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4.8 Deputy M. Tadier of H.M. Solicitor General regarding the criteria necessary for appeal mechanisms against decisions of Ministers and departments to be human rights compliant:

Will the Solicitor General state what criteria are necessary for appeal mechanisms against decisions of Ministers and departments to be human rights compliant and is he satisfied that a consistent approach is taken by all departments which is human rights compliant?

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

Ordinarily the decision of a Minister or a department can be the subject of a judicial review therefore the Royal Court, as an independent and impartial tribunal, can ultimately review any decision. In some cases the States of Jersey may have provided a statutory appeal procedure as an alternative to judicial review. Planning appeals are a recent example. Whether by judicial review or by means of statutory appeal the fact that the court can review the decision provides a consistent approach for human rights law.

4.8.1 Deputy M. Tadier:

In a case where there is no statutory review available or appeal within a particular department, and in particular when a constituent, for example, at Social Security is told that there is no appeal procedure within that department for his contentious decision, could it be said that that is not human rights compliant or against some kind of natural justice?

The Solicitor General:

I do not know very much about that case but it has not been suggested to me that the right of judicial review is unavailable and therefore there cannot be a breach of human rights.

4.8.2 Deputy G.P. Southern:

Is it not the case that there is some criteria by which the right of appeal is (a) accessible, (b) affordable and (c) timely in order that it should be seen to be effective in human rights terms?

The Solicitor General:

Human rights law requires ultimately for there to be access to an independent and impartial tribunal and, yes, that case should be heard within a reasonable time. But the judicial review is such a remedy in that it is before an independent and impartial court and the time limits are such that if you want to appeal a decision you have to get on with it and ordinarily you have to seek leave within 3 months. So very much the idea of judicial review is that you have a timely answer to your complaint.

4.8.3 Deputy G.P. Southern:

Is it not the case that in the case of medical appeal tribunals in Social Security it often takes of the order of between 12 and 16 weeks to have a decision made during which the appellant is kept without what she believes or he believes is their proper benefit level which they are appealing against? Is between 12 and 16 weeks a reasonable timely gap to achieve a decision?

The Solicitor General:

That is the time period of 3 to 4 months. As I have already said, judicial review one often finds that the leave stage of judicial review can take up to 3 months, so on the face of it, and knowing nothing about the facts of the case, which I am hearing about for the first time, that does not sound to me to be problematic, however frustrating it may be for the applicant.

4.8.4 Deputy G.P. Southern:

I am surprised that the Solicitor General has not heard about Social Security appeals since the Minister herself, some 4 or 6 weeks ago, said that her appeals were of course human rights compliant and she consulted the Law Officers' Department accordingly.

The Solicitor General:

I do not detect a question in that.

The Bailiff:

I think the question, Solicitor General, was have you not been asked to advise the Minister as to whether the appeals process for medical appeals was human rights compliant?

The Solicitor General:

I am sorry. I personally have not been asked to give that advice.

4.8.5 Deputy M. Tadier:

In terms of the general principle, which we all know about, even if it does not necessarily have a legal standing that one is innocent until proven guilty, when it comes to an appeal perhaps to do with a sanction that has been applied by Social Security to an individual who may have had to wait 3 or 4 months for that appeal decision to come back and for it to be overturned, that individual has to go through a period which some would say is too long for justice to be done and has also been left without money during that period of time. Could it be said that that individual has not been given the benefit of the doubt, has been treated as if she were guilty rather than innocent, and does that have any wider, if not human rights implications, lessons for us that we could learn from the esteemed Solicitor General about process and fairness?

The Bailiff:

Deputy, it is important that the person questioned has official responsibility for the public matter which is the subject of the question. That sounds to me like a political question that ought to be addressed to the Minister for Social Security. I do not understand what legal question is being put to the Solicitor General.

Deputy M. Tadier:

While it has become apparent that respondents are allowed to say whatever they want, whether it is relevant or not, it does not apply to questioners, which I take the direction. The question is, I suppose ...

The Bailiff:

That is not the case, Deputy. I am sorry, Deputy, that is not the case. I was reminding you of the Standing Order that requires that a question relate to something for which the person questioned has official responsibility.

Deputy M. Tadier:

Thank you, Sir, I take that point and I will rephrase the question. In terms of human rights compliance or related matters to do with fairness of human rights compliance, is it reasonable for a particularly long period of time to elapse when a decision is being made during which the appellant is essentially being said to be guilty, when in fact they may well be proved innocent at the end of the process?

The Solicitor General:

Whatever challenge is made to a decision by a Minister or department in whatever forum that challenge takes place, there is going to be a period of time during which that challenge will not be determined. So if you take judicial reviews as an example, there will be all sorts of decisions being challenged which will take several months to be challenged and it may be that the Minister's

decision is overturned at the end of that process, but there is nothing unique about a Social Security appeal system in that regard. There will always be a period of time when a decision is being overturned and, I am sorry, I do not quite detect the ... whatever the frustrations of the applicant in this particular case, I do not detect any breach of human rights law and nothing unusual about this case as compared to any other public law challenge.