



The jury in belgium

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THE JURY IN BELGIUM

Prof. Dr. Philip Traest *

1. Jurisdiction and Composition of the Jury in Belgium

In Belgium the participation of laypersons in the criminal process is in essence limited to the procedure before the « Assize court » (*Hof van Assisen – Cour d'Assises*). For other judicial instances the duty of laypersons is restricted to functions as a witness or an expert.

For the sake of completeness, it should be mentioned that laypersons can sit temporarily as judges in conclave with professional judges in the *arbeidsrechtbank (Tribunal de travail)* and the *rechtbank van koophandel (Tribunal de commerce)*, courts where social and commercial cases are tried. As these courts do not hear criminal cases, they will not be discussed here.

Only before the Assize court can laypersons serve as judges in criminal cases. All other criminal cases are tried by professional judges. Only a small percentage of criminal cases are heard by a jury court. Article 150 of the Belgian Constitution stipulates that the jury is required for all crimes – the so-called *misdaden (crimes)* – , political offences and offences perpetrated by means of the press and involving therefore the freedom of the press.

Based upon the French tradition, Belgian penal law applies a three-barrelled division of all offences, according to the penalty as provided in article 7 of the Belgian Penal Code. Offences punishable with more than 5 years of imprisonment are called *misdaden (crimes)*. Offences punishable with imprisonment between 8 days and 5 years and/or a fine of more than 25 francs¹ are called *wanbedrijven (délits)*, while offences punishable with imprisonment between 1 and 7 days and/or a fine of maximum 25 francs are called *overtredingen (contraventions)*.

So, the institution of the jury is limited to a certain category of offences, that is supposed to contain the most serious offences, causing most social troubles and disorder on the one hand (*misdaden*) and that can be considered as involving

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1. To be multiplied by 200.

the fundamental values of a democratic society on the other hand (political offences and offences concerning the freedom of the press).

There is actually no personal right for the accused to be tried by a jury in all other criminal cases. The right of the accused to a jury trial is determined by law and it is characterised as a right of the public to participate in the administration of justice, not as the right of the defendant to be tried by his peers. However, both foundations for the jury trial are to a certain degree connected. The right of the defendant to be tried by his peers, as well as the right of the public to participate in the administration of justice, can be explained as proof of a certain distrust towards government and its institutions. The history of the jury in Belgium and France proves this link.

The jury jurisdiction can be and is largely influenced by the prosecutor's charging policy and a special law of 4 October 1867 on mitigating circumstances. Not all *crimes* (offences, punishable with imprisonment of more than 5 years) are brought before a jury. As a consequence of the technique of *correctionalisation* most offences that can theoretically be punished with more than five years are in fact "correctionalised" and artificially transformed to a less serious offence (*wanbedrijf*) so they can be brought before the "correctional Court" (*correctionele rechtbank* or *tribunal correctionnel*, to be compared with the magistrates' court) without a jury. According to this law of 1867, only crimes that are punishable with imprisonment for more than 20 years cannot be "correctionalised" and have to be tried by a jury court, the assize court. Since all other *crimes* (theoretically punishable with an imprisonment of more than 5 and up to 20 years) are "correctionalised," in reality the assize court hears only the *crimes* that can not be correctionalised (more than 20 years). This is, for instance, the case in murder trials. However, it must be remarked that some *crimes* punishable with 20 or more years of imprisonment can, by virtue of explicit stipulations of the law of 4 October 1867, still be "correctionalised" and brought before a court of professional judges. For example: rape of a child of less than 10 years of age² and some forms of taking of hostages.³

The main reason for the existence of the technique of *correctionalisation* is the fact that the Belgian Penal Code of 1867 contains many offences, punishable with imprisonment for at least 5 years. It was simply not possible to bring all these *crimes* before a jury, and as a result the technique of *correctionalisation* made it possible to limit jury trial to the most serious ones. It is clear that the ideal solution would be to revise the whole Penal Code and to readjust the scale of the different punishments. However, parliament has until now taken no initiative in this direction.

It is also obvious that the technique of *correctionalisation* makes it possible for the public prosecutor to avoid a trial before the assize court. Mostly because of

2. Art. 375 Penal Code, normally punishable with imprisonment of 20 to 30 years.

3. Art. 347bis Penal Code, normally punishable with imprisonment of 20 to 30 years.

the complicated nature of jury trial, the public prosecutor takes the initiative to apply the *correctionalisation* technique to almost all criminal cases that are legally qualified for it. On the other hand, a system of plea-bargaining is not known in Belgium.

There is an assize court in the capital of each of the ten provinces of Belgium. The composition and formation of the court is regulated by articles 114 to 123 of the Judicial Code (Code of Civil Procedure), which contains all basic rules and principles of judicial organisation. The assize court consists of three professional judges and is assisted by a jury of twelve persons.⁴ The president is a judge of the Court of Appeal, while the two professional judges who are assisting him are judges in the court of first instance (*Rechtbank van eerste aanleg* or *Tribunal de première instance*, of which the correctional court is a part).⁵ The jury consists of twelve persons. However, it is possible to appoint from one to twelve persons as substitute members of the jury, in case one or more members of the jury became ill during the trial. The substitute members of the jury are therefore obliged to attend the trial from the beginning.

The public prosecutor before the assize court is mostly a member of the prosecutor's office in the Court of Appeal.⁶ However, it is also possible to appoint a prosecutor of the correctional court.⁷ The parties before the assize court (victims, defendants) can of course be assisted by lawyers to defend their interests. The decision about the compensation allowed to the victim is taken only by the three professional judges (the court itself) without the presence of the jury.

II. Role of the lay judges in the taking of evidence

The pre-trial stage of a criminal case that is brought before an assize court does not differ from the pre-trial stage in other serious matters. It involves a preliminary judicial inquiry under the direction of an investigating magistrate, the so-called *juge d'instruction*. This pre-trial investigation is mainly inquisitorial by nature and the judge collects the evidence in principle in secret. However, the law of 12 March 1998 concerning the improvement of criminal procedure (the so-called law FRANCHIMONT⁸) has introduced three new rights that can be exerted

4. Art. 119 Judicial Code.

5. For more details about the structure of the Belgian criminal justice system, see C. VAN DEN WYNGAERT, *CRIMINAL PROCEDURE SYSTEMS IN THE EUROPEAN COMMUNITY*, London, Butterworths, 1993, 4-13.

