



Ensuring the Independence and Impartiality of the Jury in the Context of the Digital Transformation of Society and the State: Russian and Foreign Experience

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Abstract: The aim of the study is to demonstrate that the digital transformation of society and the state affects the legal mechanism that ensures the independence and impartiality of the jury, while the internal elements of this mechanism largely lose their effectiveness. The legal mechanism for ensuring the independence and impartiality of jurors includes internal (implemented within the procedural framework of the consideration of a criminal case) and external (implemented outside the framework of the consideration of a criminal case) elements. The internal elements of this mechanism include: the possibility of changing the territorial jurisdiction of a criminal case; questioning potential jurors during voir dire; the possibility to declare the bias of the jury, etc. External elements of the legal mechanism ensuring the independence and impartiality of the jury include: maintaining the secrecy of jurors' personal data; a complicated form of bringing jurors to criminal liability and applying criminal procedural coercion measures to them; the existence of criminal liability for threats and violence against jurors; the possibility of applying state protection measures to jurors. Under the influence of digital transformation a number of problems appear in the jury trial, that provoke risks for the independence and impartiality of jurors: digital "surveillance" of jurors; digital "investigation" of the case by jurors; digital influence on the jury and the expression of opinions by jurors in the digital environment. The paper considers approaches

to solving these problems and offers recommendations for changing legislative regulation and adjusting judicial practice.

Keywords: jury trial; jury independence; jury impartiality; digital transformation; jury panel; digital “surveillance”; digital “investigation”

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I. Introduction

The digital transformation of society and the State, radically changing criminal proceedings, has a significant impact on the elements of the legal mechanism ensuring the independence and impartiality of the jury. The legal mechanism for ensuring the independence and impartiality of jurors includes internal (implemented within the procedural framework of the consideration of a criminal case) and external (implemented outside the framework of the consideration of a criminal case) elements.

The internal elements of this mechanism include the possibility of changing the territorial jurisdiction of a criminal case; questioning potential jurors during voir dire; the possibility to declare the bias of the

jury; prohibiting jurors from independently collecting evidence on the case and expressing their opinion on it; explanations of the presiding judge to the jurors during the consideration of the case; the possibility of questioning jurors regarding any unlawful influence exerted on them and challenging them; secrecy of jury deliberations, etc.

External elements of the legal mechanism ensuring the independence and impartiality of the jury include maintaining the secrecy of jurors' personal data; a complicated form of bringing jurors to criminal liability and applying criminal procedural coercion measures to them; the existence of criminal liability for threats and violence against jurors; the possibility of applying state protection measures to jurors.

The development of digital technologies has changed the traditional concept of jurors impartiality in general: if previously ensuring impartiality focused on the jury selection, now the main task is to maintain the impartiality of the jury throughout the trial (Waters and Hannaford-Agor, 2014, pp. 2735–2736; Haralambous, 2010, pp. 255–256; Liu and Lei, 2021, pp. 12–15; Wen, 2022). When considering the direct forms of the impact of digitalization on the mechanism for ensuring the independence and impartiality of the jury, it becomes obvious that such an impact manifests in different ways, depending on the legal nature of the interim measure. At the same time, the internal elements of the mechanism, under the influence of the digital transformation factor, are largely losing their effectiveness. Thus, in Russian judicial practice, a change in the territorial jurisdiction for hearing a criminal case is widely used if there are circumstances that may cast doubt on the objectivity and impartiality of the jury (Subpara. “c” Para. 2 Part 1 Art. 35 of the Criminal Procedure Code of the Russian Federation). For example, in the high-profile case of S. and B., the need to change the territorial jurisdiction of the case was justified by the fact that “high public resonance, the formation of public opinion and biased coverage of the process by regional media do not allow us to make an unambiguous conclusion that when considering a criminal case by judges of the Kaliningrad Regional Court with the participation of a jury, the possibility of doubts about the objectivity of the judicial decision will be eliminated and the court's position will be exclusively

neutral”.¹ Obviously, the digital transformation of society and the State leads to the fact that the dissemination of information about the process becomes extraterritorial, which largely makes changing the location meaningless. Posting such information on the Internet using Search Engine Optimization (SEO) technologies allows potential candidates for jurors to quickly find this information, regardless of their place of residence.

The spread of digital technologies leads to a significant weakening of such internal guarantees of independence and impartiality as a ban on jurors collecting information about a criminal case, since digitalization completely eliminates the distance between jurors and the sources of information about the case (for example, to obtain such information, a juror does not need to visit archives, communicate with certain persons, etc.). This creates the effect of a digital investigation of the case by jurors, which will be discussed below.

