



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 28540/20
Nazir AHMED
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 27 August 2024 as a Chamber composed of:

Gabriele Kucsko-Stadlmayer, *President*,

Tim Eicke,

Faris Vehabović,

Branko Lubarda,

Armen Harutyunyan,

Anja Seibert-Fohr,

Anne Louise Bormann, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to the above application lodged on 9 July 2020,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Lord Nazir Ahmed, is a British national who was born in 1957 and lives in Rotherham. He is currently represented before the Court by Mr I. Khan of Imran Khan & Partners Solicitors, a firm of solicitors based in London, and was previously represented by Mr A. Rahman of Farani Taylor Solicitors, also based in London.

2. The British Government (“the Government”) were represented by their Agent, Mr S. Linehan of the Foreign, Commonwealth and Development Office.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background

4. The applicant was a Labour politician who was made a life peer on 3 August 1998. He was a Member of the House of Lords, being the upper chamber of the Parliament of the United Kingdom, from that date until his resignation on 14 November 2020 (see paragraph 27 below).

5. In February 2017 the applicant met Ms Z., who asked him to assist her in making a complaint to the Police about alleged financial and sexual exploitation at the hands of a third party. Following the initial meeting, the applicant wrote to the Commissioner of the Metropolitan Police on Ms Z.'s behalf. There were a number of further meetings between the applicant and Ms Z., and in September 2017 they commenced a sexual relationship, which lasted until November 2017.

6. On 28 January 2018 Ms Z. made a complaint to the House of Lords Commissioner for Standards ("the Commissioner") concerning the applicant's conduct. The Commissioner determined that the complaint did not fall within the definition of "parliamentary duties" as then defined under the Code of Conduct (see paragraphs 30-35 below) and so declined to commence an investigation.

7. On 7 March 2018 Ms Z. took her complaint to the police. Ms Z. was interviewed by the police on 26 April 2018 and 11 July 2018, and the applicant was interviewed on 26 July 2018. No criminal charges were brought against the applicant following the police investigation.

8. On 14 February 2019 the BBC news programme Newsnight broadcast an investigation into Ms Z.'s allegations, including an "on the record" interview with Ms Z. and anonymous allegations against the applicant by other women. The story was picked up and reported by the wider media.

9. On 30 April 2019, as part of a wider policy review, the House of Lords agreed changes to the Code of Conduct which brought offences of bullying, harassment and sexual misconduct (if committed by Members in the course not only of their Parliamentary duties but also in the course of their wider Parliamentary activities) explicitly within its remit. These new rules were applied with an element of retrospective effect. In light of these changes, Ms Z. resubmitted her complaint about the applicant (see paragraph 6 above) to the Commissioner on 5 June 2019.

B. The Commissioner's investigation

10. The Commissioner accepted the resubmitted complaint for investigation. On 28 June 2019 the Commissioner informed the applicant in writing of her decision to accept the complaint and provided him with all of the documentary evidence in her possession, including Ms Z.'s original complaint of January 2018 (see paragraph 6 above).

11. The applicant provided a written statement to the Commissioner responding to Ms Z.'s allegations.

12. The Commissioner interviewed the applicant and Ms Z. in the course of her investigation. The applicant was interviewed on 13 August 2019, accompanied by leading counsel, Imran Khan KC. Ms Z. was interviewed on 6 August 2019 and 12 September 2019. Transcripts of each interview were produced and the applicant was provided with the transcripts of Ms Z.'s interviews.

13. On 29 October 2019 the Commissioner wrote to the applicant informing him of further evidence which had come to light since his interview which appeared to cast doubt on the veracity of his account. The applicant, having been invited to respond to this further evidence, provided a further written statement on 18 November 2019.

14. On 5 December 2019 the applicant wrote to the Commissioner enclosing documents which he claimed demonstrated that Ms Z. was not "a witness of truth."

15. On 12 December 2019 the Commissioner wrote to the applicant regarding a number of matters arising from his July 2018 police interview (see paragraph 7 above), which had recently been provided to her. The applicant responded in writing on 18 December 2019.

16. The Commissioner sent drafts of her factual report to the applicant on 20 December 2019 and 3 March 2020 and invited his comments on those drafts. He provided detailed comments on both drafts, which were taken into account by the Commissioner when finalising her factual report.

17. On 13 March 2020 the applicant submitted a further written statement to the Commissioner setting out further matters on which he relied in response to Ms Z.'s allegations. The Commissioner took account of the contents of this statement in her final report.

18. The Commissioner concluded that some aspects of Ms Z.'s complaint were likely to be true, but rejected others. Her material findings, as set out in the Executive Summary of her report, may be summarised as follows:

(a) On 2 March 2017 the applicant had sexually assaulted Ms Z. by placing his hand on her upper thigh, and was therefore in breach of the Code of Conduct by failing to act on his personal honour;

(b) By failing to progress Ms Z.'s complaint regarding the third-party (see paragraph 5 above), and lying about his intention to do so, the applicant had acted without honesty and integrity and was therefore in breach of the Code of Conduct by failing to act on his personal honour;

(c) The applicant had failed to co-operate with the Commissioner's investigation by persistently giving inaccurate and misleading accounts designed to conceal his behaviour towards Ms Z. His behaviour in this regard was dishonest and lacked integrity and he was therefore in breach of the Code of Conduct by failing to act on his personal honour;

(d) The seriousness of the applicant's breaches of the Code of Conduct was exacerbated by the fact that the applicant had exploited Ms Z. emotionally and sexually even though he knew that she was receiving treatment for anxiety and depression.