6. The *procureur-général*, assisted by *advocates-général* and *substitutes-procureur général*.

7. The *procureur du Roi*, assisted by several substitutes.

8. This law is the result of the proposals of a commission of experts presided by MICHEL FRANCHIMONT, professor of criminal procedural law at the University of Liège. This commission was created in 1991 by the Minister of Justice and has made two reports, one in 1994 and a second in 1995. Based on these reports the government introduced a proposal for a bill in 1996 and parliament passed the law in 1998. This law came into force on 2 October 1998.

during the pre-trial investigation by the suspect and the victim (*partie civile*). These parties can make a formal motion to have access to the criminal file and to order some additional measures of investigation. All parties concerned have a right to ask the investigating magistrate formally to annul a seizure of certain goods.⁹

Since crimes that are tried by a jury are mostly very serious ones, the accused will generally be detained on remand. According to the law of 20 July 1990 concerning provisional detention, the arrested person has a right to an automatic legal verification of the legality and advisability of his detention. This examination is made by the judicial council (*Chambre du conseil* or *Raadkamer*), which is staffed by a judge other than the investigating magistrate. Before each audience of the *Chambre du conseil* the arrested person has the right to see the entire criminal file.¹⁰ Therefore, we can conclude that the pre-trial investigation in a case that will be submitted to a jury is mainly but not exclusively inquisitorial. Since the person concerned is usually detained, he will have the right to see the criminal file at least once a month.

The proceedings before the assize court itself are much more formal than those before the other courts in criminal matters. The proceedings are characterized by the completely oral character of the debate. The trial is conducted by the president of the court, who plays an active role. However, the parties can present their evidence and their witnesses and the proceedings themselves possess an adversary character.

Before the opening of the proceedings before the assize court, the public prosecutor, the victim and the accused have to communicate the list of witnesses they want to present to the court and the jury. It is common practice that the public prosecutor calls not only his own witnesses, but also the witnesses that are proposed by the defence. It is clear that this is not an obligation, but it limits – at least temporarily – the procedural cost for the accused.

In addition, before the opening of the debate, the presiding judge of the assize court is obliged to question the accused about the facts of the case. The presiding judge has to make sure that the accused has chosen a counsel for his defence¹¹ and is obliged to make a written report of this interrogation. If necessary, the president can order additional investigations before the opening of the trial.

9. Articles 61^{ter}, 61^{quater} and 61^{quinquies} of the Belgian Code of Criminal Procedure. These demands have to be directed to the investigating magistrate, who has to decide within a certain period. In case of a denial, the interested party has a right of appeal, as a result of which the Court of Indictment (a chamber of the Court of Appeal - *Chambre des Mises en Accusation* -) decides.

10. This right is much broader than the right of the non-arrested suspect to move the investigating magistrate for access to the file. The right to consult the file before the *Chambre du conseil* cannot be refused.

11. If not, a counsel will be appointed.

The trial before the assize court is ruled by the principles of orality and continuity of the proceedings. Basically, the former means that the evidence is given only by means of the oral statements of the witnesses in the presence of the members of the jury. There are however some exceptions. Declarations under oath before the investigating magistrate may not be read by the presiding judge, but the investigating magistrate himself – who is always called as a witness – is allowed to report about these statements. Declarations of a witness to a police officer during the investigation may be read by the presiding judge, even if this witness has been interrogated later on by the investigating magistrate and even if his declaration was identical. It is not forbidden for the jury to use expert reports, plans or photographs.

Continuity of the proceedings¹² means that, once the proceedings have been started, they have to be continued without any interruption and without any contact with the outside world until the jury's verdict. This principle, which helps guarantee the impartiality of justice by preventing possible manipulation of the jury, must be applied in a reasonable way. Article 353 of the Code of Criminal Procedure allows the president to suspend the proceedings before the court for necessary rest pauses for the jury, the judges, the witnesses and the accused. In practice this means that the proceedings take place each working day from about 9 a.m. to 6 or 7 p.m. On the last day of the trial, however, it is usual to continue the proceedings even until very late in the evening. The members of the jury are allowed to return home at the end of the day to spend the night with their families.

The president of the assize court plays a very important role in the jury trial. He is in charge of the trial and has to do all necessary to preserve order in the court room.¹³ He has the power to refuse certain questions of the witnesses or other demands that are not relevant to the case. Article 268 of the Code of Criminal Procedure stipulates furthermore that the president has a discretionary power to do everything he judges useful to discover the truth. According to this article he can order to show the film of the reconstruction of the crime, designate an expert, add certain documents to the file or interrogate witnesses who are not mentioned on the official list of witnesses (i.e., a person who comes spontaneously to court and is capable of giving relevant information).

The first step in the proceedings before the assize court is the selection of the jury.¹⁴ The jury is selected by drawing lots of the names of the potential jurors that have not been excused and do not have a legally justified reason¹⁵ not to act as a juror. The accused and the public prosecutor each have the right to

12. § 353 of the Code of Criminal Procedure.

13. § 267 of the Code of Criminal Procedure.

14. For more details about the selection of the jury members before the opening of the debate, see below.

15. For instance, illness, other personal reasons, service as a translator or expert in the case.

challenge six¹⁶ members of the jury. Reasons must not be given for these challenges.

Once the jury has been selected, the proceedings before the court begin.

First, the decision of the 'Chambre des mises en accusation' to submit the case to the assize court is read by the clerk of the court. Subsequently, the public prosecutor gives a summary of the case. He is not obliged to do this but if he does, the summary has to be objective and may not end up in a closing speech about the guilt of the accused.

After this information about the facts of the case has been given, the president of the court interrogates the accused. This is not obliged by the law but is considered in practice to be a very important part of the proceedings. Some authors are not in favour of this interrogation because they fear that this could endanger the serenity of the debate before the court.¹⁷ At this moment in the proceedings the accused has for the first time the opportunity to explain his point of view about the facts of the case.

After the interrogation of the accused by the president, the court is proceeding to the interrogation of the witnesses. Since the oral character of the proceedings is essential, the hearing of the witnesses and the experts forms the most important part of the jury trial. All persons that have played a role in the investigation of the case are normally called as a witness. These persons include the judge of instruction who lead the judicial inquiry, the police officers who were the first at the scene of the crime or who have executed some investigations later on, the eye witnesses, the experts and all other persons who are capable of giving some useful information about the facts, the accused or the victim.

Witnesses can be called on the initiative of the public prosecutor, the accused and the victim.

Witnesses are normally obliged to take the oath¹⁸ before giving their testimony before the assize court. Some persons may however not take the oath, such as persons who are deprived of the right to act as a witness under oath¹⁹ and children under the age of fifteen. However, these persons can always be heard before the assize court to give some information, without taking the oath.

Other possible witnesses can not be heard because of their family relations with the accused or one of the accused persons, namely close relatives and persons related by marriage, brothers and sisters and the husband or wife of the

16. If substitute jury members are also to be selected, the accused and the public prosecutor can challenge even seven or eight proposed members.

