Errors in the formulation of questions also led to an acquittal in SARATOV-14, Supreme Court Decision of July 28, 1994 (Case of Efremov), Case No. 32-kp-094-30sp; reversal of the entire judgment in RAZAN'1-4, Supreme Court Decision of Sept. 1, 1994 (Case of Churochkin, Anikin, Ishshkin, Shaposhnikov), Case No. 5-kp-094-12sp; and the conviction for a lesser-included offense of counterfeiting in IVANOVO-7, Supreme Court Decision of Sept. 8, 1994 (Case of Razov), Case No. 7-kp-094-21sp.
422 See also ALTAI-6 and RAZAN'1. The statistics in Appendix II do not include the decision in IVANOVO-7.
VI. Conclusion

A. An Appraisal of the Results of the First Jury Trials

The nine Russian regions and territories in which jury trials have been introduced provide a laboratory for a study of the coexistence of inquisitorial and proto-adversarial procedural modes at the same time and place in history.

Introducing jury trials involves much more than creating an anonymous panel of twelve lay persons untutored in the law, who decide issues of fact and of compassion (i.e., recommending leniency and deciding upon the imposition or nullification of the death penalty). The changes affect the very notion of "adversariness," which, up until now, has meant primarily institutionalizing the equality of arms, and clarifying the roles of the prosecution, the defense, and the neutral judge.

In the neo-inquisitorial criminal justice system of the old Soviet Union, the judge, in the mythical search for truth, had to play willfully the roles of investigating, charging, prosecuting, defending, and punishing authority. The new system has stripped the judge of most prosecutorial functions, making him or her a more neutral arbiter in the courtroom.

For their part, the prosecutorial authorities (investigator and procurator) can less and less rely on the court to bail out poorly or illegally investigated cases. The Russian jury, unlike its typical American counterpart, does not tend to swallow uncritically the testimony of police officers, and is not yet so hardened by the press and hungry politicians as not to feel sympathy for those caught in the alcohol-sodden, senseless violence which seems endemic to Russia. As a result, prosecutors have been forced to look critically at the cases which investigators have turned over to them. Now, prosecutors must send back poorly investigated cases for further investigation or more realistic charging, or amend the charges during the trial to conform with the proof or with realistic expectations drawn from the evidence.

Defense lawyers have finally been given a legitimate profession. For the first time since the revolution, they can actually exercise real influence on the trier of fact and achieve that which was virtually impossible in the Soviet criminal justice system: an acquittal, mercy, or lenience. Unfortunately, so far defense lawyers have been less concerned with the new procedure than with the miserable pay they receive as court- or investigator-appointed representatives of defendants. The Russian Bar is still largely against establishing offices of public defenders, fearing that they might weaken the now-dominant collegia of advocates (defense attorneys). The state is not yet willing to pay attractive fees for handling the capital cases of the poor. The surprisingly favorable verdicts have often been attributable to the excellent work of advocates, but just as often, they are the result of the sympathies of jurors who have received little or no help from either the prosecution or the defense in understanding the case.

Before assessing the statistical results of the first trials, it is worthwhile to examine a few of the cases that have made their way through the old court with people's assessors before landing before a jury under the new procedure. Those critics of trial by jury who believe that the new system will be expensive and time-consuming need only examine these and other similar cases to determine whether the jury will actually prolong the agony of Russian criminal procedure, or give it the common sense and finality it has lacked.

The following are cases from the old courts, which had been returned for supplementary investigation or reversed by higher courts. Three cases from Saratov illustrate one of the former prosecutorial functions of the judge—that of returning a case for further investigation so that additional or more severe charges can be added to the pleading. The new adversary procedure is intended to eliminate this practice.

In SARATOV-1 the defendant, who had been previously declared an especially dangerous recidivist due to five prior convictions, shot and seriously wounded his boss following an argument. He was arrested on the same day and confessed to the shooting, but he claimed that it was an accident while the victim insisted the shooting was intentional. The defendant was

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422 Interview with A.P. Galagonov, President, Russian Union of Advocates and President, Russian Federation of Advocates, and Moscow Regional Collegium of Advocates, in Moscow (Apr. 1, 1993).
423 For detailed fact summaries of these cases, see Appendix I.
424 UPK RSFSR § 232(3).
425 UK RSFSR § 24(1). He had served upwards of 18 years in prison camps, mainly for theft convictions.
426 The argument was about a duck which was apparently missing. The boss had threatened to feed the defendant to the pigs if the duck was not found. The defendant was also apparently upset because the victim had not invited him to drink vodka with another farmer.
charged with intentional infliction of serious bodily injury.\textsuperscript{427} The case was sent to the People's Court of Saratov Region for trial.\textsuperscript{428}

Unsatisfied with the charges, the judge in the People's Court returned the case to the procurator for supplementary investigation of a possible charge of attempted aggravated murder due to recidivist status.\textsuperscript{429} For the duration of this "supplementary investigation"—May 18 until November 12, 1993—the defendant stayed in the custody of the court.\textsuperscript{430} Finally, on November 24, 1993, the case was sent to Saratov Regional Court for trial on the aggravated murder charge. The Regional Court judge, however, was not satisfied that the charges were sufficiently serious and again returned the case for further investigation to explore potential additional charges of theft and possession of military explosives.\textsuperscript{431} On January 14, 1994, a final indictment for attempted aggravated murder and theft and possession of military explosives was filed in the Saratov Regional Court. Trial commenced on February 15. On February 17, 1994, the jury found the defendant guilty of attempted murder but acquitted him on the charge of theft of explosives. The jury recommended lenience, resulting in a sentence of nine years deprivation of liberty.

SARATOV-6 and SARATOV-8 illustrate how the new jury trial procedures resolve the seemingly endless back-and-forth inherent in the old system. The case of SARATOV-6 was brought before the People's Court on non-capital charges alleged to have been committed on May 28, 1993, but once again, the People's Court judge, returned the case for supplementary investigation on October 26, 1993. Because the procurator of the Saratov Region extended the defendant's pretrial detention, the final indictment was not filed in the Saratov Regional Court until January 14, 1994. The indictment contained three charges: (1) malicious hooliganism for engaging in a scuffle;\textsuperscript{432} (2) attempted aggravated murder out of "hooliganistic motivation" for attacking the victim with an axe;\textsuperscript{433} and (3) resisting arrest by a police officer.\textsuperscript{434}

Trial by jury commenced on March 9, 1994. The prosecutor amended the indictment to drop the charges of hooliganism, instead charging the defendant with attempted aggravated murder to prevent carrying out a social duty (i.e., attacking the victim while he was trying to break up a fight).\textsuperscript{435} The prosecutor also added the charge of inflicting bodily injury on a person carrying out a social duty.\textsuperscript{436} The jury returned a very sympathetic verdict. They found the defendant (1) not guilty of hitting the victim after he had tried to break up the scuffle; (2) not guilty of resisting arrest; (3) not guilty of attempted murder; but (4) guilty of attacking the victim with the axe. The jury established that the motive for the attack was the fact that the victim had hit the defendant first. The jury therefore recommended special leniency. The judge declared the defendant guilty of intentional infliction of serious bodily injury,\textsuperscript{437} sentenced him to a mere fine, and released him from custody.

In SARATOV-8, the defendant was charged with the murder of one person and the attempted aggravated murder of another\textsuperscript{438} on June 13, 1993. The defendant, who had four prior convictions and had served many years in prison camps, was preventively detained. The case was sent to the People's Court of Petrovska on charges of murder in a state of strong emotional disturbance.\textsuperscript{439} The judge in the People's Court, dissatisfied with the lesser homicide charge, returned the case for further investigation. The Petrovska Procuracy protested the decision of the court, however, convincing the judge in the Saratov Regional Court to send the case back to the People's Court for trial on November 4, 1993. But the People's Court judge again sent the case back for supplementary investigation on December 7, 1993. This time, the Saratov Regional Court rejected the protest of the Procuracy. A new indictment finally was filed on March 15, 1994, charging the defendant with the intentional mur-
der of one person and the attempted aggravated murder of another.

Trial commenced on April 11, 1994. Two days later, the jury found the defendant guilty of inflicting serious bodily injury on both Chuev and Chausov, but while in a state of strong emotional disturbance and without an intent to kill. They recommended special leniency, resulting in the imposition of a fine and the release of the defendant from custody.

IVANOVO-2 illustrates how a judge's decision to return a case for further investigation in the interest of procuring a fair trial for the defendant resulted in the first complete acquittal before a jury in modern Russian history. That case was twice sent for trial to the Ivanovo Regional Court, but the state's key witnesses were not brought in because they had been removed to a camp in another region for protection. The prosecutor attempted to prosecute the case both times based on the witnesses' written testimony taken during the preliminary hearing. The judge refused to admit these testimonies, returned the case for further investigation to ascertain the whereabouts of the witnesses, and demanded that they be brought to court.

At the third trial, the witnesses were brought in, and testified that defendant was not responsible for the killing, that they had been forced into implicating him, and that in reality another person, who also had been questioned in relation to the killing, was responsible. That other person, however, had hanged himself in custody after having been condemned to death for the murder of a prison official. Faced with this testimony, the judge again returned the case to the investigator on November 18, 1993, to investigate the plausibility of the other person's guilt. When the case came back to court for the fourth time, the defendant requested an acquittal on all charges.

Finally, RIAZAN'-2 illustrates the injustice of allowing the Procuracy to appeal judgments in its supervisory capacity. In that case, the defendant originally had been charged with intentional infliction of serious bodily injury resulting in death. The court with lay assessors convicted and sentenced him to nine years deprivation of liberty. The prosecutor appealed, claiming that the prosecution at trial had improperly qualified the crime, that the investigation was incomplete, and that the sentence was too light. The case was therefore reversed and re-charged as aggravated murder with exceptional cruelty. After hearing the evidence at the retrial before a jury, the trial prosecutor reduced the charges to reflect the original charge, and the defendant was sentenced to eight and a half years deprivation of liberty.

It is clear from the above five cases that the jury can play a role in bringing a needed finality to cases that endlessly go back and forth from the court to the investigator because of the lack of clear definition of responsibility for prosecuting the case under the current Russian law. Only if the judge is completely stripped of the power to return a case for further investigation will prosecutors and investigators genuinely take their accusatory tasks seriously, and thoroughly investigate crimes immediately after their commission, when the evidence is easiest to find. The prevention or serious limitation of trial by transcript would also prevent delays such as those in IVANOVO-2.

A review of the first Russian jury trials reveals first and foremost how unjustified the fear of Russian and foreign jurists was that the Russian people, imagined to be predominantly in favor of capital punishment and angry at "criminals" for making the streets unsafe, would mete out a severe and bloody strain of justice. The mildness of the verdicts has belied this fear. All but twelve of the 114 initial cases were potentially capital cases. For thirty-two of the 119 defendants, the capital charge was found to be justified and leniency was not recommended, leaving open the possibility of a death sentence. Three defendants have been sentenced to death thus

440 UK RSFSR § 108.
441 Id. §§ 109, 102(g).
442 Id. § 110.
443 In both SARATOV-6 and SARATOV-8 the defendants spent another four to six months in pretrial detention because the judges felt that they merited attempted capital murder charges, while the jury found them guilty of substantially lesser charges and recommended special leniency, whereupon no sentence to deprivation of liberty was possible. Interviews with Valerii Stepanin, Trial Judge, Nikolai A. Borodin, Prosecutor, and Rimma A. Galaktionova, Defense Counsel for Sergeev, in Ivanovo (Feb. 10, 1994).
Twenty-two defendants, a few of whom had been granted lenience by juries, have been sentenced to the maximum term of fifteen years deprivation of liberty. The jury found the capital charge to be justified but recommended lenience for twenty-eight defendants and special lenience for six more. Sixty-seven defendants have received sentences of from eight to fourteen years deprivation of liberty, a sentence which is within the parameters of capital cases. Thirty-one defendants have received sentences of deprivation of liberty for up to eight years, and seven have received no jail time at all.

Twenty-three defendants were convicted of the following lesser offenses to aggravated murder (including attempt): intentional non-aggravated murder; murder using excessive force in defense of self or others; negligent murder; intentional infliction of serious bodily injury; intentional infliction of serious bodily injury while in a state of strong emotional disturbance; and negligent infliction of serious bodily injury. Ten of these defendants received lenience, and six special lenience.

The verdicts in the twelve cases charging non-capital offenses were particularly favorable for the defendants: six ended in acquittals. In two cases the defendants were convicted of lesser

549 Panchishkin in ROSTOV-2, Shevchenko in KRASNODAR-1, and Brovkin in STAVROPOL'-5. But ROSTOV-2 has been reversed by the Supreme Court. The Committee of Clemency in the President’s Administration has commuted all but five of the death penalty cases it has reviewed (in excess of 75) (one being the case of Chikhal’ko). Trial judges in Saratov, Moscow, and Ivanovo Regional Courts have stressed to the author that they and most of their colleagues are opponents of the death penalty, and that death has not been considered an option in any of their cases. Conversations with Aleksandr I. Gal’kin, President of the Saratov Regional Court, in Saratov (Feb. 16, 1994); Iurii V. Smirnov, President of the Ivanovo Regional Court, in Ivanovo (Jan. 12, 1994); and Judge Natalia V. Grigor’eva of the Moscow Regional Court, in Moscow (Jan. 4, 1994).

550 SARATOV-2, SARATOV-3, SARATOV-9, and RIAZAN’-7 (as to Kupriianov). Many findings of lenience may indeed be aimed at eliminating the death penalty as an option.

551 Both defendants in MOSCOW-13, defendant Saltykov in MOSCOW-20, and defendant Khamidullin in UL’IANOVS’K-3 were granted special lenience.

552 Fines were imposed in IVANOVO-7, MOSCOW-19, ROSTOV-1, SARATOV-6, and SARATOV-8. The defendants fell under amnesty provisions and were not punished in ALTAI-2, ALTAI-5, and MOSCOW-25. In all but ALTAI-5, the jury recommended special lenience.

553 UK RSFSR § 103. See MOSCOW-1, MOSCOW-5, and MOSCOW-18 (defendant Denisov); ROSTOV-7 and ROSTOV-9; SARATOV-13; STAVROPOL’-2 and STAVROPOL’-10.

554 UK RSFSR § 105. See MOSCOW-25; SARATOV-1 (both defendants); and SARATOV-5.

555 UK RSFSR § 106. See ALTAI-2 and ALTAI-4; MOSCOW-22.

556 UK RSFSR § 108. See MOSCOW-17; RIAZAN’-2 and RIAZAN’-6; ROSTOV-1; SARATOV-6 (not resulting in death).

557 UK RSFSR § 110. See KRASNODAR-6 (as to two counts); SARATOV-8.

558 UK RSFSR § 114 (1). See MOSCOW-20.

559 Special lenience was accorded in ALTAI-2, MOSCOW-20, ROSTOV-1, SARATOV-6 and SARATOV-8, and STAVROPOL’-10.

Ten cases involved charges of rape of a minor; the jury found for the lesser offense of lewd conduct with a child in three cases, and lesser rape charges in two more. Lenience was recommended in four cases, and special lenience in a fifth.

Sixteen cases have involved multiple killings, either during one incident or in separate incidents. Five other cases have involved an aggravating factor of a prior murder. Only three of these cases, the type which in the United States often lead to death verdicts, resulted in death penalties; eight defendants received fifteen years deprivation of liberty. The jury acquitted the defendants of double murders in three cases, and of one of the charged murders in another three cases. The defendants in KRASNODAR-6, SARATOV-1, and SARATOV-5 were found guilty of substantially less serious offenses and received very short sentences.

The verdicts in the twelve cases charging non-capital offenses were particularly favorable for the defendants: six ended in acquittals. In two cases the defendants were convicted of lesser
cluded offenses, and in the three cases in which the defendants were convicted exactly as charged, the juries recommended special lenience.

B. Prognosis for the Future

It remains to be seen whether the jury will be the catalyst for a thorough reform of the Russian criminal justice system, as the authors of the “Concept of Judicial Reform” had hoped. A majority of Russian judges support the new law and believe it will help ensure their independence from the executive branch and the Procuracy. The judges in these early jury trials have prepared with élan for their new role and have conducted the trials on the whole, with authority and efficiency. While giving up the job of marshalling the evidence to the prosecutor, they have gradually asserted their authority in deciding questions relating to admissibility.

There is also an indication that the introduction of trial by jury is beginning to change the way Russian judges “judge” in the traditional court with lay assessors. In trying to defuse criticism that jury trials had resulted in too many acquittals, Chairman of the Cassational-Panel of the Supreme Court A.P. Shurygin emphasized at the Sochi Jury Trial Conference that the court with lay assessors had returned more acquittals in the Altai Territory and Moscow Region than had the courts with juries.

Whether the Russian jury trial will slowly incorporate more aspects of Anglo-American-style adversary procedure, or remain a peculiar appurtenance to an otherwise inquisitorial criminal process, will depend on the experience gleaned from the first trials. The character of the new Code of Criminal Procedure will also determine the future of the reforms. The Code failed to materialize during the life of the old Supreme Soviet and most likely will be a subject of much debate in the two houses of the new Federal Assembly in 1995.

The working group in the Ministry of Justice has finished its draft of the Code and has submitted it to the State Duma. This draft makes few changes in the jury trial provisions currently in force, and leaves untouched the practice of returning cases for further investigation and the veto power of the aggrieved over prosecutorial motions to dismiss.

The working group of the State Legal Department, on the other hand, intends to increase the adversarial nature of criminal trials by allowing the defense to investigate the case and call its own witnesses. It also strengthens the presumption of innocence and the protection against multiple trials by eliminating the provision for returning a case for supplementary investigation after a jury has been empaneled.

Although Boris Zolotukhin was elected to the State Duma and is again vice-chairman of the new legislative committee, the committee is now chaired by nationalist V.B. Isakov. The new chairman nonetheless supported aspects of judicial reform at Zolotukhin’s urging when he was a member of the Supreme Soviet. One would think that the Ministry of Justice’s less controversial Draft Code of Criminal Procedure would be more to the liking of the new Parliament than that of the State Legal Department or the President.

During the Parliamentary session beginning in October 1994, the President planned to move the State Duma to add three new jurisdictions to the nine in which the alternative of trial by jury was available: the Republic of Karelia, the city of Moscow, and the Cheliabinsk Region.

Although the right to a jury trial is anchored in the 1993 Constitution and is officially supported by all of the major involved agen-
cies.\textsuperscript{484} This author believes that it would never have become law were it not for the initial political impulse of Boris Zolotukhin and the inexhaustible draftsmanship, politicking, teaching, and lecturing of Sergei A. Pashin.\textsuperscript{488} Indeed, the new law has thrown a wrench into the "business as usual" of the Interior Ministry and the Procuracy, and it is doubtful whether these agencies can be counted on for active support of the new institution. The Ministry of Justice tolerates the new court system, but its draft Code of Criminal Procedure certainly does not envision any expansion of the adversarial procedure to adapt to the presence of lay factfinders.\textsuperscript{486}

The most avid supporters of trial by jury in the legal profession are the core group of trial judges who have handled the first cases. Although the presidents of the regional and territorial courts pay great lip service to the new institution, it is widely suspected that some courts joined the "experiment" in the hope that their participation would lead to increased financial and material support.\textsuperscript{487} The regional collegia of advocates have been peculiarly lukewarm in their support of the jury system, despite the professional advantages that defense counsel derive from the jury system. On the other hand, many of the lawyers who have tried the first cases, and a hard core of experienced advocates versed in the pre-revolutionary tradition, are vocal proponents.\textsuperscript{488}

Whether the State Legal Department and the small group of earnest supporters in the judiciary and the Bar can overcome the conservative inertia afflicting the majority of the Russian criminal justice establishment, will depend upon the constellation of political forces in 1995. The success of this most democratic, if also most controversial, form of criminal procedure also depends upon whether economic, political, and judicial reforms will continue the transformation of Russia into a state under the rule of law.

C. Epilogue

All Russian lawyers know of the great names of pre-revolutionary criminal justice: A.F. Koni, F.N. Plevako, V.D. Spasovich, P.A. Aleksandrov, and others. However, they know that these are new times and the cases are meaner and dirtier than were those of the past.

They will not have such famous or clearly set-up defendants as Vera Zasulich,\textsuperscript{489} or Mendel Beilis.\textsuperscript{490} They are more likely to deal with murderers like Chikatilo.\textsuperscript{491} They will not have sympathetic pouring from the media and public opinion. They will not be able to count on a one-minute closing argument, as did F.N. Plevako in the case of an old provincial priest, who had admitted to embezzling 10,000 rubles in church money:

During 30 years, one year after the other, you gentlemen of the jury came to priest Kudriavtsev for confession and also as many times he absolved your sins. Now, once in 30 years, the repentant sinner comes to you for pardon with words of sorrow, repentance and entreaty. Won't you also absolve his sin?

This case ended in the acquittal of the priest.\textsuperscript{492} Russian lawyers are more likely to have cases like UL'IANOVS-K4, involving Father Tes'kov, deacon of the Russian Orthodox Church. Charged with having brutally stabbed a boyhood friend to death and attempting to dismember his body allegedly to facilitate the theft of icons and rare church books, Tes'kov was convicted of aggravated murder and sentenced to fifteen years deprivation of liberty. The compassion and understanding of the Russian jury now has its limits.

\textsuperscript{484} For an account of the trial and acquittal of this young woman for shooting a tsarist official, see KUCHEROV, supra note 15, at 214-25.

\textsuperscript{486} For an account of the trial and acquittal of the Kiev Jew, who had been arrested by the tsarist authorities as a part of an anti-Semitic campaign in 1911 for an alleged ritual killing of a Christian boy, see id. at 243-66.

\textsuperscript{491} Chikatilo killed 50 people in Rostov-on-the-Don, and was charged with rape and cannibalism. For details on this notorious case, see VLADIMIR BUT, MAN'IAK (1998).
## Table of Contents to Appendix I

### ALTAI TERRITORIAL COURT
- ALTAI-1 ........................................... 145
- ALTAI-2 ........................................... 146
- ALTAI-3 ........................................... 147
- ALTAI-4 ........................................... 149
- ALTAI-5 ........................................... 150
- ALTAI-6 ........................................... 151
- ALTAI-7 ........................................... 152
- ALTAI-8 ........................................... 153
- ALTAI-9 ........................................... 155

### IVANOVO REGIONAL COURT
- IVANOVO-1 ....................................... 157
- IVANOVO-2 ....................................... 158
- IVANOVO-3 ....................................... 159
- IVANOVO-4 ....................................... 160
- IVANOVO-5 ....................................... 161
- IVANOVO-6 ....................................... 162
- IVANOVO-7 ....................................... 163
- IVANOVO-8 ....................................... 164
- IVANOVO-9 ....................................... 165

### KRASNODAR TERRITORIAL COURT
- KRASNODAR-1 ..................................... 166
- KRASNODAR-2 ..................................... 168
- KRASNODAR-3 ..................................... 169
- KRASNODAR-4 ..................................... 170
- KRASNODAR-5 ..................................... 171
- KRASNODAR-6 ..................................... 172

### MOSCOW REGIONAL COURT
- MOSCOW-1 ........................................ 173
- MOSCOW-2 ........................................ 174
- MOSCOW-3 ........................................ 175
- MOSCOW-4 ........................................ 176
- MOSCOW-5 ........................................ 177
- MOSCOW-6 ........................................ 178
- MOSCOW-7 ........................................ 179
- MOSCOW-8 ........................................ 180
- MOSCOW-9 ........................................ 181
- MOSCOW-10 ...................................... 181
- MOSCOW-11 ...................................... 182
- MOSCOW-12 ...................................... 183

### RIAZAN' REGIONAL COURT
- RIAZAN'-1 ....................................... 200
- RIAZAN'-2 ....................................... 202
- RIAZAN'-3 ....................................... 203
- RIAZAN'-4 ....................................... 204
- RIAZAN'-5 ....................................... 205
- RIAZAN'-6 ....................................... 206
- RIAZAN'-7 ....................................... 207
- RIAZAN'-8 ....................................... 209
- RIAZAN'-9 ....................................... 210
- RIAZAN'-10 ...................................... 210

### ROSTOV-ON-THE-DON REGIONAL COURT
- ROSTOV-1 ......................................... 211
- ROSTOV-2 ......................................... 212
- ROSTOV-3 ......................................... 213
- ROSTOV-4 ......................................... 214
- ROSTOV-5 ......................................... 215
- ROSTOV-6 ......................................... 215
- ROSTOV-7 ......................................... 216
- ROSTOV-8 ......................................... 217
- ROSTOV-9 ......................................... 218
- ROSTOV-10 ........................................ 219
- ROSTOV-11 ........................................ 220
- ROSTOV-12 ........................................ 221
- ROSTOV-13 ........................................ 222
- ROSTOV-14 ........................................ 224
- ROSTOV-15 ........................................ 225
- ROSTOV-16 ........................................ 226

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1995 *The Resurrection of Trial by Jury in Russia*
Attempted escape from pretrial detention. §§ 15, 188(2).

Prosecutor: E.N. Oshovskaia

Defense Counsel: E.V. Okorokova (for Bezgodov), S.A. Butorina (for Vorona)

Charges

Bezgodov: Auto theft using force or violence. UK RF § 212-1(3). Theft of personal property. § 144(2). Possession of firearms and military explosives. § 218(1). Aggravated murder for the purpose of effecting theft. § 102(e).

Vorona: Auto theft using force or violence. UK RF § 212-1(3). Theft of personal property. § 144(2). Possession of firearms and military explosives. § 218(1). Concealment of murder. § 189(1). Attempted escape from pretrial detention. §§ 15, 188(2).

Allegations

Defendant A.V. Bezgodov, who was previously convicted (with a suspended sentence) for malicious hooliganism and intentional infliction of serious bodily injury, traveled from Aleisk to Barnaul to meet with defendant A.A. Vorona. Bezgodov brought a sawed-off shotgun, and Vorona was in possession of hand grenades he had obtained as a student in St. Petersburg. On February 18, 1993, they decided to steal a car; around 1 P.M. they stopped a passing motorist, V.K. Burau, and asked for a ride to a nearby neighborhood. Once inside the car, Bezgodov, who was seated in the back, produced the sawed-off shotgun and ordered Burau to move to the passenger seat. The victim refused and Bezgodov fired two shots into his back, killing him instantly. The defendants drove the car to a remote area, removed money and valuables from the victim’s body, and disposed of the corpse.

493 Interview with E.V. Okorokova and S.A. Butorina, Counsel for the defendants, in Suzdal’ (Apr. 18, 1994). The author also reviewed the indictment, the question list, the judgment, a partial protocol of the trial, and the Supreme Court Decision. All the documents and transcripts of interviews cited in this Appendix are on file with the author.

494 All citations to code sections in the Appendix are to the UK RSFSR (Criminal Code), unless otherwise noted.
At 11 P.M. that night, still in Barnaul, the defendants and three other friends were driving in the stolen auto when they nearly collided with a police car. The ensuing chase ended when Vorona, the intoxicated driver, drove the car into a snowbank; Vorona escaped, but Bezgodov and some of the others were arrested. At the time, Bezgodov was in possession of a bag which contained the shotgun, hand grenades, and some items belonging to the victim. Vorona was arrested later.