19. On 7 May 2020 the Commissioner invited the applicant to provide her with any material he wished her to consider when addressing the specific issue of sanction. The applicant provided material in response to that invitation which was considered by the Commissioner and annexed to her report.

20. The Commissioner's recommended sanction was that the applicant be expelled from the House of Lords.

21. In reaching her conclusions the Commissioner carefully considered the various assertions made by the applicant as to the veracity and/or reliability of Ms Z.'s evidence. The Commissioner devoted a whole chapter of her report to this issue, in which she set out and analysed each of the applicant's allegations.

C. Proceedings before the House of Lords Conduct Committee

22. The Commissioner completed her investigation on 27 May 2020 and presented her report to the House of Lords Conduct Committee ("the Committee"). The applicant exercised his right of appeal to the Committee. The applicant's appeal challenged both the Commissioner's findings and her recommended sanction.

23. The applicant submitted further evidence in support of his appeal, which had not been considered by the Commissioner. The Committee remitted this further evidence to the Commissioner who produced a detailed supplementary report analysing it. A draft of the supplementary report was provided to the applicant for his comments, which were extensive and detailed. The supplementary report was then finalised. The Commissioner concluded that the further evidence did not cause her to change her findings or her recommendation as to sanction.

24. The applicant then submitted a lengthy set of further written submissions in which he asserted that the Commissioner's supplementary report had been "affected and infected by racist views", and was the misleading product of an investigator who "has not acted as such." The accusations of racism stemmed from the fact that the Commissioner had asked a witness whether, in traditional Muslim societies, men were inclined to stick together when allegations were made about their behaviour towards women, and the fact that she had sought the assistance of an imam who was not from the same community within Islam as the applicant.

25. The Committee convened a hearing which the applicant attended. He was accompanied by Mr Khan KC, who was permitted to advise him but not

permitted to speak on his behalf. The applicant read a pre-prepared statement and answered questions posed by the Committee.

26. On 10 July 2020 the applicant applied to the Court for an interim measure pursuant to Rule 39 of the Rules of Court to suspend enforcement of any final decision in the disciplinary proceedings and to prevent the publication of any details surrounding it, including the report of the Commissioner. On the same day the Court rejected the applicant's request as it fell outside the scope of Rule 39.

27. The Committee published a report on 16 November 2020 dismissing the applicant's appeal. Annexed to the report were the Commissioner's report and her supplementary report (see paragraphs 17-23 above), neither of which had previously been published. The Committee upheld the Commissioner's findings that the applicant had failed to act on his personal honour in the course of his parliamentary activities in the respects identified by the Commissioner, and it recommended that the applicant be expelled from the House of Lords under Standing Order 12 (see paragraph 41 below). However, the applicant pre-empted the motion by resigning from the House on 14 November 2020.

28. According to the Committee, it had considered the applicant's accusations of racism (see paragraph 24 above) very carefully but rejected that aspect of his appeal because it did "not believe that the Commissioner was affected or infected by racist views". The question put by the Commissioner had referred to evidence given by Ms Z. and another witness. She had therefore been testing the evidence of witnesses but there was nothing in her report to suggest that the question reflected her own views. Moreover, it was the applicant who had suggested that the Commissioner speak to an imam and she had drawn no adverse opinions or findings about the applicant from the imam's evidence.

D. Subsequent developments

29. On 19 March 2019 the applicant had appeared in court and entered not-guilty pleas in respect of two counts of attempted rape and one count of indecent assault committed against children in the 1970s when he himself was a minor. This court appearance was widely reported in the media. In January 2022 the applicant was found guilty, following a trial in the Crown Court, of the charges of indecent assault and attempted rape. On 4 February 2022 the applicant was sentenced to five and a half years' imprisonment in respect of those offences.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Code of Conduct

30. Members of the House of Lords are subject to a Code of Conduct, and they sign a formal undertaking to abide by its terms on introduction to the House and at the start of each Parliament. The version of the Code of Conduct applicable to the applicant's case was the 8th Edition.

31. The purpose of the Code of Conduct was to assist Members in the discharge of their Parliamentary duties and activities, and to provide the openness and accountability necessary to reinforce public confidence in the way members undertook these duties and activities. The Code of Conduct set out the general principles of conduct to which Members were expected to adhere, together with a series of specific rules of conduct.

32. Paragraph 8 of the Code of Conduct required all Members to "act always on their personal honour in the performance of their parliamentary duties and activities". This was developed further in paragraph 9 of the Code of Conduct which was concerned with the principles of conduct expected of Members of the House of Lords:

"Members of the House should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. These principles will be taken into consideration when any allegation of breaches of the provisions in other sections of the Code is under investigation and should act as a guide to members in considering the requirement to act always on their personal honour."

