



e-ISSN 3083-6018

SOCIAL DEVELOPMENT: Economic and Legal Issues

<https://www.eu-scientists.com/index.php/sdel>



Constitutional and Legal Principles of Jury Functioning: A Comparative Study

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ARTICLE INFO

ABSTRACT

Research Article

DOI:

[10.70651/3083-6018/2025.12.13](https://doi.org/10.70651/3083-6018/2025.12.13)

Received:

11 November 2025

Accepted:

12 December 2025

Published online:

23 December 2025

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In contemporary constitutional law, citizen participation in the administration of justice through jury and lay judge institutions is traditionally regarded as a form of implementing the principle of popular sovereignty in the judicial sphere. However, domestic constitutional law scholarship lacks a comprehensive comparative legal analysis of constitutional models for regulating jury trials, which complicates determining optimal pathways for developing this institution in Ukraine. The purpose of this study is to clarify the features of constitutional regulation of the jury trial institution in foreign countries, identify the main models of such regulation, and determine the specifics of the Ukrainian constitutional model of popular participation in the administration of justice. The article systematizes three main approaches to the constitutional enshrinement of popular participation in justice: direct establishment of jury trials as an element of the judicial system with definition of its status and competence; formulation of a general principle of administering justice on behalf of the people without specifying institutional forms; absence of special constitutional provisions with delegation of regulation to ordinary legislation. Two main models of lay judge participation are identified: the classical Anglo-American model with clear separation of functions between jurors and professional judges, and the continental model of a unified panel of professional judges and lay assessors. It is established that states of the Anglo-American legal tradition constitutionally guarantee jury participation in both criminal and civil cases, while European and post-Soviet countries limit their jurisdiction primarily to criminal cases. An analysis of constitutional provisions on jury trials in the USA, Canada, Great Britain, Spain, Belgium, Greece, Denmark, Hungary, Austria, and post-Soviet states is conducted. It is concluded that Ukraine occupies an intermediate position in the system of global approaches, as the Constitution does not limit jury jurisdiction to criminal cases only, creating potential for introducing their participation in civil proceedings. Constitutional enshrinement provides the jury institution with enhanced legal protection and links it to the fundamental principles of popular sovereignty and democratic organization of state power.



KEYWORDS

jury trial, constitutional regulation of justice, lay assessors, judicial system.



e-ISSN 3083-6018

СОЦІАЛЬНИЙ РОЗВИТОК: економіко-правові проблеми

<https://www.eu-scientists.com/index.php/sdel>



Конституційно-правові засади функціонування суду присяжних: порівняльний аналіз

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СТАТТЯ

АНОТАЦІЯ

Дослідницька

DOI:

[10.70651/3083-6018/2025.12.13](https://doi.org/10.70651/3083-6018/2025.12.13)

Отримана:

11.11.2025 р.

Прийнята:

12.12.2025 р.

Опублікована:

23.12.2025 р.

Авторське право

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У сучасному конституційному праві участь громадян у здійсненні правосуддя через інститути присяжних та народних засідателів традиційно розглядається як форма реалізації принципу народного суверенітету у судовій сфері. Водночас у вітчизняній науці конституційного права відсутній комплексний порівняльно-правовий аналіз моделей конституційного регулювання суду присяжних, що ускладнює визначення оптимальних шляхів розвитку цього інституту в Україні. Метою дослідження є з'ясування особливостей конституційного регулювання інституту суду присяжних у зарубіжних країнах, виявлення основних моделей такого регулювання та визначення специфіки української конституційної моделі участі народу у здійсненні правосуддя. У статті систематизовано три основні підходи до конституційного закріплення участі народу у правосудді: безпосереднє закріплення суду присяжних як елементу судової системи з визначенням його статусу та компетенції; формулювання загального принципу здійснення правосуддя від імені народу без конкретизації інституційних форм; відсутність спеціальних конституційних положень з передачею регулювання звичайному законодавству. Виокремлено дві основні моделі участі непрофесійних суддів: класична англо-американська модель з чітким розмежуванням функцій присяжних і професійного судді, та континентальна модель єдиної колегії професійних суддів і народних засідателів. Встановлено, що держави англо-американської правової традиції конституційно гарантують участь присяжних як у кримінальних, так і в цивільних справах, тоді як європейські та пострадянські країни обмежують їх юрисдикцію переважно кримінальними справами. Проведено аналіз конституційних положень про суд присяжних у США, Канаді, Великій Британії, Іспанії, Бельгії, Греції, Данії, Угорщині, Австрії та пострадянських державах. Робиться висновок, що Україна займає проміжне становище у системі світових підходів, оскільки Конституція не обмежує юрисдикцію присяжних лише кримінальними справами, що створює потенціал для запровадження їх участі у цивільному судочинстві. Конституційне закріплення надає інституту присяжних підвищений правовий захист та пов'язує його з фундаментальними принципами народного суверенітету та демократичної організації державної влади.