On February 22, 1994, Vorona and some other prisoners escaped through a hole they had carved in the wall of the detention facility but were caught immediately.

At trial, Bezgodov admitted the car theft and the killing, but claimed the gun had gone off accidentally; Vorona denied all the charges levied against him. Two youths who had confessed (under coercion and falsification of documents) to this and two similar crimes testified as witnesses against Bezgodov and Vorona.

**Verdict**

Both defendants were convicted of auto theft, theft of personal property, and possession of weapons. Bezgodov was also convicted of aggravated murder, while Vorona was convicted of concealment and attempted escape.

**Sentence**

Bezgodov: Fifteen years, thirteen for the murder and other crimes and two for the violation of the conditional sentence on his prior conviction.

Vorona: Six years.

**Appeal**

An appeal by advocates (defense attorneys) was rejected by the Supreme Court. Decision of June 28, 1994, Case No. 51-kp-094-45sp.

**Judgment of April 16, 1994 (Gordymov), Altai Territorial Court.**

Judge: I.M. Popov
Prosecutor: E.N. Oshovskaia and N.S. Bastrykina
Defense Counsel: I.I. Gusel'nikova

**Judgment of April 26, 1994 (Denisov), Altai Territorial Court.**

Judge: G.I. Vargaskina
Prosecutor: V.G. Krasnoperov

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495 Interview with I.I. Gusel'nikova, Defense Counsel, in Suzdal' (Apr. 18, 1994). The author also reviewed the file and the judgment.

496 Interview with G.I. Vargaskina, Judge, and V.I. Laputina, Defense Counsel, in Altai Territorial Court, Barnaul (Sept. 1, 1994). Interview with V.G. Krasnoperov, Prosecutor, in Altai Territorial Court, Barnaul (Sept. 2, 1994). The author reviewed the judgment, the question list, the judge's summation, and the Supreme Court decision.
Defense Counsel: V.I. Laputina

Charges

Attempted aggravated murder of more than one person. §§ 15, 102(b, d, z).

Allegations

On August 29, 1993, defendant Iu.A. Denisov, who had a prior conviction for inflicting serious bodily injury, drove to the Slavgorod Market to trade in army surplus items. He parked his car in front of the store “Konstantin.” Kalok and Kutsenko, who worked in the store, came out and told him to move his car. Defendant refused and was beaten. Defendant testified he was parked legally and that his assailants demanded 1000 rubles an hour to park in front of the store. There was evidence that the defendant had demanded an apology from his assailants.

The next day, two automobiles containing nine employees of the store “Konstantin” drove up to the defendant’s house and confronted him. Words were exchanged and defendant, who testified that he was afraid they had come to beat him up, retreated into his house. After a rock was thrown through a window, Denisov told his wife and children to hide, grabbed his shotgun and fired five to six shots out the window. Kalok was badly wounded, losing an eye, and Kutsenko, Vol’f, and Rubtsov sustained serious injuries. Defendant claimed he acted in self-defense and in the heat of passion, while the prosecution argued that he lured the others to his house intentionally to shoot them.

Verdict

Acquitted.

Appeal

Prosecutor appealed, claiming that alternate jurors had wrongfully sat in on jury deliberations, and their presence constituted a violation of the confidentiality of jury deliberations. Verdict reversed by Supreme Court. Decision of June 28, 1994, Case No. 51-kp-094-61sp.

ALTAI-4

Judgment of May 5, 1994 (Burlakov), Altai Territorial Court.497

Judge: S.P. Kamnev
Prosecutor: Iu.A. Panchenko
Defense Counsel: V.V. Popkovich

Charges

Aggravated extortion of state property. § 95(2). Aggravated murder out of hooliganistic motivation. § 102(b).

Allegations

Defendant A.B. Burlakov, an armed military guard at the Altaiiskaia train station, got drunk while on duty celebrating the 76th anniversary of the Great October Revolution on November 7, 1993. A train car with a shipment of wine stood at the station and defendant and Kalennikov, an employee, went to the car, knocked on the door and demanded wine. P.A. Poluiarov, the person in charge of the wine, which was state property, testified that defendant swore at him and threatened him at gunpoint. Kalennikov testified that Poluiarov refused to provide them with any wine, but that he did not hear Burlakov make any threats. Burlakov recounted that he had offered to pay for the wine and uttered no threats.

Thereafter defendant ordered four trespassing juveniles, the victim, A.A. P’iankov, Andrei Naumov, Oksana Viarzia, and Oksana Glazkova, to get off the tracks. He threatened them with his revolver and led them to the platform. He stuck the gun into Naumov’s side and kicked him; then he grabbed P’iankov and put the gun to his temple. The gun fired, and P’iankov died instantly. The defendant testified that when P’iankov turned away, he slipped and the gun went off accidentally. The other juveniles and several other eyewitnesses testified to this scenario.

Verdict


Sentence

One year deprivation of liberty.

497 The author reviewed the file, the question list, the judge’s summation, and the judgment.
ALTAI-5

Judgment of May 5, 1994 (Saprykin), Altai Territorial Court.498
Judge: G.N. Belova
Prosecutor: E.N. Oshovskaiia and N.S. Bastrykina
Defense Counsel: V.A. Barsukov

Charges

Infliction of minor bodily injury. § 109(1). Forcible rape. § 117(2). Repeated battery in a torturous manner. § 113. Threatening murder. § 207. Rape of a child with threats of force or infliction of serious bodily injury. § 117(4).

Allegations

On May 27, 1991, the victim willingly accompanied defendant Vasilii Dmitrievich Saprykin to a dacha in the "Stroitel" settlement, Pervomaiskii Raion, and engaged in sexual intercourse with him. Thereafter she testified that she sought to leave the dacha and that the defendant chased after her, caught her, kicked her in the head, and beat her, causing bodily injury. She also testified he later administered first aid in the dacha and, after threatening to beat her and cutting her with a broken bottle, raped her. Witnesses S.A. Nekrasov and A.L. Nekrasova testified that the victim fell down the stairs, causing her injuries. Defendant testified he only hit her once and completely denied the rape.

The victim also testified that on June 26, 1991, she was at Makhmad Kodzhaev's apartment in Barnaul and encountered the defendant again. Witnesses testified that she demanded money from Saprykin for payment of some debt. She testified that he beat her and took her to I.A. Krotova's apartment in Barnaul, where he beat, choked, and threatened to kill her.

On March 28, 1993, the defendant engaged in sexual intercourse with a thirteen-year-old girl. She testified that it was not consensual; the defendant got her drunk and threatened to kill her to induce her participation. Defendant denied the charges, claiming the intercourse was voluntary, and that he did not know she was underage. The court had her appear in the same clothes she wore the night of the rape.

498 The author reviewed the judgment, the question list, and the judge's summation.
499 The names of rape victims have been omitted.

Verdict

Defendant was acquitted of all charges relating to the May 27, 1991, incident but convicted of inflicting minor bodily injury on the first victim (§ 112) in connection with the June 26, 1991, incidents. Regarding the 1993 incident, he was convicted of the lesser included offense of statutory rape (§ 119(1)), and was acquitted of all other charges. The jury recommended lenience.

Sentence

At sentencing the victim refused to pursue the punishment of defendant and, because prosecutions for § 112 must be dismissed if the victim refuses to prosecute, that charge was dismissed.

Though the judge ordered a one-year sentence for the statutory rape, defendant was not sentenced, because the case fell under the general presidential amnesty decreed at the time of the adoption of the new constitution.

ALTAI-6

Judgment of May 26, 1994 (Bulochnikov), Altai Territorial Court.500
Judge: G.N. Belova
Prosecutor: V.N. Vorontsov
Defense Counsel: V.I. Laputina

Charges

Two counts of intentional murder. (§§ 103, 102(i)).

Allegations

Defendant Sergei Nikolaevich Bulochnikov was charged with the separate murders of V.A. Seniushkin and N.K. Marushkin on May 14, 1993, in Barnaul. Defendant confessed to the murders during the preliminary investigation, but denied responsibility at the trial. He testified that investigators had beaten him and plied him with alcohol to get him to admit to the murders. Defendant's prior statements were suppressed by the judge, because he had not

500 Interview with V.I. Laputina, Defense Counsel, in Altai Territorial Court, Barnaul (Sept. 1, 1994). Interview with G.N. Belova, Judge, at Russian Law Academy (Sept. 15, 1994). The author also reviewed the judge's summation, the question list, and the informational bulletin of the case.
been advised of his right to remain silent under article 51 of the Russian Federation Constitution.

Both victims died after being struck in the neck by an axe. Defendant admitted he had an axe, and a witness, Dubrovin, testified that defendant had taken the axe from one Smirnov following Smirnov's argument with a woman. At around 10:00 P.M. on May 14, 1993, defendant, along with Seniushkin, Dubrovin, and Liutaeva, were drinking. Liutaeva testified that the other three went outside and Dubrovin returned, saying that Bulochnikov had killed Seniushkin (but another witness reported that he did not see Dubrovin leave the apartment). Smirnov testified that defendant went out after Seniushkin alone and, upon returning, said, "I killed him."

Later in the evening N.K. Marushkin was killed by an axe similar to that used on Seniushkin. A witness, Petrenko, testified that the defendant told him he had killed two people. Blood on the axe matched the blood type of Onishchenko (the woman Smirnov had argued with) and Marushkin.

Verdict

The defendant was acquitted (8-4) of the murder of Seniushkin and unanimously acquitted of Marushkin’s murder.

Appeal

The acquittal was overturned by the Supreme Court, which held that the trial judge unlawfully excluded the statements given by the defendant during the preliminary examination. Decision of Sept. 1, 1994, Case No. 51-kp-094-68sp.

Charges

Abuse of office for personal gain. § 170(1). Receiving bribes in large sums in relation to the fulfillment of public duties. § 173(3). Theft of government property. § 92(2).

Allegations

In late July 1991, defendant Sergei Mikhailovich Es’kov, president of the Administrative Commission of State Auto Inspection (GAI) for Zonal’nyi Raion, allegedly stopped Terent’ev on the grounds of the “Sokoloveki” State Farm, Zonal’nyi Raion, for drunk driving. According to the preliminary-hearing testimony of his partner, Litvinov, he took Terent’ev’s driver’s license but did not begin to fill out a report. Terent’ev claimed that defendant suggested that in exchange for some granulated flour produced by the state farm, he would return the license and not charge him with drunk driving. According to Terent’ev and a co-worker, Kress, they loaded seven hundredweights of the flour into the defendant’s service vehicle and he returned Terent’ev’s driver’s license.

On October 31, 1991, one Peresil’d was stopped for drunk driving by GAI officer Antonov. In mid-November he said he approached the defendant to see if he could fix the ticket. The defendant knew that Peresil’d worked for an auto repair shop and suggested that he repair a relative’s car. Peresil’d testified that he and Epp (a co-worker who had lost his license for drunk driving) repaired the car, and both were given their licenses back; though Peresil’d paid a small fine.

Defendant denied the charges; he claimed that he never stopped Terent’ev, and that his relative paid for the repairs to his car. No records were produced to show how much, if any, flour was missing or how much it was worth.

Verdict

Defendant was acquitted of all charges.
Judge: E.G. Zeidlits
Prosecutor: V.G. Krasnoperov
Defense Counsel: V.N. Dil’man (for Zaitseva), M.P. Bobrov (for Begliarov)

Charges
Zaitseva: Intentional murder. § 103. Attempted aggravated murder. § 15, 102(v, i).
Begliarov: Concealment of murder. § 189(1). Refusing to finish a previous sentence in a prison camp. § 188(1).

Allegations
On August 24, 1993, Oleg Gennad’evich Begliarov, Elena Mikhailovna Zaitseva, Zaitseva’s mother, and her mother’s boyfriend, M.F. Cherkasskii, were celebrating Zaitseva’s sister’s birthday. There were hostile feelings between Zaitseva and Cherkasskii, because he abused alcohol and frequently threatened and beat Zaitseva and her mother, even attacking them with a knife. Cherkasskii, Begliarov, and Zaitseva were all very drunk, and when Zaitseva saw Cherkasskii leave the room to lie down she went to her room and retrieved an axe she had hidden under her bed. Holding it behind her back she asked Cherkasskii, “How long are you going to torture us?” She then struck him three times in the cheek and neck, killing him. She returned to the party and told her mother she had put an end to her suffering. They took the body into the yard and Zaitseva dismembered it, placing the torso in one bag and the head and limbs in another. The next morning Begliarov helped her take the body on a bicycle to Paramonovskoe Lake where they hid it among the rocks. On August 27, 1993, they buried the body in the dump in the village of Kliuchi.

On September 20, 1993, Zaitseva again got drunk and took a kitchen knife to the Petukhovskii Soda Factory, where she had once worked, to “clarify the situation” with M.A. Boldykov, the watchman. Boldykov had been instrumental in having her fired for coming to work drunk and stealing soap powder from the factory. She entered the watchman’s room and pulled the telephone cord out of the wall, interrupting a conversation in which Boldykov was involved.

Zaitseva testified that she took the knife, either to scare him, or to underline the seriousness of her complaints, claiming she wanted to know whether Boldykov was spreading rumors that she had contracted a venereal disease. She also claimed he had made an amorous advance towards her. Boldykov claimed she told him that because he had reported the theft to the police and had had her fired that he should now “say goodbye to life” and stabbed him in the chest. He defended himself by hitting her on the head with an iron stove lid, but she stabbed him a second time. He finally wrested the knife away and stabbed her a few times. Zaitseva claimed that he attacked her first with the stove lid, and she defended herself with the knife.

Oleg Gennad’evich Begliarov had been sentenced to nine years in a prison camp in Tiumen Region. In January, 1993, he was given leave to attend his girlfriend’s funeral. He fell ill, was hospitalized, and decided not to finish the last four months of his sentence. Instead, he moved to Altai Region and lived with Zaitseva, waiting for Zaitseva’s divorce to become final. They were married a month or so after Cherkasskii’s murder.

Verdict
Zaitseva: Convicted of all charges.
Begliarov: Convicted as charged. (In Russia, a person cannot be convicted of concealment of the crime of his or her spouse, but Begliarov’s argument that he was Zaitseva’s de facto spouse failed).

Sentence
Zaitseva: The jury recommended lenience and she was sentenced to eight years.
Begliarov: Fifteen months.

Judgment of September 7, 1994 (Nikitin), Altai Territorial Court.508
Judge: A.N. Klimov
Prosecutor: A.P. Zozulia
Defense Counsel: E.V. Okorokova

508 Interview with E.V. Okorokova, Defense Counsel, and A.N. Klimov, Judge, in Altai Territorial Court, Barnaul (Aug. 31, 1994, Sept. 1, 1994, and Sept. 2, 1994). The author also witnessed the final days of testimony, and reviewed the indictment.
Charges

Murder to conceal rape. § 102(e). Rape. § 117(4).

Allegations

Defendant Aleksandr Viacheslavovich Nikitin and the victim both worked at Thermal Electric Plant No. 2 in Barnaul. On December 22, 1993, the plant celebrated "Electricity Day" with festivities in the cafeteria. The defendant and the victim met for the first time, danced, and drank to excess; they were seen kissing and left together at 11:00 P.M. Defendant testified that the victim invited him to her house to engage, he assumed, in sexual intercourse. When they arrived at the victim's apartment, she told the defendant to wait near the garages as she walked toward her building. The defendant, who did not know she lived with her child and her deceased husband's parents, chased after her and brought her back to the garage area. He testified at the preliminary investigation that she agreed to consensual sex in the snow near the garages. After completing intercourse he became angry because she, as he saw it, forced them to make love in the snow instead of her apartment, and strangled her with her own scarf (a task made easier by her extreme drunkenness). He then smoked a cigarette, bought a bottle of vodka and went home to his wife.

At trial defendant changed his testimony. He claimed that he had made love to the victim in the restroom of the cafeteria, and he denied killing her. Nikitin stated that he was coerced into confessing at the preliminary examination by threats to put him into the "happy cell," where people are subjected to homosexual assaults.

Verdict

Convicted as charged.

Sentence

Sentenced to fourteen years.

IVANOVO REGIONAL COURT

IVANOVO-1

Judgment of January 13, 1994 (Korolev), Ivanovo Regional Court.504
Judge: V.L. Solov'ev
Prosecutor: A.G. Korokin
Defense Counsel: E.I. Gradusov

Charges

Aggravated murder of more than one person. § 102(z). Theft of personal property. § 144(2). Intentional destruction of personal property. § 149.

Allegations

On May 21, 1993, defendant G.N. Korolev got drunk with his father. He then went across the hall to the home of his neighbor, Toropov, to swap homegrown tobacco for another bottle of vodka, but Toropov refused. According to the defendant, he was subjected to insulting remarks by Toropov's female companion, Khrenova. Defendant then returned home to get a knife with which he intended to scare the elderly couple, but instead he stabbed them both to death. His defense was that Toropov was "coming at him" and that Khrenova threw a bottle at him. After the stabbings, defendant returned to the victims' home, stole some personal items, and unsuccessfully attempted to set fire to the apartment.

Verdict

Convicted of aggravated murder and theft. Acquitted of intentional destruction of property.

Sentence

Fifteen years.

504 Interview with V.L. Solov'ev, Judge, in Ivanovo (Jan. 13, 1994); interview with A.G. Korokin, Prosecutor, in Ivanovo (Jan. 12, 1994); interview with E.I. Gradusov, Defense Counsel, in Ivanovo (Jan. 12-13, 1994). The author also observed the trial and read the indictment.
IVANOVO-2

Judgment of February 4, 1994 (Sergeev), Ivanovo Regional Court.\(^{505}\)

Judge: V.P. Stepalin
Prosecutor: N.A. Borodin
Defense Counsel: R.A. Galaktionova

Charges

Aggravated murder with extreme cruelty. § 102(g). Malicious hooliganism. § 206(2).

Allegations

On May 12, 1992, in the OK 3/4 Prison Labor Camp, a group of twenty inmates beat A.N. Paukov as punishment for allegedly sodomizing a drunk inmate, V.G. Mesiatsev. A group of prisoners, largely from Mesiatsev's hometown of Shui, had convened an impromptu court and decided that Paukov was guilty of sodomy and had to be punished. Mesiatsev later testified that he was not sodomized.

According to other prisoners, defendant O.P. Sergeev, one of this group of twenty prisoners, in order to improve his status in the camp, chased Paukov out of the barracks and stabbed him at least twenty-five times. After smoking a cigarette, he allegedly returned to the scene of the crime, observed that the victim was still alive, and proceeded to slit his throat. He also stripped until he was naked because, as he admitted later, he knew that the prison guards would not beat him, as beating on naked flesh causes scars. The defendant denied all charges, and testified that the blood found under his nails came from hitting Paukov earlier in the day.

Verdict

Acquitted of all charges.

\(^{505}\) Interview with V.P. Stepalin, Judge, in Ivanovo (Feb. 9, 1994); interview with N.A. Borodin, Prosecutor, in Ivanovo (Feb. 9, 1994); interview with R.A. Galaktionova, Defense Counsel, in Ivanovo (Feb. 10, 1994). The author also reviewed the file and the question list, as well as a local newspaper article, Tok kio the ubil? [Then Who Did the Killing?], Rabochyi Krai, Feb. 10, 1994.

IVANOVO-3

Judgment of February 11, 1994 (Kulakov), Ivanovo Regional Court.\(^{506}\)

Judge: E.V. Kalenov
Prosecutor: I.B. Tsvetkov
Defense Counsel: V.S. Arkharov

Charges

Malicious hooliganism. § 206(2). Theft by force and violence. § 146(b, v, e). Aggravated murder for personal gain and to conceal theft. § 102(a, e). Attempted rape of a minor. § 117(3).

Allegations

Evidence at the trial showed that defendant S.V. Kulakov, after getting very drunk with friends at a dance, went to S.A. Eremin's house in the village of Emel'ianovo at about 2:20 A.M. After ringing the bell, defendant uttered profanities to Eremin and punched him in the face before being chased away.

At about 6:00 A.M. the same night in the village of Khotomil', N.V. Khustochka allegedly awoke in her house to find defendant standing over her with a woodsplitter in his hands and a "crazed look" in his eyes. Defendant went towards Khustochka, dropped the woodsplitter, unzipped his pants and said he was "going to get her." Khustochka woke up her seventeen-year-old daughter, Zhanna, and ran to their neighbors for help.

When Khustochka returned, she found defendant on top of her daughter, strangling her; both she and Zhanna testified that defendant was attempting to kill Zhanna. Khustochka hit the defendant with a wooden barn door bolt while her neighbor beat him with his fists. The defendant then ran out of the house, pants in hand, swam across the river to his house, and went to sleep. Khustochka subsequently found her elderly father, V.F. Zheleznov, in his bed with his head crushed by a heavy blunt object. Blood matching Zheleznov's was later found on the woodsplitter. The victim's lacquer boxes were found near the river with the defendant's fingerprints on them; Zheleznov's wallet was missing.

\(^{506}\) Interview with E.V. Kalenov, Judge, in Ivanovo (Feb. 10, 1994); interview with I.B. Tsvetkov, Prosecutor, in Ivanovo (Feb. 10, 1994); interview with V.S. Arkharov, Defense Counsel, in Ivanovo (Feb. 10, 1994). The author observed the trial, and reviewed the file and the Supreme Court opinion.
At the opening of the trial, defendant pled guilty to all charges but claimed he was unable to tell his story because, he said, he was too drunk and did not remember anything. In a videotaped statement provided by the prosecution, defendant, prodded by investigators, admitted to the version of the crimes included in the indictment but repeated that he did not remember the facts.

Verdict

Convicted of malicious hooliganism and of infliction of minor bodily injury. Acquitted of theft by force and violence, aggravated murder, and attempted rape.

Sentence

Five and one half months, with credit for time served.

Appeal

Rejected by Supreme Court. Decision of Apr. 20, 1994, Supreme Court, Case No. 7-kp-094-7sp.

IVANOVO-4

Judgment of February 24, 1994 (Troitskii, Artemichev, and Savintseva), Ivanovo Regional Court.507

Judge: I.S. Chumina
Prosecutor: A.N. Emel’ianov
Defense Counsel: A.G. Blinova (for Troitskii), E.Iu. Drondina (for Artemichev), A.G. Benin (for Savintseva)

Charges

Troitskii: Aggravated murder with exceptional cruelty. § 102(g). Two counts of theft. § 144(3).
Artemichev: Theft. § 144(3).
Savintseva: Theft. § 144(3).

Allegations

On September 28, 1992, defendant Evgenii Nikolaevich Troitskii, who was drunk, went to A.A. Zaikin’s apartment to buy some vodka. Zaikin, who had been diagnosed as suffering from schizoid psychopathy, and Troitskii argued over the price. Zaikin seized a knife, which Troitskii wrestled away from him; Troitskii then seized some barbells and pummelled the victim in the head and body with the weights until he was dead.

Troitskii told his friends, co-defendants Vadim Ivanovich Artemichev and Galina Ivanovna Savintseva, who also lived in the same building and were also drunk, of the incident. They went to see Zaikin’s body and, after determining he was dead, decided to steal clothing and household items from the apartment. After the defendants resumed drinking, Troitskii returned to the apartment to steal some additional items. All defendants admitted their guilt and they returned most of the stolen property to Zaikin’s mother. Troitskii claimed self-defense.

Verdict

Troitskii: Convicted of aggravated murder and of both thefts, but the jury recommended lenience on the murder charge.
Artemichev and Savintseva: Convicted.

Sentence

Troitskii: Ten years.
Artemichev: Three years.
Savintseva: Two years with a condition of treatment for alcoholism.

Appeal

Rejected by the Supreme Court. Decision of Sept. 6, 1994, Case No. 7-kp-094-11sp.

IVANOVO-5

Judgment of April 6, 1994 (Fokin), Ivanovo Regional Court.508

Judge: I.S. Chumina
Prosecutor: S.Iu. Rastorguev
Defense Counsel: I.A. Frolova

Charges

Rape of a child. § 117(4).

507 Interview with I.S. Chumina, Judge, in Ivanovo Regional Court (Aug. 16, 1994). The author also reviewed the judgment, the question list, and the indictment.

508 Interview with I.A. Frolova, Defense Counsel, in Suzdal’ (Apr. 21, 1994); interview with I.S. Chumina, Judge, in Ivanovo Regional Court (Aug. 16, 1994). The author also reviewed the indictment, the judgment, and the question list.
Allegations

Defendant Stanislav Ivanovich Fokin admitted to oral copulation on October 14, 1993, with a twelve-year-old girl who lived in his building. He testified that it was a consensual act, while she said he forced her into the building, undressed her, kissed her body and forced her to perform the act. She had bruises on her shoulder to confirm this. Apparently, Fokin was drunk.

Verdict

Convicted of lewd conduct with a juvenile (§ 120). Jury found that the specific act of oral copulation had not been proved, and also found that defendant knew the victim was a juvenile, but did not know that she was under fourteen.

Sentence

Three years (maximum sentence).

IVANOVO-6

Judgment of May 10, 1994 (Sokolov), Ivanovo Regional Court.509

Judge: I.S. Chumina
Prosecutor: A.N. Emel’ianov
Defense Counsel: P.P. Nizovtsev and G. V. Romanov

Charges

Two counts of rape-murder. §§ 117(4), 102(e), 102 (e, i).

Allegations

On May 10, 1993, defendant Aleksandr Viktorovich Sokolov was drunk and lured a five-year-old girl, who was riding her bicycle, away from her house in the village of Tepliaki, Savinskii Raion, to a grove of alder trees near the Uvod’ River. Defendant undressed and raped her. To prevent the discovery of the crime he struck the child in the head several times with a board, killing her.

The victim was the daughter of one of his friends who had seen the defendant walking off with her. The defendant admitted this crime to the investigators, but claimed she kept bothering him while he was fishing so he hit her a few times, then decided to rape her. A group of “Pioneers” (a former Communist children’s organization) scoured the area and found the body. At trial defendant denied having committed the crime.

After defendant was arrested for the May 10 killing, officers investigating the May 4 killing of a nine-year-old girl interviewed him. He confessed to that killing, saying he lured the girl away from the “Verendeekva” Pioneer Park in Shuia, took her to the woods near the village of Orlovo, Shuiskii Raion, raped her, choked her to death, and threw the body into a river. Later he denied the rape-murder, claiming investigators had coerced him into confessing. When it was found, the girl’s body had been decomposed and damaged by wild animals; neither the cause of death nor the fact of rape could be shown.

Defendant’s first lawyer took the position that he was guilty of the May 10 killing, but innocent of the May 4 one. Defendant denied both murders and fired his first lawyer just before the closing arguments. A new lawyer was given one and a half weeks to familiarize himself with the case and gave the closing argument.

Verdict

Acquitted of the May 4 rape-murder, convicted of the May 10 rape-murder.

Sentence

Fifteen years.