33. The seven general principles of conduct are then set out. They include honesty and integrity.

34. The Code of Conduct is supplemented by a "Guide to the Code of Conduct" which is published alongside it. At paragraph 7 of the Guide the meaning and application of the concept of acting on one's personal honour is further explained:

"The term 'personal honour' has been used within the House for centuries to describe the guiding principles that govern the conduct of members; its meaning has never been defined, and has not needed definition, because it is inherent in the culture and conventions of the House. These change over time, and thus any definition of 'personal honour', while it might achieve temporary 'legal certainty', would quickly become out-moded ... the term 'personal honour' is ultimately an expression of the sense of the House as a whole as to the standards of conduct expected of individual members ... members cannot rely simply on their own personal sense of what is honourable. They are required to act in accordance with the standards expected by the House as a whole. 'Personal honour' is thus ... a matter for individual members, subject to the sense and culture of the House as a whole."

35. The Code of Conduct, at paragraph 17, states: "Behaviour that amounts to bullying, harassment, or sexual misconduct is a breach of this Code". Parliament's Behaviour Code, which is appended to the Code of Conduct at Appendix A defines sexual misconduct in the following terms:

“Sexual misconduct incorporates a range of behaviours including sexual assault, sexual harassment, stalking, voyeurism and any other conduct of a sexual nature that is non-consensual or has the purpose or effect of threatening, intimidating, undermining, humiliating or coercing a person.”

B. The Commissioner for Standards and the House of Lords Conduct Committee

36. The application of the Code of Conduct is a matter for the House of Lords and, in particular, for the Commissioner and the Committee. The Code sets out the procedure for enforcement of its provisions and defines the roles of the Commissioner and the Committee.

37. Further detail is set out in the Guide, which makes it clear that the House of Lords is “self-regulating”. The role and functions of the Commissioner are defined in the following terms:

“Proceedings are not adversarial, but inquisitorial in character. The Commissioner is an independent and impartial investigator, appointed by the House, whose task is to establish the facts of a case. She produces a report on each case, which includes her conclusions as to whether or not there has been a breach of the Code. In fulfilling that task, the Commissioner will question the complainant, the member and any other witnesses to whatever extent and in whatever way she thinks necessary and appropriate to elicit and test the evidence in the case.”

38. The Guide specifies that Members accused of misconduct do not have any entitlement to cross examine complainants but, in cases involving bullying, harassment or sexual misconduct, they will be given an opportunity to review and challenge the factual basis of any evidence supplied. The civil standard of proof will be applied at all relevant stages of the enforcement process.

39. The Guide further requires that the Commissioner share her findings in draft with the Member before they are finalised, and invite the Member to submit any material he wishes to be considered in relation to sanction.

40. Appeals may be brought against the Commissioner’s findings and any recommended sanction. The Guide requires that the Committee publish a report setting out its determination of the appeal, which is then submitted to the House and published.

41. A final decision on suspension or expulsion is taken by the House, in accordance with Standing Order 12, which provided, at the relevant time, that a motion to expel a member may be made, on notice, following a recommendation for expulsion by the Committee, and that expulsion would take effect as soon as the motion has been agreed by the House.

C. House of Lords (Expulsion and Suspension) Act 2015 (“the 2015 Act”)

42. Section 1 of 2015 Act, which came into force on 26 June 2015, allowed the House of Lords to pass standing orders making provision for it to expel or suspend a member. The power to expel a member did not exist prior to the entry into force of the 2015 Act.

D. Parliamentary privilege

43. The entirety of the process of investigation and resolution of allegations concerning potential breaches of the Code of Conduct (see paragraphs 30-35 above) constitutes proceedings in Parliament for the purposes of Article 9 of the Bill of Rights 1689, which provides (in modern English):

“That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”

44. The domestic courts consistently recognised the privilege conferred by Article 9 of the Bill of Rights, as a “provision of the highest constitutional importance”, pursuant to which Parliament should be permitted to regulate the business conducted in Parliament, including the conduct of its Members, without external interference. The principle, and its importance, were articulated by *Lord Browne-Wilkinson in Prebble v. Television New Zealand Ltd* [1995] 1 AC 321 in the following terms (at 322):

“In addition to article 9 itself, there is a long line of authority which supports a wider principle, of which article 9 is merely one manifestation, viz. that the courts and parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made as to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges....As Blackstone said in his Commentaries on the laws of England, 17th ed. (1830), vol. 1, p.163: ‘the whole of the law and custom of parliament, has its original form in this one maxim, “that whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere.”’”

45. Thus, in cases where the public interest enshrined by Article 9 ran into conflict with other public interests, including the ability of individuals to pursue litigation, the public interest enshrined by Article 9 would prevail.