This phenomenon significantly undermines the effectiveness of such internal guarantees as a ban on jurors expressing their opinion on the case and the secrecy of the deliberation room. The widespread use of social networks allows jurors to express a position on the case, even to disclose the essence of the discussion that took place in the deliberation room, without incurring a serious risk of being removed from the jury panel. The digital transformation of society and the State also affects some external elements of the legal mechanism that ensures the independence and impartiality of the jury. For example, the digital trace left by jurors on social networks (marketplaces, etc.) allows collecting a significant amount of personal data about them, some of which the parties can use at the trial stage for their tactical purposes (filing challenges, etc.).

In our opinion, the inefficiency of the internal and external elements of the mechanism in digital era is due to the fact that they were conceptually developed and enshrined in the legislation of the pre-digital era, they are not adapted to the special digital nature of

¹ Appeal ruling of the Appeal board of the Supreme Court of the Russian Federation dated 17 August 2021 No. APL21-311. (In Russ.).

these factors. That is why these legal means are irrelevant to solving the problems caused by digitalization.

Thus, the spread of digital technologies in society and the State has an irreversible impact on criminal proceedings, including proceedings in jury trials, significantly modifying the internal and external elements of the legal mechanism that ensures the independence and impartiality of jurors. It should be emphasized that this process is transnational, i.e., it does not depend on the specifics of the national model of proceedings in jury trial. In order to find ways to restore the effectiveness of this legal mechanism, it is necessary to consider several typical problem situations that arise during the consideration of criminal cases by jury trials in Russia and foreign countries, creating risks for the independence and impartiality of jurors.

II. Digital “Surveillance” of Jurors

The digital transformation of society and the State, as noted above, made personal data of jurors available to the parties, which led in practice to the effect of digital “surveillance” — the intentional collection by the parties of the information about jurors in the digital environment (primarily in social networks) in order to discover data indicating the impartiality of jurors or their dependence on any participant in the process or government agency.

The question of the admissibility of collecting information about jurors by the parties arose long before the development of digital technologies. As researchers note, such collection of information leads to a conflict between ensuring the right to a fair trial and the right of jurors to privacy. The most traditional approach to finding a balance between these rights is based on determining the relevance of the information received to issues of the independence and impartiality of the juror (Hannaford-Agor, 2001). Digitalization has also updated the discussion about the right of jurors to privacy (Rousseau, 2006).

Gathering information about jurors by the parties also gives rise to a number of ethical questions: should the information found be provided to the other party and the court and if so, to what extent; should the jurors be given the opportunity to comment on the information found

about them. As noted by researchers from the United States, there is no unified approach to the issue among judges: courts have wide discretion in determining additional rules for selecting jurors that are not regulated by the law. As a result, some judges in the United States completely prohibit searching for information on the Internet, while others believe that if the answers of jurors during selection differ from the information posted on the Internet, the parties are obliged to inform the court of a possible violation by a juror who has provided false information about himself (LaPinta, 2020, pp. 11–13). In one civil case in the United States, the presiding judge took the position that when using social media to research jury candidates, the parties would be required to notify the candidates so that they could, if they wish, change the privacy settings of their profiles to make their pages private (Pulver, 2016).

The consequences of collecting information also remain ambiguous. Bar associations set different requirements for digital “surveillance” of jurors. While not prohibiting these actions in general, they also have different assessments of the admissibility of actions that may result in a juror informing about a lawyer visiting his profile on social networks. Thus, sending a request to add as a friend is recognized as a violation of ethical requirements, while a notification about a visit to a page from a social network that comes automatically is not considered a violation by the American Bar Association, while the New York City Bar Association assesses any notifications coming from social networks as communication with a juror, regardless of the lawyer’s intention to initiate communication (LaPinta, 2020, pp. 15–16).

However, despite the lack of uniformity in assessing digital surveillance, it would be difficult not to agree with a number of academics and legal practitioners who acknowledge the high efficiency of this tool when it is used correctly (LaPinta, 2020, p. 17). In some cases, timely detection of juror statements on the Internet can lead to the exclusion of a juror who has clearly lost impartiality. For example, in one case considered in the United States, after the first court hearing, one of the jurors posted the following on a social network, “Actually excited for jury duty tomorrow. It’s gonna be fun to tell the accused they’re GUILTY”. This information was found by the son of the defense attorney, and the juror who posted it was dismissed (Hoffmeister, 2012, p. 429).

