

2024.11.25

Deputy T.A. Coles of St. Helier South of the Minister for Justice and Home Affairs regarding the quashing of criminal convictions for homosexuality: (OQ.225/2024)

Further to Oral Question 85/2024, will the Minister explain what progress has been made in relation to a law to allow the quashing of criminal convictions for homosexuality, and if no progress has been made, will she explain why not?

Deputy M.R. Le Hegarat of St. Helier North (The Minister for Justice and Home Affairs):

I thank the Deputy for the question. As I explained in my answer to the earlier question, this is a complex subject. I understand the U.K. pardon arrangements apply only where the person involved consented to the acts and was over the age of 16. The particular difficulty in Jersey is that the historic offence of sodomy applied to both consenting and non-consenting sexual activity between men as the old rape offence applied to women only. At this stage, it is simply not possible to establish the facts of each historic offence. Although a review carried out in 2016 could not find any convictions in Jersey of an offence relating to a consensual same-sex act with a person over the age of 16, that would be legal now. Any blanket pardon could therefore apply to convictions for non-consensual acts, which clearly remain an offence today, and would therefore be wholly inappropriate. With that context there has been no movement forward in relation to the legislating for pardon and unfortunately I am not sure that we are going to be able to move forward in that direction. However, what I would like to do is say this: if anyone knows someone that has a criminal record resulting in relation to consensual acts then I would encourage them to reach out either to me or to a charity or someone as their representative within this Assembly. I would like to address this matter if I can, but unfortunately the data does not help me do so.

2.11.1 Deputy T.A. Coles:

Given what the Minister has just said, will she commit a small portion of her budget for some sort of marketing campaign for the appeal that she has just made?

Deputy M.R. Le Hegarat:

I am not sure I necessarily need a marketing budget, but I am committed to doing that in the media if the Deputy thinks that this would help. What I am concerned about is that persons who may have been subject to this scenario may not wish necessarily to come forward to the police potentially. What I ask is that if anybody is aware of somebody, that they look to maybe go to somebody, as I said a charity or a States Member. But I am happy to commit to trying to find a solution to this because I would like to see it addressed.

2.11.2 Deputy H.L. Jeune of St. John, St. Lawrence and Trinity:

Has the Minister discussed this issue with Liberate to garner views from the community to ensure that limited resources and efforts are focused on the urgent needs of the community?

Deputy M.R. Le Hegarat:

Yes, I met with Liberate on 8th May following this question and they did not raise any concerns with me. I think the thing is, is that we may not necessarily know any individuals but, as I said, certainly I have also spoken to one other person who believed that they may know somebody but that person may subsequently have been deceased. But the data that is held is not conducive with us being able to do something with this. I am aware what was mentioned in a previous oral question from Deputy Tadier saying that somebody should not have to come to us. Unfortunately, even with P.N.C. (Police National Computer) to be able to search this type of thing with the different terminology, it is difficult and systems have changed since the 1990s. Therefore, if you are talking about research in relation to the P.N.C., for example, you need to have a nominal, which is a person's name. This is why I reiterate again that to be able to achieve this we are really going to have to be able to have data in relation to those individuals.

Deputy K.F. Morel of St. John, St. Lawrence and Trinity:

May I just ask, would the Deputy please clarify what P.N.C. is?

Deputy M.R. Le Hegarat:

My apologies, it is the Police National Computer.

2.11.3 Deputy H.L. Jeune:

I am a bit confused if the Minister is going to do something or if she is not going to do something because there is no data. I am not sure, so if she could please clarify that because she is not able to get the data and it is also very difficult, and she has explained that several times. If she is going to do something, would she be able to do that with Liberate as well to ensure that the community is supported in this matter?

Deputy M.R. Le Hegarat:

I am happy to do anything to rectify what was a wrong. Therefore, if I am able to identify a person or people that prior to the legislation changing were convicted of offences in relation to consensual offences in private, then I am happy to do something. As I said, I am limited - and I am happy to work with Liberate and any other organisation who can help me with this - but at this stage I am having difficulty rectifying the situation.

