

UDC 159.922.6

DOI <https://doi.org/10.51547/ppp.dp.ua/2021.5.7>

**Overchuk Victoriia Anatoliivna,**

Doctor of Economics, Candidate of Psychological Sciences,

Professor of Psychology Department of Vasyl Stus Donetsk National University

ORCID ID: 0000-0002-7744-9346

## INDIVIDUAL-PSYCHOLOGICAL FEATURES OF JURY UKRAINIAN COURTS

### ІНДИВІДУАЛЬНО-ПСИХОЛОГІЧНІ ОСОБЛИВОСТІ ПРИСЯЖНИХ УКРАЇНСЬКИХ СУДІВ

*The article presents individual psychological features of the jury and it was also justified the need to identify some features that have an impact on the process of making a balanced, reasonable and, most importantly, fair decision. The peculiarity of the formation of the jury's internal conviction is described and the factors that influence it are named.*

*At the present stage of the country development, there is a search for a place for the judicial system in the context of the general state and legal reform. There is a rather heated discussion about the practical renewal of the judicial system in the state and society. The basis of judicial reform is not only the implementation of an independent judiciary, ensuring its affiliation, but also the involvement of the people's representatives (jury), before the administration of justice, which is reflected in most developed countries. The jury, unlike professional judges, does not know the field of law. They usually have a lower stress resistance threshold, morally and psychologically inexperienced; they often have a different understanding of what is going on in the courtroom; they also focus not on objective criteria, but on subjective ideas, stereotypes, emotions and personal experiences, which can be confidently attributed to the psychological characteristics of each.*

*The main attention of this article is paid to psychological methods, techniques that should be used to select jurors to make objective verdicts.*

*The obtained results can be the basis for creating a psychological program for the formation of a jurors' list in their selection, which will take into account the moral, subjective and psychological qualities of each of them.*

**Key words:** jury, verdict, judge, personal and psychological qualities, judicial practice, legal culture.

*У статті наведені індивідуально-психологічні особливості діяльності присяжних, обґрунтована необхідність у визначенні цих особливостей, які мають вплив на процес ухвалення виваженого, обґрунтованого та, найголовніше, справедливого рішення. Охарактеризовано особливість формування внутрішнього переконання присяжних, названо чинники, які на нього впливають.*

*На сучасному етапі розбудови країни відбувається пошук місця судової системи в контексті загальної державно-правової реформи, у державі та суспільстві точиться досить гостра дискусія про практичне оновлення судової системи. Основою судової реформи є не тільки реалізація самостійної судової влади, забезпечення її належності, а й залучення представників народу (присяжних), до відправлення правосуддя, що відображено в більшості розвинених країн світу. Присяжні, на відміну від професійних суддів, не володіють знаннями у сфері права, зазвичай мають нижчий поріг стресостійкості, морально та психологічно не досвідчені, часто інакше розуміють, що відбувається в залі судових засідань, орієнтуються не на об'єктивні критерії, а на суб'єктивні уявлення, стереотипи, емоції й особисті переживання, що з упевненістю можна віднести до психологічних особливостей кожного.*

*Головна увага приділяється психологічним методикам, прийомам, технікам, які потрібно використовувати для відбору присяжних із метою винесення об'єктивних вердиктів.*

*Отримані результати можуть бути підґрунтям для створення психологічної програми формування списку присяжних під час їх відбору, у якій буде враховано моральні, суб'єктивні та психологічні якості кожного з них.*

**Ключові слова:** суд присяжних, вердикт, суддя, особистісно-психологічні якості, судової практика, правова культура.

**Formulation of the problem.** The basis of judicial reform is not only the implementation of an independent judiciary, ensuring its affiliation, but also the involvement of the people's representatives (jury), before the administration of justice, which is reflected in most developed countries. The jury, unlike professional judges, does not know the field of law.

**Formulation of the article's goals. The purpose of the article** is a need to determine the features, which affect the process of learning the case file, testimony of witnesses, features of witnesses, interrogation procedure, personal characteristics of the defendant and the victim, expert testimony, activities of a lawyer and a prosecutor, instructions of a judge, and

as a consequence of deciding by making a balanced, reasonable and, most importantly, fair decision.

**Analysis of recent research and publications.**

The analysis of jury's institute in the framework of the psychological paradigm originates in the works of such lawyers and jurists such as A.F. Koni, A.M. Bobrishcheva-Pushkina, L.E. Vladimirova. Scientific development of this problem is reflected in the works of such famous scientists as O.A. Hulevych, V.S. Bihun, A.A. Akymchev, A.M. Berniukov, M.V. Kostytskyi, V.T. Maliarenko, V.Ya. Marchak, S.P. Pohrebniak, T.I. Prysiazhiuk, O.O. Sydorhuk, T.A. Skuratovska, M.I. Stavniichuk, O.V. Stovba, V.M. Ternavska, Yu.S. Shemshuchenko, V.Yu. Shepitko, V.I. Shyshkin, A.F. Koni, A.M. Bobrishcheva-Pushkina, L.E. Vladimirova and others, however, the individual psychological characteristics of the jury are poorly studied, resulting there are many many problematic issues and disputes about its theoretical positions among scientists.