The phenomenon of digital “surveillance” of the parties over the jurors’ activities in the digital environment is also evident in the Russian court practice. Such a conclusion based on the study of the arguments of appeal (cassation) complaints and proposals that contain references to information obtained by invading the juror’s digital space. The following description of the arguments of an appeal by a defense attorney against a sentence rendered on the basis of a jury verdict is quite typical, “With reference to a notarized protocol of inspection of the juror’s personal page... on a social network, confirming the fact of his work in the internal affairs agencies, [the defense attorney] claims that during the selection of the jury, [the juror] misled the presiding judge and concealed this fact from the participants in the process, thus depriving the defense of the opportunity to file a reasoned challenge to him”.²

The study of the appellate and cassation practice on this issue allows us to identify three models of the attitude of the courts of the specified instances to the phenomenon of digital “surveillance”, which have a direct impact on the dynamics of the growth of this phenomenon:

- a neutral attitude, expressed in the refusal to evaluate the collection of such information about jurors by the defense;
- indirect legalization of this method of collecting digital information about jurors;
- a negative attitude, expressed in the recognition of digital “surveillance” as violating the norms of criminal procedural law and ethics.

The first model of the reaction of the courts of appeal and cassation to the use of information about jurors by the defense, obtained through digital “surveillance” is manifested in the ignoring of this data in the final procedural decisions, which, in addition, do not express any assessment of such actions of the participants in the trial.³

² Appeal ruling of the First Appeal Court of the general jurisdiction dated 18 December 2024 No. 55-1622/2024. (In Russ.).

³ Cassation ruling of the Sixth Cassation Court of the general jurisdiction dated 10 June 2021 No. 77-2788/2021. (In Russ.); Appeal ruling of the Leningrad Regional Court dated 5 July 2024. No. 22-1374/2024. (In Russ.).

The second model of the attitude of the courts to the phenomenon of digital “surveillance”, most often encountered in judicial practice, consists in indirect legalization, since the courts, on the one hand, do not express an opinion on the legality of monitoring of jurors’ accounts on social networks by the parties, but, on the other hand, meaningfully evaluate the information obtained by the parties as a result of such monitoring.

For example, in one of the cases, the arguments of the cassation appeal of the defense attorney were described in the appellate decision as follows, “[the defense lawyer] believes that the verdict was rendered by an illegal jury panel, since the panel included jurors who concealed the fact of their acquaintance with the state prosecutor, which became known to the defense after the verdict was announced. In support of this argument, a detailed analysis of the pages of the foreman of the jury and the state prosecutor, posted on the social network VKontakte, is given, which, in the opinion of the author of the complaint, indicates the acquaintance of the said persons”.⁴ The Court of Cassation rejected this argument after a substantive review, following a questioning of the jury foreman, who, “having confirmed that he had a page on the social network VKontakte, denied the fact that the state prosecutor was among his friends” and stated that from the beginning of the court hearing on the case until the verdict was delivered, he had not communicated with the state prosecutor or other participants in the trial, had not received additional information, including negative information, from anyone outside the criminal trial and had not provided it to anyone”.⁵ It is obvious that the defense attorney would not have been able to collect the specified information about the acquaintance of the juror and the state prosecutor without targeted monitoring of their accounts on social networks.

The most striking example of the indirect legalization of the phenomenon of digital “surveillance” is the decision of the Second Appeal Court of General Jurisdiction, which assessed the arguments of the defense that one of the jurors, who had worked in the prosecutor’s

⁴ Cassation ruling of the First Cassation Court of the general jurisdiction dated 19 February 2025 No. 77-427/2025. (In Russ.).

⁵ *Op. cit.*

office for a long time, posted on her personal page on the social network Vkontakte, in particular, the following content, “11 December 2020. I am very glad that for us, the jurors, the trial is over. It was not difficult for me to decide for myself whether he was guilty or not, but still”, “I liked the state prosecutor so much. He spoke so well — I did not expect it from colleagues”; “12 January 2021. Colleagues, Happy Prosecutor’s Day!!! Courage and more sense of humor, otherwise you will not survive in our system!”

According to the defense attorney, the aforementioned statements showed that the said juror, even after her dismissal from the prosecutor’s office, considered herself an employee of the said organization, calling the prosecutor’s employees, including the state prosecutor who participated in the case, her colleagues, expressing support, admiration and pride for the latter, and also that her 28 years of experience in law enforcement agencies prevented her from maintaining neutrality and remaining on the side of her colleagues, which gives grounds to doubt the objectivity and impartiality of the said juror.

