

2020.05.12

1 Deputy L.M.C. Doublet of St. Saviour of H.M. Attorney General regarding the decision not to pursue offences under the Policing of Beaches Regulations (OQ.132/2020)

What assessment did H.M. (Her Majesty's) Attorney General make of the public interest in deciding not to pursue offences under the Policing of Beaches (Jersey) Regulations 1959 relating to the walking of dogs on beaches between 1st and 12th May 2020?

Mr. M.H. Temple Q.C., H.M. Attorney General:

My decision not to prosecute offences under the Policing of Beaches (Jersey) Regulations 1959 for the period between 1st and 12th May 2020 related to 2 out of approximately 18 different categories of offence under the 1959 regulations. Those were the specific prohibitions against the walking of dogs off a lead and riding of any horse or pony between the hours of 10.30 a.m. and 6 p.m. on our beaches. So my decision was not a blanket decision not to enforce the regulations, but that in respect of 2 offences of a specific type, which would have been based on very similar underlying facts, and then only in respect of a period of 12 days prosecution would not be in the public interest. So my decision was taken, having regard to the public interest in the legal sense, and that is explained in the A.G.'s (Attorney General) Code on the decision to prosecute. The public interest assessment that I made in this legal sense was as follows. The public announcement that the Government intended to amend the 1959 Regulations in relation to the 2 offences concerning dogs and horses at this sitting of the Assembly could create uncertainty in the minds of members of the public and cause them to commit offences in the genuinely mistaken belief that the offences would not be enforced. However, a mistake about the law or its enforcement would not amount to a defence in law. Further, the 2 offences are relatively minor, with a maximum fine of up to level 2, which is £1,000 - a maximum - but if convicted a defendant would nonetheless get a criminal record. The first examples of public interest factors against prosecution listed in the Attorney General's Code on the decision to prosecute are exactly the same as the points I have just mentioned. Less importantly, the 2 offences in the 1959 Regulations are linked to the time of the tourist season in Jersey, 1st May to 30th September, and we currently have no tourist season due to the restrictions on travel. Again, this point amounted to a type of public interest factor under the Attorney's Code concerning prosecution. Lastly, I include in my assessment of the public interest the fact that this was only for a 12-day period during a period of restricted movement until the Assembly could debate the Government's then intended amendment to the Regulations.

Deputy L.M.C. Doublet:

Sorry, I am having some problems with my audio feed. I think I managed to get most of that but I do not have a supplementary at this time.

Deputy I. Gardiner of St. Helier:

I have a supplementary, I put it in the chat.

The Bailiff:

Could I remind Members that if they wish to ask a question they need to put a note on the chat so I can acknowledge that I have seen it.

Deputy I. Gardiner:

I have done.

The Bailiff:

I have not seen anything on the chat. Oh, yes, I beg your pardon. You are quite right, it was disappearing off the top of my screen, I apologise.

4.1.1 Deputy I. Gardiner.

What assessment did the Attorney General make of the impact on children's rights of his decision not to pursue offences under the Policing of Beaches (Jersey) Regulations 1959, relating to the walking of dogs on beaches between 1st May and 12th May?

The Attorney General:

Potentially children could also commit those 2 offences so they would have been included in my decision, the reasons for which I have just outlined.

4.1.2 Deputy I. Gardiner:

Can I follow with another supplementary? It was about children's right for free and safe play on the beach and what impact have you considered when you decided not to pursue offences?

The Bailiff:

Sorry, Deputy, rather like you, we are having difficulty hearing your supplementary question. I do have a note that Senator Moore wishes to ask a question. Apparently everything else is functioning all right, Deputy Gardiner. It might just be something in your machine. Can you go closer to the microphone or something?

Deputy I. Gardiner

Sure. Can you hear me better like this?

The Bailiff:

Yes, if you try like that, Deputy. Please ask the question.

Deputy I. Gardiner:

My question was about the impact on children's rights to safe play and what was the assessment that the Attorney General made when he decided not to pursue offences and their policing beach Regulations?

The Attorney General:

The children's right to safe play, I am not exactly sure what the Deputy is referring to in that. Clearly children have a right to security in this Island, in the same way as all other members of the population. So my decision, as I previously said, encompassed children in the same way as adults. It was in relation to those legal factors that I have already outlined in my previous answer.

The Bailiff:

I also have a note from Deputy Morel. As that has already been communicated I will allow that question as well. But we have a large number of questions and a very limited amount of time relatively available to us.

Senator K.L. Moore:

I think the question was from Deputy Morel, not myself, thank you.

The Bailiff:

I do apologise.

Deputy K.F. Morel of St. Lawrence:

In order to speed things up I will withdraw my question.

The Bailiff:

Deputy Doublet, did you have a final supplementary?

4.1.3 Deputy L.M.C. Doublet:

Yes, I do. I wanted to press the A.G. on Deputy Gardiner's question because Deputy Gardiner was asking about children's rights, not children as offenders. Has the Attorney General an understanding of the U.N.C.R.C. (United Nations Convention on the Rights of the Child) because in my mind there should have been more of an assessment of children's rights and a child's right to play given the fact that there were 7 control orders on dogs between 2015 and 2018 and many more incidents either going unreported or unpoliced?

[10:00]

Did the Attorney General take any of this into account?

The Bailiff:

Were you able to hear that Mr. Attorney? The question, please correct me if I am wrong, Deputy, we have a hearing a difficulty at this end, relates to the potential adverse effect on children who might play if the policing of dogs is not strictly enforced. In other words, the risks to children and their rights to be safe. Is that a fair paraphrase, Deputy?

Deputy L.M.C. Doublet:

Yes, plus the amount of control orders on dogs over the last few years.

The Bailiff:

There were a number of control orders relating to dogs over the last few years and to what extent would that fall to be considered by you in terms of the public interest when considering a prosecution?

The Attorney General:

I have to say in terms of those specific control orders I was not aware of them but I am happy to look into them subsequent to the sitting of this Assembly. I can only repeat the factors that I took into account I have already outlined. The rights of children also include a right not to be unfairly prosecuted or not to get a criminal record in circumstances where they did not have to. Those were the key factors that I took into account in making that decision.