

3.16 Deputy M. Tadier of the Attorney General regarding the dual role of Constables as States Members and honorary police officers

Given that the previous Attorney General confirmed that the Constables, as well as being States Members, are also Honorary Police Officers, will Her Majesty's Attorney General advise Members whether this dual role is, in his opinion, human rights compliant and which Articles and protocols he has taken into account in coming to this opinion?

The Attorney General:

I hope the Deputy will appreciate it is difficult in the limited time available to consider this question to be definitive in my answer.

[11:30]

However, implicit in this question is a concern that there may be something inherently problematic in human rights terms with a member of a legislature also holding policing powers. As the Constables no longer exercise any operational policing powers, the question is, in my opinion, only theoretical rather than of actual significance. I do not think therefore that there is anything that is offensive to or not compliant with any of the Articles of, or protocols to, the European Convention of Human Rights, or the other human rights instruments applicable to Jersey in the current situation.

3.16.1 Deputy M. Tadier:

By extension then, the first question I would ask, would the Attorney General think it is fine if all States Members therefore become Honorary Police Officers, but non-serving ones, in the sense that there would only be a theoretical problem there? Secondly, could Her Majesty's Attorney General confirm whether any other civilised jurisdiction have police officers? We have had it confirmed that theoretical or otherwise, the Constables are Honorary Police Officers. So, do any other civilised jurisdictions have policemen sitting in their National Assembly making laws and voting on them?

The Attorney General:

The Deputy I hope will forgive me if I do not intend to answer the first part of the question, which appeared to suggest that all States Members join the Honorary Police Force in a non-operational way, as that simply is completely an impossible concept and therefore cannot be anything other than completely speculative. I will not answer it. In terms of the other jurisdictions, I am afraid I have absolutely no knowledge or information of what the position is in other jurisdictions.

3.16.2 Deputy M.R. Higgins:

Bearing in mind the Attorney General's answer, is there any possible justification then why some Constables still carry warrant cards?

The Attorney General:

The question that I was asked was directed to whether or not there was anything problematic in human rights terms and the view that I have expressed is there is not. In terms of the justification, I am afraid the explanation for that would have to be directed to the Constables concerned. My understanding is the Constables do not take

any operational policing steps. That, I think, is the important point in terms of the question that has been asked to me.

3.16.3 Deputy M. Tadier:

Perhaps I can reiterate Deputy Higgins' question. Given that the contradiction here is purely theoretical and that we have had it confirmed that although the Constables are police officers but non-serving ones, would it be advisable then that the warrant cards be submitted as they are no longer required for police officers who are not serving in any functional capacity?

The Deputy Bailiff:

Submitted to where?

Deputy M. Tadier:

Just returned.

The Attorney General:

Again, I do not feel able to express a view in response to that question. Perhaps it might help if I amplified a little bit why this is a theoretical question in my opinion, rather than an actual one. But when the European Courts of Human Rights have come to consider whether or not a right has been breached, it considers specific facts, specific circumstances and the effect of those facts and circumstances on a victim. So, if the Connétables are not exercising any operational police powers, there are not going to be circumstances in which the exercise of those powers are going to find themselves considered by the European Court or any other court dealing with human rights matters. That is why I refer to it as a theoretical question. In terms of holding warrant cards, merely holding a piece of paper or plastic with a photograph on it or not, to my mind, is not a material consideration. In all circumstances, the Connétables, like any other public authority, have to exercise whatever powers they do outside of the Assembly in a manner that is compatible with the human rights of ... well, compatible with Human Rights Law. But I do not think whether Connétables walk around holding a warrant card and do nothing with it has any bearing on the question.

3.16.4 Deputy M. Tadier:

Could I ask for clarification? It is not simply theoretical because part of the convention states that members of the public have a right to expect an honest and impartial hearing and they could well argue, and somebody could well take a case - not a theoretical one but a practical one - to the European Court of Human Rights on the basis that they have been tried at a Parish Hall and that the laws which were made were made by policemen and they voted on them and that the law would not have gone through if these policemen, who arguably should not have been there in the first place, had not been making the law. So there is not any clear separation. So, could the Attorney General comment on that?

The Attorney General:

The first point I will just make in response to that is that people are not tried at Parish Halls. A Parish Hall Inquiry is not a judicial determination of a criminal matter; it is a prosecution inquiry which will lead at the end of it to a decision as to whether or not a charge should be brought. It is an entirely voluntary process in that anyone brought to a Parish Hall Inquiry (a) is entitled not to come and (b) if he does turn up, is entitled

to say: “No, I wish this to be dealt with an Article 6 compliant court” and the matter is then referred to the Magistrate’s Court. It is for that reason, because there is no question of a judicial determination in the Parish Hall Inquiry system, that I think this is theoretical. It is also theoretical because, as I understand the position - and I do stand to be corrected if I have got this wrong - Connétables do not conduct Parish Hall Inquiries; that is an operational policing matter.