

2.15 Deputy M.R. Higgins of the Minister for Planning and Environment regarding ...

How confident is the Minister that he and his department are acting in conformity with the European Convention on Human Rights in their dealings with the public in all areas of his department's responsibility?

Deputy R.C. Duhamel (The Minister for Planning and Environment):

The Deputy knows that there is a general and a legal expectation that the Minister and his department act in conformity with the European Convention of Human Rights through the Human Rights (Jersey) Law 2000. In that respect, I have every confidence that the Minister is acting along with those expectations and, indeed, am very confident that the department is doing so as well.

2.15.1 Deputy M.R. Higgins:

How can the Minister be confident when he has already advised the Assembly this morning that only some of the human rights audits were carried out, not all, but there have been no audits since then or monitoring of the implementation by his staff of its laws, regulations, orders and guidance?

Deputy R.C. Duhamel:

Quite easily. The Human Rights Law specifically is of relevance in 3 particular areas. That is the First Schedule Article 6, the right to a fair trial, Article 8, the right to respect for private and family life and, indeed, Article 1 of the First Protocol, protection of property. Those are the 3 main issues of relevance to the Planning Law and those are the things that we take into account along with anything else that has lesser or no relevance.

2.15.2 Deputy M.R. Higgins:

If I could just follow up on that because he has not answered the question. How, with the absence of audits and monitoring of his staff and what they are doing, can he confirm that they are complying with the Convention?

Deputy R.C. Duhamel:

As I mentioned in the earlier question, it is the laws that are audited. The guidance notes and procedures and other orders are lower down the list. It is of fundamental importance that the laws are compliant because that is the way it is set out. If the laws are done, then I have every confidence that the policies and the procedures and the protocols and everything else will be in line with the law.

2.15.3 Deputy M. Tadier:

The Minister will know that he and other departments are required to make a statement of compatibility before bringing forward legislation as he has mentioned. Can he confirm that while it is the law officers who give this legal advice, there is no requirement for the Minister to take this advice or to agree with it and that it is for the Minister to decide whether he thinks that the legislation he is bringing forward is human rights compatible, irrespective of whether that agrees with the legal advice he has received?

[11:30]

Deputy R.C. Duhamel:

I think that may be a technical assumption on behalf of the Deputy but, indeed, most Ministers operate according to what the States as a whole would wish and underneath the law as agreed by this Assembly. The Ministers do not usually, as far as possible, act outside of the law. If they did so, they would not be in office very long.

2.15.4 Deputy M. Tadier:

A supplementary and this may be peripheral, Sir, so I leave that to your judgment. Would the Minister, in light of what has just been said, not support a move because it can be seen that a Minister making decisions on human rights may take into account political arguments rather than purely legal ones. Would it not be better for the Attorney General to be required to make the statement of compatibility, taking it away from the Minister so that the objectivity of that statement could be relied upon by the States Assembly and the public?

Deputy R.C. Duhamel:

I am not sure that under the constitutional arrangements that we have in place for ministerial government that that would be able to be done and I would need proper technical legal advice to settle that issue.

2.15.5 Deputy J.H. Young:

The Minister referred to the right to a fair trial and confirmed that his departmental response procedures tried to ensure that that was provided. Could he advise whether that extends to those who are subject to enforcement proceedings and whether or not they have access to the details of the complaints about them?

Deputy R.C. Duhamel:

Could the Deputy repeat the question, thanks? He seems to be asking whether or not a complainant has open access to any advice that is held within the department and I would have thought that the rules and regulations under which departmental advice or information is held within a department is undertaken under the Data Protection Act.

2.15.6 Deputy J.H. Young:

Yes, I am happy to clarify. My question followed up from his commitment to the procedures being human rights compliant and my particular point was about enforcement proceedings. Does a complainant have a right of access to the complaints that are made about them, not the advice that the department has, but do they have access to the complaints that are made about them that they have to reply to?

Deputy R.C. Duhamel:

I think under the existing rules and regulations, I am not sure that they do but I am certainly looking at a system whereby any complaints or any objections under our new website afford a member of the public an opportunity to make a comment in relation to a particular application and for all those comments to be openly available for inspection across the internet or through the department.

2.15.7 Deputy M.R. Higgins:

Could the Minister advise the Assembly if he is currently asking the Law Officers' Department to carry out the audit of its laws, et cetera, and this is the reason why he has not been providing me with direct and timely answers to my questions starting from January?

Deputy R.C. Duhamel:

There may be an element of truth in that statement.