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FOREIGN EXPERIENCE IN THE FORMATION OF JURY TRIALS (BASED ON THE EXAMPLE OF NORTH AMERICAN AND EUROPEAN COUNTRIES)

Abstract. In this article, the authors analyze the experience of the jury system as a component of democratic justice and the judicial system in foreign countries. They examine the advantages and disadvantages of introducing the jury system in countries belonging to the Anglo-Saxon legal family and the Romano-Germanic legal family.

The authors examine models of jury trials in the United States and England (common and distinctive features of countries in the Anglo-Saxon legal family), Germany and France – the birthplace of the jury system in the Romano-Germanic legal family, as well as Georgia, which belongs to the Romano-Germanic legal family but has chosen the American model as its example.

The process of reforming the judicial system in Ukraine is linked to the establishment of the court as an independent branch of government. Fair trial and adequate protection of fundamental human and civil rights and freedoms enshrined in the Constitution and international documents are possible under conditions of procedural legislation that is close to international standards.

The development of a country's social and economic relations directly depends on its human potential, which is why studying foreign experience in implementing the jury system as a means of protecting human rights and freedoms is a crucial task for any social and legal state.

Jury trials have undeniable advantages. These include the parties' right to form a jury by filing reasoned and unreasonable challenges, the independence of jurors from professional judges who may use their authority to influence jurors, and the absence of bias against the defendant, which is ensured by prior ignorance of the case materials and negative information about the defendant.

The authors raise the question of the expediency of the jury system in Ukraine, given that cases are reviewed by professional judges in the appellate court. Under such conditions, if any of the parties to the proceedings disagrees with the court's verdict, it has the right to appeal the verdict to a higher court. The article states that the formation and functioning of a jury court is generally carried out in stages. First of all, it is necessary to distinguish between the judicial stage of forming a jury: determining the criteria for selecting jurors, compiling and approving their lists, and forming a jury as a stage of administering justice.

Keywords: court, justice, juror, jury system, jury trial, Romano-Germanic legal family, Anglo-Saxon legal family, judicial precedent.

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ЗАРУБІЖНИЙ ДОСВІД ФОРМУВАННЯ СУДУ ПРИСЯЖНИХ (НА ПРИКЛАДІ КРАЇН ПІВНІЧНОЇ АМЕРИКИ ТА ЄВРОПИ)

Анотація. У статті авторами проаналізовано досвід інституту присяжних як складової демократичного правосуддя та судової системи зарубіжних країн. Досліджено переваги та недоліки запровадження інституту присяжних в країнах англосаксонської правової сім'ї та романо-германської правової сім'ї. Автори дослідили моделі суду присяжних на прикладі США та Англії (спільні та відмінні риси країн англосаксонської правової сім'ї), Німеччини та Франції – батьківщини інституту присяжних романо-германської правової сім'ї, а також Грузії, яка належить до романо-германської правової сім'ї, проте за взірць обрала американську модель.

Процес реформування судової системи в Україні пов'язаний зі становленням суду як самостійної судової гілки влади. Справедливе судочинство та належний захист закріплених в Конституції та міжнародних документах основоположних прав і свобод людини та громадянина є можливим за умов

наближеного до міжнародних стандартів процесуального законо-давства. Розвиток соціально-економічних відносин держави безпосередньо залежить від людського потенціалу, саме тому вивчення зарубіжного досвіду впровадження інституту присяжних як системи захисту прав і свобод людини є надважливим завданням будь-якої соціально-правової держави.

У суду присяжних є безсумнівні переваги. До них належать наявність у сторін права на формування колегії присяжних шляхом заявлення мотивованих та немотивованих відводів, і незалежність присяжних засідателів від професійного судді, який може своїм авторитетом вплинути на присяжних, і відсутність упередженості щодо підсудного, що забезпечується попереднім незнанням матеріалів справи, негативних даних щодо підсудного.

