

21.01.19

7 Deputy K.G. Pamplin of the Attorney General regarding vulnerable people on the Island's roads (OQ.19/2021):

Will the Attorney General advise Members of the extent, if any, to which the Island's road traffic legislation protects the most vulnerable road users by the means of presumed liability?

The Solicitor General (*rapporteur*):

The short answer is that presumed liability is not part of Jersey law. I should expand on that, if I may. It is a civil law concept which exists in some jurisdictions, which provides that where a more vulnerable road user suffers injury or loss in a road accident, then the less vulnerable road user is presumed to be to blame, unless he could prove otherwise. As I say, it is a civil law concept, not a criminal law concept; that means it is something which is intended to make it easier for a person injured in a road accident to sue the other person for damages. It is not a concept used in criminal cases to make it easier for the police to investigate offences or indeed easier for us to convict people of offences. Presumed liability is not part of the civil law of Jersey. If I am a pedestrian, for example, injured by a motorist and I sue the motorist for damages, it is for me to prove that he was to blame. It is not part of Jersey criminal law either. The statute which governs the manner of people's driving is the Road Traffic Law 1956; that law creates a range of road traffic offences, among them failing to stop following an accident. But for all of those offences the burden of proving they were committed rests on the prosecution alone to the criminal standard, that is to say sure beyond a reasonable doubt. There is no concept with criminal offences of presumed liability, which would amount to saying to a defendant, would it not: "You are presumed to be guilty, unless you can prove you are innocent"? That concept, if it were imported into our criminal law, would not only run contrary to hundreds of years of the approach that it is for the prosecution to prove a charge but it is likely it would be wholly incompatible with Article 6 of the Convention on Human Rights, which is the fair trial rights and that mandates that and I quote: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty, according to law."

10.7.1 Deputy K.G. Pamplin:

Yes, and I thank the Solicitor General for his answer. I am not sure if he can answer this but can he advise Members when the law has been adapted or changed over any recent time period? I am sure that is a difficult answer, he may want some time to answer.

The Bailiff:

I am not sure it changes the legislative history and fall within the parameters of the question, Deputy.

10.7.2 Deputy R.J. Ward:

It took me by surprise there, I thought it was continuing. Can I ask the Solicitor General whether the priority given to pedestrians and cyclists in green lanes and indeed if lanes were to be designated, as our recent proposition, will have any effect on the liability should there be an accident? Is that a vehicle for giving the protection that perhaps is required here?

The Solicitor General:

As I understand the law relating to country lanes and more vulnerable road users, motorists are required where it is not possible for people to pass safely, either to stop to allow pedestrians, cyclists and equestrians to pass safely or indeed to back up and park in or pull up in a lay-by or

opening to allow that to happen. That law, as it presently stands, does not bear on the question of presumed liability. If an accident were to occur on a green lane because a motorist had not done what the law required him to do, the onus and civil obligation would still be upon the injured party to demonstrate factually that the motorist was to blame. The short answer to the Deputy's question is, no, it would not. Presumed liability is a different beast altogether from the green lane scenario.

The Bailiff:

Thank you very much. Final supplementary, Deputy Pamplin.

Deputy K.G. Pamplin:

No, thank you, Sir.