Appeal

Rejected by the Supreme Court. Decision of Sept. 6, 1994, Case No. 7-kp-094-18.

IVANOVO-7

Judgment of June 17, 1994 (Razov), Ivanovo Regional Court.510

Judge: E.V. Kalenov
Prosecutor: N.N. Mikhailov
Defense Counsel: A.V. Kurnysheva

Charges

Two counts of passing counterfeit money. § 87(1).

509 Statement by P.P. Nizovtsev, first Defense Counsel, in Suzdal’ (Apr. 20, 1994) (statement describing the facts of the case); interview with I.S. Chumina, Judge, in Ivanovo Regional Court (Aug. 16, 1994). The author also reviewed the indictment, the judgment, and the question list.

510 The author reviewed the indictment, the question list, and the verdict.
Allegations

Defendant Evgenii Vital’evich Razov allegedly obtained two counterfeit 50,000-ruble notes at the Ivanovo train station in November 1993. On February 23, 1994, he allegedly asked a friend to buy some wine with one of the notes, and she brought back 47,980 rubles in change and two bottles of wine. On February 24, 1994, defendant tried to buy some crackers in Ivanovo but the saleswoman recognized the note as being counterfeit. Defendant ran out of the store, but was apprehended.

Verdict

Acquitted of passing the first 50,000-ruble note, guilty of attempting to pass the second note, but not guilty of intending to put counterfeit money into circulation. The jury recommended special leniency.

Sentence

The judge qualified the crime as an attempted theft by deception (§§ 15, 147(1)) and fined defendant the equivalent of three months’ salary.

Appeal

Judgment reversed by Supreme Court due to errors in the question list and qualification of defendant’s acts. Decision of Sept. 20, 1994, Case No. 7-kp-094-21sp.

IVANOVO-8
Judgment of July 25, 1994 (Krest’ianinov), Ivanovo Regional Court.511

Judge: E.V. Kalenov
Prosecutor: N.N. Mikhailov
Defense Counsel: L.A. Romanova

Charges

Two counts of aggravated murder of two persons with exceptional cruelty. §§ 102(v, g, z). Infliction of minor bodily injury on a person who was trying to prevent the commission of the murders. § 193(2).

511 The author reviewed the file, the question list, and the judgment.

Allegations

On September 7, 1993, defendant Sergei Valer’evich Krest’ianinov, defendant’s father, V.A. Paniutin, Paniutin’s wife (A.Iu. Paniutina), and her brother (V.Iu. Pimenov) were drinking in defendant’s apartment. Defendant’s father fell asleep, and Paniutin and Pimenov left. Paniutina stayed, and when the defendant insisted she leave, she refused, claiming he owed her 500 rubles. Defendant later stated that he thought she was trying to incite a rape. Pimenov and Paniutin came back to get her, and she again tried to enter the house. The defendant barred the door, threatened to kill her, hit her in the face, and went back into his apartment. Pimenov left; Paniutina called the defendant a choknut (crazy person) and chased him back into the house. Paniutin followed. Defendant grabbed a bottle, broke it and cut Paniutina’s face. During an altercation with Paniutin, Krest’ianinov cut him over ninety times, killing him. He then began to stab Paniutina with a fork. When she died, she had been wounded no fewer than thirty-five times by both the fork and a broken bottle.

The defendant’s father woke up during the battle, and tried to stop his son until the defendant attacked him with the bottle, cutting him in the hand, and punched him in the face; the father retreated to his room. The next afternoon he bound and tied his sleeping son and called the police. Defendant admitted the killings but claimed he was in a heat of passion caused by Paniutina calling him a choknut and Paniutina jumping on him and choking him.

Verdict

Convicted of murdering both victims with exceptional cruelty, acquitted of having attacked his father who had tried to prevent the crime. The jury found he deserved leniency.

Sentence

Eleven years.

IVANOVO-9
Judgment of July 27, 1994 (Andreev), Ivanovo Regional Court.512

Judge: I.S. Chumina
Prosecutor: M.V. Tymochko

512 Interview with I.S. Chumina, Judge, in Ivanovo Regional Court (Aug. 16, 1994). The author also read the indictment, the judgment, and the question list.
Defense Counsel: T.N. Abozina

Charges

Aggravated robbery. § 146(2)(b, v, e). Murder with exceptional cruelty. § 102(a, g, e).

Allegations

Defendant Oleg Vladimirovich Andreev had lost his job and had been kicked out of the house where he had lived with his wife, two children, and his mother. A.M. Iakusheva, a seventy-six-year-old woman who lived alone in the village of Sokol'skoe helped, fed, and employed him. On April 7, 1993, defendant told her of the problems in his life and she criticized him, calling him a weakling. The defendant testified that he was insulted, so he left her house, found a brick, and decided to avenge the insult. He returned and hit her on the head with the brick several times. Thinking she was dead, he stole money (9000 rubles) and some other items (sugar, candy, and a milk bottle with some moonshine in it). Defendant "then heard a groan. Fearing that she would recover and report "Jilll tQ. the police, he wrapped the brick in a shet, an~ hit her th it until she died. In all she was struck fifteen times with the brick.

Verdict

The prosecutor dropped the robbery charge and the charge of murder with exceptional cruelty, alleging that defendant committed a theft of personal property (§ 144(2)) and murder to prevent discovery of the theft (§ 102(e)); the defense counsel argued there was no intent to kill. The jury found the defendant guilty of the theft and aggravated murder but found he deserved lenience.

Sentence

Eleven years.

Krasnodar Territorial Court

Krasnodar-I

Judgment of May 16, 1994 (Shevchenko and Evenko), Krasnodar Territorial Court.513

513 Interview with V.M. Epifanov, Judge, at Krasnodar Territorial Court (Sept. 14, 1994); interview with V.V. Kolesnik, Defense Counsel, in Krasnodar (Sept. 12-13, 1994); see also Verdikt prisiazhnykh: Vinoven [The Jury's Verdict: Guilty] Rossiskaya Gazeta, July 12, 1994;

Judge: V.M. Epifanov

Prosecutor: V.T. Putimtsev

Defense Counsel: B.P. Chepurnoi (for Shevchenko) and V.V. Kolesnik (for Evenko)

Charges

Evenko: Two counts of aggravated robbery. § 146(2)(a, b, v, d). Two counts of aggravated murder. § 102(a, e, i).

Shevchenko: Three counts of aggravated robbery. § 146(2)(a, b, v, d). Two counts of aggravated murder. § 102(a, e, i). One count of murder with exceptional cruelty. § 102(a, g, e). Possession of hashish and marijuana. § 224(1).

Allegations

Defendants Iurii Mikhailovich Shevchenko and Aleksandr Leonidovich Evenko met while serving time for previous crimes. On March 21, 1992, Shevchenko talked Evenko into helping him steal a car. When Evenko asked if it would be "without corpses," Shevchenko responded in the affirmative. They negotiated a ride with I. N. Savinko at the Armavir bus station and drove in the direction of the "Golden Colossus" collective farm, near Sovetskoi Station, Novokubanskii Raion. As they were driving in an unpopulated area, Shevchenko slipped a noose around Savinko's neck and strangled him to death while Evenko slipped into the driver's seat and grabbed the wheel. Defendants put Savinko's body in the trunk, drove to the Urup river, stripped off his jeans, and threw the body into the river. They stole a small amount of money, the jeans, and the car. Evenko admitted his part in the crime, but claimed he did not know Shevchenko was going to kill Savinko, and that he did not assist in the killing. Shevchenko denied the charges, claiming that Evenko committed the murder.

On October 8, 1992, defendants again negotiated a ride with an elderly motorist acting as a private taxi-driver, S.I. Chekmak. Chekmak took them from the Otradnoi bus station to the area of the Zaria collective dairy farm in Otradenskii Raion, when Shevchenko began to strangle Chekmak with a piece of cord while Evenko took over the controls. Chekmak did not die easily, and Shevchenko pulled him into the backseat and used Chekmak's own belt to finish the job after his cord broke. Evenko admitted

Tak reshil sud prisiazhnykh [Thus the Jury Decided], Kubanskiy Krai, Sept. 2-9, 1994. The author also reviewed the indictment, the question list, and the judgment.
participating in the robbery, and implicated Shevchenko for the murder. Shevchenko placed the entire blame on Evenko.

On November 20, 1992, Shevchenko went to the house of an old woman who allegedly owed some money to one of Shevchenko’s relatives. She was thought to have been in possession of a large sum of money. Shevchenko punched and kicked her over thirty times, trying to get her to tell him where her money was. He then bound her hands and feet and hit her four times in the head with a hammer, killing her. He stole her state privatization voucher, worth 10,000 rubles, and 1500 rubles in cash. Shevchenko denied the murder charges, changing his story several times, claiming others had killed the old woman. When he was arrested, the voucher and forty-seven grams of hashish were found in his room.

After his arrest for the old woman’s murder, Shevchenko wrote a statement linking Evenko to the murders of the motorists. Only then was Evenko arrested, and he promptly declared that Shevchenko was the killer. Shevchenko claimed that the police beat him into making his statement.

Verdict

Shevchenko: Convicted as charged.

Evenko: Convicted of the robbery-murder of Chekmak and the robbery of Savinko. The jury recommended lenience.

Sentence

Shevchenko: Sentenced to death.

Evenko: Sentenced to eleven years.

KRASNODAR-2

Jury Discharged May 17, 1994 (Odikadze), Krasnodar Territorial Court.514

Judge: S.N. Tkachev
Prosecutor: T.S. Negliad
Defense Counsel: B.S. Napso

KRASNODAR-3

Judgment of June 9, 1994 (Mishkin), Krasnodar Territorial Court.515

Judge: N.A. Ponomarenko
Prosecutor: L.N. Poliantseva
Defense Counsel: Iu.G. Zakharov

Charges

Passing counterfeit money. § 87(1).

Allegations

Defendant Anzori Omarovich Odikadze was charged with having tried, twice, to murder F.F. Morozov in May 1993, once with a pistol, and once, on the night of May 23, 1993, by climbing a ladder and releasing a grenade into Morozov’s second story apartment in the city of Tuapse. The grenade did not explode.

At trial defendant denied the charges, stating that his earlier confession, in which he stated that he acted alone, was coerced. But the victim testified that he could not move the fifty-nine-kilogram metal ladder away from his window without the help of a neighbor, and he also testified that an eyewitness, who was not questioned, saw two people emerge from a car that had driven up to his house and that the two of them had set up the ladder.

Results

Defense counsel moved, with the approval of defendant, to return the case for further investigation to see if it would have been possible for defendant alone to move the metal ladder. The judge granted the motion and also ordered the interrogation of the newly discovered eyewitness.

514 Interview with S.N. Tkachev, Judge, at Krasnodar Territorial Court (Sept. 13, 1994). The author also reviewed the order returning the case for supplementary investigation.

515 Interview with N.A. Ponomarenko, Judge, in Krasnodar Territorial Court (Sept. 14, 1994). The author also reviewed the question list and the judgment.
Allegations

On January 23, 1994, defendant Vladimir Ivanovich Mishkin allegedly used a counterfeit 50,000-ruble bill to try to buy some candy at a kiosk at the Starominski bus station. The salesman noticed it was fake and returned it. Later that day defendant passed the bill to A.N. Radchevskii to pay off a debt owed to Radchevskaia’s mother. Defendant denied he knew the bill was counterfeit.

Verdict

Defendant was unanimously acquitted.

KRASNODAR-4

Judgment of June 28, 1994 (Lebedev), Krasnodar Territorial Court.516

Judge: N.A. Ponomarenko
Prosecutor: M.P. Kuz’min
Defense Counsel: M.A. Gin

Charges

Aggravated murder by means likely to cause injury to more than one person. § 102(d). Attempted aggravated murder. §§ 15, 102(d, e).

Allegations

Tamara Khromykh, her son E.V. Sorokin and her husband G.F. Iamskoi, refugees from Abkhazia, lived in a trailer in a rural area near Goriachii Kliuch-Khaduzhensk. A tense situation developed between them and defendant Aleksandr Valentinoovich Lebedev, a beekeeper, who felt these unwanted newcomers disturbed his bucolic way of life. On October 10, 1993, Sorokin hit the defendant over the head with a metal bar and stabbed him, putting him into the hospital. Lebedev allegedly swore revenge, and around midnight on October 11, 1993, someone fired a shotgun into the trailer. The dog didn’t bark, apparently knowing the assailant. Sorokin was not at home, but Khromykh was hit in the stomach. When an ambulance finally came at 8 A.M. the next morning, Iamskoi had already cleaned all of the blood from the trailer. Before

516 Interview with N.A. Ponomarenko, Judge, in Krasnodar Territorial Court (Sept. 14, 1994); interview with M.A. Gin, Defense Counsel, in Krasnodar (Sept. 12–13, 1994). The author reviewed the question list and the judgment; see also Tak kim to she ublica? [Then Who’s the Killer?], KURANSKI KRAI, Sept. 2–9, 1994.

Khromykh died, she was asked who did it, and she answered, “my husband.”

Iamskoi was arrested, but he denied the charges and blamed the defendant. Defendant, after initially denying the charges, eventually confessed to the police, claiming he had sneaked out of his hospital room, gotten his shotgun, and fired at the trailer. At trial he repudiated his confession, claiming that the police had told him it would be better if he confessed; he believed that his wife would be in danger if he did not confess.

Iamskoi was remarried just one month after his wife died, and Sorokin, who was also a suspect, did not even attend his mother’s funeral.

Verdict

Defendant was acquitted.

KRASNODAR-5

Jury discharged August 30, 1994 (Sukhenko), Krasnodar Territorial Court.517

Judge: N.V. Nesterenko
Prosecutor: N.A. Iakovleva
Defense Counsel: A.N. Boltov

Charges

Rape of a child. § 117(4). Rape of a minor. § 117(3).

Allegations

Defendant Viktor Vasil’evich Sukhenko was charged with systematic rape by use of threats of physical force, and taking advantage of his stepdaughter over a fifteen-year period from January 21, 1978, to August 8, 1993.

Verdict

A jury of ten men and two women were selected as regular jurors, with two alternates. The defense counsel moved to discharge the panel, believing it could not be fair in such a case. The judge granted the motion over the objection of the prosecutor.

517 The author reviewed the order discharging the jury.
KRASNODAR-6
Judgment of September 14, 1994 (Sherstnev), Krasnodar Territorial Court.518
Judge: N.A. Ponomarenko
Prosecutor: N.V. Bort
Defense Counsel: R.F. Kosimov

Charges
Two counts of aggravated murder. § 102(z). Illegal possession of a knife. § 218(2).

 Allegations
On November 7, 1993, defendant I.F. Sherstnev, who was drunk, got into an argument with his wife, T.A. Sherstneva, at their home in Slaviansk-on-the-Kuban. He then decided to visit his parents in Vyborg and take their son Zhenia with him. His wife had told her older son Pavel (who had a different father) to go summon her parents, in order to stop the defendant from taking Zhenia away. Defendant claimed that, after he had chased his wife back into the house, his mother-in-law, E.A. Perekrestova, arrived and attacked him. Sherstneva yelled: "He has a knife," and Perekrestova answered, "I don't care, I'm not afraid."

Defendant testified that when his wife mentioned his knife he pulled it out and stabbed Perekrestova, just to keep her away from him, not to kill her. After he stabbed Perekrestova, his wife lunged at him and he stabbed her. Both women died of stab wounds two days later. Defendant claimed he was in a fog (he is an alcoholic) and did not want to kill either woman. At the preliminary examination, however, he had said that he intended to kill them both because they were constantly bothering him and getting in his way.

Defendant was arrested at a train station, and the knife was in his possession. Sherstneva's oldest son said that defendant constantly threatened people with his knife.

Verdict
Convicted of illegal possession of a knife. The jury found that defendant inflicted the knife wounds without intent to kill and

518 Interview with N.A. Ponomarenko, Judge, in Krasnodar Territorial Court (Sept. 14, 1994); interview with R.F. Kosimov, Defense Counsel, and N.V. Bort, Prosecutor, in Krasnodar Territorial Court (Sept. 13, 1994). The author also reviewed the indictment and the question list, and observed the judge's summation and the announcement of the verdict.

1995 The Resurrection of Trial by jury in Russia
while in a heat of passion (§ 110), and recommended lenience on the assault count.

Sentence
Three years, three months.

MOSCOW REGIONAL COURT

MOSCOW-1
Judgment of December 28, 1993 (Slonchakov and Chernikov), Moscow Regional Court.519
Judge: N.V. Grigor’eva
Prosecutor: M.A. Gaisinovich
Defense Counsel: S.E. Ermakova (for Slonchakov); A.P. Lopin (for Chernikov)

Charges
Slonchakov: Two separate counts of murder. §§ 103, 102(i). Burglary. § 144(3).

Chernikov: One count of being an accessory after the fact to murder. § 189(1).

 Allegations

In December 1989 Kulagina asked Slonchakov (who was drunk) to come to her house, because her husband, Kulagin (who was also drunk), had been beating her. Defendant Sergei Nikolaevich Chernikov, Kulagin’s wife, and Kulagin’s daughter (Chernikov’s wife) were at the house when Kulagin threatened to rape daughter in front of Chernikov. A fight started, and there was evidence that Slonchakov strangled Kulagin while he was helpless on the floor. The two defendants put Kulagin’s body on a sled and

519 Interview with N.V. Grigor’eva, Judge, in Moscow Regional Court (Jan. 4, 1994); interview with M.A. Gaisinovich, Prosecutor, in Moscow Regional Court (Jan. 10, 1994); interview with S.E. Ermakova, Defense Counsel, in Pavlovskii Posad (Jan. 5, 1994); interview with A.P. Lopin, Defense Counsel, in Moscow (Jan. 20, 1994). The author also witnessed the trial, and reviewed the indictment and the question list.
pulled it to the Kliazma River where they cut a hole in the ice and threw the body in.

On April 26, 1993, Novikov was drunk and tried to make his daughter, Slonchakov's girlfriend, give him money to buy vodka. Slonchakov, who was also drunk, began fighting with Novikov, and allegedly also strangled him to death. Slonchakov claimed at trial that Novikov pulled a knife on him, and denied any intent to kill. Slonchakov disposed of the body in the Vokhna River.

Verdict

Slonchakov: Acquitted of Kulagin's murder, convicted of the intentional murder of Novikov and of the burglary. The jury recommended leniency for the murder conviction.

Chernikov: Convicted, but the judge set aside the conviction because Slonchakov's acquittal made this verdict legally untenable.

Sentence

Slonchakov: Six years.

Appeal

Supreme Court rejected appeal by prosecution. Decision of Mar. 2, 1994, Case No. 4-kp-094-15sp.

MOSCOW-2

Jury discharged January 18, 1994 (Saltykov, Gerasimov, Gusev), Moscow Regional Court.\(^{520}\)

Judge: V.G. Letiagin
Prosecutor: V.V. Belich
Defense Counsel: A.N. Rozhkov (for Saltykov), V.G. Avetian (for Gerasimov), and R.V. Shvarskiene (for Gusev)

Charges

Saltykov: Aggravated robbery-murder with exceptional cruelty. §§ 102(a, g), 146(2)(a).
Gerasimov: Aggravated robbery-murder with exceptional cruelty. §§ 102(a, g), 146(2)(a).

Gusev: Aggravated robbery-murder with exceptional cruelty. §§ 102(a, g), 146(2)(a).

Allegations

In a statement to investigators, Aleksei Gerasimov said that he and the other defendants were drunk and lured V.V. Abdalin, an alcoholic, away from the beer dispensary at the Vinogradov train station, Voskresenski Raion, into a wooded area where they beat him to death, and stole his money to buy more alcohol, on September 14, 1992. At trial all three defendants denied the charges. Gerasimov testified that he had been beaten by the police and had been promised release if he confessed. Piskulov and Puzin, two other alcoholics, testified that they had seen the victim on September 15, 1992, after he had allegedly been killed by the defendants, contradicting their earlier testimony to investigators that they had last seen him on September 8.

Verdict

The prosecutor moved to dismiss the case for insufficient evidence, claiming an uncorroborated confession was inadequate basis for a guilty verdict. He went on to state that he himself had some doubt as to the guilt of the defendants. Abdalin's widow objected to the dismissal and the judge returned the case for further investigation based on the "new evidence" (the testimony of Piskulov and Puzin). (See MOSCOW-21, infra, for the retrial.)

MOSCOW-3

Judgment of January 25, 1994 (Bogatyrev), Moscow Regional Court.\(^{521}\)

Judge: Iu.B. Tutubalin
Prosecutor: A.V. Sokin
Defense Counsel: V.N. Sharkov

Charges

Aggravated murder committed by an especially dangerous recidivist. § 102(1).

\(^{520}\) Interview with V.V. Belich, Prosecutor, A.N. Rozhkov, V.G. Avetian, and R.V. Shvarskiene, Defense Counsel, in Moscow Regional Court (Jan. 18, 1994); interview with V.G. Letiagin, Judge, in Moscow Regional Court (Jan. 19, 1994). The author observed the first, sixth, and seventh days of the trial, and reviewed the orders setting the case for trial and returning the case for further investigation.

\(^{521}\) Interview with Iu.B. Tutubalin, Judge, in Moscow Regional Court (Jan. 24, 1994); interview with A.V. Sokin, Prosecutor, in Moscow Regional Court (Jan. 25, 1994); interview with V.N. Sharkov, Defense Counsel (several meetings throughout the trial). The author observed the entire trial, examined the file, and reviewed the Supreme Court decision.
Allegations

The events of this case took place on June 4, 1993, in the village of Ostrovtsy, Ramensk Raion. The testimony of the defendant Igor' Viktorovich Bogatyrev and five other eyewitnesses agreed that the victim challenged the defendant to armwrestle. The defendant won, infuriating the victim, who, when drunk, liked to show his strength. As defendant exited the house, the victim followed and began kicking him and hitting him. The defendant left, but apparently found an axe on the way home and decided to return to confront the victim. Witnesses said they saw the defendant, with an axe in one hand and a knife in the other, approach the house. The defendant retreated after one of the victim's friends brandished a shovel.

The victim allegedly asked his friends to accompany him to the bus station. As he was walking with his three escorts he suddenly charged at the defendant, who was standing behind a sandpile, and was mortally stabbed. The defendant testified that the victim lunged at him, exclaiming he was going to kill him, and he held the knife to his chest in self-defense. During the closing argument, the aggrieved brother of the deceased told the jury that the defendant was a "very dangerous man" who had spent seventeen years in prison camps.

Verdict

The jury narrowly (7-5) found the defendant guilty of intentional murder and recommended lenience. The judge found the defendant guilty of aggravated murder due to his criminal record.

Sentence

Twelve years.

Appeal

Rejected by the Supreme Court. Decision of Apr. 26, 1994, Case No. 4-kp-094-61sp.

MOSCOW-4

Judgment of January 31, 1994 (Kuzenko), Moscow Regional Court.522

Judge: A.A. Dzyban
Prosecutor: Iu.L. Sobina
Defense Counsel: I.D. Brovikova

Charges

Aggravated murder out of hooliganistic motivation. § 102(b).
Making death threats. § 207.

Allegations

On June 9, 1993, defendant Aleksandr Evgen'evich Kuzenko got drunk and went to the livestock factory in the village of Krasnyi Kotelshchik, Stupinskii Raion, where he and the victim worked. He found the victim and Tsvetkov playing cards and began to beat the victim, who was deaf. He pulled the victim outside, and when the victim tried to escape, he stabbed him four times in the back, killing him. He returned to the building and asked Tsvetkov to help him dispose of the body, which was thrown into a garbage pit. Defendant denied threatening Tsvetkov and said he killed the victim because he had insulted him the week before. At the preliminary investigation Tsvetkov testified that defendant had threatened to kill him if he did not help dispose of the body.

Verdict

Convicted of aggravated murder. Acquitted of the death threat.

Sentence

Twelve years.

MOSCOW-5

Judgment of March 1, 1994 (Terekhov), Moscow Regional Court.523

Judge: N.V. Grigor'eva
Prosecutor: Iu.L. Sobina
Defense Counsel: N.F. Katasonov

522 Interviews with A.A. Dzyban, Judge, Iu.L. Sobina, Prosecutor, and I.D. Brovikova, Defense Counsel, in Moscow Regional Court (Jan. 28, 1994). The author observed the entire trial and reviewed the file.

523 Meetings with Iu.L. Sobina, Prosecutor, and N.F. Katasonov, Defense Counsel, in Moscow Regional Court (Mar. 4, 1994). The author also reviewed the file and the judgment, and witnessed parts of the trial, including the closing arguments.
Charges

Aggravated murder with exceptional cruelty. § 102(g).

Allegations

On March 24, 1993, in the town of Liubertay, defendant Aleksandr Fedorovich Terekhov and his brother had become drunk. The defendant claimed his brother attacked him with a kitchen knife and that he disarmed his brother as they fought. Then they sluggedy each other and the brother fell and later died. Defendant claimed that he did not intend to kill his brother. The victim had a blood alcohol content of 0.46. The defendant was diagnosed as having a psychopathic personality, but legally competent.

Verdict

Guilty of intentional murder without aggravating circumstances (§ 103) but deserving of lenience.

Sentence

Five and one half years.

MOSCOW-6

Judgment of March 9, 1994 (Mikhalev), Moscow Regional Court.

Judge: N.V. Grigor'eva
Prosecutor: Iu.L. Sobina
Defense Counsel: V.P. Khalmosh

Charges

Aggravated murder with exceptional cruelty. § 102(g).

Allegations

Defendant Sergei Anatol'evich Mikhalev testified that, on November 29, 1993, he and his common-law wife, Marina Sazhena, got drunk, and he went to sleep. He allegedly awoke to find her dead from over 100 blows to the body. He denied having killed her but could not explain what might have happened.

1995 The Resurrection of Trial by Jury in Russia 179

Verdict

Convicted as charged.

Sentence

Twelve years.

Appeal

Rejected by the Supreme Court. Decision of Apr. 25, 1994, Case No. 4-kp-094-66sp.

MOSCOW-7

Judgment of March 18, 1994 (Dubrovin), Moscow Regional Court.

Judge: S.V. Marasanova
Prosecutor: N.V. Teplova
Defense Counsel: T.K. Dolbneva

Charges

Rape of a minor. § 117(4).

Allegations

On August 14, 1993, defendant Oleg Petrovich Dubrovin got drunk and went to the train station in the village of Vasilevo, Pushkinski Raion. He sat next to a thirteen-year-old girl on the platform. He maintained he was protecting her from some drunk youngsters on the platform, but she testified that he grabbed her by the hand, pulled her into the forested area 250 meters from the platform and threatened to kill her if she did not submit to sexual intercourse. He undressed her and raped her twice, damaging her hymen and vagina. The defendant claimed the sex was consensual and he thought she was sixteen or eighteen years old.

Verdict

Convicted as charged; the jury recommended lenience.

Sentence

Eight years.

