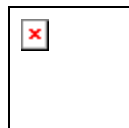


**PROJET DE LOI (200-) (AMENDEMENT No. 9) REGLANT LA PROCEDURE CRIMINELLE (P.37/2001):
REPORT**

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REPORT

The draft *Projet de Loi* lodged by Deputy Gerard Baudains of St. Clement seeks to amend Article 10 of the *Loi* (1864) *réglant la procédure criminelle* by disqualifying from jury service any person who is not a Commonwealth citizen or a citizen of the Republic of Ireland *and* who has not been ordinarily resident in the British Islands for five years. Deputy Baudains fears that the recent amendment to the 1864 Law [sanctioned by Her Majesty on 14th February 2001 and registered in the Royal Court on 2nd March 2001] will result in “... *people sitting on juries who are not familiar with our language or system of justice*”. The Legislation Committee does not share this fear and would deal with the Deputy’s concerns under the following headings.

Familiarity with the language of the Court

Any difficulty relating to language is already overcome by the power of the Royal Court to remove a juror who may not understand the language in which the proceedings are conducted. The amendment passed by the States on 24th October 2000 deliberately widened the scope to challenge jurors for cause and empowered the Court itself to discharge any juror on grounds of manifest unsuitability, or otherwise, in the interests of justice. Were a juror deficient in the language of the proceedings, it would be open to the prosecution, the defence or the Court on its own initiative to ensure that the juror did not continue as a juror. Quite apart from this, it would be wrong to assume that all Commonwealth or Irish citizens would have no difficulty in mastering the language in which the proceedings are conducted. The Court must look at the reality of the situation and the ability of the individual juror rather than insist upon Commonwealth or Irish citizenship as an exclusive test of linguistic ability.

Familiarity with the system of justice

Citizenship of any given country is not the acid test of ability to understand what a juror has to do. A jury is a tribunal of fact; the presiding Judge guides the jury on the law and assists with a summary of the matters of fact to be weighed in reaching a verdict. The Committee does not subscribe to the view that a determination of fact can be reached more intelligently or objectively by a person possessing a certain passport than by any other person of full capacity.

The position in the United Kingdom

Deputy Baudains states that his amendment would “*mirror the situation that pertained in England [and Wales] until 1995... when... citizens of the European Union... became eligible to serve as jurors*”. He does not, however, go on to explain why he seeks to revive a distinction between citizens of the European Union and other persons - other than, by implication, to suggest that a citizen of a European (non-British or Irish) country is incapable of reaching an objective determination of fact. This is not the prevailing view in the United Kingdom. Jersey law is now wider than that of the United Kingdom. Eligibility for jury service extends to all persons, subject to the residence qualification. This was of no concern when the recent amendment was sanctioned by Her Majesty on 14th February 2001. Quite apart from the position in England and Wales, it is difficult to understand why, if a person from (say) the Netherlands is eligible for jury service, a person from (say) the United States of America should not be eligible.

The period of residential qualification

Deputy Baudains seeks to increase to five years the residential qualification for eligibility to serve on a jury. In view of the widening of the power to disqualify jurors for manifest unsuitability (*inconvenance manifeste*) it is difficult to see what is achieved by increasing from two to five years the requisite period of ordinary residence in the Island. The Committee would ask what problem the Deputy seeks to overcome by extending the period of ordinary residence. The Committee is not inclined to support the proposal on the basis only that it would [in his words] “*mirror*” the position in England and Wales.

The rights of the accused

Deputy Baudains makes no mention of the rights of the accused in terms of the composition of a jury. The population of Jersey does not consist exclusively of persons of British, Commonwealth or Irish citizenship. Indeed, a substantial minority of the population of Jersey is from, or derives from, the mainland of Europe.

The nature of jury service

Jury service is not a right, but a duty. The Committee sees no reason to distinguish jury service from the civic duty to pay taxes or from the criteria which apply to the right to vote in a public election.

The age limits for jury service

At present, as Deputy Baudains states, the age range for jury service is between 25 and 65 years of age. The Deputy seeks to expand that eligibility to between 18 years and 70 years. The Legislation Committee notes that its predecessor introduced legislation to reduce the customary law age of majority from 20 to 18 years.

The proposal to expand the age limits for eligibility for jury service would (as Deputy Baudains rightly points out) correspond with the law of England and Wales. This, of course, is not a reason in itself to follow suit. However, the Committee is inclined to support this proposal. It supports especially the view that, as people over 65 are mainly retired from full-time work, the disruption to their lives created by serving on a jury ought to be less than it would be to someone in work. In this one respect, the Committee supports the draft *projet de loi*.

Conclusion

It follows that -

- (i) Article 1 of the *projet de loi* is not supported by the Committee for the reasons stated above; but that
- (ii) Article 2 of the *projet de loi*, which would amend the *Loi (1912) sur la procédure devant la Cour Royale*, is supported.