

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL  
BY SENATOR J.L. PERCHARD  
ANSWER TO BE TABLED ON MONDAY 18th JULY 2011**

**Question**

I asked the following question (6427) of the Minister for Home Affairs at the last sitting of the States:

“Will the Minister introduce financial means testing of those detained at HMP La Moye and levy a fee based on a scale of charges up to a maximum of the full cost recovery on inmates?”

In his answer the Minister wrote:

“I believe that this would be contrary to the European Convention on Human Rights for two reasons. It would be viewed as a second penalty in addition to the imprisonment being imposed by the Court. It might also contravene the right to private property being a charge which was not a legitimate tax which was being imposed on an individual without their consent.”

Would the Attorney General confirm whether he considers the European Convention on Human Rights would be contravened? And is the Attorney General of the opinion that the States could reasonably introduce financial means testing of those detained at HMP La Moye and levy a fee based on a scale of charges up to a maximum of the full cost recovery on inmates?

**Answer**

I believe there are a number of reasons why the States could not adopt the proposal in question 6427 to means test "those detained at HMP La Moye" and levy a fee on them based on a scale of charges up to the maximum of the full cost of recovery on inmates.

Firstly, it does not distinguish between those prisoners who are on remand and those who have been convicted. There could be no justification for means testing or imposing charges on remand prisoners.

Secondly, even for convicted prisoners, there is no legal authority for taking such action and it is not permissible for the States to levy such a charge or to examine a person's means, whether they are subject to a sentence of imprisonment or not, without an express legal power to do so.

Thirdly, if it were to be suggested that legal powers to take such action could be introduced, in all probability they could not, in any event, be made applicable to existing prisoners as that would probably amount to, either, a retrospective punishment for the offence, contrary to Article 7 (no punishment without law) of the European Convention on Human Rights (ECHR) or a double penalty, which would be contrary to the "*ne bis in idem*" rule in Article 14(7) of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by the UK on behalf of Jersey, and the very similar provision in the Seventh Protocol to the ECHR (which has not been ratified by the UK yet, but is intended to be ratified in the future). It would also probably be in

breach of Article 1 of the First Protocol to the ECHR (protection of property), as it would amount to deprivation of the prisoners' property which, if imposed retrospectively, probably would not be capable of justification under the Article as being in the "public interest", in spite of the wide margin of appreciation enjoyed by States under this Article.

Fourthly, even if applied only to "future" convicted prisoners, the levy would probably still amount to a breach of Article 14(7) of the ICCPR and Protocol 7 to the ECHR. It has more of the characteristics of an extra penalty, for those who could afford to pay, than a remedial or rehabilitative action, and may be difficult to justify, especially in light of the existence of statutory provisions for relieving criminals of the proceeds of crime or for ordering them to pay compensation. It might also amount to a breach of Article 14 of the ECHR in respect of rights under Article 1 of the First Protocol, by discriminating between wealthy and impecunious prisoners in respect of the same offending.

Lastly, it is noted that in England and Wales, the Government has recently introduced the Legal Aid, Sentencing and Punishment of Offenders Bill which, amongst other matters, makes provision for rules about employment in prisons and in particular enables the making of rules about the payment of prisoners for employment and deductions from their remuneration for the benefit of victims or communities, for the rehabilitation of offenders and for other purposes, which might include their "keep". This approach (assuming it to be practicable in the first place) would avoid all the above issues and also the issue of possible breaches of Article 14 of the ECHR in respect of rights under Article 1 of the First Protocol, by discriminating between wealthy and impecunious prisoners and might therefore be a better avenue to explore.