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THE POLITICS OF JURY TRIALS IN KAZAKHSTAN

ПОЛИТИКА СУДА присяжных В КАЗАХСТАНЕ

ҚАЗАҚСТАНДАҒЫ АЛҚАБИЛЕР СОТЫНЫҢ САЯСАТЫ

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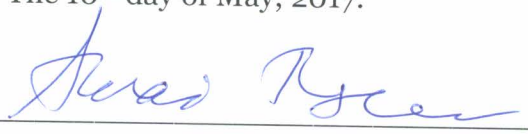

Signature of Principal Thesis Adviser

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by

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List of Abbreviations

GP	General Prosecution office
MVD	Ministry of Interior Affairs
OSCE	Organization for Security and Cooperation in Europe
CCRK 1997	Criminal Code of the Republic of Kazakhstan issued in 1997
CCRK 2014	Criminal Code of the Republic of Kazakhstan issued in 2014
USSR	Union of Soviet Socialist Republics
CIS	Commonwealth of Independent States
RK	Republic of Kazakhstan
LPRC	Legal Policy Research Center

Abstract

This study investigates the paradoxical politics of jury trials in Kazakhstan. In doing so, it tries to find out the influence of jury institution on the pro-accusation bias within criminal justice system as well as reasons for institutional resistance against the expansion of jury trials and the ways this resistance takes form. More broadly, this research is directed towards understanding the state-society relations in non-democratic regimes, dynamics of criminal justice reforms, conflict and cooperation within criminal justice system, interaction between law-enforcement officials and laypersons, legal consciousness of jurors. Generally, this study finds out that jury trials do reduce the accusation bias; however this impact is almost invisible due to limited jurisdiction of jury institution. Whereas legal actors such as prosecutors and judges resist against the expansion of jury trials in the state, since jurors expose the weaknesses of provided evidences by prosecution side during trials as well as diminish the power of the judge of solely determining the verdicts. Also, this research demonstrates that jurors help to discipline judges and prosecutors. Most importantly, jurors can and actually do decide serious criminal cases, they are intolerant towards being controlled by judges and they are against the harsh criminal punishments for certain crimes. On top of that, jurors are not restricted within the framework of the criminal charges proposed by prosecutor; they can and actually do change the qualification of alleged crimes toward less severe ones, which consequently lessen punishment.

Key words: jury trials, accusation bias, institutional resistance

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Many thanks to the prosecutors and judges, who despite their busy schedule and common anxiety toward journalists and media find a time and set away prejudices in order to share their practices of participating in jury trials as well as describe the problems, which jury institution faces in considering the real criminal cases. I am grateful for the jurors, who responded to my approaches, since I do understand how it was difficult for them to talk about crimes, verdicts and their emotional feelings during the trials.

Last but not the least I am really thankful for my father, who always motivates me and supports my initiatives in the pursuit of knowledge.

Chapter 1. Jury Trials in Kazakhstan: Effective yet Unknown, Promoted yet Resisted

Paradox: Jury Trials in Non-Democracies

In May 2015, Kazakhstan's President Nursultan Nazarbayev proposed the national program of "100 concrete steps" to implement five institutional reforms: "*Creation of a modern and professional civil service, ensuring the rule of law, industrialization and economic growth, a unified nation for the future, transparency and accountability of the state*" (akorda.kz 2015) As it generally recognized "plan of the nation" is supposed to eliminate the systemic problems within the state and enable Kazakhstan to enter the list of 30 most competitive countries in the world (Idrissov 2015). Curiously, President specifically mentioned the need for expanding the use of the jury trials to improve the judicial system in Kazakhstan in order to ensure the rule of law. This is an urgent problem because Kazakhstan's rule of law-rankings are low, as documented by the Freedom House and World Justice Project. He declared in the 21st step: **"More use of jury service in trials. An implementation of a legal definition of categories of criminal cases, where a jury trial must be mandatory"** (akorda.kz 2015). Unlike many vague statements, here it is clear that President believes that jury trials are more fair and impartial than judge-only trials in deciding criminal cases and wants some trials to be conducted by juries consisting of laypersons. Thus, he **promotes** the expansion of jury trials, which have been functioning in Kazakhstan since 2007 and decided almost 1,400 serious criminal cases.

Yet jury trials remain a virtually **unknown** criminal justice institution even

though the public tends to trust them more than to professional judges, according to public opinion surveys (Sidorov 2015). The sociological survey conducted by Association of Sociologists and Political Scientists of Kazakhstan in all regional centers of the country in 2005 indicated that 51,1% out of 2336 respondents supported the introduction of jury trials in the Kazakhstan, while 21,9% of persons were against its functioning and 27% refrain from providing the answer (Suleimenova 2009). According to Izbassarov (2017) the majority of Kazakhstani citizens have positive attitude toward the jury trials (63% out of 765 respondents). About half of the respondents (52% out of 765 respondents) expressed their trust toward the jury institution. So, in general investigations both prior to the introduction of the jury trials in 2007 and after its ten years' experience demonstrate the public support to this institution.

Almost two years passed since the President's call for jury trials to be expanded, but the rest of the state apparatus failed to expand the jury trials to the appropriate level. The 2016 Criminal Procedure Code amendments have not made jury trials mandatory for any category of crimes. Instead, they expanded the category of cases eligible to be tried by jury to crimes related with the recruitment of minors into criminal activities, kidnapping, trafficking of minors – committed by organized group of people that lead to the death or severe consequence (Law of the Republic of Kazakhstan of 2015 *"O vnesenii izmenenii i dopolnenii v nekotorye zakonodatelnye akty Respubliki Kazakhstan po voprosam soversenstvovaniia sistemy otpravleniia pravosudiia"*). But, according to official statistics, these criminal cases are rarely registered and even rarer reach the courts. This has been a fake expansion. It takes place because many state prosecutors, investigators and judges **resist** against the real expansion of jury trials. So the **paradox**

emerges: Why and how in the system with popular President, do officials whom he appoints, resist against his commands? They resist because jury trials are **effective**: they weaken the accusation bias. Law-enforcement apparatus resists collectively, since there is a well-established informal relationship between all professionals in criminal proceedings, including the defense counsel. In other words, detectives and investigators do not put much effort in collecting strong evidence, because they know that prosecutors will approve the case anyway. Prosecutors than informally negotiate with judges, that the latter will approve most or all criminal charges and convict defendants or at least not acquit. However, when the jurors – ordinary people – enter criminal proceedings and really decide cases, they pose a threat to all informal bargains made among detectives, investigators, prosecutors, and judges. As I will show below, this threat is real: jury trials strengthen adversarial procedure while jurors both debureaucratize and break cozy informal relationships within the criminal justice institutions and produce fairer outcomes. Jury trials acquit much more often than single-judge trials. And the criminal justice institutions resist jury trials in various ways: through shaping the negative public image of jury trials, lobbying for the restriction of their jurisdiction, manipulating the actual jury trial proceedings and overturning the acquittal verdicts.

The similar dynamics have occurred in Russia, where jury trials began functioning in several provinces in 1994 and expanded to the whole country in 2002 – one jury trial court per province. Their jurisdiction was narrowed in 2008, yet President Putin has recently ordered the expansion of territorial application of trials (RAPSI News 2016). According to the new law, beginning from the 1 January of 2018 the jury trials would be additionally conducted in all 2,500 district courts (*raionnye sudy*) and military

courts (*voenno-garnizonnnye sudy*) (Law of the Russian Federation of 2016 "*O vnesenii izmenenii v ugolovno-processualnyi kodeks Rossiiskoi Federatsii v sviazi s rasshireniem primeneniia instituta prisiazhnykh zasedatelei*"). Although this regulation does not expand the category of cases available for juries, it makes trials more accessible for all the parties including jurors, defendants, victims, witnesses and others. Since earlier vast Russian territories often times required all these parties travel long distances in order to attend court trials. So, after analyzing the cases of Kazakhstan and Russia it is interesting to note how these states constantly change their policies regarding jury institution. Why do we observe these back-and-forth approaches to jury trials in non-democracies?

Learning about the paradoxical politics of jury trials in Kazakhstan opens a unique window for understanding the state-society relations in non-democratic regimes: dynamics of criminal justice reforms; conflict and cooperation within the criminal justice system; interaction between law-enforcement officials and laypersons (defendants, victims, and jurors); and legal consciousness of jurors – ordinary persons who are asked to decide serious criminal cases.

Empirical and Theoretical Research Questions

The purpose of my thesis is to investigate the politics behind the resistance of law enforcement criminal justice system against the President's proposal of expanding jury trials and making them mandatory. I argue that the core reason for the resistance could be the risks that jury trials pose to informal relationships and the accusation bias within the criminal justice system. . My empirical research questions are:

- **“Do jury trials reduce the accusation bias in criminal proceedings Kazakhstan? How and Why?”**

Jury trial courts have decided almost 1,400 criminal cases in the first decade of their operation in Kazakhstan. This provides me with sufficient number of data points for systematic analysis of the outcomes of these cases.

My theoretical questions are:

- **How and why does the involvement of ordinary people in criminal proceedings change criminal justice in non-democratic regimes?**
- **Why would these regimes, which rely heavily on coercive law enforcement, want ordinary people deciding serious criminal cases more fairly?**

Addressing these big questions contributes to the growing body of political science research on the interplay between law and politics in non-democratic regimes, criminological research on the punitiveness of criminal proceedings, socio-legal studies of lay participation in the legal system and democratization literature on making democratically responsible citizens-decision-makers.

Concepts: Mixed Jury Trials, Informality, and Varieties of Resistance

There are several important concepts that arise in my thesis:

Mixed jury trials – in Kazakhstan it is a mixed court trial, where 10 lay assessors along with a single professional judge jointly determine the verdict and have the authority to change criminal charges. Any verdict of jury trial can be appealed indefinite number of times.

Accusation bias/Conviction bias/Pro-accusation bias– in Kazakhstani criminal practices as well as in other post-soviet states there is a systematic informal tendency of trial judges to show leniency towards prosecutors, to convict defendants much more than 50% of the time and of appellate judges to overturn acquittals much more often than convictions. This phenomenon is explained by various formal regulations and informal norms within judicial system.

Acquittal rate – is the percentage of criminal cases, where defendants have been cleared up of all allegations. It could be also measured by the proportion of acquitted and exonerated persons among all tried persons. I use the acquittal rate in criminal cases of public prosecution – in which state prosecutor is present - as an indicator of bias.

Decision-making – the processes of determining the verdict and changing the criminal charges - exercising the core responsibility of jurors and judge during the jury trials and of professional judges during judge-only trials and appellate hearings.

Informal relation between the prosecutors and judges – it is “unofficial” relationship between two law institutions, where prosecutors negotiate in advance with trial and/or appellate judges about the outcome of criminal case. Prosecution influences judges through the threats to appeal unfavorable sentence. Bribes offered by the defendants may also influence this informal relationship.

Resistance through lobbying – it is the refusal of law-enforcement agencies such as General Prosecution Office, Ministry of Justice, Ministry of Interior and Supreme Court to implement the President’s jury-expanding proposals in full, proposing jury-reducing bills and engaging in fake expansion of jury trials.

Active resistance – formal and informal practices by law-enforcement officials of manipulating the jury trials, spreading negative messages about jury trials in the media, cancelling the jury-made acquittals, and persuading defendants not to ask for a jury trial.

Passive resistance – formal and informal practices by officials of ignoring citizens not showing up for jury duty and not informing defendants about their right to jury

Hypotheses: Effects of Jury Trials and Resistance against Them

I develop six hypotheses explaining how and why jury trials actually make a difference (Hypotheses 1-3) in reducing accusation bias in Kazakhstan, and how and why the rest of the state apparatus resist jury trials (Hypotheses 4-6).

H1: The adversarial procedure of jury trials reduces the accusation bias

Criminal proceedings in the jury trial courts are more adversarial than in single-judge trials in Kazakhstan because:

- Ability of defense counsel to criticize evidences provided by prosecutors is stronger than in single-judge trials;
- Ability of defense counsel to persuade jurors is stronger than in single-judge trials;
- Adversarial proceedings provide incentives for the defense counsel to work harder than in single-judge trials.

H2: The jurors' attitude toward decision-making reduces the accusation bias

Jurors are outsiders to the law-enforcement system. They are different from criminal justice bureaucrats - police detectives, judges and prosecutors - in their decision-making:

- Jurors' attitudes and values are different from those of detectives, judges and prosecutors;
- Jurors feel more responsible for the outcome of the case and fate of the tried person(s) than professional law-enforcement officials feel.

H3: Jurors reduce accusation bias by breaking informal bargaining between Judges and Prosecutors

Jurors may expose that prosecutors and judges negotiate the outcome of the case or make these negotiations less effective:

- Jurors are "outsiders", they are not part of the informal criminal justice "system";
- Jurors are difficult to bribe, because there are 10 of them;
- Jurors may reveal to the public any information about improper relations (corruption, pressure, and/or improper interference) between judges and prosecutors.

The following set of hypotheses examine the ways in which most law-enforcement actors resist against jury trials in various ways on several fronts: shaping public opinion, lobbying at the top level and manipulating at the trial level.

H4: Criminal justice professionals (e.g. detectives, investigators, prosecutors and judges) resist by portraying jurors to the public as unprofessional and emotional individuals unable to assess evidences and deliver fair verdicts

H5: Criminal justice professionals resist to the expansion of jury trials by blocking the expansion of the jury trials or by faking it.

H6: Criminal justice professionals resist through the manipulation of jury trial process (e.g. biased selection of jurors, restricting the rights of defendant to have a jury trial, falsifying the list of questions given to the jurors before deliberation, etc.)

Drawing on my field research, I examine how jury trials reduce accusation bias in Chapter 4. While, Chapter 5 provides analysis of resistance against them in Kazakhstan.

Research Design and Methodology

Studying decision-making of jurors and judges is difficult because their deliberations are secret, they take place in a special room in the courthouse, and their contents are forbidden to disclose. Moreover, jury trials take place rarely due to the aforementioned resistance (more on this see below). Finally, learning about informal relations between detective, investigators, prosecutors and judges for me as an outsider to the criminal justice world was also going to be a challenge. Therefore, I chose to triangulate my data sources to collect both direct and indirect evidence of accusation bias, trials and judgments, informal relationships and resistance against jury trials – all in order to maximize the number of observations and have variation on these key dependent variables. This is consistent with what King, Keohane and Verba (1995: 212) recommend in their textbook: *The primary way of maximizing the leverage over the research*

problems is to find as many observable implications of your theory as possible and to make observations of those implications.

In order to find the evidence that would support or falsify my hypotheses I used several data collection strategies. To begin with, I conducted semi-structured in-depth interviews that lasted around 45-60 minutes each, with all actors engaged in the actual jury trials. This was important for objectivity because I needed to learn from my purposive sample the points of view from all sides of criminal proceedings. Securing interviews with state officials was a challenge. I interviewed 5 judges from the Specialized Interdistrict court for criminal cases of Astana - the only trial-level court with the jury trials in the city, 6 prosecutors from Astana city's three districts: Sary-Arka district Prosecution office, Esyl district Prosecution office, and Almaty district Prosecution office. In contrast, interviewing attorneys was easier. I interviewed 6 attorneys who represented both the victim and the defendant in jury trials. I also chose to interview 3 attorneys, who have not taken part in jury trials, in order to learn valuable information regarding single-judge trials and formal and informal practices within Kazakhstani criminal justice system.

This is the list of interviewed attorneys – participants in the actual jury trials:

Attorneys from Astana city collegium of advocates:

1. Telman Alenov is the former prosecutor has participated in several trials as prosecutor and later as the advocate. He was a prosecutor in 3 criminal cases regarding drug trafficking, 1 criminal case regarding corruption and 1 case

regarding murder; also he was defense attorney in 2 criminal cases regarding murder.

2. Al'mira Shaikhina she has been defense attorney in 1 criminal case regarding murder and 1 criminal case regarding corruption.

Advocates from the Karagandy city collegium of advocates:

3. Nenakhova Yelena - she has been defense attorney in 2 criminal cases regarding drug trafficking.
4. Meiram Zharylgapov - he has been defense attorney in 3 criminal cases regarding drug trafficking and 2 criminal cases regarding the murder.

Advocates from the Almaty city collegium of advocates:

5. Iskander Alimbayev - he has been defense attorney in 1 criminal case regarding extortion.
6. Raziya Nurmasheva - she has been defense attorney in 4 criminal cases regarding the murder and 1 criminal case regarding extortion.

Advocates who did not participated in jury trials:

7. Jokhar Utebekov is the advocate from Almaty collegium of advocates and popular Internet blogger.
8. Amanzhol Mukhamedyarov is the advocate from Astana collegium of advocates.
9. Asele Elchubayeva is the advocate from Astana collegium of advocates.

Moreover, I participated in the training seminar for advocates “Strategies in jury trials”, which took place on 3 February, 2017 in Astana. The seminar was organized by the Almaty-based think-tank Legal Policy Research Center (LPRC) and sponsored by the UK Embassy in Kazakhstan. About 40 attorneys from Astana, West Kazakhstan, Aktobe, North Kazakhstan and Karagandy provinces attended this seminar and learned defense strategies in the jury trials. The training session was lead by Mr. Nick Stanage who is the barrister at Doughty street chambers, UK and who has the 16 years of experience of participation in jury trials. At this seminar, I was able to talk to several attorneys and learn about their reactions towards jury trials.

But the most difficult task was to find jurors and to gain information from them. For obvious reasons, surveying jurors is not option in Kazakhstan in contrast to Kalven and Zaisel (1966) who conducted a pioneering survey of juror perceptions in the USA – the technique that has been consequently cited and replicated by many scholars. I managed to interview 7 jurors who have directly participated in the trials. Due to ethical considerations I do not reveal their names and places. Instead, I mention the details of criminal cases, which they had decided, to show the seriousness of accusations, and variation over time and in types of crime, and the outcomes of jury trials.

Juror 1 participated in the trial in 2016 in the case regarding murder and violent acts of sexual nature, where 3 defendants have been found guilty and convicted to 19, 16 and 14 years of imprisonment.

Juror 2 participated in the trial in 2017 in the case regarding the murder, where the defendant had been found guilty in the different crime that is the murder committed in the state of affection and was convicted to 3 years and 6 months of imprisonment.

Juror 3 participated in the trial in 2012 in the criminal case regarding the drug trafficking, where the defendant had been found guilty and convicted to 11 years of imprisonment.

Juror 4 participated in the trial in 2013 in the criminal case regarding drug trafficking, where the defendant had been acquitted.

Juror 5 participated in the trial in the 2014 in the criminal case regarding murder where the defendant had been found guilty and convicted to 17 years of imprisonment.

Juror 6 and Juror 7 have participated in the same trial in the 2015 in the criminal case regarding the planned murder attempt, where 3 defendants had been convicted to 14, 13 and 12 years of imprisonment respectively.

To the best of my knowledge, not a single social science researcher has interviewed jurors in Kazakhstan before. These interviews helped me to get a sense of pro-accusation bias, decision-making of juries, informal relations among law-enforcement institutions, influence of judges on the juries, and legal consciousness of jurors. One of the main limitations of interviews with jurors was the sample size; it may seem that the experiences of 7 jurors are not enough to draw a theory about the Kazakhstani practices of jury trials. However, taking into consideration the rareness of jury trials in Kazakhstan – merely 47 jury trials have been held in 2016 – and difficulties in the finding information about particular jurors not to mention difficulties in approaching them, the experience of 7 jurors supported by other sources of data may be the first step to begin building the picture about functioning of jury as an institution in Kazakhstan.

To overcome the limitations of interviewing method and to determine whether there

is a real adversariality in the Kazakhstani jury trials, I made participant observation of a jury trial in the Specialized Interdistrict court for criminal cases of Astana city that lasted 16 days during February 2017. This was a unique opportunity – I visited 14 trial sessions and made extensive field notes. As with my interviews, I had to be aware of the Hawthorne effect – adjusting by the research subjects to my presence. However, I do not think that my presence somehow influenced the decision-making of jurors, since they even did not know my status of observer until the very end. This is because I started to participate in trial prior to the jury selection process. So when jurors entered the courtroom I was already there, sitting quietly and making notes. Other observers surrounded me during the trial session. Later on I found out that they were friends and relatives of the victim and defendants sides. Most likely, jurors thought that I belonged to that group of observers. As for influence of my presence on the judge, prosecutor and advocates, it is interesting to note their reaction when I first time appeared on the court. Prior to the participation in court trial I have interviewed the Chair of Interdistrict Criminal court whom I asked about the possibility of observing the jury trial session. The judge informed me about the upcoming trial regarding the murder case, which was scheduled on 13th of February. I arrived to the court on the mentioned day and entered the courtroom. After the judge's assistant mentioned everybody present in the courtroom, there was only me left who was not called by name. The judge was curious about my presence, thus he asked who I am. I answered that I was the external observer *(nabliudatel)* from Nazarbayev University and that I have already negotiated my observation with the Chair of the court. The Judge corrected me and said that I was not an observer, but instead was the listener (*slushatel*). Then he asked prosecutor, defense

attorneys, victims and defendants whether they were not against my participation in trial. None objected, and the judge permitted me to remain in the courtroom during the jury trial.

This jury trial alone represented the 20% of the total number of jury trials in 2016 in Astana. That year, there have been only 5 jury trials conducted in Astana, and 4 out of them have been closed for public. So, I was fortunate that the case of the defendant Khadarov who had initially been accused of murder (Article 99, part 2 of the CCRK 2014) and deliberate infliction of serious harm to health to two or more persons (Article 106, part 2 of the CCRK 2014) and who was eventually found guilty in murder committed in a state of a strong sudden mental disturbance (Article 101, part 1 of the CCRK 2014) and infliction of harm to the health in affective state (Article 111 of the CCRK 2014) was open for public. I used this chance to observe this jury trial. This observation enabled me directly to collect evidence of key variables: the quality of evidence provided by prosecutors and defense, the presence of witnesses invited to trial, the judge's responses on motions from prosecution and defense, the quality of arguments of prosecutors and defense during the discussion process, the behavior of jurors, judge, prosecutors, and attorneys, etc. As far as I know, social scientists in Kazakhstan directly observe jury trials or court sessions from beginning to the end very rarely. To my knowledge, only twice similar method was conducted in Kazakhstan, in 2007 OSCE experts have observed 28 jury trials in 10 regional centers of Kazakhstan (OSCE Office for Democratic Institutions and Human Rights 2008). Another one was during 2009-2010 LPRC and OSCE in cooperation with Supreme Court of Kazakhstan made a direct observation of 9 jury trials. Experts have attended jury court trials in cities of Astana,

Almaty, Kostanay and Kokshetau in order to provide recommendations and suggestions to improve this institution (LPRC 2010).

