
GUARANTEES AND LEGAL RESPONSIBILITIES AS THE MAIN STRUCTURAL ELEMENTS OF JURY STATUS IN UKRAINE

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Summary. *The main condition for ensuring the rule of law is the independence of the judiciary, which is not a prerogative or privilege and is not provided to protect the interests of its own judges but to protect the rule of law and all those who seek and expect justice. Judicial independence is a mean to ensure the impartiality of judges; therefore it is a prerequisite for the guarantee that all citizens will be equal before the court. Independence is a fundamental requirement that allows the judiciary to protect democracy and human rights.*

Respect for the court is an integral part of the individual's respect for state power as a whole and an important guarantee of the timely, objective, impartial justice in Ukraine, and therefore the issue of ensuring and practicing the constitutional guarantees of the independence of judges and jurors – objects of justice.

The purpose of the study is to determine the factors influencing the implementation of the jury guarantees of independence and integrity, the conditions of their work and pay, as well as the responsibility of the jury during the conduct of legal proceedings.

Representatives of the people are professional judges and involved in cases provided for by law for the administration of justice, who are the carriers of the judiciary in Ukraine, who carry out justice regardless of legislative and executive power. In exercising justice, judges should affirm the independence and independence of the courts guaranteed by the Constitution and laws of Ukraine, increase the authority of the judiciary, ensure the binding decision of courts through fair, impartial and timely consideration and resolution of court cases, adherence to the judge's oath, proper legal reaction to the facts of pressure on interference with judicial activity and other unlawful encroachments on justice. If there is reason to believe that an attempt is being made to impose independence on the judge's impartiality, he must take measures to stop such an attack and bring the perpetrators to legal liability.

The jurors are subject to guarantees of independence and immunity of judges during their execution of their duties in the administration of justice. Independence of the jury is ensured by: the procedure provided for by law for the administration of justice; a prohibition, a threat of legal liability, any interference with the activity of justice; the established procedure for the selection of jurors; inviolability of the jury; providing at the expense of the state the material and social security of the jury.

Guarantees of realization of rights and performance of duties are one of the structural elements of the legal status of a jury.

Keywords: jury trial, judicial decision, jury rights, jury independence, jurors' immunity, jury accountability, jury fees

Introduction.

The main condition for ensuring the rule of law is the independence of the judiciary, which is not a prerogative or privilege and is not provided to protect the interests of its own judges but to protect the rule of law and all those who seek and expect justice. Judicial independence is a mean to ensure the impartiality of judges, therefore it is a prerequisite for the guarantee that all citizens will be equal before the court. Independence is a fundamental requirement that allows the judiciary to protect democracy and human rights.

Respect for the court is an integral part of the individual's respect for state power as a whole and an important guarantee of the timely, objective, impartial justice in Ukraine, and therefore the issue of ensuring and practicing the constitutional guarantees of the independence of judges and jurors – objects of justice (Nashik, 2014: 255).

The purpose of the study is to determine the factors influencing the implementation of the jury guarantees of independence and integrity, the conditions of their work and pay, as well as the responsibility of the jury during the conduct of legal proceedings.

Results.

Representatives of the people and professional judges involved in cases provided for by law for the administration of justice, are the carriers of the judiciary in

Ukraine, who carry out justice regardless of legislative and executive power. In the course of justice, judges should enforce the independence of the courts guaranteed by the Constitution and laws of Ukraine, increase the authority of the judiciary, provide binding decisions of courts through fair, impartial and timely consideration and resolution of cases, adherence to the oath of a judge, proper legal response to facts of pressure on interference with judicial activity and other unlawful encroachments on justice. If there are grounds for believing that there is an attack on the judge's independence regarding the impartial resolution of court cases, he must take measures to stop such an encroachment and bring the perpetrators to statutory liability («On the independence of the judiciary», 2007).