The author reviewed the file and the judgment.
MOSCOW-8

Jury discharged March 25, 1994 (Andreev), Moscow Regional Court.526

Judge: N.V. Grigor'eva
Prosecutor: Iu.L. Sobina
Defense Counsel: A.S. Gusev

Charges

Intentional murder and attempted aggravated hooliganistic murder by one who had earlier committed a murder. §§ 103, 15, 102(b, i).

Allegations

Defendant Igor' Anatol' evich Andreev was charged with the intentional murder of Ivakin on October 31, 1993, and with attempting to murder A.V. Gavrilov on November 6, 1993, both in Pavlovskii Posad. Defendant denied the charges, claiming he stabbed Ivakin with a sharpened piece of metal in self-defense and that he accidentally wounded Gavrilov in the neck with a trinket in the shape of a woman's shoe when he shoved him.

Gavrilov testified that the drunk defendant attacked him with a knife, and the defendant's girlfriend said that he had told her he murdered Ivakin. Ivakin's mother looked at pictures of the dead man and could not identify him as her son. The police had not asked her to identify the body and she had not known her son was dead until after the burial.

The Prosecutor moved to return the case for further investigation, for the purpose of exhuming the body. Defense counsel did not object and the jury was discharged. The body was exhumed and the mother was still not able to identify the dead person as her son. The case was set for trial a second time, a second jury was selected, but Gavrilov did not appear.

Result

The case was suspended and had not been resumed as of October 1, 1994.

526 Conversation with Iu.L. Sobina, Prosecutor, in Moscow Regional Court (Mar. 1994). The author also reviewed the notes of a law student who observed this trial, and reviewed the order discharging the jury.

MOSCOW-9

Judgment of April 7, 1994 (Krasotkin), Moscow Regional Court.527

Judge: N.V. Grigor'eva
Prosecutor: Iu.L. Sobina
Defense Counsel: L.P. Liubimtseva

Charges

Aggravated murder committed by an especially dangerous recidivist. § 102(1).

Allegations

Defendant Pavel Pavlovich Krasotkin and V.K. Shelopaev got into an argument and a fight while drunk on December 28, 1992, in Orekhova-Zuevo. Defendant stabbed the victim dead in the heart with a knife. Defendant had been declared to be an "especially dangerous recidivist" by a Kazakhstan court.

Verdict

Guilty of intentional murder; the jury recommended lenience.

Sentence

Ten years.

Appeal

Rejected by the Supreme Court. Decision of June 21, 1994. Case No. 4-kp-094-81sp.

MOSCOW-10

Judgment of April 8, 1994 (Tomilov), Moscow Regional Court.528

Judge: Iu.B. Tutubalin
Prosecutor: G.V. Rogacheva
Defense Counsel: E.Iu. L'vova

Charges

Rape of a child. § 117(4). Making a death threat. § 207.

527 The author reviewed the judgment and the question list.
528 Interview with E.Iu. L'vova, Defense Counsel, in Suzdal' (Apr. 18, 1994). The author also reviewed the question list and the judgment.
Allegations

Defendant Dmitrii Viktorovich Tomilov, previously convicted of rape of a child, admitted to forcing a twelve-year-old girl to submit to his oral copulation of her vagina on June 21, 1993, in the city of Peutov. He expressed remorse, and claimed he did not know she was only twelve years old. The defense argued that this conduct only amounted to lewd conduct, not rape.

Verdict

Guilty of the death threat and of having committed a lewd act with a minor (§ 120).

Sentence

Three years (maximum sentence).

Appeal

Rejected by the Supreme Court. Decision of June 6, 1994, Case No. 4-kp-094-74sp. The Plenum of the Supreme Court vacated the Cassational Panel’s decision and reversed the judgment, remanding the case for retrial.

MOSCOW-11

Judgment of April 22, 1994 (Shcherbakov), Moscow Regional Court.

Judge: N.V. Grigor’eva
Prosecutor: Iu.L. Sobina
Defense Counsel: V.E. Liliutin

Charges

Two counts of accepting bribes in exchange for the fulfillment or non-fulfillment of official duties. § 173(3).

Allegations

Defendant Iurii Mikhailovich Shcherbakov was the head of administration of the Nikol’skii Village Council in Odintsovskii Raion. Evidence was admitted concerning an alleged bribe of 100,000 rubles in January 1993 from M.A. Vlasov, in exchange for allocation of a parcel of land. Shcherbakov was also charged with receiving a personal bribe of $200 from Iu.B. Pegachkov to receive another piece of land. The defendant also allegedly received an automobile worth 5,232,000 rubles on May 6, 1993, from L.O. Zverev, who also desired a favorable plot. Defendant denied receiving the bribes, and claimed the automobile was received not as his own personal property, but for use of the village Soviet. The defense introduced evidence that the head of the local Soviet, N.E. Popova, had “set up” the defendant because she was angry at not having been appointed head of administration.

Verdict

Defendant acquitted of all charges.

MOSCOW-12

Judgment of May 11, 1994 (Shvedova), Moscow Regional Court.

Judge: N.V. Grigor’eva
Prosecutor: S. Artem’eva
Defense Counsel: O.V. Denisov

Charges

Aggravated murder. § 102(i). Threatening murder. § 207.

Allegations

Defendant, Liubov’ Ivanovna Shvedova, originally from Barnaul, Altai Territory, left for Moscow after her first husband drowned. She married Shvedov and was convicted along with him in 1986 for the attempted murder of Baranov. After her release from prison camp she began to see N.V. Buslaev, with whom she and her husband had once lived, and the two of them moved in with A.S. Fomichev. On November 4, 1993, in the city of Khimki, Buslaev, Fomichev, and the defendant got drunk in Fomichev’s apartment. An argument arose between the defendant and Buslaev. She said she was depressed and didn’t want to live any longer, and Buslaev exclaimed that he didn’t want to live without her. Buslaev dared defendant to stab him and told Fomichev to give her a knife, whereupon the defendant stabbed him once in the heart, killing him.

529 Interview with Iu.L. Sobina, Prosecutor, in Moscow Regional Court (Apr. 11, 1994); interview with V.E. Liliutin, Defense Counsel, in Moscow Regional Court (Apr. 11, 1994). The author observed one day of the trial and reviewed the file and the judgment.

530 The author reviewed the file, the question list, the judgment, and the judge’s summation.
Fomichev testified that defendant had been lying on the kitchen floor, claiming that Buslaev was cheating on her. She threatened to cut Buslaev; he told her to “go ahead,” and she stabbed him. Defendant, who had originally confessed to the stabbing, testified at trial that she was in a dream-like state, that she had no intent to kill him, and that Buslaev stabbed himself by pulling her hand, which was holding the knife, into his own chest.

When the ambulance and doctor came, defendant was lying on Buslaev’s body, claiming she loved him and saying she was sorry. The doctor claimed she threatened him while brandishing the knife, but she claimed she intended to kill herself, not the doctor. The police to some extent corroborated her version.

Verdict

Convicted of murder, acquitted of threatening to murder. The jury recommended lenience.

Sentence

Eight years.

MOSCOW-13
Judgment of May 13, 1994 (Glushchenko and Konovalov), Moscow Regional Court.

Judge: R.V. Rogov
Prosecutor: A.G. Zerkova

Charges

Glushchenko: Aggravated robbery-murder with exceptional cruelty as the result of a conspiracy. §§ 146(2) (a, b, v), 102 (a, g, e, n).
Konovalov: Aggravated robbery-murder with exceptional cruelty as the result of a conspiracy. §§ 146(2) (a, b, v), 102 (a, g, e, n).

Allegations

On August 14, 1993, in the city of Balashikha, the defendants, Oleg Valer’evich Glushchenko and Nikolai Sergeevich Konovalov, while drunk, took a ride from N.D. Serebriakov, who was moon-lighting as a private taxi-driver. At the preliminary investigation Konovalov testified that they decided to steal the car. Konovalov, sitting in the back seat, grabbed Serebriakov by the neck and Glushchenko, in the passenger seat, stabbed him twenty-three times. They then took 1200 rubles from his pockets, stole his dental bridges, and drove off in his car. At trial, Konovalov testified that his earlier confession was the result of coercion and threats. He testified that he did not participate in the killing and was only guilty of helping get rid of the body. Glushchenko testified at trial that an argument had erupted between him and the victim over the amount of money to be paid for the ride. The victim began hitting him and he lost control of his senses. When he came to, the victim was dead and Glushchenko had a kitchen knife in his hand. Later, one of their friends, Vladislav Lukashin, saw the blood in the car and noticed the dental bridges; he and his brother Evgenii held the defendants until the police came.

Verdict

Both defendants: convicted of aggravated murder with exceptional cruelty (§ 102(g)) and aggravated theft (§ 144(2)). The jury recommended special lenience.

Sentence

Glushchenko: Seven years.
Konovalov: Five years.

Appeal

Protest by the prosecution was rejected by the Supreme Court. Decision of July 28, 1994. Case No. 4-kp-094-94sp.

MOSCOW-14
Judgment of May 23, 1994 (Kukushkin), Moscow Regional Court.

Judge: N.V. Grigor’eva
Prosecutor: A.I. Kuznetsov
Defense Counsel: N.M. Lazareva

531 The author reviewed the question list, the judge’s summation, and the judgment.
532 The author reviewed the file, the question list, the judgment, and the judge’s summation.
Charges

Violating railroad safety rules and causing a serious railway accident. § 85(1).

Allegations

Defendant Viacheslav Aleksandrovich Kukushkin worked as a supervisor’s helper on Platform No. 88, Voskresenskii Raion, on the Moscow-Riazan’ electric train line. At one point on January 24, 1994, he signalled the supervisor to allow the automatic doors on the train to shut. V.V. Kir’ianov, who had helped an old lady with her luggage to enter the train caught his left leg in the doors as they closed. The train pulled away from the station with Kir’ianov hanging out of the door. He managed to hold on to the handle of the machinist’s cabin for several kilometers, but the cold made him let go, and he was left dangling from the car. He finally worked his left foot free and fell to the tracks, suffering broken ribs, a concussion, and lung injuries.

Defendant denied the charge that he had violated the safety rules and claimed he had carefully checked to see that all passengers had exited and entered the train before signalling for the doors to be shut.

Verdict

Defendant was acquitted.

MOSCOW-15

Judgment of May 24, 1994 (Glukhov, Dmitriev, Savinskii), Moscow Regional Court.

Judge: A.A. Dzyban
Prosecutor: L.I. Liul’cheva
Defense Counsel: O.V. Denisov, S.V. Katenev, L.I. Liul’cheva

Charges

Glukhov: Malicious hooliganism. § 206(2). Aggravated hooliganistic murder with exceptional cruelty. § 102(b, g, n).

Dmitriev: Malicious hooliganism. § 206(2). Aggravated hooliganistic murder with exceptional cruelty. § 102(b, g, n).

Savinskii: Malicious hooliganism. § 206(2). Aggravated hooliganistic murder with exceptional cruelty. § 102(b, g, n).

533 The author reviewed the judgment, the question list, and the judge’s summation.

Allegations

On September 18, 1993, defendants Igor’ Vladimirovich Glukhov, Vladimir Aleksandrovich Dmitriev, and Igor’ Ivanovich Savinskii, along with Solov’yev and Kalinkin, got drunk together in Savinskii’s apartment in Serpukhov. An argument erupted between Kalinkin and Savinskii. During the argument Savinskii demanded that Kalinkin tell him who had burglarized his apartment. Between 3:00 and 4:00 P.M., according to the statements of Glukhov and Dmitriev at the preliminary investigation, the three defendants tied Kalinkin up and began beating him. Savinskii put a rope around his neck and would tighten it when asking questions. The defendants claimed that when Kalinkin calmed down they untied him, and he threatened to return with his friends.

Kalinkin did return with another man. Dmitriev hit Kalinkin in the stomach with an axe, and Kalinkin’s friend left. Then Savinskii came in with a knife, and when he left, there was blood on the knife and he allegedly said, “Kalinkin is a corpse.” Solov’yev testified he saw Savinskii stab Kalinkin in the stomach. Kalinkin died of a knife wound to the stomach and also had wounds to the buttocks and cheek.

At trial Glukhov and Dmitriev admitted their participation but denied intending to kill Kalinkin, putting that blame on Savinskii. Savinskii presented an alibi, claiming that he left with Kalinkin’s friend.

Verdict

All defendants were convicted as charged. The jury recommended special lenience for Glukhov.

Sentence

Glukhov: Five years.
Dmitriev: Ten years.
Savinskii: Twelve years.

Appeal

Savinskii’s appeal was rejected by the Supreme Court. Decision of Aug. 1, 1994, Case No. 4-kp-094-107sp.
MOSCOW-16

Judgment of May 30, 1994 (Volikovskii and Chigarkina), Moscow Regional Court.534

Judge: A.A. Dzyban
Prosecutor: Iu.L. Sobina
Defense Counsel: O.O. Kamkiia (for Volikovskii) and T.P. Kartashova (for Chigarkina)

Charges

Volikovskii: Threatening a People's Court Judge and lay assessors with death or injury to influence a verdict. § 176(2). Threatening a prosecutor. § 193(1).

Chigarkina: Threatening a People's Court judge and lay assessors with death or injury to influence a verdict. § 176(2).

Allegations

Defendants Aleksei Aleksandrovich Volikovskii and Nadezhda Stepanovna Chigarkina were on trial before Judge Petrov and two lay assessors in the Pushkin People's Court for auto theft with the use of force. The judge allowed the reading of testimony of eyewitnesses over the objection of the defendants (who were without counsel). They were both convicted and sentenced. Upon rendering the verdict, Volikovskii allegedly told the court (including the lay assessors and the prosecutor) that all of their spines should be broken. He later denied having said this. Chigarkina admitted saying, “Judge Petrov, this is your last term on the bench,” but claimed she was going to appeal the unfair trial and the result would be Petrov’s removal from the bench.

Verdict

Volikovskii: Guilty as charged. The jury recommended lenience.

Chigarkina: Acquitted.

Sentence

Volikovskii was sentenced to six months, concurrent with the sentence for auto theft.

534 Interview with O.O. Kamkiia, Defense Counsel, in Moscow Regional Court (July 19, 1994). The author also reviewed the file, the question list, and the judgment.

MOSCOW-17

Judgment of June 1, 1994 (Anur’ev), Moscow Regional Court.535

Judge: V.P. Malakhov
Prosecutor: N.I. Kostenko
Defense Counsel: N.A. Malinovskaia

Charges

Aggravated murder due to especially dangerous recidivist status. § 102(1). Burglary and theft of personal property and documents. §§ 144(4), 195(3). Making a death threat. § 207.

Allegations

Defendant Iurii Ivanovich Anur’ev testified that he and Gubareva, with whom he claimed he lived, went to visit her good friend G.P. Volkov on May 30, 1993, in the city of Ramenskoe. They got drunk along with Volkov’s friend Iasnov. Defendant testified that he and Gubareva left at about midnight and that he knew nothing about Volkov’s murder. At the preliminary investigation, however, he admitted having stabbed Volkov to death. Gubareva testified that she accidentally met the defendant at her neighbor’s house and he stayed with her for a few nights. She alleged that on May 30, 1993, they went to Volkov’s apartment, where they drank. She went on to state that at 10:00 P.M. she decided to go home; Volkov accompanied her to the gate and she went to her apartment. Immediately thereafter the defendant, very drunk and wielding a knife, caught up with her, beat her cruelly, and said he had “laid Volkov out” and would do the same to her. Iasnov said a loud argument woke him and he saw the defendant stab Volkov in the stomach. The autopsy revealed a blood alcohol content of 0.49 in Volkov’s body.

Gubareva also testified that she came home on June 23, 1993, to find that her apartment had been burglarized and 194,000 rubles worth of property stolen. A note was on the table, saying that she was an animal who would be hung from the chandelier because of her tongue. She took this as a threat from the defendant. Defendant testified that he did return to her apartment to get his things and when he couldn’t find them he took a number of her

535 The author reviewed the judgment, the question list, the judge's summation, and the prosecutor’s cassational protest.
things as collateral. He wrote the note but did not intend to threaten her.

Verdict

Defendant was acquitted of all charges.

MOSCOW-18

Jury discharged June 7, 1994 (Kumaev, Tomilin, Dorokhov, Kosykh), Moscow Regional Court.536

Judge: V.G. Letiagin
Prosecutor: V.V. Belich

Charges

Kumaev: Aggravated robbery. § 146(2)(a, v). Aggravated robbery-murder with exceptional cruelty. § 102(a, g, e).
Tomilin: Aggravated robbery. § 146(2)(a, v). Aggravated robbery-murder with exceptional cruelty. § 102(a, g, e).
Kosykh: Aggravated robbery. § 146(2)(a, v).

Allegations

Defendants Iurii Valer'evich Kumaev, Oleg Viacheslavovich Tomilin, Aleksei Sergeevich Dorokhov, and Andrei Evgen'evich Kosykh were charged with the robbery of Filippov's automobile and (Kumaev and Tomilin only) with his murder. During the trial the prosecutor amended the indictment to charge auto theft (§ 212-1(3)), and using force dangerous to the life and health of the victim (§ 108). Dorokhov was charged with stealing a homemade firearm from Filippov's automobile, and possession of a rifle.

Verdict

Kumaev: Convicted of auto theft with use of force dangerous to life and health. § 108.
Tomilin: Convicted of auto theft with use of force dangerous to life and health. Acquitted of everything else.

536 Conversation with V.G. Letiagin, Judge, in Moscow Regional Court (Aug. 22, 1994). The author also reviewed the order discharging the jury.

Dorokhov: Convicted of auto theft with use of force dangerous to life and health. Convicted of stealing and carrying a firearm.
Kosykh: Convicted of auto theft with use of force dangerous to life and health.

The judge determined that there were no believable facts upon which to base a finding that the crimes were proven or that the defendants committed them. Because he felt there was reason to return a not guilt verdict he discharged the jury and set the case again for trial.

MOSCOW-19

Judgment of June 21, 1994 (Denisov and Il'in), Moscow Regional Court.537

Judge: R.V. Rogov
Prosecutor: V.M. Postugaeva
Defense Counsel: A.Iu. Alekseevskii, N.M. Lazareva

Charges

Denisov: Aggravated murder out of hooliganistic motivation. § 102(b).
Il'in: Aggravated murder out of hooliganistic motivation. § 102(b).

Allegations

On February 28, 1993, defendants, Sergei Konstantinovich Denisov and Gennadii Evgen'evich Il'in, along with Lukichev, Terenov, Bashkov, and other persons were on the Krasnoiarsk-Moscow train as it passed through the Moscow Region. They were coming from the Chuvash Republic to Moscow on a work assignment. They all got drunk and played cards.

Lukichev won at cards and bought more alcohol. When the defendants, Lukichev, and Bashkov went out to smoke in the vestibule, Bashkov insulted Denisov. Denisov got enraged, grabbed a penknife, and stabbed the victim three times in the stomach. According to testimony of Lukichev at the preliminary examination, Il'in told Denisov to finish him off. When Denisov returned to the compartment, Denisov, Lukichev, and Terenov testified that Il'in grabbed Denisov's knife and went back out. When he came back,
he allegedly told the others he had "made sausage out of him." Bashkov died of seven knife wounds. When the train reached Moscow, a bloody knife was found in Il'in’s coat pocket.

At trial, Denisov admitted his guilt and showed remorse. The prosecutor dropped the charge of hooliganistic motivation against Denisov and charged him with non-aggravated murder (§ 103). Denisov had originally told investigators that he alone was responsible for all the stab wounds, and Il'in denied the charges against him, saying he was in the compartment and in the toilet when the stabbing occurred. He did not know how the knife got into his pocket.

Verdict

Il'in: Acquitted.
Denisov: Guilty of intentional murder without aggravating circumstances (§ 103). The jury found he deserved lenience.

Sentence

Denisov: Five years.

MOSCOW-20
Judgment of July 1, 1994 (Iriushkin), Moscow Regional Court.538
Judge: V.P. Malakhov
Prosecutor: V.V. Belich
Defense Counsel: O.O. Kamkiia

Charges

Attempted aggravated murder of four persons out of hooliganistic motivation and with exceptional cruelty. §§ 15, 102(b, g, d, z). Aggravated hooliganism. § 206(3). Unlawful possession of military weapons. § 218(1). Destruction of personal property. § 149(2). Destruction of state property. § 98(2).

Attestation

Defendant Iuri Vasil'evich Iriushkin was drinking with N.N. Kustareva, N.M. Terekhova, E.Z. Katkova and N.N. Chushkin at Kustareva's apartment on October 11, 1993, in Orekhova-Zuevo. Kustareva tried to get rid of defendant at around 1:00 P.M., but the defendant, who was drunk, felt insulted, went home, and got a hand grenade. He returned to the house, sat down, and tossed the grenade from hand to hand. Testimony as to what then happened differed. At trial one of the women testified that the main victim, Chushkin, told him to toss the grenade to him. Earlier, they had said he tossed it under the kitchen table saying he was going to kill them. The grenade exploded, causing serious wounds to Chushkin, leading to the amputation of both legs, less serious injuries to Terekhova, and minor shrapnel wounds to Kustareva, Katkova, and the defendant. Defendant testified that he thought it was a practice grenade. An expert witness testified that practice grenades are black and live grenades are yellow with the letter "U," for "universal" printed on them. Defendant, at trial, claimed he thought the "U" stood for "practice" (uchebnyi) (a claim he had not made earlier). He denied intent to injure people or property.

Verdict

Acquitted of attempted murder, malicious hooliganism, damage to personal property, and possession of military weapons. Convicted of the negligent infliction of serious bodily injury (§ 114(1)) upon Kushkin, and the negligent infliction of minor bodily injury upon Kustareva and Katkova (§ 114(2)). He was also found guilty of negligently damaging state property (§ 99). The jury found he did not know the grenade was an active one and therefore had no intent to kill; the jury recommended special lenience.

Sentence

Sentenced to a fine and one year for violation of probation on his previous conviction. Defendant was released because of the credit for time served.

MOSCOW-21
Judgment of July 5, 1994 (Saltykov, Gerasimov, Gusev II), Moscow Regional Court.539
Judge: R.V. Rogov
Prosecutor: S.V. Nekrasov
Defense Counsel: A.V. Malashevich (for Saltykov), L.I. Iuzkevich (for Gerasimov), R.V. Shvarskiene (for Gusev)

538 Interview with O.O. Kamkiia, Defense Counsel, in Moscow Regional Court (July 19, 1994). The author also reviewed the judgment.

539 Telephone interview with R.V. Shvarskiene, Defense Counsel (Aug. 11, 1994). The author also reviewed the judgment.
Charges

See MOSCOW-2.

Allegations

See MOSCOW-2. Witnesses Fiskulov and Puzin, who had stated they had seen the victim on September 15, 1992, now stated they might have been mistaken and had possibly seen him on September 14, 1992. Another key witness had died and his statement was read into the record. The judge, who had witnessed the first trial and had openly criticized Judge Letiagin’s suppression of the videotape of the visit to the scene of the crime, denied the defense motion to suppress it in the retrial.

Verdict

Gerasimov and Saltykov: Convicted of aggravated murder for personal gain, but without exceptional cruelty, and of aggravated robbery.

Gusev: Convicted of all charges.

The jury recommended lenience for Gerasimov and Gusev and special lenience for Saltykov.

Sentence

Gusev: Eight and one half years.
Gerasimov: Eight years.
Saltykov: Seven years.

Appeal

Rejected by the Supreme Court. Decision of Sept. 6, 1994. Case No. 4-kp-094-113sp.

MOSCOW-22

Judgment of July 14, 1994 (Komar’kov), Moscow Regional Court.540
Judge: L.M. Brykalova
Prosecutor: V.V. Belich
Defense Counsel: L.V. Razhnova

540 The author reviewed the file, the question list, and the judgment.
Prosecutor: V.P. Zimin  
Defense Counsel: A.M. Beliaev

Charges

Aggravated murder with exceptional cruelty. § 102(g).

Allegations

On January 17, 1994, defendant Bezrukov was drunk in the basement of a garage in the town of Protvino when he got into a fight with I.P. Bochin and stabbed him to death. The defendant claimed that he acted in self-defense.

Verdict

Convicted of using excessive force in self-defense (§ 105). Since the defendant had no prior criminal record, admitted his guilt, and showed remorse, the jury recommended lenience.

Sentence

One year. Defendant fell under the amnesty of February 23, 1994, and was released.

MOSCOW-24

Judgment of July 25, 1994 (Grigor'ev and Shatalov), Moscow Regional Court.  
Judge: V.P. Malakhov  
Prosecutor: S.V. Artem'eva  
Defense Counsel: M.N. Kerfman and N.E. Zendrikov

Charges

Grigor'ev: Aggravated robbery of personal and social property. §§ 146(2)(a, b, v), 91(2)(a, b, v, e). Theft of personal documents. § 195(1, 3). Aggravated robbery-murder. § 102(a, e, n).

Shatalov: Aggravated robbery of personal and social property. §§ 146(2)(a, b, v), 91(2)(a, b, v, e). Theft of personal documents. § 195(1, 3). Aggravated robbery-murder. § 102(a, e, n).

542 The author reviewed the file, the question list, the judge's summation, and the judgment.

Allegations

Defendants Eduard Nikolaevich Grigor'ev and Nikolai Alekseevich Shatalov got drunk at the market in Podolsk at noon on June 11, 1998 and stopped D.M. Aref'ev's car, which belonged to the "Podolskii Machine Construction Company" Stock Company. He agreed to give them a ride to Chekhovskii Raion, and along the way they asked him to stop. In their first statements to investigators, defendants claimed they attacked Aref'ev with the intent to steal his automobile and did so, along with 500,000 rubles which his wife testified he took with him that morning on the way to the airport. They said they told Aref'ev to get out of the car and he resisted. Grigor'ev, sitting in the back seat, grabbed him by the neck and Shatalov, in the passenger seat, hit him in the face, breaking his nose, and tied his hands with a strap. Aref'ev broke away and tried to run. The defendants caught him and Grigor'ev hit him four times in the head with an axe. Shatalov stabbed him in the neck and when he saw he was still breathing, strangled him with a towel. Shatalov took 50,000 rubles from his pocket. Grigor'ev and Shatalin then dumped the body into a hole and Grigor'ev poured gasoline over him and set it on fire. They then drove off in the car. Shatalov crashed the car outside of a factory in which he used to work and was seen there by fellow workers.

At trial Shatalov and Grigor'ev testified that Shatalov asked Aref'ev to stop the car because he felt sick. Shatalov then went into the woods, and Grigor'ev got into an argument with Aref'ev about how much they owed him for the ride. Grigor'ev testified that Aref'ev began hitting him with a tire iron and he defended himself with the axe. Shatalov only admitted to helping get rid of the body. Both defendants said the investigators coerced them into giving the first statements admitting full guilt. A letter Grigor'ev wrote to his mother, saying he was going to take all the responsibility, was introduced at trial.

Verdict

Both defendants were convicted of aggravated robbery and robbery-murder.

Sentence

Each defendant was sentenced to twelve years.
MOSCOW-25
Judgment of July 28, 1994 (Luk’ianov), Moscow Regional Court.543
Judge: S.V. Marasanova
Prosecutor: S.V. Artem’eva
Defense Counsel: I.K. Eremenko

Charges
Rape of a child. § 117(4). Making a death threat. § 207.