КЛЮЧОВІ СЛОВА

суд присяжних, конституційне регулювання правосуддя, народні засідателі, судова система.

1. Introduction

The constitutions of a number of states enshrine the participation of representatives of the people in the administration of justice through the institutions of the jury and people's assessors. In the science of constitutional law, such participation is traditionally considered as a form of implementation of the principle of popular sovereignty, a mechanism of democratic legitimation of the judiciary and an additional guarantee of ensuring a balance between the interests of the state and human rights. as an institutional mechanism of democratic control over the administration of justice and as a guarantee against excessive concentration of state power in the judicial sphere [13, p. 23].

The constitutional regulation of the institution of a jury trial is characterized by a significant variety of models formed within different legal traditions. In modern conditions, this institution is of particular importance in the context of strengthening the requirements for the independence of the judiciary, the openness of judicial proceedings and public confidence in court decisions. In the domestic constitutional and legal doctrine, the study of the jury trial was carried out mainly in procedural, historical, legal and organizational-structural aspects, while the issues of constitutional regulation of this institution in the comparative legal dimension require further scientific understanding to determine the optimal model of its functioning in the legal system of Ukraine.

In this regard, the need for a comparative legal study of the constitutional principles of regulating the institution of a jury trial, determining its main models and clarifying the specifics of the Ukrainian constitutional model of people's participation in the administration of justice, taking into account modern world trends, is actualized.

2. Literature Review

A fundamental contribution to the understanding of the political and legal nature of the jury trial was made by A. de Tocqueville, who in his classic work of 1895 substantiated the thesis of the jury trial as a tool for the democratization of society and the education of civic responsibility [22]. Among modern researchers, special attention should be paid to the works of J. M. Van Dyck, who considers the jury trial as a mechanism of "final protection" of a person from state arbitrariness and additional legitimation of court decisions [25]. This concept allows us to interpret the constitutional consolidation of the jury trial not only as a procedural guarantee, but as a fundamental element of the system of checks and balances. H. A. Vargas analyzes the trial by jury in the context of the public right of citizens to participate in the exercise of state power, emphasizing the constitutional and legal nature of this institution [26]. Ph. Traest highlights the historical and political background to the introduction of the jury trial in Belgium, emphasizing its role as a guarantee against state injustice [23]. This study demonstrates the relationship between the constitutional consolidation of the jury trial and the political context of its implementation. In his monograph, N. Vidmar conducted a comparative analysis of jury trial systems in different countries of the world, revealing common and distinctive features of their functioning [27]. V. P. Hans focuses on the various jury trial systems in the world, examining their functional features and efficiency [12].

In domestic studies, the jury trial is considered as part of the constitutional democracy and legal order of Ukraine, focusing on the issues of formation, activity and legal status of jurors. Thus, I. M. Zharovska emphasizes that the jury court ensures the representation of public values in court decisions and contributes to the formation of the legal culture of citizens, analyzing the modern legislation of Ukraine, procedural regulation [29]. V. Kovalchuk considers the jury trial as an institution of direct democracy in the Ukrainian legal space, emphasizing that although the participation of citizens in justice is constitutionally enshrined, its practical implementation is significantly limited, which requires the introduction of the classical model and the improvement of procedural support [15].

The analysis of dissertations allows us to distinguish theoretical, legal and practical aspects of the functioning of the jury trial. I. R. Volosko examines the historical foundations of the formation and development of the jury trial in Ukraine, in particular, the peculiarities of the formation of the system and its transformation in the context of legal reforms [28]. The works of A. A. Solodkov are devoted to the theoretical foundations and practice of jury proceedings, in particular, the analysis of the role of juries in criminal proceedings and the problems of their application in the Ukrainian legal field [19; 20].