17. J. D'HAENENS, *BELGISCH STRAFPROCEDURERECHT*, Gent, Story-Scientia, 1985, n° 580.

18. The oath of the witnesses runs as follows: "I swear to speak without hatred or fear and to tell the whole truth, nothing but the truth" (article 317 of the Code of Criminal Procedure).

19. Persons who are convicted to an imprisonment of ten years or more are deprived of this right for life. In the case of smaller convictions, the deprivation of this right is temporarily (article 31 to 32 of the Penal Code).

accused, even after divorce. However, if none of the parties is opposed to, they can be heard as a witness and take the oath. If one of the parties is indeed opposed to hearing the witness under oath, the president can always decide by virtue of his discretionary power to hear this relative of the accused for the information of the court and the jury.

Contrary to the other jurisdictions, where the judge can decide not to hear the witness if he is judging this not relevant to the case, all witnesses who have been called to the assize court and are present have to be interrogated except if the parties at the trial renounce to their right to question the witness.

The expert who has co-operated in the investigation (e.g. the coroner) is also obliged to take the oath as a witness. However, it is common practice to ask the expert to take also the oath of the expert according to article 44 of the Code of Criminal Procedure, just in case the expert would have to answer a question that does not concern directly his earlier investigations.

The witness is first interrogated by the president, after having taken an oath. The president is entitled to ask all questions he judges necessary.²⁰ The witness is testifying orally and is forbidden to use notes. The president of the court however has read the dossier of the criminal investigation. The declaration the witness has given in an earlier stage of the investigation to the instructing judge may not be read, because of the strictly oral character of the proceedings before the assize court.

The witness, called to appear before the court, is obliged to do so. If he fails to appear, he can be convicted to a fine.²¹ The same is possible if the witness appears in court but refuses to answer the questions. It is even possible to compel a witness by public force to appear before the court, which is however rather rare.

Indeed, a witness in a criminal case can be considered as a collaborator with justice and is therefore obliged to answer the questions. He is however not obliged to do so if he is bound by professional secrecy (e.g. lawyers, doctors)²² or if he would incriminate himself by answering the question.²³

The witnesses are interrogated separately, although a confrontation is not excluded and can even be asked by the accused or the public prosecutor.²⁴ After

20. Article 319 of the Code of Criminal Procedure.

21. The fine amounts to maximum 20.000 Belgian francs, about 500 Euro's (article 80 of the Code of Criminal Procedure).

22. Note that this rule is also applied to the police officer who has the right to refuse to tell the name of his informer. Of course, the judge and the jury are free to judge the reliability of the information given by this anonymous person.

23. This is the consequence of the principle of the interdiction of self-incrimination, as contained in article 6 of the European Convention on Human Rights and article 14 of the United Nations Treaty on civil and political rights.

24. Article 326 of the Code of Criminal Procedure.

the interrogation of the witness by the president of the court, all other parties are entitled to ask questions to the witness. The judges-assessors of the court, the public prosecutor and the members of the jury can ask their questions directly to the witness and the accused. The accused and the victim have to ask their questions to the witness through the president, who can refuse to let the witness answer certain questions. This prohibition for the accused and the victim to ask questions directly to the witness has to serve the serene character of the proceedings. In Belgian criminal law, a cross-examination of witnesses is unknown; even if the president allows the simultaneous interrogation and the confrontation of two witnesses, this can not be considered as a cross-examination. Most authors do not believe that a cross-examination of a witness assures in a better way the reliability of the declaration of the witness.

If there are serious indications that a witness is making a false declaration and has committed perjury, the president has the power to defer the person (arrested or not) to an investigating judge, who will be obliged to investigate this crime of perjury²⁵ according to the normal procedure.

After each declaration of a witness, the president asks if the accused is the person he has spoken of. The president is also entitled to show some pieces of evidence to the witness and /or the accused if this should be necessary or to ask to clarify the declaration. It is also possible to show the jury some photographs or even a video tape of the reconstruction that has been organised by the investigating magistrate.

Although witness evidence is very important in a criminal case, it can be useful to visit the scene of the crime. If the assize court has decided so, all parties and the jury will accompany the court since the visit to the scene is considered to be an essential part of the trial by jury itself.

After all witnesses and experts have been heard, the court proceeds to the closing speeches. First the victim or his counsel makes his closing speech, then the public prosecutor and last the accused and his counsel. If there is more than one accused in the trial the president of the court is deciding upon the order of their closing arguments. Each of these parties has also the right to address a reply. In this stage of the trial, the closing speeches and the replies can only concern the question whether the accused is guilty of the facts of the case. According to Belgian law in general, even the victim that has brought a civil suit along with the criminal trial²⁶ can express his point of view about the question of

25. Perjury can be punished with an imprisonment of at least 5 years (article 215 of the Penal Code). If the accused has been sentenced by the assize court to life imprisonment, the witness who has committed perjury can even be condemned to life imprisonment himself (article 216). Even persons who did not take an oath but have been heard to give some information can be punished if they are not telling the truth (article 217 of the Penal Code).

26. The victim has the right to bring his civil suit before the civil judge in a separate trial and is not obliged to stand in the jury trial. He will however not have the possibility to express his point of

guilt since the crime has to be proven to enable the conviction of the accused to pay damages to the victim or his family.

The accused himself gets the last word and subsequently the president of the court declares the debates closed. Unless a reopening of the debates is ordered – which is very rare – no further investigation can be made.

After the closing of the debate, the president instructs the jury and asks the questions they have to answer.²⁷ In case of a verdict of guilty, a second debate takes place concerning the sentence. The debate about the damages for the victim follows some weeks later and the decision on this matter is taken exclusively by the three professional judges.

III. The questions to the jury and its decision.

The decision of the jury is obtained by means of some questions about the elements of the crime.

These questions have to be answered by a 'yes' or a 'no'.

There are two types of questions that have to be asked to the jury by the president of the assize court.

First, there are the questions that arise from the indictment, as it has been read at the beginning of the jury trial. In the decision of the 'Chambre des mises en accusation' (Court of indictment) the facts of the case have been described and the court is only competent to judge these facts. The questions to the jury have to be asked in a way that they make clear all elements of the crime since a fact can only be punished if all elements of the crime have been declared present. The questions are normally asked according to the legal elements of the crime. Therefore, if someone is accused of having committed a murder, the first question will be if the accused is guilty of manslaughter. If the answer on this first question is affirmative, the second question will have to be whether this manslaughter has been committed with premeditation. If the answer on this question is also affirmative, the accused will be declared guilty of murder, if not he will be guilty of manslaughter.

The same technique is used if the accused is prosecuted for robbery with murder. The first question will concern the robbery, while the second will be connected with the accompanying murder.