Allegations
On January 28, 1994, at 2:00 P.M., defendant Evgenii Vladimirovich Luk’ianov was standing in the entrance of an apartment house in the settlement of Novostroika, Sergeyev-Posadskii Raion, waiting for a bus. He claimed he was with his friend Sergei Vasil’tsov. A young girl was coming home from school and defendant testified that Sergei suggested raping her, and if he didn’t, Sergei threatened to tell their acquaintances that the defendant had been in a psychiatric hospital. (Defendant had suffered brain trauma which caused emotional problems). When the girl entered the building where she lived, the defendant grabbed her, covered her mouth, and told her not to scream or he would kill her. He led her up to the area between the second and third floors, molested her, and made her orally copulate him. He told her to meet him on February 4, 1994, at 4:00 P.M., at the bus station in Remmash, and if she did not, he would kill her parents. She told her parents and she, her father, and three policemen went to the Remmash bus station at the designated time. Defendant was arrested, throwing a knife into the snow as he tried to flee.

Verdict
The jury found that defendant’s acts did not constitute rape, but lewd conduct with a minor (§ 120), and they also found him guilty of making the death threat against the parents.

Sentence
Sentenced to two years and eight months, but his case fell within an amnesty provision and he was released.

543 The author reviewed the file, the question list, the judge’s summation, and the judgment.

MOSCOW-26
Judgment of September 14, 1994 (Sogokon’), Moscow Regional Court.544
Judge: R.V. Rogov
Prosecutor: Iu.L. Sobina
Defense Counsel: S.O. Nikolaev

Charges
Two counts of attempted aggravated hooliganistic murder. §§ 15, 102(b), 15, 102(b, i).

Allegations
In the night of July 24, 1993, on a street in the settlement of Udel’naia, Ramenskii Raion, defendant Oleg Iur’evich Sogokon’, who was drunk, stabbed S.A. Barskii in the chest. Later that night, defendant stabbed L.Iu. Voronkova in the chest causing less serious injuries. Defendant testified that he was drunk, sat on a bench, and drank alcohol with Barskii, but did not remember stabbing him. He came to when arrested by the police. Barskii and Voronkova testified that they were stabbed without any palpable reason. Defense argued that defendant was so mentally sick he could not be held responsible.

Verdict
Guilty as charged but the jury recommended special lenience.

Sentence
Five years.

MOSCOW-27
Judgment of September 23, 1994 (Moiseev), Moscow Regional Court.545
Judge: N.V. Grigor’eva
Prosecutor: G.V. Rogacheva
Defense Counsel: S.Iu. Pal’tseva

544 The author reviewed the judgment, the question list, and the judge’s summation.
545 The author reviewed the judgment.
Charges

Rape-murder with exceptional cruelty by someone previously convicted of murder and declared an especially dangerous recidivist. §§ 117(4), 102(e, g, i, l).

Allegations

Defendant Aleksei Egorovich Moiseev had served twenty-four years for various crimes, the last of which was attempted murder (§§ 15, 103) in 1981, which led to him being declared an especially dangerous recidivist. He got drunk on January 17, 1994, in his house in the village of Kalitsino, Lotoshinskii Raion. He got into an argument with his mother M.F. Moiseeva and beat her to death with fists and feet. He was also charged with having raped his mother while beating her to death.

Verdict

Guilty of aggravated murder with exceptional cruelty; the judge qualified the murder due to his prior murder conviction and recidivist status. § 102(g, i, l). He was acquitted of the rape.

Sentence

Fifteen years.

RIAZAN' REGIONAL COURT

RIAZAN'-1

Judgment of March 25, 1994 (Artiukhov), Riazan' Regional Court.546

Judge: N.P. Lezhnev
Prosecutor: P.I. Shemonaev
Defense Counsel: G.A. Kitaev

Charges

Aggravated robbery-murder for personal gain by one previously convicted of murder. §§ 102(a, i), 146(2)(v, d, e).

546 Interview with N.P. Lezhnev, Judge, in Riazan' Regional Court (Mar. 3 and 22-23, 1994); interview with G.A. Kitaev, Defense Counsel, in Riazan' Regional Court (March 23-24, 1994). The author also observed the trial and examined the file.

Allegations

At the preliminary investigation, A.I. Melekhov and Iu.B. Nazartsev (witnesses), who worked with the defendant Nikolai Ivanovich Artiukhov on a collective farm in Siberka, Kalinovskii Raion, testified that all three of them got drunk at Nazartsev's house on April 29, 1993. The three then proceeded next door to a house where the eighty-year-old A.S. Sergevin sold vodka. According to the witnesses, Sergevin refused to give vodka to them, so Artiukhov hit him with a log and choked him to death. Melekhov and Nazartsev testified that fear motivated them to help Artiukhov hide the body.

Artiukhov initially admitted culpability but later recanted, claiming that the police beat the confession out of him. He testified at the preliminary investigation that he could not have strangled the victim because he had no fingers; he lost them in his youth when he passed out drunk in freezing winter weather. However, Artiukhov had been convicted in Moscow Regional Court in 1981 (after the loss of his fingers) for strongarm robbery and murder by strangulation of another eighty-year-old man.

At trial, both witnesses recanted and claimed that they knew nothing about the killing, and that they had been beaten and forced to give incriminating statements implicating Artiukhov at the preliminary investigation. Artiukhov did not repeat the claim that he could not have strangled the victim, but did show the jury his fingerless hands. In addition, Nazartsev's mother testified that the three had been drinking on April 25 rather than April 29.

Verdict

Acquitted of aggravated robbery-murder for personal gain by one previously convicted of murder in a 9-3 vote. However, the jury returned the verdict before the end of the legally required minimum time for deliberation.

Appeal

The Supreme Court reversed the judgment because of the violation of the requirement that the jury deliberate for at least three hours, and because of errors in the question list. Decision of Aug. 18, 1994, Case No. 6-kp-094-13sp.
RIAZAN'-2

Judgment of April 18, 1994 (Tsukanov), Riazan’ Regional Court. 547
Judge: G.D. Shershneva
Prosecutor: T.Ia. Solov’ei
Defense Counsel: A.S. Chubashov

Charges
Aggravated murder with extreme cruelty. § 102(g).

Allegations
Defendant had been deprived of the apartment in which he and his mother lived by persons who had taken advantage of his alcoholism. Homeless, he and his mother were living in a village in the Rybnovskii Raion with one Sheremet’ev. On February 28, 1993, Sheremet’ev told defendant that he and his mother had to leave. Defendant, who was drunk, began gathering his things to move to Riazan’. He became infuriated with his mother, who was frail and unable to move, and proceeded to beat her severely, ultimately causing damage to her brain and internal organs, and breaking her ribs. He then loaded his mother onto a sled and left. When he noticed that his mother was dead, he burned her in the snow and later turned himself in, admitting he had beaten her.

Verdict
Convicted of intentional infliction of serious bodily injury resulting in death. § 108(2).

Sentence
Eight and one-half years, with mandatory treatment for alcoholism.

547 Interview with A.S. Chubashov, Defense Counsel, in Riazan’ Regional Collegium of Advocates (Aug. 12, 1994); see also Sanochni (Little Stiel), PRIOKSKAIA GAZETA, Apr. 30, 1994, at 2. The author also reviewed the judgment, the question list, and the indictment.

RIAZAN’-3

Judgment of April 27, 1994 (Kukhtenkov), Riazan’ Regional Court. 548
Judge: A.V. Gostev
Prosecutor: N.A. Veroina
Defense Counsel: V.S. Luchnikov

Charges
Rape resulting in the death of a juvenile. § 117(4). Aggravated murder. § 102(g, e). Rape-murder. §§ 117(4), 102(g, e).

Allegations
Defendant Andrei Mikhailovich Kukhtenkov and his wife invited her sister, a fifteen-year-old girl (victim), to their home in Boriskova, Novoderevenskii Raion, after celebrating New Year’s Eve at the house of the victim’s grandmother. On January 1, 1994, when his wife and daughter were at the hospital for treatment, defendant and victim drank alcohol and visited a few places before returning home around 6:00 P.M. He claimed she wanted to have sex but he was unable to because he was drunk. She began belittling him. Defendant admitted to beating the victim but claimed he did not have sex with her; he claimed non-Russians raped and killed her. The victim was found in bed with forty-eight bodily wounds and two tears to her hymen. Defendant told friends that she was sick and took her to the hospital after she was already dead.

The prosecutor dropped the charge of aggravated murder with exceptional cruelty and the charge of concealing the commission of a rape (§ 102(g, e)).

Verdict
Convicted of rape resulting in the death of a juvenile. § 117(4). 549 The jury recommended lenience (9-3).

Sentence
Thirteen years.

548 Mladshaia sestra [Younger Sister], PRIOKSKAIA GAZETA, May 14, 1994, at 2. The author also reviewed the case file, the judgment, and the question list. 549 Although the jury unanimously found that the defendant was guilty of the crime, the answer to the question of whether he committed the acts was 9-4 in the affirmative.
Appeal

The Supreme Court rejected defendant's appeal. Decision of Aug. 9, 1994, Case No. 6-kp-094-10sp.

RIAZAN'-4

Judgment of May 19, 1994 (Churochkin, Anikin, Ieshkin, Shaposhnikov), Riazan’ Regional Court.550

Judge: A.I. Platonov
Prosecutor: E.D. Artemov

Charges

Sergei Nikolaevich Churochkin: Intentional murder. § 103. (The prosecutor later amended this murder charge to negligent murder. § 106.) Attempted rape of a juvenile. §§ 15, 117(3). Aggravated robbery and murder. UK RF §§ 102(a, g, e), 146(2)(a, b, y). Murder after having previously committed a murder. § 102(i). Aggravated murder out of hooliganistic motivation and with exceptional cruelty and attempted arson. §§ 15, 102(b, g), 149(2).

Nikolai Anatol’evich Anikin: Aggravated murder out of hooliganistic motivation and with exceptional cruelty and attempted arson. §§ 15, 102(b, g), 149(2).

Vasilii Ivanovich Ieshkin: Aggravated murder out of hooliganistic motivation and with exceptional cruelty and attempted arson. §§ 15, 102(b, g), 149(2). Murder after having previously committed a murder. § 102(i).

Shaposhnikov: Aggravated robbery and murder. UK RF §§ 102(a, e, g), 146(2)(a, b, v).

Allegations

On December 6, 1992, Churochkin, who was sixteen years old, allegedly attempted to rape a minor girl while drunk. On December 11, 1992, he and Shaposhnikov were drinking together. They allegedly decided to rob one Senin. They beat Senin to death, stole approximately 4000 rubles, and buried Senin’s body under some snow. The next day, December 12, 1992, Churochkin allegedly got drunk with Anikin, Bakhmet’ev, and Ieshkin, who was a convicted murderer. Ieshkin argued with Bakhmet’ev and the three defendants allegedly beat Bakhmet’ev to death with a hammer, the butt of an axe, and their feet. They then allegedly set the house on fire. On November 24, 1993, Churochkin allegedly stabbed and killed Kozlov during a drunken argument. All crimes were committed in the village of Mozhary, Saraevskii Raion.

Verdict

Churochkin: Convicted of aggravate robbery with use of a weapon, infliction of serious bodily injury, aggravated murder for financial gain and with exceptional cruelty of Senin, and aggravated murder of Bakhmet’ev out of hooliganistic motivation, with exceptional cruelty and after having previously committed a murder. Acquitted of attempted rape, the murder charge relating to Kozlov, and arson. The jury recommended lenience.

Anikin: Acquitted of all charges

Ieshkin: Convicted of being an accomplice in the aggravated murder of Bakhmet’ev, while having previously committed an intentional murder.

Shaposhnikov: Acquitted of all charges.

Sentence

Churochkin: Nine years.
Ieshkin: Thirteen years. Pronounced an exceptionally dangerous recidivist.

Appeal

Supreme Court reversed the judgment because of the improper formulation of the question list and judicial qualification of the verdict. Decision of Sept. 1, 1994, Case No. 6-kp-094-12sp.

RIAZAN'-5

Judgment May 25, 1994 (Rusin), Riazan’ Regional Court.551

Judge: V.A. Chebakov
Prosecutor: L.V. Zaitsevoi
Defense Counsel: V.N. Maksimov

550 Interview with S.Iu. Kochetkov, Defense Counsel, in Riazan’ Regional Collegium of Advocates (Aug. 12, 1994). The author also reviewed the judgment and the question list.
551 The author reviewed the judgment and the question list.
Charges

Aggravated robbery and murder with special cruelty and for financial gain. §§ 102(a, g), 146(2) (b, v).

Allegations

On January 19, 1993, defendant, sixteen-year-old Roman Petrovich Rusin, attacked A.T. Agafonov with a board with the intent of robbing him. The event took place in the village of Sturey Kel'tsy, Skopinskii Raion. Defendant was serving a suspended sentence for theft at the time. Defendant robbed Agafonov of his coat, boots, keys, and 150 rubles. Agafonov died of massive head and chest injuries. The prosecutor dismissed the charge of aggravated murder with exceptional cruelty.

Verdict

Convicted of aggravated robbery and robbery-murder.

Sentence

Ten years: nine for the robbery-murder and an additional year for the previous theft.

Appeal

Supreme Court reversed the judgment because of errors in the question list. Decision of Sept. 6, 1994, Case No. 6-kp-094-11sp.

RIAZAN'-6

Judgment of May 30, 1994 (Radchenko), Riazan' Regional Court. Interview with N.I. Lezhnev, Judge, in Riazan' (Aug. 12, 1994). The author also examined the case file, the judgment, and the question list.

RIAZAN'-7

Judgment of June 6, 1994 (Volodina, Kupriianov, and Demidov), Riazan' Regional Court. Interview with A.I. Platonov, Judge; M.P. Chikunkova, Prosecutor; O.K. Bychkova, A.I. Kanukhin, N.I. Kiriushkina, Defense Counsel. The author reviewed the indictment, the judgment, and the question list.

Charges

Theft of personal property. § 144(3). Aggravated murder with exceptional cruelty. § 102(g).
Sergei Petrovich Kupriianov: Aggravated murder for personal gain, as the result of a previous agreement, and in that he was previously convicted of murder and found to be an especially dangerous recidivist. § 102(a, i, l, n).

Viktor Alekseevich Demidov: Aggravated murder for personal gain and as the result of a previous agreement § 102(a,n).

**Allegations**

Volodina and her husband Sergei Volodin (victim) had a turbulent marriage. Victim's abuse of alcohol often resulted in violence toward Volodina, including beatings and his chasing her out of the house. During one such incident on March 22, 1992, victim punched Volodina's mother in the face, prompting Volodina to hit victim several times in the head with a hammer, knocking him unconscious. When victim regained consciousness, he chased her with the hammer. After her cousin Shchenikov stopped him and disarmed him, Volodina hit victim several times with a tire iron in the head, causing serious injury.

On July 1, 1993, Volodina contracted for the victim's death. She offered Kupriianov 10,000 rubles and three liters of alcohol if he would do the job. Kupriianov had three prior convictions, including aggravated murder, and had spent fourteen and one half years in prison camps. He had been declared to be an especially dangerous recidivist. Kupriianov enlisted the assistance of a friend, Demidov, in the killing. Demidov had served thirteen years in prison camps.

That evening, Volodina gave Kupriianov and Demidov 3000 rubles to buy alcohol, which they consumed until drunk. At about midnight, Kupriianov and Demidov went to Volodina's house where they awoke the victim, telling him that they needed help to fix a car. While walking through a park, Kupriianov and Demidov beat the victim. Volodina caught up to them there and Demidov fled, thinking she was a policeman. Kupriianov finished the victim off, spraying him with gas, hitting him on the head with a hammer, and strangling him with his T-shirt. Kupriianov and Volodina covered the body with grass and left the park.

**Verdict**

Volodina: Convicted of inflicting bodily injury while in a state of extreme emotional disturbance (§ 110), and of organizing the murder.

Kupriianov: Convicted of aggravated murder pursuant to a prior agreement for financial gain by a person who was previously declared to be an especially dangerous recidivist and who had previously committed an intentional murder.

Demidov: Convicted of participating in a murder, though not of personally having committed murder.

The jury recommended lenience for all defendants.

**Sentence**

Volodina: Ten years.

Kupriianov: Fifteen years.

Demidov: Thirteen years.

**RIAZAN'-8**

Judgment of June 15, 1994 (Kirilin), Riazan' Regional Court. 

Judge: A.I. Zyrianov

Prosecutor: V.N. Simkin

Defense Counsel: A.I. Panarin

**Charges**

Making a firearm while working in a prison factory. § 218(1). Attempted escape from prison camp. § 188(2)(b). Attempted murder of a prison official in order to effectuate the escape. §§ 15, 102(e, v).

**Allegations**

Valerii Vasil'evich Kirilin made a gun while working in a factory at a prison camp in Riazan', where he was serving a seven-year sentence. On October 9, 1993, defendant stabbed himself with a homemade knife and feigned unconsciousness in order to be taken to a prison hospital. In the ambulance on the way to the hospital, defendant drew his gun on the prison doctor, S.A. Blem (victim). Defendant fired but the bullet ricocheted off Blem's badge and did not hurt him. Blem and the ambulance doctor subdued defendant. Nobody was hurt; defendant did not escape.

**Verdict**

Convicted of all charges. The jury recommended lenience. Defendant was declared to be an especially dangerous recidivist.

554 The author reviewed the indictment, the judgment, and the question list.
Sentence

Ten years, to be served in addition to the three years remaining on his previous sentence.

RIAZAN'-9
Judgment of July 5, 1994 (Fomin), Riazan' Regional Court.555
Judge: S.M. Tsepliaev
Prosecutor: T.Ia. Solov'ei
Defense Counsel: V.S. Solodovnikova

Charges

Intentional murder of more than one person. § 102(z).

Allegations

Aleksandr Grigor'evich Fomin (defendant), twice convicted of crimes and having served around four and a half years in prison camps, was drinking with Z.I. Demkina and S.V. Gromov on the night of December 11, 1993, in the village of Novoselovo, Korablevskii Raion. An argument arose between defendant and Demkina on one side, and Gromov on the other. During the argument defendant stabbed Gromov in the chest with a kitchen knife, killing him. Defendant then began to batter Demkina, eventually asphyxiating her by putting his hands over her mouth.

Verdict

Convicted on both counts of intentional murder.

Sentence

Due to mitigating circumstances (defendant has two children and suffers from tuberculosis, and the victims were both extremely drunk) defendant was sentenced to fifteen years rather than death.

RIAZAN'-10
Judgment of July 28, 1994 (Kudriashov), Riazan' Regional Court.556
Judge: G.D. Shershneva
Prosecutor: V.N. Simkin

Charges

Aggravated murder (aggravated because defendant had been previously declared to be an especially dangerous recidivist. § 102(f)).

Allegations

Aleksandr Anatol'evich Kudriashov (defendant) had been convicted of four crimes, had served fourteen and a half years in prison camps and had been declared an especially dangerous recidivist. He was drinking at T.P. Cherkesova's apartment in Riazan' with her and another friend, G.P. Zhdanov. Cherkesova's boyfriend, M.M. Kuznetsov (victim) arrived, became jealous, and argued with defendant. During the argument, defendant stabbed victim in the chest, killing him.

Verdict

Convicted of aggravated murder. The jury recommended lenience.

Sentence

Eleven years.

ROSTOV-ON-THE-DON REGIONAL COURT
ROSTOV-1
Judgment of April 8, 1994 (Iarmizin), Rostov-on-the-Don Regional Court.557
Judge: B.A. Nikolaev
Prosecutor: V.G. Shavgulidze
Defense Counsel: L.A. Gel'fand

Charges

Aggravated murder out of hooliganistic motivation. § 102(b). Attempted aggravated murder. § 15, 102(b, z). Indictment amended to add one count of non-aggravated murder. § 103.

555 The author reviewed the indictment, the judgment, and the question list.
556 The author reviewed the indictment, the judgment, and the question list.
557 Interview with B.A. Nikolaev, Judge, in Rostov Regional Court (Sept. 9, 1994); interview with L.A. Gel'fand, Defense Counsel, in Rostov Regional Court (Sept. 9, 1994). The author also reviewed the question list, the judgment, and the order preparing the case for trial.
Allegations

On June 12, 1993, Iuri Leont'evich Iarmizin (defendant), who was drunk, was walking home with two acquaintances in Rostov-on-the-Don. They met G.S. Kemoklidze (victim) who got into an argument with one of defendant's acquaintances. To help his friend, Iarmizin stabbed Kemoklidze in the chest, inflicting a serious wound. Kemoklidze was taken to the hospital and lived. Defendant was also accused of stabbing one A.D. Pantsulaia during that fight. Pantsulaia died. Defendant claimed self-defense.

Verdict

Convicted of inflicting serious bodily injury without intent to kill upon Kemoklidze. Acquitted of the murder of Pantsulaia. The jury recommended special lenience.

Sentence

Two years corrective labor at defendant's place of work and garnishment of twenty percent of wages earned. Sentence declared completed due to defendant's pre-trial detention.

Appeal

Appeal by victim's representative was rejected by the Supreme Court. Decision of June 28, 1994, Case No. 41-kp-094-63sp.

ROSTOV-2

Judgment of April 15, 1994 (Panchishkin and Filippov), Rostov-on-the-Don Regional Court.558

Judge: Vladimir V. Zolotykh
Prosecutor: A.V. Kuiumdzhi
Defense Counsel: I.N. Khudiakova (for Filippov), V.A. Moskvin (for Panchishkin)

Charges

Panchishkin: Aggravated murder with extreme cruelty, by one who had previously committed an intentional murder. § 102(g, i).
Filippov: Aggravated murder with extreme cruelty, by one who had previously committed an intentional murder. § 102(g, i).

558 Interview with V.V. Zolotykh, Judge, in Sochi (Oct. 5, 1994); see also Sud frissschnykh vverze syna smertnyi pregovor [Jur Returns the First Death Verdict], Izvestia, Apr. 25, 1994. The author also reviewed the judgment.

Allegations

On March 13, 1993, Aleksandr Viktorovich Panchishkin and Sergei Viktorovich Filippov (defendants) murdered one Goncharov, after drinking with him in his home in the city of Kamensk. They beat Goncharov savagely over his body with various objects and poured salt, ice, and other foodstuffs into an open wound in his head. Goncharov died of the wounds.

On April 12, 1993, defendants murdered S.M. Filimonov after drinking with him at his house in Chichirino, Krasnosulinskii Raion. They beat him with various objects and stuffed his personal documents into an open wound in his stomach. Filimonov died. The defendants both tried to put the blame on each other. Panchishkin is developmentally disabled and Filippov is an invalid because of brain trauma he sustained in 1985.

Verdict

Panchishkin: Convicted as charged.
Filippov: Convicted as charged.

Sentence

Panchishkin: Death.
Filippov: Fifteen years.

Appeal

Supreme Court reversed the conviction for errors in the question list. Decision of July 12, 1994, Case No. 41-kp-94-3-sk SP.

ROSTOV-3

Judgment of May 16, 1994 (Strokan'), Rostov-on-the-Don Regional Court.559

Judge: I.P. Goncharov
Prosecutor: R.M. Rokachewa
Defense Counsel: E.B. Iakusheva

Charges

Passing counterfeit money. § 87(1).

559 The author reviewed the order preparing the case for trial, the question list, and the judgment.
Allegations

Andrei Anatol’evich Strokan’ tried to buy food on January 13, 1994, at the Sal’sk train station with a counterfeit 50,000-ruble note. The saleswoman refused to accept it. Defendant was later successful buying food with the note in a kiosk.

Verdict

Convicted of counterfeiting. Jury recommended special lenience.

Sentence

Two years, suspended.

ROSTOV-4

Judgment of May 27, 1994 (Asel’derov), Rostov-on-the-Don Regional Court.

Judge: Vladimir V. Zolotykh
Prosecutor: A.B. Kuiumdzhi
Defense Counsel: O.V. Kosheleva

Charges

Conspiring with an unknown third person and passing counterfeit money with the help of a child. § 87(1). Contributing to the delinquency of a minor. § 210.

Allegations

On July 16, 1993, Umakhan Gabibulaevich Asel’derov, who had ten counterfeit 5000-ruble notes, used a young boy to pass one of the bills at a kiosk to buy some cigarettes. The event took place in the town of Volgodonsk.

The prosecutor moved to dismiss the charge of contributing to the delinquency of a minor at the preliminary hearing.

Verdict

Convicted of using the boy to pass counterfeit bills in pursuit of a conspiracy with an unnamed defendant. The jury recommended special lenience.

560 The author reviewed the order setting the case for trial, the question list, and the judgment.

1995 The Resurrection of Trial by Jury in Russia

Sentence

One year.

ROSTOV-5

Judgment of June 1, 1994 (Volkov), Rostov-on-the-Don Regional Court.

Judge: Iu.A. Minko
Prosecutor: V.G. Shavygulidze
Defense Counsel: P.I. Dziub

Charges

Robbery-murder with exceptional cruelty. §§ 102(a, g, e), 146(2)(b, v, e). Destruction by arson of personal property. § 149(2).

Allegations

Anatolii Iur’evich Volkov (defendant), while drunk, allegedly robbed and murdered P.T. Serov in his apartment in the city of Taganrog on August 4, 1993. Defendant allegedly set fire to victim’s apartment after the robbery-murder. Defendant denied the robbery-murder but admitted to burglary and to theft of a large amount of personal property.

Verdict

Acquitted of the robbery and aggravated murder charges. Convicted of burglary.

Sentence

Six years.

ROSTOV-6

Judgment of June 2, 1994 (Chernokozov), Rostov-on-the-Don Regional Court.

Judge: G.P. Ivanov
Prosecutor: I.G. Churaev
Defense Counsel: I.G. Vinokur

561 The author reviewed the order setting the case for trial, the question list, and the judgment.

562 The author reviewed the order setting the case for trial, the question list, and the judgment.
Two counts of forcible rape of a minor by an especially dangerous recidivist. § 117(4). Committing lewd acts with a juvenile. § 120.

Allegations

Aleksandr Vasil'evich Chernokozov had spent twenty-seven years in prison and had been convicted of rape three times. On the night of October 1, 1993, while drunk, he invited a fifteen-year-old girl into his apartment in Novocherkassk, beat her with his fists and forced her to submit to an act of sexual intercourse. On the night of October 13, 1993, while drunk, he hit the same girl in the face and shoulders and raped her again. In early October 1993, defendant stripped a twelve-year-old girl naked, kissed her breasts, and exposed himself.

Verdict

Convicted of two counts of forcible rape of a minor by an especially dangerous recidivist and of committing lewd acts with a juvenile. The jury recommended lenience.

Sentence

Thirteen years.

ROSTOV-7

Judgment of June 8, 1994 (Musharov), Rostov-on-the-Don Regional Court.