While interviews and participant observation provided me with unique insights of particular criminal cases, I needed to get a bigger picture of jury trials from across the country. In order to collect the jury verdicts, I have searched media reports about the criminal cases that have been considered by juries in Kazakhstan. I have found 38 cases over the 2007-2016 years period that have been described in the online media outlets (*i.e. zakon.kz; tengrinews.kz; 365info.kz; azzatyq.org; total.kz; times.kz; bnews.kz; nur.kz*). Next, I searched these cases in the Supreme Court's online service *Sudebnyi Kabinet* (*office.sud.kz*) in order to collect the texts of jury verdicts in the database *Sudebnye prigovory* (verdicts). However, information from these was very limited because 34 out of these 38 cases have been made secret and not published online. Therefore, in order to find out the greater number of criminal cases, I have used the online legal information service PARAGRAPH (*prg.kz*). This service was much more useful than the Supreme Court service. In PARAGRAPH, I have collected more than 300 jury verdicts as well as protocols of court trials conducted across 14 regions and the cities of Astana and Almaty between 2010 and 2015. It should be mentioned that verdicts for both single judge and jury trials are available on the online services of PARAGRAPH and Sudebnyi Kabinet for cases considered starting from 2010, while the services themselves have been only introduced in 2013. For that reason, many independent scholars as well as experts of non-governmental organizations who investigated the criminal justice system in Kazakhstan including the jury trial practices (e.g. Kovalev 2006, 2010; Shaikenova 2011; OSCE OIHR 2007; LPRC 2010) relied upon the archival data during conducting their

researches. Unfortunately, not a single verdict issued in 2016 has been made available in online services because all jury verdicts issued that year have been closed for public access. The vast majority of verdicts, which I have collected, are in trials for drug-related crimes. A very small number of collected verdicts are in trials for murder, brigandage, extortion, etc. This is because most trials for crimes against the human dignity are closed for public observation. This secrecy in itself may be an indirect sign of resistance by the courts to reduce the popularity of the jury trials.

In order to measure the pro-accusation bias, I analyzed annual statistics on convictions/acquittals in jury trial courts and judge-only courts from online service of General Prosecution office (*pravstat.kz*), the annual reports regarding the functioning of the criminal justice system published on web site of Supreme Court of Kazakhstan (*sud.gov.kz*), and lastly the official response of the Committee of Legal Statistics regarding my request dated by 1st of February. After extracting all the needed information I made up several tables (see below) in order to systematize my evidence. Generally, I calculated the verdicts regarding each tried individual, rather than each criminal case. This is because often time criminal cases are considered in relation to two and more persons. So, counting persons instead of cases provide more coherent statistics. Through this method I found significant differences between the outcomes of judge-only and jury trials regarding the acquittal rate in similar types of criminal cases.

To understand the active resistance against the jury trials at the central level of government, I analyzed the amendments to the Criminal Procedure Code made in 2010, 2013 and 2016 and which resulted either in actual reduction and fake expansion in types of cases that can be considered by the jury trial courts. To explore the public image of the

jury trials in Kazakhstan, I conducted a content analysis of public speeches and published interviews of prosecutors, judges and other government officials who argue against the use of jury trials, also opinions of popular attorneys who support the expansion of jury trials.

As a result, by triangulating the data sources and methodology and using different levels of analysis, I was able to gain understanding of how and why jury trials work in Kazakhstan, how and why they are defended and attacked, and how and why citizens and state interact in criminal courts in the ways they do.

Ethical and Political Considerations

Prior to conducting interviews I introduced my participants with the oral consent form, where indicated that all the collected information could be used anonymously. Judges, prosecutors and jurors asked me not to mention their identities. The representatives of law enforcement agencies indicated that the findings from these interviews may negatively influence their reputation or career prospects, whereas jurors were banned from disclosing information about the details of jury deliberations. As for attorneys, they did not mind of being mentioned in the dissertation, and some of them even insisted to be indicated.

Therefore, in order to protect my participants from any harm I kept their identities anonymous except for attorneys. In order to ensure it, I created acronyms (e.g. JR1-juror, JD1-judge, PR1-prosecutor). All collected identifying information is kept in my personal computer with the password. I did not reveal any sensitive information that could have posed threat to the career, reputation or other aspects of life of the respondents. Prior to

the submission of the final research work, I contacted my respondents and asked their permissions for the direct quotations.

Chapter 2. Theorizing About Jury Trials

The Role of Judicial Systems in Non-Democracies

In order to understand the Kazakhstani criminal proceedings it is important to consider the politics of criminal justice reforms in non-democracies first. What is the role of criminal justice system in the governance of the country by authoritative leaders? As scholars agree, rulers in authoritarian regimes maintain tight control over the judiciary and use criminal justice to punish their opponents. The main purpose of law and courts in these countries is to establish the order in the exercising of power by leaders. Moustafa (2007) provides the example of Egypt, where the president Mubarak restricted paths and eventually excluded all his opponents from the access to power through the laws, regulations, and criminal punishment. Similarly, Rajah (2012) provides the example of Singapore, where government eliminated opposition forces and autonomous media through the legal initiatives in the law. Most importantly, he demonstrated that key democratic indicators such as constitution, laws, court trials and election could be actually used against the maintenance of liberal values. Landow (1999) describes the reasons why Lee Kuan Yew, the defense attorney and the man who made invaluable contribution for the development of Singapore, abolished the jury trials. According to the author, Lee Kuan Yew, the graduate of Cambridge Law School, had extremely negative attitude toward the institution of juries. Author explains that Lee Kuan Yew was employed to defend four Muslim men who were accused of a murder of white British officer and his family:

> *"…he did what any advocate does: He "worked on the weaknesses of the jury - their biases, their prejudices, their reluctance really to find four Mussulmen*

> *[Muslims] guilty of killing in cold blood or in a heat of great passion, religious passion, an RAF officer, his wife and child." And he employed "the simple tricks of advocacy -- contradictions between one witness and another, contradiction between a witness and his previous statement to the police and the preliminary enquiry.""*
>
> *When the jury acquitted the murderers, Lee Kuan Kew reports, "The judge was thoroughly disgusted. I went home feeling quite sick because I knew I'd discharged my duty as required of me, but I knew I had done wrong." He thereupon concluded that no government in which he had a say would employ this foreign, "foolish, completely incongruous system." Pointing out that the French and other Latin nations do not use trial by jury, Lee Kuan Kew argues that it is too "alien" to the basic social attitudes of many other cultures, including those of Asia.* (Landow 1999: para 2)

It is interesting to note how President Nazarbayev highly praised the achievements made by his Asian colleague and sympathy toward him in the various interviews.

> *"…during the whole period of our independence, I have been always in contact with Singapore. You know about my meetings with Mr. Lee Kuan Yew. Since, we acquired our independence, we have been considering your country as the model for our economic development"* (Krasienko 2016)
>
> *"…we have been close to each other, I considered him as the good friend [Lee Kuan Yew], I was learning his experience"* (tengrinews.kz 2015)

Moreover, another reason for the implementation of rules and laws in authoritarian states is the desire of leaders to establish control and maintain discipline over the state employees. By allowing ordinary citizens to appeal to courts authoritarian leaders get the opportunity of obtaining information regarding the misdemeanors of their subordinates. Peerenboom (2002) provides the classical case of how center manages bureaucratic discipline through law in the peripheries using the example of China. According to him, the vast territory and complex regulation structure diminished Chinese authorities control over the state apparatus. However, through the introduction of more than 1400 administrative courts all over the country, Chinese authorities significantly increased their supervision over the country. Wang and Fukurai (2015) point out that

although the jury institution existed in China from the 1954, the communist regime of Mao did not allow it to function. The situation has changed during the 1990s and the beginning of 2000s when after series of reforms the institution of peoples lay assessors have been introduced over the whole China in 2010. The distinctive feature of this institution is its role, as elected people are supposed to provide recommendations and evaluations regarding the investigation of criminal cases. This is performed in order to control the prosecution and investigation services and prevent any unlawful practices. However despite the functioning of institution of peoples lay assessors, Connor (2016) reports about “astronomical” conviction statistic in China, which in 2014 constituted 99,92%. According to the author the reason for the pro-accusation bias in China is the fact that courts and prosecution offices are tightly controlled by Communist Party.

Furthermore the opinion of Peerenboom regarding the controlling function of the courts is shared by Verner (1984), who indicates that during sixty years of one party system in Mexico, the ordinary people appealed to courts in order to protect themselves from the unlawful inspections of state agencies. The author emphasizes that the access of people toward the judicial system was not given with the purpose of enhancing their freedoms; instead the main goal was to improve the discipline within the state administration. Bourchier (1999) points out that the widespread implementation of administrative courts in Indonesia have been done with the purpose of eradication of corruption within state apparatus. To be sure, corruption in criminal justice system is a serious problem in Kazakhstan, and the jury trials may reduce it. As I indicated above in my Hypothesis 3, it is more difficult to bribe 10 jurors instead of a single judge. It may also be possible that criminal justice professionals would not dare to engage in the

habitual informal relationships in front of the jury, thus, being forced to follow the letter of the Criminal Procedure Code.

Another possible reason for the development of judicial infrastructure is the process of globalization. Authors suggest that authoritarian countries make reforms in their judicial systems in order to attract foreign investors, thus boost their economies (see, e.g. Kennedy and Stiglitz 2013; Lubman 1999; Peerenboom 2002). Silverstein (2008) and Rajah (2012) pointed out that Singapore became the blueprint of maintaining economic success with the disciplined control over the power for all authoritarian states. Furthermore, non-democratic regimes through delegating some disputes to be resolved by the judiciary may avoid some unnecessary conflict situations, social unrest, protests, etc. Moustafa (2007) points out that president Mubarak managed to employ this strategy during promotion of controversial initiatives in Egypt. So, it can be concluded that in non-democratic regimes authorities maintain tight control over the judiciary and use it in order to legitimize their power. However, there is no evidence that foreign investors or the U.S.-based experts advocated for jury trials in Kazakhstan. Moreover, if transnational corporations hate jury trials in the U.S., why would they prefer them in Kazakhstan? A stronger reason might be that jury trials in Kazakhstan provide the only possible mechanism for producing fairer verdicts in prosecuting grave crimes, something that an average foreign investor would prefer in any country.

However, not all reforms in authoritarian states can be explained from the "controlling purpose" standpoint. According to Markovits (2004), the introduction of jury trials in the Russian Federation, which was actively promoted by the U.S. advisers to the Boris Yeltsin's administration, represented the paradoxical situation. Since Russian

government implemented the western adversarial institute into their inquisitorial judicial system. Author did not understand the purpose of this "transplantation", since she believes that the trial by jury as an institution represents core American values such as independence and impartiality in decision-making, presumption of innocence, human rights, etc. But all these values have been clearly disregarded in the Russian context; nevertheless author suggests that possible reason for the adoption of jury institution within Russian continental judicial system could be the romantic purpose, motivated by Hollywood movies, to pursue the judicial standards of western world. Could the same be true of Kazakhstani leaders? Addressing this cultural explanation brings us to the need to learn about the criminal justice in post-Soviet states.

Post-Soviet Criminal Justice Systems: Biased, Corrupt, and Informal

The 70 years of USSR's history left the footprints almost in all institutional areas of its former member states. Many authors describe how judicial practices of these countries have been significantly influenced by Soviet legacy (e.g. Solomon 2004; Volkov 2000; Paneyakh 2014; Ledeneva 2013; Trochev 2014). Therefore, in order to understand the Kazakhstani legal system it is important to consider it within the framework of post-soviet states. To begin with, the independence of judicial branch of the government is universally considered as the key factor for effective and impartial justice system. For that reason almost all countries in the world particularly mention the principle of judicial independence in their constitutions *(France Constitution, Article 64; Germany's Constitution, article 97; Denmark's Constitution, article 62; etc.)* as well as major international agreements indicate them in their documents *(UDHR, article 10; UN Main principles on the independence of judicial systems).* So, it is not a surprise that the

USSR has also formally supported this principle through the article 112 in the Constitution from 1936 and article 155 in the Constitution from 1977. Consequently, all former Soviet states underline the concept of power separation in their constitutions *(Kazakhstani Constitution, article 3; Russian Federation's Constitution, article 10; Kyrgyzstan's Constitution, article 7; Uzbekistan's Constitution, article 11; Ukrainian Constitution, article 6; Belarus Constitution, article 6; etc.).* Kovalev (2010) indicates that despite the official recognition of the principle of judicial independence by former soviet states, the real practices demonstrate that judges in these states are far away from being considered as the independent. According to him, several studies conducted by American Bar Association demonstrate that judge selection processes in these countries are not transparent and fair. Judicial appointment procedures are characterized by the politics of favoritism, which means that exams for assessing qualifications are only reliable on paper, since preferred applicants have higher chances to be selected to serve on the bench. It follows that corruption and connections with political elites play great part in the judges' selection procedures. Corruption and informal connections, then, mark a key feature of how criminal justice system works in the shadow of various procedural codes and directives. In itself, however, corruption does not produce pro-accusation bias, it produces the bias in favor of the highest paying party. For example, judges and prosecutors in Bulgaria collude and fail to prosecute and sentence mafia bosses and connected with the government officials (Popova 2012).

Another aspect of judges' low professional status is the fact that in former soviet states most of courts' decisions are influenced by the authorities both on regional and central level. This is especially true when it comes to political cases. As Solomon and

Foglesong (2000) point out the *"telephone justice"* (it is informal and illegal practices that have been originated in Soviet Union, when authorities contacted the judges with the purpose of influencing on their decisions) practices are widely used by all the former soviet states. Similarly, according to Ledeneva (2008) in the USSR law has been instrumentalized by communist leaders. This has not been changed with the collapse of Soviet Union, in contemporary Russia various interest groups, including elites continue to exploit the law. Author explicitly describes the pinnacle of Russian informal practices, which is called *Telefonnoe pravo (telephone justice).* In the Russian context, oral commands are used by authorities to bypass the laws and regulations, through this informal instrument, they may protect their interests in courts. Nikitinskii (2005) points out that in Russia the judicial pyramid is reversed; the courts are in the bottom of hierarchy, which means that every authority may order judges to issue suitable verdicts. In common law countries the courts and judges are on the top of judicial hierarchy, which means that no one can influence on their decision-making. Furthermore, according to Pashin (2001) prosecution and even investigation services may intervene in the judges' decision-making processes by making recommendations, requesting or even demanding the suitable verdict.

Furthermore, Kovalev (2010) indicates in most of post-soviet states judges are appointed for short period, the term on the bench is strictly limited. For instance, the office term for judges in Azerbaijan is 10 years for judges of supreme court, for judges of regional courts is 5 years; in Georgia for judges of all courts 10 years; in Kyrgyzstan for judges of all courts 7 years; in Turkmenistan all judges are appointed for 5 years; in Kazakhstan the head of supreme court as well as heads of civil and criminal courts are

appointed for 5 years period. As a result, judges are obliged to demonstrate their loyalty to the higher authorities in order to be reelected for new terms. Those judges who do not obey the instructions from authorities but rather want to decide cases according to their own beliefs can be easily dismissed from their services. There are various examples to support this argument, for instance ex-judge from Moscow court Melikov described how he was sacked due to his liberal views regarding the criminal cases, the Belarus judge from constitutional court Pastukhov was sacked by the President because of the commentaries regarding the impeachment (Usacheva 2004).

Moreover, according to many scholars one of the distinctive features of post-soviet countries' judicial practices is the existence of pro-accusation bias. There is a trend among judges to suppose that defendants are in most cases guilty of alleged crimes. Alekseeva (1989) indicates that judges with such bias are likely to neglect evidence and arguments provided by defense side and in contrast exaggerate the importance of the arguments provided by prosecution party. There are various justifications for such phenomenon, Kovalev (2010) suggests that accusation bias takes roots from long standing Soviet tradition of ignorance and dislike of the universally recognized principle of human rights. The main strategy in courts during Soviet period was excluding any possibility of acquittal of the guilty person. This tendency has been transmitted into current judicial practices. Another reason for the existence of accusation bias is the argument that judges over time become more resilient towards issuing acquittal verdicts. In other words, by considering cases on regular basis they engage in the process of professional deformation, which causes indifferent attitude of judges toward the fate of defendant. Consequently, they can no longer adequately assess defense's arguments and

evidences. Although this process may occur in the criminal systems of developed western states (e.g. Boyle, Hadden and Hillyard 1995), Kovalev argues that in post-Soviet states this process is deliberately stimulated and supported by governments. What is more, according to Shvarts (2004) the substantial proportion of judges in former Soviet states come from the police or prosecution services, which already have the bias against any suspects.

Kovalev (2010) indicates that another reason for the accusation bias in former Soviet states is the long standing practice among judges to learn the report prepared by investigators and processed by prosecutors *(fabula obvineniya)* before the actual trials. He suggests that such single perspective summary of the crime influences on the decision-making of judges in a way that they become more loyal towards the arguments of prosecutors during the trials. Most importantly, the criminal codes of the CIS countries imply that judge after the consideration of the preliminary crime report should decide whether to announce the main court trial, send case back to the additional investigation, postpone the main hearings, direct the case for the jurisdiction of another court or put an end for the case. Consequently, in former Soviet states the judge who concludes that there are enough proves to bring the case to the trial, is the judge who delivers the final verdict after the main hearings. So, it is argued that judges are unable to deliver impartial verdicts, since they already considered the accused person as guilty by bringing the case to the main hearings. The Russian psychologist Panasiuk (1994) found out that Russian judges determined that suspects were guilty of alleged crimes during the consideration of pre-trial reports prepared by investigation and prosecution services.

The Kovalev's arguments are backed by Solomon (2004), who also emphasizes that the Soviet legal system was characterized by "strong prosecutorial bias" that has been supported by informal practices. The prosecution and defense sides before and during the trial processes were in absolutely unequal positions. The one of the key informal practices in judicial system was the discouragement of acquittal verdicts. Solomon argues that judicial system in Russian Federation has experienced significant changes both under the presidencies of Yeltsin and Putin. He indicates that under the President Yeltsin, Russian authorities started the reformation process of judiciary system. Judges did get more independence by being able to serve unlimited terms. However, the government failed to maintain further development, since it did not have enough funds to support the system. With the arrival of Putin, Russian authorities continued to develop the judiciary system. Jury courts were introduced as an alternative to ordinary trials in all provinces, salaries of judges and other staff involved in the judiciary process were significantly increased, infrastructure and material base were developed. However, Putin's administration did not eliminate the informal practices that take place within and outside the judiciary system. Sometimes, elites interfere into the cases and change their outcome.

Furthermore, informal links within state apparatus influence on the career prospects of judges. In other words, they strongly depend from their relations with influential political figures. As a result, lack of independence, forces judges to announce verdicts that comfort the interested group of people. Solomon (2004) makes several recommendations for Russian authorities in order to develop the judiciary system. Firstly, it is suggested to reform the chairs of court institution, which has enormous influence on

judges. Instead of being appointed directly by President, member of chairs should be elected by fellow judges. Furthermore, the system of discipline, and selection of judges should reconsidered so that their overall effectiveness would be increased. Also, particular education programs such as psychology, critical thinking, etc. should be included in the training programs designed specifically for judges. Next, the judge performance evaluation system should be changed. Rather than relying on approval/reversal statistics, the quality of decisions should be evaluated. Lastly, author suggests taking into consideration public opinion polls in regard to justice system, so that authorities would be aware of the people's trust level to the judges. Solomon (2004) suggests that Russia is far away from being considered as the country with the established legal order. He emphasizes that Russian authorities consider the laws as the means to achieve their own ends.

One of the frequently indicators of pro-accusation bias is the acquittal rate in post-Soviet states. According to Kovalev (2010), the acquittal rates in single-judge trials across all post-Soviet states is less than 1%. This data seems to be reliable, as my own investigation bucked up this numbers regarding Kazakhstani case. Another essential characteristic of accusation bias is the judges' regular negligence of the principle of adversarial trial procedure. The concept of equality between prosecution and defense sides is widely recognized as the cornerstone of fair and impartial trials. The criminal procedure codes of all post-Soviet states underline this principle, however real practices demonstrate regular violation of this principle by professional judges. Kovalev points out that judges greatly favor prosecutors, this preferential treatment may come in different fashions: overturning the defense side's appeals regarding illegally collected evidences,

restricting the rights of defense side to demonstrate evidences, summon witnesses, invitation of external experts in order to examine the prosecution's evidences, etc.

Jokhar Utebekov (2015), the Kazakhstani popular attorney, indicates about very high accusation bias in contemporary judicial practices in Kazakhstan. According to him, the acquittal rate in the judicial system is only about 0.1-0.2% for all the cases. Utebekov, points out that even in 1937 the acquittal rate in Soviet Union were about 5%, while overall in different periods of Soviet times it varied from 3% to 10%. According to him, the primary reason for the accusation bias in Kazakhstan is the legacy of soviet totalitarian regime. The judges evaluated in Kazakhstan not according to their professionalism or quality of verdicts, but according to statistics of their overturned cases. In other words, higher judiciary instance may easily cancel the acquittal verdicts of judges. The more is the number of refusals from higher instances, the higher is the chance that judge would be dismissed from his duties. Consequently, judges experience the professional deformation, they do not care about the fairness and morality of verdict, but they think about whether the higher instance would overturn their decision in near future. As a result, judges make preliminary agreement with higher judicial instances about the outcome of the cases. Also, Utebekov points out that the cancellation of judges' decisions is the useful instrument of authorities to get rid of unwanted judges. Also, Utebekov (2016) describes the informal links between the main parties of trials, namely, prosecution, investigation and judges. To be more precise, all these parties are interested in accusing the defendant. This is because the acquittal verdict will demonstrate the weak preliminary work of investigators as well as will question the legitimacy of prosecutors' accusations. On top of that, it will have negative effect on judges' performance statistics.

As a result, all these parties from the very beginning of trials are interested in producing the guilty verdict.

Another problem that criminal justice systems face in each of the post-Soviet states is the extensive corruption. According to various studies and surveys of international organizations the institutions of police, prosecution and courts are among the most corrupted in the post-Soviet areas (e.g. Kaufmann, Kray and Mastruzzi 2003; Steve and Rousso 2003). As Kovalev indicates in 2008 according to the Transparency International's corruption index former Soviet countries ranked between 67 and 166 places in the global rating. It goes without saying that all the people highly evaluate their freedoms and liberties, therefore when they are persecuted for crimes, they are willing to escape it at all financial costs. In post-Soviet states, the defense counsel is often the negotiator of bribery between the defendant from one side and prosecutor and judge on the other side (Petrukhin 2000; Tselms 2002; Garmaev 2003). Scholars explain this phenomenon by significantly low acquittal statistics, which push defendants toward finding alternative ways of winning their cases. Similarly, advocates understand that there is a low possibility of persuading prosecutor to waive the charges or convincing judge to issue the acquittal verdict, therefore defense advocates take the roles of intermediaries between the accused person and prosecutor/judge sides. Usually these informally negotiating attorneys come from the law-enforcement agencies' background. Their well-established connections with their previous colleagues help them to establish informal contacts with prosecutors and judges, thus determine the outcome of the case through certain amount of bribe.

Finally, scholars note the low quality of criminal investigators, who often times illegally abuse detainees to obtain confessions and also fabricate evidences that have been presented in the court. Various studies indicated the violation of basic human rights by police in post-Soviet states, who regularly use physical force and coercion on suspects in order to extract the confessions (United Nations High Commissioner for Human Rights 2016). Kovalev (2010) argues that court trials often times take place month's or even years after the suspects have been detained in custody. So, it is impossible for them to demonstrate marks of physical abuse, during the trials. As for judges, their responses to suspects' inquiries are only limited by questioning the interrogators who were supposedly involved in physical harassment. Obviously, investigators never confirm allegations of torture regarding the suspects, consequently judges overturn motions from defendants.

