

## The role of jury in the contemporary Judicial System of the Republic Kazakhstan

Larissa Valerievna Zheldikova

Academy of Economics and Law Named after U.A. Dzholdasbekov, Tauelsizdyk Str., 77, Taldykorgan, 040000, Republic of Kazakhstan

**Abstract.** This article reflects the current and ongoing legal system within the Republic of Kazakhstan from 2007 to 2024. The justice system of the Republic of Kazakhstan embodies the people's independence in the fulfillment of the legal process. It is universally accepted that trial by jury is the most effective method to eradicate corruption from the legal system. In order for this system to function the neutrality of jury members must be given priority. It is necessary for detailed investigation of every candidate to take place before selection of the panel. Minimising jury prejudice increases public confidence and support of the judicial process and out comes.

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### Introduction

The Concept of Transition of the Republic of Kazakhstan to Sustainable Development for the Period of 2007 – 2024 emphasizes that: "Sustainable development of the internal policy of the Republic of Kazakhstan is ensured by the improvement of democratic procedures, consistent expansion of grass-roots democracy as a decision making mechanism while considering the majority and minority opinion at all levels of governmental authority" and development of civil society connected with the process of strengthening the society role when ensuring the transition to sustainable development" [1]. Implementation of Item 2, Article 75 of the Constitution of the Republic of Kazakhstan provides for a possibility to carry out criminal procedures with jury participation and stipulates the necessity of progressive development of democratic law institutions that can function only due to the effective system of justice [2, 24].

Currently, the courts are the most inaccessible institution of governmental authority, since the general public is deprived of the possibility to participate in the process of forming the judicial authorities [3, 4].

Establishment of a jury is set forth in the Constitution of the Republic of Kazakhstan and supported by the President of the country. Trial by jury is an extremely important and significant step forward in the development of the judicial branch of power in our state.

Most democratic nations tend to improve and develop their court system [5, 6, 7, 8]. If law systems have been developed without distinct interaction between themselves and independently from each other, they end up with the necessity to set forth in (at the highest constitutional level) their own legal systems special rules that protect this human

right by means of this institution. Under the rule of a law-bound democratic state, a human right to trial with participation of jury members is considered "one of the social progress keynotes which is based on universal human interest" [9,17].

A democratic nation allows its regular citizens to be involved in the state ruling, as well as in the justice administration. This combination of people's wisdom and judge's expertise provide legal verdicts which are free from erroneous, external influences. The main advantage of trial by jury is that the state does not determine whether a person is guilty or not, while a defendant's fate is decided by regular people. In this case, a convicted person will not feel angry with the state authorities made a ruling, but he has to accept his punishment as it is, because it was made by group of his peers.

The institution of jury plays an important role in the contemporary system of judicial power and law-bound state, as it allows citizens to be involved in the legal justice system in a manner prescribed by laws.

The past years show the following tendency: many countries establish trial by jury in their legal system or re-establish it, if it has been used before for legal procedures. A human right to be trialed by jury members is set forth in their constitutions in the several countries of the former Soviet Union.

Constitutionalization of jury institution does not allow the opponent side to refuse from using this type of public participation in administering justice, since a more complicated procedure is required to enter changes to a constitution.

Constitutional and legal nature of the jury institution is based on the fact that the Preminent Law of a country entitles jury members to administer justice together with professional judges who give a legal assessment of a particular case during court

procedures by providing their social and moral assessment to decide whether a defendant's action in the particular circumstances and the defendant himself are dangerous to the public, in which case, whether he has to or not to bear criminal responsibility.

This is why trial by jury is the internationally preferred form of public participation in the process of justice realisation. Trial by jury is one of the institutions of the judicial system and the entire system of state authorities which embodies the principle of direct participation of the public in administering justice. This institution of the judicial system consists of a jury box randomly selected only to consider a particular case by deciding fact issues and one professional judge who resolves legal issues.

This is the reason why improvement of forms and methods of citizens' participation in court proceedings becomes a key step in the strategy of solving top-priority tasks in administering justice in the country. In fact, urgent necessity of establishing this institution was stressed many times by the President of the country, N.A. Nazarbayev.

Thus, at the 4th Convention of Judges the following was emphasized by the President of the Republic of Kazakhstan: "One of the options for further legal development is connected with implementation of the Constitution norm related to possible administration of criminal court proceedings with the participation of jurors. Introduction of this institution will ensure full practical realization of the adversarial principle of criminal court proceedings and in general it will increase the quality of justice administration" [10]. Wherefore, on January 16, 2006 the President of the Republic of Kazakhstan, N.A. Nazarbayev, signed the Law About Jurors and Law About Implementing Changes and Additions to Some Legislative Decrees of the Republic of Kazakhstan on Issues Related to Managing Criminal Court Proceedings with Jurors' Participation. These laws determine the legal status of jurors and issues of establishing jury trials. They also offer important changes and additions to the Criminal Code, Criminal Procedure Code, Civil Procedure Code and Code of the Republic of Kazakhstan about Administrative Offences.

The introduction of jury trials into domestic criminal court proceedings will play a positive role in strengthening legal principles, objectivity in evidence evaluation and independence of judges when making a ruling, it will effect and decrease the number of court errors and abusive practices, and also it will make the legislature comply with international standards and increase the level of legal safety of all parties participating in court proceedings.

In the first instance the jury considers serious criminal cases and its verdict is not liable to appeal in terms of a guilty finding. In some US states the jurors need to reach verdicts unanimously. While in other countries the jurors need to reach verdicts by simple or special majority of votes. Also, in some countries, consideration for extenuating circumstances are taken into account in the jurors recommendations concerning sentencing, including capital punishment. However, only a judge decides which measure of punishment will be selected.