Judge: V.E. Bondar'
Prosecutor: T.V. Bulanova
Defense Counsel: A.M. Treglazov

Charges

Rape, murder, and robbery. §§ 117(4), 102(a, e), 146(2) (b, v).

Allegations

Andrei Georgievich Musharov (defendant) met a woman in a bar in Rostov-on-the-Don on March 30, 1993, and accompanied her home. Both were drunk. Defendant strangled her with a stocking and then stole some items from her apartment. Evidence showed that victim had also been raped.

Verdict

The jury found that defendant intentionally murdered the victim and stole items from her apartment, but did not find that he robbed her. The jury found 8-4 that she had been raped, but were split 6-6 on whether defendant was the one who raped her. The jury recommended special lenience on the theft charge.

Sentence

Nine years.

ROSTOV-8

Judgment of June 16, 1994 (Gusev), Rostov-on-the-Don Regional Court.

Judge: L.B. Akubzhanov
Prosecutor: A.I. Pomozkov
Defense Counsel: M.M. Rechitskaia

Charges

Embezzlement of state property in large amounts. § 93-1. Falsifying documents. § 175.

Allegations

From October 10, 1992, until April 27, 1993, Andrei Pavlovich Gusev (defendant) was the director of a state store which sold electronics equipment in the city of Bataisk. During his employment, eighty-seven TV sets were found to be missing, collectively worth 6,453,674 rubles. Inventory sheets had been falsified to hide the missing items. Defendant claimed he did not himself steal them.

Verdict

The jury found defendant guilty of being responsible for the loss of the missing items through negligence (§ 172) and for having forged the inventory documents.
Sentence

One year.

ROSTOV-9

Judgment of June 24, 1994 (Pavlov and Moguchev), Rostov-on-the-Don Regional Court.\textsuperscript{565}

Judge: I.P. Goncharov
Prosecutor: F.M. Kagieva
Defense Counsel: V.K. Bukolov and G.V. Somov

Charges

Sergei Sergeevich Pavlov: Aggravated murder with exceptional cruelty. § 102(g). Murder threat. § 207. Illegal possession of a military weapon and of a bayonet-knife. § 218(1, 2).

Boris Borisovich Moguchev: Concealment of a murder. § 189(1).

 Allegations

On November 28, 1993, Pavlov (defendant) got drunk and went to Il'iashenko's home to continue drinking. Defendant testified that Grigorii Il'iashenko's wife, Liudmila, had wounds on her face from beatings by her husband. An argument erupted between defendant and Grigorii. Grigorii hit defendant several times. Grigorii then left to 'get some friends.' Defendant testified that Liudmila asked him to stay to protect her. He then testified that he remembers nothing further. Liudmila testified that her husband came back at around 9:00 P.M. and that defendant told her he was going to cut off Grigorii's head. She saw defendant sitting on Grigorii and stabbing him with his bayonet-knife. Liudmila closed the door so her two-year-old daughter and her mother would not see what was happening. Defendant then stabbed Grigorii one more time and killed him. Defendant passed out and when he awoke at 11:30 P.M. he did not believe he had killed Grigorii.

The next day, Pavlov asked his friend Moguchev to help him get rid of Grigorii's body. They took it to the Rostov heliport and buried it. Liudmila accompanied them because she was afraid of what Pavlov might do to her. When the police arrested Pavlov, they found an assortment of ammunition and weapons.

\textsuperscript{565} The author reviewed the file, the question list, and the judgment.

Verdict

Pavlov: Convicted of the non-aggravated murder of Il'iashenko (§ 103) and of illegal possession of the bayonet-knife. Acquitted of the exceptional cruelty charge, possession of the military ammunition and weapons, and of the murder threat.

Moguchev: Convicted of helping Pavlov get rid of Il'iashenko's body. The jury recommended special lenience.

Sentence

Pavlov: Nine years.

Moguchev: Six months of corrective labor with credit for the time he had served in pretrial detention. He was released.

ROSTOV-10

Judgment of June 30, 1994 (Rozhkovetskii and Vasil'ev), Rostov-on-the-Don Regional Court.\textsuperscript{566}

Judge: Vladimir V. Zolotykh
Prosecutor: A.B. Kuiumdzhi
Defense Counsel: O.A. Sychevaia and P.S. Sidenko

Charges

Vladislav Valentinovich Rozhkovetskii: Embezzlement of state property in large amounts. § 93-1. Falsifying documents in order to obtain money and commodities. § 196(2). Illegal possession of firearms and military ammunition. § 218(1). Infliction of minor bodily injury. § 112.

Iurii Konstantinovich Vasil'ev: Embezzlement of state property in large amounts. § 93-1. Falsifying documents in order to obtain money and commodities. § 196(2). Illegal possession of firearms and military ammunition. § 218(1).

 Allegations

Rozhkovetskii and Vasil'ev acquired various guns and ammunition and kept them illegally. Rozhkovetskii was charged with having inflicted minor bodily injury on A.P. Lychev on September 2, 1992, in Taganrog. Both defendants were charged with having embezzled state property in August 1992 in the sum of 857,000 rubles and in September 1992, in the sum of 8,000,000 rubles, and of hav-

\textsuperscript{566} Interview with V.V. Zolotykh, Judge, in Sochi (Oct. 5, 1994). The author also reviewed the order setting the case for trial, the question list, and the judgment.
ing falsified state documents in the course of their conspiracy. The prosecutor moved to dismiss the embezzlement and document-falsification charges.

**Verdict**

Rozhkovetskii: Convicted of the illegal possession of weapons and ammunition. Acquitted of the charge of infliction of minor bodily injury. The jury recommended special lenience.

Vasil'ev: Convicted of possession of the illegal weapons and ammunition. The jury recommended lenience.

**Sentence**

Rozhkovetskii: Correctional labor at his place of work. He was given credit for the time he served in pretrial custody and the sentence was deemed served.

Vasil'ev: Nine months. He was released with credit for time served.

**ROSTOV-11**

Judgment of July 8, 1994 (Viazovets), Rostov-on-the-Don Regional Court.\(^567\)

Judge: V.E. Bondar’
Prosecutor: T.V. Bulanova
Defense Counsel: A.G. Kameshkov

**Charges**

Aggravated murder with exceptional cruelty of two persons, by an especially dangerous recidivist. § 102(g, e, z, l).

**Allegations**

On August 14, 1993, Iurii Pavlovich Viazovets (defendant), who had served thirty-one and one half years for previous crimes, celebrated the burial that day of the mother of his girlfriend, I.A. Bratishcheva, by getting drunk with her. Later that evening, Aleksei Makeev invited them to his home and they drank there with Makeev and his wife, Elena. Defendant testified at trial that he and Bratishcheva went home at 10:00 or 10:30 P.M. and had nothing to do with the deaths of the Makeevs.

567 The author reviewed the file, the question list, and the judgment.
Charges

Sergei Ivanovich Stoianenko: Aggravated murder by one who had previously been convicted of murder. § 102(i). Theft without intent to steal. § 212-1. Possession of an illegal knife. § 218(2). Escape from a prison camp. § 188-1.

Viacheslav Nikolaevich Shishkov: Failure to report a murder. § 190.

Allegations

On August 3, 1993, Stoianenko escaped from a prison camp where he was serving a nine-year sentence for murder. He stayed with Shishkov in Kostroma until November 26, when they came to Rostov Region. N.M. Komarov (victim), a sixty-four-year-old man, gave them a ride to the settlement of Frunze where Stoianenko’s relatives lived. An argument began between Komarov and Stoianenko, who was drunk. Stoianenko stabbed Komarov five times in the chest and stomach, killing him. He then deposited the body in a forested area and defendants proceeded to Frunze where the car broke down and they left it. Defendants were arrested on December 1, 1993, in Frunze. Stoianenko’s knife was illegal.

Verdict

Stoianenko: Convicted of aggravated murder by one who had previously been convicted of murder, theft without intent to steal, illegal possession of a knife, and escape from a prison camp.

Shishkov: Convicted of failure to report a murder. The jury recommended lenience.

Sentence

Stoianenko: Fifteen years

Shishkov: One and one half years.

ROSTOV-13

Judgment of July 26, 1994 (Bashkirov and Abramov), Rostov-on-the-Don Regional Court.

Judge: G.P. Ivanov
Prosecutor: V.G. Shavgulidze

The author reviewed the descriptive part of the indictment, the order setting the case for trial, the question list, and the judgment.

1995 The Resurrection of Trial by Jury in Russia

Defense Counsel: V.M. Zaytsev (for Bashkirov) and Iu.N. Tsukanov (for Abramov)

Charges

Vladislav Vital’evich Bashkirov: Aggravated murder with exceptional cruelty and pursuant to a conspiracy. § 102(g, n). Taking a vehicle without intent to steal. § 212-1. Three counts of theft of personal property. § 144(2). Theft of personal documents. § 195(3). Arson of personal property. § 149(2).

Vitalii Vladimirovich Abramov: Aggravated murder with exceptional cruelty and pursuant to a conspiracy. § 102(g, n). Taking a vehicle without intent to steal. § 212-1. Three counts of theft of personal property. § 144(2). Theft of personal documents. § 195(3). Arson of personal property. § 149(2). Preparing and possessing marijuana and hashish for personal use. § 224(3).

Allegations

In September and early October 1993, Abramov gathered the tops of cannabis plants that were growing in an open field and prepared marijuana and hashish for his own use. In October 1993, 23.9 grams of hashish and 20.5 grams of marijuana were seized from his house in Volgodonsk.

On September 15, 1993, Abramov burglarized the house of Z.S. Gladkikh and stole a large number of personal items, worth 1,819,200 rubles. Bashkirov appropriated some of the stolen items, knowing they were stolen.

On the evening of September 22, 1993, pursuant to a previous agreement, defendants, who were drunk, took an automobile belonging to V.Ia. Nikitenko and drove it to a friend’s house where they removed items from the trunk. After stealing the car they stole personal items from the drunk E.A. Leushin, and put him in the car. They drove to a beer kiosk in Volgodonsk and then, during an argument, defendants beat Leushin with a blunt object on the head and body. Defendants then set the car on fire. When Leushin crawled out of the car defendants beat him viciously on the head and threw him back near the burning car where he died of serious burns and asphyxiation. Defendants then went to Leushin’s apartment and stole a leather coat and some other items.
Verdict

Bashkirov: Convicted of aggravated murder with exceptional cruelty and pursuant to a conspiracy, taking a vehicle without intent to steal, receiving stolen property (§ 208(1)), theft of personal property, arson of personal property, and preparing and possessing marijuana and hashish for personal use.

Abramov: Convicted of aggravated murder with exceptional cruelty and pursuant to a conspiracy, taking a vehicle without intent to steal, three counts of theft of personal property, theft of personal documents, arson of personal property, and preparing and possessing marijuana and hashish for personal use.

Sentence

Bashkirov: Fifteen years.
Abramov: Twelve years.

ROSTOV-14
Judgment of July 29, 1994 (Kuznetsov), Rostov-on-the-Don Regional Court.570
Judge: I.P. Goncharov
Prosecutor: F.M. Kakieva
Defense Counsel: L.G. Azoeva

Charges

Aggravated murder for financial gain and with exceptional cruelty. § 102(a, g). Theft of personal property. § 144(2). Extortion of personal property. § 148(3).

Allegations

On May 27, 1993, Aleksandr Iur'evich Kuznetsov (defendant) and others got drunk in an apartment in Rostov-on-the-Don. V.S. Kotenko (victim) fell asleep and defendant stole money from his coat. Defendant, victim, and others continued to drink throughout the day into May 28. During this time defendant extorted more money from the victim, threatened him with death, beat him with hands and feet, and eventually stabbed him in the eye and in the heart, killing him.

570 The author reviewed the descriptive part of the indictment, the order setting the case for trial, the question list, and the judgment.

Verdict

Convicted of aggravated murder for financial gain and with exceptional cruelty, theft of personal property, and extorting personal property.

Sentence

Fifteen years.

ROSTOV-15
Judgment of August 10, 1994 (Shchepakin), Rostov-on-the-Don Regional Court.571
Judge: G.P. Ivanov
Prosecutor: P.V. Kirchik
Defense Counsel: D.M. Fadeev

Charges

Attempted aggravated murder with exceptional cruelty. §§ 15, 102(g). Intentional infliction of minor bodily injury. § 112.

Allegations

On November 25, 1993, Aleksandr Ivanovich Shchepakin (defendant) allegedly drove his girlfriend, T.V. Mironova (victim), into the fields near the hamlet of Proletarka, Krasnosulinskii Raion, doused her with gasoline, and set her on fire in a fit of jealousy. She ran into the woods and managed to smother the flames after she had suffered second and third degree burns on her face, neck, hands, and shoulders. Defendant then went to the house of her father, V.A. Ashifin. After finding out what defendant had done to his daughter, Ashifin attacked defendant. Defendant defended himself with a metal rod.

Defendant denied the charges, claiming Mironova caught fire as the result of an accident.

Verdict

Acquitted by the jury of the attempted murder. Acquitted by the judge of the assault on Ashifin after the jury had found him guilty and recommended special leniency. The judge found that

571 Interview with G.P. Ivanov, Judge, in Rostov (Sept. 9, 1994). The author also reviewed the order setting the case for trial, the question list, and the judgment.
no crime was committed because the defendant defended himself within the permissible range of force.

ROSTOV-16

Judgment of August 11, 1994 (Butakov and Zimov), Rostov-on-the-Don Regional Court.

Judge: L.B. Akubzhanov
Prosecutor: A.I. Romazkova
Defense Counsel: I.H. Safonov and N.P. Varashov

Charges

Butakov: Aggravated robbery-murder. §§ 102(a, e, n), 146(2) (a, b, e, v).
Zimov: Aggravated robbery-murder. §§ 102(a, e, n), 146(2) (a, b, v, e).

Allegations

On May 27, 1993, defendants, while drunk, broke into the apartment of eighty-eight-year-old M.P. Aleshina (victim) in the city of Millerovo with intent to steal. Butakov threatened victim with a knife and hit her with the butt of the knife in the face. Zimov twisted a towel around victim's neck and tied her arms and legs, then threw her to the floor and kicked her. Butakov punched victim in the face and strangled her to death with the towel. Defendants stole sheets, clothes, and other property worth 55,301 rubles.

Verdict

Butakov: Convicted of aggravated robbery-murder.
Zimov: Convicted of aggravated robbery-murder.

Sentence

Butakov: Fifteen years.
Zimov: Fifteen years.

ROSTOV-17

Judgment of August 19, 1994 (Sokolov), Rostov-on-the-Don Regional Court.

Judge: Iu.A. Minko
Prosecutor: Unknown
Defense Counsel: L.A. Gel'fand

Charges

Attempted aggravated murder for personal gain. §§ 15, 102(a). Attempted aggravated murder out of hooliganistic motivation by one who had earlier committed such a crime. § 15, 102(b, i). Malicious hooliganism and willful destruction of state property. §§ 206(2), 98(1).

Allegations

On June 8, 1988, Konstantin Anatol'evich Sokolov (defendant) allegedly ran an illegal roulette game in the city of Rostov-on-the-Don. He rigged the game and controlled who would win. At 5:00 P.M. on that day, while Iu.V. Seromin (victim) and V.A. Solosin were playing the game, Solosin realized the game was rigged and challenged defendant. Seromin supported Solosin. They demanded their money back. Defendant pushed victim and ran, and victim followed him. Victim eventually caught up with defendant, at which point defendant pulled out a knife and stabbed victim in the stomach, injuring his liver. Defendant claimed self-defense. Following the incident a doctor examined defendant and noticed wounds indicating self-defense.

On October 23, 1991, defendant threw a cart from the state cafe "Temernik" at the Rostov railway station into the Temernik River.

On May 10, 1993, defendant allegedly got drunk in the foreign currency bar at the Hotel Intourist in Rostov, badgered the other customers with profanities, and was warned by the police. At 4:50 A.M., he picked an argument with A.B. Gegrokov (victim) and shot him four times with a pistol in the crotch area, leading to amputation of victim's testicles and other serious injuries. Defendant denied having committed the shooting. The bartender and the

572 The author reviewed the descriptive part of the indictment, the order setting the case for trial, the question list, and the judgment.
victim's wife viewed a physical line-up and neither could positively identify the defendant.

**Verdict**


**Sentence**

Four years.

**ROSTOV-18**

Judgment of August 30, 1994 (Petrovichev), Rostov-on-the-Don Regional Court.574

Judge: G.P. Ivanov
Prosecutor: A.V. Kuiumdzhi
Defense Counsel: S.A. Mikhailov

**Charges**

Rape-murder of a child with exceptional cruelty. §§ 117(4), 102(g, e). Five counts of aggravated theft. § 144(2). Two counts of theft of personal documents. § 195(3). Aggravated robbery. § 146(2)(b).

**Allegations**

Vladimir Nikolaevich Petrovichev (defendant) admitted the following crimes: (1) that in May and June of 1992, while he was living in the atelier of the sculptor Korneev (victim) in St. Petersburg, and while drunk, he stole 240,300 rubles worth of Korneev's personal property; (2) that in June and July of 1992, while he was living in a communal dormitory in the city of Anzeba, Irkutsk Region and while drunk, he stole property and personal documents from Voronin (victim) and later personal property of Petrenko and Vasil'tsoy (victims); (3) that on July 24, 1992, while drunk, he hit his grandmother A.T. Goncharova (victim) over the head with an iron, threw her to the ground, bound her arms and legs, held a knife to her throat, threatened to kill her, demanded money, and stole 88351 rubles worth of property from her; (4) that on March 29, 1993, defendant broke into the apartment of Vitkovskii (victim) in Moscow and stole property worth 5,990,700 rubles in the form of gold and silver objects, vouchers, electronic games, and a large collection of medals from many countries, along with personal papers.

Defendant did not admit the rape-murder of a six-year-old girl, which took place in Gorkii Park in the city of Taganrog behind the billiard parlor on September 3, 1992. The child was sodomized, then beaten on the head with a blunt object until dead. Defendant maintained that he was subjected to beatings and coerced to admit this killing. Defendant sought to introduce X-rays of injuries inflicted by investigating officers in Taganrog and St. Petersburg.

**Verdict**

Convicted of the robbery of his grandmother and of all of the theft charges. Acquitted of the rape-murder.

**Sentence**

Twelve years.

**ROSTOV-19**

Judgment of September 9, 1994 (Shchepin and Barannikov), Rostov-on-the-Don Regional Court.575

Judge: Vladimir V. Zolotykh
Prosecutor: A.B. Kuiumdzhi
Defense Counsel: M.A. Granovskii and O.V. Kasatova

**Charges**

Igor' Valentinovich Shchepin: Aggravated robbery-murder with exceptional cruelty. §§ 102(a, g, e, n), 146(2)(a, b, v, e).

Il'ia Il'ich Barannikov: Aggravated robbery-murder with exceptional cruelty. §§ 102(a, g, e, n), 146(2)(a, b, v, e).

**Allegations**

The Shchepins and the Skaliapovs lived next door to each other in the settlement of Sinegorskii of the city of Belaia Kalitva. One of Skaliapov's three daughters was married to Oleg Shchepin. B.A. Skaliapov (victim) had remarried and now lived in the hamlet of

574 The author reviewed the order setting the case for trial, the question list, and the judgment.

575 Interview with A.B. Kuiumdzhi, Prosecutor, in Rostov (Sept. 8, 1994). The author also observed the reading of the verdict and reviewed the indictment, the order setting the case for trial, the question list, and the judgment.
Terekhovka and only came to Sinegorski on the sixteenth of each month to get his pension check and a check to support his children, each amounting to 50,000 rubles. On December 16, 1993, victim had given one of his daughters the child support money and was in his apartment. The defendants, who were drunk, testified that they decided to call on victim to continue drinking with him. Victim’s daughters testified that neither defendant was on friendly terms with victim. Defendants testified that a fight started because victim would not contribute money to buy a bottle of vodka, and that Barannikov started fighting with victim. Shchepin stated that he punched victim twice in the face and victim fell down. Defendants then took victim and threw him into a full bathtub “to wake him up” and left. Defendants denied stealing any money from victim, or stabbing him and beating him with an axe and mallet. The investigation showed that victim drowned, but also had been brutally beaten, perhaps with a mallet and a bloody axe that were found in the room. Victim had broken ribs and teeth, and had been stabbed in the chest. A large amount of blood was found in his apartment and blood was found on the defendants’ clothes after their arrest the next day. No money was found in the apartment. The prosecutor amended the indictment to charge theft of the 50,000 rubles (§ 144(2)) instead of robbery.

Verdict

Shchepin: The jury found that he had beaten the victim with fists, the axe, and the mallet, and threw him in the bathtub, but that he did not intend to kill him. The judge characterized the crime as intentional infliction of minor bodily injury. § 109. Acquitted of the theft.

Barannikov: Same.

Sentence

Shchepin: Two years.

Barannikov: Two years with treatment for chronic alcoholism.

1995 The Resurrection of Trial by Jury in Russia

ROSTOV-20576

Judgment of September 29, 1994 (Kravtsov), Rostov-on-the-Don Regional Court.577

Judge: Vladimir V. Zoletykh
Prosecutor: A.Iu. Borokhov
Defense Counsel: N.N. Titova

Charges

Murder and attempted murder with exceptional cruelty. §§ 15, 102(g).

Allegations

Over a period of several years Vladimir Ippolitovich Kravtsov (defendant) had been mistreated by his two adult sons, Sergei and Iurii Korolev (victims). Both victims were unemployed alcoholics. Victims often beat defendant and forced him to give them money. After one of these incidents, victims passed out drunk and defendant doused them with gasoline and set them on fire. Sergei died of the burns but Iurii managed to awaken and smother the flames. Iurii survived with extremely serious burns.

Verdict

Convicted of murder and attempted murder with exceptional cruelty. The jury recommended lenience.

Sentence

Twelve years.

SARATOV REGIONAL COURT

SARATOV-1

Judgment of December 17, 1993 (Martynov and Martynov), Saratov Regional Court.578

576 Another trial took place between ROSTOV-19 and ROSTOV-20 but the author was not able to get any information about it before completing his research in early October 1994.
577 Interview with V.V. Zoletykh, Judge, in Sochi (Oct. 5, 1994).
578 Interview with A.Iu. Galkin, Judge, in Saratov (Feb. 16, 1994); interview with V.I. Afanas’eva and S.Iu. Romanova, Defense Counsel, in Sochi (Apr. 27, 1994); see also Doveriv sud’bu sudu prisiazhnykh, obviniaemykh, pokhozhe, tu progadal (Having Entrusted Their Fate to the Jury, the Defendants, It Seems, Made the Right Choice), Izvestia, Dec. 17, 1993, at 5; Let triudis’ia v Saratove, gozvodov prisiazhnykh zasedatelei (The Ice Has Melted in Saratov, Ladies and Gentlemen of the Jury), Izvestia, Dec. 21, 1993, at 5. The author also listened to a tape of the trial.
Judge: A.I. Galkin
Prosecutor: V. Simshin
Defense Counsel: V.I. Afanas'eva (for Artur Martynov), S. Iu. Romanova (for Aleksandr Martynov)

Charges

Artur Osipovich Martynov: Robbery and aggravated murder of multiple victims, for personal gain and with exceptional cruelty. §§ 102 (a, g, z), 146(2)(b, v).
Aleksandr Iosifovich Martynov: Robbery and aggravated murder of multiple victims for personal gain and with special cruelty. §§ 102 (a, g, z), 146(2)(b, v).

Allegations

The evidence was nearly exclusively based on testimony of the defendants. Artur Martynov (defendant) claimed that he had been drinking with Volkov (victim) and Zastupov (victim) when he passed out, and that he did not know how they died. During the preliminary investigation he had testified that he had clubbed Volkov and Zastupov with an axe-handle after they had attacked him, but at the trial he stated that he had lied to the investigators in order to protect his brother Aleksandr.

Aleksandr Martynov (defendant) testified during trial that he and Iurii Ogly were in the kitchen of the Martynov house, and that Artur Martynov had passed out, when the victims came over and broke into their house. Volkov and Zastupov started beating Artur Martynov while Subbotin (victim) tried to protect him. Aleksandr Martynov testified that he later saw Subbotin lying in a puddle of blood while Volkov and Zastupov continued to attack Artur Martynov. Aleksandr Martynov grabbed an axe-handle and clubbed Volkov and Zastupov to defend his brother. He testified that he did not think they were dead. He left the house with his brother. Ogly stayed in the house with the victims for a while and then left to join defendants. The victims, who had been set on fire, were found dead.

Both defendants denied having stolen anything from the victims and they denied setting fire to the victims. Ogly was declared insane and not allowed to testify at the trial, nor was his statement admitted into evidence. The defendants had no prior criminal record.

The prosecutor amended the indictment to dismiss the aggravated murder charges and the robbery allegations. According to the amended document, Artur Martynov was charged with intentional murder (§ 103) of Subbotin and Aleksandr Martynov with murder by use of excessive force in self-defense (§ 105) of Zastupov and Volkov.

Verdict

Artur Martynov: Convicted of using excessive force in self-defense.
Aleksandr Martynov: Convicted of using excessive force in self-defense. The jury recommended lenience for Aleksandr.

Sentence

Artur Martynov: Eighteen months
Aleksandr Martynov: One year.

SARATOV-2

Judgment of February 11, 1994 (Semenychev), Saratov Regional Court.579

Judge: Evgenii V. Druzin
Prosecutor: E.A. Pokhov
Defense Counsel: G.S. Palsui

Charges

Aggravated murder (aggravated because he had previously been convicted of attempted murder). § 102(i). Possession of a firearm. § 218(1). Armed hooliganism. § 206(3).

Allegations

The trial involved two separate incidents allegedly involving Aleksandr Alekseevich Semenychev (defendant). On October 11, 1991, defendant, who was drunk, went to the apartment of his former girlfriend, L. V. Shevtsova and demanded admittance. When she did not open the door, he fired two shots into the door and two shots into the window.

579 Interview with E.V. Druzin, Presiding Judge, in Saratov Regional Court (Feb. 16, 1994); interview with G.S. Palsui, Defense Counsel, in Sochi (Apr. 17, 1994); interview with E.V. Druzin, Judge, at the Russian Law Academy (Sept. 15, 1994) (regarding the retrial). The author also reviewed the file, the question list, and the judgment.
On December 23, 1991, defendant allegedly shot his ex-wife. He claimed that at that time he was working as a security guard in a shoe store. Several children testified that they had seen defendant, drunk, playing hockey near his wife’s apartment. The ex-wife, N.A. Semenycheva (victim) was shot at the time he claimed to be in the shoe store and died one week later. While still alive, she told investigators that defendant had shot her.

Defendant had been found guilty of the murder and sentenced to fifteen years, but the Supreme Court reversed the case and referred it for further investigation to determine whether the mortally wounded Semenycheva had been mentally competent to relate who had shot her.

Verdict

Convicted of aggravated murder, possession of firearms, and armed hooliganism. The jury recommended lenience.

Sentence

Fifteen years.

