

Quarterly hearing with Minister of Home affairs dated 11th February 2011

Extract

Deputy R.G. Le Hérissier:

The Repatriation Law, Mr. Minister, it has been talked about for a long time and I suppose the panel is quite concerned about when it is coming in, any issues that have arisen in the drafting stage and, if I may pile on a third question, how does it interact with the power that a court presently has and which often surprises people because it is happening within, in a sense, the E.U. (European Union). How does it interact with the power of deportation, which the court sometimes exercises?

The Minister for Home Affairs:

Right. The Repatriation Law is obviously a key issue from the point of view of Home Affairs for 2 reasons. Firstly, because we need to reduce the size of the prison if we are going to achieve our C.S.R. (Comprehensive Spending Review) targets, and secondly because it is in the interests of prisoners who have no ties with the Island for them to be able to return and to maintain contact with families and so on, particularly where you have drug mules who come here and may be arrested immediately, and have seen nothing of Jersey other than trips to and from prison, Magistrates Court or court, et cetera. Our target is to get it to the Corporate Management Board on 9th March - that is the Chief Officer's meeting - the Council of Ministers on 24th March and to lodge in time for debate on 17th May. We have not yet, I think, sent it to your good selves. Is that because we are still in a drafting phase?

Chief Officer:

We should have sent the latest draft through to the Scrutiny Officer. It went to Ms. Lydiard, I think.

Mr. M. Haden:

She has been on leave this week.

Deputy R.G. Le Hérissier:

Okay, yes, I think it was coming through ...

The Minister for Home Affairs:

Okay. As I think I said to you on the previous occasion, it is pretty boring stuff, it is pretty technical in its wording, but it does achieve the objective. We have since our previous informal discussions met with the Bailiff and Deputy Bailiff to discuss the implications as between the different groups and had a very useful discussion with them, which will go on at some stage fairly shortly to a meeting with the superior number, with the jurats, so I can talk to them and see what they think in relation to different issues. If you recall, the issues that arise relate really to the issue as to what we should do in relation to prisoners who currently return at their request to serve their sentences in the U.K. (United Kingdom), who currently serve their sentences under what we call restrictive transfer - in other words on a regime which is the equivalent to our regime in terms of equivalent parole and so on - rather than on a U.K. regime. The difficulty being that essentially once this comes into existence you will have 3 different groupings potentially. You will have non-British prisoners who would be eligible to be returned to their home country where they would serve according to the rules of that country and, frankly, although we have not done a detailed survey on this, my understanding is the rules of the different countries are all massively different. There is no unified system. But that has been accepted as part of the internal convention or whatever it was within the E.U., the direction it was on this. Then you have prisoners who would be of U.K. origin who would want to return to the U.K. Now, the question is do you send them back on the same basis as our people in order to maintain parity between those bearing in mind that there would then be a difference. If you hypothetically had Mr.

Eccofeshon(?) from Jersey and Mr. Smith from Liverpool and Mr. de Sousa from Madeira as co-conspirators in bringing heroin into the Island, then, of course, there could be issues of difference. Now, one could simply take the view that it is entirely consistent with the principles of the ... I am calling it different names. It is a direction, is it not?

Chief Officer:

The E.U. Directive?

The Minister for Home Affairs:

Directive, the E.U. Directive. One could simply say it was completely consistent with the principles of the E.U. Directive that they would serve according to the principles of the country where they served, in which case we would no longer return people to the U.K. on restrictive transfer, which means on our rules, but we would return them on the basis of their system. But that is why there has to be further discussion. Now, the issue in relation to the interplay of that with ... I have lost the word.

Chief Officer:

Deportation.

The Minister for Home Affairs:

Deportation, with deportation, in a sense they are separate concepts because deportation has got to do with what happens after you have completed your sentence, whether you can come back or not. So we do not envisage any change in that; that would still operate in the same way. I can outline to you how that operates if you would like me to, but I do not think it will make any difference whatsoever because that has to do with where you serve your sentence; it has to do with whether you can come back to Jersey once you have completed your sentence.

Deputy R.G. Le Hérissier:

I think that is sufficient. I do not know, Members, do you want more elaboration on deportation?

Deputy J.M. Maçon:

Just 2 questions because you have talked about the C.S.R. What percentage of prisoners that are currently serving break down between the local and non-local roughly?

The Minister for Home Affairs:

We have not brought the numbers with us. We have about 24 off the top of my head.

Chief Officer:

Yes, that is the easier way to look at it, I think.

Assistant Minister for Home Affairs:

I think it is mid-30s including Poles and Madeira ...

The Minister for Home Affairs:

Portugal, and about 8 from Poland.

Chief Officer:

That is right.

The Minister for Home Affairs:

But we are not sure that it would break in that way in this sense, that the classification depends upon whether or not they have ...

Chief Officer:

Local ties.

The Minister for Home Affairs:

Well, is it local ties or is it housing rights? I am just trying to remember.

Chief Officer:

Well, I think both are a factor but when we transfer them to England it is done on local election.