The Appellate court, rejecting the arguments of the appeal, analyzed these posts of the juror in detail, finding no signs of loss of independence and impartiality, “The content indicates the absence of any kind of prejudice on the part of the said person, both in relation to the circumstances of this case in general, and in relation to the accused and other participants in the criminal proceedings in particular, which objectively follows from the statements that the speech of the state prosecutor made a favorable impression unexpectedly for the author of this publication, and the decision on the guilt of the accused was made by her personally for herself”.⁶

The third model of the attitude of the courts of the above instances to the phenomenon of digital “surveillance”, the most rarely encountered in practice, consists in denying the legality of the collection by participants in the trial of any personal data or other information about jurors.

Thus, during the appeal hearing of one of the criminal cases, it was established that the defense attorney filed a motion to replace one of

⁶ Appeal ruling of the Second Appeal Court of the general jurisdiction dated 2 March 2021 No. 55-67/2021. (In Russ.).

the jurors with a reserve juror. According to the lawyer, the said juror, when forming the jury, withheld the information that she was a close relative of a retired prosecutor, and therefore was subject to challenge. In support of his arguments, the lawyer presented screenshots from the social network Telegram, which indicated the mobile phone numbers used by the juror, her date of birth, and her residential address. The collection of this information was carried out during the period when the said juror was administering justice, at the time when the guarantees of judicial immunity extended to her. When checking the version of the defense, the relationship of the said juror with the former prosecutor was not confirmed. The Appellate court concluded that the defense violated the guarantees of independence and immunity of jurors, provided for in Art. 12 of the Federal Law of 20 August 2004 No. 113-FZ "On Jurors of Federal Courts of General Jurisdiction in the Russian Federation", when collecting and presenting information about jurors, which is unauthorized and goes beyond the scope of the powers granted to the defense.⁷

Thus, in Russian judicial practice, the attitude of courts to the collection of information about jurors by parties in the digital environment (digital "surveillance") is most often positive-neutral, which creates the preconditions for the preservation and spread of this phenomenon. The negative attitude of courts to this kind of actions by parties is manifested only in the case of collecting personal data about jurors (residential addresses, private information, etc.) that is deprived of legal significance for appealing the court sentence, as well as collecting this information from closed sources (with violation of the jurors' right to privacy). This approach of judicial practice seems justified, but requires development and detailing.

In our opinion, it is necessary to create a comprehensive regulation of the collection of information about jurors (including digital "surveillance"), defining:

- 1) the permissible limits of such collection;

⁷ Appeal ruling of the Third Appeal Court of the general jurisdiction dated 20 November 2023 No. 55-475/2023. (In Russ.).

2) its forms and time frames, deadlines for providing it to the court (in order to neutralize unfair behavior, in which a party will conceal the information discovered and provide it only in case of disagreement with the jury's verdict and the court's sentence);

3) a number of specific issues related to the possibility of notifying jurors about possible digital "surveillance" of them; responding to cases when a juror has learned about the collection of information about him by a certain participant in the process; possible participation of a court employee in the search for information about jurors.

The development of such regulation at the level of clarifications of the Russian Federal Bar Association and orders of the Prosecutor General's Office of the Russian Federation, as well as the formulation of relevant clarifications by the Plenum of the Supreme Court of the Russian Federation would create the necessary conditions for ensuring the unity of judicial practice in order to help the parties to understand the particular consequences of their actions.

III. Digital "Investigation" of a Criminal Case by a Jury

The widespread use of digital technologies in modern society makes it much easier for jurors to search for information on a criminal case outside of the trial, since all this information is located in a virtual digital space, to which each juror has constant access. In practice, this gives rise to the phenomenon of digital investigation of a criminal case by jurors. The desire of jurors to find additional information about a case is reflected in many publications around the world and has a long history. T. Hoffmeister identifies, in addition to the "traditional" reasons for searching for information (insufficient information disclosed in the process; a sense of responsibility for the verdict; misunderstanding of explanations of the law or terms; the desire to find out what information was not disclosed), also "modern" reasons related to the development of technology: the desire to learn more about people by searching the Internet (about the judge and the parties to the case), the habit of searching and finding any information on the Internet, the prevalence and availability of information about court proceedings (Hoffmeister, 2012, pp. 419–425). As a separate reason, he also highlights the

incorrectness of the instructions addressed to the jury: for example, in one of the cases, a juror did not correlate the ban on “collecting evidence” with the search for information about a party.

