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

FOURTH SECTION

DECISION

Application no. 23570/22
Owen William PATERSON
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 27 August and 3 September 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 10 May 2022,

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, Mr Owen William Paterson, is a British national who was born in 1956 and lives in Ellesmere. He was represented before the Court by Mr P.T. Barden of Devonshires Solicitors LLP, a lawyer practising in London.

2. The Government of the United Kingdom ("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, a member of the Conservative party, was elected as a Member of Parliament ("MP") in 1997. He remained a Member of the House of Commons until his resignation on 5 November 2021.

5. He was a Government Minister from May 2010 until July 2014, having served as Secretary of State for Northern Ireland from 2010 to 2012 and as Secretary of State for Environment, Food and Rural Affairs from 2012 to 2014.

B. Investigation by the Parliamentary Commissioner for Standards

6. In October 2019 the Parliamentary Commissioner for Standards ("PCS") opened an investigation, on her own initiative, following media reports that the applicant had engaged in lobbying for two companies for which he was a paid consultant.

7. The PCS posed questions to the applicant, and he provided detailed answers. She sent him a draft Memorandum on 1 December 2020 and invited his comments. At his request she met with him on 11 February 2021, and an interview followed on 26 March 2021.

8. The PCS revised her draft Memorandum in light of further material provided by the applicant. She sent a second draft of the Memorandum to the applicant on 11 June 2021 and afforded him three weeks to provide his comments, which were published alongside the other written evidence received during the course of the investigation.

9. The PCS found that the applicant had breached paragraphs 11, 13 and 15 of the 2015 Code of Conduct (see paragraph 21 below). She concluded that the applicant had engaged in paid advocacy, contrary to paragraph 11 of the Code; that he had used resources provided by Parliament to support his work for the two companies in breach of paragraph 13 of the Code; and that he had failed properly to declare his interests in breach of paragraph 15 of the Code. The PCS further concluded that, in light of the numerous and serious breaches of the Code established by her investigation, the applicant was also in breach of paragraph 16 (see paragraph 21 below), as his actions had caused significant damage to the reputation of the House and of other Members.

10. In the Memorandum the PCS addressed the various complaints made by the applicant concerning the procedure she had adopted in the course of her investigation. The PCS explained that she was not presiding over adversarial proceedings but was engaged in an internal, inquisitorial inquiry conducted under Standing Orders of the House of Commons (see paragraph 23 below). She expressed the view that the principles of natural justice had been applied in the investigation as the applicant had been

informed of the case against him and had been given the opportunity to be heard.

11. The PCS sent her completed Memorandum to the House of Commons Committee on Standards ("the Committee") on 16 July 2021.

C. The Committee on Standards

12. At the relevant time the Committee was comprised of seven lay members and seven MPs (four from the Conservative Party, two from the Labour Party and one from the Scottish Nationalist Party) (see paragraph 25 below).

13. The applicant provided the Committee with a written statement and indicated that he wished to give oral evidence. The Committee agreed to the request and the applicant attended before the Committee on 21 September 2021, accompanied by his legal advisers. He was permitted to make an opening statement, following which he was asked questions by the Committee. His legal advisers were permitted to offer him confidential legal advice but did not address the Committee directly. A transcript of the applicant's evidence to the Committee was prepared and published on the Committee's website.

14. At a meeting on 19 October 2021 the Committee considered and approved its draft Report, without a vote being taken (see paragraph 27 below). It was ordered that the Chair make the Report to the House. The Report was printed, by order of the House, on 26 October 2021. It was published on the same date, with the Commissioner's report set out in full in Appendix 1.

15. In the Report, the Committee, having taken account of the written and oral evidence of the applicant, and having conducted its own analysis of that evidence, agreed with the PCS's conclusions that the applicant had acted in breach of paragraphs 11, 13, 15 and 16 of the 2015 Code of Conduct (see paragraphs 9 above and 21 below). For the Committee, the most serious aspect of the case was the multiple breaches of the rules relating to paid advocacy.

