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THE JURY SYSTEM OF UKRAINE: ORGANIZATIONAL SUPPORT OF ITS FUNCTIONING

In the article the key issues on realization of organizational support for jurors' activity are revealed: formation of jurors' lists; technical support; organizational support; information and methodical support; financial support. The recommendations regarding the Council of the jurors of the district court as a form of jurors' self-organization with the status of an advisory body functioning within the office of the head of the court are given.

Key words: juror, institution of jurors, organizational support for jurors' activity, assurance of jury's activity, the Council of jurors of the district court.

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СИСТЕМА ПРИСЯЖНИХ В УКРАЇНІ: ОРГАНІЗАЦІЙНА ПІДТРИМКА ЇЇ ФУНКЦІОНУВАННЯ

У статті розглядаються основні проблемні питання реалізації напрямів організаційного супроводу діяльності присяжних: формування списків присяжних; матеріально-технічне забезпечення; організаційно-технічне забезпечення; інформаційно-методичне забезпечення; фінансове забезпечення. Надаються рекомендації щодо Ради присяжних окружного суду як однієї з форм самоорганізації присяжних зі статусом консультативно-дорадчого органу при голові суду.

Ключові слова: присяжний, інститут присяжних, організаційний супровід діяльності присяжних, забезпечення діяльності присяжних, Рада присяжних окружного суду.

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СИСТЕМА ПРИСЯЖНЫХ В УКРАИНЕ: ОРГАНИЗАЦИОННАЯ ПОДДЕРЖКА ЕЕ ФУНКЦИОНИРОВАНИЯ

В статье рассматриваются основные проблемные вопросы реализации направлений организационного сопровождения деятельности присяжных: формирование списков присяжных; материально-техническое обеспечение; организационно-техническое обеспечение; информационно-методическое обеспечение; финансовое обеспечение. Даются рекомендации в отношении Совета присяжных окружного суда как одной из форм самоорганизации присяжных со статусом консультативно-совещательного органа при главе суда.

Ключевые слова: присяжный, институт присяжных, организационное сопровождение деятельности присяжных, обеспечения деятельности присяжных, Совет присяжных окружного суда.

Постановка проблеми

In accordance with Article 124 of the Constitution of Ukraine, the people directly participate in the provision of justice as jurors. However, until 2012, this constitutional norm had not had its procedural fixation. Only after the adoption of the new Criminal Procedure Code of Ukraine, the institute of jurors and the jury, as a procedural embodiment of the constitutional right of the people to participate directly in the provision of justice, had proved its ability as the rule of law in Ukraine.

According to the State Court Administration of Ukraine, in March 2013-March 2018, the jury trials were formed in 199 cases for the consideration of criminal cases. In 2017, the jury was extended to civil cases within a separate proceeding (25,264 civil cases were considered with the involvement of jurors in 2017).

The effective performance of the jurors' duties depends largely on proper organizational support of their activities. It ultimately affects the quality of the provision of justice by the jury. In fact, in the list of functions of the district court apparatus there is a separate direction, which is connected with the support of the activity of both the jurors and the jury.

At the same time, the survey of the heads of the district courts, as well as the jurors themselves, revealed many organizational problems associated with the jury. In particular, to the request "Give an assessment of the organizational support of the jury by the employees of the court apparatus" 89% of the surveyed heads of local courts and 93% of jurors say that the staff of the court apparatus does not fully understand the specific characteristics of jury trials and jury status.

Мета

The objective of the paper is to reveal the main problems connected with the organization of the jury's activity in Ukraine.

Аналіз останніх досліджень і публікацій

The issues related to the formation and functioning of the jury are considered by prominent scholars of the past, S.Viktorovsky, L. Vladymyrov, L. Ganevych, P. Stebelsky, G. Gros, A. Kistiakivsky, A. Koni, K. Krotevych, P. Lublin, I. Foynitsky and others. In Ukraine, the organizational and procedural aspects of the jury were revealed in works by I. Glovyuk, A.Voyanarovykh, S. Ivanitsky, O. Kaplina, R. Kachur, S. Prylutsky, O. Prokopenko, V.Termetsky, G. Shtogun, V. Shcherba and others.

