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THE FORMATION AND DEVELOPMENT OF THE NATIONAL ASSESSORS IN SOVIET UKRAINE: HISTORICAL AND LEGAL ANALYSIS

Anischuk N.V., Ugnenko T.V.

National University «Odessa Law Academy»

In this article is discovered the complex of historical and legal problems of formation and development of Ukrainian national assessors institute. It is analyzed the legal status of national assessors and their place and role in soviet legal system.

Keywords: national assessor, national court, justice, jurisdiction.

There were historical premises for appearance of national assessors institute at the beginning of 20 century. There were different forms of people's participation in judicial process that were usual on the lands that were the part of Russian Empire before revolution. Some of these forms, for example, trial of jury, were seriously criticized by representatives of bilshovitskay party. To the point of view of bilshovitskay party trial of jury protected the interests of representatives of the highest status. Instead of this, public court that based on participation in justice by all the members of community did not meet any objections.

Till 1917 national assessors institute did not get any serious theoretical development in works of the leaders of bolshovitskay party. According to the class system there are the government arrangement and reformation of court system in after revolution period. Instead of this the accent was made on the necessity of destruction of old government machine and court system too. Even in works where the thesis about the existence of transitional period was and temporary preservation of government mechanism is absent the detailed description of the structure and principles of new court system. Instead of this were proclaimed slogans about establishment of control over the court system from the side of proletariat by the way of election of judges and their participation in court process. But concrete forms of people's participation in realization of justice were not discussed [2, p. 126].

The first steps in legal mounting of national assessors institute were made during the adoption of decrees «About Court». The analysis of its history and content shows that bolshoviky did not have any idea about character of this institute and its role in new model of justice. There were serious divergences in points of view on the nature of national assessors with their partners – left essers. The national assessors were just the analogy of the trial of jury. The left essers wanted just to liberalize the mechanism of election and to make the post of jurymen accessible for ordinary people. They wanted to extend the sphere of influence in the court process and to protect the leader role of professional judge. Instead of this bolshoviky thought that it is necessary to give the main role in the court process to people.

From the very beginning national assessors institute was formed like electoral, temporal and collective authority. But during the long period of time there were not single approaches both in

theory and practice according to the membership, order of elections, terms of authorities and reasons of finishing of them.

There were two or six national assessors in the local courts: judge and two assessors considered civil cases, judge and six national assessors- criminal cases. In the circuit court this measure was increased to four or twelve persons [2, p. 182]. In conditions of civil war and uncertainty of loyalty in the most part of population, first of all, in the country – side areas were brining in indirect elections, which took place under the control party organizations.

The right to choose the candidates of assessors was given to party organizations and to organizations of workers. Instead of this, the choosing of candidates was made in the cities by soldiers and work deputies. The main feature of this period was the absence of demands to candidates of national assessors. There was one legal conditions of election to the national assessor. There was right to choose and to be chosen to Rada. We can come to conclusion that national assessor could be chosen among the representatives of work and country-side population. If only they did not use workers and did not serve in administration or in the authority of law and order. Besides, could not be elected incapable people and that ones who were imprisoned. On practice there were additional demands according to the candidates. These demands were followed during advancement of candidates.

First of all the important features were: loyalty to new power, authority in society, appropriate social origin. The term for accomplishment was from six month still one year. The reasons and order of preterm finishing of accomplishments in normative acts were not written. But the character of assessor's mandate said, that it could possibly be recalled.

It became usual for Ukrainian and Russian jurisdiction the less of wide law, social and economical guarantees of national assessors' activity [1, p. 67]. Only one exception was in amendment about pecuniary compensation for taking part in court session. But during the long period of time it was considered like temporary action. It was going to make the assessors work free of charge. That is why, the most part of population tried to avoid the participation in justice accomplishment. In such conditions soviet leadership made national assessors' participation in justice accomplishment obligatory. There were penalties if somebody did not take part in justice accomplishment.

During soviet court system reformation in 20th of 20 century there was legal national assessors institute mounting by the way of approval several legal acts. Among them were «Act about judicial system», Criminal Code, Civil Code. According to this document there was a unification of justice system. In such way soviet power realized national assessors on the level of judicial system.

In the 20th of 20 century there was optimization in national assessors' membership. General position of national assessor was not seriously changed. The national assessors were equal to professional judge. At the same time soviet jurisdiction made some obligations for national assessors: presence on court sessions, accomplishment of fare decisions [4, p. 14].

Besides, in the 20th of 20 century the national assessor had to give an account of work. The mechanism of privileges for national assessors was improved. The national assessor institute became the part of soviet punishment machine that made realization of decisions even when they were against the interests of the most part of population. Bad influence on the national assessors institute had the beginning of the Second World War [5, p. 149].

There were some changes in the system of Criminal Code. The national assessors were absent during court sessions that made the process faster. In conditions of war it was very important. Accept these changes, in general, soviet court system saved both in the institute of national assessors and old forms of sessions. It was not transformed seriously during the war time.