The jurors are subject to guarantees of independence and immunity of judges during their execution of their duties in the administration of justice. Independence of the jury is ensured by: the procedure provided for by law for the administration of justice; a prohibition, a threat of legal liability, any interference with the activity of justice; the established procedure for the selection of jurors; inviolability of the jury; providing at the expense of the state the material and social security of the jury.

Guarantees of realization of rights and performance of duties are one of the structural elements of the legal status of a jury.

The legal encyclopedia of guarantees (from the French *garantie* – provision, pledge) of the rights and freedoms

of man and citizen understands the conditions, means, methods, which ensure the full implementation and full protection of the rights and freedoms of the individual. The concept of «guarantee» covers the whole set of objective and subjective factors, aimed at the practical realization of rights and freedoms, to eliminate the possible obstacles to their full or proper implementation (Law Encyclopedia, 1998: 555).

In the legal literature, there are different classifications of guarantees of human rights and freedom.

P. Rabinovich divides the guarantees of rights and freedoms into: general social, and special. The general social ones include: economic, political, religio-ideological. Special are legal norms established by the state, which are specifically aimed at ensuring human rights, as well as practical work on the application of these norms and law enforcement acts of relevant authorities (Rabinovich, 1997: 7).

M. Vitruk believes that the guarantees of human rights and freedoms include: general guarantees – economic, social, religious (including ideological guarantees); special – legal (the whole system of existing legal rules) (Vitruk, 1985: 38).

In accordance with Part 3 of Art. 68 of the Law of Ukraine «On the Judicial System and the Status of Judges», the jurors are subject to guarantees of independence and immunity of judges established by law, while they perform their duties in the administration of justice. But upon a well-grounded request for a jury, security measures may be prolonged for him after the completion of these duties («On the Judiciary and the Status of Judges», 2016).

In our opinion, the independence of the jury can be guaranteed by a special

procedure for its appointment, election, prosecution and dismissal; by immunity of the jury; by permanence of the jury; by the procedure for the execution of legal proceedings, determined by the procedural law, and the secrecy of the court decision; by prohibition of interference with the administration of justice; by responsibility for disrespect to a court or a judge; by a separate financing procedure; by the means of securing the personal safety of the jury, members of jury's family, property, as well as other means of their legal protection, determined by law.

Guarantees of inviolability are declared in Art. 49 of the above-mentioned law. Thus, it follows from the content of the article that a jury may not be detained or arrested without the consent of the High Council of Justice before a court sentences a conviction.

To protect the rights and legitimate interests of the jury, the following measures may be applied:

1) their personal protection, protection of their housing and property (Article 6 of the Law of Ukraine «On State Protection of Court Employees and Law Enforcement Bodies»).

In the case of the establishment of data indicating the real danger of an attack on persons subject to protection, measures are taken regarding the personal protection of court employees and law enforcement agencies and their close relatives of their homes and property. In case of need, housing and property of persons taken under protection, at the expense of the local budget, are equipped with means of fire and security alarm, changes of the numbers of their apartment phones and the state registration plates of the vehicles belonging to them. Operational and technical means may also be applied in accordance with

the Law of Ukraine «On Operational and Investigative Activity».

2) the issuance of weapons, means of individual protection and notifications of danger (Article 7 of the Law of Ukraine «On State Protection of Court Workers and Law Enforcement Bodies»).

Depending on the degree of threat to life and health, a court officer or law enforcement agency and his or her close relatives may, subject to the requirements of applicable law, be issued with weapons, special personal protective equipment and danger alert technical equipment.

3) installation of telephone at the place of their residence;

4) use of technical means of control and listening to their phone and other communications, use of the means of watch and observation (Article 8 of the Law of Ukraine «On State Protection of Court Workers and Law Enforcement Bodies»).

In the event of the threat of violence or other unlawful actions against persons taken under protection, telephone or other communications may be conducted on written statements or by the consent of these persons. In the course of listening to the communications of persons taken under protection, recording may be used.