46. The question of whether the absolute privilege reflected in Article 9 extended to internal investigations of Members’ conduct was addressed in *R v. Parliamentary Commissioner for Standards, ex parte Al-Fayed* [1998] 1 WLR 66939. The claimant sought judicial review of an investigation conducted into an allegation of misconduct by the Parliamentary Commissioner for Standards. The domestic court concluded that the responsibility for supervising the Parliamentary Commissioner for Standards was conferred, by Parliament through its Standing Orders, on the

Committee of Standards and Privileges of the House (the Committee’s equivalent in the House of Commons), and that, in light of Article 9, it was for the House to determine whether the investigation had been properly conducted and not the courts.

47. The extension of the immunity beyond freedom of speech in the House was recently confirmed by the Supreme Court *in R (SC) v. Secretary of State for Work and Pensions* [2022] AC 2233 at § 165:

“165. ... the law of Parliamentary privilege is not based solely on the need to avoid any risk of interference with freedom of speech in Parliament. It is underpinned by the principle of the separation of powers, which, so far as relating to the courts and Parliament, requires each of them to abstain from interference with the functions of the other, and to treat each other’s proceedings and decisions with respect. It follows that it is no part of the function of the courts under our constitution to exercise a supervisory jurisdiction over the internal procedures of Parliament. That principle was affirmed by this court in *R (Buckinghamshire County Council) v. Secretary of State for Transport* [2014] 1WLR 324, in my own judgment at para 110 and in the judgment of Lord Neuberger PSC and Lord Mance JSC at paras 203—206, where they observed (at para 206) that ‘Scrutiny of the workings of Parliament and whether they satisfy externally imposed criteria clearly involves questioning and potentially impeaching (i.e. condemning) Parliament’s internal proceedings, and would go a considerable step further than any United Kingdom court has ever gone.’”

COMPLAINTS

48. The applicant complained that the process for investigating and punishing breaches of the House of Lords’ Code of Conduct (see paragraphs 30-35 above) did not afford due respect to the interests safeguarded under Article 8 of the Convention. He further complained under Article 8, read together with Article 14 of the Convention, that only members of the House of Lords and Members of Parliament were denied a remedy in a court or tribunal in the event of their being accused of sexual misconduct.

THE LAW

A. Complaint under Article 8 of the Convention

49. The applicant complained that the process for investigating and punishing breaches of the Code of Conduct was not accompanied by adequate procedural safeguards.

He invoked Article 8 of the Convention, which, in so far as relevant, provides as follows:

“1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. The parties’ submissions

(a) The Government

50. The Government argued that Article 8 of the Convention was not applicable to the facts of the case. The findings of the Commissioner did not relate to the applicant’s private life but rather concerned his behaviour in the course of his parliamentary activities and the extent to which he gave a truthful account of his actions. Accordingly, if Article 8 was applicable to the applicant’s case it could only be on the consequence based approach (the Government referred, in this respect, to *Denisov v. Ukraine* [GC], no. 76639/11, §§ 102 and 107-109, 25 September 2018).

51. The Government made the following points. First of all, contrary to the applicant’s assertion, neither the recommended sanction (see paragraph 22 above) nor his pre-emptive resignation (see paragraph 27 above) had the effect of “terminating” his life peerage. The applicant remained a life peer, even after his conviction for child sex offences (see paragraph 29 above). Secondly, the applicant was convicted of child sex offences in January 2022, and the allegations which formed the basis of that conviction had been in the public domain long before the report of the House of Lords Conduct Committee (“the Committee”) was published on 16 November 2020 (see paragraph 27 above). On 19 March 2019 the applicant had appeared in court and entered not-guilty pleas in respect of two counts of attempted rape and one count of indecent assault, and this court appearance was widely reported in the media (see paragraph 29 above). Thirdly, although the applicant disputed the findings of the Commissioner in relation to certain aspects of his behaviour towards Ms Z., he accepted that he had engaged in a sexual relationship with a member of the public who approached him in order to obtain his assistance in relation to allegations of financial and sexual exploitation by a third party.

52. According to the Government, for the applicant to meet the threshold for Article 8 applicability on the consequence-based approach he would have to demonstrate that the consequences for his private life on which he relied for these purposes related directly to the findings and outcome of the impugned investigation as distinct from the widely publicised criminal charges (which were subsequently proved) of sexual offences against children, and his admitted, and widely publicised, conduct in commencing a sexual relationship with Ms Z. However, his claim that the adverse consequences for his private life were solely attributable to publication of the Committee’s report was unsustainable and the Government therefore submitted that he had failed to discharge the burden of establishing that Article 8 was applicable.