2.11.4 Deputy P.F.C. Ozouf of St. Saviour:

I do not think I need to declare an interest as probably being the only gay States Member for this term - male one - and in a number of years previously. Would the Minister agree with me that while it sounds very time-consuming - and I am not aware myself of a single individual, although if anybody wants to come to me and talk to me about criminal convictions in the past - would she agree with me that we cannot change the past but we can change the future? That resources are better deployed by the police and her other departments making sure that today we are the tolerant open society that accepts people who ... it is not about sodomy. It is about the fact that 2 individuals of the same sex - in this case male - can be in a loving relationship and be soulmates and be recognised by the law and not discriminated for doing so? Would she agree that forward-looking and ensuring problems of today is better use than maybe dealing with a generic and unknown thing of the past?

Deputy M.R. Le Hegarat:

I could not agree more in that we do need to ensure that all parts of our community are treated fairly and equally and with respect. Although I would disagree with the Deputy in relation to the fact that I think it is important, if there is something that has happened in the past that we are able to remove for the future, then we should.

Deputy P.F.C. Ozouf:

I thank the Minister for her reply. Not all people who are of the same sex are members of Liberate or active and show about it, but I offer the Minister my help in supporting anybody who has been the subject of a criminal conviction, because it means a lot to me and I am more than happy to help a Minister with that. I hope that she will take that on board.

2.11.5 Deputy M. Tadier of St. Brelade:

It is a chilling reminder to us in the 21st century that not only was consensual homosexual acts for a long time considered illegal and very stigmatised, but actually that no distinction was made between consensual intercourse between 2 adults and rape, effectively. But given that is the fact, does the Minister not agree that there should be court transcripts which are available - court transcripts which I believe actually generally should be public anyway, like our own transcripts - for court proceedings are public? But notwithstanding that they are available to the Minister, including potentially *obiter dicta* that are made around the judgments when they are delivered, that there should have been distinctions made, certainly where non-consensual sodomy occurred, as an aggravating factor in the conviction and potentially in the sentences that were handed out in order to distinguish between consensual acts of which we nowadays would not want anyone to be convicted, versus rape, which on the other hand is of

course abhorrent? It is now and it was abhorrent then. Does the Minister believe that there should be a way to distinguish between the 2 when individuals come forward to say that they have potentially been victims of what would now be considered miscarriages of justice?

Deputy M.R. Le Hegarat:

In relation to the court record, the answer to that question is that I am not 100 per cent convinced that that would be available. In relation to any data that would have been held prior to the 1990s then a lot of the data would have been paper data which will be archived. The easy answer is that if someone is able to come forward, the Police National Computer system would have data prior to 1990. What concerns me is trying to find data on archived systems which potentially will not give you the facts, or the full facts, of the case in reality. I am certainly happy to ask the Courts the question but I am thinking that it is unlikely for them to have the depth of information that we would require to be able to identify what the full case was and whether or not those individuals were both still living individuals or either one had passed. I can certainly ask the question but I am not totally convinced that that is a possibility.

2.11.6 Deputy M. Tadier:

Would the Minister consider putting an appeal out to the legal sector to ask, in fact, if there would be lawyers in Jersey who would be willing to assist both with the Minister and those who feel that they have been involved in what we might now call a miscarriage of justice to have their convictions quashed, that they could seek private legal advice? Because that seems to me to maybe be an alternative if the Minister is not able to produce a scheme herself.

Deputy M.R. Le Hegarat:

I am happy to do that. I just think the solution which is more conducive with being able to achieve something that is more positive in a more realistic timeframe is for the individuals who have had the miscarriage of justice to be able to come forward and provide that data and information. I fully accept that in an ideal world we should have that information but in reality prior to 1990, prior to computers ... and in fact if you go over the timescales, if you look, we have changed I think 3 or 4 computer systems since the system we have got now in relation to what is recorded by the police. I think the thing is, if there is a way of us doing that then I am happy to ask the question but, as I said, it is simpler for someone to come forward as opposed to us to try and find that somebody.

The Deputy Bailiff:

A final supplementary, Deputy Coles.

2.11.7 Deputy T.A. Coles:

I thank the Minister for her responses to the varying questions this afternoon. Is the Minister aware of any other blanket convictions that may have been issued previously that may cause a problem in the future?

[16:15]

Deputy M.R. Le Hegarat:

That is an interesting question. I really do not know, I have no idea. I think the difficulty is, that with this particular offence the recording of the data is difficult. It was an offence at the time but is no longer, so I think it is very difficult to say in relation to the question that he has asked.