Виділення не вирішених раніше частин загальної проблеми

Despite a large number of scientific studies of the activities of the jury, in Ukraine there is no comprehensive study of the jury activity after the adoption of the new Criminal Procedural Code of Ukraine and the constitutional reform of 2016. Besides, despite a certain study of the organizational activity of the courts in the Ukrainian literature (see, for instance 2, 3, 4, 5, 6, 7, 8, 9, 10), the procedures for ensuring the activity of jurors and jury trials have not been researched yet.

Виклад основного матеріалу

According to D. Pryamachenko and R. Igonin, organizational support for judicial authorities can be defined as a set of administrative, financial,

informational, organizational and logistical measures that are of a non-procedural nature and aimed at creating and maintaining appropriate conditions for the effective functioning of the judiciary [12, p. 58].

According to D. Pritika, the subject of judicial management (administering) is: the organization of judicial bodies, the selection of judges and jurors; judicial personnel management; monitoring of the work of the judiciary; study of judicial practice; arrangements on the judicial statistics [13, p. 32].

As it appears, organizational support for the activities of the jury is in a combination of appropriate measures, the implementation of which allows creating the proper conditions for the provision of justice by the jurors. Such support consists of activities in the following areas:

- participation in the formation of jury lists;
- technical support;
- organizational support;
- information and methodical support;
- financial support.

Let's outline the main issues in each prospect.

There are two tendencies in the activities of district court apparatuses on the formation of jury lists. The first of them comes from the Regulation that the formation of lists is an exclusive function of local self-government bodies. As a consequence (including the position of court apparatus), there are non-formed jury lists (in a proper number), especially in large cities. Thus, at the beginning of 2018 the "shortage" of jurors in four local courts of Odessa reached 40%. The second tendency is connected with the fact that the apparatus of the district court should select jurors, who later, allegedly on their own, submit their applications to local self-governments. This, in turn, leads to the passivity of local self-government bodies, which are guided by the principle "you need jurors - recruit them yourselves" and to the formation of lists with the so-called "own" (that is, convenient) jurors. It eliminates the social significance of the jury.

On our opinion, the functions of the district court apparatus in the formation of jurors' lists should be in informing the public as widely as possible about the creation of jury lists using the instruments available at the court (website/webpage of the court, information posters in the court building and in the other public authorities and public institutions, press conferences, media publication and forecasting programs, etc.). It will be efficient for the court apparatus to cooperate actively with local self-government bodies regarding the "quality" of those who apply for the jurors' lists. In particular, the officials of the court apparatus must participate in a meeting of the commission of the relevant local council on the preliminary consideration of the jurors' list before approving it at a plenary session of the council. This will allow the court, among other issues; to identify "well-known" persons in the list who try to decide (by means of their inclusion into the list of jurors) non-justice issues and that could be informed by the commission. The position of the court with regard to jury candidates, especially in the case of applications' exceeding, will certainly be taken into account by the local council.

It is also clear that it is precisely on the proposals of the district court apparatus that territorial departments of the State Court Administration of Ukraine formulate submissions to local self-government bodies regarding

the number of jurors in the relevant court. It requires a comprehensive analysis of the quantitative and other characteristics of trials with the participation of jurors in order to avoid the "overload" of the jury, full implementation of the law of Ukraine regarding the involvement of jurors in the provision of justice for a period not exceeding one month per year, which, unfortunately, often does not happen.

After the formation of the list of jurors, they must also be the focus of the personnel departments of the court apparatuses with the application of the appropriate personnel technologies [see, for example: 16, 17, 18]. Who is a juror? A judge or a person involved in the provision of justice. We believe that the jurors should fill their personal files. The existing procedure for the formation, maintenance, recording and keeping of personal files of judges [19] does not contain a requirement for jurors. However, there is the experience of the apparatus of a number of local courts (for instance, Prymorsky court in Odessa, Halytsky court in Lviv) where they have the registration of the so-called dossier of the jurors, which, in particular, contains:

- the decision of the local self-government body on approving the candidature of a juror;
- information about the postal address, e-mail address, telephone(s) of the juror and other means of communication;
- data on the employer of the juror;
- copy of a Work Book;
- a copy of the letter-notice on the requirement for the juror to fill out the declaration of the person authorized to perform the functions of the state or local self-government;
- a summary report of a juror for submitting a certificate on the actual performance of the juror's duties to the territorial department of the State Court Administration of Ukraine for the calculation of his/her remuneration;
- a withdrawn certificate of a juror for a period when the juror does not perform his/her duties in a court;
- a photocopy of the passport;
- a photocopy of the registration card of the individual - the taxpayer;
- a statement of a juror on his/her personal data processing;
- information about bank details of a juror, etc.

These materials greatly simplify the interaction of district court apparatus with the jurors and provide effective organizational support for their activities.

The next component of organizational support of the jurors by district courts is their proper logistical support. In particular, the aforementioned survey has shown that the district courts of Ukraine have hardly been adapted for the provision of justice by jurors. It is clear that solving a significant part of the problems regarding the logistics of courts is a function of the State Court Administration of Ukraine of Ukraine and its territorial departments, but this also implies an active interaction with the district court apparatuses. It is assumed that the technical support of the jury should be in:

- implementing technical requirements [20] regarding the composition of the auxiliary premises of the courtrooms through the allocation of separate premises in the court building for the jury before the

court session. It excludes extrajudicial contacts of the jury with the parties of the trial. Of course, this involves providing the premises with the appropriate furniture, air conditioning, cooler, tea/coffee, etc.;

- adapting the courtroom in accordance with the technical requirements for the trials with the jury or jurors. It presupposes a separate sub-zone for the jury, equipped with monitors and microphones, in an area of not less than 1.0 m² per juror, in the procedural zone of the court room, taking into account the fact that among the jurors there may be disabled in wheelchairs;
- adapting the consultative room for a jury decision together with the professional judge (judges) who should adjoin the courtroom and have a separate entrance from the sub-zone for the jury. The area of the meeting room for the jury must be not less than 24.0 m² with a sanitary knot area of not less than 2.0 m², equipped with one toilet and washbasin in the gateway;
- assuring the jury with stationery (handles and notebooks);
- providing the jury with the appropriate badges or other IDs at the time of the court session [21].

As the jurors themselves point out, the lack of relevant IDs is a significant problem for the certification of jurors. These documents should be issued by the apparatus of district courts for the entire period of trial and be removed after the trial within the framework of the organizational support of the jury in accordance with the Regulation on the procedure for the production, accounting, issuance, replacement and destruction of certificates [22].

One of the most important part of the activity of the apparatus of district courts in organizing the support of the jury is the problem of payment for the jurors. Despite the regulation of jury payment [23], according to the jurors' survey, they face numerous organizational problems. In particular, the secretaries of court sessions do not calculate the time when the jurors wait the starting of a court session (in case the schedule of court sessions is shifted). They do not calculate the time when the jurors study the materials of the court case.

The solution of these problems depends on the apparatus of the district court and the proper organization of its performance. On our opinion, the table on the juror's performance (on the juror's duties in a court) and the corresponding certificate to be presented to the territorial administration of the State Court Administration of Ukraine on remuneration may be primarily certified by the district courts in accordance with the quality management system established by the standard ISO 9001: 2015 [24, 25]

The formation of district courts at the end of 2017 challenges the court apparatus with additional tasks in terms of interaction with the jury. As it appears, within the territorial jurisdiction of the district court a single (common) list of jurors will be formed, which may include residents of settlements covering several administrative-territorial units of the district level and cities of oblast significance. In case when there are several court buildings (buildings of former local courts) existing within the territorial jurisdiction of the district court the need of travel reimbursement for the jury will appear. The difference in time of the trial and the time-table of public transport in some cases will cause the need for jurors to be accommodated in a hotel with a

daily allowance (per diem) and meals. If these funds are not reimbursed or paid in advance, the district courts may face the problem of denying the jurors to participate in court sessions.