The second group of questions are the additional questions that can be asked by the president of the court concerning certain circumstances that result from the debate before the court, if and only if they are relevant to the facts of the case. The court itself (the three professional judges) decides which questions are

view about the guilt of the accused to the jury and will meet much difficulties before the civil judge if the accused would have been acquitted.

27. See hereafter.

resulting from the debate, on one condition, that no other facts are submitted to the jury.²⁸

The additional questions may concern aggravating circumstances or causes of excuse.²⁹ Consequently guilt-related questions and punishment-related questions are to some extent mixed up, on the condition that they can be considered as a legal element of the incrimination. They can also be connected to the eventual disqualification of the facts, e.g. attempted robbery instead of robbery.

Finally, the additional questions can also be connected to the state of mind of the accused at the moment of the verdict of the jury. Questions about the state of mind of the accused at the time of the crime always have to be asked if the accused or his counsel is requesting this.

The questions have to be formulated in a way that an answer by 'yes' or 'no' is possible. Therefore, one question may only concern one charge and one accused. Only if certain aggravating circumstances are considered to be 'objective' they can be asked in one question for all the accused. This is e.g. the case for the aggravating circumstance of murder to robbery.

In selecting the questions for the jury, the court has to respect the rights of the defence and of the principle of contradiction. Before taking a decision about the questions to be answered by the jury, the defence has to be heard in its remarks and the advice of the public prosecutor has to be asked. The subsequent decision of the court has to be motivated, although this motivation may be summary.

No questions have to be asked about justifying circumstances since they are virtually included in the questions about the guilt and the same applies to mitigating circumstances since they only concern the term of imprisonment, which is decided in a later phase of the trial.

After the reading of the questions for the jury to answer, the president of the court instructs the jury. This instruction concerns possibly the questions themselves since the president can explain the meaning of the questions. However, the rights of the defence demand that the accused or his counsel can intervene during this instruction if they ask to do so.³⁰ The written questions are delivered to the head of the jury. In addition, the indictment and the whole criminal file are delivered to the head of the jury, except for the declarations of the

28. This has lately been put in mind by the Belgian Court of Cassation in a ruling of 11th may 1994 (*Rechtskundig Weekblad*, 1994-1995, 636-637). In the same ruling the Court of Cassation decided that the refusal of the court to ask certain additional questions to the jury does not automatically involve a violation of the rights of the defence.

29. Articles 338 and 339 of the Code of Criminal Procedure.

30. R. DECLERCQ, BEGINSELEN VAN STRAFRECHTSPLEGING, Antwerpen, Kluwer rechtswetenschappen, 1994, nr. 1560.

witnesses before the investigating judge.³¹ If the jury should receive declarations they are not allowed to read, the whole procedure before the assize court is invalid.

The president also instructs the jury on the way of voting and the way to act if there is only a simple majority of 7 to 5 about a basic fact of the case. The president however doesn't instruct the jury on the evidence itself, the sufficiency of the evidence or the credibility of certain witnesses. By doing this, he would assume a function that by virtue of the law has been reserved for the jury, namely judging about the quality of the evidence produced by the public prosecutor.

IV. Deliberation and deciding questions of fact, law and guilt.

The members of the jury are being brought to a separate room for their deliberation and they are not allowed to leave this room before they have reached a verdict. During their deliberation, no one is allowed to enter the room. Even the substitute jurors are being kept in a separate room and are not allowed to have contact with other persons before the deliberation has reached an end.³²

However, the head of the jury can call the president of the court in, to ask some explanations about the way of voting or the meaning of the questions. The president may however not answer a question that would concern the facts of the case. If the president is called in the deliberation room of the jury, he can only enter the room in the presence of all parties and the clerk of the court (article 343 of the Code of Criminal Procedure).³³

Before the start of the deliberation, the head of the jury is obliged to read the instruction of the jury as noted in article 342 of the Code of Criminal Procedure. This instruction to the jury can be considered as the best expression of the fundamental principle of the intimate conviction in continental criminal law. The last part of this instruction runs as follows: « The law is prescribing the members of the jury to consider carefully in their conscience which impression the evidence and the arguments of the defence have made upon their mind. The law does not say: You will consider true what has been declared by a certain number of witnesses. The law does not say: You will not consider true a proof that is not based on a certain report, on a certain number of witnesses or on a minimum of indications of guilt. The law is only asking one question, in which the whole duty of the members of the jury is enclosed : are You convinced in all conscience ? ».

This principle of the intimate conviction can be considered as the corollary of the principle of the search for the material truth and even though it is only explicitly formulated in respect of the jury it is deemed to be applicable to other

31. Article 341 of the Code of Criminal Procedure.

32. In case they would be obliged to stand in for a jury member during the deliberation.

33. J. D'HAENENS, *o.c.*, n°. 585.

jurisdictions as well.³⁴ The professional judge in a trial without a jury is just as the jury in the assize court assessing the weight of the evidence and is not bound by a legal minimum.

At this stage of the trial, the jury is only deliberating about the question of guilt. The jury can not ask at this stage of the trial that the evidentiary portion of trial would be re-opened but they dispose of the investigative dossier and the physical evidence.

The jury has to decide first about the main fact of the case and only subsequently about the aggravating circumstances. The vote is secret and each member of the jury has to drop out 'yes' or 'no' on the ballot paper. If a member of the jury is not voting, he is supposed to vote in favour of the accused. The questions are answered in principle by a simple majority. A vote of 6 to 6 means a decision in favour of the accused and the answer on the question is 'no'. If there is a simple majority of 7 to 5 the head of the jury has to note this on the document intended for the president of the court.

The jury has to answer all questions, except for subsidiary questions when the answer on the question about the main fact is positive and except for questions about aggravating circumstances when the answer about the main fact is negative.

If the answer on a question about a main fact of the cause is positive by 7 to 5 votes, the three professional judges have to express their opinion about the question of guilt. They are deciding with a simple majority whether or not they will join the majority of the jury. If they don't, the ultimate vote is 8 to 7 in favour of the accused, which means the acquittal.³⁵

If the majority of the jury is 8 to 4 or more, the professional judges do not intervene in the decision about the guilt of the accused. The intervention of the professional judges was meant as a guarantee for the accused.