On the first of January 2007 Kazakhstan introduced jury participation within the legal system. Introduction of public representation into consideration of criminal cases becomes one of the most effective means to solve this problem. Kazakhstan chose the mixed type of jury (there are two types – Anglo-Saxon and Continental), with the presence of two judges and nine jurors.

Based on the Anglo-Saxon model, a case is considered by a professional judge and a board of jurors. However, the solution of the convicted guilt or innocence is accepted by a board of jurors in a consultative room without involvement or direction from a professional judge.

Following the Anglo-Saxon legal system, the jury verdict on guilt or innocence of a defendant is binding for the judge during all legal proceedings. The solution can not be appealed by its definition. An appeal can be applied based on the grounds of procedural faults, i.e. if a defendant is found guilty, he can appeal a verdict only in relation to a measure of punishment prescribed to him.

According to the Continental type of system, the jurors collaborate with the professional judges and form a board, which examines a case on its merits and makes a solution in the consultative room all together.

Trial by jury in Kazakhstan is an institution of the legal system, which consists of a board of jurors represented by nine regular citizens and two professional judges. According to the law, the jury considers criminal cases which require a capital punishment. They consider if a person convicted of a criminal offence is guilty or innocent and also decide the measure of punishment. In addition, both judges and jurors have equal rights to solve all issues.

Realization of jury institution into the criminal court proceedings in the Republic of Kazakhstan is performed by implementing a variety of law-making and managing measures. It is obvious that the situation with administering justice has changed significantly after these laws have been passed.

The Kazakhstan model of jury trial institution has its own peculiarities and it requires

further improvement. In the long term, while using the jury institution, some changes will be required to its work experience. Therefore, basic research becomes significantly important. Evaluating the experience gained from jury trials, this research will improve its fundamental legal principles.

According to Item 7-1, Article 7 of the Criminal Procedure Code of the Republic of Kazakhstan, there are specific requirements in order for a person to be sworn in as a juror: he must be a citizen of the Republic of Kazakhstan, be invited to participate in legal processes in a manner specified in the Criminal Procedure Code of the Republic of Kazakhstan and he must swear an oath of honesty [11, 7].

It should be noted that criminal liability is stipulated in the Criminal Code of the Republic of Kazakhstan for infringement on a life of a juror, for a threat to kill him, for a personal injury, for damaging or destroying personal belongings of a juror, for disrespect for a juror and also for slander to a juror.

As for the stages of considering a case with jurors' participation, the Continental type was adopted in Kazakhstan in general.

Jurors are able to participate in legal proceeding stages that result in prosecution when the following can be proven within reasonable doubt:

- proof of illegal act;
- the convicted committed a crime;
- the convicted participated in a crime.

In addition, private questions regarding the circumstances that impact on type and severity of punishment can be discussed.

Voting is held in written form on a voting paper which contains the following words: "By my truth, conscience and inner conviction, my conclusion is...". Then the judge and the jury deposit their voting papers in the ballot box. A designated chairman reveals the results of voting in the presence of jurors. Ballots filled in with the answers of the jury and the judge are sealed in an envelope, which is kept in the criminal case files.

A verdict accepted by the jury is the grounds for a final decision.

The Kazakhstan legislature established the following criterion for the verdict definition:

- a verdict of "guilty", is deemed accepted, if a majority of voters gave positive answers to each of the three questions specified in a voting paper;
- a verdict of "Not guilty", shall be deemed accepted, if six or more voters gave a negative answer to any of the main questions.

Type and severity of punishment are decided by a trial with jurors' participation by open voting.

The law specifies that judgements and decisions that were made by trial with jurors' participation and have not come into force yet can be appealed in the Appeal Court.

While the Kazakhstan legal system is practising with trials by jury it is worth looking closely at the experience of post-Soviet Russia, where the jury system has been implemented in similar conditions for more than 10 years.

It is generally accepted that a trial by jury ensures the court's independence, improves the transparency of legal proceedings and objectivity of accepting outcomes, refreshes formal justice with public wisdom, decreases a risk of rights abuse in pre-trial and trial stages, the possibility of corruption, and helps to avoid forcing a court to make a particular court decision.

In summary, the main idea of public participation in administering justice was and still is the fact of ensuring that court proceedings are transparent and they are focused on finding the truth and making a fair judgement. Historically legal systems of different countries utilise public participation in justice process as it improves the transparency of legal proceedings and objectivity of accepting outcomes.

Implementation of the jury in the criminal court proceedings helps to strengthen the principles of legality, objectivity in evidence evaluation, independence of courts in making their decisions, reduce court errors and rights abuse, allow to follow a principle of collegiality by utilizing public participation in administering justice and also improve the level of legal safety of citizens in the range of the democratic court proceedings. Utilising a jury raises the people's trust and confidence in the legal system, emphasizes fairness of the courts, ensures a more detailed and accurate examination of the case circumstances, facilitates adversary nature of the judicial process, and as a result helps to make more objective court decisions, complies with a broad approach to understanding the right, even if it is quiet different from laws, fits into the international and domestic traditions.

Trial by jury is a distinct indication of democracy principles, when human rights and freedoms are known to a state as the highest value.

#### **Corresponding Author:**

Dr. Zheldikova Larissa Valerievna  
Academy of Economics and Law Named after U.A. Dzholdasbekov  
Tauelsizdyk Str., 77, Taldykorgan, 040000, Republic of Kazakhstan

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