This phenomenon is also observed in Russian judicial practice, where a differentiated approach to procedural response to it has been formed, depending on how many jurors carried out such an “investigation”, whether it affected their objectivity, whether they had an impact on other jurors. In situations where the awareness of a juror about the circumstances of the case from non-procedural sources of a digital nature becomes known before the jury has rendered a verdict, such a juror is questioned to determine whether he has lost his objectivity and, if this is revealed, he is subject to challenge. The possibility of participation of the remaining jurors is determined by the degree of informational impact exerted on them by the challenged juror and may entail both the challenge of the remaining jurors (and the dissolution of the panel) and the conclusion that the remaining jurors have retained their objectivity.

For example, in one of the criminal cases, the court sentence was not overturned, since the panel of judges did not consider the jurors’ awareness of the circumstances of the criminal case, including from the social network VKontakte, as a reason to doubt the ability of the panel to make an objective decision on the case, since only one candidate No. 5 reported this as a reason for her self-recusal, which was granted by the presiding judge.⁸ The case materials do not contain any other information about such awareness of the persons selected as jurors.

In another criminal case, the defense lawyer indicated in the cassation appeal that the majority of the jurors had information about the criminal case from the media, Internet sites and social networks, but this argument was rejected due to its hypothetical nature.⁹

It is obvious that the identification of digital “investigation” of the case by jurors creates a high risk of their loss of impartiality and, as a result, inability to render an objective verdict. In order to identify the

⁸ Cassation ruling of the Seventh Cassation Court of the general jurisdiction dated 25 July 2023 No. 77-2915/2023. (In Russ.).

⁹ Cassation ruling of the Third Cassation Court of the general jurisdiction dated 29 August 2024 No. 77-1761/2024. (In Russ.).

degree of influence of this information on the juror, the survey of jurors is actively used in judicial practice. It seems that the form of survey of jurors is the most acceptable procedural method of checking both the circumstances of the illegal influence exerted on them and the improper performance of their duties. On the one hand, such a method does not transform the procedural judicial status of the juror into the status of a witness. On the other hand, it allows collecting information about the said facts from the primary source, which enhances the objectivity of their verification. At the same time, in order to ensure uniformity of such a survey, it seems necessary to regulate the procedure for its implementation by law. In our opinion, such questioning should be conducted in full compliance with the general conditions of judicial proceedings: orality, directness and adversarial nature, but with limited publicity, since the questions that are clarified may concern the personal data of the jurors. The procedure for asking questions to the jurors, the requirements for these questions, the right of the presiding judge to remove such questions — should be identical to the procedural rules of interrogation of witnesses, as maximally corresponding to the adversarial principles of judicial proceedings.

IV. Digital Influence on Jurors

Another consequence of the digital transformation of society and the State in relation to guarantees of independence and impartiality of jurors is the emergence of a digital method of influence, both on an individual juror and on the jury as a whole. Unlike traditional methods of influence, digital influence is characterized by a number of special qualities. Firstly, it is often anonymized, i.e., it does not allow to identify the author of the content posted on the Internet. This significantly weakens the effect of the court applying procedural sanctions for committing such an action. Secondly, the specified information can be deleted from one source and appear on another within a minimum time, which makes judicial influence on a specific electronic media ineffective. Thirdly, the digital environment allows posting any type and volume of information (text, photo, video, etc.) in order to have the maximum impact on the jury. Fourthly, in practice it is extremely difficult to

establish that the jurors are familiar with this information. There are no convincing means of verifying their answers in this regard. Fifth, while “traditional” media bear at least reputational responsibility for the quality of the information posted and follow the ethical regulation of the journalistic profession, in the modern world anyone can become a source of information about a case. The problem of posting unverifiable information or data based on private opinion on social networks is of great concern to researchers (for example, Gruce, 2024, pp. 3–4). Social network algorithms, in turn, actively distribute information among users, including jurors, based on their preferences.

The risk of external influence on jurors through information available to a wide range of readers or viewers is based on the collision of a number of basic generally recognized rights, namely the rights to a fair trial, to disseminate information, and the right of society to receive information about important social events. The balance between these rights is established differently in various countries: from recognizing the priority of freedom of the media in the United States to the possibility of limiting coverage of cases before sentencing in the United Kingdom (Strelkova, 2018, pp. 242–243). In Russia, such restrictions have not been introduced, either with respect to official media, or with respect to the parties or other persons.

In Russian judicial practice, attempts to influence jurors using digital sources are observed quite often, as evidenced by the arguments of appeal (cassation) complaints. At the same time, for the reason mentioned above, in almost all cases, the courts of appeal and cassation do not recognize the fact of digital influence as established and reject this argument.