A generalized review of the literature demonstrates that the jury trial is considered as an important institution of constitutional democracy, which ensures the participation of citizens in the administration of justice, but the practical mechanisms of its constitutional and legal consolidation in national legislation require further scientific understanding and improvement.

3. Problem Statement

Despite the presence of a significant array of scientific works devoted to the institution of jury trial, in modern legal doctrine, research of this institution is mostly carried out through the prism of constitutional, legislative and by-laws, as well as the practice of their application. At the same time, the systematic analysis of the constitutional regulation of the jury trial as an independent institution of constitutional democracy remains limited, especially in the comparative legal aspect.

Within the framework of this scientific article, the task is to investigate the constitutional and legal nature of citizens' participation in the administration of justice through the institution of a jury trial, to outline the importance of this institution for ensuring democratic justice, to identify the main models of its constitutional consolidation in foreign countries and to determine the features of the Ukrainian approach to the functioning of the jury trial.

The implementation of this task involves clarifying the content and scope of constitutional norms that regulate the trial by jury, identifying common and distinctive features of foreign models and formulating generalized conclusions about the role of this institution in the system of constitutional guarantees of democratic justice.

4. Methods and Materials

In the process of research, a complex of general scientific and special legal methods of cognition was used. In particular, the system method is used to analyze the institution of a jury trial as an element of the mechanism for implementing the principle of democracy in the field of exercising judicial power. The comparative legal method is used to identify common and distinctive features of constitutional models of consolidation of the institution of jury trial in states of different legal traditions. To study the content and scope of constitutional norms regulating the participation of the people in the administration of justice, the formal legal method was used, which made it possible to analyze the structure, formulations and legal significance of the relevant provisions of the constitutions. The structural-functional method is used to clarify the role of the jury in the system of constitutional guarantees of democratic justice.

The theoretical basis of the study is the works of domestic and foreign scientists in the field of constitutional law and the theory of state and law, devoted to the problems of people's participation in the administration of justice. The normative framework is formed by the constitutions of Ukraine and foreign countries, which enshrine the institutions of the jury or people's assessors, and the research materials include doctrinal sources and the results of comparative legal research in this area.

5. Results and Discussion

Depending on the degree of normative specification of the participation of the people in the administration of justice in the basic law of the state, the following approaches to constitutional regulation can be distinguished: 1) direct consolidation of the jury trial as an element of the judicial system, determination of its status, competence and scope of application; 2) formulation of the general principle of the administration of justice on behalf of the people without specifying the institutional forms of such participation, which determines their further regulation at the level of ordinary legislation; 3) the absence of special provisions on the participation of jurors or people's assessors, in which the admissibility and parameters of the involvement of non-professional judges are determined exclusively by the legislator or are not determined at all.

The first approach is characteristic of the states of the Anglo-American legal tradition, where the jury trial has historically been formed as a fundamental constitutional guarantee and has received a detailed consolidation at the level of the basic law. The second approach is inherent in the majority of continental European states, which recognize the principle of popular participation in justice, but

delegate the definition of specific forms of its implementation to the legislator. The third approach is observed in states where the participation of the people in justice is either absent at all, or is implemented exclusively at the legislative level without constitutional consolidation of the principle of popular sovereignty in the judicial sphere.

In comparative constitutional law, there are two main models of participation of non-professional judges – the classical model (the Anglo-American system) and the continental model (European) [19; 23; 27]. The classical model of a jury trial is based on a clear functional separation of competence between a jury panel and a professional judge. Within this model, the jury independently makes a verdict on the guilt or innocence of the accused without the participation of a judge, while a professional judge, on the basis of such a verdict, carries out the legal qualification of the act and determines the type and measure of punishment. The jury's verdict, as a rule, is unmotivated and can be canceled only in case of significant violations of procedural law, which leads to its increased stability in the system of court decisions [16; 17]. This model was historically formed in the legal orders of the Anglo-Saxon legal family and developed in the constitutional and legal systems of the United States, Canada and Great Britain. Some of its elements were also received in a number of continental states, in particular in Spain, where the jury has a normatively defined procedure for adopting a reasoned verdict.