Questions of law are answered by the court itself. It isn't always easy to distinguish a legal from a factual question. Legal questions are :

- the question whether coins are legally valid in Belgium (art. 160 Penal Code);
 - the question whether the issue of paper currency is allowed by virtue of the Belgian law (art. 173 Penal Code);
 - the question concerning the admissibility of criminal proceedings because of a crime, committed by a Belgian citizen in a foreign country against a local;
- Not considered as legal questions, though as factual questions are :

34. C. VAN DEN WYNGAERT, *CRIMINAL PROCEDURE SYSTEMS IN THE EUROPEAN COMMUNITY*, London, Butterworth, 1993, 22.

35. The fact that the professional judges decide with a simple majority means that, if two of the three judges are in favour of an acquittal, the accused goes free even if 8 out of the in total 15 persons (7 jury members and 1 judge) are in favour of a guilty verdict.

- the question whether coins are legally valid in a foreign country and whether the issue of those coins is allowed by their law;
- the question about the age of the victim, in cases like rape or indecent assault;
- the question about the descent, in cases like parental or child-murder;

These examples show there are some factual questions that are in reality legal questions or have at least important juridical consequences. As the examples show it is also presumable that some factual questions hide a question about the regularity of the way in which evidence was obtained, this latter being the object of great juridical controversy. Therefore, it won't be easy to catalogue a problem concerning the regularity of a wiretap or an eventual violation of the professional secrecy or the argument the crime has being provoked or the fact that evidence was irregularly obtained as a legal or as a factual question. However, since the jury has to judge the value of the evidence presented by the public prosecutor, there are arguments to say that also problems concerning the regularity of the gathering of this evidence have to be solved by the jury itself.

The question whether or not the reasonable time according to article 6 of the European Convention has been exceeded has to be decided by the jury if this has affected the evidence and by the jury and the court together if this has only an influence on the sentence.³⁶

Most of these problems suppose a certain knowledge of the law and the jurisprudence about evidence gathering and the exclusionary rule. It is clear most jury members lack this legal knowledge or experience, while on the other hand the instruction of the president of the court may not be meant to influence the jury in answering a certain question. Article 267 of the Code of Criminal Procedure stipulates that the president may guide the members of the jury in the course of their legal task but this can not serve as a justification for the president to influence the decision of the jury.

If the answers of the jury are incomplete, dubious or contradictory the president of the court has the power to send them back to their chamber to complete their answers but not to change the decision. This could happen if there is a contradiction between the written answer of the jury and the oral declaration of the president of the jury.

The jury has to give no reason at all for its verdict. It is therefore very difficult in case of an acquittal to establish if the motives for this judgement are related to sympathy for the accused or his acts or to disapproval of the law. There have been cases where the verdict of the jury was extremely lenient compared to what could have been expected of a professional judge but in some other cases, the verdict of the jury was judged to be very severe.

36. M. FRANCHIMONT, A. JACOBS & A. MASSET, MANUEL DE PROCEDURE PENALE, Collection scientifique de la Faculté de droit de Liège, 1989, 651-652.

V. The judgment

After the decision of the jury on the question of guilt, the second phase of the jury trial starts.

If the result of the deliberation of the jury is a not guilty verdict, the accused is allowed to leave the court as a free citizen. The not guilty verdict means that the accused can never be indicted a second time for the same fact, not even if it would be qualified otherwise.³⁷

Exceptionally it is possible for the president of the assize court to order that the acquitted person will be indicted for another criminal fact that was not the object of the jury trial, but that has appeared to be committed by the accused as a result of the debates before the assize court. Even if the president of the court is not acting in this way, the public prosecutor can always indict the accused for that other offence according to the ordinary rules of criminal procedure. This could happen for example if the accused would confess during the jury trial about a rape that is not linked to that murder.

After a not guilty verdict, the accused can sue the denunciators or the victims for damages based on defamation. However, it is clear that these damages are not allowed automatically.

If there is a verdict of guilty the debate about the penalty starts. Theoretically, the court – the three professional judges – have, according to article 352 of the Code of Criminal Procedure, the power to refer the case to a next session of the assize court with a totally different jury if they judge that the jury has made a mistake in the judgement of the case itself, even if all procedural rules are respected. This decision can only be taken by the three judges unanimously and only after a guilty verdict (not after an acquittal). The decision of the second jury has to be followed, even if the result is the same as the decision of the first jury.

It is also possible for the court to acquit the accused after a guilty verdict of the jury if the material fact would appear not to be forbidden by law. The same applies when the court would find only after the guilty verdict that the public action, the right to prosecute, was prescribed. It must be clear that all this happens extremely rarely.

Normally, after the guilty verdict of the jury, the debates about the sentence start. According to the fundamental principles of criminal law, the victim can not take part in this debate. Only the public prosecutor and the accused can participate in this debate. The accused has the last word.

The final sentence is decided by the jury and the court together, 15 persons in total. The decision is taken by a simple majority and the 15 votes are equal. The youngest member of the jury votes first, the three professional judges last. If the debates and the answer of the jury make clear the accused can not be held

37. Before 1981 this was indeed possible.

responsible for his actions, the court and the jury pronounce the internment of the accused.³⁸

The sentence is pronounced in public session of the assize court and the president of the court can incite the accused to keep courage or to improve his behaviour. The president also informs the accused about his right to lodge an appeal to the Court of Cassation within the next fifteen days. The punishment verdict is binding the judge and can not simply be considered as a recommendation for the judge. The court isn't allowed to reduce or increase the sentence, decided by the jury and the professional judges together. Just as the guilty verdict, the sentence doesn't have to be motivated in a specific way. However, it is clear that the sentence has to be determined within the limits (maximum and minimum) fixed by the law. The Court of Cassation can be called to verify this point.

The assize court is deciding subsequently about the damages to be granted to the victim or his family. This decision is taken by the professional judges only, without the jury. This part of the trial can follow immediately after the decision on the sentence but in reality this debate occurs generally some weeks after the sentence.

If the accused is fugitive and is not present at the beginning of the trial before the assize court, the special procedure of article 470 of the Code of Criminal Procedure is followed. The accused is judged by the three professional judges only without any intervention of a jury. The accused may not be defended and no witnesses are called to testify before the court. If the accused is caught, he is entitled to a new trial with a jury.

VI. The appeal

There is no appeal possible against a decision of the assize court.

Article 14.5 of the United Nations International Treaty on Civil and Political Rights, signed in 1966 and ratified by Belgium in 1981, is not applicable on the judgements of the assize court since Belgium made a reservation when ratifying the convention.

The only possibility to attack the validity of a decision of the assize court is to lodge an appeal to the Court of Cassation. However it is necessary to distinguish a guilty and a not guilty verdict.