Empirical Investigation of Disparities between Judges and Juries Decision-Making

Although both juries and judges authorized to determine the guilt of individuals, there is a clear disparity in the actual verdicts. Various scholars made an attempt to compare judges and juries decision-making. In order to understand what factors influence on the decision-making of juries, we should analyze western countries experiences with jury trials. Particularly, it is better to consider juries in the U.S., since its jurisdiction is recognized as the example for many other states. Several methodological approaches were used by researches to measure the difference in opinions between judges and juries. Generally all the studies could be divided into three categories, which are judges and juries agreement researches, archival data analyses and experimental studies. The first two methods investigate the decisions of judges and juries in real situations. The

advantage of judge-jury agreement researches is that both decision-makers consider identical cases, however one party usually analyze the case as the post-factum. As for archival studies, the pros is that both types of decision-makers are analyzed in accordance with their real trial cases, when juries and judges were performing their responsibilities, but cons is that judges and juries did not consider identical cases. The third type of research that scholars conducted to study the decision-making of judges and juries is based on experiments. This method allows researchers to test decision-makers analytical capabilities through asking them to analyze facts and data related to trials. The findings from all the mentioned studies below could be used to make comparisons with Kazakhstani statistics. Also, scholarly methods of collecting data could be successfully replicated in my own research.

Exploring the judge-juries agreement rate

One of the classical studies that investigate the divergences in juries and judges verdicts in America was conducted by Kalven and Zeisel (1967). The authors examined 3,576 criminal and about 4,000 civil cases, and asked questionnaires from 55 professional judges about their opinions regarding the outcome of these cases. Also judges were asked what would be their decision if they have considered cases instead of juries. Lastly, judges were asked to explain their views that are different from juries. Kalven and Zeisel have found that in 78% of cases Judges would have announced the same verdict as Juries. In 19% of trials Judges would give punitive verdict compared to Juries decisions and in 3% of cases Judges would have acquitted suspects compared to Juries' guilty verdict. The study indicates that primary reasons for the divergence in the opinion of Judges and

Juries are due to problems with evidence, attitudes of lay assessors regarding the law, emotional feelings of juries about defendants, personal investigation of information by the judge, the greater influence of defendant lawyers on juries.

Are juries capable of understanding provided evidence? Kalven and Zeisel claim that juries do comprehend the evidence, because in most of the cases (78%) juries and judges came to the same verdict. However, when the evidence is weak, juries are more inclined to take the defendant's stand compared to judges. Furthermore, authors indicate that juries tend to have the negative view regarding punishments for certain crimes mentioned in the Law. To be more precise, juries believe that some punishments are very harsh, especially when it comes to drunken individuals. Consequently, during the trials juries tend to acquit those defendants who were believed to be drunk in the process of crime.

Moreover, in some cases juries feel sympathetic toward defendants. This may happen when suspects fall under the socially vulnerable category of people. Also personal live stories of defendants may have huge impact on juries' decision-making. Another reason of disagreement between Judge's and Juries verdicts are that Judges have the access to the prior criminal record of suspects, whereas Juries cannot have such information, since suspects do not testify about that. It is interesting to note that the least important factor that is responsible for the disparity between Judge's and Juries decisions is the arguments of advocates.

Heuer and Penrod (1994) conducted the similar research to the Kalven and Zeisel and investigated the agreement rate between judge's and juries decisions across 33 American states in 77 criminal and 67 civil cases. The authors found that for criminal

cases judges would have announced the same guilty verdict in 73% of trials. In about 3% of trials Juries convicted suspects, while Judges would have cleared individuals of all allegations. Furthermore, in 25% of trials juries acquitted suspects, while judges would have sentenced. As for, civil cases the judges would have agreed with juries in 63% of trials. The disagreements among Judges and Juries decisions were equally distributed, with judges acquitting suspects in 18% of cases where juries made opposite verdict, and 19% of trials where Judges would have announced guilty verdict as opposed to the juries lenient verdicts.

Eisenberg et al. (2005) studied judge-jury agreement in the states of California, Arizona, New York and South Carolina over three hundred criminal cases. It is interesting to note, how results from this study is similar to one's found by Kalven and Zeisel. Eisenberg et al. determine that judges in 75% of cases would have provided the similar verdict as juries. Furthermore, in 6% of trials Judges would have freed suspects as opposed to Juries. Whereas, in 19% of cases Judges would have sentenced detainees in contrast to Juries. Similar to other researches, Eisenberg et al. do not find any relation between the complexity of the cases and the level of disparity between the Judges and Juries. In addition, the authors indicate that Juries set higher requirements for determining guilt compared to Judges.

To conclude, these ways of studying decision-making of judges and juries demonstrate similarities in outcomes: on average, judges would agree with juries in three out of four times.

Archival data

Another way of comparing judge and juries trial verdicts is to study the outcomes of actual trials. The advantage of this method is that scholars investigate the actual verdicts, instead of finding the hypothetical outcomes of judges' decision-making and comparing them with juries' verdicts. Clermont and Eisenberg (1992) analyzed data from the United States Administrative Courts Database over the 1979-1989 periods. Scholars discovered that in most cases there were no notable disparities in plaintiff success level either in front of judges or juries. However, the researchers found that plaintiffs won cases on a higher rate before judges in certain cases, namely, medical cases, author's right cases, car accident cases. Interestingly, the authors find out that plaintiffs are expected to perform strong in front of judges in those types of cases, where they have the similar high success rate before juries. Furthermore, in another study Eisenberg et al. (2002) used data from the Civil Trial Court Network, where they investigated over 9,000 civil trials in 1996. Their findings were somehow different to previous studies, since they found that plaintiffs won on a higher occasions before Judges (62%) than before Juries (47%).

More recently, Helland and Tabarrok (2000) analyzed archival data in the US on middle-level crimes that have deteriorating effect on the health of plaintiffs over 1988-1996 periods. According to the authors the plaintiff success rate in front of judges constituted 86%, whereas before juries this statistics were 72%. Scholars suggest that the disparities in Judges and Juries decision-making could be explained by the divergences in the criminal episodes they considered. Overall, scholars who studied archival data have an advantage, since they compared Judge and Juries verdicts on real cases situations. However, the main limitation of these studies is the fact the findings could be biased

since each incident is unique and participants, namely plaintiffs and suspects may be of different background. In short, similar to the findings of the judge-jury agreement rate, the difference in outcomes of judge vs. jury verdicts exists but it is not large.

Experimental studies

Lehman, Lempert and Nisbett (1988) studied the common prejudice that juries in the US are not capable of understanding scientific and statistical evidence presented on trials. The scholars came to conclusion that juries do experience problems with such type of data, however they point out that judges also face difficulties with scientific and statistical data. This is because many judges come from law schools, while the law school curricula do not pay much attention on scientific and statistical courses. Therefore, authors argue that judges and juries are in an equal position when it comes to analyze highly complicated scientific evidence.

Robbennolot (2005) argues that both judges and juries bring advantages and disadvantages to the court. The differences in decision making could be because of improved collective efforts of juries or in contrast because of professional qualities of judges. In other words, trial by jurors could be effective way of deciding one's fate, since jurors operate as a group and they usually represent the different social classes of the community. However, the divergence in the opinion of judges and juries could be due to comparative advantage of judges. To be more precise, judges are expected to have better experience and knowledge about judicial system. Furthermore, regular participation in trials may develop the better understanding of facts and evidences, which is helpful for providing fair verdict.

In short, scholars again find that difference between judges and jurors exists but it is not pre-determined who would be fairer in deciding criminal cases.

Why Are Juries Different from Judges?

Participation of juries in the administration of justice is historically considered as the protection against regimes' oppressions. According to the Blackstone (1809), the institution of juries in England set huge obstacle for Crown's desire of promotion own interests over the freedoms and liberties of public. Devlin (1956) shares the opinion Blackstone, he considers the jury trials as the safeguard of peoples' sovereignty against the despotism of political power.

Moreover, jurors are considered to be the guardians of public faith in the US, also they deliver the voice of the society within the legal system prevailed by bureaucratic prosecutors and judges (e.g. Gobert 1994; Hannaford and Munsterman 1997; Hazelwood and Brigham 1998). Moreover, the possibility for the defendant to enjoy the trial that is judged by the person's peers is the fundamental principle of not only the American judicial system, but also that of any other developed countries. In fact, according to the Byron White, former member of the U.S. Supreme Court:

> "*providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge*." (Duncan v. Louisiana 1968)

Boatright (1999) point out that the jury panel consisting of the ordinary citizens helps defendant to be confident that court's decision would be free of any bias and prejudice, especially in the corruption cases, where judges themselves often get involved. Next, scientists indicate that the jury service enables people to take active part in the judicial branch of the government. Participation of ordinary citizen in the trial process

could be considered as the firsthand experience with the framework of the judicial system, consequently it helps to develop the trust of society toward legal system, which eventually contributes to the wider support of the judicial system by the citizens (e.g. Hamilton 1978; Baldwin and McConville 1980; Boyl 1991). Most importantly, scholars point out that participation of people in jury trials allows the country to set a platform for the building of the civic society. In other words, there is a positive correlation between the amount of jury trials and the participation of citizens in the political life of the nation. This is because; trial process implicates great benefits on the personal development of individuals. People begin to perceive how crucial it is to determine one's guilt or innocence. Consequently, it affects the individuals own decision-making and behavior in daily life, they become more active and supportive to governments' initiatives as well as more obedient to rules and regulations. Ultimately, it changes the whole society in a way that they become more inclined toward the development of democratic values and institutions within nation (e.g. Vidmar et al 1997; Wolf and Sarat 1998).

On the contrary, many scholars argue that the use of mixed court (i.e. judge and juries both determine the question of guilt and the measure of punishment) as opposed to pure jury court (i.e. juries determine the question of guilt, while judge determine the measure of punishment) do not guarantee the independent and impartial trials. Various studies indicated that in mixed court trials there is a tendency that juries in most cases are likely to agree with the opinion of judge (e.g. Casper and Zeisel, 1972; Ivkovic, 1999; Kovalev, 2004). Furthermore, not all scholars consider juries as the effective instrument against the repressions of the governments and overall questioned the need for this institution in the judicial systems of countries. Ferri (1895) argues that under the rule of

despotic leader juries are unable to demonstrate their independence and impartiality during trials as well as they cannot prevent corruption within government or abuses of judges by authorities. On top of that, he suggests that in democratic states there is no need for the institution of juries, since in these countries judges are already independent.

The Role of Jury Trials in Legal Reforms in Post-Soviet States

Having identified the main problems in the criminal justice systems of post-soviet countries and investigated the empirical studies regarding judges/juries decision-making it is important to find out the opinions of scholars regarding the role of jury trials in judicial systems around the world as well as in former Soviet states. From the one side the jury institution may remarkably benefit the legal systems by discouraging law enforcement agencies of using informal practices on the other side the participation of juries in the administration of justice can play only symbolic role in the legal systems. To begin with, according to Kovalev (2010), the main advantage of juries over the judges in post-Soviet context is the fact that they are not accountable either to higher judicial instances (reducing internal judicial dependence) or the government (reducing external judicial dependence). This absence of responsibility makes juries independent decision-makers and allows them to consider criminal cases according to their own believes and faiths. On the contrary, judges in post-Soviet area are only accountable to the government, since authorities appoint judges, not general public. The Kovalev's views supported by other authors, Gleadow (2000) points out that the introduction of jury institution in Spain in 1995 has positively influenced the emergence of autonomous and powerful courts.

There is no consensus among scholars regarding the influence of juries on the aversariality of criminal proceedings. The opponents of jury trials provide the examples of Netherlands, Israel and Singapore who managed to establish impartial courts without the assistance of juries (e.g. Koppen and Penrod 2003; Swart 1993; Harnon and Stein, 1999). On the other side Gleadow (2000) points out that introduction of jury trials in Spain made the trials processes more adversarial and maintained the principle of equality between the prosecutors and advocates. Kovalev (2010) believes that jury institution has positive influence on the court trials, since juries are not bounded by responsibilities in front of the government compared to judges and thus they are free to judge cases impartially. Consequently, it motivates both prosecutors and advocates to prepare better for trials, since they understand that they need to persuade not just a single judge, but twelve individuals with different backgrounds and believes. Melnikov (1993) points out that although jury trials increase the power of defense counsel, they are negatively influence on their professionalism, as lawyers become more and more inclined towards development of their public skills to impress juries, rather than paying attention to thorough examination of the evidence.

Kovalev (2010) suggests that jury institution can be considered as the effective instrument to combat corruption within judicial systems. It becomes increasingly difficult for judges to take bribes, once juries are introduced into the trials. This is because, judges can no longer guarantee the outcome of the case for the interested parties. Opponents of jury trials argue that juries may as well take bribes, Cornish (1968) indicates that in the United Kingdom there is a higher possibility of engagement into corruption from the juries rather than from the judges. However, this view is opposed by Kovalev, who

argues that in the context of post-Soviet countries judges by all means are more inclined toward bribery than juries. This is because juries are not used to take bribes on a regular basis; it is very risky for parties to contact juries, since there are no intermediaries who can establish connections with lay participants. On top of that, juries themselves in most cases categorically against of taking any bribes, they are afraid of being approached by unknown parties. Furthermore, according to Kovalev, early jury trials in Russia demonstrated the weaknesses of investigation and prosecution services, since the low quality of provided evidences were exposed at the jury trials during the cross-examination of defendants and witnesses. Consequently, an increase of acquittal verdicts lead to the reduction in salary bonuses to law enforcement employees and most importantly to the deterioration of their career prospects. This is because acquittal verdicts demonstrated that investigators and prosecutors did not perform their duties properly. For that reason, Kovalev argues that widespread use of jury trials in post-Soviet area would significantly develop the professionalism of investigators and prosecutors.

The Challenges for Jury Trials in Kazakhstan

There are few studies that have analyzed particularly Kazakhstani experience of Jury trials. Some authors refer to our historical experience, when all the major disputes have been solved through the ancient institution of bii's courts or *Sud Biev* (e.g. Abdrasulov 2008; Brusina 2008; Zimanov 2010; Aitkhozhin 2015). These scholars indicate that *Sud Biev* have the features of contemporary jury trials such as the deliberation process and the delivery of mutual verdict. However the main difference is that *Sud Biev* tried to mitigate conflicts, whereas jury trials are about punishment or acquittal of the defendants. Going to contemporary legal practices, some authors blame

the Kazakhstani path of jury trials. They indicate that the French model of jury panel is not actually applicable to our country. This is because, putting the judge into the one room to discuss the case and determine the verdict brings different scenario than in France. To be more precise, experts argue that in Kazakhstan judges tend to pressure and influence the decisions of the juries, while in France they actually help juries to acknowledge and evaluate all the evidence in the correct way (e.g. Fedotova 2009; Shaikenova 2009; Baitukenov 2015).

Nikolai Kovalev (2010) has comprehensively studied the early years of Kazakhstani jury experiences. He provides insights into the Kazakhstani mixed courts trials practices during 2005-2010, describes the preliminary stages of the trial implementation process, and indicates reforms related to trials and makes valuable recommendations for the further development of the jury institutions in Kazakhstan. However, several years have passed since the Kovalev's last investigation of jury trials in the state. The jury institution has experienced the changes in its jurisdiction, the reasons for these variations need to be studied more closely.

Furthermore, the Kazakhstani defense lawyers' community in general supports the use of jury trials, since they believe that this institution has potential to improve the judicial practices in the state. However many attorneys argue that currently jury institution plays a largely symbolic role. Daniyar Kanafin (2017), the member of the Chair of the Republican collegium of Advocates points out that majority of people in Kazakhstan do not even know about the existence of jury trials in the state. He indicates that the development of this institution is greatly opposed by judiciary, prosecution and investigation agencies, which are not interested in its expansion due to well-established

informal practices within the criminal justice system. Kanafins's opinion is shared by Utebekov (2015), who emphasize that in Kazakhstani jury trial practices judges constantly manipulate the opinions of juries in the deliberation room in order to acquire the convenient verdict.

In short, the reviewed literature does not fully explain how and why jury trials produce fairer verdicts than judge-only trials. Neither does it offer a coherent explanation of how criminal justice professionals have been successful in resisting President Nazarbayev's orders to expand jury trials and make mandatory some of them. Having read and analyzed all arguments of scholars, who discussed both Western and Kazakhstani jury practices it can be concluded that there is still a large gap in our understanding of the politics of jury trials in Kazakhstan, the only country in Central Asia that has this institution in its criminal justice system. To my knowledge, there is no study, which explores the reasons for the institutional resistance of President's propositions in authoritarian regime, and more broadly, how dynamics of laypeople participation in criminal justice change the relationships among and within law-enforcement agencies on the ground in non-democratic context.

Chapter 3. Big Picture: Expansion, Reduction, and "Fake" Expansion of Jury Trial Courts in the Criminal Justice System of Kazakhstan

Judging by the changes to the jurisdiction of the jury trial courts and the actual number of cases decided by them in Kazakhstan, it becomes clear that the criminal justice system resists them because juries reduce pro-accusation bias. It is widely acknowledged that Kazakhstani judicial system characterized by so-called "accusation bias" (e.g. Kovalev 2010; Solomon 2006; Ledeneva 2004; Thaman 2004). These arguments are supported by official court statistics. The Table 1 demonstrates statistics from the Supreme Court of Kazakhstan regarding acquittal/conviction rates in criminal court trials during the recent years. As it can be noticed the percentage of acquittals in criminal cases with public prosecution (i.e. criminal court trials where the prosecutor is presented) varied between 0,2-0,5%, while the conviction rates respectively were higher than 99 % in those years. Note that most of acquittals have been delivered in cases of private prosecution, in which state prosecutors do not take part.

In order to understand the magnitude of these statistics, it is worth considering other countries' data. For instance, according to the United States Bureau of Justice Statistics the conviction rate in criminal cases in recent years varied between 65-80% across different states (bjs.gov 2016). In the United Kingdom according to the Supreme Court conviction rate in last ten years varied between 75% and 82% (supremecourt.uk 2016). So these conviction rates are far below from Kazakhstani practices, where in approximately 99% of cases, which end with sentence, the defendants are convicted. In other words, it means that in Kazakhstan if the case of public prosecution goes to the trial, ordinary citizen has virtually no chance of being found not guilty.

Table 1. Conviction and Acquittal Rates in Kazakhstani Criminal Courts, 2009 – 2016

	2009	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Total number of criminal cases with sentences issued	34, 667	30, 432	22, 012	18, 230	21, 833	20, 571	28, 031	27, 989
Including the cases with private prosecution	1,333	1,338	708	383	454	565	1,192	1,520
Total number of persons tried with private prosecution	1,515	1,567	796	491	620	675	1,448	1,848
Number of convicted persons with private prosecution	980	968	408	173	184	238	867	1,034
Number of acquitted persons with private prosecution	**535**	**599**	**388**	**318**	**436**	**437**	**581**	**814**
Including the cases with public prosecution	33, 334	29, 094	21, 304	17, 847	21, 379	20, 006	26, 839	26, 469
Total number of people tried with public prosecution	39, 717	35, 741	27, 066	22, 831	26, 855	24, 882	30, 898	30, 861
Number of convicted persons with public prosecution	39, 629	35, 633	26, 972	22, 749	26, 784	24, 841	30, 736	30, 789
Ratio of convicted persons	99.8 %	99.7 %	99.7 %	99.6 %	99.7 %	99.8 %	99.5 %	99.8 %
Number of acquitted persons with public prosecution	**88**	**108**	**94**	**82**	**71**	**41**	**162**	**72**
Ratio of acquitted persons in cases with public prosecution	**0.2 %**	**0.3 %**	**0.3 %**	**0.4 %**	**0.3 %**	**0.2 %**	**0.5 %**	**0.2 %**

Source: http://service.pravstat.kz

Kazakhstan made an attempt to develop its criminal justice system through introduction of jury trials. Although the amendments to the Criminal Procedure Code introducing the jury trials were made in 2001, they were actually implemented only in 2007. This delay is an indirect evidence of resistance of the criminal justice professionals. As a result of this resistance, Kazakhstan chose continental form of jury trials (i.e. similar to France and Germany), where verdicts are produced by jurors together with judges. It is different from the American and Russian model, where verdicts are produced by jurors only, while judges only determine measure of punishment. Initially, the jury trial court in Kazakhstan consisted of 9 lay assessors and 2 professional judges (Law of RK of 2006 on the lay assessors "*o prisiazhnykh zasedateliakh*"). However, this format changed in 2009 to its present form with 10 main and 2 substitute lay assessors as well as 1 professional judge after criminal justice system had ensured that having a single judge was sufficient to manage the jury trial.

Currently, following the actual restriction of their jurisdiction in 2013 and their "fake" expansion in 2016, jury trials are requested by the defendants extremely rarely. As a result, the vast majority of criminal trials is conducted by a single judge. The Table 2 provides information regarding the number of jury trials as well as their conviction/acquittal rates during the last decade. Overall, between 2007 and 2016, there have been 1,388 verdicts issued by jury courts regarding 2,079 defendants. This is quite small number, since it represents only about 0.5% of all verdicts (269,923) issued by criminal courts during this period. As it can be noticed, the acquittal rates for jury trials varied considerably since the introduction of this institution. The lowest acquittal rate

2,5% was recorded in 2014, while the highest acquittal statistic 12,9 % was indicated in 2009.

Table 2. Outcomes of Jury Trials in Kazakhstan, 2007 – 2016

Year	Number of jury trials with issued verdicts	Number of persons tried	Number of convicted persons	Number of acquitted persons	Ratio
2007	36	62	57	5	8,1 %
2008	42	78	72	6	7,7 %
2009	60	116	101	15	12,9 %
2010	270	377	334	43	11,4 %
2011	339	491	461	30	6,1 %
2012	289	379	355	24	6,3 %
2013	198	319	289	30	9,4 %
2014	65	121	118	3	2,5 %
2015	42	61	59	2	3,3 %
2016	47	75	67	8	11,7 %
Total	**1,388**	**2,079**	**1,913**	**166**	

Source: http://service.pravstat.kz

In order to find out how ordinary and jury trials differ in terms of acquittal rates, I compared their statistics directly with each other. The Table 3 demonstrates the disparities in the proportion of acquitted persons in the all cases with public prosecution and cases specifically considered by juries. It should be mentioned that statistics regarding acquittal rates in cases with public prosecution already includes data of jury trial cases. Since in jury trials the presence of prosecutor is mandatory. So, the disparities in acquittal rates between all public prosecution cases and jury trial cases could be even higher, if we extract them one from another. According to the table, the acquittal rates in ordinary trials varied between 0.2% and 0.5% during 2009-2016 years, while the acquittal rate in jury trials were between 2.5 and 12.9%. So, the acquittal rates in jury trials have been very unusual for the criminal justice system in Kazakhstan - on average

25 times higher than in single judge trials during the 2009-2016 years. This clearly shows that jury trials reduce pro-accusation bias in criminal proceedings.

