

KATARÍNA FEDOROVÁ  
(Masaryk University in Brno)

## *The impact of the revolutionary movement on the judicial reform of Russian Tsar Alexander II*

### Abstract

The article deals with the impact of revolutionary movement of 1860–1881 on the judicial reform introduced by Russian Tsar Alexander II. The reform comprising the Law on Establishment of Courts, the Criminal Trial Act, the Civil Trial Act and the Law on Penalties Imposed by the Conciliation Courts, was designed to eliminate the shortcomings of the dysfunctional judicial system of the pre-reform period and allowed for the public control of the judicial decisions. By doing this, the reform opened the door to the needed changes in the Russian society that significantly lagged behind Western Europe. The measures taken against the revolutionary movement of the 1880s and the 1890s negatively affected the reform legislation and distorted many democratic institutions introduced by the judicial reform.

**Key words:** judicial reform, revolutionary movement, Zemlja i volja, samoderzhavie

**Słowa kluczowe:** reforma sądowa, ruchy rewolucyjne, Zemlja i volja, samodzierzawie

## 1. Introduction

After the humiliating defeat of Russia in the Crimean War, Tsar Alexander II began with the remodeling of the society through several reforms,<sup>1</sup> among which the reform of the archaic judicial system was fundamental, on the basis of the Law of the Establishment of Courts, the Criminal Process Act, the Civil Process Act and the Law establishing penalties, imposed by the conciliation courts issued on 20<sup>th</sup> November 1864. A lengthy written and non-public process of a pre-reform period had been replaced by a flexible public and oral procedure. Unprecedented elements were incorporated into the law in Russia, as guarantees of the rights of the defendants, institutes of advocacy, conciliation courts,

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<sup>1</sup> Primarily the emancipation of serfs in the Emancipation Manifesto of 19<sup>th</sup> February 1861, which aroused the need to solve many legal disputes between landlords and peasants concerning the allocation of land and the police reform of 1862, which excluded the arbitration of infringements from the scope of the police.

and institute of the jury courts. The jury courts, at the time of the reform imposition also indicated as the cornerstone of judicial reform<sup>2</sup> should have become a symbol of equal participation of all segments of society<sup>3</sup> in the judicial power execution and its independence from the state apparatus. Reforms led to moderate modernization of Russia through growth of capitalism and evolution of the peasantry. On the other hand, they have also evoked the pressure for further reforms, which led to weakening the absolutistic character of the Tsar's power. Alexander II had to answer himself the question known to all big reform creators – where does he want and can end his reform effort? His unwillingness to walk the way of the constitutional monarchy, fragmentary and slow implementation of the reform institutes into the praxis, and also the reluctance of the bigger part of the administrative apparatus to any changes in the detriment to its comfort of existence led to massive sway of revolutionary movement.

## 2. Russian revolutionaries in 1860–1881

The revolutionary effort at the beginning of the sixties of the 19<sup>th</sup> century was concentrated mostly in the organization *Zemlja i volja* (Land and Freedom), main goals of which were passing the land to the peasants, enabling elections of the local government, cuts in expenses of government and palace. Within this organization there was a radical group led by N.A. Ishutin, goal of which was to unleash the peasant revolution. One of its members – D.V. Karakozov has (not successfully) attempted the assassination of the Tsar Alexander II. Together with some members of the circle Karakozov became a supporter of the tactics of individual terrorism and believed that killing the Tsar could serve as an impetus to awaken people to the social revolution.

In the year 1869 a group called *Narodnaja razprava* (National dispute) was established. Its leader C.G. Nechayev was author of the radical Catechism of the revolutionary,<sup>4</sup> in which he formulated a program of large-scale terror with massive loss of life for the sake of “the bright future of all mankind”. Nechayev became ‘famous’<sup>5</sup> by the murder of the student I.I. Ivanov. In November 1869 Nechaev in a cave of Peter's Academy

<sup>2</sup> For example, a major Russian lawyer of this period, A.F. Koni indicated the jury as “*the best part of judicial reform, based on the confidence in the national spirit*”; A.F. Koni, *Sobranie cocinenij v vosmi tomach*, Tom 4. Moscow, Juridiceskaja literatura, 1966, p. 43.

<sup>3</sup> Participation of all segments of society on the judicial power execution as one of the main ideas behind the incorporation of jury courts in judicial reform of 1864 should be viewed in the context of other significant reform of Alexander II, the emancipation of serfs in the Emancipation Manifesto of 19<sup>th</sup> February 1861. In the process of preparation of the judicial reform the competent concluded that the introduction of jury courts in Russia is “much more urgent than in other countries because in no other country has a historical life of the nation put such harsh boundaries between segments of society, for which there are so many differences between the traditions and way of life of our judges from higher and the accused from lower layers of society”; V.V. Frolov, *Sudebnaja reforma 1864 goda v Rossii i ee otrazenie v pravosoznanii rossijskogo obscestva serediny XIX veka*, Sankt Peterburg., SPGU, 2003, p. 69.