The Minister for Home Affairs:

Yes, but the trouble is the statistics that I am getting which are saying Portuguese or Polish ...

Assistant Minister for Home Affairs:

It does not indicate what their ties are with the Island and so that is an additional piece of work we are doing at this moment to see, okay, they might not be locally housing qualified, but if you have somebody from Madeira who has children here who has lived here for 8 years, then that casts a completely different picture on it. So we are doing that piece of work right this minute.

The Minister for Home Affairs:

That sort of numbers, 30-odd out of a prison population which has been about 180, 190 ... or 170, 190 ... but we do not think the whole of the 30 ...

Assistant Minister for Home Affairs:

It does not include the British prisoners either, that figure.

The Minister for Home Affairs:

Well, yes, but that does not change the situation for them because they go back voluntarily and we do not pay for them. So British prisoners who go back voluntarily for whom we do not pay will just continue, so there is no change.

Deputy T.M. Pitman:

Just to clarify - I think Jacqui probably has - but the number then who are non-U.K., but like Holland or whatever, that is 30, did you say?

Assistant Minister for Home Affairs:

It is around the mid 30s to 40 because I was only including Polish and Portuguese there, not the other nationalities, of which we have a few.

The Minister for Home Affairs:

There are some others.

Assistant Minister for Home Affairs:

Yes, but I do not know off the top of my head.

The Minister for Home Affairs:

There is a particular issue in relation to a particular person of a different nationality at the moment.

Deputy T.M. Pitman:

Then just going one step further, how do you have the ... I would see it as a treaty or

something, but how do you ... when you want to return someone to a country, how does that process work?

[10:15]

The Minister for Home Affairs:

Okay. Well, first of all, you have to have an understanding with a specific jurisdiction, so we have been talking to the Chief Minister's Department in terms of starting to make contact with the key jurisdictions, which are, of course, going to be Portugal/Madeira and Poland in terms of numbers. I think there is also another jurisdiction we would probably want to make contact because of a particular case. The way the system works is that in relation to an individual prisoner, the sending country has to want to send them and the receiving country has to agree to receive them. We had this discussion on a previous occasion about whether or not the prisoner had to consent.

Chief Officer:

Yes, the original 83 E.U. Directive required the prisoner to consent, but it was amended by an additional protocol later which removed that. So the situation now is that you do not require the prisoner's consent.

The Minister for Home Affairs:

Although, of course, if the prisoner was very unhappy they could make representations to the receiving country.

Deputy T.M. Pitman:

Could I just ask in that direction ... I am not working with anyone at the prison but I know Deputy S. Pitman is. Is there a feeling among the prisoners in that situation that they would ... you know, they are fully supportive of this repatriation?

The Minister for Home Affairs:

Well, one would expect so.

Deputy T.M. Pitman:

Is there any ... did people take their views or ...?

The Minister for Home Affairs:

We have not been talking to them but one would expect so because in ... one would expect people to want to go back and ...

Deputy T.M. Pitman:

Because of their children, et cetera.

The Minister for Home Affairs:

Be close to their families. There are all sorts of sad circumstances which could arise particularly with drugs mules. Apart from that, of course, there may be issues in which the regime in their country allows them to be released earlier so there may be advantages for them from that point of view. But no, we have not been talking to them. In a sense, this is an E.U. Directive and we are not bound by that, but nevertheless it is an international agreement. We talk about repatriation of prisoners or ... and it seems desirable for a whole number of reasons to go down this route.

Deputy R.G. Le Hérissier:

Okay. We will leave it there for the moment.

Deputy M. Tadier of St. Brelade:

First of all, my apologies, I sent a message that I got held up.

The Minister for Home Affairs:

Yes.

Deputy M. Tadier:

I just had a question about ... I know we spoke about the repatriation of prisoners briefly at the last one. Is it possible for it to be phased in and perhaps on a voluntary basis so that those who ... there obviously needs to be consultation I would imagine anyway with prisoners because there will be scenarios, I imagine, where appeals would happen where somebody for whatever reason - it may be in a minority of cases - does not want to be repatriated, perhaps because the conditions would not be as favourable for them.

The Minister for Home Affairs:

There is going to be a situation obviously in which there will be individual prisoners who potentially could be repatriated. We have to reach an agreement with the other jurisdictions and other countries so that they are happy to have a reciprocal arrangement with us. Then in an individual case we might say: "We do not think the ties are sufficiently close. It would be in your best interests for you to return." You could have a situation, I suppose, where a prisoner would say: "I do not agree with that." But as Mr. Austin-Vautier explained, under the current arrangements there is no requirement for the prisoner to consent. Having said that, the receiving country has also got to agree to take the person. So in a sense you have to have agreement both locally and also you have to have agreement from the receiving country, otherwise it will not happen. So there is a kind of double safeguard. We cannot be turfing people out just to reduce our prison numbers willy-nilly as it were. Obviously, in looking at who would be suitable candidates, we have to look at issues like the nature of their ties with the Island, whether they want to go or not, et cetera. But as I say, there is no requirement under the E.U. Directive for the consent of the individual prisoner.