53. Finally, the applicant had adduced no evidence to support his contention that a life peer of a different race and/or religion who had been found to have acted in the same manner would not have been subject to a recommendation for expulsion from the House of Lords (see paragraph 59 below). No particulars had been given as to the basis upon which the Commissioner and/or the Committee might have discriminated against the applicant on account of his race and/or religion, nor had he indicated which findings or conclusions might have been infected by such discrimination. His contention that the Commissioner and/or the Committee would not have recommended expulsion from the House had he not been a Muslim of Pakistani origin was therefore based on nothing more than bare assertion. As the sanction of expulsion from the House only became available on 26 June 2015 (see paragraph 42 above), the fact that the applicant was the only member of the House to “face expulsion” was of limited force and simply reflected the fact that that, during the limited period for which the sanction had been available, no other member of the House had been found to have committed misconduct of sufficient seriousness to merit such a recommendation. It was also misleading for the applicant to seek to compare his situation with that of a number of members of the House of Commons (“MPs”). Unlike members of the House of Lords, MPs were elected representatives and by virtue of the Recall of MPs Act 2015 they could lose their seats via a recall petition process if they were suspended for more than ten sitting days or fourteen calendar days. The question of whether an MP, as an elected representative, should lose his or her seat was therefore ultimately reserved to the electorate.

(b) The applicant

54. The applicant argued that Article 8 was applicable to the facts of the case. The findings and proposed sanction of the Commissioner, as upheld by the Committee, related to his private life and was capable of falling within the scope of Article 8 since his (former) role as a member of the House of Lords was analogous to employment. Moreover, his expulsion from the House of Lords was not a foreseeable consequence of his own actions as the recommendation of the sanction of expulsion from the House of Lords was manifestly disproportionate to the impugned conduct. In this regard, he pointed out that no other member of the House of Lords had faced expulsion (or been expelled).

55. Insofar as the applicant relied on the consequence-based approach, he submitted that the threshold of seriousness had been more than met as he had sustained irreparable damage to his “inner circle”, his opportunities to establish and develop relationships with others, his finances and his reputation in general.

56. More particularly, the findings and proposed sanction had irretrievably damaged his long-standing reputation as a member of the House

of Lords, tarnished the extensive charitable work that he had previously done, irrevocably damaged his reputation in his local community, and prejudiced his upcoming criminal trial for the sexual offences committed as a minor. Moreover, he had been compelled to resign as a result of the Commissioner's findings against him and lost the income he was receiving from his role, including the allowances he received for attending sessions of the House of Lords. Following the publication of the Committee's report, he was asked to return a loan of 550,000 British Pounds (GBP) which he had taken out and refused an uplift on his mortgage and business loan. He had made attempts to secure an alternative bank account but had been refused by multiple banks and loan companies. He therefore had to sell his house at almost GBP 300,000 below the market rate to survive. In addition, he incurred substantial costs seeking legal advice in order to appeal the report and clear his name.

57. The applicant further argued that he had been promised that he would be appointed President of Azad Kashmir by the Pakistani Prime Minister, but that offer had been withdrawn following the publication of the report. He was no longer able to engage in humanitarian work and was likely to find difficulty engaging in any other work of a public nature.

58. Insofar as the Government sought to conflate the applicant's conviction for sexual offences committed as a minor with the finding of sexual assault by the Commissioner (see paragraphs 51 and 52 above), he pointed out that he was only convicted after publication of the Committee's report.

59. In his observations the applicant also appeared to rely on the reasons-based approach (see *Denisov*, cited above, §§ 102-106), arguing that his race and/or religion had played a part in the Commissioner's findings and proposed sanctions. He pointed in particular to nine white members of the House of Lords and the House of Commons who had complaints against them upheld. In 2019 and 2020 four Members of the House of Lords were ordered to undertake training for complaints related to harassment, discrimination and, in one case, bullying. In 2017 a sanction of expulsion was recommended for a Member of the House of Lords following allegations of sexual harassment and corrupt inducements, but the sanction was reduced to a suspension on appeal. In 2016 an MP resigned following allegations that he had sent suggestive messages to a woman who he had met through his political role; in 2017 a Government Minister resigned after allegations were made that he had repeatedly placed his hand on a journalist's thigh; in 2018 an MP was suspended from the Labour Party amid an investigation into whether he had sent inappropriate texts to a former aid; and in 2021 an MP was suspended for six weeks under the Independent Complaints and Grievance Scheme after he had made "significant" repeated unwanted sexual advances against a member of staff.

2. *The Court's assessment*

60. The relevant principles are set out in *Denisov* (cited above, §§ 95-117).

61. The Court does not consider that the applicant, as a life peer and Member of the House of Lords, was in an analogous position to an employee or even a civil servant. Nonetheless, for the purposes of Article 8 of the Convention the Court has accepted that the exercise of public duties by a politician is akin to a “professional occupation” (see, implicitly, *Algirdas Butkevičius v. Lithuania*, no. 70489/17, § 93, 14 June 2022). The applicant’s complaints may therefore be considered in line with both the reasons-based and consequence-based approach identified by the Court in *Denisov*, meaning that an issue could arise under Article 8 of the Convention if the reasons for the Commissioner’s investigation and findings were linked to his private life within the meaning of Article 8 of the Convention, or if they had a negative impact on his “inner circle”, on his opportunities “to establish and develop relationships with others”, and on his reputation (see *Denisov*, cited above, § 115).