<sup>4</sup> Catechism of the revolutionary consists of four sections – The attitude of the revolutionary self, the attitude of revolutionaries in the revolution, the attitude of the revolutionary to the public and the ratio of the partnership to the people.

<sup>5</sup> The case of C.G. Nechayev inspired F.M. Dostojevsky to write the novel “Besj”.

with four other members of his organisation killed I.I.Ivanov, who was also a member of Narodnaja razprava, for disobeying his will.

In the seventies of the 19<sup>th</sup> century the reform zeal mostly of the young, educated people led to so called “chozdenie v narod” (going to people), which meant that approximately 2500 of them went to peasant villages to work there as teachers, doctors, nurses, vets etc. Here was tested in praxis the idea of peasant commune as a foundation of just social order, which was the fundamental of the so called ‘narodnichestvo’, an ideology built on the theory of a non-capitalist path for Russia’s development – the idea of a transition to socialism through the preservation, use, and transformation of the collectivist principles.<sup>6</sup>

The second organisation called Zemlja i volja established in the year 1876 was much more radical than its ascendent. It was built on the idea of necessity of the peasant revolution leading to creation of a federation of communes, and it was organizing first demonstration in Russia on 6<sup>th</sup> December 1876 in St. Petersburg. It was behind several violent actions against representatives of the regime. Since 1878 Zemlja i volja shifted from an anarchistic propaganda among the peasants directly to the fight against the government for political freedom. In resistance to autocracy, which choked any unwanted propaganda, naturally developed a political direction. Twofold reason, characteristic of autocratic and semi-feudal Russia, clothed it mostly in the form of terror.<sup>7</sup> In the year 1879 Zemlja i volja split into two organisations – Czernyj peredel (Black repartioning), which concentrated on propaganda and Narodnaja volja (Will of nation) stirring up ‘emperor hunt’ – terroristic actions with emperor as a primal target, which led to assassination of Alexander II on 13<sup>th</sup> March 1881. Aggressive approach of the state organs against tsar assassins<sup>8</sup> gave a clear sign to the public that Tsar Alexander III will, opposite to his famous reform predecessor, follow the way of conservation of the absolutistic ‘samoderzhavie’.<sup>9</sup>

### 3. Political trials after the judicial reform

First political trial after the issuance of reform codes was that of Dimitrij Karakozov and company for the attempt to assassinate the Tsar. There were 197 persons arrested, 36 sentenced. The process was a mixture of the pre-reform and reform characteristics. The pre-reform was mainly the enquiry led by special commission, non-public hearing, reform was the participation of the councillors. The sentences were very strict – two death penalties (for Karakozov and Ishutin), seven persons were punished with impris-

<sup>6</sup> More available at: <http://encyclopedia2.thefreedictionary.com/Narodnichestvo> (access: 9.03.2012).

<sup>7</sup> N. Troickij, *Vtoraja revoljucionnaja situacija v Rossii*, available at [http://scepsis.ru/library/id\\_1623.html](http://scepsis.ru/library/id_1623.html) (access: 9.03.2012).

<sup>8</sup> Already in the middle of March 1881, police caught all murder participants and they were executed in public on 3<sup>rd</sup> April 1881.

<sup>9</sup> Tsar has shown his attitude clearly in the Manifest from 29<sup>th</sup> April 1881, where he declared his will to confirm and protect the ‘samoderzhavie’ power from any attacks. The political program of Alexander III is characterized by his accentuation of orthodoxy, nationalism and autocracy.

onment for 8, 12 and 20 years and one person was sent to Siberia. (These were sentences for the first “group” of 11 persons accused of the most serious crimes). The emperor was not satisfied with moderateness of the court, especially with low number of death penalties, as the “sentence created no place for mercy”.<sup>10</sup>