Organizational and technical support for the duties performance by the jurors consists in the following accompanying measures:

- after the court receives the decision of the relevant council about the improvement of the list of jurors, the employers must be officially notified about it. However, the practice shows that the juror receives information on his/her inclusion in the list of jurors only when he/she is appointed to participate in a trial. The appropriate notification about the inclusion in the list of jurors will allow the employer to provide the procedure for the replacement of a juror at his/her working place (at the time of his/her duties in court) in advance;
- a proper call (invitation) by a secretary of court sessions to a juror to attend a court session. In particular, according to Article 67 of the Law of Ukraine "On the Judiciary and Status of Judges", a written invitation to participate in the provision of justice is sent by the court to the juror not later than seven days before the trial begins. The invitation contains information about the rights and obligations of the juror, the requirements for him/her, as well as the arguments for discharging the duties. At the same time (together with the invitation), a written notice is sent to the employer about the involvement of the employee as a juror. Article 385 of the Criminal Case Code of Ukraine contains the provisions on the written call (invitation) of a juror and requirements to him/her. Unfortunately, the Instruction on Court Proceedings [26] does not specify the procedural form of an invitation or a call to a juror. In addition, there is practice of inviting (calling) a juror, even without their written consent, via an e-mail address and SMS-message, as a fact of introducing the "Electronic Court" model. It sometimes leads to misunderstandings between the employer and the juror who cannot present any evident ("written") document as the reason to be absent in the workplace. That is why the apparatus of a number of district courts of Ukraine has already independently developed a sample of the invitation of the juror.

Information and methodical support for the activities of the jury may include, in particular, a set of measures for raising the level of legal culture and the level of legal knowledge by jurors. In particular, district judges should provide jurors with procedural codes for the effective participation of jurors in court sessions. Jurors should be able to obtain books, comments, explanations, scientific literature, court practice materials, audiovisual materials, newspapers, magazines, and other media in the library of the court [27].

In the context of the jury's information support, the activity of the press center of the court should be activated, in particular regarding a specialized section on the activities of jurors on the court's website, effective interaction with the public regarding the increase of the jury's prestige, the study of jurors' opinions on the organization of their work, etc.

Apparently, the court apparatus can also carry out activities on jurors' training both directly and through the dissemination of information among jurors on relevant seminars, trainings, roundtables, including events on international technical assistance programs.

The organizational and methodical support of the juror's activities by the apparatus of the district court also provides an appropriate organizational culture for the jurors themselves, which, unfortunately, is extremely low. The jurors mostly do not have notebooks, and therefore often do not know the numbers of court cases, do not remember the presiding judges and do not fix the telephones of secretaries of court sessions, forget about the appointed court sessions or inform too late about their impossibility to be present in the court, do not inform the court about changed telephone numbers or circumstances that make it impossible to fulfil the duties of a juror, etc. The lack of responsibility of the juror leads to the consideration of law cases in unreasonable terms. For instance, in Prymorskyi Court in Odessa the juror is provided with the form that allows him/her to record his/her performance on juror's duties in court for the purpose of the next comparison with the form filled by the court and avoids the existing misunderstandings regarding remuneration.

The positive experience of many local courts of Ukraine is the appointment of a person from the court apparatus, whose duties include the organizational support of the jury. With this person, the jury directly interacts with many problems of their activities. However, the apparatus of the district courts should not neglect the elements of the self-organization of the jury.

One of the forms of self-organization of the jury may be the Board of the Jurors of the District Court, as an advisory body functioning under the head of the court. We consider it necessary to develop a Model Regulation on the Board of the Jurors of the District Court. The Board shall be formed to establish effective interaction between the chairman, the deputy chairman, the head of the apparatus and the judges of the district court with jurors, taking into account the opinion of the jury regarding the arrangement of the activities of the district court. The main tasks of the Board are as follows:

- facilitating the creation of conditions for the implementation by the jurors of their rights and obligations regarding the provision of justice;
- promoting the interests of the jury in the implementation of the organizational activities of the district court;
- popularizing the institute of jury among citizens within the territorial jurisdiction of the district court;
- organizing the interaction of jurors (included in the jurors' list) with a district court and between themselves.