Автори піднімають питання про доцільність функціонування інституту присяжних в Україні оскільки в апеляційній інстанції справу переглядають професійні судді. За таких умов, якщо будь-яка із сторін судового провадження не згідна із вироком суду, вона має право оскаржити вирок до суду вищої інстанції. В статті зазначено, що формування та функціонування суду присяжних на загал здійснюється поетапно, насамперед потрібно розрізнити судоустрійний етап формування складу присяжних: визначення критеріїв підбору присяжних, складання та затвердження їх списків і формування складу присяжних як етап відправлення правосуддя.

Ключові слова: суд, правосуддя, присяжний, інститут присяжних, суд присяжних, романо-германська правова сім'я, англосаксонська правова сім'я, судовий прецедент.

Statement of the problem. In various countries around the world, the people have long been involved in the administration of justice, thereby emphasizing the status of an independent and democratic judicial branch of government. An attribute of any democratic and social-legal state, including Ukraine, is an appropriate level of justice through the involvement of representatives of the people in the administration of justice. Significant changes that have taken place in various spheres of our society have necessitated judicial reform, one of the important areas of which has been the introduction of jury trials in Ukraine. Article 124 of the Constitution of Ukraine enshrines the participation of the people in the administration of justice through jurors, and such participation is formally enshrined not only in the Criminal Procedure Code, but also in the Civil Procedure Code of Ukraine. Given that this is a relatively new institution for Ukraine, the country faces problems in forming a list of potential jurors, and cases involving jurors are extremely rare. Therefore, it is necessary to study international judicial practice in order to understand the legal basis for the long-term functioning of the jury system and to borrow its positive features. This article will focus on the study of jury trials in criminal cases only.

Analysis of scientific research. The problem of the establishment and development of the jury system as a component of the judicial branch is reflected in the scientific works of: Yermolaiev V. V., Slovka E.I., Novykov O.V., Korotun T.V., Berch V. V., Kobrusieva E. A., Tkachenko M. G., Konieva E. M., Serdinskyi V. S., and others. Despite the significant number of works, the issue of the jury system remains relevant today.

Purpose of the article. To use special legal methods to study the features of jury trials in countries with Anglo-Saxon and Romano-Germanic legal systems and determine which of them could be useful for the full implementation of jury trials in Ukraine.

Presentation of the main material. Adherence to the principle of democracy in the process of considering a court case is an integral attribute of a social and legal state, where the people take a direct part in the administration of justice. The involvement of the people in the process of justice has its ancient roots.

Throughout history, there have been various forms of public participation in the administration of justice. Starting with the collegium of heliaists in Ancient Greece, the ting in Scandinavian countries, the grand jury in England, the “court of equals” in France, and the scheffen in Germany, the modern Anglo-American and Franco-German (continental) models of jury trials were formed. This legal institution had its own history, characteristics, and stages of evolution in each nation [1, p. 28].

The introduction of the jury system in a number of European states took place during the late 18th and early 19th centuries. France was the first state to establish a jury system after the revolution in 1791.

The state formed a new continental model of criminal trial by a professional judge with the participation of jurors, whose task was to decide on the guilt or innocence of the defendant, and during the reign of Napoleon, it regulated the innovations of the Criminal Procedure Code of 1808 [2, p. 74].

There are two main models of jury trials in the world: Anglo-American and continental. The Anglo-American model is provided for by the legislation of the United States, Canada, Great Britain, and Spain.

This model is characterized by the division of powers between the jury and the professional judge, namely the jury decides on the guilt of the person, and if the jury finds the person guilty, the professional judge determines the sentence; the jury renders a verdict, which, as a rule, is unmotivated (with the exception of Spain); the verdict can be overturned, as a rule, only in the event of significant violations of procedural law [3, p. 726].

The Anglo-Saxon model provides that, in the absence of a judge, the court independently renders a verdict of guilty or not guilty, which is binding on the judge.