(a) **The reasons-based approach**

62. According to the applicant, the Commissioner’s findings and proposed sanction were closely related to his Muslim Pakistani race and religion (see paragraph 59 above). While issues related to religion fall under Article 9 of the Convention, if his claim to have been treated differently on account of his race were substantiated, it would undoubtedly give rise to an issue under Article 8 of the Convention (see, for example and *mutatis mutandis*, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI). However, the applicant has not sufficiently substantiated this claim. The Commissioner’s investigation was initiated following a serious allegation of sexual misconduct made to her by Ms Z. (see paragraphs 6, 9 and 10 above). The applicant’s race was therefore not the “sole ground” for the investigation (compare *Smith and Grady*, cited above, § 71). In fact, there is no evidence of any link between the applicant’s race and either the Commissioner’s decision to commence the investigation and/or her findings and proposed sanctions.

63. Before the Committee the applicant contended that the Commissioner’s supplementary report had been “affected and infected by racist views” (see paragraph 24 above). This allegation – which the Committee dismissed (see paragraph 28 above) – was based on two specific accusations (see paragraph 24 above) not repeated before this Court. In contrast, the complaint that the applicant now makes before the Court – namely, that the sanction proposed by the Commissioner was more severe than the sanctions proposed in the cases of white members of both Houses of Parliament (see paragraph 59 above) – was not voiced before the Committee.

64. The sanction proposed by the Commissioner in the applicant's case was undoubtedly more severe than those faced by his chosen comparators. However, as the applicant did not raise this issue before the Committee, the Court does not have the benefit of its views on the extent to which these cases were in fact comparable to his (see the Government's contentions in this respect, summarised in paragraph 53 above). On the basis of the information provided by the applicant, the Court is not persuaded that any of these cases provide it with a useful comparator. The four Members of the House of Lords sanctioned in 2019 and 2020 did not face allegations of sexual misconduct (see paragraph 59 above). The four MPs were arguably not in a comparable position to the applicant since they were elected representatives of the people and even a relatively short suspension could have resulted in them losing their seats via a recall petition (see paragraph 53 above). In any case, of the four MPs referred to by the applicant, two resigned, and the applicant has not indicated whether any sanction was proposed by a parliamentary committee prior to their resignation; one was suspended following a recommendation by an independent panel rather than a parliamentary committee; and one appears to have been suspended by his party. Only one of the applicant's chosen comparators was a Member of the House of Lords sanctioned for sexual misconduct, and in that case expulsion from the House was in fact proposed before being reduced on appeal to suspension (see paragraph 59 above). The applicant has not provided any explanation as to why this proposed sanction was reduced on appeal.

65. The Court does not, therefore, find that either the conduct of the proceedings before the Commissioner and the Committee, or the severity of the proposed sanction of expulsion from the House of Lords, were related to the applicant's race and thereby linked to his private life within the meaning of Article 8 of the Convention.

(b) The consequence-based approach

66. Turning, then, to the consequence-based approach, the Court takes note of the Commissioner's principal findings – upheld on appeal by the Committee – that on 2 March 2017 the applicant had sexually assaulted Ms Z. by placing his hand on her upper thigh; that he had failed to progress Ms Z.'s complaint, and had lied about his intention to do so; that he had failed to co-operate with the Commissioner's investigation by persistently giving inaccurate and misleading accounts designed to conceal his behaviour towards Ms Z.; that he had exploited Ms Z. emotionally and sexually even though he knew that she was receiving treatment for anxiety and depression; and that in all these things he had failed to act on his personal honour in the course of his parliamentary activities (see paragraphs 18 and 27 above).

67. According to the applicant, as a result of these published findings he had sustained irreparable damage to his "inner circle", his opportunities to establish and develop relationships with others, his finances and his

reputation (see paragraph 55 above). While the foreseeable negative effects on private life of misconduct entailing a degree of legal responsibility cannot be relied on in order to complain of an interference with the right to respect for “private life” (see, *mutatis mutandis* and in relation to the commission of a criminal offence, *Denisov*, cited above, § 98; see also *Gillberg v. Sweden* [GC], no. 41723/06, § 68, 3 April 2012), this “exclusionary principle” is not applicable in a case like the present where the applicant has contested the findings of the Commissioner and Committee (see *Denisov*, cited above, § 121; see also, by way of comparison, *Gillberg*, cited above, § 71).

68. Nevertheless, while the findings of the Commissioner, later upheld by the Committee, undoubtedly touched on a wider ethical aspect of the applicant’s personality and character, and cast aspersions on his moral values (compare *Denisov*, cited above, § 129), his claims to have suffered damage to his inner circle, his relationships with others and his reputation are largely unsubstantiated. In particular, he has provided no evidence to support his claims of financial loss (see paragraph 56 above); his loss of opportunity to be appointed President of Azad Kashmir by the Pakistani Prime Minister (see paragraph 57 above); or his inability to engage in humanitarian work or other work of a public nature (see paragraph 57 above). Moreover, the applicant was not compelled to resign from the House of Lords. He chose to do so before the House could consider whether or not to apply the recommended sanction of expulsion (see paragraph 27 above). In doing so, he did not lose his life peerage (see paragraph 51 above).