5) their temporary placement in secure places (Article 9 of the Law of Ukraine «On State Protection of Court Workers and Law Enforcement Bodies»);

If necessary, an employee of a court or a law enforcement agency, their spouse, juvenile children and other close relatives may, with their consent, be temporarily placed in places that guarantee their safety, including in preschool educational institutions or institutions of social protection of the population of Ukraine.

6) ensuring the confidentiality of protected objects (Article 10 of the Law of Ukraine «On State Protection of Court Workers and Law Enforcement Bodies»).

By the decision of the bodies providing security, adopted in accordance with their competence, a temporary or permanent prohibition on the issuance of information about the place of residence of persons taken under protection and other information about them by the address bureaus, passport services, units of the State Inspection, the reference services of the automatic telephone exchange and other official information services. In some cases, the above information may be withdrawn in accordance with the procedure established by law.

7) transfer to another job, referral to study, replacement of documents, etc. (Article 11 of the Law of Ukraine «On State Protection of Court Workers and Law Enforcement Bodies»).

These measures may be applied to a juror upon a substantiated request by the jury and upon completion of these duties.

Also, one of the guarantees of jury rights is the duty of the presiding officer:

- clarifying the rights of jurors, as well as the conditions for their participation in court proceedings (Part 2 of Article 387 of the CPC);

- assisting the jury in making a court decision in the event that there are no professional judges among the majority of the court that made the decision (Part 5 of Article 391 of the CPC). Material and legal safeguards are enshrined in Art. 68 of the Law of Ukraine «On the Judiciary and Status of Judges». Thus, in Part 1 of this article it is stated that a jury will be remunerated during the time when they perform their duties in court in the manner established by the Cabinet of Ministers of Ukraine. They are reimbursed for travel and housing, as well as paid per diem. These payments are made by the territorial departments of the State Judicial Administration of Ukraine at the expense of the State Budget of Ukraine. This issue is regulated by the decree of the

Cabinet of Ministers of Ukraine dated October 11, 2002 No. 1506 «On Approval of the Procedure for Compensation of Expenses for Travel and Housing, Daily Payment to People's Deputies and Jurors for the Time of their Performance in Court» («On approval of the procedure for payment...», 2002).

Another element of the legal status of a jury is the responsibility of the jury. It can be criminal and civil law.

If the jury has decided to have a knowingly unlawful sentence, the jury shall be liable to prosecution under art. 375 of the Criminal Code of Ukraine.

The civil liability of a jury can occur in the event that an innocent person was convicted as a result of a verdict by a jury of a knowingly unjust sentence. From the contents of Part 3 of Art. 1191 of the Civil Code of Ukraine it is possible to conclude that the state, having compensated the damage caused to this person, has the right of a reverse claim to a jury in case of establishing in its actions the composition of a crime by a conviction which has become legally valid.

However, at present, there is a debatable question as to whether the subject of the crime provided for in art. 375 of the Criminal Code of Ukraine juries (Shcherba, 2014: 140).

In the theory of criminal law, a general and special subject of crime is distinguished. In accordance with Part 1 of Art. 18 of the Criminal Code of Ukraine, the subject of a crime is a physical, convicted person who committed a crime at an age from which, according to the Criminal Code of Ukraine, criminal liability may arise. Part 2 of the same article defines a special subject of a crime as a person who is physically convicted of a person who has committed a criminal offense from the age at which a person can be the subject of a crime.

Disposition of Part 1 of Art. 375 of the Criminal Code of Ukraine clearly defines a judge (judges) as a special subject of the decision of a knowingly unjust sentence.

V. Yednak notes that there is no single point of view as to whether the juror may be the subject of iniquity (in our case during the criminal proceedings) (Unnamed, 2013: 289).

Such scholars as: A. Boyko, A. Galakhov, N. Yemeyev, E. Osipova, A. Kartashova, believe that the subject of a crime envisaged art. 375 of the Criminal Code of Ukraine may be professional judges only.

You can also agree with the opinion of N. Yemeyev that, the jurors, being representatives of the people and getting involved in enforcing the justice, however, are fulfilling not professional, but public duties.

