



Lay justice in Western Europe

Summary

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Summary

Introduction

This research originates from a motion adopted by the House of Representatives in 2022, which requested to provide an overview of the different forms of lay justice that are currently being applied in Western European countries. The underlying idea is that introducing a form of lay justice would lead to improved public confidence and trust in the judiciary in the Netherlands. The Netherlands is one of the few countries in Europe that does not have any form of lay representation in criminal justice (except for military tribunals). Research into the possible introduction of lay representation in the Dutch criminal justice system was already carried out in 2006 in response to an earlier, similar motion. The new motion provides an opportunity to conduct an update of the earlier research study into the various forms of lay justice in Western Europe, with the aim of facilitating a debate on the possible introduction of a form of lay justice in the Dutch (criminal) legal system.

In this study, lay justice is understood as 'the participation in the justice system of citizens who have no legal training or any other specialist qualification'. The three forms of lay justice that are discussed here are jury trials, the lay magistrate and mixed panels. In jury trials, a group of lay people is randomly selected (on the basis of electoral lists) from the community to participate in one criminal case, which is presided over by a professional judge. The jury has independent decision-making power with regard to (at least) the question of guilt, without the involvement of professional judges. The lay magistrate decides on both guilt and punishment without a professional judge, alone or together with other lay magistrates. The mixed panel is a form of lay justice in which lay judges are appointed to participate in multiple trials over a period of time, adjudicating together with professional judges and co-deciding on both guilt and punishment.

Previous Dutch research shows that trust in the judiciary in the Netherlands in general is relatively high. Among people who have little trust in the judiciary, this is partly due to low trust in institutions in general and dissatisfaction with the functioning of the judiciary or the legal system in general. Moreover, research shows that it is not self-evident that lay justice contributes to trust in the judiciary. Furthermore, the existing research does not yet provide in-depth knowledge about what Dutch citizens think of various forms of lay justice, what advantages and disadvantages they attribute to it, and what these different forms can mean for their trust in the judiciary.

In addition to trust in the judiciary, this study examines the relationship between lay justice and democratic participation, because lay justice is seen as a form of democratic participation in the judiciary. Democratic participation in the context of lay justice can be seen as meeting three conditions: participation, deliberation and representativeness. Participation means, firstly, the extent to which citizens have the opportunity to participate in a substantial part of criminal cases or in an important category of criminal cases. Secondly, it concerns the possibility of playing a role in decisions on guilt and punishment, of gaining access to the underlying information and of actively participating in hearings. Deliberation is mainly about promoting the quality of deliberation, in which each participant finds him- or herself in an equal position, and in which different perspectives, both those of professionals and laypeople, are discussed. Lay judges must therefore be able to retain their unique perspective as 'lay people' (as opposed to professionals) as much as possible. In addition, deliberation is also about the extent to which the existence of lay justice contributes to a well-informed societal debate about the judiciary. Representativeness means the extent to which the entire body of lay judges or juries reflects the composition of the society in the given country.

The central research question is:

What is known about the relationship between the different forms of lay justice in criminal cases in Western European countries (and beyond) and (a) trust in the criminal justice system; (b) democratic participation and (c) other possible arguments for and against lay justice?

The sub-questions are:

1. What arguments for and against lay justice are put forward in the legal and legal theoretical literature? (answered in chapter 3)
2. Which different forms of lay justice are applied in criminal cases in Western Europe, and how do these different forms relate to the three conditions of democratic participation, namely participation, deliberation and representativeness, according to the relevant laws and regulations, available statistical data and the legal literature? (answered in chapter 4)
3. What is known from the empirical literature about the relationship between: a) public trust in the administration of (criminal) justice and (different forms of) lay justice; and b) democratic participation and (various forms of) lay justice? (answered in chapter 5)
4. What experiences have recently been gained with different forms of lay justice in criminal cases in three selected Western European countries? What arguments for and against lay justice have been put forward in these countries in the light of (promoting) democratic participation and trust in lay justice and/or the judiciary? (answered in chapter 5)
5. How do Dutch citizens view the introduction of various forms of lay justice in criminal cases, and how do they view the relationship between these forms of lay justice and trust in the judiciary? (answered in chapter 7)

