

## **7.12 Deputy T.M. Pitman of the Attorney General regarding compliance with Article 6 of the European Convention on Human Rights:**

Following his answer of 10th September in which he stated that the single instance of the Superior Number failing to exercise its jurisdiction to act on inappropriate standards of honesty, integrity and/or behaviour of a Jurat would not cause the U.K. authorities to intervene, would the Attorney General clarify whether this effective lack of challenge to higher authority is compliant with Article 6 of the European Convention on Human Rights?

### **Mr. T.J. Le Cocq Q.C., H.M. Attorney General:**

Article 6 of the European Convention of Human Rights guarantees certain minimum rights to an individual in the determination of that individual's civil rights or criminal charges against him. Those rights are designed to ensure a fair trial. A litigant who believes that he did not receive a fair trial has a right to appeal to the Court of Appeal or in some cases to the Judicial Committee of the Privy Council. Both are of course Article 6 compliant courts. The jurisdiction of the Superior Number to petition Her Majesty in Council is not part of a determination of the rights of any litigant before a court in which the Jurat has sat. But accordingly the question of compliance with Article 6 does not arise. As to actions or otherwise of the U.K. authorities, that is not a matter for which the Attorney General has any responsibility.

### **7.12.1 Deputy T.M. Pitman:**

I thank the Attorney General for that. Lord McNally, former Minister for Justice, says he cannot intervene in such circumstances. Now the Attorney General has just said that you have a right of appeal through the appeal system in Jersey, but I am afraid he has been misled because I have it in black and white from a single judge of the Appeal Court that it is no business of the Appeal Court to deal with the Jurat in this case who we all know, it is in here, helped conceal child abuse. Could I have an authoritative, definitive answer please?

### **The Attorney General:**

I find it difficult to give an authoritative and definitive answer when I have not understood the question, I am afraid.

### **7.12.2 Deputy T.M. Pitman:**

If I can help the Attorney General, it is not very difficult. Under human rights any mechanisms which will have to be genuine and real, I think the Attorney General would agree with that, the Minister has quite clearly said he cannot deal with Jersey because it is an independent jurisdiction; an Appeal Court judge acting in Jersey says it is no business of his. So that quite contradicts what the Attorney General has told me. So all I am asking for is, who can one appeal to, or is it just like most things in Jersey, it is just a Mickey Mouse system made up as we go in my opinion and many others?

### **The Attorney General:**

The question that I was asked is about Article 6 and its applicability specifically to certain provisions of the Royal Court (Jersey) Law. I have answered that question and I do not think I can assist the Deputy any further. I decline I think to speculate on a specific case.

### **7.12.3 Senator P.M. Bailhache:**

Would the Attorney General agree that the conduct of the Jurat in question in Deputy Pitman's case was exhaustively examined before the Court of Appeal and that the judge declared that he could not see how any reasonable and fair-minded observer in possession of all the facts could conclude that there was any possibility of bias on the part of the Jurat?

### **Deputy S. Pitman:**

I have to stand up and point out that ... I am sorry, but I believe that Senator Bailhache is in conflict here. He used to work with *[Name omitted from the transcript in accordance with Standing Order 109(7)]* at Victoria College.

**The Deputy Bailiff:**

The Senator is quoting from the Court of Appeal judgment and asking the Attorney General to comment.

**Deputy S. Pitman:**

I am sorry but he was a colleague and I think it is a conflict of interest and you should not be presiding over your brother when questions are being asked over him and over the Judiciary this morning. I am sorry, I am not the only Member in this House that has objections to it, but you seem to think that it is okay.

**The Deputy Bailiff:**

If I thought it was not appropriate for me to be presiding I would not be presiding.

**Deputy S. Pitman:**

I am afraid it is not. You should recuse yourself, Sir.

**The Deputy Bailiff:**

Well, I am not going to.

**Deputy S. Pitman:**

You should, and I am afraid you are answerable to the members of the public, and members of the public will perceive that you have a conflict when it comes to presiding over your brother and the Judiciary.

**The Deputy Bailiff:**

Deputy, the position is that the Senator is a Member of this Assembly and just as you and as Deputy Trevor Pitman have the right to ask questions of the Attorney General, so has he the right to ask questions. Would you kindly sit down.