The characteristic features of the Anglo-American jury model are the division of powers between the jury and the professional judge; the jury renders a verdict, which, as a rule, is unmotivated (with the exception of Spain, where, according to the law, jurors must motivate their verdict regardless of whether it is acquittal or conviction); the verdict can be overturned, as a rule, only in the event of significant violations of procedural law. In this model, the verdict is considered to be an independent decision of the jury, made without the participation of professional judges, expressing their agreement (or disagreement) with the indictment. In other words, the Anglo-American model is characterized by the fact that the jury answers the question of whether the defendant is guilty of committing the offense. If the jury answers this question in the affirmative, the professional judge, on this basis, determines the specific type of punishment for the defendant and decides other issues that require special knowledge in the field of law. It is precisely this functional content of the jury's competence that creates the preconditions for classifying them as “judges of fact,” while a professional judge is a judge of law [4, C.133].

Federal law in the United States establishes a procedure for selecting jurors for certain types of cases from different social strata of the population living in the area where the trial is taking place. At the same time, US law sets restrictions on candidates for jury service. Such candidates may be US citizens who are at least 18 years of age, have resided in the relevant area for at least one year, are able to read, write, and understand English, have no mental or physical disabilities, have not been charged with a crime or convicted of a crime punishable by imprisonment for more than one year, are not classified as persons who may disclose confidential judicial information, and are capable of performing the duties of a jury. Military personnel, firefighters, and officials of legislative, executive, and judicial bodies are not included in the jury lists [5, 45].

In the United States, each federal district court has its own procedure for selecting jurors. The basis for selecting candidates is census data, lists of voters in the district or taxpayers, information from city directories, and telephone directories. Each state has a court official who compiles a general list of citizens. This same person compiles a list of candidates for each specific trial, taking into account that the jury should be representative of all possible segments of the population [6].

The United States Constitution guarantees jury participation in all criminal cases. The Supreme Court declares this preference to be “fundamental to the American system of justice” and the most important element of the Sixth and Seventh Amendments to the Constitution, which concern the right to a jury trial in criminal and civil cases, respectively. This institution, formed by citizens selected by the parties to the case, is an integral part of the judicial system. During the trial, the jury establishes the facts of the case and determines whether they testify in favor of a particular party [3, 727].

For US citizens, serving on a jury is an honorable duty. Those selected to serve on a jury begin a new life—after taking the oath, they must limit communication with acquaintances so as not to create a false impression of the circumstances of the case, minimize reading newspapers and watching television, and refrain from using the internet. Violation of these rules may result in a violation of a person's right to a fair trial. As a result, the juror may be held criminally liable.

The first jurors in England acted as witnesses, providing certain information about crimes and offenses committed, but gradually jurors began to act as judges in civil and criminal disputes. Somewhat later, they were given other functions, moving from reporting on events they had witnessed or knew about in advance to discussing the evidence provided by the parties involved in the case. It gradually became clear that in order for a juror to make an independent and impartial decision, they should know as little as possible about the case before the trial began [6].

Currently, in England, matters relating to jury trials are governed primarily by the Jury Act 1974, as amended and supplemented. The formation of the initial jury list is entrusted to a special court official appointed by the Lord Chancellor. This official compiles a list that includes persons who meet the relevant requirements of the law.

These must be persons who are on the electoral register, have been permanently resident in England and Wales for at least 5 years after reaching the age of 13, are not younger than 18 and not older than 75, do not suffer from mental disorders and are not disqualified from serving as jurors. The law also lists persons who cannot serve as jurors. Thus, persons who have been sentenced to imprisonment for less than 5 years, who have been taken into custody, as well as persons who have been given a suspended sentence or sentenced to community service, cannot serve as jurors for a period of 10 years. Persons sentenced to life imprisonment, imprisonment for more than 5 years, or imprisonment for the sake of public safety are disqualified for life. In addition, persons who are unable to effectively perform their duties as jurors, namely those who have a poor command of English or have physical problems, may be dismissed by the judge [7, p. 23].

From the perspective of law enforcement in the post-Soviet space, Georgia's experience of introducing the American model of jury trials is interesting. Article 27 of the Criminal Procedure Code of Georgia [8] stipulates that a jury consists of twelve jurors and two alternate jurors. The jury must consist of at least six jurors in cases involving less serious crimes, at least eight in cases involving serious crimes, and at least ten in cases involving particularly serious crimes. The Code establishes the requirements for a person who can be a juror: they must be at least 18 years old, be fluent in the language of criminal proceedings, reside in the relevant district of Georgia where the jury list is kept, have full legal capacity, and have no reasons that would prevent them from performing their duties as a juror. The jury selection

procedure is similar to the US system. A distinctive feature of the legal regulation of jury trials is that an acquittal by a jury is final and cannot be appealed.

