

## **2.12 Deputy M.R. Higgins of the Attorney General regarding cases of alleged criminal offences committed by serving officers in the States of Jersey Police:**

Yes, but I would like to point out to Members before I do that the original question referred to illegality on the part of police officers rather than criminal offences. The reasoning will become apparent, I think. Is the Attorney General aware of any cases of alleged criminal offences or illegality committed by...

### **The Bailiff:**

No, the question is criminal offences because you refer to prosecution. You can only prosecute for criminal offences, Deputy.

### **Deputy M.R. Higgins:**

Okay, Sir, I will accept that point.

### **The Bailiff:**

You cannot prosecute for illegality. So your first question was wrong and this is now the correct question.

### **Deputy M.R. Higgins:**

If that had been communicated to me, it would have been helpful. It was not. Is the Attorney General aware of any cases of alleged criminal offences committed by serving officers in the States of Jersey Police and if so, what action, if any, will he be taking to prosecute such officers to maintain or restore public confidence in the police and to show that no one is above the law?

### **Mr. H. Sharp Q.C., H.M. Solicitor General:**

The rule of law requires that, subject to any immunity or exemption provided by law, the criminal law of the land should apply to all alike. A person is not to be singled out for adverse treatment merely because he or she holds a high or dignified office of State but nor can the holding of such an office excuse conduct which would lead to the prosecution of one not holding such an office. The maintenance of public confidence in the administration of justice requires that it be, and be seen to be, even-handed. So said the Privy Council in the 2007 case of *Sharma v Brown-Antoine* and I respectfully agree. It follows that there is no special or different test when it comes to considering a prosecution decision that concerns a police officer. The same tests that are applied to a member of the public are also applied to the police officer. Finally, insofar as this question invites discussion between the Law Officers and one or more States Members as to the merits of a particular prosecution, then I decline that invitation. It goes without saying that prosecution decisions must be taken on a consistent and independent basis, free from political pressure.

### **2.12.1 Deputy M.R. Higgins:**

It is not a question of bringing up a particular case so the Solicitor General has no need to worry on that. It is a question of principle and about procedure. The case or cases I particularly wish to raise is a question of police officers entering property without a warrant or lawful cause. Now, any ordinary person who enters someone else's house would be charged with breaking and entering. If a police officer enters the house he should have a warrant under the Police Powers and Criminal Evidence Law. Equally, he should show a warrant card and yet there are examples of police officers on 3 occasions, and one of these has been confirmed by a former police officer, where they entered without a warrant. They raised the issue with their fellow officer and they were told to keep it quiet, the public do not know. Does he feel that the police should first of all follow the law and if they do not that they should be prosecuted for not doing so?

### **The Solicitor General:**

The Deputy will no doubt be aware from recent events in the United Kingdom involving BBC News Night and the false criminal allegations made on that programme that conducting trials through the media or internet blog is a proven recipe for creating injustice and smearing the name of an innocent person. [Approval] Trial by States Deputy is not an improvement.

**2.12.2 Deputy M.R. Higgins:**

Can I come back on that? First of all, I have no idea what he is talking about, States blogs and everything else, because my question is not concerned with that at all. What I am concerned about are 3 separate occasions when police officers have entered property without a warrant or without lawful cause and, in one case, they were in plain clothes and they did not even show their warrant cards. Is that acceptable behaviour on the part of the police?

**The Solicitor General:**

As I have already said, I am not going to engage in a trial through question time of particular police officers. The Law Officers will consider any case file that comes to them and will assess it on its merits and no police officer will be treated any differently to any member of the public. I should add in a broad sense that police searches sometimes are conducted without the appropriate warrant. That does not normally result in a prosecution. It may give rise to a civil claim for whoever's property has been trespassed.

**2.12.3 Deputy T.M. Pitman:**

To give a nice direct generic hypothetical instance, if a police officer is accused of doing something illegal or a criminal offence but his defence is: "Well, the Law Officers told me to do it" are those Law Officers then subject to the same scrutiny and investigation as the police officer would be or is there some different code of operation?

**The Solicitor General:**

Firstly, that is not a hypothetical situation, that is a real case, so I am not commenting on it. Secondly, a police officer is responsible for his or her own actions. The fact that a lawyer gives that police officer legal advice does not make the lawyer responsible for the police officer's actions.

**2.12.4 Deputy M.R. Higgins:**

I am really surprised at the Solicitor General's attitude on this. What I am seeking him to do is make a statement to the States and to the public at large on the protection that members of the public should have against arbitrary police action. Would the Solicitor General please state clearly for everybody the right of police officers to enter a property, the procedures they must follow and also would he also address the fact of Article 8 of the European Convention on Human Rights where the police are invading the privacy of the people concerned when they do so?

**The Solicitor General:**

Article 8 of the Human Rights Law provides a person with a right to privacy and that is why the police powers, in terms of search, are qualified and have suitable safeguards to ensure there is a proper balance between the police's ability to investigate crime and the individual's right to privacy. As I have said, if the police get it wrong in terms of their use of their search powers, then they are exposed certainly to a civil claim. If a police officer acts in a way that constitutes a criminal offence, then that officer will be considered for prosecution in just the same way as any member of the public. There have been, I should add, previous well-known examples of prosecutions of police officers in this Island. I personally have prosecuted 2 such cases.