In the year 1869 the process in the case of ‘Nechayevs’ started. Nechayev himself managed to escape abroad,<sup>11</sup> but his comrades were found and brought to trial in the St. Petersburg Court. They were prosecuted not only for murder, but also for the formation of a revolutionary society. The inquiry was conducted in strict accordance to new judicial codes and took therefore time, necessary for realization all actions required by law.<sup>12</sup> Dissatisfaction of the government with the long inquiry according to new codes led to issuing the Law of 19<sup>th</sup> May 1871, where the inquiry in political crimes was given to a police force – zhandars. This law, designed to make inquiries more efficient and less ceremonious, become a cover for concealing the traditional zhandarmerie lawlessness. It’s not even just to say that zhandars deliberately violated the rule of law, and procedural rules, they usually were not able to understand them. Law of May 19 was the first step in the judicial counter-reforms, which thus began when the statutes of 1864 were just issued and had not even been fully implemented.<sup>13</sup> Public hearing was conducted by cognizant court, which was giving the unsatisfactory moderate penalties, and this made it necessary to exclude all crimes against the state from the authority of general courts. By the Law of 7<sup>th</sup> June 1872 Special Department of the Senate was formed. The process there was non-public, the sentence always matched the accusation, there was no possibility to appeal against the decision. The process was realized under Tsars supervision. In the years 1873–1878 Special Department arbitrated 37 political trials.

Great attention of the public won the process of Vera Zasulich. On 24<sup>th</sup> January 1878 Vera Zasulich walked into the house of St. Petersburg City Chief General Trepov and fired twice at the general from brought in revolver, hitting his left hip. Vera Zasulich was arrested on the spot and subsequently charged with attempted murder. The motive of the crime inhered in the incident of 13<sup>th</sup> July 1877, when the General came to the prison on Spalernaja street, where he met prisoner Bogoljubov, member of the organization Zemlja i volja, accused of serious crimes of a political nature.<sup>14</sup> Trepov’s act caused in Vera Zasulich a need to punish the perpetrator of oppression of defenseless prisoner, whom according to her argument she had never met before. While with regard to the circumstances of the case, the Minister of Justice was sure that the jury court could

<sup>10</sup> N. Troickij, *Vtoraja revoljucionnaja...*

<sup>11</sup> In 1872 the Swiss government handed Nechayev over to Russia as a criminal. He was tried in the Moscow district court, in a process with a participation of jury court. He was convicted of the murder of Ivanov, he was sentenced to hard labor in the mines for 20 years, but he was not sent to the mines, and imprisoned in the Peter and Paul Fortress.

<sup>12</sup> As a result of inquiry and investigation, the case dragged on for six years.

<sup>13</sup> N. Troickij, *Vtoraja revoljucionnaja...*

<sup>14</sup> At this meeting, Bogoljubov bowed Trepov, but when the general passed through a second time, Bogoljubov did not hacked down his cap. Extremely annoyed Trepov took the cap with screaming from Bogoljubov’s head. Prisoners, watching the incident from windows, began to shout and protest, whereupon Trepov issued an order to corporal punishment of Bogoljubov. Trepov’s procedure was illegal, because corporal punishment for disciplinary offenses might be under Russian law imposed only on convicted persons, while a judgment in Bogoljubov’s case, convicting him on the penalty of forced labor in the period of fifteen years was not yet in force.

not decide otherwise than by finding the defendant guilty, the case was transferred to a decision of the jury court and was not qualified as a criminal offense against state.<sup>15</sup> A process of Vera Zasulich at St. Petersburg's district court began on 31<sup>st</sup> March 1878 under the chairmanship of A.F. Koni. Act of Zasulich was classified as attempted murder under the provisions 9 and 1454 on the Law on penalties and corrections with impending punishment of forced labor in the range of 15 to 20 years with deprivation of all property rights. In the trial it was shown that Zasulich obtained the revolver in advance, and the revolver was "strong and short", which the prosecutor in itself considered a sufficient evidence of her intention to kill Trepov. The jury ruled that the accused was innocent, so the presiding judge in accordance with the law exempted Zasulich from indictment and released her from custody.<sup>16</sup> This led to a legal reconstruction of the jury courts by laws passed in the years 1878–1889. By the Law of 9<sup>th</sup> May 1878 all criminal acts having political overtones, such as resistance to state authority, murder and attempted murder of the state power representatives were excluded from the scope of the jury jurisdiction.

#### 4. Regulations of Alexander III

The assassination of Tsar Alexander II on the 1<sup>st</sup> of March 1881 evoked understandable concerns in the government class about the unleashing of the revolution. The most important acts on legal protection of the existing regime became the Regulation on ways of protection of the state regime and public order from 14<sup>th</sup> August 1881 and Regulation of the police surveillance from 12<sup>th</sup> March 1882.<sup>17</sup> These regulations were meant as exceptional laws, which allowed for the extension of the authority of the state organs and realization of wide law enforcement by the police power.<sup>18</sup> Even though they were issued only as temporarily acts for 3 years, their effectiveness was prolonged till 1917. The Tsar's regulations were following the idea of consistent enforcement of the resources and goals of the protection of the state regime. In the hands of one person – Interior Minister, was concentrated the biggest power to 'determine the direction of the state protection'.<sup>19</sup> The regulation covered the obligation of all local organs to fulfill immediately all the decisions of the Interior Ministry issued upon this regulation. Like wise, the regula-

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<sup>15</sup> Under Articles 1030 and 1031 of the Law on penalties and corrections of 1864 criminal offenses against the State decided judicial chambers and supreme criminal court without the participation of jurors in a specially modified procedure.