69. The applicant has also provided no evidence to substantiate his claim that his criminal trial was prejudiced by the publication of the Commissioner’s findings (see paragraph 56 above). If this had been the case, his defence could have raised this issue in the course of the criminal proceedings. There is no evidence that it did so.

70. Even if the Court were to accept that the Commissioner’s published findings – upheld on appeal by the Committee – caused injury to the applicant’s private life, in considering whether the minimum threshold of severity has been met it must have regard to his situation at the time of the impugned interference. The published reports cannot, therefore, be viewed in isolation. In this regard, the Court considers the following factors to be significant.

71. First of all, insofar as the Commissioner found that the applicant had exploited Ms Z. emotionally and sexually even though he knew that she was receiving treatment for anxiety and depression (see paragraph 18 above), it is noteworthy that the applicant at no point sought to deny that he had a sexual relationship with Ms Z. after she had approached him for assistance in his capacity as a Member of the House of Lords (see paragraph 5 above).

72. Moreover, on 14 February 2019, some twenty-one months before the Committee published its report, together with that of the Commissioner (see

paragraph 27 above), BBC Newsnight had broadcast an investigation into Ms Z.’s allegations, which included both an “on the record” interview with Ms Z. and anonymous allegations against the applicant by other women. The story was subsequently picked up and reported by the wider media (see paragraph 8 above).

73. While there is a qualitative difference between media reports and their subsequent confirmation in a published report by a parliamentary committee, endorsed by a parliamentary chamber, the Court further notes that prior to the publication of the reports of the Committee and the Commissioner on 16 November 2020 the applicant had also been charged with two counts of attempted rape and one count of indecent assault, both of which related to offences committed against children when he himself was a minor (see paragraphs 29 and 51 above). Without seeking to undermine the gravity of the breaches of the Code of Conduct identified by the Commissioner, these criminal charges concerned offences of a different order. On 19 March 2019 the applicant had appeared in court to enter not-guilty pleas, and this court appearance was widely reported in the media (see paragraph 29 above).

74. The reports of the Commissioner and Committee were therefore published at a time when there were criminal charges pending against the applicant for the attempted rape and indecent assault of children, and both those charges and Ms Z.’s allegations had been widely reported in the media. Moreover, just over a year after publication of those reports the applicant was convicted of the criminal offences and sentenced to five and a half years’ imprisonment (see paragraph 29 above). Given that each of these things – in particular, the criminal charges which would later result in a criminal conviction – were capable of causing significant damage to the applicant’s private life, and in particular his inner circle, professional relationships and reputation, it was incumbent on him to demonstrate that the damage relied on related principally to the findings and outcome of the impugned investigation and not to these other factors. He has not done so.

75. Accordingly, the Court cannot accept that the Commissioner’s findings alone had sufficient negative effects on the applicant’s private life so as to cross the threshold of seriousness for an issue to be raised under Article 8 of the Convention.

(c) Conclusions

76. Given that the applicant has not demonstrated either that the reasons for the Commissioner’s findings, and in particular the proposed sanction of expulsion from the House of Lords, were linked to his private life within the meaning of Article 8 of the Convention, or that any consequences of those findings crossed the threshold of seriousness for an issue to be raised under Article 8 of the Convention, the Court finds that this Article is not applicable. The Government’s objection in this respect should therefore be upheld and

the complaint must be dismissed as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

B. Complaint under Article 14 of the Convention, read together with Article 8

77. Invoking Article 14, read together with Article 8 of the Convention, the applicant argued that “everyone in the UK who is accused of sexual misconduct has a remedy in a court or tribunal – whether that is through defending criminal proceedings, bringing an action for defamation, or contesting the accusation in whatever proceedings it is made in. Only Members of the House of Lords (and MPs) have no such remedy”. In his observations to the Court he further claimed that he was treated differently “as a Muslim member of the House of Lords”.

78. Article 14 provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

1. The parties’ submissions

(a) The Government

79. The Government pointed out that being a Member of the House of Lords would not have prevented the applicant from bringing a defamation action against Ms Z. in respect of the allegations she made against him on a national television programme before she submitted her second complaint to the Commissioner, had he chosen to do so. Those allegations were not protected by parliamentary privilege and were therefore justiciable in the normal way. Furthermore, it was not his status as a Member of the House of Lords that prevented him challenging the findings of the Commissioner before a court. The immunity from legal proceedings derived from the fact that proceedings before the Commissioner and the Committee were proceedings in Parliament pursuant to Article 9 of the Bill of Rights 1689 (see paragraph 43 above) and were therefore privileged. That privilege protected the reports of the Commissioner and Committee from being impugned by anyone, regardless of their status. For example, it would not have been open to Ms Z. to challenge anything said in the reports, even though she was referenced therein. Accordingly, the applicant was not treated differently to other persons in an analogous position, namely the position of being referred to in a report by the Commissioner and/or Committee.

80. Even if the applicant were to overcome this fundamental obstacle to his Article 14 complaint, the Government argued that any difference in treatment arising from the fact that the proceedings before the Commissioner and the Committee were protected by parliamentary privilege was justified

by the legitimate aims of maintaining parliamentary privilege and the constitutional separation of powers between the legislature and the judiciary.