**Presenting main material.** Reformers saw the jury as the guarantor of democracy in the country. Young reformers were influenced by the European legal tradition. It is known that at that time the jury was an integral part of liberal European theories. In creating a jury trial, jurists have borrowed a lot from Western European traditions and no one at the time thought that the individual, unique psychological qualities of each jury would have a significant impact on future decisions [1, p. 26]. Having adopted and developed, at one time the institute of the jury, the English process has mastered the principle of functions' separation: "De jure respondent judices, de facto juratores" (Lat.) It means judges decide the questions of law and juries decide the questions of fact. Foinytskyi pointed out that the juries were witnesses who answered questions of fact, and their testimony on the factual side of the case was declared mandatory for the judges. At that time, there was a distinction between evidence through the jury and evidence through the witness; the former developed in England and the latter in France [2, p. 4–8; 6, p. 201].

A special difficulty has always been the study with the participation of judges of the fact of the circumstances that characterize the identity of the defendant.

It should be noted that many have criticized such a broad study of the date of the defendant's identity before a jury. V.K. Sluchevskyi, for example, argued that the character traits of the defendant should be studied only to the extent that they could be manifested in the commission of a crime. According to V.S. Spasovich, it is necessary to limit research of data on the person only to those, which will consider it necessary to open protection [3; 4, p. 13].

Thus, A.F. Koni and his companions strongly supported the idea of introducing a jury trial, while pointing to the need for competent selection of juries so that they could make a truly objective decision [5, p. 13].

We believe, as it was noted earlier, that all decisions made by the jury directly depend on their psychological characteristics (levels of empathic abilities, character traits, temperament types and permanence of stereotypes). Therefore, when forming the jury's list, it is necessary to pay special attention to moral, subjective, psychological qualities, as he is in his status at the time of the proceedings equated to a professional judge and decides on the guilt or innocence of the accused, thereby deciding the fate of the latter.

However, considering the relevance of the issue of correct jury selection, the author in the study of historical facts, found an example of incorrect selection, the so-called "people's court" on the example of Russian law. That is, a kind of controversial idea between pre-revolutionary lawyers became an innovation regarding the introduction of official qualifications.

Thus, regardless of income level or salary, the list of jurors included all citizens, officials from V to XIV class, all elected officials of city and noble institutions and peasants who held at least three years of elected positions of village elders, etc. Thus the question of jury's selection was not to determine the individual psychological characteristics but to the position in society [6, p. 114; 7, p. 25–39; 8, p. 29].

Moreover, because of ignoring the selection of candidates for individual psychological characteristics of the jury in the first years of its operation, this legal institution has shown its inability to make objective verdicts. That later caused a very serious confrontation over the jury trial by such influential jurists as K.P. Pobiedonostsev, the Minister of Internal Affairs D. Tolstoy and the chief of gendarmes P. Shuvalov [2, p. 4–8; 9, p. 1–2].

The pre-revolutionary researcher of judicial reform I.V. Hessen wrote that almost the first verdict of the jury caused the dissatisfaction of the government. The author concludes that most often the consideration of cases by juries was conducted "insufficiently clearly and distinctly by legislative motives", namely, "the question of crime's sanity was decided by a jury based on an internal uncontrolled conviction of conscience". That is, once again confirming the fact that the wrong selection of jurors, without taking into account their psychological characteristics, the court decisions were made spontaneously, irresponsibly and recklessly, questioning the institution of a jury trial.

Lawyers of that time later began to pay close attention to issues “related” to the psychological characteristics of the jury trial: the collective decision of the jury and its motivation, the dependence of the group decided on the social composition of the jury and its socio-psychological characteristics, legal awareness of the jury and some other psychological qualities. Many of the jury’s researchers, like A.M. Bobryshchev-Pushkin, L.E. Vladimirov, turned to psychological categories, to the categories of moral and morality [3; 10, p. 76].

However, the question of the dependence of individual psychological features remains unexplored, such as stereotypes, such as those that are endured over time which “people often get into trouble through no fault of their own, being victims of chance”, “innocent people often end up in prison”, “low authority of police officers is associated with a large number of abuses and offences in the performance of their duties”, etc. It was not studied at all the dependence of the level of jury’s empathic abilities, their personal qualities, such as isolation – sociability, concrete thinking – abstract thinking, emotional instability – emotional stability, subordination – dominance, restraint – expressiveness, low normative behaviour – high normative behaviour, timidity – courage, realism – sensitivity, suspicion – credulity, practicality – dreaminess, straightforwardness – diplomacy, calmness – anxiety, conservatism – radicalism, conformism – non-conformism, low self-control – high self-control, relaxation – emotional tension. In our opinion, these all have a significant impact on the jury in deciding the guilt or innocence of the defendant.