As noted above, jurors do not have special knowledge in the field of law that the judges owns.

At the same time, in section XVIII «Crimes against justice» the legislator distinguishes between a judge, a people's assessor and a jury (Article 377, Article 378, Article 379 of the Criminal Code of Ukraine). At the same time, as in separate articles of this section (including in the disposition of Part 1 of Article 375 of the Criminal Code of Ukraine), it is only a judge (judges) as a special subject of a crime. However, we believe that the jury should be held accountable for its actions in a separate article, since its status is different from the status of a judge. But since the possibility of a jury trial is available only in cases where a person is charged with crimes punishable by life sentence, the punishment for the decision of a knowingly unjust sentence should be less than that of judges, but sufficient for such a crime.

Conclusions and prospects.

The CPC of Ukraine and the Law of Ukraine «On the Judiciary and Status of Judges» are variously different in terms of the legal nature of the jury guarantee, as well as the principles of the responsibility of the jury for the ruling of a knowingly unjust sentence. But the legal mechanism for the implementation of these guarantees in Ukraine has not been yet secured. In accordance with Part 3 of Art. 68 of the Law of Ukraine «On the Judiciary and Status of Judges», all guarantees of independence and immunity of judges, which are established by law at the time when they perform their duties on the administration of justice, apply to the jury, but only a part of such norms may be applied to the jury. Thus, the legal status of the jurors as persons subject to the guarantees provided in the Law of Ukraine «On State Protection of Court Workers and Law Enforcement Bodies» is required by law.

References

1. Virtuk, N.V. (1985). Legal status of the person in the USSR. Moskva: Yurid. lit., 175 (in Russian).
2. Unnamed, V.M. (2013). May be the subject of the decision of knowingly unjust sentence people's assessors and jurors: to the problem statement. The journal of the Kyiv University of Law, 3: 288–291 (in Ukrainian).
3. Nashik, T. (2014). Guarantees of the rights of jurors as a means of ensuring the legality of the court decision. Legal Bulletin, 6: 378–384 (in Ukrainian).
4. On the independence of the judiciary (2007): Resolution of the Plenum of the Supreme Court of Ukraine dated June 13, 2007, № 8. The official website of the Supreme Court of Ukraine. Available at: <http://www.scourt.gov.ua> (in Ukrainian).
5. On approval of the procedure for payment of remuneration and reimbursement of expenses for travel and hiring of housing, daily allowances for people's assessors and jurors during their duties in court (2002): Resolution of the Cabinet of Ministers of Ukraine dated October 11, 2002. Official bulletin of Ukraine, 42, 1930 (in Ukrainian).
6. On the Judiciary and the Status of Judges: Law of Ukraine dated June 02, 2016, № 1402-VIII. Available at: <http://zakon2.rada.gov.ua/laws/show/1402-19> (in Ukrainian).
7. Rabinovich, P.M. (1997). Human rights and citizen in the Constitution of Ukraine (to the interpretation of the original constitutional provisions). Kharkiv: Law, 64 (in Ukrainian).
8. Shcherba, V.M. (2014). To the issue of responsibility of the jury. Scientific Bulletin of Uzhgorod National University. Series: Right. 24(4): 138–141 (in Ukrainian).
9. Law Encyclopedia (1998). Red.: Y.S., Shemshuchenko and others. Kyiv: Ukr. Encyclopedia, 1(A; G), 672 (in Ukrainian).

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Анотація. У статті розглядаються актуальні питання забезпечення присяжних встановленими чинним законодавством гарантіями прав щодо їх незалежності та недоторканності при здійсненні судочинства, відповідальності, а також проблемним аспектам і впливу на результати діяльності умов їх роботи й оплати за її здійснення.

Ключові слова: суд присяжних, судове рішення, гарантії прав присяжних, незалежність присяжних, недоторканність присяжних, відповідальність присяжних, оплата праці присяжних