Methods

Various research methods were used for the study, namely:

- Document and literature review: legal, legal theoretical and empirical literature was examined. Depending on the research question, the review included national, European or international sources. Also, laws and regulations were studied, and relevant databases were consulted.
- In-depth study in three countries: the experiences with three different forms of lay justice in criminal cases in Belgium, England and Sweden were investigated through an in-depth literature study, supplemented with semi-structured interviews with (lay) judges and former jurors (two to five interviews per country).
- Semi-structured interviews were conducted with seventeen Dutch citizens whose trust in the judiciary varies from very low to very high. Participants were asked about their trust in the judiciary, their opinion on different forms of lay justice, and what advantages and disadvantages they attribute to it.

Arguments for and against lay justice

What arguments for and against lay justice are put forward in the legal and legal theoretical literature?

Important arguments in favour of lay justice are that it promotes of democratic participation, increases accessibility of the law for citizens, and limits government power. Historically, there has been a strong fear of oppression by corrupt judges, and lay justice can be understood as a guarantee against abuse of power by the government.

In addition, certain arguments are used both in favour and against lay justice: namely, considerations relating to the legal tradition, the quality of judicial decisions, the impartiality of judges and the costs associated with lay justice. A long tradition of lay justice could, for example, ensure that lay justice has sufficient support among both lawyers and the wider public. On the other hand, the absence of such a tradition may provoke resistance to the introduction of (a form of) lay justice, both among lawyers and citizens. The involvement of lay people can potentially improve the quality of judicial decisions. That is because a diverse group of lay people can provide valuable insights into the social context of a case and show more empathy for those involved (both for the suspect, and for the victim and any surviving relatives). At the same time, there are concerns that lay people are less suited for judging than professional judges. It is argued that lay persons do not have the necessary expertise and are more easily influenced by emotions, or that they may be inclined to punish more severely than professional judges. As for the costs, opponents of lay justice emphasize that a system with a jury or mixed panels is more expensive than professional justice. They fear that the efficiency of the current Dutch criminal procedure, which is mainly written in nature, will be jeopardized if not all participants are professional lawyers. Proponents, on the other hand, stress that a panel with several lay judges or a mixed panel with one professional judge and two lay judges is cheaper than a multi-judge panel with three professional judges.

Forms of lay justice in Western Europe

What are the different forms of lay justice in criminal cases that are applied in Western Europe, and how do these different forms relate to the three aspects of democratic participation?

An exploratory study of 18 European countries (and a total of 20 jurisdictions with their own legal system within these countries) shows that the three different forms of lay justice – the jury, the lay magistrate and the mixed panel – are very differently organised. The differences lie in the number of lay judges (in absolute terms and in relation to the number of professional judges), the role and responsibilities of lay judges, and the procedures for selection and decision-making. Each of the three forms of lay justice has inherent advantages and risks. In terms of participation, the advantage of lay magistrates and jury trials over mixed panels is that the lay people have the formal authority to decide completely independently without the professional judge(s). Ensuring (active) participation of lay people during the hearings is a challenge in all three models. As far as deliberation is concerned (the extent to which lay people exert influence on the decisions taken), the lay magistrate has the most advantage. The risk of laypeople being influenced by legal professionals seems to be greatest in mixed panels, but it is also present to some extent in jury trials. In some countries, legal safeguards have been introduced to give lay judges in mixed panels the same rights and powers as professional judges, but it is questionable whether these safeguards are effective in practice. The chance of professionalization of lay judges is greatest with the lay magistrate, and smallest with jury trials. In terms of representation, jury trials offer the greatest opportunity to involve as many citizens as possible in lay justice, provided that the jury handles a relatively large number of cases. In Belgium, for example, only a limited number of jury trials take place each year. However, the representativeness of jurors and lay judges remains a major challenge in all three forms of lay justice. Some countries have introduced explicit safeguards to increase representativeness, but the effectiveness of these safeguards is unclear in practice. In answering this question, different forms of lay justice were compared with each other, but no comparison was made with a system consisting

exclusively of professional judges. Therefore, the question of, for instance, whether lay justice is more or less representative than a system with only professional judges has not been addressed.