The Board of Jurors, in accordance with its tasks may:

- - prepare and submit proposals to the head of the district court on improving the organization of the activities of the jury;
- prepare and submit proposals to the head of the district court on the number of jurors for further submission of proposals to the territorial administration of the State Court Administration of Ukraine;
- submit proposals to the head of the district court on the drafting of orders on the organization of the

district court's work and improvement of its work;

- collect, summarize and submit information to the head of the district court about the jurors' proposals to resolve issues that are important for the realization of their status;
- organize trainings and other educational activities for jurors;
- analyze and discuss information on the diligence of the jurors in fulfilling their duties and the rules of judicial ethics;
- issue a warning to the jurors of the district court on the diligence of the jurors in fulfilling their duties and the rules of judicial ethics. The warning is to be given to the local self-government body for consideration in the process of formation of a new list of jurors of the district court;
- organize public events to discuss relevant issues for the development of the jury;
- promote the institute of jurors within the territorial jurisdiction of the district court;
- facilitate the submission of citizens' applications for inclusion in the list of jurors of the district courts and qualitative selection of persons in the process of jurors' list of district courts formation by the local self-government body.

It is proposed that the members of the Board may be elected from the list of jurors of the district court, as well as those who were on the list in previous periods. The composition of the Board should be formed at the meeting of the jurors of the district court by rating voting from the number of those who are personally present at the meeting. The number of members of the Board may be determined by the meeting of the jurors of the district court, but not less than three persons. The term of Board's authority should be three years - the term for the formation of a list of jurors of local self-government. In order to form the composition of the Board, the district court must, not later than 10 calendar days before the specified date of the meeting of the jurors, inform the jurors (included into the list) about the date, time and place of the meeting and deliver the information on the site of the district court. The head of the district court, on the basis of the minutes of the meeting of the jury, should approve the composition of the Board.

The Board is headed by a chairman elected at the meeting of jurors by rating vote. The chairman has a deputy. The chairman of the Board of Jurors should organize the activities of the Board of Jurors; organize the preparation and conduct of general meetings of the jurors of the district court; represent the jury in relations with the head, deputy head, head of the apparatus, judges of the district court, associations of citizens, local self-government bodies, mass media, etc.; participate in meetings of the judicial self-government of the district court with the right to speak; participate in the preliminary consideration (by the local self-government body) of candidates for inclusion in the list of jury of district courts with the right to speak.

The main format of the Board activity should be meetings, if needed. The meetings of the Board should be held openly. A jury session may be attended by any juror of a district court who has the right to take a word. In the sessions of the jury the head, deputy head, head of the apparatus of the district court also may take part

with the right of an advisory vote. The decisions of the Board should be of a recommendatory nature. They are obligatory for the head of the district court. The decision of the head of the district court, adopted on the results of the consideration of the Board's proposals, must be communicated to the members of the Board. The information on the decision must contain information on the consideration of the proposals of the Board or the reasons for their rejection.

The documents of the Board, the composition of the Board, the decisions made and information on their implementation, as well as other information about the activities of the Board, should be delivered on the official website of the District Court under the heading "Jury". The appropriate conditions for the jury and its meetings must be provided by the district court apparatus. At the request of the chairman of the Board and for the purpose of its organizing, informing, etc., the head of the district court may assign the functions of the Secretary of the Board to a staff member of the district court.

According to the Strategy of the Reform of the Judiciary and Related Legal Institutions for 2015-2020 [28], the gradual expansion of the use of the jury and its institutional development are envisaged. At the Verkhovna Rada of Ukraine, there are also several bills on the improvement of the jury. It seems that the apparatus of the district courts should also participate in the drafting of legislation on the jury, including through an appeal to the Verkhovna Rada Committee on Legal Policy and Justice to resolve and prevent the problems in the functioning of the jury.

Висновки

Organizational support for the activities of the jury is in a combination of appropriate measures. Such support regarding the juror's activity consists of activities in the following areas: participation in the formation of jury lists; technical support; organizational support; information and methodical support; financial support. The importance of organizational support in effective performance of the jurors' duties affects the quality of the provision of justice in Ukraine. The district court apparatus provides the support of the activity of both the jurors and the jury.

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