**Deputy S. Pitman:**

I believe it is wrong. He is a former colleague of this former Jurat and he should not be asking questions, and you should recuse yourself from presiding over when he is being asked a question ...

**The Connétable of St. John:**

Sir, can we move on please?

**Deputy S. Pitman:**

... of the Judiciary.

**The Deputy Bailiff:**

Would you kindly sit down? You have expressed your point of view. In the circumstances, Senator, would you please repeat your question?

**Senator P.M. Bailhache:**

I asked the Attorney General whether he would agree whether the conduct of and the complaint against the Jurat in question in Deputy Pitman's case was not exhaustively examined before the Court of Appeal, and whether he would agree that the judge in that case expressed the view that he could not see how any reasonable and fair-minded observer in possession of all the facts could conclude that there was any possibility of bias on the part of the Jurat.

**The Attorney General:**

I can confirm that that behaviour was examined fully as the Senator suggests and that the court made the observations that the Senator has just set out.

**7.12.4 Deputy T.M. Pitman:**

Now we return to reality, if I could just say that it was not looked at in full. The judge did not add the full details. Indeed, he did not even know that the Sharp Report did not come out until after [*Name omitted from the transcript in accordance with Standing Order 109(7)*] was appointed. But just so that Members can know and the Attorney General can respond, what the actual Jurat did was refuse to look at video evidence against the man who took little boys off on boats, got them drunk, masturbated them, performed oral sex on them, and then he refused to look at evidence. Then he wrote that as long as the police did not press charges it could be seen as an unsubstantiated allegation.

**Senator P.M. Bailhache:**

On a point of order: is it appropriate firstly for the Member to name the individual in question? I ask that that name be struck from the Hansard report of these proceedings. Is it appropriate that this unrelated conduct should be referred to in this way under the privilege of this House?

**Deputy T.M. Pitman:**

May I continue?

**The Deputy Bailiff:**

No, one moment please. A point of order has been referred to me and I shall address it. Senator, my ruling on the point of order which is raised is that the question which Deputy Trevor Pitman wishes to put falls within the corners of the question which is set out at paragraph 12 on the agenda and therefore that is in order. However I think it is unnecessary that the name of the Jurat be published and accordingly I am going to rule that it should not appear on the Hansard record. Would you like to put the question again and leave out the name of the Jurat?

**Deputy T.M. Pitman:**

Absolutely. The name of the Jurat will be in the report that I will finally lodge next week so people can see the proof. But I must say the Senator said that people were in full possession of the facts. The Senator was in full possession of the facts because he was the Bailiff who allowed this individual to sit as a Jurat for the first of the 14 years. How could anyone, I am asking the Attorney General, seriously say that that has been exhaustively examined, and despair when we have a man who refused to do what the Jurats' only job is, to look at evidence, decide on fact. He refused to look at selective evidence and then he made a decision about a paedophile who was probably not a paedophile. How is that fair and how can one appeal against that?

**The Attorney General:**

I confess that it is absolutely impossible for me to speculate and to answer a question about what was in the mind of a judge or a former Bailiff. It is simply something that I cannot possibly know. Therefore I cannot possibly make any judgment call upon it or certainly give legal advice in respect to it. In terms of matters of appeal, if anyone is aggrieved by the fact that they do not think they have had a fair trial, as I have already said in my answer, there are well-travelled avenues of appeal as far as the judicial committee of the Privy Council and in some cases to the European Court of Human Rights in Strasbourg which are available to all litigants who do not believe they have had a fair trial through the courts.

**7.12.5 Deputy T.M. Pitman:**

Can I just seek clarification from the Attorney General, and I am not attacking the Attorney General on this; I respect him. But anyone should surely be able to achieve justice in Jersey. It should not be a case that one has to go to the Privy Council or all the way to Strasbourg which takes years. I have it in black and white that the Appeal Judge says it is no business of the Appeal Court to look at this problem. So who can one appeal to? If it is nobody, just to say nobody. I am happy with that answer. I am not trying to catch the Attorney General out.

**The Attorney General:**

The business of the Appeal Court is to determine whether there is a valid ground of appeal in connection with any particular case. It is absolutely right that it is not the business of the Appeal Court to discipline members of the judiciary or to make any observations about members of the judiciary. But that has nothing to do with the determination or the rights of the individual litigant. Those rights are vindicated by the appeal process.