The continental model is characterized by the unity of the panel of judges, which is made up of professional judges and representatives of the people, who participate in all stages of the process and exercise their powers for a specified period of time. This panel not only jointly decides on the issue of guilt or innocence, but also on the issue of qualification of crime and punishment. That is, non-professional judges participate in the consideration of the case together with professional judges as equal members of the court [27, p. 726]. Such non-professional judges who participate at all stages of the proceedings are referred to in the legislation of foreign countries as "lay judges" or "Schöffen", the latter being a German term translated as "lay assessors" or "special members" [18, p. 67].

From the point of view of subject matter jurisdiction in comparative law, two models of the application of the jury trial are clearly distinguished. The first model involves the participation of juries in both criminal and civil cases. It is characterized by the fact that juries participate in criminal cases to establish guilt and in civil cases to establish factual circumstances and responsibility, and the competence of jurors in civil cases is usually dispositive. This model is typical primarily for the USA, Canada and partly Great Britain. The second, more common model in Europe involves the involvement of juries only in criminal proceedings, usually in cases of serious crimes. Limiting the participation of juries exclusively to criminal cases has constitutional and theoretical significance, since it indicates that in most European legal orders, the jury trial is not considered as a general mechanism for the democratization of justice, but is perceived as a special tool of public supervision over the implementation of criminal prosecution by state bodies.

A special place among the states with the classical model of a jury trial is occupied by Great Britain, whose legal system is not based on a single written constitutional act. At the same time, the right to a trial by jury is traditionally recognized as a fundamental constitutional principle of common law, which originates from the Magna Carta of 1215 and retains its constitutional significance in the modern legal order [10, p. 156]. In the current English judicial system, juries are primarily involved in indictable offences in the Crown Court, as well as, in exceptional cases, in certain categories of civil cases, in particular cases of libel or unlawful deprivation of liberty. The normative formalization of this principle at the level of statutory law is carried out, in particular, by the Law on Juries of 1974, which determines the procedure for the formation and participation of juries in the administration of justice [14].

In other states of the Anglo-American legal tradition, the institution of a jury trial was directly enshrined at the level of written constitutions. Thus, in the United States of America, the most extensive constitutional regulation of this institution is contained in the Basic Law: Article III, Section 2 establishes the obligation to consider criminal cases by a jury; Amendment VI guarantees the right to a speedy and public trial by impartial juries in criminal proceedings; Amendment VII provides for the right to a trial of civil cases by a jury provided that the established property threshold is exceeded [8; 13]. In Canada, the right to a jury trial is enshrined in Article 11 of the Canadian Charter of Rights and Freedoms of 1982 and is guaranteed in criminal cases in which a sentence of imprisonment of five years or more is possible [2]. Thus, the classical model of jury trial is characterized by a high level of autonomy of the jury, a clear delineation of procedural roles and, in a number of states, detailed constitutional regulation of the scope of its application in both criminal and civil proceedings.

Among the member states of the European Union, only a few countries have enshrined the institution of people's participation in justice in the Basic Law. Thus, Article 150 of the Constitution of Belgium establishes a jury trial in all criminal cases and in cases of political crimes and crimes of the press [1]. As K. Van den Wyngaert notes, the introduction of a jury trial in Belgium was motivated by political considerations as a guarantee against state injustice [24, p. 31]. Article 97 of the Constitution of Greece establishes the possibility of citizen participation in justice through a system of mixed courts, where three professional judges and four lay assessors together participate in the consideration of serious criminal cases [5]. Section 65 of the Danish Constitution provides for the mandatory participation of citizens through the institution of lay assessors in criminal proceedings [3], and the Basic Law of Hungary establishes that lay judges also participate in the administration of justice in cases determined by law [21].

Particular attention should be paid to the experience of Austria, where Article 91 of the Federal Constitutional Law introduces a dualistic model of popular participation in justice. Part 1 of this article enshrines the general principle: "The people must participate in the administration of justice." Part 2 constitutionalizes the classical model of jury trial (*Geschworenengerichte*) for crimes for which severe punishment can be imposed, as well as for all political crimes, where the question of the guilt of the accused is decided by the jury independently of professional judges. At the same time, Part 3 provides for the *Schöffengerichte* model of the court of assessors (*Schöffengerichte*) for other criminally punishable acts, if the measure of punishment may exceed the limit defined by law, where citizens and professional judges form a single panel [11]. Such a differentiated approach allows the Austrian constitutional system to flexibly combine the political function of popular control, implemented through classical juries in the most socially significant cases, with the procedural efficiency of mixed courts for less serious torts. The constitutional model of Spain combines the recognition of juries as a democratic element of the judiciary with a continental approach to the organization of justice, which determines the limitation of the scope of their application to criminal proceedings and the subordination of the detailed regulation of this institution to ordinary legislation [7].