16. The Committee addressed the complaints advanced by the applicant as to the procedure followed by the PCS in the conduct of her investigation (see paragraph 10 above). It noted that the PCS was an independent and impartial office holder appointed by the House under Standing Order No. 150 (see paragraph 23 below), whose task was to conduct an inquisitorial process. The Committee confirmed that it was not bound by the PCS's findings and had reached its own conclusions in light of the totality of the evidence, including the further evidence presented by the applicant.

17. The Committee concluded that:

> "[Owen Paterson] failed to establish the proper boundaries between his private commercial work and his parliamentary activities, as set out in the Guide to the Rules.

> [Owen Paterson] told us multiple times in oral evidence before us that he was elected for his judgment, and that he judged that he was right to make the approaches he did. But no matter how far a Member considers that the private interest of a paying client coincides with the public interest, the lobbying rules rightly prohibit members from initiating approaches or proceedings which could benefit that client. If such approaches were routinely permitted, the lobbying rules would be of little value."

18. As it considered this to be an egregious case of paid advocacy, the Committee recommended a sanction of suspension from the service of the House for thirty sitting days.

19. A motion to approve the Committee's report was duly tabled, and passed by the House on 16 November 2021. However, the motion did not include provision for the recommended sanction to be applied as the applicant had resigned from the House on 5 November 2021.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Code of Conduct

20. Members of the House of Commons are subject to a Code of Conduct. The version of the Code of Conduct applicable to the actions of the applicant was the version approved by the House of Commons on 17 March 2015.

21. The Code of Conduct sets out the general principles of conduct to which Members are expected to adhere, together with a series of specific rules of conduct of which the following are relevant to the applicant's case:

> "11. No Member shall act as a paid advocate in any proceeding of the House.
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> ...
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> 13. Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Financial Interests. They shall always be open and frank in drawing attention to any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.
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> ...
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> 15. Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters. Members shall ensure that their use of public resources is always in support of their parliamentary duties. It should not confer any undue personal or financial benefit on themselves or anyone else, or confer undue advantage on a political organisation.
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> 16. Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally."

22. The Code of Conduct is supplemented by The Guide to the Rules relating to the Conduct of Members ("the Guide"), which is published alongside the Code. The purpose of the Guide is to provide Members with

detailed guidance as to the meaning and application of certain provisions of the Code, including the provisions relating to the registration of interests and paid lobbying. The Guide and amendments to it are approved by means of Resolutions of the House of Commons and the Guide therefore carries the authority of the House.

B. The Parliamentary Commissioner for Standards ("the PCS")

23. The PCS is an independent Officer of the House of Commons appointed under Standing Order No. 150 which provides, in material part, as follows:

> "(1) There shall be an Officer of this House called the Parliamentary Commissioner for Standards who shall be appointed by the House.
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> (2) The principal duties of the Commissioner shall be –
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> ...
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> (c) to advise the Committee on Standards, its sub-committees and individual Members on the interpretation of any code of conduct to which the House has agreed and on questions of propriety;
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> (d) to monitor the operation of such code and registers, and to make recommendations thereon to the Committee on Standards or an appropriate sub-committee thereof;
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> (e) to investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members and to report to the Committee on Standards or to an appropriate sub-committee thereof, unless the provisions of paragraph (4) apply;
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> ...
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> (3) In determining whether to investigate a specific matter relating to the conduct of a Member the Commissioner shall have regard to whether in his view there is sufficient evidence that the Code of Conduct or the rules relating to registration or declaration of interests may have been breached to justify taking the matter further.
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> (4) No report shall be made by the Commissioner—
>
> (a) in any case where the Member concerned has agreed that he has failed to register or declare an interest, if it is the Commissioner's opinion that the interest involved is minor, or the failure was inadvertent, and the Member concerned has taken such action by way of rectification as the Commissioner may have required within any procedure approved by the Committee for this purpose; and
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> (b) in any case involving parliamentary allowances, or the use of facilities or services, if the Commissioner has with the agreement of the Member concerned referred the matter to the relevant Officer of the House for the purpose of securing appropriate financial reimbursement, and the Member has made such reimbursement within such period of time as the Commissioner considers reasonable."

24. The PCS follows an inquisitorial process in the conduct of her investigations, in which she gathers evidence, weighs that evidence in order to reach conclusions, and reports on her findings to the Committee. Members of Parliament who are subject to investigation by the PCS are informed of the

nature of the allegations under consideration and are given an opportunity to present any material they consider to be relevant to the PCS.