Thus, in the case of G., the cassation appeal of the victim’s representative indicated that the wife of the accused tried to shape public opinion on social networks about G.’s innocence, as well as to discredit the presiding judge and the prosecution.¹⁰ However, the cassation court, referring to the results of the presiding judge’s clarification of these facts, did not recognize this circumstance as a cassation basis.

¹⁰ Cassation ruling of the Eighth Cassation Court of the general jurisdiction dated 6 May 2024 No. 77-1462/2024. (In Russ.).

In another case, the defense attorney drew the attention of the appellate court to the fact that the victim's wife broadcast on the Internet a video recording of the movement of the jury to the courtroom in the building of the Moscow City Court on 6 October 2021, with comments on what was happening. The defense argued that these actions allowed an indefinite number of people — users of social networks on the Internet — to write comments, and for the jurors to see themselves on the Internet while performing their duties, which eliminated the obligation to remain objective and impartial when making a fair decision. However, the appellate court rejected this argument, noting that there was no information that these actions influenced the jurors, and these circumstances did not indicate the illegality of the verdict.¹¹

Similarly, citing the fact that no evidence was presented that the jurors were familiar with the publication and that their opinion of the accused was formed under the influence of the said publication, the defense's argument that the publication titled "Killer at Large" (indicating that the accused had committed murder) posted on the website of the "Kotovchanin" Internet portal was posted on all social networks and was read by the jurors, was rejected.

The arguments of the victim's appeal that the jurors were influenced by the article about the death of her brother that was published on social networks in Bratsk, where the author accused the authorities of the fact that an innocent person who was tortured by the police was in the dock, were rejected as presumptive.¹² Similar positions were expressed in other cases.¹³

It seems that the difficulty of legally proving the connection between publications about the case and the verdict does not mean that the coverage of the investigation and consideration of criminal cases does not require special regulation. The introduction of restrictions on such publications and their timely removal could be one of the measures that does not have unconditional effectiveness, but is capable of reducing the number of references to the case on the Internet.

¹¹ Appeal ruling of the First Appeal Court of the general jurisdiction dated 1 August 2022 No. 55-1037/2022. (In Russ.).

¹² Appeal ruling of the Irkutsk regional court dated 9 April 2024 No. 22-1000/2024. (In Russ.).

¹³ Appeal ruling of the Volgograd regional court dated 17 February 2025 No. 22-551/2025. (In Russ.).

V. Expressing Juror's Opinion about a Case in the Digital Space

The development of the digital space objectively increases the possibilities of communication both between jurors outside the trial and between jurors and other persons (who are or are not participants in the trial). These communications create a risk for the independence and impartiality of jurors if the subject of these communications is the discussion of the criminal case, during which jurors express their opinion on it.

The risk of discussing the case among the jurors themselves can be considered inevitable, which is why some authors consider it possible to allow jurors to discuss the evidence examined before the verdict (Anderson, 2002, pp. 94–95; Dufrainmont et al. 2008, pp. 235–240; Hans, 2025, pp. 173–175). Despite all the ambiguity of this approach, discussing the case among jurors in the digital space also creates another, more significant risk: online communications through the use of websites, social networks or even e-mail create a risk of access by third parties, including parties to the case. In turn, this can lead to the disclosure of the content and distribution of votes during jury deliberation (Hoffmeister, 2012, pp. 427–428).

In studying the reasons for the prohibited communications of jurors on the Internet, researchers, citing numerous examples of violations, highlight, in addition to the usual desire to discuss the case, two specific problems: the jury's misunderstanding of the judge's instructions in this part (that publishing a post about the case, in addition to violating the ban on expressing one's opinion, also represents a prohibited form of communication — especially if a comment can be left under the post), and the habit of constantly posting on social networks, talking about various events in one's life (Hoffmeister, 2012, pp. 433–436).