Table 3. Differences in Acquittal Rates between Jury Trials and Single Judge Trials, 2009-2016

	2009	2010	2011	2012	2013	2014	2015	2016
Ratio of acquitted persons in all cases with public prosecution	0,2 %	0,3 %	0,3 %	0,4 %	0,3 %	0,2 %	0,5 %	0,2 %
Ratio of acquitted persons in jury trials	12,9 %	11,4 %	6,1 %	6,3 %	9,4 %	2,5 %	3,3 %	11,7 %

Source: http://service.pravstat.kz

Furthermore, jury trials are conducted at particular places, which are called Specialized Interdistrict Criminal Courts that are located in 14 provincial centers and cities of Astana and Almaty. For crimes committed by military personnel and which are available for juries consideration there is a separate court that is called Republican Military court. Table 4 provides information about the distribution of jury trials across regions in Kazakhstan during the last ten years. As it can be noticed the vast majority of trials occurred during the 2010-2013 years, which can be explained by the expansion of jurisdiction of jury trials that will be discussed later. Generally, over the ten years period the most number of trials have been conducted in Almaty city, Kostanay and Pavlodar regions, while the least number of trials have occurred in West Kazakhstan, North Kazakhstan and Kyzylorda regions. Also, the overall rare use of jury trials is well demonstrated through the following statistics. For instance, in 2008 in Akmola, West Kazakhstan, Karagandy, Pavlodar and North Kazakhstan regions there have not been jury

trials conducted at all. Similarly, if we take more recent court statistics, in 2015 in Astana, Aktobe, Atyrau, East Kazakhstan and West Kazakhstan regions there was no jury trials at all.

Table 4. Distribution of Jury Trials in Kazakhstan, by Region, 2007 - 2016

	2007	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Astana city	3	4	5	28	27	25	23	0	0	5
Almaty city	4	4	3	30	54	40	10	5	3	n.d.
Akmola region	1	0	3	19	24	18	20	8	5	n.d.
Aktobe region	1	6	5	15	14	15	6	3	0	n.d.
Almaty region	7	5	8	10	17	6	9	5	3	n.d.
Atyrau region	6	5	5	12	11	7	2	2	0	n.d.
East Kaz. region	4	4	1	16	16	9	6	3	0	n.d.
Zhambyl region	1	2	5	19	7	13	6	1	1	n.d.
West Kaz. region	2	0	0	7	15	11	11	7	0	n.d.
Karagandy region	0	0	5	15	22	17	0	1	3	n.d.
Kostanay region	0	2	1	23	34	35	16	5	7	n.d.
Kyzylorda region	0	1	0	7	3	1	6	1	1	n.d.
Mangistau region	3	3	7	13	7	7	3	1	1	n.d.
Pavlodar region	0	0	3	30	59	45	36	14	3	n.d.
North Kaz. region	3	0	0	3	10	11	17	1	3	n.d.
South Kaz. region	1	6	9	22	17	16	14	8	12	n.d.
Military court	0	0	0	1	2	0	5	0	0	n.d.
Total	**36**	**42**	**60**	**270**	**339**	**276**	**190**	**65**	**42**	**47**

Source: http://service.pravstat.kz

As it can be noticed from the Table 4 above, the number of jury trials varied considerably during the last decade. The primary reason for that is the fact that categories of cases available for juries' consideration have experienced significant changes during that period. Generally, the process of changing the list of crimes that are eligible for jury trials could be divided into four stages of expansion and reduction. During first stage, between 2007 and 2010, only crimes that are punishable by life imprisonment or death penalty belonged to the competence of the jury trial courts. However, in 2010 the categories of crimes, could be decided by the juries have been expanded. Almost all grave crimes have become eligible for jury trials. As the number of jury trials increased, the acquittal rates have also increased. The participation of jurors in trials have demonstrated how weak and incompetent police investigation and prosecution agencies were in Kazakhstan. As a result, those agencies resisted against the further expansion of jury trials. As I explain in Chapter 5, in July of 2013 at the initiative of the General Prosecution Office the category of cases that can be subjected to jury trials have been reduced to its initial level (i.e. death penalty and life imprisonment cases). The "popular crimes" related to drug trafficking and corruption have been excluded from juries' jurisdiction. Consequently, the number of jury trials returned to its initially low level.

Official court statistics and jurisdictional changes leave the reader puzzled as to how and why jury trials drastically reduce pro-accusation bias, and how and why the criminal justice professionals resist these trials. The following chapters address these research questions drawing on the findings from my field research.

Chapter 4. The Role of Jurors in Reducing the Accusation Bias in Kazakhstan

This chapter is about how jury trials work in Kazakhstan. I focus here on the actual difference between single judge trials and jury trials in criminal proceedings in order to analyze how and why jury trials are able to reduce the accusation bias in Kazakhstan (Hypotheses 1-3). As the general purpose of the introduction of the jury trials in Kazakhstan was to provide better opportunities for both defense attorneys and prosecutors to compete with each other as well as improve the quality of investigation and protect better the rights of the defendants, and ultimately reduce the pro accusation bias in the courts (Sisenova 2015).

H1: The Adversarial Procedure of Jury Trials Reduces the Accusation Bias

According to the Kazakhstani Criminal Procedure Code, there is a little difference between ordinary trials and jury trials in terms of procedure. All the key stages such as testimonies of victims, suspects, witnesses as well as debates between the prosecutors and advocates could be found in both types of trials. Interviews with the key parties in the jury trial process such as prosecutors and defense attorneys helped me to identify each side's opinion regarding the disparities in the ways ordinary and jury trials are conducted. Generally, prosecutors and judges do not make a difference between two types of trials in terms of adversariality of criminal proceedings. However, they indicate that the introduction of juries into the trial process, additionally requires strong public speaking skills from each party. On the other side, interviewed defense attorneys indicated that

jury trials certainly make the court hearings more adversarial. It is worth considering each party's opinion separately.

Defense counsel

According to interviewed attorneys, there is a clear difference between the ways ordinary trials are conducted and the ways jury trials are performed. All the parties including judges, prosecutors and advocates behave differently in front of the jury trial court. To begin with, in jury trials the court hearings start exactly at the appointed time, while in ordinary trials it is a common practice that prosecutors or advocates may be late and hearings start 30 - 60 minutes or even later. This indicates judge's leniency towards lateness of prosecutors, an early sign of the accusation bias. Next, in jury trials prosecution and defense sides try to present their arguments in a logical and coherent manner to make it understandable to the jurors, while in ordinary trials most of the times discussion of arguments and evidence is a mere formality because both judge and prosecutors have already reached the bargain about the outcome of the criminal trial. It is interesting to note how the Almaty-based attorney Daniyar Kanafin mentioned that when the first jury trial has been conducted in the city of Petropavl (North Kazakhstan) in 2007 the prosecutors came to the trial in their special outfits, which they usually wore on public holidays. All observers were amazed how the trial was conducted: presiding judge interrupted the defense counsel only a few times - a sign of fair trial, and prosecutors have delivered brilliant speeches in front of the jury.

Furthermore, interviewed attorneys explained to me that jury trials motivate both prosecutors and defense attorneys to come better prepared for trials. To be more precise, prosecutors understand that they cannot simply use their administrative resources and

explain informally to the judge all facts of the criminal case. Prosecutors cannot neglect the existence of the jury, they need to provide proper evidence and prepare strong arguments in order to persuade jurors that the defendant is guilty. Similarly, defense attorneys have great opportunity to impress the jury panel by their strong performances during debates, and, thus, gain the acquittal of the defendant of all charges. As for judges, they understand that trial process should be carefully conducted in accordance with regulation so that no criticism would be made of them in the future in appellate proceedings. One of the attorneys during the interviews revealed that in their criminal court there was a judge who often times showed up visibly drunk during the trials, everyone knew about his drinking habit, but no one could influence him. However, when this judge was appointed for jury trials, he always showed up for them sober.

Furthermore, my participation in the training courses for attorneys to develop defense strategies in jury trials helped me understand the key techniques for advocates during participation in trials with lay assessors. The session was led by Nick Stanage, who presented "Ten golden rules" in order to win the support from juries. It worth mentioning each rule separately:

Rule 1: Do not be boring.
Why the defense should not be boring? Because juries need to be completely at under your spell. As if you have the power of magic and very discretely when you capture the attention of the jury, they find everybody else boring. I pray every night, before the jury trial: God, please give me a boring prosecutor, give me a boring judge and thirdly help me as an advocate. But first of all to the Lord I ask for a boring prosecutor who speaks in a boring way and listens to himself, not trying to connect with the juries. That is the kind of prosecutor I want, because it will enable to me to connect more directly with the juries.

Rule 2: Communication means connection
I take for granted, I assume that you know the detail of the evidence, you know your case concept, you prepared your questions for the witnesses, you know how to attack the prosecution's evidence, all that we assumed. Now, when you are speaking to the jury, at any moment of the trial and especially at the end you have got to know how to connect,

you are not talking to the jury as if they were of low educational level or as if you are professional and they have to listen to you, because they are farmers and grandmothers. That is not a connection. You have got to do everything you can to emphasize that you have a close connection with them and when you use some sort of reference may be a proverb, poem or metaphor it has got to be something that they can connect with. The bar in Kazakhstan is national, so you can go anywhere. So, you have got to know that what works in Almaty might not work Ust-Kamenogorsk. When I am in front of the jury court in London, my speech is very different to the jury in north of England. Jurors in the North of England at weekends go to the mountains and they walk in the fields and everybody knows how sheep and cows look like. In London, they have to go to the Facebook to look at the mountains or a sheep, their life is totally different, and they use metro and department stores or visit the opera. If you talk about the opera in the North of England, they will kill you. Jurors would think that you are so superior that you know about the opera. So, you need to know what works in your local area, because you want to make sure, you are the one making best connection with the jury.

Rule 3: The receiver is the most important person in any communication

This is my favorite rule. What does it mean? You have to minimize the use of "I" in your speech, because it is the jury who is deciding the case, the jury which is analyzing the evidence, the jury that has the legal and moral responsibility to answer one question: "Has the prosecution proved its case beyond reasonable doubt?" During the last 20 years I start my speech with these words: "Ladies and gentlemen of the jury, what you have said at the beginning of the case is more important that anything I will say." What juries say at the beginning of trial? They say: "I swear that I will faithfully try the defendant according to the evidence". I remind to juries about their oath and say let's see if I can help you to do that. My opinion does not matter, you are the only people in this court who matter. I hope I could help, let's see what you think of the evidence. So, as you can notice what I am doing with juries is addressing them YOU, YOU, YOU instead of I, I, I. Forget about I, since I is the intruder, while YOU is the decision maker. Unless you cultivate this mentality, you will look like an arrogant professional who is failing to make connection with jury.

Rule 4: Energy is the essential fuel

Someone who lacks physical dynamism cannot impress the juries. Mental energy is also essential. When you are in front of the jury, from the first moment they see you, you need to have the mentality that there is nowhere I would rather be and it has to be true in your mind. If you have that mentality, you will be more persuasive, you make a connection, you show your physical and mental energy, and you are more likely to win the case for your client.

Rule 5: Every time you speak to juries, give them something valuable

The juries like prisoners; they were forced to come to the court. Some of them do not want to sit in the panel. You have got to be a person, giving them something valuable, not wasting their time by irrelevant detail.

Rule 6: Make an eye contact

Look at each of the members of the jury court. Always at least look at one of them. The only exclusion is when you look at the judge.

Rule 7: Authenticity
You have to make sure that everything you said is authentic. Being a defense advocate is not about representing angels. Your job is not to say to the jury, the prosecution says that my client is the devil, while he is an angel. It is a fantasy. Your job as criminal defense advocate is to help juries to answer the question: Has the prosecution proved its case beyond the reasonable doubt?

Rule 8: Be a trustworthy
You have got to be reliable. Help juries to trust you. Say things that are reasonable. Persuade them in a way that is sensible, which shows that you also the member of the human race, not the professional lawyer race. Be tidy, be organized, be polite, and be helpful.

Rule 9: Slow down
When you are at the early stage of friendship with someone, you are not in a race of telling as much as possible about something about you that they may find interesting. Similarly with juries you should not hurry up with your speech, you have to speak in a slow and memorable manner. I want you to cultivate a mentality that you are on a date with each member of the jury during the trials. However, you should not have any personal contact with juries, do not even smile at them in the corridor or in the street.

Rule 10: Choose your favorite communicator
Choose a person who makes you listen very carefully and persuades you. Think about how this person can achieve such a result. Try to apply all the qualities and skills of this person on yourself.

As it can be noticed from the recommendations mentioned above, the defense attorneys have to pay great attention to the juries, they need to not only work on the quality of their arguments and evidences, but also they need to develop their socio-analytical skills in order to establish contact with juries and persuade them. Obviously, in the single judge trials defense attorneys do not have such opportunity, that is why from the defense perspective, the jury trials are more adversarial than ordinary trials in a way that they provide a greater chance for defense attorneys of winning the case due to

additional twelve people who preside in the court compared to trials where judge sits alone.

Prosecutors

As far as prosecutors' opinion is concerned, they do not make distinction between ordinary and jury trials in terms of procedural norms. However they indicate that participation in trials with lay assessors requires some practice and knowledge. Interviews with prosecutors helped me identify their strategies in jury trials. According to the prosecutors, the quality of the preliminary investigation work done by police directly influence on the quality of arguments presented by prosecutors in the court. Since the weak evidence can be doubted and questioned, consequently defense attorneys can capitalize on that and win the support from the juries. As a result, poorly described actions of the defendant can lead to the changing of the qualification of the crime by jury court or even worse to the acquittal verdict. It means that in the eyes of the jury the prosecutor failed to prove the guilt of the defendant and made a mistake, which, in turn, indicates a low professional level of the prosecutor.

Also, prosecutors told me that an ability to persuade juries without exaggeration of the threat of the crime was not an easy task. The prosecutor needs to have a creative mind as well as deep awareness of the theory of methodological analysis. The only knowledge of the dispositions of the articles from the Criminal code does not allow uncovering the essence of human interactions. At least, prosecutor needs to know how internal consciousness is formed and how the internal contradictions of the person are revealed. This knowledge helps to detect the reasons and motives for committing crimes as well as prevent public relations from any criminal infringements. Prosecutors

acknowledge that not all of their colleagues have such a deep understanding of critical reasoning. Prosecutor 1 described the accusation speech of one of his young partners in the case regarding drugs:

> *"the state must detect, prevent and harshly punish those who make a profit from the troubles of others. The punishment for drug dealers should be as strict as for murderers. This is because, if a murderer kill one or two people, the drug dealer kills a million of people at once". This speech explicitly illustrates the weakness of prosecutor, since he made a fatal error by saying that "drug dealer kills a million of peoples at once". There is no such a statistic it is only his fantasy. By saying such words, he digressed from the alleged accusations. Regarding the fact that the "state must detect, prevent and harshly punish those who make a profit on the troubles of others" these words do not represent the position of the government. The state does not make a purpose to harshly punish guilty persons, instead the purpose of the criminal law is described in the article 2 of the Criminal code: "protection of rights, liberties, and legitimate interests of individuals and citizens, of property, rights, and legitimate interests of organizations, of public order and safety, of the environment, constitutional order and territorial integrity of the Republic of Kazakhstan, of public and state interests protected by law from criminal infringements, protection of peace and safety of mankind, as well as crime prevention."* (Anonymous. 2017. Interview with the prosecutor by author. February 17)

This particular example demonstrates what problems current prosecution office s experiences. Many young prosecutors need to learn about making convincing arguments through training courses and manuals.

Furthermore, prosecutors warn to be careful with the concept of "public prosecution." Since, when juries hear this term they momentarily think about power of the state, while unlawful acts of the defendant goes into the shadow. Prosecutors indicate that their purpose in jury trials is to present evidence in the simple understandable language. This is because it will help juries to figure out the validity of the alleged accusation. The Prosecutor 2 describes how one defendant (the former educated lawyer) tried to demonstrate the judge's prevention of the violations of the procedural rules as the

support of the accusation bias. He called the “fight” as the “incident”, “quarrel” as the “dispute.” Obviously, this was influencing the juries because jurors were subconsciously acquiring invalid information in favor of the defendant, which could possibly have impact on their decision-making. Therefore prosecutor asked questions from the defendant regarding the distinctions between the real terms mentioned in the accusation and the ones defendant proposed to juries. By doing this prosecutor demonstrated to juries that the defendant was misguiding them. (Anonymous. 2017. Interview with the prosecutor by author. February 21)

Prosecutor 3 described his experience in the participation of jury trial regarding the defendant who had been accused of killing his own sister:

> *The difficulty of the case was that the victim in the trial was the father of the defendant. During the jury selection process I and my colleague tried to form the panel consisting of women of young age preferably under the age 35. This is because the victim was the young woman, and also because the persons of same gender tend to reach solidarity and follow the opinion of the leader. As a result, the selected panel consisted of 11 women and 1 man. As according to the law on lay assessors the panel should consist of 10 main and 2 substitute juries. During the trial the defense side presented their key witness. However, by analyzing the mimics of the witness it was clear that she was lying, so by asking relevant questions prosecutors exposed to the jury the true nature of the witness. Gradually, the father of the defendant, who was also the victim in the trial started to believe us. At the end of trial he was already asking his son to admit the murder of the sister.* (Anonymous. 2017. Interview with the prosecutor by author. March 3)

So, it can be noticed that jury selection process plays important role in the trials, since from the beginning parties get acknowledged with future lay participants as well as have chances for peremptory challenges. In addition, prosecutor mentioned that in both jury and ordinal trial it is important to trace the verbal signals of witnesses and even the timbre of their voices. Since it helps to identify the trustworthiness of their testimonies.

Participant observation

In order to find out whether claims about the fair competition between defense attorneys and prosecutors at the jury trial were true, I attended the actual jury court trial in the Astana Interdistrict criminal court. The defendant Khadarov had two experienced attorneys: Yerzhanova and Bilyalov. Attorney Yerzhanova who back in 2011 at the jury trial regarding Minister of Public Health Doskaliev defended his accomplice Dyuisaliev and eventually the jury acquitted her client. While attorney Bilyalov was known for defending the victim in the criminal case regarding the murder of a student Aubakirov in 2016. On the other side, the prosecutor was a young captain Khoshiev, Attorney Sagyntayev represented the victim – a mother of the killed person. The process started with the jury selection procedure, many candidates have been eliminated due to various reasons: old age, busy work schedule, little children at home, etc. As a result 19 people left in the courtroom. Their names have been put on the basket and judge extracted from it two pieces of paper with names of persons who have been released from jury duty and sent home. So, 17 people left in the courtroom, judge asked prosecutor and defense attorneys to exercise their right of peremptory challenge. The prosecutor named two persons that have been eliminated from the jury duty: they were males of around 50 years old and probably upper middle level social status. While defense attorneys eliminated three individuals: one young man and two women. I did not detect any manipulation during the jury selection process.

The whole trial in this case lasted for 14 sessions during the 16 days period. The defendant Khadarov was initially charged with murder and deliberate infliction of serious harm to health However, during the trial the prosecutor changed the qualification of the

crime to murder committed in a state of a strong sudden mental disturbance and infliction of the serious harm to health in the state of heated passion. This change would result in the lesser punishment of the defendant, if convicted. According to the evidence provided, there was a conflict between the two young individuals, who then set the meeting in the suburbs of the Astana city. One individual Galyuautdinov brought with himself around 30 individuals to the meeting, while other one Khadarov brought with himself his father, two brothers-friends and their father. When two parties arrived at the place of meeting, parents tried to establish rapport with other side and find resolution to the conflict, however opposite side did not communicate at all, instead they attacked Khadarov's side and fired at them from traumatic pistols and injured Khadarov's father. Khadarov, tried to defend his father and has taken the gun from the backseat of his car and started to shoot all over the place. As a result, victim Lobanov was killed and 5 other individuals injured.

The contest between prosecutor and defense attorneys become clear during the testimonies of witnesses and victims as well as their cross examination. Prosecutor was asking the victims whether they had previously abused Khadarov in order to stress out that there had been no grounds for Khadarov to kill Lobanov and injure the others. While, the position of defense attorneys was to point out that the Khadarov's side did not want any violence. They cited the fact that Khadarov's side had brought their fathers, who attempted to establish a dialog by asking the opposite side to mediate the dispute, as evidence of peaceful motives of the defendant. Furthermore, according to the Criminal Procedure Code, the judge and other parties should not mention any information regarding the previous convictions of the defendant or his bad habits, illnesses and other factors that could provoke the bias in juries. However, during the trials, the previous

conviction of the Khadarov (i.e. he was previously put under the probation for this particular crime, however the verdict has been overturned and the case was send for the consideration of jury court) has been widely mentioned by prosecutor and victims, even though the judge each time stopped prosecutor and victims and was asking juries to not consider the fact of previous conviction. It was obvious that jurors have learned about previous conviction of the defendant.

Next, I had a feeling during the trial that Judge had been slightly favoring prosecution. He several times overturned the motions of the defense attorneys, while he declined the motions of the prosecutor only once. I measured the duration of speeches of each side during the concluding discussion of the trial. The speech of prosecutor lasted 7 minutes, victim's attorney spoke for 12 minutes. On the other side, the defense attorney Yerzhanova's speech lasted for 45 minutes, while defense attorney Bilyalov spoke for 15 minutes. So, it was clear to me that both the jury trial allowed defense to speak freely and that the defense was better prepared. Defense attorneys were all the times appealing directly to the juries, while prosecutor often forgot to maintain any eye contact with jurors, instead, staring in the indictment.

Overall, the participation in the jury trial left me with the controversial feelings. This is because the defense attorneys were active and trying to ask logical questions as well as to address their arguments directly to juries. While the prosecutor and the victim's attorney have been passive and addressing their evidence and arguments mostly to the judge. Yet it was clear that this jury trial was a real contest between the defense and prosecution.

H2: The Jurors' Attitude toward Decision-Making Reduces the Accusation Bias

As the existing research demonstrates, the jurors' attitudes toward deciding criminal cases is very different from those of professional judges. This argument is indirectly supported by official statistics regarding the acquittal rates. As I have explained above, in Kazakhstan, the acquittal rates in jury trials are much higher than those in ordinary trials. My interviews revealed that parties who have been involved in jury trials hold different opinions regarding this issue. Prosecutors and judges indicate that juries usually do not agree with the harsh punishments for certain crimes. For instance, between 2010 and 2013, when criminal cases regarding drug trafficking were eligible to be decided by juries, many defendants have been given short prison sentences. This is because juries considered measures of punishment for drug-related crimes as too strict.

On the other hand, according to the study conducted by LPRC (2016) almost all of advocates who participated in jury trials responded that the opinion of judge regarding the criminal case has an immense influence on the decision-making of juries. That is why the fairness of jury verdicts is highly doubted by advocates. 53% of respondents were not satisfied and 17% were partially satisfied with the current practices of jury trials. The most popular reason for the advocates' dissatisfaction are the concerns regarding the influence and pressure on juries by presiding judge. Therefore, 9 out of 10 attorneys did not support joint decision-making by judges and juries. It means that attorneys believe that juries and judges should not discuss the verdicts together.

Furthermore, attorney Almira Shaikhina shares her experience in participation in the trial regarding the judges of the Supreme Court Dzhakishev and Tashenova in 2012, who had been accused of corruption. According to the advocate judges deliberately chose

to be tried by jury court, since they believed for a more fair trial. However it went wrong, as Shaikhina indicates that during the trial jurors have been influenced by the social factor. To be more precise, the panel of juries consisted from low-income employees of public sector. Therefore, prosecutor each time stressed on the supposedly luxurious lifestyle of the defendants. He several time contrasted the vacations of defendants to the foreign countries with the inability of the jurors to make similar trips abroad. The defense attorney rebutted that the salary of Supreme Court judges, were much higher compared to the average wage in the Kazakhstan, therefore, defendant could afford such trips. However, juries have been influenced by these disparities in the incomes, thus they convicted the judges, according to Shaikhina. (Almira Shaikhina.2017. Telephone call to author, March 27)

The general knowledge is that jurors unlike judges are independent from any authorities, they are not bureaucrats and do not have any obligations except to make judgments in the cases, according to their beliefs and consciousness. Therefore, such attitude of jurors toward the trial contributes to the greater acquittal rates. Interviews with jurors enabled me to confirm that they do care about the outcome of criminal proceedings.