C. The House of Commons Committee on Standards ("the Committee")

25. The Committee is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards. The constitution and powers of the Committee are set out in Standing Order No.149. It provides that the Committee will consist of seven Members of Parliament and seven lay members (appointed in accordance with Standing Order No.149A). The powers conferred on the Committee by the Standing Order include the following, at 149(1)(b):

> "... to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed and which have been drawn to the committee's attention by the Commissioner; and to recommend any modifications to such code of conduct as may from time to time appear to be necessary."

26. As set out at paragraph 19 of the Code of Conduct (see paragraphs 20 and 21 above), the Committee will consider any report from the PCS to it, and report its recommendations to the House. The House may then impose a sanction on the Member where it considers it necessary to do so.

27. Although Committee members can vote on any areas of disagreement, in practice the Committee has a strong tradition of operating by consensus and formal votes are very rare.

D. Review by Sir Ernest Ryder

28. The procedures adopted by the House for dealing with allegations engaging the Code of Conduct were recently subject to a comprehensive review commissioned by the Committee and undertaken by Sir Ernest Ryder, former Senior President of Tribunals for the United Kingdom and Lord Justice of Appeal. The review was published as an annex to a report by the Committee on 4 March 2022 entitled "Review of fairness and natural justice in the House's standards system".

29. Sir Ernest's conclusions included the following:

> "1) Parliamentary Privilege and exclusive cognisance are the constitutional basis for the standards jurisdiction of the House of Commons. It would be unwise to disturb the constitutional balance of interests which the law of Parliament reflects.
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> ...
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> 6) The inquisitorial procedure for standards inquiries in the House is fair and compliant with Article 6 ECHR.
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> 7) The investigator should not be the first decision-maker.

> 8) Neither the Commissioner nor the Member who is the subject of an inquiry should be present during the Committee's deliberations.
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> ...
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> 11) There should be a right of appeal from the Committee where the process of investigation was materially flawed, the process of decision-making was procedurally flawed, credible fresh evidence has become available that could not reasonably have been presented and which, if accepted, has a real prospect of affecting the outcome or the sanction was unreasonable or disproportionate. That appeal should be to an independent body with judicial expertise."

30. In respect of the recommendation at point 11, Sir Ernest regarded the institution of a formal right of appeal as a matter of "good practice", but observed that under the existing procedure "[a] Member will have had at least two opportunities to challenge facts with the [PCS] and a further opportunity with the Committee".

31. The Committee accepted Sir Ernest's recommendations, including the recommendation for the establishment of a formal appeal process, and a procedural protocol was published by the Committee on 4 July 2022 incorporating the new right of appeal.

E. Parliamentary privilege

32. Article 9 of the Bill of Rights 1689 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."

33. 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."'"

34. 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.

35. 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] 1WLR 669. The claimant sought judicial review of an investigation conducted by the PCS into an allegation of misconduct. The domestic court concluded that the responsibility for supervising the PCS was conferred, by Parliament through its Standing Orders, on the Committee of Standards and Privileges of the House (the predecessor of the Committee), 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.

36. 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."

F. Recall of MPs Act 2015

37. If, following a report from the Committee, the House of Commons orders the suspension of an MP for a period of at least ten sitting days (or, if the period is not expressed as a specified number of sitting days, for a period of at least fourteen days), a recall petition will be opened in the MP's constituency. If the recall petition is signed by at least ten percent of registered parliamentary electors in that constituency, the MP's seat will become vacant and a by-election will be held.

COMPLAINT

38. Invoking Article 8 of the Convention, the applicant considered that the proceedings before the PCS and the Committee, which led to the finding that he had breached the Code of Conduct, had not been fair.

THE LAW

39. The applicant complained that the public finding that he had breached the Code of Conduct had damaged his good reputation, and that the process by which the allegations against him were investigated and considered had not been "fair" in many basic respects.

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

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

A. The parties' submissions

1. The Government

40. The Government argued that Article 8 was not applicable to the facts of the case because, applying the principles set out in *Denisov v. Ukraine* ([GC], no. 76639/11, §§ 110 and 113, 25 September 2018), the applicant had not demonstrated convincingly that the high threshold of severity had been met.