In the Russian court practice this phenomenon can also be found, as indicated by the decisions of the courts of appeal and cassation. Thus, in one of the cases, after the end of the court session and the announcement of the verdict, the state prosecutor found information on social networks published by the foreman of the jury about negative statements addressed to government officials, an extremely negative

attitude towards the State and all law enforcement agencies; she also posted information about participation in the court session as a juror (summons from the Moscow City Court), asked questions to an unlimited number of people, including lawyers, about the progress and features of court proceedings with the participation of jurors. In rejecting the arguments of the appeals, the Appellate court analyzed the statements of the jury foreman in detail and established that the circumstances of the case were not discussed in this message, the secrecy of the deliberations was not violated, and, in addition, the complainant did not provide information that the social media pages belonged to the jury foreman, or if so, that they were not hacked.¹⁴

In another case, the appellate court rejected the defense's arguments that one of the jurors had made a post on her public page on the social network VKontakte, the gist of which was that due to fear, she had no opinion of her own and could not independently assess what was happening, contrary to the position of the prosecution. Firstly, the court pointed out that the source of the information provided by the defense was the Internet, which, in the opinion of the panel of judges, did not meet the requirements of reliability. Secondly, the court noted that, if we take into account the information posted on the juror's page on the Internet, then the lawyers' opinion that this text testifies to the juror's inability to make an independent decision is a free interpretation of the written text, which does not allow one to doubt the objectivity of this juror.¹⁵

Similarly, courts of review instances reject the arguments of complaints if the thesis about the creation of a collective chat by jurors on social networks or messengers is a hypothesis. For example, one of such decisions stated, "The defense attorney's argument that during the trial a chat was created on the social network WhatsApp uniting jurors in which they could discuss issues related to the consideration of this criminal case is only the attorney's assumption, is not objectively

¹⁴ Appeal ruling of the First Appeal Court of the general jurisdiction dated 14 July 2021 No. 55-1013/2021. (In Russ.).

¹⁵ Appeal ruling of the Moscow city court dated 10 April 2024 No. 10-5160/2024. (In Russ.).

confirmed by anything, and therefore cannot be taken into account by the judicial panel”.¹⁶

At the same time, in judicial practice there are cases, even though they are quite rare, where courts recognize such statements by jurors in the digital environment as a significant violation of the criminal procedure law. Thus, in one of the cases, the court of second instance established that on 5 March 2012, juror P. created a group on a social network called “The Court is in Session!”, which included 9 jurors participating in the criminal case against O. On 31 March 2012, the group members — jurors P. and B., in violation of Para. 2, Part 2, Art. 333 of the Criminal Procedure Code of the Russian Federation, expressed their opinion on the criminal case before rendering a verdict. The court concluded that since the jurors discussed issues related to the consideration of this case outside the court session, this calls into question their compliance with the requirements of Art. 333 of the Criminal Procedure Code of the Russian Federation, according to which they do not have the right to express their opinion on the criminal case before jury deliberations.¹⁷

The approaches cited from Russian practice are standard in comparison with the practice of other countries. It seems that, despite the difficulty of preventing jurors from communicating with each other or with third parties, it is necessary, at the very least, to eliminate this risk since jurors do not understand the illegality of such actions. To this end, judges need to explain in the most accessible and complete manner what forms of interaction are prohibited for jurors.

VI. Conclusion

It became obvious that traditional legal mechanisms to ensure the independence and impartiality of jurors are ineffective against digital technologies (postponement of the hearings; change of location; engaging jurors from another locality, careful selection of jurors) (Waters and Hannaford-Agor, 2014, p. 2741).

¹⁶ Appeal ruling of the Amur regional court dated 24 July 2023 No. 22-1573/2023. (In Russ.).

¹⁷ Cassation ruling of the Supreme Court of Russian Federation dated 11 December 2012 No. 203-O12-2SP. (In Russ.).

Another actual question is the influence of generation “Z” on the performance of juror functions. This generation grew up in the era of widespread development of digital technologies, as a result, generation “Z” perceives information differently — with inability to concentrate for a long time, with the habit of searching for information on the network and demonstrating high skills in such search, and using social networks for discussions (Tenzer, 2020, pp. 200–201). Some researchers associate these characteristics with the need to change the approach to traditional instructions, as new features of thinking and perception of information caused by daily searching on the Internet, reading structured short texts with headings, high speed of the flow and perception of information lead to a change in cognitive schemes (Waters and Hannaford-Agor, 2014, p. 2737; Huang and Wixted, 2024, pp. 90–107), that could not be ignored during the trials.

At least several approaches to solving these problems are proposed in scientific literature and judicial practice, the first three of which can be considered “classic”.

1. Complete or partial isolation of jurors from the digital environment.

This method is quite effective, since it neutralizes the negative effect of the digital space on jurors in such manifestations as digital investigation of a crime, digital influence on the jury panel, and jurors expressing their opinions in the digital environment. However, this method does not block digital “surveillance” of jurors by the parties. In addition, it has objective limits of application, since complete digital isolation of jurors cannot be applied for a long time, otherwise it will create an excessive restriction of their constitutional rights. The use of this method in a limited time interval significantly reduces its effectiveness (for example, if jurors’ communication devices are seized during a court hearing, they will again be exposed to the digital environment after the return of these devices). Complete digital isolation of jurors for the entire period of the trial is possible only within the framework of the institution of sequestration and, in our opinion, is an extremely negative way of solving this problem, since it seriously depopulates the jury trial in society.