Relationship between lay justice, trust and democratic participation in empirical research

What is known from the empirical literature on the relationship between: a) public trust in the administration of (criminal) justice and (various forms of) lay justice; and b) democratic participation and (various forms of) lay justice?

The vast majority of empirical studies concern jury trials and originate from the United States. With regard to trust in the judiciary, it first of all – as expected – appears to be difficult to properly investigate the relationship with a particular form of lay justice. In general, it seems that citizens appreciate the system they are familiar with, but that the less trust they have in the system of professional justice, the more they support lay justice. The clearest relationship between lay justice and trust in justice exists for those who have participated in a jury. They often have more confidence in the judiciary after their participation in the jury. This is because they usually look back positively on their experience and, for example, are satisfied with the mutual treatment and collaboration, the deliberation process, and with the decision. However, their trust in the judiciary prior to their appearance as jurors also appears to play a role. Moreover, this means that jury participation can also lead to decreased trust in the judiciary, namely if citizens judge their experience as a juror negatively.

Various aspects of democratic participation are reflected in the empirical research studied. For example, the representativeness of the participating citizens is a point of attention in all forms of lay justice. (Self-)selection effects appear to occur in each phase of selection, as a result of which, for example, people from minority groups are less likely to participate in a jury panel. As far as deliberation in mixed panels is concerned, there are considerable differences in the extent to which citizens actively participate in decision-making. However, in joint deliberation, non-legal knowledge and argumentation also appear to be useful for decision-making; a point on which lay judges are not inferior to professional judges. However, lay judges do learn over time which arguments are considered legally relevant, meaning that they gradually lose their quality of laypersons.

Two other aspects of democratic participation have also been addressed in previous empirical research, namely the willingness of citizens to participate in lay justice and the significance of that participation for active citizenship. Among other things, citizens appear to be less willing to participate the more uncertain they are about their own knowledge and skills. The willingness to participate, on the other hand, seems to be greater among those who tend to support jury trials, or those who tend to be dissatisfied with professional judges. Finally, as far as the relationship between lay justice and active citizenship is concerned, participation in the jury seems to lead people to vote more often in elections.

Experiences in Belgium, Sweden and England and Wales

What experiences have been gained recently with different forms of lay justice in criminal cases in three selected Western European countries: the jury (Belgium), mixed panels (Sweden) and the lay magistrate (England and Wales)? What arguments for and against lay justice have been put forward in these countries, and what are the relative advantages and disadvantages of these forms in the light of (promoting) democratic participation and trust in lay justice and/or the judiciary?

In all three countries, lay justice is seen as an integral part of the national legal culture and democratic tradition. Nevertheless, there have also been recent discussions in all three countries about the advantages and disadvantages of (the existing forms of) lay justice. The general tendency in the three

countries over the past century has been to limit the scope and/or the role and influence of lay judges within the criminal justice system.

Some arguments for and against lay justice from the three countries are similar to the arguments put forward in the literature on legal theory. Promoting democratic participation and trust in the judiciary by reducing the supposed 'gap' between citizens and the judiciary was mentioned in all three countries studied. In Sweden, the emphasis was on bringing non-legal expertise to the professional judiciary and informing the public about the functioning of the criminal justice system. In England and Wales, on the other hand, the focus was more on *magistrates* ' involvement in the community and the promotion of 'local justice'. In Belgium, the argument of the particular quality and meticulousness of the procedure and decision-making in cases tried by jury came to the fore.

