

20.11.30

**6 Deputy M.R. Higgins of H.M. Attorney General regarding rights of prisoners (OQ.344/2020):**

Will Her Majesty's Attorney General advise the Assembly of the legal rights of prisoners at H.M. (Her Majesty's) Prison La Moye to make and receive telephone calls to friends, family and outside organisations; and state what legitimate and proportionate restrictions, if any, there exist to such rights?

[15:30]

**Mr. M.H. Temple Q.C., H.M. Attorney General:**

Firstly, as regards rights, rule 45 of the Prison (Jersey) Rules 2007 provides a prisoner with a qualified right to access to a telephone. That right is qualified by rules 45(3), (4) and (5), which provide prison officers with powers to record and monitor calls and also to terminate malicious calls. Where an officer terminates a call, the officer has to inform the prisoner of the reason for the termination. So the right is also subject to rule 45(7), which provides power for the Minister for Home Affairs to issue directions imposing additional conditions on the use of a telephone by a prisoner. Secondly, as regards legitimate and proportionate restrictions, the imposition of restrictions on rights to make and receive telephone calls; that clearly engages Article 8 of the E.C.H.R. (European Convention on Human Rights), which protects a person's rights to private and family life. So to be compatible with Article 8 of the European Convention on Human Rights, the interference must be lawful and proportionate to one of the legitimate aims set out in Article 8(2). It was held in a recent E.C.H.R. case in Strasbourg that Article 8 does not in itself guarantee the right to a telephone call. But where telephone facilities are made available, they may be subject to restrictions in view of the ordinary and reasonable requirements of imprisonment. That case was *Lebois v. Bulgaria 2017*. Finally, with very limited exceptions, a prisoner must be allowed to communicate with his or her legal adviser outside the hearing of the prison authorities. So that is reflected in rule 45(3) of the prison rules, which provides that such calls may not be recorded.

**The Deputy Bailiff:**

You have gone beyond 90 seconds now so can you bring your answer to a close?

**The Attorney General:**

I have stopped.

**The Deputy Bailiff:**

Even better.

**3.6.1 Deputy M.R. Higgins:**

Is the Attorney General aware of the fact that prisoners have had calls, not terminated, but not been allowed to a number of friends or organisations outside the prison, and have not been told of the reasons why. I will just ask that question first. I may have another one following that.

**The Deputy Bailiff:**

You may not get another one, Deputy Higgins, so if you want to ask 2 questions then ask them now in one go.

**Deputy M.R. Higgins:**

In one case, some prisoners were calling a gentleman who was doing a survey, he was inquiring about the prison, conditions, opportunity and quality of rehabilitation, *et cetera*. Would he think that is an appropriate thing to stop conversations on as well as phone calls to family and friends?

**The Attorney General:**

I was not aware of that specific incident that has been mentioned by the Deputy. I was only aware in the most general terms of possible restrictions or instances where telephone calls had been terminated. But I was not aware of the specific matter that has been raised by the Deputy. In terms of the specifics of the instance that the Deputy has mentioned, assuming that he is right about the facts, in principle it seems to me that would not be an appropriate use of the power to terminate a telephone call. I had heard that the calls were being recorded and put on a blog and it may be that would not be appropriate, so there are further restrictions regards malicious calls. It would be debatable as to whether or not putting these sorts of calls on a blog would be malicious or whether they would be, for example, a breach of discipline under the prison rules, the schedule to the prison rules. But taking the outline of the facts that the Deputy has mentioned, it seems to me that of itself, and without any of those other factors that I have referred to, that would not be an appropriate use of the power to terminate.