

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY THE CONNÉTABLE OF ST. OUEN
ANSWER TO BE TABLED ON TUESDAY 4th FEBRUARY 2020**

Question

Will H.M. Attorney General –

- (a) state what legal effect, if any, the Venice Commission’s Code of Good Practice in Electoral Matters has in Jersey; and
- (b) if he considers that the Venice Commission’s Code does have legal effect in Jersey, state whether it is his assessment that the proposition of the Privileges and Procedures Committee, ‘Electoral Reform 2020’ (P.126/2019), and the accompanying report are compatible and consistent with the Code, in particular paragraphs 2.1 and 2.2?

Answer

Question (a)

The Human Rights (Jersey) Law 2000 provides that certain Articles of the European Convention on Human Rights (the “**ECHR**”) are incorporated into Jersey’s domestic law and are enforceable in Jersey. The principle ECHR right relating to elections is Article 3 of the First Protocol to the ECHR (“**A3P1**”), which provides –

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

It is important to recognise that A3P1 is not an absolute right and may be subject to limitations. The European Court of Human Rights (“**European Court**”) has found that limitations on, for example, voting and candidature rights are permitted provided that they do not impair the very essence of the rights afforded by A3P1 or deprive them of their effectiveness; and also that they are imposed in pursuit of, and are proportionate to, some legitimate aim. The leading case on these issues is *Mathieu-Mohin v Belgium* (1987) 10 EHRR 1.

A3P1 does not require any particular constitutional structure, nor electoral system, and in determining whether a state’s system is compatible with A3P1, the European Court will have regard to its political history, allowing the state a considerable margin of appreciation so long as the electoral measures ensure the free expression of the opinion of the people in the choice of the legislature.

In addition to A3P1 is supplemented by guidance issued by the European Commission for Democracy through Law (the “**Venice Commission**”). In particular the Venice Commission’s Guidelines on Elections’ (“**the Guidelines**”) which sit at the core of its ‘Code of Good Practice in Electoral Matters’ (“**the Code**”). One of the provisions in the Guidelines’ recommends that electoral systems seek to ensure that seats be distributed evenly between constituencies. The Guidelines include a formula indicating when a particular electoral system might depart from what the Venice Commission considers to be acceptable democratic standards.

The Code and the Guidelines may be a relevant consideration for the European Court when interpreting A3P1. They may also be relevant to the interpretation of the International Covenant on Civil and Political Rights (“**ICCPR**”), which, unlike the European Convention on Human Rights, does expressly require that

“elections... shall be by universal and equal suffrage.” However, it is important to recognise that the Venice Commission is an advisory body and its Guidelines and Code reflect best practice, but do not have the force of law in Jersey or elsewhere. The European Court has considered the Guidelines and Code not to be binding and has previously distinguished their relevance to its assessment of the requirements of A3P1.

Question (b)

Looking at the specific requirements of Guidelines by reference to the PPC’s proposals, the following points might be made:

- The Venice Commission’s commentary on Paragraph 2.1 of the Guidelines makes it clear that this paragraph is intended to ensure that each individual has equal voting power in relation an elections he or she is eligible to vote in. It is not designed to require that electors be provided with an equal number of votes in a system, such as Jersey’s, where multi-member constituencies are combined with first-past-the-post elections, and where electors in each constituency are each given the same number of votes in relation to the seats to be filled to represent them.
- Paragraph 2.2 includes a series of principles relating to the distribution of seats between constituencies based on the number of constituents and includes two figures that are relevant to determining whether the distribution of voting power is in accordance with the Guidelines. Specifically, it says that the proportion of seats to constituents in a constituency should seldom be outside +/-10% of the mean; and not outside +/-15% save in exception circumstances. On the PPC proposals found at Appendix 3 to P.126/2019:
 - St Clements and St Helier Central would be at -13% and +13% respectively. This would be unlikely to represent a problem, particularly as, in the case of St Clement, population increases are anticipated.
 - Grouville/St Martin would be at -18%. While this would exceed the Guidelines, it is necessary to look at the question of justification as the Guidelines note that geographical and historic boundaries may be taken into consideration in distributing seats. It is stated in P.126/2019 that the deviation in this case from the Guidelines is the result of basing the proposed new constituency boundaries on existing Parish and Vingtaine boundaries for practical reasons. It might be argued that the grouping of Parishes together recognises their historic importance at least to some extent, but as the degree of departure from the +/-15% figure is minor it is unlikely that this deviation could give rise to any arguable breach of A3P1 or any other relevant international standard.