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COURT OF JURORS AS COMPLEX INSTITUTION OF THE JUDICIAL SYSTEM OF UKRAINE

Abstract

In article new approaches to the essence of court of justice in Ukraine is analyzed. This article is dedicated to the topic of the feature of the legal adjusting of court of jurors. Purposefulness of usage of court of jurors as complex institution of judicial system of Ukraine was proven.

Keywords

court of jurors, judicial system, judicial trial, justice, court, judge

Defining the problem

The Constitution of Ukraine [1], which is a basic law of our country, provides that citizens are directly involved in the administration of justice by assessors and the jury (p. 124); justice in Ukraine is exercises by professional judges and, in cases determined by the court, assessors and the jury (p. 127). Proceeding is being conducted by one judge, a panel of judges or the jury (p. 129). Although the Constitution of Ukraine was adopted almost 17 years ago, problem of the jury still has not been entirely solved.

Analysis of scientific publications on which the paper is based

The basis of the paper are scientific ideas of known scholars, including: S. Bobotowa, B. Wyłeńskiego, F. Leontowicza, N. Kołmakowa, A. Koni, M. Mychejenki, Ż. Russoa, P. Szczerbinę, O. Jarmysza, S. Paszyna. Też warto wymienić naukowców P. Dewlina, W. Zażyńskiego, A. Lewi, S. Poznyszewa, D. Robertsona, W. Tertysznyka, whose works were used while preparing this article.

Shaping the purposes of the article

Taking account of an ambiguous interpretation of law, which defines this national institution of the judicial practice and to some imperfections and lack of national model of the court of jury, the purpose of the article is to examine oddities of development of institution of court of jury on the territory of Ukraine.

Basis research materials

Part 2 of Art. 1 of the Law of Ukraine "The Judiciary and the Legal Status of Judges" provides for that the judicial is being exercised by professional judges and, in cases determined by the court, assessors and the jury, by exercising the justice in the appropriate court procedures. Part 3 of a.m. Law says that citizens take part in exercising justice by assessors and the jury. Art. 63 of a.m. Law generally defines that jurors may be the citizens of Ukraine who, in cases defined by procedural law, are able to get involved in exercising justice, providing, in accordance with the Constitution of Ukraine, direct participation of the nation in exercising justice.

It is known that using of court of jury guarantees independence of judges, encourages the parties to compete, reduces the risk of abuses on pre-trial and trial level, reduces the risk of corruption and imposing an judgment on the court.

Known English lord, Patrick Delvin called the jury a "little parliament": "No tyrant cannot afford putting a decision about freedom in hands of twelve of his countrymen. This is why jury court is more than an instrument of justice and mechanism of constitution – it is a luminary, which shows that freedom is alive"[3].

Interesting thought today are one of the founders' of processual law, S. W. Poznyszew: "While evaluating the jury, often its political side reveals itself. Some sees in it one of form of allowing people in the country to manage, some defends it

strongly in this shape, other as strongly rejects. Sometimes some sees in it a wonderful school of law for the nation or even a revision, which helps them correct defects of the legal system and adjust it to the needs of society. However such views must be immediately rejected. The court of jury should be considered in science not only as judicial mechanism, which was established to serve purposes of the criminal administration of justice. Court should ever be neither a guide of some particular political tendencies, nor an instrument of political parties, nor revision of the law, which it is to exercise and execute, and only then it shall become uncommitted and just" [4].

In favor of the court of jurors speaks also an American scholar Jeffrey Robertson, who pointed out that court of jury creates competition of the trial, in which the accused may, if they want, vigorously defend themselves and the evidence are to be examined, in order to ensure that everyone could have made sure of their authenticity or falsity [5,. c. 493].

An attempt of delimitating the process form of activity of court of jury was taken in New Criminal Code of Ukraine [6], to which the Law of Ukraine "The Judiciary and the Legal Status of Judges" relates. But the idea of the court of jury itself, as professor W. M. Tertysznyk says, have suffered some serious changes and have been strongly deformed. In part 3 of Art. 31 of New Criminal Code of Ukraine it is pointed out that criminal procedure in court of first instance against the crimes for which the likely sentence of life imprisonment shall be carried out, is conducted after accused' request by "court of jury in groups of two professional judges and three jurors". No particular form of process has been revealed and could not have been, because jurors are considered a decorative addition, which use to sit with professional judges and nods under their command [7, p. 28]. Prof. W. M. Tertysznyk is quite categorical in regard to establishing the court of jury in Ukraine, pointing out that possibility of voting in legal cases for people, who are not educated in jurisprudence is in effect a discrediting of the idea of jury court [7, p. 29].

Agreeing with this assumption, we want to point out that solution of the problem is possible through the adoption of some organizational and legal projects, which are to lead to establishing the court of jury in Ukraine. Such project may include: participation of psychologist while choosing candidates for jurors or participation of an independent, competent person in a collegium of jurors.

To a positive result may lead conducting short, familiarization seminars for candidates for jurors on which they could receive minimal knowledge about criminal judiciary and legal nomenclature.

There are also suggested conclusions about limitation of jurisdiction of jurors. Russian scholar, A. Zażyński propose: "One may only correct present state of affairs by revising the legislature. It would be worthy to remove from the competence of the court of jury cases, which are related to national betrayal, spying, national secret and some other crimes against the basic constitutional regime and security of the state" [8, p. 3]. We maintain such claim, especially in the categories of cases related to national secret. It is connected first, with complicated procedure for obtaining permission for access to national secret, and with the necessity of trust, in such cases, in findings from the experts.

Process mode of organization of court may depend on the specific of state and national traditions. However, this institution secures the fulfillment of main principles of the administration of justice, which guarantees an equitable judgment. This is done by voting of citizens uncommitted in the outcome of the case, who are capable of considering a defendant guilty or innocent, by referring to their own life experience.

