

Theoretical and Legal Analysis of Lay Element in Judiciary

Abstract

This work is dealing with the lay element in judiciary. The main emphasis is laid on the institute of lay judges in the Czech legal order. The main goal of the work is to answer the questions whether the lay element in judiciary is still a democratizing component, further if there are fulfilled enough the constitutional conditions of an independent, impartial and statutory judge principle in case of lay judges, whether the democratic or the expert legitimacy may prevail and at last, if the lay element should be preserved in the Czech legal order.

In the first chapter, there is described a historical development of the lay element in judiciary. In modern times, it has appeared firstly in the form of jury courts in the Czech lands, more precisely in the Austrian monarchy, after the revolutionary year 1848. Its functioning is illustrated on two famous cases, which were the process with K. H. Borovský and with Leopold Hilsner. On the one hand, these cases show the advantage of participation of lay people into judiciary, as it can serve as correction of the state's despotism. On the other hand, there should come to wrong decisions in the consequence of an easy suggestibility of the public. At the age of the so called First Czechoslovak Republic, there was the Austrian model of jury courts adopted. However, during the Nazi occupation was it avoided. After the World War II, it has come to implementation of the institute of the lay judges. In the part about the communistic regime, there is pointed out to the fact, that the function of the lay element in judiciary as the guarantee of democracy can be also misused. The so called "judges from the people" had served more likely as a control of court's decision-making in the interests of the governing structures. After the Velvet revolution were the lay judges preserved.

Afterwards, the institute of the lay judges is discussed in the current legislation. Firstly, in this part is pointed out to some quite vague conditions for the execution of the office of a lay judge. Further, the exposition dedicates to the procedure of the selection of lay judges, their position and ways of termination of the office.

The next chapter discusses about the question, whether there is the independence and impartiality of the lay judges guaranteed enough in the Czech Republic. The author concludes, that with respect to these principles is very problematic the way of selection of lay judges to their office, unsuitable specification of mutual incompatibility of offices, the length of their term of office, insufficient material security and the way of dismissal of the lay judges from their office.

The following part is dealing with the question, whether there exists the right on a statutory lay judge next to the right to the statutory judge. The author answers this question positively. He focuses on the thesis, if this principle is sufficiently fulfilled in case of lay judges. He analyses also some of the decisions of the Czech Supreme Court or Constitutional Court. After that, he answers negatively. As insufficient he primarily denotes the way of assignation of the lay judges to the particular cases, which absolutely admits arbitrariness.

Afterwards, the subject of research are the issues such as collision of democratic and expert legitimacy and the extent of engagement of the lay judges during the court's hearings. The author expresses the presumption, that both democratic and expert legitimacy should not be necessarily in a conflict. The solution is in their appropriate synthesis.

A comparative part is also contained. There are judicial lay elements in Austria and in Germany compared.

In conclusion, the author tends to the statement, that it is more convenient to preserve the lay element in the Czech judiciary. For the needs of the domestic court proceedings he opts for the current institute of lay judges as better than the juries. Nevertheless, he considers as more suitable to keep them only in the criminal trials. In the civil proceedings, there should be the lay judges avoided. As absolutely unsuitable deems the author the general conception of the lay judges. Firstly, he opts for option of inspiration by the Austrian or by the German law, where the office is a civic duty. This amendment should help to the solution of the whole series of another partial issues. He proposes the inspiration by the abroad legislation also in the issues of the decision-making of the court bench in order to minimalizing the risks of inappropriate outvoting of the professional judge by the lay people. As such conception is currently practically unenforceable, he does not exclude also an alternative possibility to avoid the lay element in judiciary.

Keywords: Justice; Lay Judges; Jury.