

3.13 The Deputy of St. Martin of H.M. Attorney General regarding the compliance of the arrangements by which Centeniers present cases in the Magistrate's Court with the Human Rights (Jersey) Law 2000:

I think it would be fair to mention to Members that the actual question I did ask has been rephrased, but maybe I will have an opportunity of asking the original question in my supplementary. Would the Attorney General confirm that the present arrangement in which Centeniers present cases in the Magistrate's Court is compliant with the Human Rights (Jersey) Law 2000? If so, would he explain why?

Mr. W.J. Bailhache Q.C., H.M. Attorney General:

Centeniers have presented cases in the Magistrate's Court for a period of over 150 years. From time to time adjustments have been made in the procedures which have been adopted in that court, and there is no reason to think that this process will not continue in the future. However, in the light of what has been said this morning, I would like to say that I have no significant concerns about the overall fairness of the system and the justice generally delivered in that court. The role of the Centenier in the Magistrate's Court is, as Members have heard for quite some time this morning, under review by the Education and Home Affairs Scrutiny Panel. In the statement which the Deputy made to States Members and to the media following his resignation, he said that he telephoned me on 4th June and asked me when my comments on this subject would be available to the Panel. He reported that I had said they would be available in 2 to 3 weeks. I expect to advise the Panel on the usual basis broadly within that timescale, and in those circumstances I do not propose to answer the question today.

3.13.1 The Deputy of St. Martin:

May I ask a supplementary question? Will the Attorney General confirm that the dual role of the Magistrate in the Magistrate's Court is compliant with the Human Rights Convention?

The Attorney General:

As I have said, Sir, I intend to be advising the Panel in due course.

3.13.2 Deputy G.P. Southern:

Can the Attorney General explain on what grounds and under what articles of the Human Rights Law the role of the Centeniers might be open to question?

The Attorney General:

I would expect to be reviewing certainly Article 6 of the Human Rights Convention, which is the right to a fair trial. It is likely that there will be other Articles which I will need to review in the context of the advice which has been sent to me by the Panel and on which I will be advising the Panel in due course.

3.13.3 Deputy J.A. Martin:

In hindsight, given that there may be a question - and I will probably get this word wrong, Sir - that the Attorney General is titular head of the Honorary Police, would the Attorney General not concede that possibly he could be very conflicted if he is going to give an opinion; it will be just 2 opinions. The question I am basically asking is, is it human rights compliant? Now we are told from 2000 - from our Chief Minister, Sir, and from the A.G. - that nobody has looked at this Law and they expect Scrutiny now to come up with the answer. Well, I do not think that is fine. But I will say that I really think the Attorney General could be conflicted and could he answer that? It is not answering a question, it is just where he feels he stands on this?

The Attorney General:

It is obvious that the Attorney has a series of different functions, potentially as adviser to the Minister, potentially as adviser to the Panel, potentially as titular head of the Honorary Police, and

also as the *partie publique* responsible in the criminal justice system. That is where we are. Ultimately, legal issues can only be resolved in a court. In my view it is inappropriate to try to resolve legal issues in this Assembly. Contrary to what the Deputy of St. Martin said this morning, I did not tell the Panel that I would not advise as I had a conflict of interest. I said to him that as the Panel had expressed concern to me that it would not be appropriate for me to advise, and as the Panel had the advice at that time of Professor Le Sueur, I agreed that the Panel should seek legal advice from an outside source. I think it is obvious that I would recognise - as Attorneys have always recognised - that there are a number of different duties, and one has to resolve those as best one can in advising the Assembly, which is where ultimately decisions are going to be taken, or advising Ministers in the context of the Executive. It would be silly not to recognise these different functions exist, but the alternative is to see legal issues debated in this Chamber, which seems to me to be an inappropriate conclusion.

3.13.4 Deputy G.C.L. Baudains:

I am slightly confused, Sir, because the Attorney General has told us that he would rather give this information in a confidential meeting with the Scrutiny Panel rather than to this Assembly. But it does seem to me a straightforward question. Either the issue is human rights compliant, or it is not. I really cannot see, Sir, why that has to be a confidential issue.

The Bailiff:

The Attorney did not say he would give the information. He said he would give the legal advice to the Scrutiny Panel. Not information, legal advice.

Deputy G.C.L. Baudains:

Thank you for the clarification, Sir. I am still unsure why the Attorney General is unable to tell us either it is, or it is not. Or is the fact that it has not been identified either way yet the actual answer.