A not guilty verdict can not be attacked before the Court of Cassation, neither by the public prosecutor,³⁹ nor by the victim. If the case is dismissed by the jury

38. The internment of mental ill persons (a compulsory psychiatric treatment) is possible by virtue of the law of 9 April 1930 on the protection of society against abnormal persons and habitual criminals. This measure is pronounced for a not limited period but every six months a special social defence commission (composed of a judge, a psychiatrist and an advocate) is examining the case of the interned person and decides whether or not he can be released.

for legal motives (e.g. prescription of the right to prosecute) the public prosecutor has a full right to attack this decision before the Court of Cassation. If this court decides that the legal reason was not justified the case has to be reopened before another assize court. A not guilty verdict that is based only – *quod plerumque fit* – on the judgement of the facts by the jury can not be attacked before the Court of Cassation.

A guilty verdict however can be attacked before the Court of Cassation by the accused. Since the mission of the Court of Cassation is to maintain the exact interpretation of the law and the unity of jurisprudence just like in all other criminal cases, the Court is only allowed to examine the legal qualities of the decision of the assize court. Grounds for cassation are violation of the law or general principles of law. The Court of Cassation is not at all competent to re-evaluate the evidence.

If the Court of Cassation is judging that the sentence of the assize court is affected by a legal error, the decision is quashed and the jury trial has to be started a second time before another jury. It is important to keep in mind that in case of a quashing of a sentence of the assize court, the second jury is not obliged to respect the negative answers of the first jury on the aggravating circumstances. It is therefore possible that a person convicted for manslaughter would be found guilty of murder – after the quashing of the first sentence – if the second jury answers affirmatively to the question of premeditation. The procedure before the Court of Cassation in a jury case is exactly identical to the procedure in a non-jury case. If the convicted person is arrested, which is usual in jury-cases, the Court of Cassation is examining the file with priority over other criminal cases, where the convicted person is still a free citizen.

It has to be said that most attempts to get a review of an assize court judgement by the Court of Cassation are not successful.⁴⁰

The application for cassation is the last legal remedy that can be taken recourse to on a national level. The decision of the Court of Cassation can only be attacked before the European Court of Human Rights in Strasbourg.

VII. Who are the lay judges and how are they selected ?

The selection of the jury is regulated by the articles 217 to 253 of the Judicial Code (the Code of Civil Procedure), that is the common code for civil cases.⁴¹ Article 217 of the Judicial Code stipulates that, in order to be a possible jury

39. The public prosecutor can bring the not guilty verdict before the Court of Cassation in the interest of the law and without any prejudice for the accused (article 409 of the Code of Criminal Procedure), which is extremely rare.

40. The same applies to other criminal cases without a jury trial.

41. However, the organisation of the courts, criminal courts included, can be found in the Judicial Code.

member, an inscription in the voters register is required,⁴² as well as the possession of civil and political rights. Also, the citizen should be between 30 and 60 years old and be able to read and write.

Every four years, in the month of January, each municipality is selecting by drawing lots out of the voters' register a list of candidate jurors. A number of two figures is selected and the citizens whose registration number in the voters' register ends on this number are put on a list. Persons younger than 30 years of age or older than 60, priests, soldiers in active service, magistrates and clerks, members of parliament and some other categories of people are immediately removed from the list by the mayor.

Before 1 June each province sends the list of candidate jury members, being the sum of the lists of each municipality in that province, to the president of the court of first instance in the capital of the province.

The president of the court of first instance is responsible for the composition of the final list of candidate jurors. This final list is obtained by selecting out of the list of the province the persons that possess a certain educational level,⁴³ have been member of parliament, a provincial or a city council or have been member of certain well known councils in the socio-economic world. Subsequently the president selects out of the provincial list an equal number of persons who do not respond to those criteria. This final list of the president of the court of first instance is ready for 1 November and is used as from 1 January of the coming year. The final list is valid for four years and contains therefore an equal number of higher educated people and others.

At least thirty days before the start of the trial before the assize court, the president of the assize court asks the president of the court of first instance to select by lot out of the mentioned final list at least thirty candidate members for the jury. These persons are called to be present the first day of the jury trial. The selection by lot of this list of at least 30 people is not regulated in the same way as the list of the president of the court of first instance. It is therefore possible that in this group of 30 persons a majority is highly educated but the opposite can occur.

The first day of the trial the court is deciding in the presence of the public prosecutor and the accused on the requests for exemption, formulated by the candidate jury members. After having decided on this point, the president of the court is reading one by one the names of the candidate jury members that have not been exempted. The accused⁴⁴ and the public prosecutor may challenge

42. In Belgium, voting is obligatory.

43. Persons who possess a university degree and a diploma of higher secondary education, technical education or schoolteacher (art. 232 of the Judicial Code, with reference to article 223 of the same code).

44. If there is more than one accused, they may together challenge not more candidate jury members than one accused could.

each maximum six candidate jury members. The jury is composed when the president has twelve names of jury members who have not been challenged. Immediately after the formation of the jury, the jury trial before the assize court starts.

VII. Short history of lay participation in the criminal trial.

It is very important to stress the fact that the right to a trial by jury was originally reserved only for political offences and offences involving the freedom of the press but was later extended to the most serious common offences.⁴⁵

Anyway, it is remarkable that not only the competence on political and press-matters but also the institution of the jury itself has strongly been influenced by historical facts, going back to the period between the second half of the 18th and the beginning of the 19th century.

After the French Revolution in 1789 the jury has been introduced in France in 1790 after the Anglo-Saxon model by some decrees of the 'assemblée nationale', the first parliament after the Revolution. The jury appeared in the French Constitution of 1791 and in the Code d'Instruction Criminelle of 1808. Belgium was at the time a part of the French territory.

During the Dutch regime (1814-1831) the jury was abolished⁴⁶ while the assize courts remained, but without jury. A proposal of some Belgian representatives in 1828 to restore the jury in the assize courts was rejected by a majority of the House of Representatives.⁴⁷

After the declaration of independence of Belgium in 1830, the restoration of the jury was proposed in a first draft of the Constitution on 27 October 1830. Another proposal of 25 November 1830 stipulated that the jury would be installed for political and press offences and for the most serious common offences. In January 1831 this proposal was accepted partially by a commission of the National Congress,⁴⁸ namely for the political and press offences, while the question whether or not the jury had to be introduced for the most serious offences was left to the legislator. As the French revolutionary legislator, the Belgian constitutional legislator considered the institution of the jury as a guarantee against political unfairness of the government. The reason for the

45. C. VAN DEN WYNGAERT, CRIMINAL PROCEDURE SYSTEMS IN THE EUROPEAN COMMUNITY, London, Butterworth, 1993, 2 and 11; P.E., Trousse, *Report at the Journée d'études juridiques Jean Dabin*, published in *LE JURY FACE AU DROIT PÉNAL MODERNE*, Brussels, Bruylant, 1967, p. 53-55. It appears that the article in the Belgian Constitution concerning the jury has been extended to the criminal matters the day before the final vote of the article 98 of the Constitution on 21 January 1831.

