

JURY TRIALS START IN KAZAKHSTAN

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To Westerners who are used to the idea of obtaining a jury trial when one is going to court, it is difficult to imagine a court system where that is not allowed. But in Central Asia it is a Civil Law region and jury trials are a cornerstone of the Common Law system. The American Constitution guarantees a citizen the right to a jury trial under the Sixth Amendment.¹ But under the Civil Law systems that developed from Roman-Germanic origins, a jury trial was not guaranteed as a right under the Civil law codes. Kazakhstan has followed this traditional pattern and has historically only allowed individuals charged with a crime or litigants in a civil lawsuit only a trial before a judge.

The new pattern for allowing jury trials began in Russia on July 16, 1993, when the Russian Federation amended the Criminal Procedure Code to allow a defendant in a criminal trial to have a panel of 12 people decide his or her case.² This process for Kazakhstan finally began on January 1, 2007, but only in the case of capital cases.³ Without a history of jury trials, it is a difficult process to determine how they should operate and how they should be conducted. In response to new the legislation instituting jury trials in serious murder cases in Kazakhstan, the Rule of Law Initiative's Regional Advocacy Program, in cooperation with the Union of Advocates of Kazakhstan, conducted advocacy skills training for 20 lawyers from around the country on March 15, 2007. The training was planned in coordination with the first three jury trials in the country, which occurred in Petropavlovsk, Uralsk and Almaty. Advocates from the first two trials attended the training, and they discussed their experiences participating in this new trial format. The roundtable discussion, which will be televised and featured in the magazine *Advocate*, centered on the significant issues and problems experienced by the first advocates to operate in the jury trial format in the country. The lack of knowledge and experience regarding how best to participate in jury selection was one of the biggest problems discussed. Other significant obstacles highlighted during the discussion were the lack of knowledge on the part of judges regarding the need to provide ample time to question the jurors, as well as the need for access by defense advocates who wish to question jurors.⁴

With the introduction of jury trials come some very practical problems. Who will sit on the jury? What will their function be? How will lawyers prepare and conduct a jury trial? While these may seem to be easy questions for Westerners who are used to jury trials, in a system where a jury trial has never been used before the administrative problems are enormous. The major problems that must be addressed are within the structure and laws of Kazakhstan, how will jury trials function; how will lawyers prepare their client for a jury trial; how will a lawyer assist his client in deciding on whether to use a jury trial, or try the case to the judge; how will the determination of jury

¹ U.S. Constitution, Sixth Amendment.

² Moscow Center for Prison Reform, *Jury Trials in Russia*, (1998), at <http://www.prison.org/english/rpsjur.htm>.

³ USAID Europe and Eurasia, *Kazakhstan Courts Prepare for Jury Trials*, (November 2, 2006), at

http://www.usaid.gov/locations/europe_eurasia/press/success/2006-11-09.html

⁴ American Bar Association, *Promoting the Rule of Law*, (May 4, 2007), at <http://www.abanet.org/rol/news/news-kazak-jury-trial-training.shtml>

members be made; how will lawyers use their legal skills before a jury, it is often an art that takes years to learn; and how will cases be appealed after a jury trial.⁵

While these questions may seem easy to solve, the first jury trials in Kazakhstan were a symbol of the important tasks that must be concluded if jury trials are to be successful. Some trials have already taken place in Eastern and Northern Kazakhstan. The jury consisted of eleven people, selected by special computer program from a long list of people's surnames, suggested by regional Akimat. People who do not have legal capacity, public servants, police officers, military personnel, lawyers, people with criminal history, as well as those who know the accused personally or are younger than 25 years old, could not participate. Those who were called in could also refuse from taking part voluntarily. A day of work as a juror is rewarded with 3,713 tenge - a half of daily salary of a judge in a regional court.⁶ More than 4,000 candidates to the jury were selected preliminarily from all voters in Northern Kazakhstan. Computers had selected 40. Only 37 appeared in the court. Among the candidates, crowded in a small courtroom, were people from all over the region, from the teachers to the housewives. Some of them had to cross several hundred kilometers to reach the regional court. Some have clearly smelled of alcohol⁷ About one third of the candidates informed the court that they could not take part in a trial. Some referred to being swamped at work. The teachers of the state university and the schools turned out to be the busiest people. Others said they had to take care of their sick husbands or wives at home, or worried about their chickens and cows left behind. One candidate, as it turned out, did not speak Russian, a language of the trial, another had impaired hearing. Satybaldy Nurushev, who was worried about leaving his stock room unattended, became the very first juror in the history of the country's judiciary.⁸ The practical point is that if one is guaranteed a right to a jury trial, the process must work, and it must work fairly to all. If a jury cannot be seated because of administrative problems, then it is not fair and does not apply equally to all.

⁵ *Id.*

⁶ NewsEurasia, *Jury Kazakhstan* (April 9, 2007) at <http://kazakhstan.neweurasia.net/2007/04/09/the-jury-starts-working-in-kazakhstan/>

⁷ *Id.*

⁸ *Id.*