The Attorney General:

Under the States of Jersey Law the Assembly has set up a system of Scrutiny Panels. I understand that to mean that Scrutiny Panels will review what they have decided to review, will take evidence where it is appropriate to take evidence, will take advice where it is appropriate to take advice and will come back with their recommendations as to what, if anything, ought to be done in relation to the subject matter of their inquiry. At the moment there is not an issue which is before the States Assembly for consideration. There is no debate currently before the States Assembly on which I would be required as Attorney to give the States advice. I am required under the circumstances which have arisen to give the Panel advice and that is what I intend to do.

3.13.5 Deputy J.A. Martin:

Yes, I do think it would be a straightforward answer yes or no. My question to the Attorney General is he has obviously agreed to give the Panel advice or an opinion, whatever we want to call it. What I would like to know from the Attorney, and because the Attorney says there is not an issue before the Assembly, if these laws have not been changed since 2000 when then the Assembly was advised there was an issue about human rights, it will come before the Assembly. My question, Sir, basically is when the Attorney advises the new constituted Panel will they be able to make his advice public so, in the new Chairman's word, give a balanced answer?

The Bailiff:

I am not sure that is a question for the Attorney General, Deputy. That is a question for the Panel. But the question is whether the Panel is going to make its conclusions and the advice that it has received public. That is a matter for the Panel, not for the Attorney General.

Deputy J.A. Martin:

Sorry, Sir, that is a problem we have with the Attorney General. The Attorney General will meet in confidence and it is his advice, Sir. I am asking him through the Chair will it be under this that he gives the advice to the Panel because if he does they will not be able to then use it, but will he lift that restriction and give them the advice so then we all know what is going on and we can make -- well, it will be illegal. It probably will end up in the courts. I do not know but until we know what the advice is either way I think this House is very much at a disadvantage. It is the Attorney I think who needs to answer this question, not the Panel.

The Bailiff:

That is a different question. The Attorney can answer that.

The Attorney General:

The question of the publication of the Attorney's advice is something which is going to arise in the context of the Chairmen's Committee's proposals on the Code of Practice. There will be full debate by the States and a decision by the States as to the way in which approaches to the Attorney for advice will be treated. The Deputy will know that for a number of reasons, which were set out by both Law Officers in a report to the States on the last proposal of the Chairmen's Committee, that we hold very strongly to the view that legal advice should not be published. That matter will be debated in the States on 17th July. Really it seems to me that that is the appropriate time to debate it.

The Bailiff:

Final supplementary I think, Deputy.

The Deputy of St. Martin:

With respect, Sir, we have another 20 minutes I think of the questions.

The Bailiff:

With respect, Deputy, the Chair decides when to draw the supplementary questioning to an end. Final supplementary.

3.13.6 The Deputy of St. Martin:

I stand corrected, Sir. I understood the questions were one-and-a-half hours, Sir. I have 2. Obviously I will only be able to ask one. Is the Attorney General aware of a similar question being asked in the House of Keys last year by the Chief Minister of the Attorney General? The Attorney General answered: "Mr. President, I think that as a matter of principle it is wrong that the police should be involved." This was followed on by "hear, hear". "But both investigation and prosecution... that the principle which I think has been endorsed by the Council of Ministers over a long period of time is also reflected in the directions which have come from the European Commission from time to time that the prosecution and investigative part of the court process should be separate." Is the Attorney General aware of that comment and also was it one which he would endorse?

The Attorney General:

I was not aware of the comment. As a matter of general principle I am not sure that I would normally wish to comment upon matters which have been said by other Attorneys General in other jurisdictions. But having said that, on this particular occasion I will and say that it is very unusual that those responsible for the investigation of the offence should be responsible for the prosecution of it. There have been directions given by me to Centeniers that where they are personally engaged in the investigation of an offence they should not take the decision as to whether there should be a prosecution. That is not to say it never happens. There may be exceptional circumstances when it does happen but it is very, very rare indeed. So I am happy to tell the Deputy that as a matter of

broad principle I agree with my colleague Attorney in the Isle of Man. I do not always agree with him but I do on this occasion.

The Bailiff:

Well, that concludes all...

The Deputy of St. Martin:

Could I thank the Attorney General. It is very difficult for us to ask these questions but I do believe in the interest of the public interest these questions are asked. I do apologise if I have in any way made the Attorney General feel uncomfortable because I am just as uncomfortable asking the questions. Thank you, Sir.

The Bailiff:

Well, I may just say from the Chair, Deputy, that no Member should feel uncomfortable about asking the Attorney General any question at all. I am quite sure looking at him the Attorney General feels entirely relaxed. **[Laughter]**.