Therefore, this method can be used only in a limited number of situations, for a short period of time and has questionable effectiveness.

2. Legal influence on the digital environment in order to ensure the independence and impartiality of jurors.

On the one hand, this method can be quite effective, since it involves direct influence on the digital environment — the area which creates risks for the independence and impartiality of jurors. On the other hand, this method has obvious disadvantages. Such influence is not included in the scope of measures of criminal procedural coercion provided for by the Criminal Procedure Code of the Russian Federation, i.e., to create a legal basis for such measures, it will be necessary to develop a new legal institution or use the means of other branches of law. However, such measures are unlikely to be effective. The digital environment is very changeable and the pace of modification of this environment significantly exceeds the pace of making any procedural decision, which will often be belated. Finally, this method cannot eliminate digital “surveillance” of jurors, digital investigation of crimes by jurors, or their expression of opinions in the digital environment.

3. Neutralization of the consequences of the negative impact of the digital environment on the independence and impartiality of jurors.

This method is universal, as it allows to counteract all problematic situations. It involves the use of a wide range of procedural means, from the presiding judge’s explanations of the inadmissibility of certain actions in the digital environment to the dissolution of the jury if it is determined that it has lost its impartiality. However, this method is effective only as a means of responding to the consequences of the negative impact of the digital environment on jurors. If such an impact is not obvious or is only predicted, the effectiveness of this method is sharply reduced. The degree to which jurors assimilate the presiding judge’s explanations is absolutely unverifiable, while all other manifestations of the use of this method are destructive, since they involve the exclusion of a person from the jury.

4. Anonymization of jurors is a measure sometimes used by courts to reduce the risk of influence on jurors by third parties who want to persuade them to make a particular decision (Waters and Hannaford-Agor, 2014, p. 2743). For example, anonymous jury panels were used

to consider cases against Donald Trump. The extraordinary attention of society, a wide range of publications with threats to potential jurors in the event of an outcome of the case that did not suit the commentators, indicated the risk of physical harm to the jurors (Ressler, 2024, pp. 612–614). The creation of anonymous panels, taking into account the development of technology, seems to be an effective way to protect jurors, while ensuring the fairness of the trial (Ressler, 2024, pp. 655–656).

The scientific literature suggests options for combining the approaches discussed above (Hoffmeister 2012, p. 436):

- introducing sanctions for jurors for using digital technologies during the trial (fines, ban on using equipment with Internet access, sequestrations);

- allowing digital “surveillance” of jurors for the parties and the court (there is a risk that the parties will disclose information only after the verdict, however, in this regard, it is proposed that the court apparatus check social networks before selection) (Gruce, 2024, p. 19);

- allowing jurors to ask questions not only to witnesses, but also to the court (not to receive a particular answer, but for additional explanations or court instructions, or to show the parties on what issue there was insufficient information);

- updating instructions (what exactly is prohibited with examples, why it is prohibited): use generally accessible language and terminology of social networks; provide specific examples of unacceptable behavior on social networks; explain the reasons for restrictions, explain the consequences of violations (Rose and Ogloff, 2001, pp. 409–410; Gruce, 2024, pp. 19–20).

Nevertheless, while recognizing each of the three “classic” methods as adequate, not all researchers agree that these measures will be effective in terms of banning the use of mobile phones, at least for the younger generation (Tenzer, 2020, p. 208). Among the three main ways to combat information search and communication on social networks (confiscation of phones, improvement of instructions, introduction of sanctions), sanctions are the most effective, but they reduce the desire to become jurors. For this reason, some authors suggest accepting the idea of the impossibility of preventing the use of technology for these

purposes and focusing on assessing the consequences of such behavior: in what cases it becomes necessary to overturn the sentence. In this regard, Leslie Y. Garfield Tenzer supports the harmful error test, which is already used by judges in the United States, which requires a thorough assessment of the content of communication from the standpoint of whether the right to a fair hearing has been violated (Tenzer, 2020, p. 217).

Thus, none of the methods of counteracting the negative factors of the digital environment, weakening the guarantees of independence and impartiality of jurors, considered in this publication, is able to independently solve all the problems of this kind that arise in judicial practice. It seems that only the integrated application of all these methods is the optimal way to solve the problem under consideration.

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