Thus, according to E.A. Budilov, with whom it is impossible to disagree, the advantage of the jury is primarily an individual, subjective, psychological assessment of the case. However, as in the past and today, there is no procedure for selecting juries according to their psychological characteristics, which we consider a big mistake both in the field of justice administration and there is a blank in the knowledge of dependence of jury’s individual psychological features in the implementation of their powers, and as a consequence of making a fair, complete, informed decision [3].

Concentrating subjectively around personal and psychological qualities, the jury’s assessment of what is happening in the trial flows smoothly into their inner conviction.

This is how the CPC of Ukraine determines that in resolving questions, the jury must be guided by their inner convictions and conscience, as befits a free citizen and a just man.

The peculiarity of the formation of the jury’s internal conviction is that for them, as non-professional judges, the immediate, main importance is the intuitive perception of the evidence. Therefore, the prosecutor and defender must not only know jurisprudence but also have the ability to appeal to the minds and emotions of the jury [11, p. 115].

Factors, which influence the formation of their inner conviction, are:

- level of empathic abilities;
- stereotypes of thinking;
- the persuasiveness of the prosecutor’s position and defender;
- the behaviour of the accused in court;
- the position and behaviour of the victim in court;
- the personal, subjective conviction of the guilt (innocence) of the accused, regardless of the evidence presented;
- the jury’s temperament [11, p. 119].

However, it should be noted that, in our opinion, each “set” of individual psychological characteristics is one that, as paying attention to the above examples of real court cases, openly disregarded the law and common sense. Thus, proving that not every citizen can perform the functions of a juror.

Thus, case law shows that the psychological component plays a huge role in the jury trial. “People from the street”, who are in fact jurors, must listen to, properly evaluate a complex system of evidence, sometimes indirect, and make a legally competent and fair decision. Oratory, rhetoric, artistry sometimes overshadow the power of evidence, arguments and legal reasons. Moreover, when all this is overlapped on the individual psychological characteristics of the jury, on their low legal culture, on a fair verdict following accepted legal norms in society, it is often difficult to count [12, p. 101–106].

The analysis of the case materials in the jury trials showed that the value division of modern society, as well as the individual psychological characteristics of the jury, determine the shifting the focus of the jury’s attention from the objective consideration of the case to its subjective assessment [13, p. 243].

Many problems and claims to the jury are associated with insufficient attention to the psychological patterns of functioning of this legal institution. Meanwhile, these are the main reasons for jurors making unjust decisions.

Therefore, it is worth noting that the supporters of the jury believe that the advantages are still more than the disadvantages of this form of justice, indicating the compliance of the four basic principles of the jury trial: the immediacy of perception, impartiality, and independence of the board and adversarial parties.

Following the principle of immediacy, the basis of the judgment must be the evidence presented during the trial [3]. Supporters of jury trials argue that professional judges have several stereotypes that arise as they “enter the profession” making it difficult to implement this principle. In this situation, the verdict of the jury, who have no experience in making a court decision, is more in line with the principle of immediacy. According to the principle of impartiality, a person who is not interested in the outcome of the case, who has no prejudice in favour of one of the parties, should make a court decision. Supporters of the jury believe that jurors, who have no personal interest in making a decision, namely they are not bound by the agency’s interests in which they work, they are not familiar with the defendant, victim, witnesses, prosecutor, lawyer and judge, will make impartial decisions. The trial process includes several mechanisms such as selection of the jury, creating a solemn and at the same time working atmosphere in the courtroom, compliance with the decision-making procedure that allows the jurors to remain impartial. The size of the board complicates the pressure on its members, which guarantees its independence. Publicity of the process increases the probability that both parties – prosecutor and lawyer – will have the opportunity to express their position in the case, which will ensure compliance with the principle of adversarial proceedings [14, p. 54–55].

This idea gave rise to some ideas about what should be the ideal jury:

- the juries are a “blank slate”, namely, entering the courtroom, they “leave behind the door” their attitudes, values and life experiences;
- the jurors make decisions based exclusively on the evidence presented during the trial, without taking into account any other information;
- the jurors carefully memorize and use all the evidence which was presented to them during the trial;
- the jury postpones the decision until the discussion in the meeting room;

– the individual opinions of the jurors do not change under the influence of other members of the board [5; 15, p. 13].