41. Should the Court decide otherwise, the Government argued that the entirety of the investigation into the applicant's conduct had constituted a proceeding in Parliament and it was for Parliament, and not the courts, to regulate the business of Parliament, including the conduct of Members of Parliament in the discharge of their Parliamentary duties. The ability of a legislative body to regulate the conduct of its members, without the interference of the Court, was a fundamental aspect of the constitutional separation of powers. The Court had consistently recognised the importance of respecting the right of State legislatures to regulate their own procedures, and held that a wide margin of appreciation should be afforded to States in the realm of parliamentary law (in this respect, the Government referred to *Kart v. Turkey* [GC], no. 8917/05, §§ 81-82, ECHR 2009 (extracts)). The proceedings in this case were in accordance with the applicable standing orders of the House of Commons and followed the established practice of the PCS and the Committee. Accordingly, a finding that the procedure adopted by the PCS and/or the Committee amounted to a violation of Article 8 would require the Court to conclude that it fell outside the wide margin of appreciation afforded to State legislatures in the regulation of their activities, and the activities of their members. Such a finding would go to the heart of parliamentary immunity.

42. In any event, the Government argued that the Article 8 procedural obligation did not extend to the imposition of specific "fair trial" requirements. Rather, it simply required that the decision-making process be a fair one in which the affected individual had been involved to an extent sufficient to provide him with the requisite protection of his interests (see *Tysiąc v. Poland*, no. 5410/03, § 113, ECHR 2007-I). The investigation of the allegations against the applicant was fair, rigorous and thorough, and there was no evidence to suggest that the outcome would have been different had the procedure been modified as the applicant has suggested Article 8 required (see the applicant's arguments summarised in paragraph 50 below). While the applicant had no recourse to the courts, the process was multi-layered with all of the fairness checks that those layers entailed. The fact that the House has since decided to establish a formal appeals process from decisions of the Committee, albeit on limited grounds, in line with the recommendations of Sir Ernest Ryder (see paragraph 31 above), did not mean that the procedure applied in the applicant's case was in breach of Article 8 of the Convention. The question was not whether the legislature's procedures were capable of improvement, but whether they met the requirements of basic fairness.

2. The applicant

43. The applicant argued that he was publicly stated to have been found by a fair process to have engaged in corrupt practices and to have breached the Code of Conduct of Members of Parliament (see paragraphs 20 and 21 above). This called into question his character and reputation, and caused him significant personal and financial loss and damage.

44. First of all, he referred to the numerous press reports that had accused him of corruption and sleaze following publication of the findings of the PCS and the Committee. He claimed that prior to publication he had been well-respected in his constituency and nationally, and he had an inner circle of friends, mainly in politics. Following publication he was no longer engaged with the local community, was not invited to events, and was shunned by many people he had considered friends. He gave examples of being shouted at in the street. As a consequence, he has found it difficult to attend events; for example, on the occasion of the Coronation of King Charles III he did not attend any events for fear of embarrassing his hosts.

45. Secondly, he claimed that his family had suffered great stress. His wife committed suicide during the investigation, and while he admitted that he did not know the reason why she took her own life, he believed the ongoing investigation to have been a contributing factor. In addition, he has been diagnosed as suffering from stress and anxiety, for which he has seen a psychiatrist and been treated with medication and counselling.

46. Thirdly, he argued that the PCS's findings blighted his reputation and made it impossible for him to obtain employment or to use his skills in

helping charities. He had sought paid and unpaid employment without success. He has been advised that no-one would employ him on account of his reputation, and charities would not engage with him. He currently chairs his family's suicide prevention charity and that is the only extent to which he is able to work. In addition, he has lost his income as an MP, and the two companies that had retained his consultancy services had cut all ties with him. He has calculated his net loss to be 120,000 British Pounds net per annum. Without this income, and without other employment opportunities, he has had to support himself using savings, pension income and income from rental property.

47. He therefore contended that there were clear factual grounds for concluding that the report and its adoption had a substantial effect on his opportunities to establish and maintain relationships, including those of a professional nature. As such, the threshold of seriousness for an issue to arise under Article 8 was crossed.

