

4.14 The Deputy of St. Martin of the Chairman of the Privileges and Procedures Committee regarding Article 39A of the Public Elections (Jersey) Law 2002:

Will the Chairman inform Members which, if any, Convention rights are potentially affected by Article 39A of the Public Elections (Jersey) Law 2002 and the reasoning behind the statement of her predecessor in P.65/2008 that the provisions of that Law are compatible with Convention rights?

Connétable J. Gallichan of St. Mary (Chairman of the Privileges and Procedures Committee):

While I am surely not in a position to comment on the reasoning of a previous Chairman of the P.P.C., before my predecessor signed the statement of compatibility advice was received from the Law Officers Department that enabled him to be satisfied that the projet was compatible with Convention rights, and that he could therefore sign the statement that appeared in the projet. As Members know, it is usual practice not to disclose the content of legal advice received, and so it would not, therefore, be appropriate for me to do so in this case. I am not aware that any of the Convention rights are potentially affected by this Article, but would remind the questioner that Deputy Southern has lodged a proposition which seeks to repeal the Article in question, and this will be considered in due course by the new P.P.C. which will, I feel sure, seek appropriate advice before commenting on that proposition.

4.14.1 Deputy G.P. Southern:

Does the Chairman not accept that Article 39A is open to challenge as being a disproportionate restriction on Article 3 of the First Protocol of the Human Rights (Jersey) Law 2000? Further, that it clearly goes against the U.N. (United Nations) Agreement on Disability Rights Article 29 on participation in political and public life which states that States parties shall guarantee to persons with disabilities their political rights and the opportunity to enjoy them on an equal basis with others; and by artificially restricting access to postal voting, does not Article 39A restrict and go against that U.N. convention?

The Connétable of St. Mary:

As I said, and it is well known I am not a lawyer, perhaps the Deputy could get a more satisfactory answer if he directed it elsewhere. However, I would say my understanding is that Article 39A does not prevent any person with disability or otherwise from participating in elections.

4.14.2 Deputy G.P. Southern:

Does she accept that access to a postal ballot form is made extremely difficult by Article 39A for those who are housebound or those with a reading disability or those with English as a second language? That is the case, is it not, and is this not unfair and open to challenge under Article 3 of our own Human Rights Law?

Senator T.J. Le Main:

Do you know, I find that quite strange.

The Deputy Bailiff:

Senator, I am sorry. At the moment there is a question posed to the Assembly.

The Connétable of St. Mary:

Can I just have some guidance from the Attorney General? Is it permitted for me to address this question? I understand that the Deputy is the subject of a law case at the moment.

Senator T.J. Le Main:

Absolutely. Absolutely.

The Connétable of St. Mary:

Does this, in fact, raise any questions that I ...?

Senator T.J. Le Main:

Absolutely. It has got something to do with it. Pleaded guilty to electoral fraud.

Deputy G.P. Southern:

Take it out of the House, please, Minister. Take it out of the House and repeat it.

The Deputy Bailiff:

One moment. Now, one moment. Can I ask both Members to restrain themselves? There is a question asked of the Chairman on whether she thinks it is Human Rights compliant. This is for the Chairman to answer as she thinks best. Chairman, it is over to you.

The Connétable of St. Mary:

One thing I am quite happy to say is that I do not believe that there are not mechanisms in place where any person in this Island who wishes to receive help with a postal voting application form can do so by legitimate and authorised personnel. Article 39A makes a specific restriction simply on candidates and their representatives, and it does not restrict any other person from giving assistance.

The Deputy Bailiff:

Very well.

Senator S. Syvret:

On a point of order, Senator Le Main was allowed to interject and accuse Deputy Southern of committing electoral fraud. That is not an accurate assessment of the situation. **[Approbation]** It is a false accusation made against a Member, and I have no doubt whatsoever that if I said anything of that nature I would be demanded to withdraw.

Senator T.J. Le Main:

Is it not right that the Deputy has pleaded guilty to electoral fraud?