The cost argument seemed to be more prominent in Belgium (as an argument against lay justice) and England and Wales (as an argument for lay justice), but also played a role in the background in Sweden. As an argument against lay justice, in both Belgium and Sweden, the lack of real (substantive) input to the process or outcomes by lay people was mentioned, and in England and Wales, the inadequate quality of procedures and decision-making in magistrate courts. A prominent argument in Sweden concerned the possible political influence on the judiciary, because lay judges are appointed by political parties.

Many of the arguments mentioned above contain assumptions that are not or insufficiently supported by empirical evidence. As regards the three aspects of democratic participation, the level of participation in terms of the share of the total population participating is rather low in all three countries. Nevertheless, this concerns a significant proportion of, or an important category of criminal cases. The proportion of all criminal cases that are handled with the participation of lay people is highest in England and Wales in the magistrates model and is very low in the jury model in Belgium (although these are very important cases, such as murders or manslaughters). As far as deliberation is concerned, the input of lay people is formally well guaranteed in all three countries studied. *De facto*, the input of lay people is least prominent in Sweden and most prominent in England (although lay people can also be influenced there by, for example, legal advisers). The input of lay people is generally assessed differently by professional judges than by lay people themselves. Laymen believe that they have more input than is acknowledged by professional judges. The representativeness of persons participating in lay justice is a problematic aspect in each of the three countries examined. Theoretically, a jury model ensures greater representativeness than a mixed panel model or a lay magistrate system, because jurors are randomly selected from the community. Of the three examined jurisdictions, England and Wales makes the greatest effort to ensure genuine representativeness of lay judges.

Dutch citizens on lay justice and trust

How do Dutch citizens view the introduction of various forms of lay justice and how do they view the relationship between these forms of lay justice and trust in the judiciary?

The qualitative research consisting of interviews with seventeen Dutch citizens, whose trust in the judiciary varied from very high to very low, showed that several respondents associated professional justice with expertise and objectivity. This association was accompanied by reluctance to support the idea of lay justice. According to these respondents, citizens would be too impressionable and emotional, as a result of which feelings of revenge and prejudice would play an undesirable role in decision-making. Other disadvantages they mention are the possible extra costs and longer duration of cases (by selecting, funding and informing laymen), the possible higher penalties (if the respondent is not in favor of higher sanctions), a (too) great influence of dominant citizens during deliberations,

the risk of external influence on laymen, and security risks for participating citizens. In addition to disadvantages, advantages of lay justice were also mentioned, such as that it would allow for the involvement of insights of different groups of citizens; promote greater awareness of the complexity of judicial decisions and acceptance of the latter by citizens; promote greater understanding for the points of view of other citizens; would result in judgments that are easier to understand; and would lead to lower costs (a layman is cheaper than a professional judge) and the elimination of backlogs by having laymen handle simple cases.

Of the three forms in which citizens (co-)decide, the mixed panel can count on the most support, because of the involvement of a professional judge. Nevertheless, some respondents observed that also in this form that professional judges should retain the deciding vote. In general, support for lay justice seemed to be greater among people who had less trust in the (professional) judiciary, but there were also exceptions to this.

The interviewees had varying opinions about the possible influence of the introduction of lay justice on their trust in the judiciary. Some respondents thought that the existence of a form of lay justice would increase their trust. Others thought that it would reduce their trust, and others simply found it difficult to assess. In a general sense, the interviewees considered it possible that a form of lay justice could contribute to trust in the judiciary, because people would see that citizens like them are represented and that their insights are taken into account in the decision-making process. It was also important for the respondents that the group of participating citizens would be representative of society, for two reasons: firstly, because it is a guarantee against unilateral decisions and secondly because it gives everyone an equal opportunity to participate. That could possibly contribute to trust in the judiciary, because everyone feels represented.