48. With regard to the merits of his complaint, the applicant argued that the margin of appreciation in cases concerning parliamentary privilege should not be so broad as to afford the respondent State such discretion over its procedures for determining alleged misconduct by parliamentarians that it might deny them procedural safeguards that the Committee's own appointed legal advisor recommended that it adopt.

49. He submitted that the actions of which he complained were at the fringes of domestic immunity and that the margin of appreciation should therefore be reduced. In the United Kingdom immunity extended only to statements made by MPs during the course of parliamentary debates on the floor of the House and did not apply outside Parliament. However, the PCS and Committee proceedings took place outside of the floor of the House. While there was a connection to parliamentary activity – namely, the regulation of a Member's conduct – neither the report nor the proceedings leading to it were parliamentary functions in their core sense of law-making or debates in the chamber. The legitimate aim of protecting Parliament from external control was not relevant and the State's margin of appreciation should accordingly be narrower.

50. Finally, the applicant argued that the process by which the allegations were investigated and considered had not been fair in the following basic respects. First of all, the PCS had been both the investigator and the first instance decision-maker, something which was generally regarded as inappropriate in the common law tradition because questions about impartiality might arise. Secondly, the PCS had been present during the Committee's decision-making deliberations, without the applicant being present or the minutes of the deliberations being disclosed. This was akin to a first instance judge sitting in on, and taking an undisclosed part in, an appellate court's consideration of an appeal from her decision. Thirdly, the lack of a right of appeal had been a procedural flaw. Fourthly, the PCS had

failed to inform the applicant that she was minded to reject his explanations before deciding that he had breached the rules. The only scope for input from the applicant had been on the question of factual accuracy. As such, he had not had the opportunity to address the case against him, put to him after all the evidence had been considered and after the PCS had reached provisional conclusions on the key issues, in a manner that was not theoretical and illusory.

B. The Court's assessment

1. General principles

(a) The applicability of Article 8 of the Convention

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

(b) The autonomy of Parliament

52. In *Karácsony and Others v. Hungary* ([GC], nos. 42461/13 and 44357/13, §§ 142-147, 17 May 2016) the Court said the following:

> "142. The Court notes that the rules concerning the internal operation of Parliament are the exemplification of the well-established constitutional principle of the autonomy of Parliament. ... In accordance with this principle, widely recognised in the member States of the Council of Europe, Parliament is entitled, to the exclusion of other powers and within the limits of the constitutional framework, to regulate its own internal affairs, such as, *inter alia*, its internal organisation, the composition of its bodies and maintaining good order during debates. The autonomy of Parliament evidently extends to Parliament's power to enforce rules aimed at ensuring the orderly conduct of parliamentary business. This is sometimes referred to as 'the jurisdictional autonomy of Parliament'. According to the Venice Commission, the majority of parliaments have internal rules of procedure providing for disciplinary sanctions against members ...
>
> 143. In principle, the rules concerning the internal functioning of national parliaments, as an aspect of parliamentary autonomy, fall within the margin of appreciation of the Contracting States. The national authorities, most notably parliaments (or comparable bodies composed of elected representatives of the people), are indeed better placed than the international judge to assess the need to restrict conduct by a member causing disruption to the orderly conduct of parliamentary debates and which may be harmful to the fundamental interest of ensuring the effective functioning of Parliament in a democracy (see *Kart*, cited above, § 99, and, *mutatis mutandis*, *Kudrevičius and Others* [*v. Lithuania* [GC], no. 37553/05], §§ 97 and 156 [, ECHR 2015], with further references).
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> 144. As to the breadth of the margin of appreciation to be afforded to the respondent State, this depends on a number of factors. It is defined by the type of the expression in issue and, in this respect, the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see, among other authorities, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV; *Stoll v. Switzerland* [GC], no. 69698/01, § 106, ECHR 2007-V; and *Perinçek v. Switzerland* [GC], no. 27510/08, § 197, ECHR 2015).
> ...