81. Finally, and in any event, the procedures adopted by the House of Lords for the regulation of its business, including the conduct of its Members, fall well within the wide margin to be afforded to State legislatures in this context. It was not for the Court to substitute its own view as to the appropriate procedure for the House to adopt in the investigation of allegations of misconduct by its Members, especially in circumstances where that procedure had been the subject of careful and detailed consideration by the House.

(b) The applicant

82. The applicant argued that there was no objective and/or reasonable justification for the alleged difference in treatment. Although he accepted that Members of the House of Lords should (have to) abide by a Code of Conduct as well as be subject to procedures if in breach of that Code, the application of those procedures as well as the procedures themselves had to be in accordance with his Convention rights.

83. Furthermore, if the aim of the procedure to which the applicant was subjected was legitimate (investigation of a breach of the Code), the relationship of proportionality between the means employed and the aim sought to be realised was most certainly unreasonable.

2. The Court's assessment

(a) General principles

84. In order for Article 14 of the Convention to be applicable, it is both necessary and also sufficient for the facts of the case to fall “within the ambit” of one or more of the Convention Articles (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, ECHR 2010, and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 124, ECHR 2012 (extracts)). In this regard, the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the ambit of any Convention Article, for which the State has voluntarily decided to provide (see *Beeler v. Switzerland* [GC], no. 78630/12, § 48, 20 October 2020, with references therein).

85. Furthermore, for an issue to arise under Article 14 there must be a difference in the treatment of persons in “analogous or relevantly similar situations”; and the difference in treatment must be based on an identifiable characteristic, or “status” (see, for example, *Molla Sali v. Greece* [GC], no. 20452/14, § 133-134, 19 December 2018). Once such a difference in treatment has been demonstrated, the burden is on the Government to show

that there was an objective and reasonable justification for it such that it was not incompatible with Article 14. Justification is lacking where the different treatment does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Molla Sali*, cited above, §§ 135-37).

(b) Application of those principles to the facts of the case at hand

86. Insofar as the applicant has sought to argue that he was treated differently as a Muslim Member of the House of Lords, this complaint does not fall “within the ambit” of Article 8 of the Convention (see paragraph 62 above) It must therefore be dismissed as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

87. Furthermore, his claim to have been treated differently on account of his race has already been found by the Court to be wholly unsubstantiated (see paragraphs 62-65 above). It must therefore be dismissed as manifestly ill-founded pursuant to Article 35 §§ 3 (a) of the Convention.

88. As for the second element of his Article 14 complaint, as the Government point out (see paragraph 79 above), the fact that the applicant was a Member of the House of Lords did not prevent him from challenging allegations of sexual misconduct before a court. He could have brought defamation proceedings against Ms Z., had he wished to do so, and he could also have defended himself had any criminal proceedings been brought against him in respect of Ms Z.’s allegations. What he could not do was challenge the findings of the Commissioner before a court because proceedings before both the Commissioner and the Committee were proceedings in Parliament within the meaning of Article 9 of the Bill of Rights 1689 (see paragraph 43 above) and could not be impeached or questioned in any court or place out of Parliament. In this respect, he was in the same position as any other persons affected by the findings, regardless of whether they were Members of the House of Lords or not.

89. Nonetheless, it could be argued that he was treated differently, on the basis of “other status”, from persons whose professional misconduct was investigated by bodies not protected by parliamentary privilege. However, even if his complaint were framed in this way, the Court is not satisfied that the facts of the case fall “within the ambit” of Article 8 of the Convention.

90. While the Court has found Article 14 of the Convention to be applicable in cases where the substantive Article, standing alone, might not have been applicable (see, for example, *Konstantin Markin*, cited above, §§ 129-30, and *Yocheva and Ganeva v. Bulgaria*, nos. 18592/15 and 43863/15, §§ 71-73, 11 May 2021), in these cases the respondent State had elected to provide for rights going above and beyond what was required by

the Convention Article in question. In such cases the Court has made it clear that if these additional rights fall “within the ambit” of a substantive Article, the State cannot, in the application of that right, take discriminatory measures within the meaning of Article 14 (see *Beeler*, cited above, §§ 48 and 61). In the present case the applicant’s complaint under Article 8 of the Convention, standing alone, has not been found to be inadmissible *ratione materiae* with the provisions of the Convention because the facts of the case go beyond the rights guaranteed by Article 8, but rather because the applicant has not demonstrated that on the facts of his particular case either the reasons for the Commissioner’s findings, and in particular the proposed sanction of expulsion from the House of Lords, were linked to his private life within the meaning of Article 8, or that any consequences of those findings crossed the threshold of seriousness for an issue to be raised under Article 8 (see paragraph 76 above).

91. Accordingly, the applicant’s complaint does not fall “within the ambit” of Article 8 of the Convention and Article 14 of the Convention is not, therefore, applicable. It must therefore be dismissed as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 September 2024.

Andrea Tamietti
Registrar

Gabriele Kucsko-Stadlmayer
President