Appeal

On appeal, the Supreme Court reversed all convictions because defendant had not been advised about the limited right of appeal following a jury verdict. Decision of Apr. 18, 1994, Case No. 32-kp-094-11sp. Upon retrial, defendant waived his right to trial by jury and was again convicted and sentenced to fifteen years.

SARATOV-3
Judgment of February 18, 1994 (Bortsov), Saratov Regional Court.80

Judge: Evgenii V. Druzin
Prosecutor: Iu.I. Sidorova
Defense Counsel: E.M. Levina and M.B. Ignatenko

Charges

Aggravated murder with extreme cruelty and due to hooliganistic motivation. § 102(b, g).

80 Interview with E.V. Druzin, Presiding Judge, in Sochi (Apr. 27, 1994); interview with Iu.I. Sidorova, Prosecutor, in Sochi (Apr. 27, 1994); interview with E.M. Levina and M.B. Ignatenko, Defense Counsel, in Sochi (Apr. 27, 1994). The author also observed this trial and reviewed the file and the question list.

Allegations

On May 23, 1993, A.P. Bortsov (defendant) and some friends bought a case of champagne at a store. There defendant met the victim who worked at the store and agreed to meet him and another saleswoman Burmistrova. Defendant and his friend Antonov returned to the store and bought another case of champagne.

Defendant, victim, Antonov, and Burmistrova went to find a hotel in order to have sex. They could not find one, so Antonov and Burmistrova left the defendant and victim at the “House of Culture-Peace” in a remote area of Saratov. Both defendant and the victim were extremely drunk. Defendant testified that he then asked the victim to make love but she said, “not here, either at my place or in a hotel.”

In a written statement to the police, defendant had said that he got mad and started beating the victim. He hit her with a champagne bottle, dragged her outside into the bushes, beat her some more, and then passed out. When he awakened, she was dead. At trial, defendant said he was forced to make the statement. He alleged that the police had threatened to have him set on fire and killed if he did not confess.

He testified in court that he had tired of trying to have sex with the victim and just left her near the “House of Culture-Peace.” A kiosk owner had allegedly told police that the defendant came to him around midnight covered with mud and blood, pounded his fists on the kiosk, and then passed out. A friend and co-worker of defendant allegedly told police that defendant had come home at 2:00 A.M. and asked her to wash his clothes, which were bloody and dirty. At trial, both witnesses denied having said they had seen blood on defendant’s clothing. Antonov and Burmistrova did not appear in court.

The victim had been brutally beaten and had a tree branch stuck through her eyesocket into her brain. Her nude body was found in the bushes the morning of May 24, 1993. Defendant had no prior criminal convictions.

Verdict

Convicted of aggravated murder with extreme cruelty, due to hooliganistic motivation. The jury recommended lenience.

Sentence

Fifteen years.
Appeal

(By defense counsel) Rejected by Supreme Court. Decision of May 13, 1994, Case No. 32-kp-094-15sp.

SARATOV-4
Judgment of February 18, 1994 (Nesterenko), Saratov Regional Court.581
Judge: V.F. Shishliannikov
Prosecutor: V.I. Levchenko
Defense Counsel: A.K. Meleshin

Charges
Attempted aggravated murder, because of the defendant's status as an especially dangerous recidivist. §§ 15, 102(f). Theft and possession of military explosives. §§ 218-1, 218(1).

Allegations
Lev Mikhailovich Nesterenko (defendant) had five prior convictions (all for theft or hooliganism) and had served eighteen years and five months in prison camps. He was living with his girlfriend, Z.I. Solodun, at a farm belonging to Solodun's brother, M.I. Korolev (victim). Victim had previously accused defendant of stealing alcohol and of being responsible for a missing duck. On October 11, 1992, victim had offered a drink of vodka to a neighboring farmer but failed to invite defendant, thus insulting him. Victim told defendant that if he did not find the duck, he would feed the defendant to the pigs. Defendant, who was already drunk, returned to the house, armed himself with a shotgun and waited, apparently fearing that victim would make good on his threat. When victim came into the house, defendant shot him in the stomach. According to victim, defendant shot a second round into the floor near defendant's feet and left.

Defendant allegedly told investigators he wanted to kill the victim so he would not be fed to the pigs. Defendant had put explosives in his pockets because he wanted to blow up the victim with them. In court, defendant said he did not have his glasses on when he signed the confession and that he did not intend to kill the victim or to blow him up, or to steal his explosives.

Verdict
Convicted of attempted murder and of carrying explosives with intent to kill; acquitted of theft of explosives. The jury suggested lenience.

Sentence
Nine years.

SARATOV-5
Judgment of February 25, 1994 (Burmistrov), Saratov Regional Court.582
Judge: Iu.N. Tsarev
Prosecutor: V.I. Sheka
Defense Counsel: G.A. Litrovnik

Charges
Aggravated murder by one who had previously been convicted of intentional murder. § 102(i).

Allegations
A.K. Burmistrov (defendant) had previously served seven years for crushing his father's skull with a woodsplitter while his father was sleeping. After his release from prison camp, defendant returned home to the village of Erykla (Vol'skii Raion), where he began selling cattle and veal in order to buy alcohol. Defendant worked with his cousin, A.V. Zhirov (victim). Victim's father testified that animosity existed between victim and defendant because they both worked on the same tractor, and that victim did all the work and defendant just drank.

On September 10, 1993, after defendant had been drinking with friends, victim came by. Defendant testified that a fight erupted and that victim hit him in the mouth. Defendant then stabbed the victim once in the chest with a homemade knife and killed him. Defendant then placed the knife in the hand of

581 Interview with V.I. Levchenko, Prosecutor, in Saratov (Feb. 15, 1994); interview with A.K. Meleshin, Defense Counsel, in Saratov (Feb. 15, 1994); interview with V.F. Shishliannikov, Judge, in Saratov (Feb. 15, 1994). The author also observed the trial and reviewed the file and the question list.

582 The author reviewed the file, the question list, and the judgment.
Abakumov, a friend who had passed out before victim’s visit, and told the victim’s father that Abakumov had actually killed his son. Defendant later confessed, fearing the father would hurt Abakumov.

The aunt of both defendant and victim testified that victim had beaten his ninety-year-old aunt. Defendant had favorable character witnesses.

Verdict

The jury found it “probable” that defendant had acted in self-defense and after having been seriously insulted. Defendant was convicted of murder using excessive force in self-defense. § 105. The jury recommended lenience.

Sentence

One year.

SARATOV-6

Judgment of March 14, 1994 (Gavrilenko), Saratov Regional Court.583

Judge: Evgenii V. Druzin
Prosecutor: E.A. Lokhov
Defense Counsel: N.V. Sudarkina

Charges

Serious hooliganism. § 206(2). Attempted murder out of hooliganistic motivation. § 102(b). Using force to resist arrest. § 191(2).

Allegations

Valentin Ivanovich Gavrilenko (defendant) had no prior convictions and was a veteran of the clean-up of Chernobyl and the Armenian earthquake. On May 28, 1993, defendant got drunk and went with others to gather the medicinal herb zelenko near the farm of V.I. Chernov (victim). Defendant saw V.I. Tiukhno whom he accused of poorly caring for defendant’s cow. According to bystanders, defendant cursed Tiukhno, grabbed his shirt, and pulled him from his horsedrawn wagon. Chernov and another man, Krasnov, broke up the fight. Defendant hit Chernov, but Chernov also managed to knock defendant down and kick him once.

Insulted by Chernov’s violence, defendant procured an axe and returned to Chernov’s farmhouse. Defendant hit Chernov four times in the arms before opening his skull with the axe. Defendant then tried to continue the attack with a board. Defendant allegedly was screaming his intent to kill Chernov during the entire incident. Another man, Sultanov, stopped defendant.

When a local policeman, Iu.I. Orgenich, later tried to arrest defendant, defendant attacked him, hitting and kicking Orgenich and tearing off his tie and insignia.

The prosecutor amended the indictment to drop the hooliganism charges and amend the attempted aggravated murder charge to attempted murder of one carrying out a social duty (§ 102(v)). The charge of inflicting corporeal injury on someone engaging in a social duty (§ 193(2)) was also added.

Verdict

Defendant was acquitted of resisting the police officer and of hitting Chernov after he had pulled him away from Tiukhno. He was convicted of attacking Chernov with the axe (but not the board) without intent to kill him. The jury also established that the motive for the attack was the fact that Chernov had hit him earlier, not that Chernov had stopped him from attacking Tiukhno. The jury recommended special lenience. The judge found defendant guilty of intentional infliction of serious bodily injury (§ 108(1)).

Sentence

Undisclosed fine.

SARATOV-7

Judgment of April 16, 1994 (Tarasov), Saratov Regional Court.584

Judge: V.F. Shishliannikov
Prosecutor: V.I. Illarionov
Defense Counsel: O.I. Igumnova

583 Interview with E.V. Druzin, Judge, in Sochi (Apr. 27, 1994); interview with N.V. Sudarkina, Defense Counsel, in Sochi (Apr. 27, 1994). The author also reviewed the indictment and the question list.

584 The author reviewed the indictment, the question list, and the judgment.
Charges

Robbery of personal property. § 146(1). Robbery of state property. § 91(1). Rape. § 117(1). Attempted murder to cover up the robbery and rape. §§ 15, 102(e). Battery of a citizen in the course of fulfilling his civic duty of trying to detain him after the crime. § 193(2). Aggravated theft. § 212-1(2). Attempted murder of a policeman. § 190-2.

Allegations

On September 27, 1993, Viktor Alekseevich Tarasov (defendant), who was drunk, visited a state store at the Krasavka train station where N.G. Seliutina (victim) was working. When she left the store for the noon break, he followed her with the intent of robbing her of the store’s proceeds. Defendant allegedly went after her with a can opener. When she refused to hand over her purse, he hit her, knocked her down, and kicked her in the head until she lost consciousness. He took her purse and then dragged her to a wooded area and undressed her. Defendant denied trying to rape her, saying he was only pretending to make love to her when three men passed by. The men saw a trail of blood and that the woman was unconscious. One of the men, Terzioglo, ran after defendant and caught him, but defendant hit him and escaped.

Police apprehended defendant two days later while defendant was attempting to steal a tractor. Defendant admitted attacking the victim and robbing her but denied intent to kill her. Victim was stabbed four times in the chest and heart area with the can opener. Defendant testified that the victim had enraged him by claiming that he had infected his girlfriend with venereal disease and then left her.

Verdict

Defendant was: (1) convicted of attacking the victim with the intent of stealing both personal and state property; (2) convicted of stealing personal, but not state property; (3) convicted of attempted murder to cover up the robbery; (4) convicted of battery on Terzioglo to prevent him from fulfilling his civic duty; (5) convicted of theft of the tractor with use of force, and of trying to run over a policeman, but without intent to kill him; and (6) acquitted of rape.
fled. Defendant then found Chuev and stabbed him several times, killing him.

Defendant threw away the knife but later turned himself in.

Chausov testified that he and Chuev did not rape Dontsova, but merely saved her from the swamp. Dontsova testified to the rape, confirming defendant’s testimony.

**Verdict**

Convicted of inflicting serious bodily injury without intent to kill and while under the influence of a sudden strong emotional disturbance. § 110. The jury recommended special lenience.

**Sentence**

A fine of fifty monthly payments of 4275 rubles.

SARATOV-9

Judgment of April 21, 1994 (Litvinov), Saratov Regional Court. 586

Judge: A.I. Galkin
Prosecutor: Iu.L Sidorova
Defense Counsel: V.P. Kol’chenko

**Charges**

Aggravated robbery-murder. §§ 102 (a, e), 146(2) (b, v).

**Allegations**

On November 7, 1993, Dmitrii Aleksandrovich Litvinov (defendant), his mother, her boyfriend A.P. Myshko and two of his mother’s friends, S.P. Rossoshanskiy and Rossoshanskiy’s common-law wife, N.N. Kuryshova (victim), were drinking at his mother’s house in Samoilovka.

Defendant was wanted by the police for killing a cow, so he needed money to leave town. He learned during the party that victim was carrying 34,000 rubles on her person. While speaking to Myshko, defendant suggested robbing Kuryshova, but Myshko did not take him seriously.

After Rossoshanskiy left and the other guests passed out, defendant called victim away from the party into an adjacent room where he was waiting for her with an axe. He hit her with the blunt

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586 Interview with V.P. Kol’chenko, Defense Counsel, in Sochi (Apr. 27, 1994). The author also reviewed the indictment and the question list.

1995 The Resurrection of Trial by Jury in Russia 243

end, crushing her skull and causing her to fall unconscious to the floor. He then hit her with the sharp end of the axe six times in the neck area before taking her money and fleeing the scene. Victim died immediately.

Defendant hid for two days before being arrested in Belgorod Raion. At trial, defendant testified that victim had assaulted him first.

**Verdict**

Convicted of aggravated murder and aggravated robbery. The jury recommended lenience.

**Sentence**

Fifteen years.

SARATOV-10

Judgment of April 27, 1994 (Kocherov), Saratov Regional Court. 587

Judge: V.F. Shishliannikov
Prosecutor: V.I. Levchenko
Defense Counsel: M.N. Dubrova

**Charges**

Attempted rape of a child. §§ 15, 117(4). Robbery. § 146(1).

**Allegations**

On October 24, 1993, Sergei Mikhailovich Kocherov, who was drunk, approached a group of girls at the Letiazheva Station, Arkadakskiy Raion, and tore one of them away. He took her to a barnyard, beat her with his fists, bashed her head on the barn and on the ground, hit her with a stick, stuck his fingers in her eyes, and bit her on the forehead between her eyes, causing a permanent scar. He forced her give up her gold earrings and wallet, and he tried to rape her but failed.

**Verdict**

Convicted of attempted rape of a child, and of robbery.

587 The author reviewed the descriptive part of the indictment, the question list, and the judgment.
Sentence

Seven years.

SARATOV-11

Judgment of May 4, 1994 (Radchenko and Radchenko), Saratov Regional Court. 588

Judge: V.N. Konev
Prosecutor: V.I. Illarionov
Defense Counsel: N.V. Popova and N.V. Nachmurina

Charges

Aleksandr Ivanovich Radchenko: Aggravated robbery. § 146(2). Intentional damaging of personal property. § 149(2). Aggravated murder for personal gain and to conceal the commission of a serious crime. § 102(a, e).

Evgenii Aleksandrovich Radchenko: Same.

Allegations

On August 25, 1993, Aleksandr Radchenko (father) and Evgenii Radchenko (son) decided to rob A.K. Nesterova, whom the son had robbed before. They armed themselves with an axe, a knife, and kerosene. While the son pretended to ask the woman for moonshine, the father broke the window of the house with the axe. The victim got scared and defended herself with a pitchfork in the barn. The son hit her with a stick in the head and she fell. The father then came and stomped her with his feet upon finding that she had no money. She died after the son stabbed her in the chest. Father and son dragged her body into the house, doused it with kerosene, and caused a fire that burned the house and the woman's body. The incident took place in the village of Grivki, Turkovskii Raion. The son admitted complicity but the father denied that he participated in the murder or in the arson. The indictment said that the crime was the father's idea and that he had used his influence over the son to control his deeds.

Verdict

A.I. Radchenko: Convicted of aggravated robbery. Acquitted of murder and of intentionally damaging personal property.

E.A. Radchenko: Convicted of aggravated robbery, intentional damaging of personal property, and aggravated murder for personal gain and to conceal the commission of a serious crime.

Sentence

A.I. Radchenko: Fourteen years.
E.A. Radchenko: Nine years.

SARATOV-12

Judgment of May 6, 1994 (Kononenko), Saratov Regional Court. 589

Judge: Evgenii V. Druzin
Prosecutor: E.A. Lokhov
Defense Counsel: N.A. Firsova

Charges

Illegal possession of firearm. § 218(1). Attempt to murder a police officer. § 191-2.

Allegations

A Saratov police officer reported that someone shot at him on July 28, 1993, as he was driving along the Volga in Saratov. A sawed-off rifle was found in the garage of Valerii Vesil'evich Kononenko, who denied having fired at the officer.

Verdict

Convicted of illegal possession of a firearm but acquitted of attempted murder.

Sentence

Three years.

Appeal

The Supreme Court rejected the appeal to reduce sentence. Decision of Aug. 11, 1994, Case No. 32-kp-094-33sp.

588 The author reviewed the descriptive part of the indictment, the question list, and the judgment.

589 The author reviewed the question list and the judgment.
Charges

Aleksandr Alekseevich Gur’ianov: Two counts of aggravated murder out of hooliganistic motivation pursuant to a conspiracy. § 102(b, i, n). Robbery of state property of especially great value. § 98-1. Burglary-theft. § 144(3).

Pavel Nikolaevich Bogolei: Same.

Allegations

On July 10, 1993, Gur’ianov and Bogolei (defendants) and an unknown man (victim) got drunk and began fighting. Bogolei hit victim over the head causing moderately serious injury. Gur’ianov then stabbed victim in the chest and neck killing him. Victim’s personal belongings were burned and the body thrown into the cellar of the building. Both defendants claimed they were acting in self-defense.

At 2:00 A.M. on July 13, 1993, defendants got drunk and broke into the premises of a construction firm. They stole a UAZ van after forcing the watchman into the watchhouse at knife point.

At 4:00 A.M. that day, defendants and one Sychev (victim) burglarized an apartment. All three of them later got drunk and began fighting. During the fight, Gur’ianov stabbed Sychev at least three times in the chest and Bogolei struck Sychev in the head with a wooden plank. Sychev died from his injuries and his body was thrown into the cellar. All crimes took place in the city of Saratov.

Gur’ianov turned himself in and confessed to the killings but claimed self-defense, as did Bogolei.

The prosecutor amended the indictment to charge Bogolei only with intentional infliction of moderately serious bodily injury of the unknown man (§ 109) and of robbery of personal property, as the construction firm had been privatized (§ 146(2)(a, b)). The prosecutor dismissed the charges of hooliganistic motivation and

Verdict

Gur’ianov: Convicted of intentional, non-aggravated murder of the unknown man, aggravated murder of Sychev by one who had previously murdered (§ 102(i)). The prosecutor charged Bogolei with the non-aggravated murder of Sychev (§ 103).

Sentence

Gur’ianov: Fifteen years.

Bogolei: Ten years.

Appeal

The Supreme Court rejected Bogolei’s appeal. Decision of July 28, 1994, Case No. 32-kp-094-29sp.
She left to go to her mother’s apartment, which was located in the same building. As she was ascending the stairs, defendant followed, swearing at her. She saw her neighbor, D.O. Chernov (victim) and two of his friends S.A. Gurin (victim) and V.Iu. Serganov, and told them what was happening. Chernov, Gurin, and Serganov tried to stop defendant from following her. When defendant refused to return to his apartment, the three men physically forced defendant back into his own apartment, shoving him. Defendant then grabbed a kitchen knife and stabbed Gurin and Chernov. Gurin escaped with minor injuries but Chernov died in his apartment a few minutes later.

Defendant admitted stabbing the men, but claimed he was not drunk, and that he was protecting himself from an unlawful assault by Gurin, Chernov, and Serganov.

**Verdict**

Acquitted of attempted aggravated hooliganistic murder and aggravated hooliganistic murder of people fulfilling a social duty. The jury found that the conduct of Gurin and Chernov was not correct and that defendant acted in self-defense and without excessive force.

**Appeal**

The Supreme Court reversed the acquittal, finding that it was error for the judge to submit a new question list after finding an irregularity in the first one, and holding that questions of self-defense and heat of passion were questions of law, not of fact. Decision of July 28, 1994, Case No. 32-kp-094-30sp.

**SARATOV-16**

Judgment of May 24, 1994 (Ermakov), Saratov Regional Court. Judge: V.F. Shishliannikov

Prosecutor: E.A. Lokhov

Defense Counsel: S.N. Dolzhikov and R.V. Eremin

**Charges**


Andrei Vladimirovich Bykov: Malicious hooliganism. § 206(2). Failure to report a murder. § 190.

**Allegations**

At the beginning of October 1993, Kashuba (defendant) bought a sawed-off shotgun and a pistol in the city of Samara. On October 24, 1993, Bykov (defendant) and Kashuba, who were drunk, met Vorozhbet, Apraksin (victims), and two other persons in the city of Balakovo. Defendants and the victims did not know one another. Allegedly for no reason, Bykov punched and kicked Vorozhbet causing minor bodily injury. Then Kashuba, from a distance of one meter, pointed his pistol at Apraksin and shot twice. The gun misfired. Kashuba then pointed the gun at Vorozhbet.
and fired twice, hitting him in the head and neck, and killing him. Defendants claimed an argument had preceded the violence.

Verdict

Kashuba: Convicted of illegal weapons possession, hooliganistic murder, and attempted hooliganistic murder.

Bykov: Convicted of malicious hooliganism. Acquitted of failing to report the murder and of attempted murder.

Sentence

Kashuba: Fifteen years with treatment for opium addiction.

Bykov: Four years.

SARATOV-17

Judgment of August 3, 1994 (Brazhin), Saratov Regional Court.594

Judge: V.F. Shishliannikov
Prosecutor: Iu.I. Sidorova
Defense Counsel: M.A. Poromotskaia

Charges

Two counts of aggravated hooliganistic murder. § 102(b, z). Malicious hooliganism and a murder threat. §§ 206(2), 207.

Allegations

On August 19, 1992, Dmitrii Gennad’evich Brazhin (defendant), who was drunk, met with his friend and two women, and suggested that they visit his neighbor, Z.P. Shumilina (victim), to drink there. Shumilina was in her apartment with her boyfriend D.A. Gabaev (victim). When Shumilina refused to open the door, defendant broke it down. Victims told defendant to leave but defendant began to swear at them, kick them, and hit them until they lost consciousness. Defendant and his friends then went into the kitchen and drank alcoholic beverages. Defendant dragged the unconscious victims into the bedroom and slit their throats with a knife.

At about 3:30 P.M., Shumilina’s daughter, N.A. Shumilina (victim), came home. She tried to go into the bedroom, but defendant, who was naked, was holding the door from the inside. He finally emerged, swore at her, and began to beat and kick her. She ran out on to the balcony and shouted for help. The naked defendant seized the knife and chased after her, threatening to kill her and throw her from the balcony. When someone in the apartment yelled that the police were coming, defendant threw his clothes on and he and his friends left.

Verdict

Convicted of the aggravated hooliganistic murders of Shumilina and Gabaev, and malicious hooliganism and a death threat in relation to N.A. Shumilina.

Sentence

Fifteen years.

SARATOV-18

Judgment of August 9, 1994 (Iunev and Zhadan), Saratov Regional Court.595

Judge: Iu.N. Tsarev
Prosecutor: V.I. Levchenko
Defense Counsel: M.I. Timofeev (for Iunev) and T.I. Ermenkova (for Zhadan)

Charges

Vladimir Aleksandrovich Iunev: Twelve counts of forcible sodomy and one count of attempted forcible sodomy of a juvenile. § 121. Illegal possession of military ammunition. § 218(1). Aggravated hooliganistic murder. § 102(g). Attempted aggravated murder by someone who had previously murdered, to conceal that previous murder. §§ 15, 102(e, i). Two counts of theft of personal property. § 144(3). Attempted theft of public property. §§ 15, 89(3). Theft of socialist property. § 93-1. Theft of personal documents. § 195(3). Theft of a license plate. § 195(1). Contributing to the delinquency of a minor by encouraging him to engage in criminal activity. § 210.

Aleksandr Viacheslavovich Zhadan: Two counts of theft of personal property. § 144(3). Attempted theft of public property.

594 The author reviewed the descriptive part of the indictment, the question list, and the judgment.

595 Interview with Sarah Reynolds, Professor at Harvard Law School, who observed the trial, in Moscow (Aug. 11, 1994). The author also reviewed the descriptive part of the indictment, the question list, and the judgment.
Allegations

Six minor boys (victims) testified that Iunev (defendant) either attempted to or did forcibly sodomize them at various times since 1987. In a couple of cases Iunev sodomized the same boy more than once after threatening to reveal the previous act to his friends unless he submitted again. In every case Iunev threatened the boys with bodily injury or death.

On January 26, 1993, Iunev, who was drunk, invited another boy (victim) into an apartment and tried to get him to invite a young girl as well. The boy refused and Iunev stabbed him in the chest and neck, killing him. Iunev put the boy's body under the bed and invited another boy back to the apartment. Iunev allegedly threatened him with a knife and forced him to submit to sodomy. According to the indictment, the boy later noticed the dead body. Fearing that the boy would report the murder and the sodomy, Iunev plunged the knife into the boy's chest, but the boy fled into the hall where a man prevented Iunev from catching him.

Zhadan (defendant) also testified that Iunev forcibly sodomized him several times in 1990, when he was still a minor. All of the above acts took place in the town of Mokrous, Fedorovskii Raion.

In April 1992 Iunev and Zhadan, who lived in a hotel with one Varaev (victim), stole Varaev's property, including a leather coat, shoes, and a scarf, together worth 10,300 rubles. In June 1992 Iunev, with Zhadan as a look-out, reached into a state store and unplugged an air-conditioner; they fled, however, when Zhadan heard a noise. In July 1992 Iunev and Zhadan broke into the garage of a local newspaper and stole the newspaper's car which contained personal documents and property of A.K. Anosov; they later stole the car's license plate.

Iunev was arrested on January 30, 1994, in his home, where police found some illegal military ammunition which defendant claimed to have found ten years earlier while digging a trench.

Verdict

Iunev: Convicted of twelve counts of forcible sodomy of a juvenile, illegal possession of military ammunition, aggravated hooliganistic murder, attempted aggravated murder by someone who had previously murdered, two counts of theft of personal property, theft of personal documents, theft of a license plate, and contributing to the delinquency of a minor by encouraging him to engage in criminal activity. Acquitted of the attempted theft from the state store and one attempted sodomy charge.

Zhadan: Convicted of two counts of theft of personal property, attempted theft of public property, theft of socialist property, theft of personal documents, and theft of a license plate. The jury recommended lenience.

Sentence

Iunev: Fifteen years.
Zhadan: Four years, suspended for three years.

SARATOV-19

Judgment of August 10, 1994 (Rakhimov), Saratov Regional Court.

Judge: Evgenii V. Druzin
Prosecutor: V.P. Anashkin
Defense Counsel: Iu.N. Spirkin

Charges

Rape-murder for personal gain. §§ 117(4), 102(a, c). Theft of personal items. § 144(2). Theft of a passport. § 195(3).

Allegations

On March 13, 1994, Umar Ramazanovich Rakhimov (defendant) attended a dinner in memory of a dead acquaintance at Shashaeva's house in the village of Sosnovoborskoe, Petrovskii Raion, and got drunk. The Evstigneev and Nedoshivin couples were also present. M.V. Evstigneeva went to her house next door to put her son to sleep. Later, her mother, N.F. Nedoshivina (victim) came to babysit, and Evstigneeva returned to the dinner. Defendant, knowing victim was alone with the baby, went next door with the intent of raping her. Defendant beat her and bit her in the back and buttocks, and forced her to submit to anal intercourse. He then strangled her and hid her body in a haystack in
the courtyard of the house. Defendant then stole miscellaneous articles and Evstigneeva’s passport, and left.