Juror **1** describes how she has overcome the difficulty of considering the case

> *"There were three defendants on trial; all of them young individuals aged 28, 26 and 22 respectively. My son is 22 years old, so I did put him in the place of defendant, and I was horrified. How is that possible that these individuals committed such a severe crime? They murdered the human! However, initial feelings have gone away as the prosecutors and defense attorneys presented their evidence, and witnesses provided their testimonies. I tried to stay calm and evaluate all the arguments, because the lives of individuals have been put on the trial."* (Anonymous. 2016. Interview with the juror by author. December 27)

Juror **2** tells how she learned that prosecutor has wrongfully qualified the crime

> *"…the defendant was accused of murder, however the testimonies of victims and witnesses during the trial, which have been partially contradicting their initial testimonies provided to the investigator as well as reports of psychological experts have proven that defendant did not control himself during committing crime. Victims have been hugely outnumbering the defendant, what is more they were shooting, they injured his father and they were beating him, obviously he was frightened and could not control himself, therefore he could not adequately evaluate his actions. Even without the forensic examination reports it was clear to me that he lost his mind at the moment of attack and killed accidently the bullying guy."* (Anonymous. 2017. Interview with the juror by author. January 12)

Juror **3** describes how the jury convicted the defendant to 11 years of imprisonment

> *"The defendant has been transferring about 0.8 kg of narcotics under his clothes during the travel on the train from Kazakhstan to Russia, when he was captured by Kazakhstani Custom officers. Even though he denied the allegations, it become clear that he was lying, since prosecutors provided explicit evidence."* (Anonymous. 2017. Interview with the juror by author. February 2)

Juror **4** describes how they acquitted the defendant because of the weak evidence provided

> *"The defendant was accused of selling drugs, however the prosecutors failed to prove that the former was really guilty. No video or audio recordings have been made that would have exposed the defendant. Also, witnesses did not directly see how the defendant was selling the drugs, they only saw buyer who told them that he bought the drugs from the defendant. Therefore, we decided that the allegations proposed in regards to defendant are not justified, thus, we acquitted him."* (Anonymous. 2017. Interview with the juror by author. March 5)

Juror **5** describes how the jury trial influenced him to change his profession

> *"I was a lawyer at the corporate sector with almost ten years of experience, when I received the invitation to the court to the jury selection process. To be honest, I was really surprised since I did not expect at all to be chosen. There have only small number of people arrived for the selection process and majority of them wanted to escape the jury duty. When judge asked whether among juries there are any attorneys, I responded that I am a corporate lawyer. The judge said to me that it is very good, and that the jury panel needs such people as me. So, we were considering the case regarding the murder on the aggravated circumstances. The*

> *defendant was accused of murdering old woman and her grandson and robbing their house. The evidences provided by prosecutors were enough to prove that the defendant was really guilty. Interestingly, what I noticed was how emotional were the jurors around me, they cried when they heard the testimonies of the victim side and witnesses. Also, the defense lawyer was not prepared good enough compared to the prosecutor. In the deliberation room, we unanimously convicted the defendant to 17 years of imprisonment. The most interesting things happened after the trial, I had friends among attorneys' community who were inviting to join this profession before, however the exposure to the real trial process inspired me. I have greatly become interested in the criminal processes and all the stuff that is related to trial processes. After one year I started to participate in attorneys trainings and just recently I have applied for the attorney license. I hope that I would find ways to defend the rights of my clients effectively.* (Anonymous. 2017. Interview with the juror by author. March 17)

The jurors 6 and 7 have explicitly expressed their regret regarding convicting the defendant. According to them during the process the prosecutor and victim failed to provide sufficient evidence to prove the guilt of the defendant. However the judge has forced the members of the jury to convict the defendant. The stories of these juries are explicitly described in the analysis of evidence for hypothesis 6 below in Chapter 5.

It should be mentioned that although juries acquit more often than judges alone, the general public is not eager to serve on the jury panel. My in-depth analysis of over 300 hundred jury trial verdicts shows that the average turnout rate during the jury selection process is only about 25-30%. So, most of the people ignore their civic duty to participate in trials, and the state agents do not seem to care about it, thus, passively resisting the jury trial courts. Furthermore, during my participant observation of a jury trial in Astana in February 2017, only 40 individuals out of 300 candidates came to the court for selection procedures. What is more, almost all of them did not want to participate in trial. They provided different reasons for excuses. However, judge reluctantly repeated several times that participation in jury trials was the duty of

Kazakhstani citizens and avoidance would bring significant penalties. So, the question for future research emerges: if people become jurors without desire or under the pressure of penalties can they produce fair and impartial verdicts or do they simply want to quickly finish the trial? My interview with jurors indicated that many of them felt in a discriminated position: they considered the judge not as an equal to them, but as the boss whose opinion was more important than opinion of jurors during the jury deliberation of the verdict. Also, there are no requirements for juries in terms of education or qualifications. So, less educated and young jurors in the Kazakhstani context can follow the personal opinion of the judge regarding the verdict.

Furthermore, the juries definitely reduce accusation bias compared to single-judge trials. Table 5 provides information regarding disparities in outcomes between jury and ordinary trials in deciding murder cases. In murder trials, the acquittal rates in jury trials have been on average 50 times higher than in ordinary trials. It is interesting to note that while the acquittal rates for murder cases in ordinary trials during the 2010-2016 have been around 0–0.3%, the same statistics for jury trials varied considerably. The general trend with jury trials is that the acquittal rates have been decreasing over the years. In 2010, it has been the highest with 12.5% and by 2016 it was only 2.8%.

More evidence of difference in judge-juries decision-making could be demonstrated through the analysis of trials for drug-related crimes. Table 6 illustrates the disparities in outcomes between jury and ordinary trials in deciding drug related cases. As it can be noticed the disparities in this type of crime are even higher than in murder cases. The percentage of acquitted persons in jury trials were on average 60 times higher than in ordinary trials.

Table 5. The Disparities in Outcomes between Jury and Ordinary Trials in Deciding Murder Cases (Article 99 of the Criminal Code)

	2010	2011	2012	2013	2014	2015	2016
Total number of persons tried for murder	1,154	1,162	1,107	1,140	897	449	703
Including persons tried in single judge trials	1,026	991	977	1,015	830	432	667
Number of convicted persons in single judge trials	1,025	991	975	1,014	830	432	665
Percentage of convicted	99.9%	100	99.8	99.9	100	100	99.7
Number of acquitted persons in single judge trials	1	0	2	1	0	0	2
Percentage of acquitted	**0.1 %**	**0**	**0.2**	**0.1**	**0**	**0**	**0.3**
Including persons tried in jury trials	128	171	130	125	67	17	36
Number of convicted persons in jury trials	112	158	118	116	65	17	35
Percentage of convicted	87.5%	92.4	90.8	92.8	97	100	97.2
Number of acquitted persons in jury trials	16	13	12	9	2	0	1
Percentage of acquitted	**12.5%**	**7.6**	**9.2**	**7.2**	**3**	**0**	**2.8**

Sources: http://service.pravstat.kz, Official response from the Committee of Legal statistics to my request

Not only do juries acquit the persons on a higher rate, but they also lighten up the punishments by changing accusations from severe crimes to the moderate ones. **The article 24 of the Criminal Procedure Code allows changing the qualification of the crime during the trial.** The Table 7 provides information about the criminal cases when juries changed the qualifications of crimes. Between 2007 and 2016 on 111 occasions juries issued verdicts after having lessened the criminal charges, thus, sentencing the defendants to less severe criminal punishment criminal charges. These lessened criminal charges would not be eligible to be heard by the jury, if they were brought to court originally. This represents about 10% of overall cases considered by juries during this

Table 6. The Disparities in Outcomes between Jury and Ordinary Trials in Deciding Drug Related Cases (Articles 259-261 of the Criminal Code)

	2010	**2011**	**2012**	**2013**
Total number of persons tried regarding the narcotics crimes	6,043	2,256	1,802	1,622
Including persons tried in single judge trials	5,900	2,109	1,683	1,530
Number of convicted persons in single judge trials	5,899	2,099	1,676	1,528
Percentage of convicted	99.98 %	99.5%	99.6%	99.9%
Number of acquitted persons in single judge trials	1	10	7	5
Percentage of acquitted	**0.02%**	**0.5%**	**0.4%**	**0.1%**
Including persons tried in jury trials	143	147	119	92
Number of convicted persons in jury trials	123	137	115	80
Percentage of convicted	86%	93.2%	96.6%	87%
Number of acquitted persons in jury trials	20	10	4	12
Percentage of acquitted	**14%**	**6.8%**	**3.4%**	**13%**

Sources: http://service.pravstat.kz, Official response from the Committee of Legal statistics to the request of author.

period. It follows that juries have a well-developed collective legal consciousness because jurors do not simply rubber-stamp the cases within the framework of prosecutor's accusation; they can change the proposed charges to the different crimes when issuing verdicts.

Table 7. Verdicts by Jury Trials, in Which Juries Changed Criminal Charges, in Kazakhstan, 2007-2016

Article of Criminal Code in editions		Type of crime	Verdicts issued regarding each particular crime in years										
16 July 1997	**3 July 2014**		**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**Total**
98	101	Murder committed in a state of a strong sudden mental disturbance	-	-	-	-	1	2	-	-	-	-	**3**
99	102	Murder as a result of exceeding limits of necessary self-defense	-	-	-	-	6	9	3	2	-	-	**20**
101	104	Causing Death by Negligence	-	-	-	-	2	2	1	2	-	-	**7**
103	106	Deliberate Infliction of serious harm to health	-	-	-	-	15	11	8	5	-	-	**39**
108	111	The Infliction of harm to health in the heat of passion	-	-	-	-	1	-	-	-	-	-	**1**
109	112	The Infliction of serious harm to health when exceeding the limits of necessary defense	-	-	-	-	-	1	1	-	-	-	**2**
111	114	Incautious infliction of harm to health	-	-	-	-	-	-	-	1	-	-	**1**
112	115	Threats	-	-	-	-	-	1	-	-	-	-	**1**
122	122	Sexual relationship or other actions of sexual nature with person, not reached the age of sixteen	-	-	-	-	-	-	1	-	-	-	**1**
123	123	Coercion to sexual intercourse, pederasty, lesbianism or other sexual actions	-	-	-	-	-	1	-	-	-	-	**1**
124	124	Depravation of minors	-	-	-	-	-	1	-	-	-	-	**1**
175	188	Theft	-	-	-	-	1	1	-	1	-	-	**3**
176	189	Conversion or	-	-	-	-	-	1	-	-	-	-	**1**

		Embezzlement of entrusted other people's property											
177	190	Fraud	-	-	-	-	2	-	1	-	-	-	**3**
178	191	Robbery	-	-	-	-	2	2	1	-	-	-	**5**
185	200	Illegal Taking Possession of an Automobile or Other Transport Vehicle without the Purpose of Stealing	-	-	-	-	-	-	1	-	-	-	**1**
251	287	Illegal Purchase, Transfer, Sale, Storage, Transportation, or the Carrying of Weapons, Ammunition, Explosives, or Explosion Devices	-	-	-	-	1	1	-	-	-	-	**2**
257	293	Hooliganism	-	-	1	-	1	3	-	2	-	-	**7**
262	300	The illegal cultivation of plants, prohibited to cultivation and contained drugs	-	-	-	-	1	-	-	-	-	-	**1**
296	345	Violation of traffic regulations and the operation of transport facilities by the persons who operate the transport facilities	-	-	-	-	-	-	-	1	-	-	**1**
307	361	Abuse of official powers	-	-	-	-	1	1	-	-	-	-	**2**
327	389	Arbitrariness	-	-	-	-	4	1	-	-	-	-	**5**
364	434	Failure to report about the crime	-	-	-	-	1	1	-	-	-	-	**2**
		Other	-	-	1	-	-	-	-	-	-	-	**1**
													111

Sources: http://service.pravstat.kz, Official response from the Committee of Legal statistics to the request of author

H3: Jurors Reduce Accusation Bias by Breaking Informal Bargaining Between Judges and Prosecutors

All attorneys, whom I have interviewed, insisted that there is a strong informal relationship of cooperation and coordination between judges in criminal courts and prosecutors. This cooperation and coordination is usually maintained for two purposes. Firstly, to reach the consensus on the sentence and the level of punishment in the criminal case in order to exclude any possibilities of overturning the decisions by appellate courts in the future. Kazakhstani Criminal Procedure Code allows unlimited appeals against acquittals, and prosecutors use it with vigor against the judges who sometimes disagree with prosecutors. Secondly, to discuss the matters of lightening up or instead toughen the punishment as well as producing the acquittal or conviction verdict for the defendant, if there have certain amount of bribe been offered by either defense or the victim. So, the introduction of juries into the trial process interrupts the bargaining between judges and prosecutors in a way that it becomes more difficult to negotiate directly the outcome of the case. The third party "jurors" is considered as the outsiders of the judicial system, meaning that it is difficult to integrate them into the well-established informal relation because none of state agents can guarantee cooperation of jurors in the corrupt deals in the criminal proceedings. Consequently, the trials with participation of juries increase the probability of producing the acquittal verdicts.

These problems of Kazakhstani criminal justice system have been well described by popular attorney Jokhar Utebekov. According to him, there is a lack of professionalism among investigators, they often times provide weak evidence and physically or psychologically force suspects to make confessions about committing of crimes. Next, the prosecution office in the country possesses enormous power, which

literally means that prosecutors can appeal and consequently overturn almost any court's decisions. In addition, the Kazakhstani judges are not independent in their decision-making; they are highly vulnerable if they do not match the numerical evaluation criteria. To be more precise, it is safer for judges to convict, since if they acquit suspects, then higher court instances may cancel their decisions. Consequently, three cancellations of sentences by the courts of higher instances may put an end to the career of a judge (Jokhar Utebekov 2016. Interview with the author. December 29)

All these are problems, according to attorneys, and they result in the emergence of informal relationship between the Prosecutors and Judges. It is when they mutually decide beforehand the outcome of the case. Consequently, when prosecutors bring the cases to the court, judges approve all the allegations and convict defendants. As a result our judicial system experiences very strong accusation bias. This phenomenon could be partially explained by the Soviet legacy. Most of the former USSR states experience the similar problem in their judiciary systems. The centralized communist system left huge footprints on the governance strategies of all its former member states, including the judicial area (Trochev 2014).

During my participant observation of previously mentioned the jury trial of Khadarov, prosecutor during the trial has suddenly changed the initial accusation murder to the less severe charge, that is murder committed in the state of affection. Both the victim's attorney and victim herself were shocked with such decision; they openly accused the prosecutor and the judge of the corruption during the breaks between the trial sessions. They argued that there were no grounds for change the accusation from the crime that is punishable by 15-20 years of imprisonment to the crime that is punishable

by no more than 5 years of imprisonment. Victim believed that defense had offered the bribe to the prosecutor and judge in order to lessen the punishment. So, in Kazakhstani legal practices juries do not fully stop the informal relationship, since there is a still room for the negotiation between the judge and prosecutor, both whom retain a great deal of discretion.

In conclusion, jury trials dramatically change acquittal/conviction rates in criminal cases as well as makes the processes of jury trials more adversarial. This is why law-enforcement agencies have been resisting against jury trials. I turn to the repertoires of resistance in the following chapter.

Chapter 5. Resistance of Law-Enforcement Agencies against Jury Trials in Kazakhstan

This chapter examines the nature, mechanisms and practices of resistance against jury trials in Kazakhstan based on my own interview data, analysis of media stories, court statistics and legislative changes. There have been many attempts at making Kazakhstani criminal trials fairer. But many of them failed. However, the jury trials succeeded, as evident by their unusually high acquittal rates resulting from both adversarial procedure, juror attitudes and reduced informality. And it is for this reason, they have been resisted by most criminal justice professionals. As I show below, this resistance takes places both openly and secretly, formally and informally, and at the national and local levels.

H4: Criminal Justice Professionals Resist by Portraying Jurors to the Public as Unprofessional and Emotional Individuals Unable to Assess Evidence and Deliver Fair Verdicts

The various sociological surveys conducted prior to the introduction of jury trials in 2007 have indicated disparities in the opinions of ordinary citizens toward the institution of juries. Although the majority of 2336 respondents (51.1%) supported the introduction of jury trials, there have been those who were against its implementation (21.9%) and those who hesitated to describe their position regarding jury trials (27%). Even more competitive was the opinion of people regarding the type of jury trials, with 26.6% respondents voting for continental model (i.e. when juries and judge mutually decide the verdict and measure of punishment), 25.2% of individuals made a preference for classical model (i.e. when juries determine the verdict, while judge only decide the measure of punishment) and smaller fraction of respondents (16.2%) desired the soviet model of lay assessors. At the same time, majority of individuals expressed their doubts

regarding the effectiveness of jury trials in the Kazakhstani context due to the low status of human rights in the country (Suleimenova 2009). Similarly to general public, there is no consensus among law enforcement agencies regarding their attitude toward the jury institution. Although the majority is against, there is still minority group who supports the development of jury trial courts. The content analysis of public speeches of legal officials as well as interviews with judges and prosecutors helped me to identify their positions regarding the jury trials.

To begin with, in July 2013, when the jurisdiction of jury trials have been curtailed, the Deputy General Prosecutor of Kazakhstan Mr. Merkel announced the reduction of the category of cases that are available for juries consideration, the main argument was that in the Kazakhstani context it is difficult to select the impartial jury panel since there is a very high level of blood ties among ordinary citizens. Although jury trials are conducted in the centers of a province, in which crimes have been committed, it is difficult to believe how jury panel could be comprised from the individuals who to certain extent connected with the defendant. Mr. Merkel, indeed, chose not to mention any specific trial.

Furthermore, during the interviews with judges they described that juries are experiencing difficulties when considering crimes, which are committed by organized groups. There have been cases when murders have been committed by criminal gangs, however only person who directly killed the victim have been convicted, while other accomplices escaped the punishment. Judges argue that juries usually do not understand the concept of organized criminal group, which implies, in judges' opinions, that all individuals who are involved in such entities are responsible for committed crimes.

However, it might also be the case that prosecutors on those occasions failed to provide strong evidence to prove the formation of organized criminal groups

The former Procurator-General Askhat Daulbayev publicly blamed the acquittal verdict issued by jury court in 2010 regarding the Botabayev:

> *"In 2011, the jury trial court of Astana acquitted the suspect Botabayev, who was accused of murder. All the appeals from the prosecution office have been declined. In the aftermath, he becomes involved in the extremist group, which murdered 11 people in Ile-Alatau National park in 2011. He is currently on the run and nobody from among judges have been punished for this."* (Kursiv.kz 2013)

Although Askhat Daulbayev did not particularly blame the juries for that verdict, it was clear that this argument was supposed to undermine the image of jury institution. In another news report it was indicated that prosecutor who has taken part in this trial appealed to the cassation court, where he mentioned that the suspect Botabayev and witnesses lied to the juries that at the moment of crime they have been in another city, also they persuaded juries that he is a religious person and that he could not kill a human being. However, prosecutor indicated that during the investigation the radical Islamic literature has been found in the house of suspect (*Tengrinews.kz* 2013)

When President Nazarbayev has learned this case, he ordered Beknazarov (Chairman of the Supreme Court at that time) to conduct "thorough investigation" on cases where the criminals have been acquitted by courts. Beknazarov made an investigation regarding this particular case and backed the decision of the court. According to the head of Supreme Court:

> *"The Investigation and Prosecution services failed to provide enough evidence in order to convict the suspect that is why Botabayev was acquitted and released from jail"* (Nomad.su 2013)

However, the opinion of Beknazarov has not been shared by some of his colleagues. For instance, the Head of Judicial Union of Kazakhstan Anatolii Smolin indicated that juries could be easily manipulated by defense counsel:

> *"Surely, in the current realities it is difficult to for all the parties of trial process to abide the ethical norms. However, it is important to understand that the way parties of trial behave significantly influence the outcome of the criminal case. This is especially true, when it comes to jury trials, where attorney can effectively demonstrate all his public speaking skills. For instance, in the case of Botabayev who had been accused of murder, the defense counsel found a way to persuade members of the jury that his client was not guilty."* (Tengrinews.kz 2013)

However, due to new facts and evidences the acquittal verdict regarding Botabayev has been overturned by appellate court, and the case was sent for consideration by another judge and new jury panel, which convicted the defendant in absentia.

So, this case demonstrates the negative attitude of Prosecution office towards acquittals and the jury institution. As for judges, there is no consensus among them regarding the jury practices, since chair of Supreme Court justified the acquittal verdict by weak evidences provided by investigation and prosecution offices, while the Head of Judicial Union of Kazakhstan blamed attorneys for misguiding the juries.

Kairat Mami, the current chair of the Supreme Court, publicly supported the jury trials on several occasions. For example, in September 2016 during the Internet conference he stressed the importance of jury trials for Kazakhstani community:

> *"I think that the jury institution should exist in Kazakhstan. I agree that jury institution should develop. I was one of the initiators of introduction of jury trials back in 2007. There were many opponents of this institution from the Investigation, Prosecution and National Security Committee at that time. They thought that juries would acquit everyone.*
>
> *The main advantage of juries is that the people themselves take part in the administration of justice. Why do you think that we are not interested in jury trials? Actually jury trials would eliminate many questions to the courts. Also, I think that the limitation of criminal cases that are available for juries consideration in 2013 was a wrong act. That is why we expanded the jurisdiction of jury trials last year [2015], we added 5 articles to the jurisdiction of juries. However, these additional crimes are rarely happen. I am for the further expansion of jury trials. Of course, there could be errors made by jury court, since they are not professionally trained, but they judge according to their life experience. So, if the evidence provided by prosecutors are weak it is better for juries to acquit the defendants. We would make further expansion of jury trials, but I want to emphasize that we already have some progress, in the first 8 months of 2016 there were 34 jury trials, while in 2015 during similar period we had only 28 cases. I want to point out that that the initiative should be also from the defendants and their attorneys, since according to the law, they should request jury trials. We would develop the jury institution together with advocates' community."* (Zakon.kz 2016)

Another supporter of jury trials within judicial community is Head of Mangistau Interdistrict Criminal Court Azat Izbassarov, who in his recent interview indicated the need for the further expansion of jury trials through including into the competence of juries all the severe crimes.

> "*…the expansion of jury trials should be done for following reasons, firstly I think that the participation of ordinary people in the administration of justice as lay assessors will increase the trust toward the judicial power. Secondly, such expansion could possibly protect the rights and legal interests of individuals who have been accused of severe crimes. I personally think that jury trials can be conducted regarding all severe criminal cases, which are punishable by more than 12 years of imprisonment."* (Zakon.kz 2017)

H5: Institutions (Prosecutors and Judges) Resist against the Expansion of Jury Trials by Blocking the Expansion of the Jury Trials or by Faking It.

