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6 Deputy M. Tadier of H.M. Attorney General regarding the legality of Jersey residents travelling to Switzerland to end their life: [OQ.125/2018]

Will H.M. (Her Majesty's) Attorney General advise whether it is currently legal for a Jersey resident to travel to Switzerland to end his or her life; and what safeguards, if any, exist to prevent an individual who assists a person with such travel from being prosecuted?

Mr. R.J. MacRae, H.M. Attorney General:

In relation to the offence of suicide or attempting suicide, there has been no prosecution in Jersey for attempting to commit suicide for over 100 years. The act of suicide, and hence any attempt, is no longer regarded by the Jersey courts, of itself, as carrying any civil or criminal penalty. In any event, many departing from Jersey to another country with suicide in mind would not amount to an attempt. As to what safeguards, if any exist, render an individual who assists a person with such travel from being prosecuted, Article 6 of the Homicide (Jersey) Law 1986 recognises the offence of aiding, abetting, counselling, or procuring a person's suicide. The consent of the Attorney General is required to institute proceedings for assisting suicide. The Attorney General will take into account various factors when deciding whether or not to consent to a prosecution in such a case, namely where an individual had assisted in ending another person's life by helping with travel arrangements. Assuming the evidential test was passed, the public interest in prosecution would need to be considered. In that regard, the Attorney General will have regard to the sort of considerations that have been published by the Attorney General of England and Wales, the D.P.P. (Director of Public Prosecutions), in respect of precisely these sorts of offences. For example, without taking up too much time, a prosecution is more likely to be in the public interest if the deceased was, for example, under 18 or did not have capacity to reach an informed decision or had not reached a voluntary clear, settled, and informed decision to commit suicide, or the deceased did not seek the encouragement or assistance of the suspect personally or on his or her own initiative.

The Deputy Bailiff:

Attorney, might I ask you to bring the answer to a close.

The Attorney General:

I was then going on to deal with the public interest factors, which would tend against prosecution. Perhaps if there is a supplementary question I will do so.

The Deputy Bailiff:

If there is a supplementary question you can of course answer it in that sense.

4.6.1 Deputy M. Tadier:

The first part of the Attorney General's answer, for which I thank him, seemed to indicate that suicide is an otiose law in Jersey, which has not been acted or prosecuted on in some 100 years. If it is the case that this is an otiose law what recommendation has been made by the Law Officers to the relevant States officials to rescind this law and to reconsider the whole matter of suicide laws, especially in the context of recent calls for assisted dying?

The Attorney General:

Distinction needs to be drawn between criminalising taking one's own life and assisting another person to do so. That has occurred in most European jurisdictions. In probably all jurisdictions in Europe now it is no longer an offence to take one's own life. But as the European Court of Human Rights has observed in 36 of 43 E.C.H.R. (European Court of Human Rights) countries, it is still an

offence to assist someone else to take their own life. There are complex policy questions here perhaps beyond the scope of this question.

[10:15]

In relation to legislation, it is right that the U.K. and Guernsey have specifically enacted laws to indicate that taking one's own life is no longer an offence, whereas in Jersey it is plain that the custom has changed, where custom law jurisdiction, and it is no longer do so, but that has taken place without legislation. It remains an offence to assist another person with taking his or her own life, as indicated by the 1986 law to which I have referred.

4.6.2 Deputy G.P. Southern:

Is the Attorney General's decision on public interest open to appeal?

The Attorney General:

No, in the sense that, save for a theoretical right to challenge a judicial review, it is accepted that the Attorney General's view in relation to public interest is generally a final one. Of course, if the Attorney General were nonetheless to embark upon a prosecution that is plainly contrary to public interest, one would expect the Court to indicate so in clear terms one way or another, perhaps on application to stay the proceedings or on sentence.

4.6.3 Deputy G.P. Southern:

Surely the absence of a route to appeal is thrown into question by human rights legislation that we sign up to, is it not?

The Attorney General:

No. It is very important that an independent prosecuting authority has its independence preserved and not called into question. In all jurisdictions that have an independent prosecution service, it is thought to be appropriate and sensible for decisions made by a prosecutor to be independent of all third party pressures and subject only to a review by the courts in particular circumstances. It has always been the view in this jurisdiction that the view of the independent prosecutor is final. Of course, if his decision is wrong then the person prosecuted will either be acquitted or the prosecution stayed as an abuse of process.

4.6.4 Deputy M. Tadier:

Given the apparent grey area that exists and the political considerations that need to be made in where the public interest lies in the question of assisting somebody to end his or her own life, would the Attorney General welcome a debate from the States Assembly to give direction and, if indeed, give firm legislation in this particular area?

The Attorney General:

It is a matter for the Assembly and not for me.