In our opinion, in Ukraine there is a need for the court of jurors. First, such court would create a fundament for shaping in Ukraine a trial based on competing, nevertheless in contemporary trial competition has dominant role and apart from that, such model plays role of an example of a political criterion of democracy, justice and civilized judiciary.

The fulfillment of justice with the help of court of jurors is not possible without meeting fully the rules of competition, equality of parties and their activity, and against the traditional administration of justice in examining circumstances of the case.

Second, court of jurors is exempt of the obligations of exercising the function of criminal investigations as a wrong institution of administration of justice.

Third, court of jurors has reduced the existing distance between the administration of justice and the society, after all citizens of Ukraine was given real possibility to control the activity of judicial authorities. In conditions of wide representation of the people, in legislative and executive branches of state authority exercising of judicial power for a long time was exceptional prerogative of officials.

Fourth, court of jurors in eyes of society becomes „a court of social conscious", which ensures just punishment for all guilty ones and justifies the innocent ones. Such court is not to punish, but most likely it is an educational authority, which allows criminals to look at their committed actions with their own eyes or eyes of ordinary citizens.

In time of overwhelming distrust of the legal authorities, police and judicial system, the court of jurors is necessary for consideration and equitable solution of more complicated and socially dangerous criminal cases, to avoid tragic judicial mistakes, which may be hard to correct.

Well, advantage of alternative form of justice in criminal cases is obvious, however constantly raising amount of judgments revised in cassation procedure (at first acquitting) formed by collegium of jurors, raises serious concerns.

Having regard to the declared position, we have to acknowledge the low efficiency of activity of court of jurors and agree with separate thesis of its opponents. Arguments of the last are as follows:

First is about solving a legal question of defendant' guilt by representatives of society, who have no legal education, what causes lots of legal mistakes. Delivering a judgment, jurors go by the categories of "good and evil", "consciousness and justice".

But yet one also needs to go by general standards of behavior which are consolidated in the norms of law. Ignorance of law and not understanding its sense by a collegium of jurors makes it impossible for them to normally fulfilling the justice. However, in the era of flourishing of a legal nihilism, in which the concepts of good and evil are being mixed and distorted, these factors cannot influence shaping individual features of a man. Thus, apart from these categories, common sense must prevail in a juror.

Second is about examining and evaluating evidences in bigger, group cases with lots of episodes, which are highly difficult even for professionals. Apart from that, accusation in court of jurors must be upheld by a public prosecutor. However not every prosecutor agrees for this situation, because it takes more time to prepare to the proceedings, it requires them to study the materials of criminal case more closely to learn how to come before jurors and prove the made accusation, and not only to pass an accusation request, what may be often seen in a court. In relation to that, person, who conduct investigation, must do their work in such a way to obtain other evidences than a testimony of an accused.

Third – courts of jurors delivers a large number of acquittal verdicts (in regular courts this number does not exceed 1%, in courts of jurors it is 18% and more). A Russian scholar, A. Lewi draws attention to mistakes in activity of court of jurors and ascertains that 50% of acquittal verdicts are being invalidated in cassation procedure [9, c.25].

The fourth argument relates to fact, that our society is not prepared to solve the question of guilt and innocence of a man in a just way because:

- our society has no legal traditions;
- has no general moral basis, for example religious;
- social and economic differentiation is too strong, people are irritated, envy the rich and hatred for criminals prevails;
- general criminogenic situation etc.

The fifth argument is that the court of jurors is connected with Anglo-Saxon institution of the precedents. For us though, it is not necessary, for Ukraine belongs to continental family of law. Establishing court of jurors is against cultural foundation and traditions of national law.

Some of these arguments in our opinion are not consistent with reality. For example results of carried out research allows to conclude that court of jury in Ukraine has deep roots, which go back to ancient history, however, because of lack of required conditions (economic, social, political), was not given a chance to develop. For this reason such court cannot deny cultural foundation and traditions of Ukraine.

Arguments of opponents of court of jurors, which are based on unfounded advantage of acquittals delivered by jurors, also cannot be considered a confirmation of collapsing of this court. Indicated thesis most likely show notable repressiveness of "regular" courts, than "incompetence" of work of a court of jurors.

However we may agree with the argument of opponents of court of juror which relates to today's incapability of society to exercise the administration of justice.

In relation to that, problem of allowing people, who has no required level of education, morality, moral resistance etc., to perform the duties of a juror, deserves for special attention. The issue is complicated by the lack of legal tradition and unfinished process of shaping a civil society. To avoid unilateral implementation of a legal reform, level of legal culture of society needs to be increased. Absence of indicated projects, as it is apparent from the practice, and functioning of court of jurors in different historical moments leads to destruction of a trust for this institution and to change of its essence.

Mistakes which are being made in activity of the court of the jurors, and which existence is being confirmed by petitions of higher instances, indicates the presence of some gap in its organization, but does not allow making a conclusion about malevolence of such institution.

Conclusion

In our opinion, any point of view, which indicates an imperfection of a court of jurors or activity of higher instances (taken into account are: cassation and supervisory) is unilateral and subjective. In this case it is important to note not only defects of a court of jurors, but also an activity of higher instances, what allows finding a compromise, which serves making just and objective decisions.

In our opinion, it is necessary today to elaborate a rational procedure, within which verdicts of jurors shall acquire legal validity, the collegium will stop have only declarative character, and higher instances will stop paralyzing activity of this quite expensive institution.

Apart from indicated above, a positive aspect of development of institution of court of jurors in Ukraine is also that by institution of court of jury, role of barrister in trial strengthens, declared rule of competing of parties of a trial realizes in practice and a growth of principle of democracy is ensured.

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