

2.10 Deputy M. Tadier of the Chief Minister regarding the use of super-injunctions in Jersey:

Following claims by a U.K. M.P. that 4 individuals have obtained an injunction under the Data Protection (Jersey) Law 2005, to prevent allegations being made about them on a blog, is the Chief Minister aware of super injunctions being used in Jersey and, if so, has taxpayers' money been used to deal with cases under the Data Protection Law which might otherwise be pursued as civil libel and defamation cases?

Senator I.J. Gorst (The Chief Minister):

I am unaware of any super injunctions having been obtained in Jersey, however I can confirm that it is part of the function of the Data Protection Commissioner to assist members of the public to enforce their rights under the law.

The Bailiff:

Just before we get to supplementary questions, I had to consider very carefully whether to allow this question under Standing Order 10(10). I did so because it raised the question of spending of public money, but I must emphasise all those who ask supplementary questions that because the case referred to as being heard in private, it would be improper and a breach of Standing Orders to refer to the names of any of the parties or the details of the case.

2.10.1 Deputy M. Tadier:

I take that direction, Sir. The point is, we do not know of any cases, by their very nature, if they are private anyway. So my question to the Chief Minister is does he acknowledge that there is perhaps a departure from - and there is a very delicate line to be had here - the right of journalists, whether they be bloggers or in another form, to be able to report accurately on individuals? There is currently a recourse, which is called defamation and libel, which can be taken as a civil case, but as soon as a case such as super injunctions, which necessarily have to be heard in private, are used, there is a case for abuse. Will the Chief Minister give his comments on that?

Senator I.J. Gorst:

I am not sure that in question time under Standing Orders I am asked for my opinion on matters but obviously if you are allowing the question to stand, the Deputy is right. Of course it is difficult. We enjoy a free media and they report on matters as they see fit within the law, and that is as it should be. It is for this Legislature to amend and change laws if they think that is necessary and it is for the court system to interpret them in due course should there be a dispute.

2.10.2 Deputy M.R. Higgins:

I was surprised by the latter remark because newspapers are sued all the time for defamation. However, my question is, is it right that public money can be spent and we do not know that it is being spent and we do not know who it is being spent on or what is going on. Where is the accountability for any money that is being spent on these secret, or private - depending on how you want to look at it - actions that are being brought before the courts?

Senator I.J. Gorst:

As I said in my opening response, the Data Protection Commissioner has part of that function, the requirement to assist members of the public in enforcement of their rights under that law. The budget for the Data Protection Commissioner is published as a non-executive Ministerial department, it is part of the budget that this Assembly approves and an annual report is produced from the Data Protection Commissioner's office. I believe that there is therefore appropriate control there and there is an accounting officer responsible for the spending of that money.

2.10.3 Deputy R.G. Le Hérissier:

Notwithstanding, as an earlier question indicated, in the absence of a Minister of Justice post in the Government, would the Chief Minister promote the idea that the use of super injunctions should be absolutely minimal because of the dangers it raises about private or secret justices, as the Deputy has just instanced. Would he be prepared to promote the minimisation of their use and to see whether other routes can be used in order to deal with aggrieved complainants?

Senator I.J. Gorst:

The Deputy asked me earlier why I felt that perhaps we were driving in the opposite direction of the appropriate separation of powers. He now seems to be suggesting that I should be making public statements which to some extent go and interfere. I do not believe it is my job to either promote or not. It is appropriate for the courts to decide under the law and perhaps I should have been a little bit firmer earlier this morning in making it clear that not only government and the police but also the courts are subject to the Human Rights (Jersey) Law 2000. Therefore I believe we can have confidence that they are acting appropriately and taking those concerns into consideration when making decisions. Those who do not like the decisions of the court obviously have a number of statutory processes that they can go through, appeals, administrative appeals and ultimately judicial review.

2.10.4 Deputy R.G. Le Hérisier:

Would the Minister not accede that the issue is not whether or not I agree with this decision; there is no reason why I have to comment. Would he not accept it is his job to promote policy and that is the role of the Legislature?

[10:45]

Senator I.J. Gorst:

I am not sure if the Deputy seems to be proposing that I should promote a policy that means that people do not have recourse to the courts? That surely cannot be right.

2.10.5 Deputy T.M. Pitman:

I think if our courts observe human rights and everyone is entitled to a fair trial under that... which is clearly not the case as I can demonstrate, in fact the evidence is all there. What I would like to ask is how can we have this absurdity when all 4 individuals have been named already and their names are in the public domain? How can we have these secret court sessions? The next one, which is going to take place on 5th November, taxpayers' money is being used and nobody knows what it is being used for or how, to support people, one who is a convicted petty criminal, convicted in the courts in March 2011...