The advantages and disadvantages of lay justice mentioned by citizens are broadly in line with the arguments from previous Dutch research. A new argument is the safety of the participating citizens. This point is in line with the increased attention to the safety of professional judges, lawyers and prosecutors in a broader sense. Moreover, in the context of lay justice, respondents used considerations concerning security in different ways: in relation to the willingness to participate (presumably lower in the event of a security risk), objectivity (lay people may be threatened to enforce a certain decision) and the cost of proceedings (it is more expensive if all participating lay people also have to be protected).

Final remarks

There are several paths along which lay justice could influence citizens' trust in the judiciary: (a) a possible increase in trust due to changes in outcomes of criminal cases in line with the wishes of citizens; (b) a possible increase in trust because citizens see that their insights are taken into account (change in the process); and (c) an increase in confidence among those who participate as laymen and look back positively on their participation. The latter is supported in international empirical research among jury members.

This study has examined possible advantages and disadvantages associated with different forms of lay justice. In the Dutch context, there appears to be a lot of support for the current professional justice system, and therefore there is probably little support for lay justice, and little confidence in the fact that lay people can take objective decisions. In addition, trust in the judiciary may actually decrease among those who now have a lot of confidence in professional justice. Finally, the necessary changes in the system and attitudes within the judiciary pose particular challenges with regard to the possible introduction of a form of lay justice in the Netherlands. However, there are also fundamental

arguments in favor introducing lay justice, for example to strengthen the democratic nature of the judiciary. The final weighing of all the pros and cons remains a political choice.

The advantages and disadvantages discussed this report are schematically presented in the four tables below: one table concerns all forms of lay justice general, followed by three tables for the different forms of lay justice covered in this study: the jury, mixed panels and the lay magistrate. In the tables we cover the advantages and disadvantages with regard to the trust in the judiciary; the three distinct elements of democratic participation; and other advantages and disadvantages.

Advantages and disadvantages of lay justice in general

	Advantages	Disadvantages
Trust	<ul style="list-style-type: none"> • Possible increase in trust due to changes in outcomes in line with the wishes of citizens. • Possible increase in trust because citizens see that their insights are taken into account (change in the process). • Possible increase in trust among those who participate as laymen and look back positively on their participation. 	<ul style="list-style-type: none"> • Much support for current professional justice system; little support for lay justice and little confidence in the fact that participating lay people would take objective decisions. • Possible decrease in trust among those who now have a lot of confidence in professional justice.
Participation	<ul style="list-style-type: none"> • Citizen participation in the judiciary is increasing because a certain proportion of citizens participate in (part of) criminal cases and are given a (co-)decisive role in them. • Participating citizens are better informed about the (functioning of the) criminal justice system. 	<ul style="list-style-type: none"> • The scope or reach of lay justice within the criminal justice system may remain limited due to certain considerations that play an important role in the judiciary today, in particular the increasing complexity of criminal cases, efficiency and cost savings. • Providing information to lay people in a way that is accessible to them and allowing them to participate in decision-making requires a lot of effort from the professionals involved, and possibly far-reaching reforms in the criminal process.
Deliberation	<ul style="list-style-type: none"> • The quality of deliberation in criminal cases may improve because professionals are confronted with the perspectives and insights brought in by lay people. • The existence of the institution of lay justice may contribute to the quality of the public debate about the judiciary, which is partly conducted through the media. 	<ul style="list-style-type: none"> • Equal deliberation may be limited by <i>de facto</i> unequal (information) positions of professionals and lay judges; professionals are likely to have a lot of influence on the decision-making of lay people. • Strict frameworks set by the legal system, with which court decisions must comply, limit the scope for debate in deliberations with the participation of laymen and professionals.

