



LEGAL REGULATION OF LAY JUDGES' ACTIVITIES IN THE CRIMINAL PROCESS OF UZBEKISTAN

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Abstract

This article analyzes the procedural institution of lay judges in criminal proceedings in Uzbekistan, who participate in the consideration of criminal cases involving especially grave crimes. The study examines some organizational problems in their activities related to the administration of justice and proposes ways to address these issues. Additionally, the article explores the legislative practices of several Central Asian states and European countries regarding the involvement of jury trials or lay judges in criminal court proceedings, conducting a comparative legal analysis with Uzbekistan's national legislation. Based on the findings of the study, the author presents several proposals for improving this legal institution.

Keywords: Lay judges, criminal proceedings, especially serious crimes, trust in court, criminal cases, rich life experience.

Introduction

The Criminal Procedure Law of the Republic of Uzbekistan has introduced and implemented the institution of lay judges to facilitate public participation in the administration of criminal justice. The involvement of citizens as lay judges in the administration of justice is one of the democratic principles of a state governed by the rule of law. This ensures a close connection between the judiciary and the people, provides public oversight of judicial activities,



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guarantees the issuance of lawful and well-founded court decisions, and ensures the moral and legal impact of judicial proceedings on the upbringing of the younger generation. This legal institution has a positive impact not only on the judicial system but also on citizens, increasing their trust in the court, responsibility for their actions, allowing them to understand the full essence of judicial activity and thereby increase their respect for this body, as well as enhance the authority of the court in the eyes of the people.

The activities of lay judges are regulated by the Criminal Procedure Code of the Republic of Uzbekistan, the Law "On Courts," and the Regulation "On Qualification Collegiums of Judges." In accordance with existing practice, criminal cases involving especially grave crimes that pose the greatest social danger are considered by courts of first instance collegially, comprising a judge and two people's assessors. The latter have the same rights as the judge, participating in the issuance of court verdicts and the imposition of sentences.

Many legal scholars have expressed different opinions regarding public participation in the administration of justice in criminal cases, as well as other elements of public involvement in criminal proceedings. For instance, I.Ya. Foynitsky attributed the participation of the "people's element" in court composition to the "characteristic features and guiding principles" of criminal proceedings, examining these provisions in the very first, introductory part of his course, preceding both the judicial-structural parts of the section ("Court Establishments") and the purely procedural parts ("Subject of Proceedings," "Movement of Criminal Cases") [Foynitsky, 1996]. D. I. Talberg defined "people's judges" as individuals elected from among the people, for whom the administration of justice constitutes a temporary occupation performed with only life experience and common sense, without special legal training for this type of activity [Talberg, 2016]. Similarly, S. I. Viktorsky understood "people's judges" as individuals elected by the population themselves and temporarily called upon to perform judicial duties, i.e., those who do not make this their profession and do not abandon their usual work [Viktorsky, 2009]. V.Bykov adhered to a similar approach, emphasizing that people's representatives should be "non-official judges" [Bykov 2018]. These authors share the opinion that people's assessors, who serve in criminal courts alongside judges, engage in this



activity not professionally, but on a voluntary basis, are elected by the population themselves, and their service is temporary in nature.

The viewpoint of procedural law scholar M.S. Strogovich deserves special attention. He wrote: "The main and most essential characteristic of the institution of lay judges is their direct implementation of state activity - justice; they are full-fledged judges who possess equal rights with the presiding judge when deciding a case in court" [Strogovich, 2014].

National scholar K. Mavlonov, analyzing the origins of the institution of people's assessors, noted that it emerged during the era of the former Soviet Union, and until recently, lay judges participated in all categories of criminal cases [Mavlanov, 2023]. According to the scholar, it is necessary to introduce a system for compensating people's assessors, as well as to expand their powers.

The recent discussion¹ about lay judges on social media also indicates that this issue, despite the stability of the institution itself, is being debated not only within the legal community but also among the general public.

It should be noted that lay judges are considered lay judges. They exist in the judicial systems of several foreign countries, but unlike jury members, lay judges are distinguished by the fact that they enjoy all the rights of a judge during court proceedings.

In some developed foreign countries, particularly according to Article 383 of the Criminal Procedure Code of Ukraine, all matters except those related to the application, modification, or cancellation of preventive measures are considered in the first instance by a judge and jury². During the investigation or at the trial stage, the prosecutor or the court must explain to the accused in writing that they have the right to have their case heard by a jury if they may face a life sentence for the crime committed.

¹ "Special Podcast" channel by Kamol Abdumalikovich.

<https://www.youtube.com/watch?v=CKLJ5ZwQZZ8>

² Criminal Procedure Code of Ukraine of April 13, 2012 No.

4651-VI https://continent-online.com/Document/?doc_id=31197178#pos=4099;-45



Jurors are summoned through an electronic system³ from an existing list of 7 people at least 5 days before the start of the court session. The selection process of the summoned jurors takes place directly during the court session. Selected individuals take the oath in accordance with the procedure established in Article 388 of the Criminal Procedure Code. From this moment, participants in the process are prohibited from communicating with the jurors during the trial.

Following the consideration of the case, a meeting of jurors is held, at which the issues to be resolved by the court during the sentencing process are put to a vote. Article 52 of the Criminal Procedure Code of the Republic of Kazakhstan⁴ defines the procedure for conducting court proceedings with the participation of jurors. Notably, in this state, the types of crimes requiring the participation of jurors, that is, the crimes under their jurisdiction, are clearly defined (part one of Article 52 of the Criminal Procedure Code of Kazakhstan). Unlike Ukraine, in Kazakhstan, 10 jurors are required to participate in the case review process, and participants are strictly forbidden from contacting them throughout the trial. In this case, the suspect or accused must submit a petition to the person in charge of the case to consider it with the participation of jurors, and it is the duty of investigators and inquiry officers to inform them of the existence of such a right. After the commencement of the court proceedings, such petitions are not accepted. Another important feature of this institution is that jurors are selected by the participants of the court session through questioning, and based on its results, a jury panel of 10 people is formed.