Deputy J.M. Maçon:

Sorry, just one small ... what have you done looking into the other side of other countries accepting their prisoners back into their countries? Have you found that some countries are much better at doing it than others or ...?

The Minister for Home Affairs:

Well, that is where we are, through the Chief Minister's Department, seeking now to start engagement with the countries. One of the reasons why it would have to be without the consent of the prisoner is because there has to be reciprocity, and because the E.U. Directive is on certain terms in a sense it is one of these situations where we have to buy into the wider rule.

Deputy M. Tadier:

Although you could argue that you still need the consent of the country, so if the country itself is not giving consent for whatever reason, then that is a similar problem, is it not?

The Minister for Home Affairs:

Well, it is a safeguard, I think, of the individual's rights. Sorry, have I misunderstood you there?

Deputy M. Tadier:

I do not think so, but I think the issue you have raised there about you could not base it on the consent of a prisoner, but we still have the consent of both countries. So if the other country or our country did not want to receive the prisoner then there is nothing to do to

oblige the transfer?

The Minister for Home Affairs:

No, that is absolutely right. That is absolutely right. We will receive some prisoners back. For instance, I know of a number of prisoners who, for instance, have been serving sentences in French prisons because they were apprehended by French police or customs in the process of bringing stuff into Jersey. They would be eligible to return to Jersey and if their ties are here then I would expect us to say yes they should return.

Chief Officer:

If it helps to put it in context, I was at M.O.J. (Ministry of Justice) 2 weeks ago. There are currently 20 bilateral agreements between the United Kingdom and other jurisdictions and the U.K. returned 65 prisoners in 2010. That will contextualise it for you.

Deputy R.G. Le Hérisier:

Just a final question, obviously one of the big issues with people moving back to the U.K. was that they did not get the U.K. parole benefits.

The Minister for Home Affairs:

Yes.

Deputy R.G. Le Hérisier:

That was always seen ... other than the fact some of them did not really want to go into U.K. prisons; they found the Jersey prison more congenial. How is that going to be resolved?

The Minister for Home Affairs:

Well, as I say, this is part of the ongoing discussions with the Royal Court. My understanding is that there was a period in which people were being returned to the U.K. on the U.K. terms and then concerns were raised - I am not sure whether they came from the courts or whatever - as to the fact they were sentencing 2 people and they would be receiving their sentence under different conditions, as it were. So a decision was made by ... I think we go back to the Prison Board, do we not?

Chief Officer:

Yes, we do.

The Minister for Home Affairs:

Even before the start of Home Affairs.

Chief Officer:

It was the 1997 Crime (Sentences) Act that they used.

The Minister for Home Affairs:

Right, to go down the route that we have gone down. But I think my own personal view is the logical situation would be to accept that we treat the U.K. as if it was in the wider system. That would mean that they would serve according to the regime where they served. That would be consistent with the E.U. Directive.

Deputy T.M. Pitman:

Just picking up what you said, Steven, was that 65, and that is a population of what, 84,000 or something, is it not, U.K. prisons?

Chief Officer:

Yes, in relative terms it is a small number.

Deputy T.M. Pitman:

If we transfer that likelihood to Jersey it is pretty miniscule.

Chief Officer:

Although here I think that the size of the prison, we have quite a high number of people who do not actually come from here. Because as I said the other day, there are people in the prison who have only seen the airport, the custody suite and the inside of La Moye.

The Minister for Home Affairs:

And the Magistrates Court as well.

Chief Officer:

Oh, yes. **[Laughter]** Not wishing to leave the court out of ...

Deputy R.G. Le Hérissier:

What about a Jersey ... sorry, this has gone on a little longer than I thought, but what about a Jersey prisoner who is serving a very long and serious sentence - and I know there are a few in the U.K. prison system - for a crime committed in the U.K.? Could they apply to come back here even though the Jersey prison probably does not have the ability to deal with long-term prisoners who need all kinds of programming support?

The Minister for Home Affairs:

They could apply but, of course, we would have to decide whether we were able to cope with them. Obviously, we have recently coped with a very high-level risk prisoner, as people now realise, but that would have to be looked at in terms of that. At the moment, of course, a Jersey-based prisoner serving a very long sentence would serve their sentence in Jersey, so it is not that different.

Deputy T.M. Pitman:

Will the agreements take into account places perhaps like Thailand, which do not necessarily have the best prison system, if somebody is being sentenced in Thailand, perhaps for a drug-related charge which we would consider particularly harsh?

The Minister for Home Affairs:

Well, we are only looking within the E.U. so we are not going to be sending people back to Thailand.

Deputy T.M. Pitman:

No, I was thinking the other way round, though, because there are people serving sentences under very ...

The Minister for Home Affairs:

Oh, I see.

Deputy T.M. Pitman:

I suppose that is a future consideration, is it?

The Minister for Home Affairs:

Yes. No, we are only looking within the E.U.

Chief Officer:

I do not think we would run before we could walk on this one.

Deputy T.M. Pitman:

Also it is the E.U. Directive partly, is it not? That is the reason.

The Minister for Home Affairs:

It is the E.U. Directive.