46. By decree of 6 November 1814.

47. 66 votes to 31 and 57 to 40 as for the press offences (R. DECLERCQ, *Het Hof van Assisen veroordeeld* in *OM DEZE REDENEN. LIBER AMICORUM VANDEPLAS*, Gent, Mys & Breesch, 1994, 91-93).

48. The first provisional parliament of Belgium.

introduction of the jury was much more inspired by political motives than by pure legal reasons. When reading the discussions held in the French « Assemblée Constituante » it appears that the institution of the jury was much more a political issue than an attempt to organise the jurisdiction in an effective and legitimate way. So said DUPORT: « Ce qu'il faut rappeler, ce qu'on ne saurait trop répéter, c'est que sans jurés, il n'y a pas de liberté dans un pays; sans jurés, aucune élection n'est libre ». Since the introduction of the jury received an overwhelming support among the representatives in the new Belgian National Congress, there were not many historical arguments against this reform. On the other hand, political freedom was the main argument of those who were in favour of the introduction of the jury.

In January 1831, a member of the National Congress proposed to introduce the jury also for the most serious common offences. This proposal was explained in a rather incoherent way but got the support of the majority of the members of the National Congress. The main argument of those who were in favour was again that there could be no liberty without the institution of the jury.⁴⁹ The jury was subsequently introduced by article 98 of the constitution for political and press offences and for the most serious common offences. The article concerned has never been changed. This was confirmed by decree of 19 July 1831. At first, only persons with certain capacities (doctors, notaries etc.) could be a member of the jury. By the law of 18 June 1869 also persons who paid a certain amount of taxes could be a member of the jury. By the law of 21 December 1930 the jury was reformed a second time in a more egalitarian way and in its actual form. After the coordination of the Constitution in 1994, the article concerning the jury became article 150 but the text remained unchanged.

VIII. Studies of the effectiveness of jury decision-making and criticism in scholarly writings and in the public sphere.

Jury-sentencing and its effectiveness is not a hot topic in Belgium. However, some scholars have studied regularly the question whether the jury system and the assize court need to be maintained or if it would be better to let professionally trained magistrates judge crimes as well as political and press offences.

It is clear that statistically the jury trial is rather uncommon in the Belgian judicial activity. In the period 1835-1944 the cases judged by the assize courts in Belgium represented about one percent of all criminal cases. After 1955 this part dropped to 0,01 percent. In absolute figures, the activities of the assize courts remained at about the same level but the number of cases before the courts with professional judges only increased dramatically after the second world war.

It must be said that the supporters of jury decision-making can be found generally under the lawyers, who have experienced mostly the practice of jury

49. R. DECLERCQ, *o.c.*, 92.

trial. Most supporters of the jury argue that there would be a big danger for job-related disability if only professional judges would be deciding about the question of guilt in criminal cases. The same authors argue that the jury is absolutely free to declare guilty or not.⁵⁰ The jury is not bound by the rules of rational decision-making and may acquit a person, even if his guilt has been established beyond reasonable doubt.

It is also true that citizens who have acted as a member of a jury usually get a more positive opinion about the justice system and the judges.

A second argument that has been developed in favour of the jury is that the jury can appreciate the moral aspect of the facts in a broader and more human way than professional judges, certainly in cases of very serious crimes, where a severe sentence can be the consequence.⁵¹

Some authors are in favour of the jury system but urge a reform of the procedural rules themselves.⁵² This reform would imply a simplification of the procedure and the enlargement of the possibilities of correctionalisation.

There are also many scholars who prefer the abolition of the jury system in Belgium. Opponents of the jury are among others P.E. TROUSSE, M. PREUMONT, A. FETTWEIS and A. DE NAUW. The arguments of the opponents of the jury are double. Firstly, they argue that the jury, created almost two hundred years ago, is not able to cope with the new problems in decision-making in criminal matters, which require professionally trained judges. Secondly, they advance that the jury often takes partly irrational decisions, while these decisions can not be attacked before an appeal court and are not motivated. The decision is a simple yes or no.

A study in 1989 about jury trials and psychology showed that jury jurisdiction is not working optimal and there can be much improved.⁵³

The critical remarks on the jury trial are however not based on the cost of the jury trials.

It can not be denied that the historical arguments in favour of the jury are not present anymore. The jury system has been introduced in 1789 after many years' experience of political oppression and political unfairness of the government, including judicial decisions that were not motivated and that were, in many cases, the result of a trial that did not respond to the fundamental demands of the rule of

50. L. VAN LANGENHOVE, *o.c.*, 47-56; R. R. DECLERCQ, *o.c.*, 94-96, who is making a clear survey of the authors who have expressed their support for the jury system. These authors contain: J. VANDERVEEREN, M. FRANCHIMONT (president of the commission for the reform of the law of criminal procedure), J. MESSINNE, L. CORNIL and R. LEGROS (who is a former president of the Court of Cassation and president of the commission for the reform of the Penal Code).

51. W. GANSHOF VAN DER MEERSCH, *Un projet de réforme de la compétence de la Cour d'assises en matière d'infractions de droit commun*, *REV. DR. PEN.*, 1939, 1398-1402.

52. J. Spreutels, in *Quel avenir pour le jury populaire en Belgique?*, *JOURNAL DES PROCES*, 1993, 10-33.

53. L. VAN LANGENHOVE, *JURYRECHTSPRAAK EN PSYCHOLOGIE*, Antwerpen, Kluwer Rechtswetenschappen, 1989, 368 p.

law. Although the judiciary faces some problems and although we do not live in an ideal society, it must be said that the situation is not at all comparable to that of two centuries ago. This explains that it is nowadays not obvious to maintain the jury in its actual form. Moreover, citizens, acting as a member of the jury could be afraid of judging very dangerous persons. In 1993, a case had to be postponed for five months after it had appeared impossible to find enough members of the jury without a sufficient motive for an exemption.

R. DECLERCQ, already cited above, has realised an excellent evaluation of the jury trial and the assize court.⁵⁴ It is useful to pay attention to some of the conclusions of this scholar, who has also a lot of experience as advocate-general in the Court of Cassation. After a comparison of the procedural rules before the assize court and the other jurisdictions in criminal cases, he concludes that the procedure before the assize court can not be considered as having superior qualities to the normal procedure before professional judges. Some principles – e.g. the interdiction for the members of the jury to have contact with the outside world – are interpreted in a very flexible way as a result of which the surplus value of this article is limited.

