



PRESS RELEASE

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Government Welcomes Court of Appeal Judgement

HM Government of Gibraltar welcomes the judgment delivered by the Court of Appeal on Friday in relation to its appeal against the judgement of the Honourable Justice Mr Adrian Jack in connection with the parole of prisoners. The main point in issue being whether the Minister has the power to discontinue a set of proceedings commenced under section 54(5) of the GSD administration's Prisons Act 2011.

Given the public interest in this case, and, in particular, the many self-serving and incoherent attempts by the Opposition to make political capital of this matter due to the identity of the individual concerned, it is important and necessary, in the Government's view, to make a statement on the judgement.

The Court of Appeal unanimously held that the Minister does indeed have the power to withdraw a section 54(5) application prior to its determination by the Court and that such a construction of the law both accords with principle and has practical benefits. The Court also suggested a procedure to be followed when withdrawing such an application which mirrors that followed in the case in question.

The background regarding this matter is well known. Late last year, after serving two years and four months out of his seven year sentence, Isaac Marrache appeared before the Parole Board for it to consider whether he should be released on licence. The Board, guiding itself by the law passed by the previous administration, recommended his release on licence. The Minister asked the Board to reconsider its recommendation. It did so and confirmed its advice. As he was still in disagreement with the decision, the Minister applied to the Supreme Court for it to determine the matter. The law passed by the GSD administration is silent as to the procedure to be followed in respect of such an application, so the Minister followed the legal advice from Government's Queen's Counsel and senior Crown Counsel as to the form of the application.

After the Minister filed his application, further evidence emerged that dealt with the Minister's concerns, and again following legal advice, he issued instructions to withdraw the application to the Supreme Court. On the legal advice received, he was convinced that the legal test in the GSD's law had been met in full. The Honourable Justice Mr Adrian Jack disagreed with the procedure the

Ministry of Health, Care and Justice

HM Government of Gibraltar • Zone 1, Level 7 St Bernard's Hospital, Harbour Views Road • Gibraltar GX11 1AA

t +350 20007011 (Centrex 2027) f +350 20059942 e ministry@gha.gi w gibraltar.gov.gi



Minister followed and questioned whether he had the power to withdraw his application. As noted above, the Court of Appeal has unanimously determined in the Minister's favour.

It is important to note that the Honourable Justice Mr Adrian Jack had, in any case, previously accepted that the Government's view was perfectly arguable and that the final disposal of the matter, including the licence conditions, was perfectly satisfactory. Likewise, although the Government disagreed with the ruling of the Honourable Justice Mr Adrian Jack in this case, it is right and proper and of the utmost importance that our independent and excellent judicial system is free to examine and decide upon the use of statutory powers by Ministers and others. Such a journey is neither extraordinary nor unprecedented and it is the right manner in which such differences are settled in a vibrant democracy that holds judicial independence as sacrosanct.

Minister for Health, Care and Justice, the Hon. N F. Costa MP, said: "As the Court of Appeal rightly states in its judgement, this appeal raised a short but important point regarding my powers and duties under the Prison Act 2011. The Court of Appeal has made it clear beyond any doubt that where a Minister considers that a particular course of action is mandated by compelling reasons of justice and/or the public interest, it would be a dereliction of his duty as a public authority if he did not take that course of action. In fact, the Court of Appeal states that in this particular case, 'it would be counterintuitive' if I could not revise a decision on receiving further information.

"For the Opposition in their Press Releases to attempt to lecture me to the contrary, and insinuate that I was not undertaking my statutory duties seriously, and that my actions may have had an adverse effect on Gibraltar's international reputation, has been shown by this judgement to be not just wrong, but reckless in the extreme. I expect the Opposition will retract such statements immediately. The Opposition have known at all times that even if I had made a wrong decision, which it has now been determined I had not, it was always in good faith and on the premise of the highest quality legal advice and the information available to me. On this premise, for the Opposition to suggest that I may have received calls for my resignation if the Court of Appeal had disagreed with my decision, is shockingly hypocritical, as I cannot recall a single occasion where a GSD Minister resigned following a judgement decided against them. The community will not forget that there were a number of such cases, such as the Privy Council decision against the GSD Government's discriminatory and unconstitutional policy on the allocation of Government housing in the case of Nadine Rodriguez v Minister of Housing and the Housing Allocation Committee; or the case of Social Services Agency v Joanna Hernandez where the Government lost an argument as to the meaning of "a week" in law! Both were entirely unnecessary cases, which made such great public expense the more insulting.

"The Opposition's statements in this matter are just another example of their lazy politics of insults and cavalier disregard to the harm caused to Gibraltar. I have to say, however, that on this occasion, I was surprised even by their already shockingly abysmal standards. It is time for the GSD to start showing, at least, a smidgen of political maturity."