Before discussing the late expansion of jury trials it is important to find out what was the attitude of law enforcement agencies and other institutions and parties regarding the introduction of jury trials back in the beginning of 2000s in Kazakhstan. Prior to the final implementation there have been huge debates among politicians, law enforcement agencies, judiciary and advocacy communities, as well as non-governmental organizations regarding the structure of jury trials. Generally the representatives of law enforcement agencies and judiciary community were calling for the postponing of the introduction of jury trials as well as adoption of continental model of jury trials (similar to France and Germany, where verdicts and punishments are issued by juries in cooperation with judge). Rashid Tusupbekov the General Prosecutor in January, 2005 was calling for postponing the introduction of jury trials:

> *"Although the introduction of jury institution would be the important democratic step, I am afraid that parties involved in the trial process are not ready for trials with participation of juries. I think that it is better to introduce trials in 2007-2008 and prior to the implementation it is important to organize the educational courses for the ordinary people regarding the jury trials."* (Karavan 2005a)

On the other side advocacy community, human rights organizations and some politicians were calling for the classical model (Similar to USA and UK, where juries determine the guilt of the person, while judges indicate the measure of punishment).

According to the Dariga Nazarbayeva the deputy of Majilis parliament in 2005 the continental model of jury panel would complicate the trial processes:

> *"The Supreme Court and Ministry of Justice want to introduce the continental model of jury trials, whereas we the "Asar" Party, the lawyers community and non-governmental organizations vote for the classical model of jury trials. I believe that classical model of jury trials is the important instrument to control the authorities. All the attempts to impose the soviet system of lay assessors or the continental type of jury trials can be considered as the weakly concealed desire of authorities to resist against the control. In the continental model of jury trials the impartiality of judges, juries and consequently issued verdicts are under the doubt."* (Karavan 2005b)

Back in 2005, Yevgenii Zhovtis the Head of Kazakhstani bureau of Human Rights indicated that prosecutors and judges are lobbying the promotion of continental type of jury trials, since it will still allow them to issue the suitable verdicts.

> *"The continental type of jury trials professional judge has huge influence on the juries. Therefore, it is dangerous to put the judge into the same deliberation room with juries. There is no need for the adoption of continental type of jury panel. Every ordinary citizen is capable of evaluating the evidences provided by investigation and prosecution services without the assistance of judge. Therefore, we should go with the classical model of jury trials in Kazakhstan."* (Karavan 2005a)

Although the National committee regarding the drafting the law on juries lead by Maksut Narikbayev was suggesting the classical model, the head of Supreme Court Kairat Mami opposed this idea and suggested the draft law of the continental type of jury trials, which was eventually adopted in the parliament (Karavan 2005a). So, it can be noticed that from the beginning in Kazakhstan the law enforcement agencies and judges had the leverage over the other institutions. They found a way to promote and adopt the continental type of jury trials, which has been opposed by many lawyers and non-governmental organizations. This trend has continued till nowadays, as prosecutors and judges do not allow the widespread use of jury trials, despite the arguments of lawyers that the jurisdiction of jury trials needs to be significantly expanded.

In December 2016 in Astana the LPRC, a private think-tank, organized a day-long conference, related to the development of jury trials in Kazakhstan. During that event the judge of the Supreme Court of Kazakhstan Mr. Krukbayev reported about the expansion of the jurisdiction of jury trials in our country. He indicated that, in accordance with the President order, four more crimes have been added to the competence of juries. He also mentioned that the great success have been achieved in the development of this institution. However, the Deputy Director of LPRC Ms. Zinovich disagreed with him: during the 9 months of 2016 only 36 crimes have been considered by juries and out of this number no cases related with expanded crimes have been decided. Furthermore, during my interviews many prosecutors and judges admitted that current jurisdiction of jury trial courts remains very limited. According to respondents, there are two main reasons for that problem. Firstly, they argue that Kazakhstani society is not yet ready for the active participation in trials. The mentality and consciousness of our citizens is not as developed as in western countries. Secondly, the expansion of jury trials is associated with huge financial costs. In the time of economic crises, government of the country is not ready spending huge amount of money on the juries' salaries.

After the President's proposal of 100 concrete steps policies in 2015 the jurisdiction of jury trials were only slightly changed. Again, only rare cases have been included under the jurisdiction of juries. To put it more simply, "political" crimes *(e.g.* Crimes against peace and human security, Criminal infractions against foundations of constitutional order and security of the state) and terrorism, have not been included in the list of crimes that can be tried by juries. Most importantly, "popular" crimes such as second-degree murder, drug trafficking, crimes against property, corruption, etc. also

have not been re-introduced. This clearly shows that in Kazakhstan criminal justice agencies made the “fake” expansion of the competence of jury trials. This is because jury trials are still can be only used in severe crime cases with some exceptions for kidnapping, trafficking of minors and their involvement in criminal activities. It worth mentioning that according to statistical data from *Pravstat.kz*, the percentage of severe crimes between 2007 and 2015 constituted only about 1-3% out of all criminal offences. The Table 8 below demonstrates all four stages of eligibility of crimes for jury trials over ten years period. It should be mentioned that In 3 July 2014 the Criminal code has been changed and entered into force from 1 January 2015. Although the numbering of articles changed, the type of crimes remained the same.

Table 8. List of Crimes Eligible for Jury Trials, 2007-2016

Article		Type of Crime	Introduction stage	Expansion stage	Limitation stage	Fake expansion
1997 Criminal code	**2014 Criminal code**		**2007 – 2009**	**2010 - 2013**	**2013 - 2015**	**2016 – until now**
96	99	Murder	Part 2	Parts 1, 2	Part 2	Part 2
120	120	Rape	N/A	Parts 3, 4	Part 4	Part 4
121	121	Violent acts of sexual nature	N/A	Parts 3, 4	Part 4	Part 4
125	125	Kidnapping	N/A	Part 3	N/A	Part 3
128	128	Human trafficking	N/A	Part 4	N/A	Part 4
131	132	Involvement of a minor in the commission of criminal infractions	N/A	Part 5	N/A	Part 5

133	135	Trafficking of minors	N/A	Part 4	N/A	Part 4
179	192	Brigandage	N/A	Part 4	N/A	N/A
181	194	Extortion	N/A	Part 4	N/A	N/A
235	262	Creation and management of organized group, criminal organization, as well as participation in them	N/A	Part 3	N/A	N/A
235-1	263	Creation and management of criminal society, as well as participation in it	N/A	Parts 1, 3, 4, 5	N/A	N/A
235-2	264	Creation and management of transnational organized group, transnational criminal organization, as well as participation in them	N/A	Parts 1, 3	N/A	N/A
235-3	265	Creation and management of transnational criminal society, as well as participation in it	N/A	Parts 1, 2, 3	N/A	N/A
237	268	Banditry	N/A	Parts 1, 2, 3	N/A	N/A
238	269	Seizure of Buildings, Installations, or Means of Communication	N/A	Part 3	N/A	N/A
239	270	Hijacking or Seizure of an Aircraft or Sea craft or a	N/A	Part 3	N/A	N/A

		Railway Rolling Stock				
240	271	Piracy	N/A	Part 3	N/A	N/A
250	286	Smuggling of withdrawn from handling of items or items, handling of which is restricted	Part 4	Parts 3, 4	Part 4	Part 4
255	291	Theft or extortion of weapons, ammunition, explosive substances and explosive devices	N/A	Part 4	N/A	N/A
259	297	Illegal production, processing, acquisition, storage, transportation in order to sale, transfer or sale of narcotic drugs, psychotropic substances, their analogues	N/A	Parts 3, 4	N/A	N/A
260	298	Theft or extortion of narcotic drugs, psychotropic substances, their analogues	N/A	Parts 3, 4	N/A	N/A
261	299	Inducement to use narcotic drugs or psychotropic substances	N/A	Part 4	N/A	N/A
311	366	Acceptance of a bribe	N/A	Part 5	N/A	N/A
312	367	Giving bribe	N/A	Part 5	N/A	N/A

Source: http://adilet.zan.kz

In order to visualize the distribution of criminal cases decided by jury trials over time, it is worth considering the data presented in the Table 9. So, as

Table 9. Verdicts That Have Been Issued Regarding Crimes, Which Belonged To the Competence of Jury Trials, 2007 – 2016

Article of Criminal Code in editions		Type of Crime	Verdicts issued regarding each particular crime in years										
16 July 1997	3 July 2014		**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**Total**
96	99	Murder	36	42	58	115	138	108	98	46	39	33	**713**
120	120	Rape	N/A	N/A	N/A	1	7	7	6	0	1	4	**26**
121	121	Violent acts of sexual nature	N/A	N/A	N/A	4	5	6	0	0	0	10	**25**
125	125	Kidnapping	N/A	N/A	N/A	2	1	0	0	N/A	N/A	0	**3**
128	128	Human trafficking	N/A	N/A	N/A	0	0	0	0	N/A	N/A	0	**0**
131	132	Involvement of a minor in the commission of criminal infractions	N/A	N/A	N/A	0	0	0	0	N/A	N/A	0	**0**
133	135	Trafficking of minors	N/A	N/A	N/A	0	0	0	0	N/A	N/A	0	**0**
179	192	Brigandage	N/A	N/A	N/A	13	12	9	2	N/A	N/A	N/A	**36**
181	194	Extortion	N/A	N/A	N/A	5	3	3	4	1*	1*	N/A	**17**
235	262	Creation and management of organized group, criminal organization, as well as participation in them	N/A	N/A	N/A	0	0	1	1	N/A	N/A	N/A	**2**
235-1	263	Creation and management of criminal society, as well as participation in it	N/A	N/A	N/A	0	0	0	0	N/A	N/A	N/A	**0**
235-2	264	Creation and management of transnational organized group, transnational criminal organization, as well as participation in them	N/A	N/A	N/A	0	0	0	0	N/A	N/A	N/A	**0**
235-	265	Creation and management of	N/A	N/A	N/A	0	0	0	0	N/A	N/A	N/A	**0**

3		transnational criminal society, as well as participation in it										
237	268	Banditry	N/A	N/A	N/A	0	0	0	0	N/A	N/A	N/A	**0**
238	269	Seizure of Buildings, Installations, or Means of Communication	N/A	N/A	N/A	0	0	0	0	N/A	N/A	N/A	**0**
239	270	Hijacking or Seizure of an Aircraft or Sea craft or a Railway Rolling Stock	N/A	N/A	N/A	0	0	0	0	N/A	N/A	N/A	**0**
240	271	Piracy	N/A	N/A	N/A	0	0	0	0	N/A	N/A	N/A	**0**
250	286	Smuggling of withdrawn from handling of items or items, handling of which is restricted	0	0	0	14	8	8	9	0	0	0	**39**
255	291	Theft or extortion of weapons, ammunition, explosive substances and explosive devices	N/A	N/A	N/A	0	0	1	0	N/A	N/A	N/A	**1**
259	297	Illegal production, processing, acquisition, storage, transportation in order to sale, transfer or sale of narcotic drugs, psychotropic substances, their analogues	N/A	N/A	N/A	114	123	105	60	4*	1*	N/A	**407**
260	298	Theft or extortion of narcotic drugs, psychotropic substances, their analogues	N/A	N/A	N/A	0	1	0	0	N/A	N/A	N/A	**1**
261	299	Inducement to use narcotic drugs or psychotropic substances	N/A	N/A	N/A	0	0	0	0	N/A	N/A	N/A	**0**
311	366	Acceptance of a bribe	N/A	N/A	N/A	2	1	0	1	N/A	N/A	N/A	**4**
312	367	Giving a bribe	N/A	N/A	N/A	0	1	2	0	N/A	N/A	N/A	**3**
												Total:	**1 277**

Sources: http://service.pravstat.kz, Official response from the Committee of Legal statistics to the request of author

it can be noticed from the Table 9, the most popular crime over the period was the murder and drug dealing, which accounted respectively for 713 and 407 criminal cases. Other

types of crimes rarely happen according to the data. It is interesting to note that there have no crimes been committed regarding the new added articles *(Kidnapping, human trafficking, involvement of minors in the commission of criminal infractions, trafficking of minors)* into the jurisdiction of jury trials in 2016.

H6: Institutions (Prosecutors and Judges) Resist through the Manipulation of Jury Trial Process (e.g. biased selection of jurors, restricting the rights of defendant to have a jury trial, falsifying the list of questions given to the jurors before deliberation)

To begin with, it was important to define whether in Kazakhstani judicial practices defendants are restricted in their rights to have jury trials. I did not find direct evidence for that, since the analysis of over 300 protocols of preliminary court hearings during the 2010-2015 years demonstrated that judges, in fact inform the defendants about the possibility of consideration of their cases by panel of juries. What is more, defendants orally inform judges if they do not want the jury trial (this is recorded in the protocols) or they write a motion, if they chose to have jury trials. Interviews with advocates also indicated that defendants are well informed about the opportunity of jury trials, since defense lawyers explain about the potential advantages and drawbacks of jury trials for their clients prior to the preliminary hearings. So, there are no grounds to suppose that defendants are discriminated in their rights to have jury trials in Kazakhstani context.

Instead, I have found that prosecutors and judges manipulate and improperly influence jury trials through biased selection of jurors and falsifying the list of questions given to the jurors before deliberation. One of the main problems with jury trials in Kazakhstan is that judges have capacity to influence on the jury verdicts in the deliberation room. For instance, in 2016, in Specialized Interdistrict criminal court of

Karaganda region there was a case regarding 17 years old Alexander Belov who was accused of repeatedly raping his 13 year old cuisine sister. She got pregnant and hided this fact from her parents for some time. During the discussion of verdict in the deliberation room, despite the fact that judge was instructing juries to convict Belov, they unanimously acquitted the defendant of rape; since they thought that the sexual contact was on mutual consent. Judge decided to dismiss the jury panel since they supposedly violated the regulations regarding the discussions of verdict, therefore he ordered to call new jury panel for consideration of this case from the beginning. Immediately after that juries contacted local journalist in order to complain about this situation. According to the jury Aigerim Kerinibaeva, judge ordered them to provide positive answers for list of questions, which would make the Belov guilty of rape. However, when juries declined to follow the order, judge said: "*Are you really going to allow the suspect escape the punishment?*" Another jury Yelena Ivanova complained that the judge did not provide any reasonable explanation for the dismissal of panel. What is more, judge from the beginning of trial was ordering juries to not consider seriously the arguments of defense counsel. Also she indicated that juries only discussed the verdict among themselves, they have not been contacted by other parties nor they contacted any persons outside the deliberation room. After that incident, the administrative court of Karaganda issued fines in regards to two juries, who participated in Belov's trial, since they broke the court regulations.

Another illustration of the judges' interference into the decision-making of juries is the case regarding the followers of Sufism in Kazakhstan in 2011, when 9 persons have been convicted for long terms including the Professor Ibrayev from the Kazakh National

University. The defense attorney of Ibrayev, Abzal Kuspanov indicated that after the verdict has been issued, the one jury approached the wife of the Ibrayev and told her that from the beginning of the trial he believed that Ibrayev would be acquitted. However, under the influence of the judge he was forced to change his opinion. Jury complained about the stress, insomnia and with the tears in the eyes asked for the forgiveness. Also, Kuspanov with other defense attorneys in this particular case have become the witnesses of how the Head of the Almaty Interdistrict Criminal Court Butbai Mamytov prior to the issuing verdict many times invited juries to his cabinet and spend with them long hours there. According to the advocate, there was no need for inviting juries to the judge's personal cabinet, since there was a separate deliberation room as well as the separate official process of determining the verdict. But, judge chose to speak to juries in private. Consequently, defense attorneys complained about these violations to the Head of Supreme Court, however they did not get the response (Toguzbayev 2011).

Another example of judge's influence on jury decision-making comes from the criminal case handled by the Specialized Interdistrict criminal court of Aktobe region. The juries considered the case regarding Bakhyt Muldagarin who was accused of raping 5-year-old girl. Eventually, the defendant was convicted to 17 years of imprisonment. However, two juries Anastasiya Klesova and Ainur Kurmantaeva revealed that they have been forced to convict the non-guilty person. According to the juries, judge Gul'zhan Azhigalieva in the deliberation room asked juries to convict the defendant, while the Head of the court Nurlan Sultanov also visited the deliberation room and informed juries that he had familiarized himself with the case and that he is confident that the defendant

is guilty of committing crime. However, when the journalists approached the criminal court, they refused to provide comments regarding this particular case.

Another controversial case was described during my interview with the Astana-based attorney Amanzhol Mukhamedyarov who currently represents the interests of Aidyn Alpysbayev. According to the advocate back in 2015, Alpysbayev the officer of National Security Committee (KNB) and his two accomplices Khasenov and Logvinenko were found guilty of preparation and failure to commit a murder of businessman Kudin and sentenced respectively for 14, 13 and 12 years of imprisonment. According to the verdict, Alpysbayev asked Khasenov to find a person to kill the Kudin in order to seize his business of exploration and mining of natural resources. For that purpose the convict Alpysbayev provided 10 000$ for the Khasenov. The latter recruited Logvinenko and gave him 5,000$ in order to kill Kudin. Logvinenko made three shots to Kudin; however the latter found a way to escape from the killer. All the convicts have been captured by police during their second attempt of murdering Kudin. During the trial the defense counsel many times submitted petitions to rearrange the medical and ballistic examinations, however all these petitions have been declined by the judge. After the guilty verdict had been handed down, 6 out of 10 presiding jurors appealed to the Military court (i.e. all cases regarding employees of law enforcement agencies are considered in the Military Court of the Republic of Kazakhstan) about the pressure and influence that they experienced from the judge. According to their complaints judge forced them to rewrite their answers to the list of questions, until they produced guilty verdict. The extractions from the jurors' complaints are provided below (The copies of

complaints have been provided to me by attorney Mukhamedyarov. Translation is my own.)

Complaint 1

In the deliberation room, to all the posed questions regarding the crime I answered that Alpysbayev, Khasenov and Logvinenko are not guilty in the proposed allegations. During the several days we have been considering this case in the deliberation room. After we have answered all the questions and submitted them to Judge, he told us that we need to rewrite the answer sheets. Some of jurors under the instruction of judge have rewritten their answer sheets. Among jurors there have been old woman, who expressed her disagreement about repeated filling of the answer sheets, there have been tough conversation between this woman and the judge, after which we have continued voting and submitted our answer sheets again.

As far as this particular case is considered, I still believe that the guilt of the suspects has not been proven, on top of that during the trials there have been specific questions posed to experts regarding the bullets entry and exit holes on the clothes of the victim. However, there have been sense that the experts see the clothes of the victim for the first time and they could not provide the answers for the questions. Also, during the trials prosecutors failed to answer many questions from the defense side.

Complaint 2

For about three months we have been participating in court trials and obviously the eventual verdict did upset us. There have been some discrepancies in this case, for instance: there was no gun found of supposed murder attempt, then experts have been confused when explaining evidences regarding the bullets holes on the clothes of the victim. We [jurors] also had questions, for instance: how it is proved that the records made in the notebook of Alpysbayev have been really written by him? For what purposes such educated and experienced person like Alpysbayev wanted someone's business? Why, the victim Kudin, if he really was injured did not call the emergency services, but called his friend? Why the doctor did not know the type of victim's injury (doctor said that he did not untie the bandage in order to not bring the infection to the injury)? Why the victim Kudin said that he has some connections in the Ministry of Interior Affairs, whom he consulted, but then denied these connections? Why the surgeon doctor did not appear in the court? Why the prosecutor and judge did not pay attention for these issues?

During the voting, there were moments, when we were rewriting our answers. Since judge told us that if we answer YES to one question, we could not provide the NO answer for the following one. Also, judge told us that if we vote for guilty verdict, then Alpysbayev would receive the minimum sentence, because judge would apply the minimum punishment according to the new Criminal code. I personally think that the guilt of Alpysbayev has not been fully proven. I hope for the just verdict.

Complaint 3

In the deliberation room we have been given 60 questions regarding the episodes of which Alpysbayev has been accused. For the first 10 questions, I responded "NO, not guilty" similar to other 10 jurors. After we submitted our answer sheets, we went home. After the 10-15 minutes, the judge's assistant called me and informed that we need come back and continue the session. In the deliberation room the Judge explained that one of the jurors supposedly contacted over the phone to the one of the defense advocates, that is why judge recalled all the jurors again into the deliberation room. Then judge pulled out the answer sheets, which we have submitted to him and started to tear them apart. He said that we need to answer questions again, consequently he commented the answers of each jury and pressured us towards the producing of guilty verdict.

In the deliberation room, I expressed my own opinion. I said that the President Nazarbayev on the Congress of Judges announced that we should not deteriorate the wellbeing of our citizens, if we want to join the 30 most developed countries in the world. After my comments, the judge responded me with the anger "Now everyone shut up!" In the aftermath I sit quietly and did not speak at all.

From my point of view, the suspects Alpysbayev, Khasenov and Logvinenko are not guilty in committing the crimes, for which they have received harsh punishments. After this trial process, I could not find myself, I was shocked, and I hoped that all the suspects would be acquitted, since I believed that they did not commit these crimes. I think that their involvement in this crime has not been proven. I ask you to investigate this case and take all the lawful measures.

Complaint 4

During the trial process, I was really suspicious regarding the guilt of Alpysbayev, Khasenov and Logvinenko. Were there any real attempts to commit a murder? There are several reasons for my doubts.

First of all, during the interrogation of the victim Kudin, he indicated that after the failed assassination attempt, although he was wounded by three bullet shots he did not call the emergency or police, but instead called his assistant. Then, he was waiting his assistant at home, after the assistant arrived, Kudin personally drove the car to the hospital. Taking into the consideration the fact that any small injuries or wounds of criminal character should be reported to the police, it is unclear why the doctor did not inform the police about Kudin's wounds, and why he send the Kudin back to home?

Secondly, during the interrogation the surgeon doctor Tashetov, who inspected the Kudin indicated that wounds of Kudin have not been from the bullet shots, since there have not been bullet entry and exit holes on the body. As for the report about bullet shots wounds, the doctor said that he wrote it according to the words of the victim. Doctor said that he cannot confirm that wounds are really from bullet shots, since it is in competence of other special experts. However, it was unclear why the expert Andreyev has not been interrogated in the trial? Also, why the prosecutors did not bring him to the trial?

Thirdly, I doubted the bullet sleeves that have been found on the place of crime. Two sleeves did not contain the smell of powder. The third sleeve found on the next day of attempted murder contained the powder smell. However, the smell actually should be gone after one day.

Fourth, the gun which has been supposedly thrown by Logvinenko to the river Akbulak has not been found by the investigation services. However the flow of the river is not fast and it is not so deep. Also, Logvinenko demonstrated approximate place where he thrown the gun.

Fifth, the only witness which heard the bullet shots and who is the neighbor of the victim Kudin has not been interrogated on trial process. Also, the witness which has been mentioned by Logvinenko has not been found and interrogated.

I think that there has not been any attempt made to murder Kudin, thus the guilt of the suspects has not been proven. In the deliberation room I expressed my doubts regarding the facts related to this crime. However, I was stopped by the Judge who shouted at me "Do not set opinion for other jurors!" Also the answer sheets which we filled and submitted to the judge have been torn apart and we have rewritten our answers.

Taking everything into consideration, I still believe that the guilt of the suspects Alpysbayev, Khasanov and Logvinenko has not been proven, what is more I doubt whether there has been the murder attempt.

Complaint 5

During the trial process I had some doubts regarding the guilt of the Alpysbayev, so when we answered first 10 questions and submitted them to the judge, he expressed his dissatisfaction. He said that: "the group of qualified specialists have investigated this case and made a great work, while you want to nullify all the collected evidences. What if this crime has been committed against you or your relatives, would you still acquit the defendants?" Then judge suggested us to repeat the voting process and he has torn apart our previous answer sheets.