The Bailiff:

Deputy, I have already given guidance that there is to be no reference to the details.

Deputy T.M. Pitman:

That is not the details. That is the background of the people who are getting secret hearings.

The Bailiff:

Deputy Pitman, you will obey please the directions of the Chair.

Deputy T.M. Pitman:

Yes, thank you, Sir. You have reminded me how right my first question was.

The Bailiff:

I am sorry?

Deputy T.M. Pitman:

I said, Sir, you have reminded me how right my first question was about how the courts are a law unto themselves. Public money being spent and we cannot find out...

The Bailiff:

Please confine yourself to a question rather than comments.

Deputy T.M. Pitman:

That is my question, Sir. How can we see what money is being spent? We know it is being spent and yet as the leader of this Government, the Chief Minister will not stand up and show some leadership. Why not?

Senator I.J. Gorst:

As I quite clearly indicated right at the start, it is part of the function of the Data Protection Commissioner to assist members of the public to enforce their rights under that law. If the Deputy disagrees with that and does not believe that that should be a function of the Data Protection Commissioner, then of course he can bring forward a proposition which would seek to amend it, but I would suspect that he would have to provide good evidence to suggest that that was not being used appropriately. I have no evidence to suggest anything other than it is being used appropriately. As with regard to his opening comments and his final supplementary question, if the Deputy is so certain of the facts that he says he has, then he should, I suggest, either contact the police or speak further to his lawyer. It cannot be right that in this Assembly, a parliamentary privilege is abused in the way that I fear that we are potentially doing so today. [Approbation]

Deputy T.M. Pitman:

The Minister is misleading the House. Parliamentary privilege exists just for this reason. It is not abused and it is for people when the Minister will not do his job because he is a coward.

The Bailiff:

Deputy, please withdraw that comment. You know that you are not entitled to say that about another Member.

Deputy T.M. Pitman:

Completely lacking in backbone then, Sir. I will remove the coward bit.

The Bailiff:

You will remove the coward and you will apologise.

Deputy T.M. Pitman:

Apologise for what, Sir?

The Bailiff:

For calling him a coward.

Deputy T.M. Pitman:

I am very sorry. The Minister is not a coward, but he does lack complete political backbone.

2.10.6 Deputy M. Tadier:

I accept that this is a very complicated issue and this allegation or suggestion was made in the U.K. by a U.K. M.P. who said that with the assistance of the Jersey Government, a super injunction had been obtained against, let us say, an individual in Jersey. He was very surprised that it had been undertaken under the Data Protection Act of all things, as he said. Does the Minister accept that there is a risk that the way in which the Data Protection Act is being used here is a departure from the norm and that is why it is of concern to the U.K. M.P. and to local M.P.s? Will he also comment on the fact... I noticed that the Minister said it is up to politicians to change and amend the laws if it is necessary, but now do we bring changes to a law if we and the Chief Minister, as he says, are completely unaware whether super injunctions are even used in Jersey. How do we change the fact that super injunctions should not be used if we do not even know if they are being used in Jersey in the first place? That is ultimately the question I would like the Chief Minister to answer.

Senator I.J. Gorst:

For Members, if they believe the principle of such things should not be used in our jurisdiction to come forward with amendments to law to ensure that they cannot if they are. I have forgotten now what the Deputy's opening question was.

Deputy M. Tadier:

Can I give clarification, perhaps, to the Minister? In order to know whether or not we want to stop super injunctions, we need to know whether they exist. There is no point in bringing an amendment to the House to change something which does not exist. So can the Minister suggest to Members, how can we as Members for the greater public know whether or not super injunctions are being used and possibly

abused in Jersey so that we can know whether or not to ask questions and to amend that, which must be the right and even the duty of any elected States Member.

Senator I.J. Gorst:

I think the Deputy asked me in his opening question, it just came back to me, with regard to our law and the comments of a United Kingdom Member of Parliament. I was, of course, surprised to hear him say that because our law is based on the European Data Protection Law and I imagine that United Kingdom's law is likewise based and therefore would have similar provisions. So I am surprised that that is being made as a peculiarity of our law. I am not certain that that is the case. It is about principle. We should not be talking about specific cases in this Legislature but if Members believe that a principle is correct or incorrect then they should come forward and amend the law appropriately.