

KS/SC/027

PRIVILEGES AND PROCEDURES COMMITTEE

(27th Meeting)

21st January 2016**PART A (non-exempt)**

All members were present, with the exception of Connétable C.H. Taylor of St. John and Deputy S.M. Brée of St. Clement, who were conflicted by virtue of being members of the Corporate Services Scrutiny Panel and Senator P.F.C. Ozouf, who had recused himself from consideration of this matter.

Connétable L. Norman of St. Clement, Chairman
 Connétable D.W. Mezbourian of St. Lawrence
 Deputy J.A. Martin of St. Helier
 Deputy S.Y. Mézec of St. Helier

In attendance -

M.H. Temple, Q.C., H.M. Solicitor General
 Dr. M. Egan, Greffier of the States
 L.M. Hart, Deputy Greffier of the States
 K.L. Slack, Clerk to the Privileges and Procedures Committee

Note: The Minutes of this meeting comprise Part A only.

Challenge to
 summons
 served by the
 Corporate
 Services
 Scrutiny Panel:
 Managing
 Director of the
 States of
 Jersey
 Development
 Company.
 450/99(5)

A1. The Committee, with reference to its Minute No. A1 of 14th January 2016, and with H.M. Solicitor General in attendance, gave further consideration to the challenge by the States of Jersey Development Company (SOJDC) to the summons issued upon its Managing Director by the Corporate Services Scrutiny Panel (CSSP).

The Committee noted that, as requested at the previous meeting, both parties had provided short written submissions on the issue of whether the SOJDC was entitled to rely on Article 8 and Article 1 Protocol ECHR rights in the matter, or whether it was a governmental organisation such that it did not fall within the parameters of Article 34 of the ECHR, which read:

“The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto.”

The CSSP submitted that it was not open to the SOJDC to claim victim status because it was a governmental organisation and Article 34 did not apply to such bodies.

The view of Advocate Kelleher, on behalf of the SOJDC, was that that the Company was not in any sense a ‘core’ public authority and, as such, was not precluded from relying on Convention rights against the State. He opined that the SOJDC could be a hybrid public authority, but that in respect of the matters raised by the CSSP, the SOJDC was exercising a private function, viz the agreement of contractual relations with private third parties and, as such, had Convention rights in relation to those functions.

The Committee was of the opinion that the SOJDC was a hybrid public authority, but that in relation to this matter it could not argue that it was acting in a private way and, therefore, could not claim victim status. In reaching its decision, the Committee considered whether the public interest of releasing papers to the CSSP justified the interference with the private rights of those companies with which the SOJDC had entered into agreements. It recalled that the right to property under the ECHR was a qualified, rather than an absolute, right and, as such, could be interfered with.

The Committee was also mindful of the need for it to consider the test set out in Regulation 5(1)(e) of the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, PAC and PPC) (Jersey) Regulations 2006, which provided that a person may challenge a summons issued by a scrutiny panel on the ground that:

“... the prejudice to the person that would ensue from appearing before the scrutiny panel or the PAC and giving the evidence and, where required, producing the documents, so far outweighs the usefulness of the evidence or documents to the panel or the PAC that it would be unreasonable to require the person to appear.”

It reflected on what would constitute ‘unreasonable’ in this context and queried whether it was reasonable for the CSSP to request the documents that had been seen by its advisers, Ernst & Young, particularly as the CSSP had, in its Interim Report on the Financial Viability of the Jersey International Finance Centre, made clear statements on the viability of the project. It was also heedful of the prejudice that would be caused to the SOJDC, Camerons Limited, UBS and the public purse if the contents of the documents, that had been requested, were to be made public.

Having given careful consideration to the matter, the Committee unanimously agreed that it would uphold the summons issued on the Managing Director of SOJDC by the CSSP. However, it did so on the basis that the summons would be amended in the following ways:

1. The SOJDC would be required to make the documents requested by the CSSP available to the members of the Panel within 21 days, either at the Company’s offices or at the offices of its lawyers, Carey Olsen;
2. The Panel members would not be able to remove the documents, nor could they copy them, photograph them or make notes relating to them;
3. The Panel members would be able to view the documents on more than one occasion, during normal office hours and having given sufficient notice to the SOJDC; and,
4. The members of the CSSP would maintain confidentiality in respect of the documents, but would be free to discuss the same with their advisers, Ernst & Young, subject to the latter’s confidentiality agreement with SOJDC permitting the same.

The Committee directed H.M. Solicitor General to prepare a draft decision document, which would also set out the reasons for its decision, for its approval. It was noted that the document would then, in accordance with usual court practice, be circulated to both parties before being signed by the Chairman.