

STATES OF JERSEY



HUMAN RIGHTS LAW: STATEMENTS OF COMPATIBILITY

Lodged au Greffe on 17th June 2010
by the Deputy of St. Martin

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that Article 16 of the Human Rights (Jersey) Law 2000 should be amended to require Ministers to state what Articles of the European Convention on Human Rights, if any, are affected in relation to the legislation being brought forward and the reasons why the Minister considers that the proposed legislation is, or is not, compatible with the Convention rights; and
- (b) to request the Chief Minister to bring forward the necessary amendment to Article 16 to give effect to the proposal.

DEPUTY OF ST. MARTIN

REPORT

The Human Rights (Jersey) Law 2000 was adopted by the States on 8th February 2000. However it did not take effect until 10th December 2006. Article 16 of the Law now places a requirement on Ministers when lodging 'au Greffe' a Projet de Loi to make a statement to the effect that in his/her view the provisions of the projet are compatible with the Convention rights (a statement of compatibility); or make a statement to the effect that although he/she is unable to make a statement of compatibility, he/she nevertheless wishes the States to proceed with the projet.

The statement must be in writing and be published in such manner as the Minister making it considers appropriate. The statement is usually included in the Proposition.

Two interesting points arising from the provisions of Article 16 is that there is no provision for the Minister to explain what Convention Right is affected and why the proposed Law is Convention compliant.

Another important point is that at present there is no provision for any dedicated States body to scrutinise the Minister's statement for possible violations of the Human Rights Law.

On 29th May 2008 I lodged P.78/2008 which sought States approval to establish a Committee to have oversight of the Human Rights Law and also to amend Article 16 of the Law to require Ministers to elaborate as to why the particular Law they were proposing was compliant and what Article(s) were affected.

Prior to lodging the proposition I carried out considerable research, including visiting Westminster and discussing the work of the Joint Committee on Human Rights with its chairman, Andrew Dismore, MP and Commons Clerk, Dr. Mark Egan. I also submitted two papers to the Privileges and Procedures Committee, the Chairmen's Committee and the Council of Ministers. I subsequently had meetings with each of the Committees prior to, and after, my visit to Westminster. I had hoped to discuss my proposals with the Council of Ministers; however it chose not to meet me.

The main points arising from my meetings and research are –

- (1) When the States approved the Human Rights Law in 2000 (P.197/1999), it was recognised that there were bound to be some manpower and financial implications.
- (2) None or very little consideration was given for the oversight of the Human Rights Law.
- (3) There is no official Executive or Scrutiny body with responsibility for the oversight of the Jersey Human Rights Law.
- (4) There is no independent audit of any of the Ministers' statements of compatibility.
- (5) There is no explanation as to why statements of compatibility are compatible.
- (6) Do all International Human Rights Treaties ratified by the U.K. apply to Jersey?

- (7) Is Jersey party to all the relevant Treaties and Conventions? For example, why is Jersey not party to the Convention on the Rights of the Child (protecting fundamental rights of the child), ratified in 1991?
- (8) Although there was a 6 year period between approving the Jersey Human Rights Law and the Appointed Day Act, not all Laws were subjected to a Convention audit.
- (9) If allegations were made about Human Rights violations occurring within any of our public bodies, who would address them?

In the U.K. there is a Human Rights Minister within the Ministry of Justice. One of his important tasks is to promote Human Rights and ensure there is adequate training for those involved in the public sector.

There is also the Joint Committee on Human Rights to hold the Executive to account. Jersey is now an International Finance Centre with an international presence. As such we are party to a number of international laws and agreements which have implications for our finance industry and also our social structure. To address these issues, I believe we should establish some mechanism for oversight of our Human Rights obligations. Unfortunately, at present I do not believe there is sufficient support from Ministers and some States Members to establish a standalone body, therefore until that support is forthcoming I will not pursue the matter.

However there is no reason why support should not be given to require Ministers to be more accountable when proposing Laws. I believe the absence of an explanation is unsatisfactory and a more detailed analysis should be provided. The provision of more details should enable Members to be better informed and more aware of the Human Rights implications of the legislation being proposed.

The provision of more detailed analysis should not impose too great a burden on the Ministers because they are obligated to make a declaration of compatibility and will be in possession of the necessary information. Therefore there should not be any financial or manpower implications.

When I visited Westminster 2 years ago I was informed that serious consideration was being given by all political Parties for the need for Government Bills to include explanatory notes on Human Rights Compatibility. I have recently checked with Westminster and have been informed that all Government bills now come with explanatory notes, this is not a statutory requirement, but a commitment by the Government which has so far been consistently adhered to. Explanatory notes now usually include a section on human rights compatibility. In addition, the Select Committees now receive a human rights memorandum these are published with the reports on the bills concerned. Better information about human rights has resulted from years of complaints and suggestions from the Joint Committee on Human Rights.

As mentioned above, prior to my lodging of P.78/2008 I met both PPC and the Chairmen's Committee to discuss my proposals and whilst there were concerns about a standalone Human Rights Panel, which were mainly due to cost, there appeared to be support to amend the Law requiring Ministers to provide more information.

In fact the Chairmen's Committee Minutes of 25th April 2008 record "The Committee agreed that the best way forward would be to amend Article 16 of the Law so that Ministers were obliged to give a full explanation for the reasons behind the acceptance or otherwise of Human Rights Compliancy".

However prior to debate on 8th September, the Chairmen's Committee lodged an amendment to my proposition which requested the Privileges and Procedures Committee to consider whether there was a need to amend the Law. It seemed to be a bizarre decision given its decision on 25th April.

Unfortunately the States supported the Chairmen's Committee's amendment and then voted against establishing a standalone Panel and requesting PPC to consider whether there was a need to amend the Law. Two years on no moves have been made to establish a standalone Panel or amend Article 16.

I believe that there is absolutely no reason why Ministers or States Members, particularly those serving on Scrutiny Panels should oppose an amendment to Article 16. Before any Law is lodged Ministers are provided with advice by the Law Officers to allow Ministers to state that the particular they are proposing is Convention compliant. One assumes that the advice will include the Articles affected. Therefore there appears to be no impediment as to why that information is not included in the relevant proposition.

I also believe that amending the Law would not be too onerous or time consuming for our very efficient Law Draftsmen.

Manpower and financial implications

There should be no additional or manpower implications.