Thus, the “ideal juror” is a person, who can abandon instantly the experience, can delay consciously the assessment of new and interesting information for him, completely ignores the opinion of others, that is, it has psychological features that are not characteristic of people in general. Naturally, real jurors do not fully meet these notions. The same applies to people with legal education who have been working in the judiciary for a long time [16, p. 8–9].

Thus, one of the most important issues that arise in connection with the consideration of the case with the participation of the jury is the accuracy of the verdict. It is extremely difficult to answer due to the lack of a standard. Before the trial, we do not know whether the defendant committed the crime with which he is accused. Even after its completion, the main criterion for the guilt of the defendant is the court decision, not “what happened”.

There are several options for determining the quality of a jury verdict:

- compliance of jury verdicts with the decisions of professional judges;
- the description of analysis strategies information of the jury obtained during the trial;
- analysis of the verdict process;
- identification of factors that influence the verdict [3; 17; 18].

**Conclusions and further prospects in this direction.** Most researchers, who are dealing with this issue, are guided in their work by other ideas borrowed from social and general psychology. They do not study the process of making a court decision in general, but the dependence of the verdict on several factors.

All of the above forces us to turn to the analysis of those psychological patterns that underlie the jury’s verdicts, and in particular to study the dependence mechanisms of several factors that influence the formation of the internal conviction of the jury.

#### REFERENCES:

1. Гуценко К.Ф. Суд присяжных: панацея или иллюзия? *Вестник Верховного Суда*. 1991. № 3. С. 31.
2. Селезнев М. Суд присяжных действует, но... *Законность*. 1998. № 4. С. 4–8.
3. Брижак З.И. Личностные детерминанты формирования внутреннего убеждения присяжных заседателей : дис. ... канд. психол. Наук : 19.00.06. Ростов-на-Дону : РГБ, 2006. URL: <http://www.lib.ua-ru.net/diss/cont/161898.html>.
4. Шувальська Л.Р. Психологічна діяльність суду присяжних у нарадчій кімнаті. *Філософія і психологія права*. 2016–2017. № 1.
5. Кони А.Ф. Присяжные заседатели. *Советская юстиция*. 1993. № 17. С. 15.
6. Винник А. Суд присяжных: шаг к демократии или от нее? *Право и жизнь* : независимый научно-популярный журнал. Москва : Манускрипт. 1996. № 9. С. 105–135.
7. Пашин С.А. Отбор присяжных заседателей в суде. *Состязательное правосудие* : труды научно-практических лабораторий. Москва : Международный комитет содействия правовой реформе, 1996. Вып. 1. Ч. I. С. 25–39.

8. Гулевич О.А., Дьяконов Т.Ю. Стереотипы маргинальных групп в средствах массовой информации (по материалам статей в российских газетах 1999–2001 гг.). *Воображение и творчество в образовании и профессиональной деятельности*. Москва, 2004. С. 28–50.
9. Abwender D.A., Hough K. Interactive effects of characteristics of defendant and mock juror on U.S. participants' judgment and sentencing recommendations. *The Journal of Social Psychology*. 2001. Vol. 141. P. 603–615.
10. Гулевич О.А. – Психологічні основи юриспруденції : навчальний посібник. Москва : НОУ ВПО Московський психолого-соціальний інститут, 2009. 512 с.
11. Гулевич О.А. Психология в суде присяжных. Аналитический обзор : учебное пособие для студентов факультетов психологии высших учебных заведений по специальности 020400 – «Психология». Москва : Международное общество им. Л.С. Выготского, 2003. 259 с.
12. Гулевич О.А. Господа присяжные заседатели: размышления психолога. *Общественные науки и современность*. 1996. № 5. С. 101–106.
13. Гулевич О.А. Влияние типа преступления на оценку степени ответственности и вины преступника и жертвы. *Сборник трудов Института психологии им. Л.С. Выготского РГГУ*. 2001. Вып. 1. С. 233–248.
14. Гулевич О.А. Социальные представления о преступлениях в межличностной и массовой коммуникации. *Вопросы психологии*. 2001. № 4. С. 53–67.
15. Правовые представления личности с различной установкой к участию в суде присяжных : автореф. дис. ... канд. психол. наук : 19.00.01. Краснодар, 2007. 26 с.
16. Радченко І.А. Теорія і практика наукових досліджень : посібник. Умань, 2013. 104 с.
17. Eakin D.K., Schreiber T.A., Sergent-Marshall S. Misinformation effects in eyewitness memory: the presence and absence of memory impairment as a function of warning and misinformation accessibility. *Journal of Experimental Psychology*. 2003. Vol. 29. P. 813–820
18. The effects of defendant race, victim race, and juror gender on evidence processing in a murder trial / R. Lee Forster et al. *Behavioral Sciences and the Law*. 2006. Vol. 24. P. 179–198.