		<ul style="list-style-type: none"> • Media coverage of the lay justice system can be one-sided and superficial, with an emphasis on creating sensation. • Lay judges may be reluctant to reach a wide audience or encounter barriers such as lack of time or administrative support.
Representativeness	<ul style="list-style-type: none"> • Representativeness and diversity within the judiciary increases when lay judges come from all layers of society. 	<ul style="list-style-type: none"> • Selection conditions to participate in lay justice can have exclusionary effects for minority groups. • Self-selection may take place, as a result of which people from certain layers are less represented (for example, younger people or people with lower confidence in the judiciary). • Recruiting lay judges from less represented groups takes a lot of effort.
Other	<ul style="list-style-type: none"> • Involving lay people can contribute to greater openness and accessibility of the judiciary. 	<ul style="list-style-type: none"> • The introduction of lay justice may have little support among legal professionals in those legal systems where it does not exist.

Advantages and disadvantages of jury trials

	Advantages	Disadvantages
Trust	<ul style="list-style-type: none"> • Because a relatively large number of people participates in a lay jury panel, this is the best way to show that everyone's insights can be taken into account and to possibly achieve more trust through democratic participation. 	<ul style="list-style-type: none"> • Possible decrease in trust because people have the impression that jurors are easily influenced and cannot judge objectively.
Participation	<ul style="list-style-type: none"> • Possibility to involve a large part of the population in the administration of justice (provided that the type/number of cases handled by a jury is not limited too much). • Jury members generally rate their experiences with participation in the jury positively. • Possibility to actively involve lay people during the trial and deliberation. 	<ul style="list-style-type: none"> • Partly due to high costs, the share of cases heard by juries remains fairly limited in many countries. • There is a risk that the jury's power to decide independently (without judges or other professionals) will be increasingly limited due to concerns about 'incorrect' or 'unfair' acquittals.

Deliberation	<ul style="list-style-type: none"> • Jurors make most of the decisions in a case together, especially about guilt. • Potentially better quality of the deliberation due to a large number of participants. • The risk of influence by professional lawyers (including judges) may be reduced by the secret deliberation and vote. • Potentially great familiarity of society with jury trials. • Potentially more media attention for the judiciary. • The jury members retain the quality of layman through their one-time participation. 	<ul style="list-style-type: none"> • The actual quality of the deliberation depends on various factors that can be difficult to ensure, such as representativeness in the jury panel. • Some risk of influence by professional lawyers (and possibly also the media) remains. • Risk of poor quality of media coverage with an emphasis on sensational aspects of jury cases.
Representativeness	<ul style="list-style-type: none"> • The jury duty and random selection promote representativeness. • In many countries there are legal safeguards to ensure representativeness. 	<ul style="list-style-type: none"> • The degree of representativeness often decreases significantly during the selection of panels of potential jurors for concrete cases. • The possibility for the parties to exclude people from jury participation can further limit representativeness.
Remaining	<ul style="list-style-type: none"> • The proceedings are public and accessible to the wider public; the public is likely to have a lot of interest in jury cases. 	<ul style="list-style-type: none"> • The support for the introduction or the continued existence of the jury can be (too) small, especially among lawyers. • High costs per case compared to the fully professional judiciary and other forms of lay justice.

Advantages and disadvantages of mixed panels

	Advantages	Disadvantages
Trust	<ul style="list-style-type: none"> • Perceived by Dutch citizens as less of a drastic change in the system, than introducing jury trials or lay magistrates. 	<ul style="list-style-type: none"> • Possible decrease in trust because people have the impression that lay judges are easily influenced and cannot judge objectively, although the presence of the professional judge offers some counterbalance in the perception of citizens.

