

A Discussion on the Lay Judge System in Judicial Yuan Draft based on the Lay Judge System in Germany

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Abstract

The functions of citizen participation in the justice system can be explained from two perspectives, one is the Liberty viewpoint, on the other hand is the Interest of Justice viewpoint. According to the Liberty point of view, the function of citizen participation in the justice system is to constraint of state power (including jurisdiction). From the standpoint of the Interests of Justice, the crime punishment power of state must be based on the national faith and trust in the justice, including fairness, independence of judge and due procedures, and criminal judgments will not be deviated from the concept of citizenship. Today's international concrete examples of practice on citizen participation in the justice system, there are basically two "prototype" system, namely, the Anglo-American jury system and the European lay judge system. Besides founded on these two "prototype" will be the mixing court system, such as France and the recent Japan. From the 70's, the Judicial Yuan has discussed whether there is need to adopt the foreign system, and prepared the draft of "the criminal lay judge system", "the experts lay judge system", "the national lay judge system" and nearest "the people lay judge system". This article aims to assess the matters for planning citizen participation in the justice system, based on discussion of the lay judge system in Germany, and finally suggests different viewpoints to "the people lay judge system".

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