**Verdict**

Convicted of rape-murder for personal gain, theft of personal items, and theft of a passport.

**Sentence**

Fifteen years.

**STAVROPOL' TERRITORIAL COURT**

**STAVROPOL'-1**

Judgment of April 22, 1994 (Poliakov), Stavropol' Territorial Court.597

Judge: N.G. Nikitenko
Prosecutor: S.S. Kuz'menko
Defense Counsel: V.A. Sidorchenko

**Charges**

Aggravated robbery. § 146(2)(v). Grand larceny. § 144(2, 3). Aggravated murder for financial gain, out of hooliganistic motivation, and to prevent a citizen from carrying out his civic duty. § 102(a, b, v).

**Allegations**

Nikolai Mikhailovich Poliakov (defendant) was aware that his neighbor, E. Ol'khovskaiia (victim), an elderly woman, had moved in with another man, leaving her house and possessions unattended. After becoming intoxicated one evening, defendant took his wheelbarrow to Ol'khovskaiia’s house, intending to steal her personal property. On his first haul, he took about 500,000 rubles worth of goods. During his second trip, he encountered Ol'khovskaiia’s son-in-law, N. Sukhikh, who had been informed of the theft. Defendant returned home, drank some more, and returned to continue his theft. Defendant took a shotgun, purportedly to scare Sukhikh. Defendant again encountered Sukhikh, who threatened to send the police to defendant’s house the next day. Defendant responded by shooting him in the head, killing him.

Defendant also allegedly stole a rug belonging to Mrs. Laudenshleger in September 1993. At trial, defendant unsuccessfully tried to gain favor with the jury by pointing out that Laudenshleger and Sukhikh were non-Russian.

**Verdict**

Convicted of aggravated murder to conceal the commission of a theft and of two counts of theft. Acquitted of robbery.

**Sentence**

Fifteen years deprivation of liberty.

**STAVROPOL'-2**

Judgment of April 27, 1994 (Ioev), Stavropol' Territorial Court.598

Judge: L.V. Kondrat'ev
Prosecutor: S.S. Kuz'menko
Defense Counsel: V.A. Sidorchenko

**Charges**

Aggravated murder out of hooliganistic motivation. § 102(b). Illegal possession of firearms. § 218(1).

**Allegations**

On November 6, 1992, Vitalii Sergeevich Ioev got into an argument with G.B. Avsharov, in which they exchanged threats, insults, and profanities. Defendant, who was drunk, shot Avsharov four times, killing him. He claimed that he acted in self defense. The incident took place in the village of Aleksandrovsk.

**Verdict**

Convicted of non-aggravated intentional murder. Acquitted of illegal possession of firearms.

**Sentence**

Six years.

597 Popytka ubitya razvrat' national'nuui kartu podderzhki u priznachnykh ne nashla [Attempt by Murderer to Play the Nationalism Card Found No Support with the Jury], Izvestia, Apr. 27, 1994, at 2. The author also reviewed the file.

598 The author reviewed the question list and the judgment.
Appeal


STAVROPOLO'3
Judgment of May 4, 1994 (Dergalev), Stavropol' Territorial Court.599
Judge: I.I. Kurbatov
Prosecutor: L.N. Suvorova
Defense Counsel: D.M. Fedorenko

Charges
Rape of a child, causing a serious bodily injury. § 117(4).

Allegations
On September 11, 1993, Sergei Aleksandrovich Dergalev (defendant), who was drunk, lured a twelve-year-old girl away from her family's garden plot, threw her down, beat her with his fists on her head and body, and choked her, causing injuries to her brain. He then raped her. When the girl heard her parents looking for her, she managed to flee. Defendant hid and later went home, where he was arrested. He confessed to the investigators. At trial he testified that he did not hit the girl, but only tried to rape her and was only partially successful. The incident took place in the city of Piatigorsk.

Verdict
Convicted of rape of a minor, not a child, causing especially serious bodily injury. The jury found that defendant did not know that the girl was under fourteen. They recommended special lenience.

Sentence
Six years.

STAVROPOLO'4
Judgment of May 13, 1994 (Esenov and Esenov), Stavropol' Territorial Court.600

599 The author reviewed the indictment, the question list, and the judgment.
600 The author reviewed the indictment, the question list, and the judgment.
Verdict

A.Ia. Esenov: Convicted of attempting to murder a policeman.

Sentence

A.Ia. Esenov: Ten years.

STAVROPOL'-5

Judgment of June 17, 1994 (Brovkin and Minkin), Stavropol' Territorial Court.601
Judge: L.I. Kondrat'ev
Prosecutor: V.V. Chernenko
Defense Counsel: M.S. Benediuk and L.G. Sazanova

Charges

Pavel Fedorovich Brovkin: Aggravated murder of two people. §102(e, z). Theft. § 144(2).
Ivan Ivanovich Minkin: Theft. § 144(2).

Allegations

In late October 1993, Brovkin and Minkin (defendants), while drunk, went to the home of Brovkin's ex-wife in the village of Donsk, Trunovskii Raion. She was not home. Defendants stole, for purposes of resale, a motorcycle from in front of her house, which belonged to Sukhinin. Both defendants admitted having committed this theft.

In August of 1993, Brovkin, who abused alcohol, began seeing Natal'ia Kosukhina. Natal'ia's mother, Mar'ia, did not like her daughter seeing Brovkin. Mar'ia and Brovkin argued a lot and Brovkin swore at her and created scandals. The two never fought physically. Brovkin once told Natal'ia that when he died he would take a member of her family with him. Mar'ia obtained a hatchet and kept it with her at all times, fearing Brovkin would kill her. Natal'ia had two daughters, four-year-old Katia and sixteen-year-old Evgeniia, who got along well with Brovkin. To avoid the tension between Mar'ia and Brovkin, Natal'ia moved out of the family house and moved in with Brovkin at a communal dormitory.

On November 4, 1993, defendants and some co-workers got drunk at lunchtime. At 3:00 P.M., Brovkin decided to go to the Kosukhina house to get his clothes. The door was open and he entered to see Mar'ia standing in the hall, holding the hatchet in a defensive manner. Brovkin grabbed the hatchet and began chasing her up the stairs. He trapped her in a room on the second floor, in which Katia was also present. Brovkin hit Katia on the head with the blunt end of the hatchet and she fell unconscious to the floor. He testified that he was trying to hit Mar'ia, but accidentally hit Katia. Mar'ia escaped and ran to the third floor. Brovkin caught her there and hit her seven or eight times in the head with the hatchet, killing her. He then returned to the second floor where he saw that Katia was still alive. He decided to finish her off, striking her three more times in the head. He then washed the hatchet, put it under his coat and left. Brovkin hid the hatchet underneath a house on the way back to work. According to Brovkin's friends, when Brovkin rejoined them that afternoon, he looked pale and was shaking. He downed two large glasses of vodka and then started crying.

Natal'ia and Evgeniia returned home around 5:15 P.M. and found Katia and Mar'ia. Katia died before the ambulance came.

Verdict

Brovkin: Convicted of aggravated murder of two people and theft.
Minkin: Convicted of theft. The jury recommended lenience.

Sentence

Brovkin: Death.
Minkin: Three years, suspended.

STAVROPOL'-6

Judgment of June 23, 1994 (Gokorian and Arutunian), Stavropol' Territorial Court.602
Judge: M.K. Chubarkin
Prosecutor: V.V. Chernenko
Defense Counsel: M.S. Benediuk and L.S. Alekseeva

601 The author reviewed the indictment, the question list, and the judgment.
602 The author reviewed the indictment, the question list, and the judgment.
Charges

Suren Serezhazhievich Gokorian: Aggravated robbery-murder. §§ 102(a, e, n), 146(2) (a, b, v).
Armen Tigranovich Arutiunian: Same.

Allegations

In May 1993 Gokorian and Arutiunian (defendants) moved from Armenia to the village of Kambulat, Turkmenskii Raion, where they worked in construction. They were fired for selling concrete on the side and periodically visited their supervisor, Vagan Simonian, to get back pay. On October 21, 1993, Vagan Simonian, Sumbat Simonian (victim), returned to Kambulat from Siberia on his way to Armenia. Sumbat met defendants and they spent time together in the ensuing days. Defendants thought that Sumbat Simonian was carrying around one million rubles.

On October 24, 1993, defendants decided to kill victim and steal his money. Defendants invited him that evening to come with them to visit some women. Victim came, drunk. Defendants led him through a wooded area. Gokorian had brought a metal bar with him that weighed about seven kilograms. As Arutiunian diverted victim’s attention, Gokorian clubbed him on the back of the head, causing him to fall to the ground. Gokorian clubbed victim a second time, killing him. Gokorian took victim’s leather coat, in which he found 600 rubles and a watch. Defendants dragged the body into the wooded area, Gokorian threw down the metal bar, and defendants left. Defendants were arrested in Rostov-on-the-Don Region, where Gokorian was wearing the jacket and was in possession of the watch.

Vagan Simonian testified that Sumbat had been paid 600,000 rubles. The police found 265,000 rubles under victim’s mattress at Vagan’s house.

Arutiunian denied complicity, first claiming he was with Gokorian but did not know of Gokorian’s intent to rob victim. Later, Arutiunian said he was not even present. Gokorian initially confessed, implicating Arutiunian, but then said that Arutiunian was not present and that victim had attacked him and he had only acted in self-defense.

Verdict

Gokorian: Convicted of aggravated robbery-murder.
Arutiunian: Convicted of aggravated robbery-murder.

1995  The Resurrection of Trial by Jury in Russia

Sentence

Gokorian: Nine years.
Arutiunian: Eight years.

STAVROPOL’-7

Judgment of June 24, 1994 (Sushko), Stavropol’ Territorial Court. 608
Judge: N.K. Zarudniak
Prosecutor: V.P. Loviannikov
Defense Counsel: V.G. Kostenko

Charges

Aggravated murder of two persons. § 102(z).

Allegations

Iurii Alekseevich Sushko (defendant), I.N. Repin (victim), and A.V. Koriakin (victim), were helping build a milk plant on a collective farm in Levokumskii Raion. Defendant brought construction material and other machinery, including a movable generator, an irrigation machine, and a water container to aid in the construction. In July 1991, the relationship between defendant and the victims soured. Defendant demanded victims return his generator, irrigation machine, and water container. They refused. Defendant and victims exchanged threats.

On August 2, 1991, at about 5:00 P.M., defendant allegedly went to the milk plant with a double-barreled shotgun. Victims were sitting on a bench in front of the milk plant. Defendant demanded the machines. Victims reminded him that they had said they would kill defendant if he ever came back. A fight started. Repin allegedly yelled for Koriakin to get the gun and Koriakin allegedly returned with a single-barreled shotgun and fired once, accidentally hitting Repin. Defendant allegedly jumped up, grabbed Koriakin’s gun, but couldn’t reload it. Defendant then allegedly grabbed the double-barreled shotgun and hit Repin twice in the head with the butt end, killing him. Defendant then allegedly chased Koriakin and fired twice, missing him with the first shot, but hitting Koriakin in the chest with the second shot, killing him. Defendant said he took the bodies in his truck to a sunflower field and buried them. Defendant later cleaned up the murder.

The author reviewed the indictment, the question list, and the judgment.
site, threw away the guns, and threw away the victims' clothes. Defendant showed investigators where the bodies were buried and the drainage ditch into which he threw the gun and clothes.

Defendant later claimed that investigators had forced him to give a false statement. Defendant said that he had met three unknown men who wanted to buy wine and that, since he had wine at home, he took them to his home. Defendant said that he then took them to the milk plant because the young men wanted to buy the generator. Defendant said that he then heard three shots, saw the young men load the bodies into his truck, and saw where they buried them.

**Verdict**

Defendant was initially convicted of aggravated murder of two persons. The trial took place before a court with lay assessors.

**Appeal**

The Supreme Court reversed, ordering that defendant's allegations of mistreatment during the investigation be investigated. This was done, yielding no information that defendant was mistreated.

**Verdict**

Acquitted upon retrial by a jury.

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**STAVROPOL'-8**

Judgment of June 27, 1994 (Khaniev), Stavropol' Territorial Court.

Judge: M.S. Romanov
Prosecutor: V.V. Alypov
Defense Counsel: V.D. Zimogliadov

**Charges**

Passing counterfeit currency. § 87(1).

**Allegations**

Abdulsalam Akhmetovich Khaniev (defendant) obtained two counterfeit 50,000-ruble notes in the city of Malgobek, in the Republic of Ingushetia and used one in a restaurant there. On November 29, 1993, he gave the second note to Salokhin at the train station in Mineralnye Vody and asked him to buy a bottle of vodka and some cheese with it. The saleslady recognized that the bill was counterfeit and returned it. Salokhin told some policemen and they arrested defendant. Defendant claimed he did not know the bills were counterfeit.

**Verdict**

Convicted of passing counterfeit currency. The jury recommended special lenience.

**Sentence**

One and one half years.

---

**STAVROPOL'-9**

Judgment of July 13, 1994 (Edal'biev), Stavropol' Territorial Court.

Judge: M.K. Chubarkin
Prosecutor: V.V. Litvinov
Defense Counsel: L.M. Ryzhenko

**Charges**

Putting counterfeit money into circulation. § 87(1).

**Allegations**

On December 12, 1993, Aslambek Kiurievich Edal'biev (defendant) was arrested in the Mineralnye Vody train station with 63 counterfeit 50,000-ruble bills. He first told police that a man named Akhmatov in Groznyi, Republic of Chechnia, gave him the bills on December 9, 1993, for him to transport to Chernovtsy in Ukraine to give to a man named Igor', for which he would be paid 300,000 rubles. Defendant later changed his story and said that he did not know the money was counterfeit.

**Verdict**

Acquitted by the jury on a vote of 6-6.
Judgment of July 22, 1994 (Matsegorov), Stavropol’ Territorial Court.\textsuperscript{606}

Judge: V.A. Zakharov
Prosecutor: V.P. Loviannikov
Defense Counsel: E.E. Sizova

Charges

Aggravated murder with exceptional cruelty. § 102(g). Intentional infliction of minor bodily injury. § 109.

Allegations

On December 12, 1993, Vladimir Aleksandrovich Matsegorov (defendant) got drunk with Yu.I. Arutiunov (victim) at Arutiunov’s residence in Stavropol’. Defendant testified that an argument arose when Arutiunov accused him of stealing Arutiunov’s watch. Defendant alleged that Arutiunov hit him in the ear with a stool and then came after him with a knife. Defendant testified that he may have stabbed Arutiunov while wrenching the knife away and while pushing Arutiunov away.

Arutiunov was stabbed once in the neck and six times in the chest. Arutiunov died in the hospital the next day. Arutiunov’s body had thirty-two apparent cigarette burns but defendant denied having touched Arutiunov with a cigarette.

After leaving Arutiunov’s house, defendant went to the apartment of his former girlfriend L.I. Kurakova (victim), threw her onto the ground, hit her, and stomped her with his feet, causing minor bodily injury.

Verdict

Convicted of non-aggravated murder of Arutiunov (§ 103) and the infliction of minor bodily injury on Kurakova. The jury recommended special lenience.

Sentence

Thirty-four months.

\textsuperscript{606} The author reviewed the indictment, the question list, and the judgment.

Judgment of June 9, 1994 (Mel’tsev), Ul’ianovsk Regional Court.\textsuperscript{607}

Judge: B.V. Lagunov
Prosecutor: P.A. Alenin
Defense Counsel: A.A. Vershinin

Charges

Possession of a deadly weapon. § 218(1). Malicious hooliganism. § 216(1). Aggravated murder out of hooliganistic motivation. § 102(b).

Allegations

On August 14, 1993, Aleksandr Viktorovich Mel’tsev (defendant), a chronic alcoholic, got drunk with several companions including S.V. Popkov (victim). Defendant became angry when victim did not invite him to share one of the bottles of vodka. Defendant then grabbed him by the shirt and punched him in the face. Victim pushed him away. Defendant then pulled out his home-made revolver and shot victim once in the chest, killing him instantly.

Verdict

Convicted of possession of a deadly weapon, malicious hooliganism, and aggravated murder out of hooliganistic motivation. The jury recommended lenience.

Sentence

Fourteen years.

Judgment of July 6, 1994 (Shishaev), Ul’ianovsk Regional Court.\textsuperscript{608}

Judge: A.S. Kol’shinitzyn
Prosecutor: S.A. Khrulev
Defense Counsel: S.V. Shipkov

\textsuperscript{607} The author reviewed the judgment.
\textsuperscript{608} The author reviewed the file and the question list.
Charges

Two counts of rape. § 117(4). One count of attempted rape of a child. §§ 15, 117(4).

Allegations

According to the testimony of a female minor, her grandfather, Anatolii Vasil'evich Shishaev (defendant), had sexual intercourse with her in 1992 when she was six years old. In the winter of 1992, defendant pulled her into the bathhouse, took off her clothes, and had lain down next to her when defendant’s daughter, Galina Shishaeva, entered the bathhouse and interrupted him. On November 24, 1993, defendant again undressed the girl and she alleged that he had sex with her. Defendant was again caught in the act by Galina Shishaeva.

Another daughter of defendant claimed that defendant tried to have sex with her in 1984. Galina Shishaeva also claimed that defendant tried to have sex with him in November 1993. Defendant admitted to the November 1993 incident, but denied the others. Defendant claimed that his granddaughter wanted to have sex with him.

Defendant's wife is paralyzed. Defendant is a chronic alcoholic who was allegedly drunk during each incident.

Verdict

Acquitted of the 1992 count of rape. Found guilty of lewd conduct with a minor. § 120. The jury recommended special lenience in relation to this charge. Convicted of attempted rape of a child. The jury recommended lenience as to this charge.

Sentence

Ten years with treatment for alcoholism.

UL'IANOVSK-3

Judgment of July 8, 1994 (Kamaletdinov and Khamidullin), Ul'ianovsk Regional Court.609

Judge: B.V. Lagunov
Prosecutor: A.E. Kulagina

609 Memorandum from A.N. Chukalov, Vice-President of the Ul'ianovsk Regional Collegium of Advocates, on the closing arguments of both Defense Counsel. The author also reviewed the indictment, the question list, and the judgment.

1995 The Resurrection of Trial by Jury in Russia

Defense Counsel: V.L. Daminova (for Kamaletdinov) and A.A. Merdeev (for Khamidullin)

Charges

Ravil' Kelimullovich Kamaletdinov: Aggravated murder with extreme cruelty and as a result of a previous conspiracy. § 102 (g, n).

Ferit Kharisovich Khamidullin: Same.

Allegations

Kamaletdinov (defendant) had a sister who had been married to T.N. Akhmetzianov for eighteen years. Akhmetzianov often beat his wife and chased her out of the house, threatening her with death.

On January 1, 1994, he again chased his wife out of the house and rode through the village on horseback, forcing his way into people's houses to look for her. Later that day, Kamaletdinov and a cousin of victim's wife, Khamidullin (defendant), got drunk and Kamaletdinov decided it was time to kill Akhmetzianov. He asked Khamidullin to participate and Khamidullin agreed. Defendants tricked Akhmetzianov into travelling with them to a neighboring village. On the road, defendants attacked him. Kamaletdinov stabbed him forty-one times and Khamidullin stabbed him four times until his knife broke. Defendants left victim on the road. Both defendants admitted their guilt, but denied intent to inflict extreme cruelty.

Both defendants had no prior police records and had good reputations.

Verdict

Kamaletdinov: Convicted of aggravated murder as a result of a previous conspiracy. The jury recommended lenience.

Khamidullin: Convicted of aggravated murder as a result of a previous conspiracy. The jury recommended special lenience.

Sentence

Kamaletdinov: Eleven years.
Khamidullin: Seven years.
Judgment of August 15, 1994 (Tes'kov), Ul'ianovsk Regional Court. 610

Judge: Iu.S. Il'inykh
Prosecutor: Unknown
Defense Counsel: A.G. Ivachev

Charges

Aggravated robbery. § 146(2)(b, v, e). Aggravated murder for financial gain, to conceal the commission of another crime, and with extreme cruelty. § 102(a, g, e). Destruction of personal and socialist property by arson. §§ 149(2), 93(2). Infliction of minor bodily injuries on citizens exercising their civic duty. § 193(2).

Allegations

Aleksandr Alekseevich Tes'kov (defendant), a thirty-one-year-old deacon of a Russian Orthodox Church, was a collector of old religious books, an alcoholic, and an alleged abuser of pills. He often quoted from the Bible and talked about the importance of the law, forgiveness, and brotherly love. He drank a lot of church wine, smoked during services, and was fascinated with corpses.

V.E. Verbitskii (victim) was an old acquaintance. Victim arranged to sell a rare book to defendant on June 6, 1993. Defendant did not show up for the sale. At 7:00 A.M. on June 7, 1993, defendant came to victim's apartment armed with a kitchen knife and some kerosene. Defendant stabbed victim twenty-seven times, killing him. Defendant then tried to dismember the body at the knees and shoulders, and hide it. He stole a number of icons and religious books and other items, including money, and then set the apartment on fire with the kerosene, setting off an explosion.

Defendant ran from the building and was followed by bystanders who believed him to be responsible for the blast. Defendant escaped after he teargassed his pursuers. He talked his way into a stranger's apartment in another building saying he was being attacked by teenage thugs, washed the blood off himself, put on a change of clothes he had in his bag, and shaved his beard. Shortly after leaving the stranger's apartment, defendant was arrested by the police.

Defendant claimed he was "in a fog" at the time of the killing and that he was carrying kerosene because he was on his way to his dacha. Defendant was diagnosed as psychotic but responsible for his actions.

Verdict

Convicted of aggravated murder.

Sentence

Fifteen years.
Appendix II

Jury Trial Statistics As of September 1, 1994

Compiled by the Cassational Panel of the Supreme Court of the Russian Federation (given to the author by Alexei P. Shurygin, Head of the Cassational Panel of the Supreme Court of the Russian Federation, Sochi, Oct. 5, 1994).

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| Names of Courts            |                      |                                        |                                                               |                                  |                                     |                                               |                                  |                   |                        |                               |                           |
|---------------------------|----------------------|----------------------------------------|                                                               |                                  |                                     |                                               |                                  |                   |                        |                               |                           |
| Altai Territorial Court   | 1/1                  | 1/1                                    | 2/2                                                           | 50                               | 0                                   | 0                                             | 0                               | 0                  | 0                      | 0                             | 0                         | 0                             | 0                             | 0                             | 0                             |
| Ivanov Regional Court     | 0                    | 0                                     | 0                                                              | 0                                | 0                                   | 0                                             | 0                               | 0                  | 0                      | 0                             | 0                         | 0                             | 0                             | 0                             | 0                             |
| Krasnodar Territorial Court | 0                   | 0                                     | 0                                                              | 0                                | 0                                   | 0                                             | 0                               | 0                  | 0                      | 0                             | 0                         | 0                             | 0                             | 0                             | 0                             |
| Moscow Regional Court     | 0                    | 0                                     | 0                                                              | 0                                | 0                                   | 0                                             | 0                               | 0                  | 0                      | 0                             | 0                         | 0                             | 0                             | 0                             | 0                             |
| Rostov Regional Court     | 1/2                  | 1/2                                    | 1/2                                                           | 66.6                             | 0                                   | 0                                             | 0                               | 0                  | 0                      | 0                             | 0                         | 0                             | 0                             | 0                             | 0                             |
| Riazan’ Regional Court    | 0                    | 2/5                                    | 2/5                                                           | 83.3                             | 0                                   | 0                                             | 0                               | 0                  | 0                      | 0                             | 0                         | 0                             | 0                             | 0                             | 0                             |
| Saratov Regional Court    | 2/2                  | 2/2                                    | 2/2                                                           | 33.3                             | 2/2                                 | 33.3                                          | 1/2                             | 1/2                | 0                      | 1/1                           | 0                         | 0                             | 0                             | 0                             | 0                             |
| Stavropol’ Territorial Court | 0                   | 0                                     | 0                                                              | 0                                | 0                                   | 0                                             | 0                               | 0                  | 0                      | 0                             | 0                         | 0                             | 0                             | 0                             | 0                             |
| Ul’ianovsk Regional Court | 0                    | 0                                     | 0                                                              | 0                                | 0                                   | 0                                             | 0                               | 0                  | 0                      | 0                             | 0                         | 0                             | 0                             | 0                             | 0                             |
| Total                     | 4/5                  | 5/6                                    | 7/11                                                          | 35.5                             | 2/2                                 | 6.4                                           | 3/5                             | 3/5                | 0                      | 7/18                           | 0                         | 0                             | 0                             | 0                             | 0                             |

The Restoration of Trial by Jury in Russia
ACKNOWLEDGMENTS

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For my knowledge of the drafting of the Jury Law, the political struggle attending it, and its difficult path through the Supreme Soviet of the Russian Federation, I owe special thanks to Sergei Pashin, Head of Section for Judicial Reform of the State Legal Department of the President of the Russian Federation, and his assistant Sergei Tropin, who allowed me to attend crucial meetings and provided me with copies of all of the various drafts of the law. I further would like to thank Lev Khaldeev, Lidia Alekseeva and Nona Radutnaia of the Russian Legal Academy who allowed me to attend their seminars for judges and participate in their conferences and strategy sessions surrounding the implementation of the Jury Law. Thanks also goes to Lev Ivanov and Mikhail Paleev of the former Legislative Committee of the Supreme Soviet who allowed me to attend meetings and the hearings relating to the Jury Trial Law and gave me important insight into the political struggles which accompanied its path through the legislature.

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IVANOVO REGION: President of Ivanovo Regional Court Iurii Smirnov, Vice-Presidents of Ivanovo Regional Court Valerii Stepanin, Leonid Solov’ev, and Lev Loginov, and Judge Larissa Gracheva. President of the Ivanovo Regional Collegium of Advocates Albert Bulichov and Advocates Vladimir Arkharov; Evgenii Gradusov, and Sergei Travin.

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MOSCOW REGION: President of Russian Federation of Advocates and the Moscow Regional Collegium of Advocates Aleksei Galaganov, President of the Russian Council of Judges and Former President of Moscow Regional Court Mikhail Bobrov, Vice-President of Moscow Regional Court Svetlana Marasanova, Judges Natalia Grigor’eva, Iurii Tutubalin, Valerii Letiagin, and Aleksandr Dzyban, and Court Clerk Tat’iana Karpova.

RIAZAN REGION: Acting President of the Riazan Regional Court Nikolai Lezhnev, Judge Viktor Chebakov, and President of the Riazan Collegium of Advocates Ivan Markov.

ROSTOV-ON-THE-DON REGION: Judge Boris Nikolaev and Advocate Sergei Oganesov.
SARATOV REGION: President of the Saratov Regional Court Aleksandr Galkin, Vice-President Valerii Konev, Judges Evgenii Druzin and Vladimir Shishliannikov, and Advocate Il'ia Shashikadze.

STAVROPOL' REGION: Judge Nikolai Nikitenko and Advocates Vladimir Gevorkov and Vladimir Fedotov.

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