Moreover, in French criminal courts, there are jury panels consisting of 9 members, whose list is compiled by local authorities. In Germany, there is also a Schöffengericht (lay judge court), where cases are heard by three professional judges and two lay judges. A similar institution of lay assessors, with two members participating in court proceedings, functions effectively in the criminal justice systems of Scandinavian countries [Criminal law & procedure, 2018].

³ Chapter 3 of the Law of Ukraine "On the Judiciary and the Status of Judges" as amended in 2023, No. 1402-VIII dated 02.06.2016, version effective from 01.01.2022 For more details:

https://urist.com.ua/ru/o_sudoustroystve/razdel-III/glava-3

⁴ Criminal Procedure Code of Kazakhstan.

https://online.zakon.kz/Document/?doc_id=31575852&doc_id2=31575852#pos=51;-86&pos2=1400;-26



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Japan also has the institution of "Saiban-in" in court proceedings, which, compared to our national procedural legislation, corresponds to the institution of lay assessors [Rekhovsky 2015]. This institution is developed according to European standards, with cases being heard by a panel of 3 judges and 6 lay assessors, or one judge and 4 lay assessors. The lay assessors are selected from a pre-formed list. An important aspect is that for a guilty verdict to be issued at the conclusion of the case, the majority of lay assessors must vote in favor of it. By analyzing procedural legislation and various scholarly opinions, several conclusions can be drawn regarding the participation of lay assessors in the administration of justice in criminal cases:

1. Lay judges do not have higher legal education and are not professional judges, but they possess rich life experience that helps them evaluate situations (crimes) and determine the guilt or innocence of individuals.
2. The participation of lay judges in criminal cases is not permanent, but temporary, only for especially grave crimes that may result in sentences exceeding 10 years of imprisonment. The temporary nature of their court participation means that lay judges are called upon to perform the duties of a judge for a specific period, namely for the judicial proceedings of a particular criminal case.
3. Lay judges have the same rights as judges when considering and resolving criminal cases. They, along with the judges, decide on the guilt or innocence of the accused and defendants. They may ask questions to the parties during court proceedings, make remarks regarding compliance with procedural form and order, etc. The Law of the Republic of Uzbekistan "On Courts" stipulates that "all guarantees of judicial immunity extend to lay judges during their performance of duties in court."
4. The participation of lay judges in criminal cases involving especially grave crimes imposes on them the responsibility to fairly, objectively, and lawfully resolve the issue of a person's guilt or innocence. When appearing before a court with people's assessors, an individual sees that the court composition includes ordinary people, which instills trust in the court. They understand that they can count not only on a legal decision but also on a fair court ruling.



Along with the aforementioned guarantees and benefits, in order to fulfill the functions assigned to them in the administration of justice, lay judges are responsible before the law for rendering a fair court verdict. The law, granting lay judges the same rights and obligations as a judge, has established that when considering a criminal case, they must strictly observe the Constitution and laws of the Republic of Uzbekistan, be fair and impartial, and ensure the protection of citizens' rights and freedoms, as well as the interests of the state protected by law. Persons appointed by the court to participate in the consideration of a criminal case as lay judges are obliged to appear at the specified court at the appointed time and fulfill the duties assigned to them.

However, in practice, there are cases of postponement of court proceedings due to the non-appearance of lay judges at the appointed time, which can be caused by various circumstances: direct performance of work duties, urgent tasks, disapproval from the management of the organization where the people's assessor works regarding participation in court proceedings, family and personal issues, transportation costs, etc.

These and other factors significantly influence the timely conduct of court proceedings, and it is the presiding judge who is obligated to resolve all tasks and issues that hinder normal court proceedings. Undoubtedly, this negatively affects not only the procedural deadlines for considering a criminal case but also the activities of an independent judge who, by virtue of their official powers, tries to resolve all complications that have arisen with the lay judges as quickly as possible and commence the judicial proceedings.

This gives grounds to believe that it is necessary to develop and adopt a more comprehensive normative act regulating the activities of lay judges in the administration of justice. This act should regulate the specific conditions for electing people's assessors, the procedural order for the participation of lay judges in court proceedings, and provide rules for financing the transportation and other expenses of lay judges related to their participation in court proceedings.

Even more serious difficulties can arise when people's assessors, without realizing it themselves, exhibit a biased assessment of the events of the crime, the actions of the defendant, and express interest in the outcome of the case.



Undoubtedly, the judge's task is to clarify the role and status of the people's assessor in the judicial process, to specify the responsibility for abuse of a judge's powers, to which the powers of lay judges are equated.

In the administration of justice, lay judges enjoy all the rights of a judge. They have equal rights with the presiding judge in resolving all issues arising during the consideration of the case and the issuance of a sentence. Consequently, lay judges are impartial, honest, and fair judges who administer justice, and any deviation from their direct duties entails corresponding liability.

In conclusion, we can conclude that the participation of citizens as lay judges in the administration of justice in criminal cases is one of the forms of exercising power by the people, an important element of a democratic legal state, and an additional guarantee for the protection of the rights and legitimate interests of participants in criminal proceedings. At the same time, we believe it is necessary to develop a relevant draft law regulating the activities of lay judges in the administration of justice, the procedural order of their participation in court proceedings, thereby increasing the level of accessibility and transparency of judicial power with public participation in the administration of justice.

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