

3.7 Deputy M.R. Higgins of H.M. Solicitor General regarding the involvement of defence lawyers in criminal court cases:

Will H.M. Solicitor General explain whether in criminal court cases where a defence lawyer has been appointed it is usual for defence lawyers to be present throughout all court hearings involving questions of bail and for sentencing and, if not, will he explain why not and whether such proceedings would be compliant with Article 6 of the European Convention on Human Rights?

Mr. H. Sharp Q.C., H.M. Solicitor General:

If a defence lawyer has been appointed then it would be usual for that lawyer to be present at all hearings involving the lawyer's client. Article 6 establishes the right to a fair trial. This will require a defendant to have effective legal representation at trial and any sentencing hearing that follows. A bail hearing also engages Article 5 which is concerned with the lawful detention of a person. Again, legal representation may be necessary in order that the defendant can make an effective application for bail. However, Articles 5 and 6 do not establish an absolute requirement that a defendant must be represented by a lawyer at all times. To take just one example, Article 6 expressly preserves the right of a defendant to represent themselves in criminal proceedings. Whether criminal proceedings are human rights-compliant will depend on the nature of the proceedings and the reasons for any absence on the part of the defence lawyer. Each case will turn on its own facts.

3.7.1 Deputy M.R. Higgins:

Supplementary, yes. Could H.M. Solicitor General tell me then in the case of H.G, who was sentenced in the Magistrate's Court to leave the Island, to be bound over to leave the Island for 3 years, the defence attorney was not present at the time she was sentenced and therefore could not represent H.G, who I think it was felt was not in a position to defend herself. Does he feel that that would be acceptable and would be human rights-compliant?

H.M. Solicitor General:

H.G entered a guilty plea on 11th October 2010 in Jersey Magistrate's Court and she was also sentenced on that occasion. The transcript records that in fact her defence advocate was present and I note from the transcript that her advocate did the following things that day: the defence advocate entered a guilty plea to the offence on behalf of H.G and the defence advocate said in mitigation, and I quote: "H.G understands that what she did was wrong." In mitigation the defence counsel referred the court to a relevant background report that helpfully described H.G's personal circumstances. In making her submissions to the court, the defence advocate invited the Magistrate's Court to bind over H.G and she did so in these words: "In sentencing H.G today I would be inviting you to deal with this matter by way of binding H.G over to leave the Island. H.G wishes now to leave the Island and she would be compliant with that order."

[15:45]

That is direct quote from the transcript, the words precisely said by her defence advocate, save that I have obviously used the initials H.G rather than her real name. I am very sorry, but the defence counsel was present at sentencing, did make appropriate submissions to the court, as I have just described. What happened was the court acceded to that request and, therefore, it is very difficult to understand how it can be said that H.G did not get a fair hearing. The court did what she asked it to do.

3.7.2 Deputy M.R. Higgins:

Supplementary. I may have been confused between the final sentencing and the bail hearing. At the bail hearing, is it not the case that H.G did have legal representation before lunch and when the magistrate wanted to have inquiries made as to whether she had accommodation, was not present after lunch when they came back and said her landlord would not have her back, when we know that the landlord would have had her back had the police told them why she had been arrested in the first place. The question is she had legal representation before the bail hearing before lunch, but the defence attorney was not present after lunch when the information came back and the final decision was made as to her being bound ... sorry, to the Royal Court until such time as she was eventually moved from the Island.

H.M. Solicitor General:

H.G appeared before the court on 27th September 2010 where there was a bail hearing. She was represented by a defence advocate who made various submissions as to why bail should be granted, notwithstanding the prosecution's concerns. Conditional bail was proposed. There was, therefore, a full adversarial argument as envisaged by Article 5 of the Human Rights Law. At the conclusion of the various arguments, the court considered the matter and wanted to know before reaching its decision whether in fact H.G would be able to reside at her landlady's address. The court deferred its judgment to ascertain if such confirmation could be obtained and, therefore, the matter was put over to the afternoon. A police officer contacted H.G's landlady who informed the police officer that she was unwilling to accommodate H.G. The court sat in the afternoon, it is right, not in the presence of the defence advocate but simply to give judgment, having already in the morning heard argument from the lawyer. The court declined to grant bail because at that time the information before the court was that there was nowhere for H.G to reside. The court reminded H.G of her right to make a further bail application in which she could address further this key issue of residence. No such application was ever made by H.G.

3.7.3 Deputy M.R. Higgins:

Final supplementary. Would H.M. Solicitor General then say that had her lawyer been present, her lawyer could have questioned whether the police officer had spoken to the landlady correctly, found out whether the landlady would have had her on the premises, because we know for a fact subsequently that the landlady would have allowed H.G back on the premises had she been told what she had been charged with. Now, the point is without having a defence lawyer present, and we know from the timeline that is given in the written answer of H.G, states when she completes custody and so on, do you really honestly believe that she had a fair trial by not having a defence attorney present?

H.M. Solicitor General:

H.G was represented in the morning of 27th September by defence counsel who made submissions as to why H.G should receive conditional bail. Clearly, the court, having heard those submissions, was concerned only as to know whether or not H.G was going to have somewhere to live. The information before the court was that she did not on that particular day. But if defence counsel felt that a further bail application should have been made, it could have been made, but it was not, which, I have to say, is rather more telling than what is being said now 3 years after the event. So did H.G have a full and adversarial argument as envisaged by Article 5? Yes, she did. The point was that the only information before the court on that day did not assist her with her bail application.