The Deputy Bailiff:

No, Senator, he has not. We are not going to discuss the case today. One moment, please. This is a matter which is before the courts, but it is a matter of public record that it is not electoral fraud. It is a breach of the ... **[Approbation]** So, I did reprimand Senator Le Main for it but, Senator, I must ask you formally to withdraw the allegation of electoral fraud.

Senator T.J. Le Main:

I withdraw it, Sir.

The Deputy Bailiff:

Very well.

The Deputy Bailiff:

Any other questions on Question 18?

4.14.3 The Deputy of St. Martin:

The Chairman will know, will she not, as a member of the Scrutiny Panel with me on Social Affairs, that it was possible to get a proper audit of an article or particular law? Would the Chairman consider carrying out an independent audit on this particular Article and, in fact, the Law? That way we will ensure all States Members will know that an independent and public audit will show us whether in actual fact it is lawful or unlawful at present. Will the Chairman give us that assurance?

The Connétable of St. Mary:

My understanding is that the compatibility of convention rights is something which is ultimately decided in the courts. I have quite clearly stated the position regarding to the declaration that was made of compatibility when the Law was presented. I have also said there is a potential that this might be revisited, because there is certainly a proposition which is lodged by Deputy Southern. I would imagine - but I cannot speak for Deputy Southern, of course - that he will have something to say on the matter. At this stage I will say no more than that.

4.14.4 Deputy T.M. Pitman:

Could the Chairman of P.P.C. just clarify to me, when Article 39A was constructed was that done in the best McCarthyist intentions just to pursue certain individuals such as the J.D.A. (Jersey Democratic Alliance)? I ask this only because I hold in my hand a charge sheet relating to a non-J.D.A. candidate in St. Helier No. 2, who strangely is not being pursued, while J.D.A. members are being dragged to the Royal Court for helping elderly people fill out an application form. That is an absolute disgrace. Transcripts we have in our possession reveal there is another individual with a beard, name beginning with R, I will not name him, who is also alleged to have done the same things, and I salute both of those people.

The Deputy Bailiff:

How is this a question of the Connétable of St. Mary?

Deputy T.M. Pitman:

The question is, is it just to persecute the J.D.A.? Is it dependent on somebody's political prejudice?

The Deputy Bailiff:

The Chairman has no responsibility for prosecutions. Very well.

Senator S. Syvret:

Perhaps, then, the Attorney General?

Deputy T.M. Pitman:

Yes, indeed. That would be helpful.

The Deputy Bailiff:

This is a written question to the Chairman of the Privileges and Procedures Committee. Questions about prosecutions are not for the Chairman of the Privileges and Procedures Committee.

Deputy T.M. Pitman:

What about the construction and McCarthyist intent, Sir? I am sure the Chairman could answer that.

The Connétable of St. Mary:

I am quite happy to answer that. I have made it quite clear when these particular amendments to the Public Elections Law were put forward that this was in order to ensure that all aspects of the ballot were seen to be above suspicion of any interference; and specifically I think, if the Member will look through the Hansard record of that debate, it was said that no suggestion was made that any impropriety had taken place in the past, no particular Members were singled out, no districts were

singled out, and it was a general and, I still believe, an important amendment, and I stand by that. Certainly, there is absolutely no aim from this Member to single out any other Member of the States in any way. I have made it quite clear when I stood for the position of Chairman of P.P.C. that I believe that all things apply equally to all Members.

4.14.5 Deputy S. Pitman:

Is the Constable saying that there is no evidence to support this amendment, because it sounds like it?

The Connétable of St. Mary:

No. I am not saying that. I suggest that the Deputy revisits the transcript.

4.14.6 Deputy G.P. Southern:

Would the Chairman accept that in fact Article 39A is completely misdirected at the wrong element of the voting process, in that it seeks to prevent electoral fraud on a postal vote, but addresses the application form only, and that is misdirected? Does she not accept that her good intentions have been misdirected?

The Connétable of St. Mary:

No, I do not believe they have. The application for a postal vote is the first part of a process that ultimately leads, one would hope, to the casting of a postal ballot. All elements, I believe, of the election process must be safeguarded. Every member of the public must be able to be confident that every vote is equally valuable and equally sacrosanct.