A distinctive feature of the continental model is that a single panel is formed to hear cases, consisting of professional judges and representatives of the people, who jointly decide on the guilt or innocence of the defendant (the question of fact), as well as on the classification of the crime and the punishment of the defendant. This model is common in France, Germany, Austria, Denmark, and Italy.

A characteristic feature of the French jury system is that the French Code of Criminal Procedure, adopted in 1958, finally abandoned the institution of an independent jury, leaving only the term “jury” formally in the law. Article 356 of the French Code of Criminal Procedure provides: “The court and the jury shall deliberate and then vote by ballot.” In the event of a positive answer to the question of guilt, the court immediately discusses the sentence. France's merit is that the combination of Anglo-Saxon and French legal customs contributed to the development of the jury with the subsequent formation of a two-tier jury court structure – professional judges and representatives of the public.

According to the French Code of Criminal Procedure, the status of a jury is equivalent to that of professional judges. This means that the jury, together with the judges, makes a judicial decision in the deliberation room. The jury decides not only on the guilt of the person, but also on the sentence. Jurors are active participants in the trial process and have the right to ask questions indirectly through the presiding judge. The main duties of jurors are to administer justice according to their inner convictions and to keep the deliberations of the jury room secret. Justice by jury is administered both in the first instance and on appeal. Article 296 of the French Code of Criminal Procedure provides for a jury of six members if the case is heard in the first instance and nine members if it is heard on appeal.

Prior to the amendments to the Code by Law No. 2011-939 of August 10, 2011, there were more members of the jury in jury courts: nine in the first instance and twelve in the appellate court [9, p. 170].

The jury system in Germany began operating in 1848. At the same time, in 1924, it was somewhat modernized into a lay judge system, which consisted of three judges who administered justice on a professional basis, as well as six lay judges. Since 1975, the number of lay judges who are not professional judges has been two. In Germany, there is an institution of lay judges who, as representatives of the people, are involved in the consideration of cases in court hearings. A number of requirements are imposed on such persons, including: citizenship; age between 25 and 70; residence in the territory of the relevant municipality; legal capacity. Persons who have "violated the principles of humanity of the rule of law, persons sentenced to imprisonment for more than 6 months, as well as persons who have already been lay judges for two consecutive terms, whose term of office is still ongoing at the time of compiling the

list of candidates for lay judges, cannot exercise direct democracy through the administration of justice. When selecting shaffens, the principle of equality between men and women must be observed [10, p. 234].

In Germany, criminal cases are typically heard by a panel consisting of one professional judge and two lay assessors (non-professional judges). In some very serious cases, such as those involving the death of a victim, the court consists of three professional judges and two lay assessors. All important procedural issues during the trial are decided by the entire court, judges and assessors, and not just the presiding judge. Throughout the decision-making process, assessors have the same rights as professional judges. Only a simple majority of votes is required to decide procedural issues; lay assessors cannot outvote their fellow judges. This is even more true for decisions on sentencing and punishment, where a two-thirds majority is required. In this way, lay judges can prevent any decision from being made to the detriment or benefit of the defendant [11]. Lay judges are selected through a nomination and selection process dominated by local parliaments and local authorities. These bodies compile a list of potential lay judges, which consists of twice as many lay judges as are actually needed. A commission consisting of one professional judge, one administrative officer, and ten trusted individuals appointed by the state administration then selects jurors from the list. Jurors are assigned to different courts by random selection for a period of 12 days [11].

Conclusion. Despite the fact that the jury system is enshrined in Ukrainian jurisprudence (both criminal and civil), its application is problematic, ranging from the formation of jury lists to the extremely small number of cases heard by courts with the participation of jurors. Therefore, legislators should take into account the practice of jury trials in North America and Europe and decide on the model and scope of application of jury trials in Ukraine.

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