<sup>16</sup> When Alexander II learned the verdict, in contravention of applicable laws imposed general Kozlov, Trepov's deputy in the town chief office to issue a warrant for the arrest of Vera Zasulich, but she managed to hide in a conspiracy flat and later emigrated to Switzerland. The Minister of Justice Palen alleged A.F. Koni from illegal conduct and transferred him to a civil college of the court. Palen himself was dismissed from his post for negligent supervision of Zasulich's case.

<sup>17</sup> The fact, that these legal acts were called regulations is not because of their lower legal power in comparison to other legal acts called laws. The normative legal acts of tsarist Russia were declaring their position in the system of law from the issuing organ, not from their name. The highest legal power had the legal acts coming from Tsar, which didn't have an uniform name, which would indicate its legal power.

<sup>18</sup> V.M. Gesen, *Iskjučitel'noe položenie*, Sankt Peterburg, Pravo, 1908, p. 410.

<sup>19</sup> Clause 1 of the Regulation on ways of protection of the state regime and public order.

tion provided for the right of the Minister to change any decisions or acts of all lower executive organs, the right to propose new necessary regulations for the fulfilling of the regulation in a shorter legislative proceeding, and the immediate enacting jurisdiction in specified cases. The protection of the state regime and public order was realized by declaration of exceptional measures

[...] in the cases where the criminal action of the persons, who have bad thoughts about the state policy and social security, have such a dangerous character that the special measures are necessary to stop its exhibition.<sup>20</sup>

The regulations covered two types of special measures – higher protection and extraordinary protection. The regime of higher protection could be declared when the public policy in the respective place was disturbed by delinquent action against existing state order or the safety of people or property, or even the attempts for such an action, where for keeping the policy and peace the existing legal measures were not sufficient. The regime of extraordinary protection could be declared when

[...] the inhabitants of the respective place were brought to a nervous mood, which shows the necessity of special measures to be taken in the place to restore immediate order and peace.<sup>21</sup>

In the Regulation of the police surveillance was the police surveillance defined as a measure leading to prevention of the criminal acts against the state order, which was ordered to persons who are dangerous for the public order and it was used within the process of forced displacement, for the time of the displacement.

In order to demonstrate the ‘special’ legal acts issued during the ruling of Alexander III, it is necessary to take into consideration also the Rules on places, where state of war was declared from 1892, which granted the possibility to declare the state of war even in the time of peace in places with ‘inner schism’ and also the Law on preventing and avoiding criminal action from year 1890, which gave the power to general-gubernators, gubernators, gradonaczalniks<sup>22</sup> and senators to call in the army in the respective places to ensure public order.<sup>23</sup> It is important to mention that during the time when state of war was declared, the military tribunals were very actively used to treat the serious crimes endangering national security – these were mostly acts of political character committed by civil inhabitants. In these proceedings the death penalty was very usual.

## 5. Conclusion

The revolutionary effort at the beginning of the sixties of the 19<sup>th</sup> century was concentrated mostly on passing the land to the peasants, enabling elections of the local

<sup>20</sup> Clause 4 of the Regulation...

<sup>21</sup> Clause 6 of the Regulation...

<sup>22</sup> Gradonaczalnik was the head of gradonaczalstvo, a place and its surrounding which is outside the authority of the gubernator, due to its significance or geographic location, e.g. Moskva, Sankt Peterburg, Odesa.

<sup>23</sup> Well known Russian lawyer V.M. Gesen in his work *Isključitel'noe položenie* is calling the regime of higher and extraordinary protection as a civil dictatorship, and the fictive state of war declared in case of inner schism as military dictatorship. V.M. Gesen, *Isključitel'noe...*, p. 75.

government, cuts in expenses of the government and palace. Measures taken to fight against revolutionary movement in the 80's and 90's of the 19<sup>th</sup> century negatively affected the reform legislation and distorted many democratic institutes introduced by the judicial reform, before they could be fully implemented. Assassination of Alexander II made the government issue radical regulations to protect the regime of samoderzhavie and the public order and policy in the country. The legal backbone of these regulations became the Regulation on ways of protection of the state regime and public order from 14<sup>th</sup> August 1881 and the Regulation of the police surveillance from 12<sup>th</sup> March 1882, which created the measures for protection of the state security. They were the basis for specific organization of government in the Russian empire, which led to effective fight against the anti-state activities and regulated the relationship between state and society in the period 1881–1917.