The evaluation by DECLERCQ of the institution of the jury leads to a negative result. The historical distrust towards professional judges is not founded any more since the procedure of recruitment of the judges has been democratised to a large extent. Moreover, it is not justified to give the responsibility for the judgement in very serious cases in the hands of people that have no training or formation whatsoever. One of the results is that before the assize courts 20 to 30 or even 40%⁵⁵ of the jury trials end up in a not-guilty verdict, what is much more than the part of acquittals before jurisdictions of professional judges. It is clear that this can not be explained otherwise than by the intervention of the jury, since all serious criminal cases have been preceded by a profound instruction under the responsibility of the judge of instruction, who has to investigate « à charge » and « à décharge ».

Like other authors, DECLERCQ is criticising the unmotivated character of the judgement and the absence of any possibility to attack the sentence before an appeal court.

He concludes that “jury jurisdiction is the denial of the administration of justice, being an essential duty of the state”.

Some years ago I had the opportunity to express my point of view on the problems that are rising in the participation of laymen in the administration of evidence in relation to the evaluation of the criminal evidence.⁵⁶

54. See note 42.

55. For the period 1945-1966, 21,2%.

56. Ph. Traest, *Juries, evidence and the role of lay participants in the Belgian criminal process*, in PROCEEDINGS OF THE FIRST WORLD CONFERENCE ON NEW TRENDS IN CRIMINAL INVESTIGATION AND

Modern penal law implies a modern system of proof incomparable with the evidence system existing at the time of the institution of the jury. As penal law itself became more complex, so became the rules of evidence. Many are the cases in which the legislator remains silent and the solution is offered by jurisprudence.⁵⁷ It is very problematical to make a jury responsible for solving these problems of evidence, without supplying the solutions offered by the jurisprudence in general.

The main problems of laymen judging the evidence can be analysed on three levels.

First, it is very difficult to control the correct application by the jury of the rules concerning the burden of proof, especially when the accused appeals on circumstances that could exclude his guilt. According to the jurisprudence of the Court of Cassation the onus of proof of the absence of such circumstance is on the prosecution if the accused appeals on this ground of justification and is proposing it with a certain credibility. If the prosecution can not counter the argument, discharge is the rule.⁵⁸ It is not unlikely that laymen will mix up the judgement on the onus of proof with the judgement of the substance of the case itself, what can never be controlled since the judgement of the jury is not motivated.

Secondly, the jury has normally no qualification or know-how to judge upon the reliability of the presented scientific evidence. Research by interviewing laymen showed that members of the jury often have the impression to be confronted with totally unknown situations and many members admitted having difficulties to evaluate all what is happening.⁵⁹ Even if many professional judges also lack technical and scientific skills, they are more experienced and have the possibility to ask a second opinion, e.g. by ordering a second expertise. At last, the professional judge does compete less with the oral character of the trial. Here again, any control on the rationality of the decision of the jury is impossible due to the unmotivated character.

Thirdly, it is very difficult for a jury to decide about problems of legitimacy of the obtained evidence. In the past decennia the defence appeals more and more to the illegitimacy of the obtained evidence. This is not surprising as many of the modern techniques presume a violation of private life in one way or another. A correct application of the exclusionary rule in judging the evidence is also

EVIDENCE, NUIBOER and REIJNTJES (ed.), Lelystad, Koninklijke Vermande (Netherlands), 1997, 373-381.

57. E.g.: What sanction fits the exceeding of the reasonable term, defined by article 6 European Convention on Human Rights? What to do with criminal evidence obtained wrongfully by a third party? What sanction fits the denial of the right to remain silent or the use of methods of investigation without any legal basis?

58. C. VAN DEN WYNGAERT, *o.c.*, 21.

59. L. Van Langenhove, *Juryrechtspraak en psychologie*, Antwerpen, Kluwer rechtswetenschappen, 1989, 13-15.

expected from the professional judge, but he is more trained to do so and the obliged motivation guarantees a control on the shown discipline. This is not the case with the jury.

The new law of 12 April 1998 on the improvement of the criminal process in the phase of the investigation, which came into force on 2 October 1998, can be considered as a step in the right direction, since this law makes it possible for the "Chambre du conseil"⁶⁰ to remove the improperly obtained evidence before the trial by professional judges or the jury starts.

VIII. Reform proposals.

Two reforms merit some attention.

The first reform has succeeded very recently while the second still remains a proposal and has not yet been adopted by the Belgian parliament.

On 30 April 1999, the Belgian parliament has adopted a modification of the article 150 of the Constitution, which orders the jury to judge serious offences, political offences and press offences. Members of parliament of different political parties introduced a proposal on 20 January 1998 to make an exception to the principle of the jury trial for press offences that are inspired by racism or xenophobia. The main reason for this proposal was to make punishment of racist press offences easier. In the last decades, manifestations of racism and xenophobia by means of the press were rarely punished since the trial by jury is a very slow and heavy procedure. As a result of the new text of the article 150 of the Constitution the jury remains competent for the most serious offences, political offences and the press offences that are not related to racism or xenophobia. This text has been voted on 30 April 1999, the last day of session of Belgian parliament before its dissolution for the forthcoming general elections of 13 June 1999.

It is possible to change article 150 of the Constitution in the next four years since this article has been mentioned on the list of articles of the Constitution that can be changed by the next parliament. This means that the discussion remains open and that the trial by jury theoretically could be abolished in the near future.

A second proposal that has been discussed in parliament concerns the reform of the whole procedure before the assize court. This proposal has been adopted by the Chamber of representatives on 4 February 1999⁶¹ but has not yet been discussed in the Senate. The proposal aims at simplifying the procedure before the assize court on the one hand and on the other hand at bringing the rights of the parties concerned to an equal level. According to this proposal, witnesses will be allowed to use notes during their testimony, victims can also request an interpreter and the president can read the written statement of a

60. A court that controls (the completeness of) a judicial inquiry and the detention on remand.

61. Document nr. 1085/15 –96/97.

witness that has died or a witness that is not responding to the convocation to appear before the assize court. The new parliament, to be formed after the general elections of 13 June 1999, will be obliged to re-discuss this proposal.

To conclude on the participation of laymen in the jurisdiction is far from simple.

The institution of the jury allows citizens to participate in the administration of justice in a way far exceeding other participation-forms in other courts. This is the strongest argument in favour of this institution, certainly in a period where citizens are inclined to distrust the state and the justice system.

On the other hand, the jury is not the ideal institution to decide about serious crimes in a system of criminal justice that is far more complex than at the time the jury was created. Judging the evidence has become a difficult task, while the unmotivated character of the verdict and the lack of appeal does not comply with the features of a modern criminal justice system at the end of this century.

At the dawn of the 21st century, the legislator might have to balance the people's right to participate in jurisdiction against the need for a juridical solid and motivated trying of capital crimes.

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62. These articles are only the most essential publications on the topic.