There were some changes in renovation procedure. In conditions of war the state refused from the principle of election during the reformation of public courts and turned into setting. The consequence of war was increasing the pressure on the national assessors, shortening of human resources. The loss made judges to renounce from pre-war norms about maximum ten days term of including assessors to consideration and two years term for fulfil of their authorities. The limitation of public courts, jurisdiction, shortening of their quantity was temporal.

When the enemy was driven out from occupied territory, military tribunal became again and old forms of court system were renew. The main feature of final stage of war was brining in the national assessors institute on Ukrainian lands. The weakness of soviet power and a big number of opposition representatives of local mass, made the state to pay attention on the social origin and political persuasions of candidates on the post of public judges and national assessors. But the process of election was just the simple formality.

In 50-80th of 20th century the national assessors institute was the part of soviet court system and was used till the disintegration of USSR. In this period the legal base of public court was renovated. There were discussions about problems of elections' organizations and the work of public assessors. It was the possibility of more quality and effective work of assessors in courts. General tendency was the increasing of the term of national assessors' authorities till 2,5 years in 70th of 20th century and 5 years in 80th of 20th century [6, p. 97].

Such innovations had dual character. On the one hand they decrease participation of state in the process of national assessors' election and made it possible to have more practical experience for them. On the other hand, they diminished the rotation of national assessors and did not attract the population to take part in this process for a long time [6, p. 99].

There was the rise of demands to candidate of national assessor. There was the rise of the age for person that pretends to this vocation till 25 years. Besides, there were no formal demands that were followed during elections: the absence of the facts of criminal or administration responsibilities, positive moral status, civil activity and such personal qualities as adherence, restraint, an ability to control the situation, a sense of tact, humanism, an ability to analyze the events and phenomena.

During the long period of time in scientific literature was discussed the question about the possibility of introduction of educational qualification and election of national assessors only with high education. But such approach was against the general principles of soviet ideology that is why it was refused.

The procedure of national assessors' election in comparing with previous period did not have serious changes. The election of candidates was made by work collectives and the right of election belonged to all full age population that lived in borders of the court district. The principle of national assessors' election that was fixed in soviet jurisdiction not only gave the ability for population to delegate their representatives into court but took aside them from their posts too. But realization of this article on practice met some barriers. The main barrier was uncertainty of taking aside the mechanism of assessor.

Only at the beginning of 80th of 20th century there was a number of laws, that regulate the procedure of preterm finishing of national assessors' authorities by the way of their taking aside [6, p. 102].

The national assessors membership did not changed – two participants took part in court process. The jurisdiction of this period paid serious attention to the organizational and law guarantees of realizations of these rights. Among the main of them were the right of previous acquaintance with materials, the right of self making decisions, and the right of «unusual point of view» and so on.

At the same time, the analysis of realization of these authorities on practice showed, that the most part of national assessors did not hurried to use these rights. That is why the most part of researchers marks gradual falling of their actual role in court process. Soviet power was trying to overcome the passiveness of the national assessors in 60-80th of 20th century.

It provided the wide complex of measure directed on rising of their activity in court process. First of all, there was variety of educational forms of state activity: creation of public universities, lectures, seminars, practical lessons with justices. It was made for raising the level of law education of national assessors and giving them necessary minimum of information about their own rights and obligations. It was very important to raise the prestige of national assessor. It was made the cam-

paigned for creation of positive image where were showed high moral and professional guarantees of assessors. It was developed the system of privileges for participations of court processes [3, p. 51].

At the same time material guarantee of the na-

tional assessor was not made, and even material compensation could not satisfy the population. That is why; in scientific literature of that period were often made propositions to create additional guarantees for the national assessors.

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Аніщук Н.В., Угненко Т.В.

Національний університет «Одеська юридична академія»

СТАНОВЛЕННЯ І РОЗВИТОК ІНСТИТУТУ НАРОДНИХ ЗАСІДАТЕЛІВ РАДЯНСЬКОЇ УКРАЇНИ: ІСТОРИКО-ПРАВОВИЙ АНАЛІЗ

Аннотація

У статті розкрито комплекс історико-правових проблем становлення та розвитку інституту народних засідателів Радянської України. Проаналізовано правовий статус народних засідателів, їх місце та роль у відправленні правосуддя в радянській судовій системі.

Ключові слова: народний засідатель, народний суд, правосуддя, юрисдикція.

Анищук Н.В., Угненко Т.В.

Национальный университет «Одесская юридическая академия»

СТАНОВЛЕНИЕ И РАЗВИТИЕ ИНСТИТУТА НАРОДНЫХ ЗАСЕДАТЕЛЕЙ СОВЕТСКОЙ УКРАИНЫ: ИСТОРИКО-ПРАВОВОЙ АНАЛИЗ

Аннотация

В статье раскрыт комплекс историко-правовых проблем становления и развития института народных заседателей Советской Украины. Проанализирован правовой статус народных заседателей, их место и роль в отправлении правосудия в советской судебной системе.

Ключевые слова: народный заседатель, народный суд, правосудие, юрисдикция.