145. The Court notes in this connection the position of the great majority of the Contracting States, which sanction speech or conduct interfering with the orderly conduct of parliamentary proceedings. From the comparative law material available to the Court, it appears that most, if not all, member States have in place a system of disciplining members of parliament who breach the rules of Parliament by engaging in improper speech or conduct ... Similar rules exist in the Parliamentary Assembly of the Council of Europe and in the European Parliament ... It may be inferred from this that, despite differences related to the nature and extent of the disciplinary measures, the member States generally accept the need for regulations sanctioning abusive speech or conduct in parliaments.

146. Bearing this in mind, the Court considers that there is an overriding public interest in ensuring that Parliament, while respecting the demands of a free debate, can function effectively and pursue its mission in a democratic society. Therefore, where the underlying purpose of the relevant disciplinary rules is exclusively to ensure the effectiveness of Parliament, and hence that of the democratic process, the margin of appreciation to be afforded in this area should be a wide one. The Court observes that it has already acknowledged that member States have a wide margin of appreciation in the context of the regulation of parliamentary immunity, which belongs to the realm of parliamentary law (see *Kart*, cited above, § 82).

147. However, at this juncture the Court would like to stress that, from the standpoint of the necessity test under Article 10 § 2 of the Convention, the national discretion, which is inherent in the notion of parliamentary autonomy, in sanctioning speech or conduct in Parliament that may be deemed abusive, albeit very important, is not unfettered. The latter should be compatible with the concepts of 'effective political democracy' and 'the rule of law' to which the Preamble to the Convention refers. The Court reiterates that pluralism, tolerance and broadmindedness are hallmarks of a 'democratic society'. ... Accordingly, parliamentary autonomy should not be abused for the purpose of suppressing the freedom of expression of MPs, which lies at the heart of political debate in a democracy. It would be incompatible with the purpose and object of the Convention if the Contracting States, by adopting a particular system of parliamentary autonomy, were thereby absolved from their responsibility under the Convention in relation to the exercise of free speech in Parliament (see, *mutatis mutandis*, *Cordova (no. 1)* [*v. Italy*, no. 40877/98], § 58[, ECHR 2003-I]). Similarly, the rules concerning the internal operation of Parliament should not serve as a basis for the majority to abuse its dominant position vis-à-vis the opposition. ...."

(c) The procedural obligation under Article 8 of the Convention

53. Whilst Article 8 contains no explicit procedural requirements, the Court cannot satisfactorily assess whether the reasons adduced by national authorities to justify their decisions were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests (see, among many examples, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 147, ECHR 2014 (extracts), with further references).

54. More specifically, in respect of disciplinary sanctions against MPs, the Court, in the context of a complaint under Article 10 of the Convention, has said the following (see *Karácsony and Others*, cited above, §§ 156-57):

> "156. ...With regard to *ex post facto* disciplinary sanctions, the Court considers that the procedural safeguards available to this effect should include, as a minimum, the right for the MP concerned to be heard in a parliamentary procedure before a sanction is imposed. It notes that the right to be heard would indeed increasingly appear as a basic procedural rule in democratic States, above and beyond judicial procedures, as demonstrated, inter alia, by Article 41 § 2 (a) of the Charter of Fundamental Rights of the European Union ...
>
> 157. The manner and mode of implementation of the right to be heard should be adapted to the parliamentary context, bearing in mind that ... a balance must be achieved which ensures the fair and proper treatment of the parliamentary minority and precludes abuse of a dominant position by the majority. In the exercise of his or her functions, the Speaker ought to act in a manner that is free of personal prejudice or political bias. In addition, while, in the light of the generally recognised principles of parliamentary autonomy and the separation of powers, an MP who has been disciplinarily sanctioned cannot be considered entitled to a remedy to contest his sanction outside Parliament, the argument for procedural safeguards in this context is nonetheless particularly compelling given the lapse of time between the conduct in issue and the actual imposition of the sanction."

2. Application of those principles to the facts of the case at hand

55. In a published report the Committee – like the PCS before it – found that the applicant had acted in breach of the 2015 Code of Conduct by engaging in paid advocacy (contrary to paragraph 11 of the Code); using resources provided by Parliament to support his work for two companies (contrary to paragraph 13 of the Code); failing properly to declare his interests (contrary to paragraph 15 of the Code); and causing significant damage to the reputation of the House and of other Members (contrary to paragraph 16 of the Code – see paragraph 15 above). It concluded that this was an egregious case of paid advocacy and recommended that a sanction of suspension from the service of the House for thirty sitting days should be applied (see paragraph 18 above).