Participation	<ul style="list-style-type: none"> • Possibility to let lay people participate in a relatively high proportion of criminal cases. • Lay judges are generally positive about their experiences of participating in mixed panels. • Lay judges gain a great deal of insight into the functioning of the judiciary and the reasoning behind judicial decisions. 	<ul style="list-style-type: none"> • The share of the population that can participate in the judiciary remains limited. • The (active) participation of lay judges during the hearing may remain limited. • Lay judges have no power to make decisions completely independently (without professional judges). • There is a risk that the number of applications from citizens will be insufficient, partly because the position is usually unpaid.
Deliberation	<ul style="list-style-type: none"> • Potentially better quality of deliberations due to a (relatively) large number of participants and a mix of both laymen and professionals. • Possibility to introduce legal safeguards to give lay judges and professional judges an equal voice (and other safeguards to protect the role of lay judges in deliberations compared to professional judges). 	<ul style="list-style-type: none"> • Risk of <i>de facto</i> influence by professional judges despite the legal guarantees ensuring formally equal roles. • Risk of 'professionalisation' of lay judges (who then lose the quality of 'layman') compared to jurors (but to a lesser extent than lay magistrates). • Lay judges can be reluctant to maintain contacts with the wider public. • Possibly limited media attention for and/or of one-sided or negative media coverage of (the functioning of) lay judges.
Representativeness	<ul style="list-style-type: none"> • Possibility to promote representativeness by introducing certain selection mechanisms. • There are legal safeguards to ensure representativeness in some countries. 	<ul style="list-style-type: none"> • The degree of representativeness remains limited by the voluntary (and often unpaid) nature of the position of lay judge. • Risk that certain groups or people will be excluded due to the selection conditions (and the fact that the position is unpaid) and/or self-selection. • Risk of political influence as lay judges can be nominated by political parties in certain countries.
Remaining	<ul style="list-style-type: none"> • The criminal justice process may become more transparent and accessible to citizens. • Comparatively lower costs compared to panels with professional judges. 	<ul style="list-style-type: none"> • Lay judges may not receive sufficient administrative support and/or cost compensation from the government, because the position is considered 'voluntary work'.

Advantages and disadvantages of lay magistrates

	Advantages	Disadvantages
Trust		<ul style="list-style-type: none"> • Possible decrease in trust because people have the impression that lay magistrates are easily influenced and cannot judge objectively, and moreover there is no professional judge involved.
Participation	<ul style="list-style-type: none"> • Possibility to let a very high proportion of criminal cases be decided by lay people. • Lay magistrates are generally positive about their experiences in the judiciary. • In <i>continental law</i> legal systems, lay magistrates are likely to be able to actively participate in the hearing. • Lay magistrates are authorised to make decisions completely independently (without professional judges). 	<ul style="list-style-type: none"> • The share of the population that can participate in the administration of justice remains very limited. • In <i>common law</i> legal systems, lay magistrates can be more passive during the hearing. • There is a risk that the number of applications from citizens will be insufficient, partly because the position is unpaid.
Deliberation	<ul style="list-style-type: none"> • Provided that several lay judges decide together, collective decision-making ensures a better quality of deliberation. • Relatively little risk of influencing of decision-making by professional judges and the media. 	<ul style="list-style-type: none"> • (According to some authors) potentially lower quality of deliberation and decision-making due to the lack of professional judges. • A certain degree of risk of being influenced by legal professionals other than judges remains. • A higher chance of 'professionalisation' of lay magistrates compared to other forms of lay justice. • Lay magistrates can be reluctant to maintain contact with the wider public. • Possibly (very) limited media attention for and/or of one-sided or negative media coverage of lay magistrates.
Representativeness	<ul style="list-style-type: none"> • Possibility to influence representativeness by introducing certain selection mechanisms. • In many countries there are legal guarantees to ensure representativeness. 	<ul style="list-style-type: none"> • The degree of representativeness remains limited by the voluntary (and often unpaid) nature of the position of lay magistrate. • Risk that certain groups or people will be excluded due to the selection conditions (and the fact that the position is unpaid) and/or self-selection.

Remaining	<ul style="list-style-type: none">• Comparatively lower costs compared to professional judges.• Ability to eliminate backlogs and shorten case processing times.	<ul style="list-style-type: none">• Lay magistrates may not receive sufficient administrative support and/or cost compensation from the government, because the position is considered 'voluntary work'.
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