Some of jurors expressed their doubts regarding the guilt of the suspects. However there was a harsh reaction from the judge, who said: "Sit and shut up", also he mentioned that jurors should not influence on the opinions of others during the voting. During the deliberation process, I asked judge is it possible to see again the bloodied t-shirt of the victim Kudin, which has been on the video tape, since I have doubts regarding the tracks of blood on the t-shirt. But judge responded that evidences have been destroyed.

I think that the guilt of the suspects have not been proven, that is why I expressed my opinion during the voting.

Complaint 6

From the beginning in the deliberation room the Judge took the accusation position. He was reading the questions and when majority of us answered that suspect is not guilty he

torn apart the answer sheets and thrown them into the bin. The he distributed new answer sheets and said that "anyway the suspects would be convicted, look how big is the criminal dossier" This is continued for two days, until we voted how he desired, which is the guilty verdict.

Some of jurors tried to oppose the judge, that is why he shouted at them: "why are you defending the suspects, why don't you believe the victim, investigation and prosecution? Especially he shouted at the old woman, she tried to defend her opinion that the guilt of the suspects is not proven, and judge shouted at her loudly and did not allow her to speak.

Overall, in this trial process for me many things have remained unclear. Particularly, how victim Kudin after he was shot three times managed to wait his assistant and drive the car personally to the hospital. Kudin said that after the shooting he was bleeding badly. All his clothes including the trousers and boots were in blood. However, prosecutors did not provide these clothes, there has been only t-shirt with little traces of blood, on top of that on the interior cover of the car there have not traces of blood been found. The whole trial process was very doubtful, the prosecution side and the victim himself could not explain properly the provided evidences.

I think that the guilt of Alpysbayev and others has not been proved, therefore I believe that they are not guilty, therefore in the answer sheet I voted that they are not guilty.

In the cassation court did not rule in favor of these complaints from jurors because according to the law, only parties (i.e. defense or victim side) can appeal the verdict, while jurors do not belong to either sides. Nevertheless, in March 2017, the conviction of Alpysbayev was overturned by the appellate court due to the fact that the victim businessman revealed that he provided false testimonies, the deputy chairman of Astana city's criminal police Suleimenov was found guilty of torturing the Alpysbayev, while the forensic expert was found guilty of falsifying the evidence. All these violations led to the overturning of the initial guilty verdict, and new court trial in this case was appointed on April 12, 2017.

Furthermore, one of interviewed jurors described to me the trial in which three persons were accused of organizing criminal group, sexually violating and killing a man.

The juror described how during the whole trial she could not decide whether the suspect was guilty or not. However during the discussion of verdict in the deliberation room, the judge has revealed some facts about the defendant and his real motives behind the crime. This information has had a strong influence on the minds of the jurors and they convicted defendants for 19, 15 and 14 years of imprisonment.

So, it can be noticed that juries expose the weakness of investigation and prosecution offices because they require the high quality evidences. Also, it is evident that judges influence and pressure the juries.

Another method of manipulation is the use of legal definitions when constructing the list of questions for juries in deliberation room. By using this method, judges may confuse jurors and direct them to provide suitable answers. My analysis of more than 300 criminal trials decided by juries demonstrated the widespread use of legal terms in the list of questions.

Another example of the influence of the judge on jury decision-making is the case regarding judges of Supreme Court Dzhakishev and Tashenova who were accused of corruption and were convicted respectively for 12 and 10 years of imprisonment. The internal audit revealed that the presiding judge has changed the initial list of questions and also ordered one juror to fill in the answer sheet for all of jurors. As a result the appellate court of Akmola region has overturned the decision made by jury court. Interestingly, jurors made a joint complaint with the signatures of 8 people to the Supreme Court of Kazakhstan, where they condemned the cancellation of their decision:

> *"In the adversarial court procedure, we, jurors tried to be objective and impartial. We knew what kind of responsibility we burden, that is why we are curious why our decision has been overturned? What kind of violations have we done, in order our verdict to be cancelled? The overturning of the decisions*

> *imposes the negative image on the juries. We have made the right and just decision; the corruption crime of the former judges of the Supreme Court has been proven. Each of us made this decision individually. Also, we want to underline that we have not experienced any pressure either from the judge or from prosecutor. The Republic of Kazakhstan is the rule-of-law state. Nobody has the right to break the laws. It does not matter whether the violator is minister, ordinary worker or the judge, if they break the law, then all should burden the responsibility for the committed crimes. It is very frightening when the servants of Themis violate the laws and escape the punishments. We hope that talks about the corporate solidarity among judges are only gossips"* (Novaya gazeta 2013)

At the first glance, it seems that jurors tried to defend their decision and demonstrate their civic positions. However, the defense lawyer Almira Shaikhina who participated in this trial told me that this complaint has been driven by the Judge Baimagambetov who had presided with the jury in this case. He did not want his decision to be overturned on appeal, therefore he persuaded jurors to write a complaint to the Supreme Court. Also, the Shaikhina argued that the complaint was professionally written and that she doubted jurors' capabilities of writing such a professionally written complaint.

Moreover, according to the law (Article 662 of the CPRK 2014) the jury verdicts can be only overturned in case of procedural violations of court trials. Interviews with judges, prosecutors and advocates demonstrated that jury verdicts are usually more difficult to overturn than verdicts issued by single judge. According to my respondents, verdicts issued by jury courts have more legitimacy compared to single judge verdicts. This is because verdicts in jury trials are result of the analysis of 10 jurors and 1 professional judge, which makes the sentence more solid than sentences of judge-only trials. Also, since jury trials occur on the significant less rate than ordinary trials (0.2-1.5% out of all criminal cases in last ten years) it attracts the attention from the public, so

the criminal justice system wants to demonstrate that decisions of juries are highly appreciated and not the subject for interference from authorities. Despite this common sense within legal community, there is still disparity in the opinions, as judges and prosecutors indicate that all the verdicts of juries are difficult to overturn, while defense attorneys point out that only conviction verdicts are difficult to overturn.

However, court statistics demonstrate that the jury verdicts are often cancelled by appellate and cassation courts, which originally supposed to correct the errors made by trial judges. The main problem in Kazakhstani case is that jury verdicts are evaluated by panel of three professional judges in the appellate or cassation court. As Kovalev (2010) suggested, the jury verdicts should be evaluated by separate jury panel in the appellate or cassation court, it would make the process of appeals more transparent and impartial. The Table 10 provides court statistics regarding the frequency of overturning the jury trials' acquittal verdicts. The statistical data for that kind of information is only available on

Table 10. Overturning the Jury-Made Acquittals in Kazakhstan, 2012-2016

Year	Number of persons tried in jury courts	Number of acquitted persons in jury courts	Overturned acquittal verdicts in regard to persons in higher courts			Ratio of overturned acquittal jury verdicts	Ratio of overall overturned verdicts in criminal cases
			Total	**Appellate**	**Cassation**		
2012	379	24	11	5	6	45.8 %	0.7 %
2013	319	30	14	13	1	46.7 %	0.6 %
2014	121	3	2	2	0	66.7 %	0.5 %
2015	61	2	1	1	0	50 %	-
2016	75	8	0	0	0	0 %	0.3 %

Sources: http://service.pravstat.kz, Official response from the Committee of Legal statistics to the request of author

decisions starting from 2012. As it can be noticed, on average about half (50%) of jury-issued acquittals have been overturned between 2012 and 2016. This is enormously high proportion compared to overall percentage of overturning the decisions of criminal cases that was on average less than 1% in the last five years. So, it is the evidence of manipulation with the outcomes of jury trials by higher appellate courts, meaning that they may correct "supposed errors' made by courts of first instances

It is interesting to note how even some legal representatives acknowledge the fact of overturning of juries' acquittal verdicts. Judge of Aktobe Region Interdistrict Criminal Court Sisenova (2015) publicly admitted this tendency:

> *"There is a tendency of overturning the acquittal verdicts issued by jury courts for the reasons, which are not related with the facts of criminal cases, but due to previous convictions or administrative penalties of the close relatives of the jurors. However, the conviction verdicts have not been overturned for such reasons. One of the main problems of the jury selection process is the existence of close relatives of jurors, who have been convicted or arrested about which the jurors chose to not mention either deliberately or accidently. Actually, according to the law these circumstances do not prevent the citizens from the participation in jury trials, if they reveal them publicly during the jury selection process."*
>
> *If the prosecution side is not satisfied with the jurors' verdict, then they start to investigate jurors, whether they have mental disorders or drug addictions; on top of that they inspect all the close relatives of the jurors in order to find out whether any of them have had previous convictions. In case of finding these indicators, the issued verdict is overturned due to possible influence of the hidden facts (i.e. previous conviction of relatives, drug addiction or mental disorder of juror) on the decision-making of jurors. Usually, prosecutors do not provide any explanation how the irregularities in the background of one jury can influence on the decision making of the whole jury panel."*(Sisenova 2015)

Furthermore after analyzing the judicial verdicts, which I have collected through the online services of Sudebnyi Cabinet and Paragraph I identified the cases where the acquittal verdicts of juries have been overturned. The Table 11 presents my findings. There are many examples when defendants have been acquitted, however after certain

period their verdicts have been overturned by appellate or cassation court and then they have been convicted to prison terms. For instance, there was a case with Mayor of Zhanaozen town, who was tried in court regarding the December 2011 violent protests of oil workers. Initially the jury court of Mangystau region has acquitted him of corruption allegations, however this decision has been overturned and new jury panel in Aktobe region has convicted him for 12 years of imprisonment. Another example is the case of the human rights activist Vadim Kuramshin, he was also initially acquitted by jury panel of extortion allegations, however this verdict has been overturned by appellate court and the new jury panel found him guilty and convicted for 9 years of imprisonment. Many other examples are presented in the Table 11. So, there is clear tendency that law enforcement agencies can manipulate the jury trial by overturning the acquittal verdicts on appeal.

Table 11. List of Cases Found in the PARAGRAPH and Sudebnyi Cabinet Databases, in Which the Jury Acquittal Verdicts Have Been Overturned, 2010-2013

N	Name of the defendant	Court, Year	Initial verdict	Appellate Review	Final verdict
1	1) Bekov Akhmed 2) Asambayeva Aigul	Astana, 2010	1) Convicted to 11 years of imprisonment 2) Acquitted	1) The verdict in regards to Bekov Akhmed is remained without changes. 2) The verdict in regards to Asambayeva Aigul has been	Asambayeva Aigul is convicted to 10 years of imprisonment

				overturned	
2	Batalov Yerlan	Astana, 2012	Convicted to 2 years of imprisonment	The verdict has been overturned	Convicted to 10 years of imprisonment
3	1) Madiev Rasul 2) Adayev Alshynbek 3) Kabylbayev Ruslan	Akmola region, 2013	1) Convicted to 12 years of imprisonment 2) Acquitted 3) Acquitted	1) The verdict in regards to Madiev Rasul is remained without changes. The verdicts regarding Adayev Alshynbek and Kabylbayev Ruslan have been overturned	Adayev Alshynbek is convicted to 9 years of imprisonment Kabylbayev Ruslan is convicted to 9 years of imprisonment
4	Bakirov Dmitrii	Atyrau region, 2010	Acquitted	The verdict has been overturned	The new verdict is closed for public access
5	Berezin Pavel	East Kazakhstan region, 2010	Acquitted	The verdict has been overturned	Convicted to 13 years of imprisonment
6	Kondratyev Petr	East Kazakhstan region, 2012	Acquitted	The verdict has been overturned	Convicted to 16 years of imprisonment
7	Simonovich Igor	Zhambyl Region, 2010	Acquitted	The verdict has been overturned	The new verdict is closed for public access
8	Kuramshin Vadim	Zhambyl region, 2012	Convicted to 1 year of imprisonment, released in the courtroom after the verdict	The verdict has been overturned	Convicted to 12 years of imprisonment
9	Sarbopeev Orak	Mangistau region,	Acquitted	The verdict has been	Convicted to 10 years of

		2012		overturned	imprisonment
10	Khaidarov Anuarbek	North Kazakhstan region, 2013	Acquitted	The verdict has been overturned	The new verdict is closed for public access
11	Zhumanov Torebek	South Kazakhstan region, 2010	Acquitted	The verdict has been overturned	Convicted to 15 years of imprisonment
12	Shakurov Rashid	South Kazakhstan, 2010	Acquitted	The verdict has been overturned	The new verdict is closed for public access
13	Safronov Sergei	Pavlodar region, 2013	Acquitted	The verdict has been overturned	Convicted to 3 years of imprisonment
14	Slepakov Oleg	Pavlodar region, 2011	Acquitted	The verdict has been overturned	Acquitted
15	Mashkhoev Ruslan	Pavlodar region 2012	Acquitted	The verdict has been overturned	Convicted to 10 years of imprisonment
16	Zaicev Vladimir	Pavlodar region, 2011	Acquitted	The verdict has been overturned	The new verdict is closed for public access
17	1) Narymbayev Tolybai 2) Dzhumageldinov Zhumagalii	Pavlodar region, 2011	1) Acquitted 2) Acquitted	The verdict has been overturned	1) Convicted to 12 years of imprisonment 2) Convicted to 12 years of imprisonment
18	Abildin Amangeldy	Pavlodar region, 2012	Acquitted	The verdict has been overturned	In new trial prosecutor has partially removed some accusations and the case in regards to suspect has been ceased due to act of Amnesty

Sources: https://prg.kz, http://office.sud.kz

Conclusion

This work contributes to the greater framework of studies that investigate the role of judicial politics in non-democracies. Generally, scholars indicate that authoritarian rulers maintain tight control over the judiciary systems in their countries (e.g. Moustafa 2007; Rajah 2012; Peerenboom 2002). Autocrats use laws in order to legitimize their power and use criminal justice system in order to punish their opponents. In this context, the example of Kazakhstan is indeed represents the paradoxical case. Since, authorities "transplanted" the foreign democratic jury institution into the punitive and highly controlled Kazakhstani legal system. Consequently, this study demonstrates the controversies in politics of jury trials in Kazakhstan at all stages of its development. The jurisdiction of jury trials experienced the significant changes during the whole period of its existence. This is because, although authorities were pushing for the improvement and expansion of jury trials in the state, judicial and law enforcement communities have been resistant to implement these developments into practice. The content analysis of public speeches of legal officials as well as interviews with judges and prosecutors demonstrated that the resistance against the expansion of jury trials in Kazakhstan is not straightforward. Although the majority of legal community is against the expansion of jury trials in Kazakhstan, there is still a minority group who supports the jury institution and calls for the reforms in order to improve this institution and expand its jurisdiction.

Furthermore, as I demonstrated in my work the juries enable to discipline judges and prosecutors, thus make the process of trials more adversarial. Most importantly, this study contributes to the field of legal consciousness of jurors – in the Kazakhstani context, despite the influences and manipulations from judges; the ordinary people can

decide serious criminal cases. Jurors intolerant towards being controlled by judges and they expose the weaknesses of prosecution and investigation services in providing reliable evidences. Also, jurors are against the harsh criminal punishments for certain crimes. On top of that, jurors are not restricted within the framework of the criminal charges proposed by prosecutor, they can and actually do change the qualification of alleged crimes toward less severe ones, which consequently lessen punishment.

The Kazakhstani criminal justice system is characterized by strong accusation bias, the authorities have the control over the judiciary, which allows them the prosecution and punishment of the political opponents. That is why, the development of the jury trials in Kazakhstan is indeed a very complicated reform. This is because it has not only legal but also the political character. The controversy of jury trials is the fact that the state shares its power of administration of justice with the representatives of ordinary people. It goes without saying that the process of transmission of the right for criminal repression from authorities to ordinary citizens cannot be straightforward.

In my work, I tried to find out **whether the jury trials reduce the accusation bias in the Kazakhstani legal practices?** The answer to this question is Yes and No. This is because, relying upon statistics it is clear that in jury trials the acquittal rates are on average twenty five times higher than in ordinary trials. Also, interviews with all the parties of trial processes as well as the juries themselves enabled me to identify, why they acquit on a higher rate than single judges. The primary reason for the acquittals is the weak evidential base provided by investigation and prosecution services. Juries in most cases simply cannot accept the obvious violations made by investigation services or absence of decent proof of the guilt of the defendant. Instead of rubber-stamping

decisions of police operatives, as professional judges often do, jurors really decide criminal cases. Another reason for more frequent acquittals is absence of fear in jurors regarding the overturning of their decision by appellate and cassation courts. In ordinary trials judges do care more about the survival of their verdicts on appeal, while juries do not have such an attitude. Even though the influence of the presiding judge in the deliberation room is strong, juries acquit on a higher rate than single judges do. Thus, jurors deciding criminal cases together reduce the pro-accusation bias.

However, the impact of juries' decisions on the overall criminal justice system is very weak. This is because the criminal cases tried by jury constituted merely between 0.2 and 0.5% of all criminal cases heard since 2009. Even when we include their acquittals, the total acquittal rates in Kazakhstani criminal justice never exceeded 0.5%. Therefore, although jury trials produce higher acquittal verdicts compared to the ordinary trials, their effect on the criminal justice system is almost invisible. For that reason I argue that jury trials in their contemporary form and jurisdiction do not reduce the pro-accusation bias in the overall Kazakhstani legal practices. Why is that happening? The jury trials do not have the proper effect on the reduction of accusation bias in the criminal justice system due to the resistance from legal institutions, which do not want the expansion of the jurisdiction of the jury trials in Kazakhstan.

This leads us to the second research question considered in my study: **how and why legal institutions resist against the expansion of jury trials in Kazakhstan?** In general, legal institutions such as prosecution, investigation and judicial offices resist against the expansion of jury trials in Kazakhstan, since judges do not want to share their power in deciding criminal cases with ordinary people, while prosecution and

investigation services do not want to expose their weaknesses in collecting reliable evidences and proves of the guilt of the defendants. The interested groups within legal institutions have already succeeded in their resistance back in 2005, when they have promoted the draft law of the continental model of jury trials in Kazakhstan, as opposed to American model that was suggested at the time by advocacy community and some members of parliament. The adoption of the continental model of jury trials in Kazakhstan allowed saving the practice of the informal relationships between the judges and prosecutors as well as the judges of first and appellate instances, this is because juries cannot break or influence these relationships. The inclusion of the judge into the panel of 10 jurors in the deliberation room, provides opportunities for a judge to determine the verdict. Therefore, the informal bargaining between the judges and prosecutors as well as the judges of first and appellate instances still exists.

How do criminal justice agencies resist against the expansion of jury trials in Kazakhstan? Generally, the resistance is divided into the two levels: top level – by limiting or making fake expansions of the jurisdiction of the jury trials through the legislature, lower level – by influencing the decisions of the juries in the deliberation room and overturning the acquittal verdicts of juries in the appellate courts. As it has been demonstrated in my investigation, the legal institutions have limited the category of criminal cases that are available for juries' consideration back in 2013 and made a fake expansion of the jurisdiction of jury trials in 2016 by adding 5 criminal cases, which happen extremely rarely. Another example of resistance is the influence and pressure that judges impose on juries during the discussion of the verdicts in the deliberation room.

Also, institutions resist by overturning the acquittal verdicts of juries, the scale of this practice is indeed huge.

Taking everything into consideration, the legal institutions do not want to share power with ordinary people in the judiciary because jury trial courts impose only burdens and risks on the criminal justice professionals without offering any benefits. The same is true of the provincial governments responsible for compiling lists of eligible jurors in their provinces. Currently criminal justice system is literally under the control of the executive branch. Authorities have a strong capacity to influence and negotiate the decision-making of judges in order to obtain the desired verdict for any case, including political ones. So, the logical question emerges: Why did Kazakhstan introduce the jury trials? While most of prosecutors and judges believe that jury institution was implemented in order to democratize the Kazakhstani legal system, the attorneys consider the introduction of jury trials as the "window dressing" – the demonstration of state's democratic initiatives to the international audience. If the government truly wants the development of jury institution, it should expand its jurisdiction to the appropriate level, through adding not particular criminal cases, but whole category of cases such as all severe crimes to its jurisdiction. Also, current mixed court model of jury trials demonstrated its huge weaknesses, since judges have the full capacity to influence on the decision-making of jurors. That is why, it is more relevant to switch to the classical jury model, where jurors determine the verdicts separately from the judge, and judge only considers the measure of punishment. Nevertheless, the Kazakhstan is considerably young country, currently it is going through the state of institutional modernizations. Therefore, there is a hope that in near future there would be more reforms conducted

regarding the institution of juries and it will eventually reach the standards of western developed countries.

Bibliography

Abdrasulov, Ermek. 2008. “Rol’ Suda Biev v Sovershenstvovanii Norm Obychnogo Prava.” [The Role of Biy Courts in Improving the Rules of Customary Law] In *Materialy mezhdunarodnoi nauchno-prakticheskoi konferentsii "Sud biev – unikal'naia sudebnaia sistema, proshedshei 25 maia 2008 goda v g. Almaty/V knige: Drevnii mir prava kazakhov. Volume 10*. Almaty: Zheti zhargy. http://sud.gov.kz/rus/content/rol-suda-biev-v-sovershenstvovanii-norm-obychnogo-prava (April 20, 2017).

Ak Orda. 2015. “The Strategy for the Development of the Republic of Kazakhstan.” May 20. http://www.akorda.kz/en/official_documents/strategies_and_programs (April 20, 2017).

Aitkhozhin, Kabdulsamikh. 2015. “Sud Biev v Istorii Kazakhskogo Naroda.” [The Biy Courts in the History of Kazakh People] *Kazak gazetteri*. May 18. http://kazgazeta.kz/?p=31308 (April 20, 2017).

Alekseeva, Ludmila. 1989. *Preduprezhdenie Sudebnyh Oshibok, Obuslovlennyh Obvinitelnym Uklonom v Deiyatelnosti Sudov Pervoi i Kassatsionnoi Instancii: Posobie dlia Sudei.* [The Prevention of Judicial Errors Caused by Accusation Bias in the Practices of First and Cassation Instances of Courts: The Handout for Judges] Moscow: City Bar Collegium.

Baitukenov, Tulegen. 2015. “Predlozhennyi Yelbasy Plan Natsii – 100 Konkretnykh Shagov…Zabuksoval.” [The Plan of Nation Proposed by the Leader of the Nation …Got Stuck] *Central Asia Monitor*. October 5. http://camonitor.kz/18379-chi-shagi-predlozhennyy-elbasy-plan-nacii-100-konkretnyh-shagov-zabuksoval-tbaytukenov.html (April 20, 2017).

Baldwin, John and McConville, Michael. 1980. “Does the Composition of an English Jury Affect its Verdict?” *Judicature* 64(3): 133-139.

Bergoglio, Maria. 2016. “Citizen Views on Punishment: the Difference between Talking and Deciding.” *Onati Socio-Legal Series* 6(2): 216-234.

Bourchier, Daniele. 1999. “Magic Memos, Collusion and Judges with Attitude: Notes on the Politics of Law in Contemporary Indonesia.” In *Law, Capitalism, and Power in Asia: The Rule of Law and Legal Institutions*, ed. Kanishka Jayasuriya. 233-252. New York: Routledge.

Boatright, Robert. 1999. “Why Citizens Don’t Respond To Jury Summonses: And What Courts Can Do About It.” *Judicature* 82(4): 154-164.