In post-Soviet countries, except for Ukraine, the participation of the people in the administration of justice is determined by the constitutions of Kazakhstan, Kyrgyzstan, Belarus and Russia. Thus, part 3 of Article 59 of the Basic Law of Georgia establishes that the consideration of cases by general courts is carried out with the participation of a jury in cases and in the manner determined by law [4]. And part 2 of Article 75 of the Constitution of the Republic of Kazakhstan provides that in cases provided for by law, criminal proceedings are carried out with the participation of jurors [7]. Article 58 of the Basic Law of the Kyrgyz Republic stipulates that everyone has the right to have a case heard by a court with the participation of jurors in cases provided for by law, and Article 94 provides for the right of citizens to participate in the administration of justice [6]. The analysis of the constitutional provisions of the post-Soviet states indicates the dominance of the model of the general principle of people's participation in justice with the delegation of the specification of the forms and procedure of such participation to an ordinary legislator.

In Ukraine, the constitutional principles of people's participation in the administration of justice are enshrined in Articles 124 and 127 of the Constitution of Ukraine. Part 4 of Article 124 of the Basic Law establishes: "The people directly participate in the administration of justice through a jury." Article 127 of the Constitution specifies the organizational forms of such participation, determining that "in cases determined by law, justice shall be administered with the participation of a jury" [9]. Generalization of the content of these constitutional provisions allows us to single out several fundamental features of the Ukrainian model. Firstly, the Constitution of Ukraine does not specify the subject jurisdiction of juries, not limiting their participation exclusively to criminal cases. Article 124 establishes that the jurisdiction of the courts extends to any legal dispute and any criminal charge, and in cases determined by law, the courts also consider other cases. This distinguishes the Ukrainian model from most European states. Secondly, the Constitution delegates to the legislator the definition of specific cases of jury participation in the administration of justice ("in cases determined by law"), which is typical for the continental approach to the regulation of this institution. Thus, Ukraine occupies an intermediate position between the Anglo-American and continental models of constitutional regulation of jury trials.

It should be noted that the constitutional consolidation of the participation of the people in the administration of justice is not a generally accepted world practice. The analysis of the Basic Laws of the

European Union and post-Soviet countries shows the existence of a significant group of states in which the participation of citizens in the administration of justice has not received direct constitutional consolidation, but is implemented at the level of ordinary legislation, as a rule, on the basis of laws on the judiciary and procedural codes. Such states include, in particular, Germany, France, Sweden, as well as a number of post-Soviet countries. The absence of constitutional consolidation does not mean the absence of the institution of popular participation in justice as such. In Germany, for example, the institute of *Schöffen* is widely used – non-professional judges who, together with professional judges, form a single panel and participate in resolving both factual and legal issues. A similar practice exists in France, where lay jurors (*jurés populaires*) participate in the adjudication of the most serious criminal offences before the *Cour d'assises*. Such a model of legal regulation provides the legislator with maximum flexibility in determining the parameters of popular participation in justice, allowing this institution to be adapted to changing social needs without the need to amend the constitution. At the same time, it deprives the institution of jury of increased constitutional and legal protection, which may lead to its weakening or even abolition in the event of a change in the political situation.

6. Conclusions

The comparative legal analysis indicates the absence of a universal model of constitutional consolidation of the participation of the people in the administration of justice, as a result of which different approaches to the regulation of the institution of jury trials have been formed in the world legal order. Only some states, primarily the countries of the Anglo-American legal tradition, have constitutionalized the jury trial as an independent element of the judicial system with a clear definition of its status, scope and procedural role, which led to the formation of a classical model with the separation of powers between the jury and the professional judge. In most European and post-Soviet states, the continental approach dominates, in which the participation of non-professional judges is limited to criminal proceedings and detailed at the level of ordinary legislation. Ukraine occupies an intermediate position between these models, combining the constitutional recognition of the participation of the people in the administration of justice with the delegation to the legislator of the definition of specific forms of its implementation, which creates the potential for further development of the institution of the jury as a component of democratic justice and a mechanism for increasing public trust in the judiciary.

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