Boyll, Joshua. 1991. “Psychological, Cognitive, Personality and Interpersonal Factors in Jury Verdicts.” *Law and Psychology Review* 15(2): 163-184.

Brusina, Olga. 2008. “Sharia and Civil Law in Marital Relations of the Muslim Population in Central Asia.” *Anthropology & Archeology of Eurasia* 47(2): 53-68.

Blackstone, William. 1809. *Commentaries on The Laws of England.* London: Strahan.

Burns, Robert P. 2016. “Popular Sovereignty and the Jury trial.” *Onati Socio-Legal Series* 6(2): 334-343.

Casper, Gerhard and Zeisel, Hans. 1972. “Lay Judges in the German Criminal Courts.” *Journal of Legal Studies* 1(1): 135-191.

Comiskey, Marie. 2016. “Tempest in a Teapot – The Role of the Decision Tree in Enhancing Juror Comprehension and Whether It Interferes with the Jury’s Right to Deliberate Freely? ” *Onati Socio-Legal Series* 6(2): 1-23.

Connor, Neil. 2016. “Chinese Courts Convict More Than 99.9 per cent of Defendants.” *Telegraph*. March 14. http://www.telegraph.co.uk/news/worldnews/asia/china/12193202/Chinese-courts-convict-more-than-99.9-per-cent-of-defendants.html (April 20, 2017).

Criminal Code of the Republic of Kazakhstan. 1997. *RCLI Adilet,* http://adilet.zan.kz/eng/docs/K970000167_ (April 20, 2017).

Criminal Code of the Republic of Kazakhstan. 2014. *RCLI Adilet,* http://adilet.zan.kz/eng/docs/K1400000226 (April 20, 2017).

Devlin, Patrick. 1956. *Trial by Jury.* London: Stevens.

Eisenberg, Theodore et al. 2002. ”Juries, Judges and Punitive Damages: An Empirical study.” *Cornell Law Review* 87(3): 744-780.

Galushko, Artem. 2008. “Politically Motivated Justice in the Former Soviet Union: The Novel Concept of “Two-Fold Constitutionalism” in Post-Soviet States.” *Queen Mary Law Journal* 4(2): 149-162.

Garmayev, Yurii. 2003. “Korruptsiya Mezhdu Advokatami I Sudami: Kratkaya Kharakteristika Prestupnoi Deyatel’nosti.” [Corruption Between Attorneys and Courts: Brief Characteristic of Criminal Activity] *Federal’nyi Pravovoi Portal*

Yuridicheskaya Rossiya. 26 April. http://www.law.edu.ru/doc/document.asp?docID=1223011 (April 20, 2017).

Gobert, James. 1994. "Corporate Criminality: Four Models of Fault." *Legal Studies* 14(3): 393-410.

Gleadow, Carmen. 2000. *History of Trial by Jury: Theoretical Foundations and Practical Results.* Lewiston: The Edwin Mellen Press.

Fedotova, Irina. 2006. "Sud Biev kak Demokraticheskii Institut Otpravleniya Pravosudiya v Kazakhskom Traditcionnom Obshestve." [The Biy Court as a Democratic Institution of Justice Administration in Kazakh Traditional Society] *Vestnik Cheliabinskogo Gosudarstvennogo Universiteta* 10(34): 134-137.

Ferri, Enrico. 1895. *Criminal Sociology.* London: Fisher Unwin.

Ibraev, Serik. 2016. "Institut Biev kak Istochnik po Istorii Sudebnogo Deloproizvodstva v Kazakhstane." [Biy Institution as a Source of History of Judicial Proceedings in Kazkahstan] October 18. http://e-history.kz/ru/contents/view/1612 (April 20, 2017).

Ivkovic, Kutnjak 1999. *Lay Participation in Criminal Trials: the Case of Croatia.* Lanham: Austin & Winfield Print.

Hannaford, Paula and Munsterman, Thomas. 1997. *Jury Trial Innovations.* Williamsburg, VA: National Center for State Courts.

Hans, Valerie. 2008. "Jury Systems Around the World." *Cornell Law Faculty Publications.* Paper 305.

Hamilton, Vick. 1978. "Obedience and Responsibility: A Jury Simulation." *Journal of Personality and Social Psychology* 36(4): 126-146.

Hazelwood, Duncan and Brigham, Jack. 1998. “The Effects of Juror Anonymity on Jury Verdicts.” *Law and Human Behavior* 22(6): 695-713.

Heuer, Larry and Penrod, Steven. 1994. “Trial Complexity: A Field Investigation of Its Meaning and Its Effects.” *Law and Human Behavior* 18(1): 29-51.

Helland, Eric and Tabarrok, Alexander. 2000. “Runaway Judges? Selection Effects and the Jury.” *Journal of Law, Economics, and Organization* 16(2): 306-333.

Harnon, Eliahu and Stein, Alex. 1999. “Israel.” In *Criminal Procedure: A Worldwide Study*, ed. Craig M. Bradley. Durham, NC: Carolina Academic Press, 217-244.

Idrissov, Yerlan. 2015. “Kazakhstan: 100 Steps Toward a New Nation.” *Diplomat.* July 25. http://thediplomat.com/2015/07/kazakhstan-100-steps-toward-a-new-nation/.

Jackson, John and Kovalev, Nikolai. 2016. “Lay Adjudication in Europe: The Rise and Fall of the Traditional Jury.” *Onati Socio-Legal Series* 6(2): 368-395.

Jackson, John and Kovalev, Nikolai. 2009. “Lay Adjudication and Human Rights in Europe.” *Columbia Journal of European Law* 13(1): 83-123.

Karavan. 2005a. “Gotov li Kazakhstan k Vvedeniiu Suda Prisiazhnykh?” [Is Kazakhstan Prepared to Introduce the Jury Trial Court?] October 10. https://www.caravan.kz/articles/gotov-li-kazakhstan-k-vvedeniyu-suda-prisyazhnykh-373311/ (April 20, 2017).

Karavan. 2005b. “Kontinental’naya Model’ Suda Prisyazhnyh Uslozhnit Sudebnoe Razbiratel’stvo, Schitaet Deputat Nazarbayeva.” October 11. https://www.caravan.kz/news/kontinentalnaya-model-suda-prisyazhnykh-uslozhnit-sudebnoe-razbiratelstvo-schitaet-deputat-nazarbaeva-211990/.

Kalven, Harry and Zeisel, Hans. 1966. *The American Jury*. Boston: Little, Brown and Company.

Kaufmann, Daniel, Kray, Aart and Matruzzi, Massimo. 2003. "Governance Matters III: Governance Indicators for 1996-2002." http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/govmatters3_wber.pdf (April 20, 2017).

Kendirbaeva, Gulnar. 1999. "The Kazakh Intelligentsia at the Beginning of the 20th Century in Search of National Identity and Prospects of the Cultural Survival of the Kazakh People." *Central Asian Survey* 18(1): 5-36.

Kennedy, David and Stiglitz, Joseph. 2013. *Law and Economics with Chinese Characteristics: Institutions for Promoting Development in the Twenty-First Century*. Oxford: Oxford University Press.

King Gary, Keohane Robert and Verba Sidney. 1995. "Designing Social Inquiry: Scientific Inference in Qualitative Research." Princeton, NJ: Princeton University Press.

Koppen, Peter and Penrod, Steven. 2003. *Adversarial versus Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems*. New York: Springer Science and Media.

Kovalev, Nikolai. 2010. *Criminal Justice Reform in Russia, Ukraine and the Former Republics of the Soviet Union: Trial by Jury and Mixed Courts*. Lewiston, N.Y.: Edwin Mellen Press.

Kovalev, Nikolai and Suleymenova, Gulnar. 2010. “New Kazakhstani Quasi-Jury System: Challenges, Trends and Reforms.” *International Journal of Law, Crime and Justice* 38(1): 261-278.

Kovalev, Nikolai. 2014. “Selection of Jurors and Lay Assessors in Comparative Perspective: Eurasian Context.” *Russian Law Journal* 2(2): 9-62.

Kovalev, Nikolai, and Smirnov, Alexander. 2014. “The Nature of the Russian Trial by Jury.” *European Journal of Crime and Criminal Justice* 22(1): 115-133.

Krasineko, Yaroslav. 2016. “Singapur Dazhe Posle Smerti Lee Kuan Iu ne Perestal Byt Primerom dlya Kazakhstana.” [Even after the Death of Lee Kwan Yew Singapore Has not Stopped to Be a Model for Kazakhstan] *KTK* TV. September 28. https://www.ktk.kz/ru/news/video/2016/09/28/72521 (April 20, 2017).

Kursiv. 2013. “Sud Snova Opravdal Podozrevaemogo v Massovyh Ubiistvakh v Natsionalnom Parke.” [The Court Again Acquitted the Suspect of Mass Killings Conducted in the National Park] February 14. https://www.kursiv.kz/news/incidents/sud-snova-opravdal-podozrevaemogo-v-massovyx-ubijstvax-v-ile-alatauskom-nacparke/ (April 20, 2017).

Law of the Republic of Kazakhstan from 31 October 2015 N 378-V “O vnesenii izmenenii i dopolnenii v nekotorye zakonodatelnye akty Respubliki Kazakhstan po voprosam sovershenstvovaniya sistemy otpravleniia pravosudiia”. [On Amending Some Legislative Acts of the Republic of Kazakhstan on Issues of Improvement of the System of Justice Administration] https://online.zakon.kz/Document/?doc_id=33968956#pos=1;-172.

Law of the Russian Federation from 23 June 2016 N190-ФЗ "O vnesenii izmenenii v ugolovno-processualnyi kodeks Rossiiskoi Federatsii v sviazi s rasshireniem primeneniia instituta prisiazhnykh zasedatelei". *Rossiiskaia gazeta.* June 26. https://rg.ru/2016/06/28/upk-dok.html.

Ledeneva, Alena. 2008. "Telephone Justice in Russia." *Post-Soviet Affairs* 24(4): 324-350.

Lee, Jae-Hyup and Woo, Jisuk. 2016. "Judge-Jury Interaction in Deliberation: Enhancement or Obstruction of Independent Jury Decision-Making?" *Onati Socio-Legal Series* 6(2): 179-196.

Lehman, Darrin, Richard Lempert, and Richard Nisbett. 1988. "The Effects of Graduate Training on Reasoning: Formal Discipline and Thinking about Everyday-Life Events." *American Psychologist* 43(4): 431-443.

Legal Policy Research Center. 2010. "Sovershenstvovanie sudoproizvodstva s uchastiem prisyazhnyh zasedatelei v ugolovnom processe Respubliki Kazakhstan" Otchet po prilkadnomu issledovaniyu. [The Improvement of Trials with the Participation of Jurors in the Criminal Procedures of Kazakhstan] Almaty: LPRC.

Machura, Stefan. 2016. "Civil Justice: Lay Judges in the EU countries." *Onati Socio-Legal Series* 6(2): 235-254.

Markovits, Inga. 2004. "Exporting Law Reform – But Will it Travel." *Cornell International Law Journal* 37(1): 95-110.

Mel'nikov, Sergei. 1993. "Perechitaite Brat'ev Karamazovykh." [Reread the Brothers of Karamazovy] *Sovetskaia Iustitsiia* 1(14): 2-4.

Moustafa, Tamir. 2014. “Law and Courts in Authoritarian Regimes.” *Annual Review of Law and Social Science* 10(1): 281-289.

Nomad. 2013. “V Hode Rassmotreniya Dela v Otnoshenii Z.Botabayeva Narushenii Zakonnosti ne Dopsukalos.” [There Have Been no Any Violations During the Consideration of the Case Regarding Z. Botabayev] April 2. http://www.nomad.su/?a=3-201304020019 (April 20, 2017).

OSCE Office for Democratic Institutions and Human Rights. 2008. “Otchet po Rezultatam Monitoringa Sudoproizvodstva s Uchastiem Prisyazhnyh Zasedatelei v Respublike Kazakhstan v 2007.” [The Report Regarding the Results of Monitoring the Court Trials with the Participation of Jurors in the Republic of Kazakhstan in 2007] Almaty.

Panasiuk, Andrey. 1994. “Prezumptsia Vinovnosti v Sisteme Professional’nyh Ustanovok Sudei.” [Presumption of Guilt in the System of Professional Adjustments of Judges] *Gosudarstvo i Pravo* 3(1): 70-79.

Paneyakh, Ella. 2014. “Faking Performance Together: Systems of Performnce Evaluation in Russian Enforcement Agencies and Production of Bias and Privilege.” *Post-Soviet Affairs* 30(2): 115-136.

Pashin, Sergey. 2001. “The Reasons for Reintroducing Trial by Jury in Russia.” *International Review of Penal Law* 72(1): 253-257.

Petrushkin, Igor. 2000. “Otchet o Sociologicheskom Issledovanii Faktorov, Vliyaushikh na Deyatel’nost’ Advokatov Moskovskoi Gorodskoi Kollegii Advokatov.” [The Report on Sociological Research of the Factors Influencing Activity of Lawyers of the Moscow City Bar] *Presidium of the Moscow City Bar* 93-112.

Popova, Maria. 2012. “Why Doesn’t the Bulgarian Judiciary Prosecute Corruption?” *Problems of Post-Communism* 59(5): 35-49.

Rajah, Jothie. 2012. *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore.* Cambridge: Cambridge University Press.

RAPSI News. 2016. “Putin Signs New Law Expanding Jury Trial in Russia.” June 23. http://rapsinews.com/legislation_news/20160623/276371461.html (April 20, 2017).

Robbennolot, Jennifer. 2005. “Evaluating Juries by Comparison to Judges: A Benchmark for Judging?” *Florida State University Law Review* 32(2): 469 – 509.

Schuller, Regina and Erentzen, Caroline. 2016. “The Challenge for Cause Procedure in Canadian Criminal Law.” *Onati Socio-Legal Series* 6(2): 315-333.

Shaikenova, Sakhiba. 2009. “Sud s Uchastiem Prisiazhnykh Zasedatelei v Respublike Kazakhstan.” [Court with Participation of Jurors in the Republic of Kazakhstan] *Aktualnye Problemy Ekonomiki i Prava* 2(1): 170-177.

Shvarts, Olga. 2004. “Sudebnaya Reforma Zakonchilas’.” [The Judicial Reform has Ended] FeldPochta. March 22. http://feldpost.ru/N21-22/shvarc2.shtml (April 20, 2017).

Silverstein, Gordon. 2008. “Singapore: the Exception that Proves Rules Matter.” In *Rule by Law: The Politics of Courts in Authoritarian Regimes,* eds. Ginsburg, Tom and Moustafa, Tamir. 73-101.

Sisenova, Madina. 2015. “Otmena Opravdatelnykh Prigovorov s Uchastiem Prisiazhnykh Zasedatelei - Obychnoe Delo.” [Cancellation of the Acquittals of the Jury Trial Courts - Common Practice] *Aitkaliyeva & Partners Lawyers.* November 18.

http://apl.kz/articles/view/otmena-opravdatelnyh-prigovorov-s-uchastiem-prisyazhnyh-zasedatelej-obychnoe-delo (April 20, 2017).

Slade, Gavin and Light, Matthew. 2015. "Crime and Criminal Justice after Communism: Why Study the Post-Soviet Region?" *Theoretical Criminology* 19(2): 147-158.

Sidorov, Oleg. 2015 "Sud Prisiazhnykh Stanet Obyazatelnym." [Jury Trial Court Will Become Mandatory] June 9. *Liter*. https://liter.kz/ru/articles/show/9590-sud_prisyazhnyh_stanet_obyazatelnym (April 20, 2017).

Solomon, Peter. 2007. "Courts and Judges in Authoritarian Regimes." *World Politics* 60(1): 125-145.

Solomon, Peter. 2008. "Assessing the Courts in Russia: Parameters of Progress under Putin."*Demokratizatsiya* 4(1): 63-73.

Solomon, Peter. 2015. "Post-Soviet Criminal Justice: The Persistence of Distorted Neo-inquistiorialism." *Theoretical Criminology* 19(2): 159-178.

Solomon, Peter and Foglesong, Todd. 2000. Courts and Transition in Russia: The Challenge of Judicial Reform. Emeryville, CA: Avalon Publishing Group. 222 p.

Suleimenova, Gulnar. 2009. "Opyt Funktsionirovaniia Suda s Uchastiem Prisiazhnykh Zasedatelei v Respublike Kazakhstan." [Experience of Functioning of the Court with Participation of Jurors in the Republic of Kazakhstan] *Zakon.kz.* October 15. https://www.zakon.kz/4757902-opyt-funkcionirovanija-suda-s-uchastiem.html (April 20, 2017).

Steves, Franklin and Rousso, Alan. 2003. Anti Corruption Programs in Post-Communist Transition Countries and Changes in Business Environment, 1999-2002. European Bank for Reconstruction and Development, Working Paper N85.

http://www.ebrd.com/downloads/research/economics/workingpapers/wp0085.pdf (April 20, 2017).

Swart, Anthony. 1993. "The Netherlands." In *Criminal Procedure Systems in the European Community*, ed. Christine van den Wyngaert. London: Butterworths.

Tengrinews. 2013. "V Sude Astany Ob'yasnili Opravdatel'nyi Prigovor Ile-Alatauskomu Ubiice." [The Astana City Court Has Explained the Acquittal Verdict Regarding the Ile-Alatau Murderer] February 14. https://tengrinews.kz/crime/sude-astanyi-obyyasnili-opravdatelnyiy-prigovor-ile-228544/ (April 20, 2017).

Tengrinews. 2013. "Ile-Alatauskogo Ubiicu ot Prigovora Spasla Horoshaya Rabota Advokata." [The Good Job of Defence Attorney Has Saved the Ile-Alatau Murderer from the Verdict] July 3. https://tengrinews.kz/kazakhstan_news/ile-alatauskogo-ubiytsu-prigovora-spasla-horoshaya-rabota-237316/ (April 20, 2017).

Tengrinews. 2015. "Nazarbayev o Lee Kuan Iu: Ya Schital Ego Svoim Horoshim Drugom." [Nazarbayev about Lee Kwan Yew: I Considered Him As a Good Friend of Mine] *Tengri News* . March 23. https://tengrinews.kz/kazakhstan_news/nazarbaev-o-li-kuan-yu-ya-schital-ego-svoim-horoshim-drugom-272085/ (April 20, 2017).

Toguzbayev, Kazis. 2011. "Lidery Kazakhskih Sufiev Otpravleny v Turmu na Dolgie Gody." [Leaders of Kazakh Sufis Have Been Sent to Prison for Long Years] *Radio Azattyq.* October19. http://rus.azattyq.org/a/kazakh_sufi_ismatulla_abdigappar_sajat_ibragimov_verdict/24364804.html (April 20, 2017).

Trochev, Alexei. 2014. “Soviet Legacies in Post-Communist Criminal Justice.” In *Historical Legacies of Communism in Russia and Eastern Europe*, ed. Mark Beissinger and Stephen Kotkin. New York: Cambridge University Press, 152-178.

Tselms, Georgii. 2002. “Mogu Vam Porekomendovat’ Advokata.” [Can Suggest You an Attorney] *Novye Izvestiya*, 29 August. http://moscow.hrights.ru/sud/data/sud_06_09_2002-6.htm (April 20, 2017)

United Nations High Commissioner for Human Rights. 2016. *OHCHR’s Annual Reports and Plans*. http://www.ohchr.org/EN/PublicationsResources/Pages/AnnualReportAppeal.aspx (April 20, 2017).

Usacheva, Anna. 2004. “U Nas Net Basmannogo Pravosudia.” [We Do Not Have Basmannyi Justice] *Domashnii Advokat.* June 20. http://www.bestlawyers.ru/php/news/archnew.phtml?id=172&idnew=17093&start=10707 (April 20, 2017)

Utebekov, Dzhokhar. 2015. “Nash Sud Pochti ne Opravdyvaet.” [Our Court Almost Always Does Not Acquit] *Kapital*, July 17. https://kapital.kz/gosudarstvo/42065/dzhohar-utebekov-nash-sud-pochti-ne-opravdyvaet.html (April 20, 2017).

Utebekov, Dzhokar. 2016. “Kartinu Pristrastnostei Sudei Sozdaiut Politicheskie Dela.” [Political Trials Create the Image of Partiality of Judges] *Today.kz.* January 15. http://today.kz/news/zhizn/2016-01-15/707241-dzhohar-utebekov-kartinu-pristrastnosti-sudej-sozdayut-politicheskie-dela/ (April 20, 2017).

Utebekov, Dzhokhar. 2015. “Sudnyi Kapital.” [Judgment Capital] *Vremya*. 26 August. http://www.time.kz/blogs/hocu-skazat/2015/08/26/dzhohar-utebekov-sudnij-kapital (April 20, 2017).

Utebekov, Dzhokhar. 2014. “Sud’ia Vinosya Reshenie, ne Dumaet Kto Prav, a Kto Net.” [Judge While Deciding Is Not Thinking Which Party Is Right, and Which One Is Not] October 15. *Matritca.kz.* http://www.matritca.kz/quote/14754-dzhohar-utebekov.html (April 20, 2017).

Verner, John. 1984. “The Independence of Supreme Courts in Latin America: a Review of the Literature. *Journal of Latin American Studies* 16(1): 463-506.

Vidmar, Beale et al. 1997. “Should We Rush to Reform the Criminal Jury: Consider Conviction Rate Data.” *Judicature* 80(4): 286-317.

Volkov, Vadim. 2000. “Between Society and the State: Private Security and Rule-Enforcement in Russia.” *Politics and Society* 28(4): 483-501.

Wang, Zhuoyu and Fukurai, Hiroshi. 2015. *China’s Lay Assessor System in East Asia’s Renewed Respect for the Rule of Law in the 21st Century: The Future of Legal and Judicial Landscape in East Asia.* Boston: Brill.

Wedel, Janine. 2001. “Corruption and Organized Crime in Post-Comminist States: New Ways of Manifesting Old Patterns.” *Trends in Organized Crime* 7(1): 3-61.

Wolf, Robert and Sarat, Austin. 1998. *The Jury System.* New York: Chelsea House Publishers.

Zakon. 2016. “Internet Konferenciya s Predsedatelem Verhovnogo Suda Kairat Mami.” [Internet Conference with the Head of Supreme Court Kairat Mami] October 24. https://vs.zakon.kz (April 20, 2017).

Zakon. 2017. “Sudoproizvodstvo po Ugolovnom Delam s Uchastiem Prisyazhnyh Zasedatelei v Mangistauskoi Oblasti.” [Legal Proceedings in Trials with Participation of Jurors] February 27. https://www.zakon.kz/4850902-sudoproizvodstvo-po-ugolovnym-delam-s.html (April 20, 2017).

Zimanov, Salyk. 2010. “The Ancient World of Kazakh Law and its Sources.” http://www.scientificfund.kz/index.php?option=com_content&view=article&id=59:the-ancient-world-of-kazakh-law-and-its-sources&catid=5:2&Itemid=27 (April 20, 2017).

Zimanov, Salyk. 2008. *Kazakhskii Sud Biev – Unikal’naia Sudebnaia Sistema.* [Kazakh Biy Court – A Unique Judicial System] Almaty: Atamura.

Zimanov, Salyk. 2008. “Kazakhskii Sud Biev v Pamyati Pokolenii.” [Kazakh Biy Court in Memory of Generations] *Iurist*. January. http://journal.zakon.kz/203439-kazakhskijj-sud-biev-v-pamjati.html (April 20, 2017).