56. Relying on *Denisov* (cited above), the applicant in the present case complains about the impact of the findings of the PCS and the Committee both on his reputation and also on his personal and professional relationships (see the applicant's arguments, summarised in paragraphs 43-47 above). In *Denisov* the Court was concerned with an applicant who had been appointed president of the Kyiv Administrative Court of Appeal by the Council of Judges of Ukraine for a five-year term. He was dismissed from the position of president for failure to perform his administrative duties properly, although he remained in office as a judge of the same court (see *Denisov*, cited above, §§ 12-20). In considering whether or not a private-life issue arose under Article 8 of the Convention, the Court noted that the case concerned "an employment-related dispute" (ibid, § 92). Having regard to its previous case-law, it acknowledged that it had dealt with different types of "employment-related scenarios" involving Article 8, including discharge from military service, dismissal from judicial office, removal from

administrative functions in the judiciary, transfers between posts in the public service, restrictions on access to employment in the public service, loss of employment outside the public service, and restrictions on access to a profession in the private sector (ibid, § 101, with references therein).

57. The applicant, as a MP, was not, strictly speaking, an employee. However, 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 the consequence-based approach identified by the Court in *Denisov*, meaning that an issue could arise under Article 8 of the Convention if the findings of the PCS and the Committee 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, § 107).

58. With regard to the applicant's inner circle, the Court notes his claim (see paragraph 44 above) that as a long-standing MP his inner circle of friends were mainly in politics, and many of those relationships were damaged irreparably by the political scandal that culminated in the investigation by the PCS and the Committee. Moreover, the Court notes that the investigation may have been a source of stress and anxiety for the applicant and his family. While the applicant does not appear to suggest that a direct causal link can be made between the investigation and his wife's suicide (see paragraph 46 above), the stress and anxiety occasioned by the investigation and accompanying media scrutiny came at an already very difficult time for him and his family. Furthermore, the findings of the PCS and the Committee touched on a wider ethical aspect of his personality and character, and cast aspersions on his moral values (compare *Denisov*, cited above, § 129). Those findings were widely reported on by the media, with the applicant being accused repeatedly of corruption and sleaze (see paragraph 44 above).

59. However, the applicant has not substantiated his more specific claims of damage to his professional relationships and his consequent financial loss. As he himself resigned from the House of Commons before the House could consider whether or not to apply the recommended sanction, neither the loss of his seat nor the loss of income from his position as an MP were a necessary consequence of the investigation. Moreover, he has provided no documentary evidence to substantiate his claims that he lost his consultancy work, and has since been unable to find either paid employment or charitable work, as a direct consequence of the Committee's findings. Similarly, although he claims that he has had to support himself using savings, pension income and income from rental property, he has not suggested that this fact alone has caused him any hardship or affected the "inner circle" of his private life.

60. Furthermore, the Court must take note of the fact that the allegations against the applicant were already in the public domain before the

investigation by the PCS began; in fact, that investigation was preceded – and prompted – by media reports about the applicant's conduct (see paragraph 6 above).

61. It is therefore doubtful that the negative impact on the applicant's private life caused by the investigation and its published findings alone reached the minimum level of severity required for Article 8 to be applicable.

62. In any event, even if that minimum level of severity were reached, and if the Court were to accept that there had been an interference with the applicant's Article 8 rights, for the reasons set out below the Court considers the applicant's complaint under Article 8 of the Convention to be manifestly ill-founded.

63. The applicant does not suggest that the alleged interference with his private life was not prescribed by law, and it undoubtedly had a legal basis in Standing Orders Nos. 149 and 150 (see paragraphs 23 and 25 above). As for whether it pursued a legitimate aim, in *Karácsony and Others* (cited above, § 129) the Court has held that the fining of MPs for showing billboards and using a megaphone during parliamentary votes pursued the legitimate aims of "prevention of disorder" and protecting the rights of others. Unlike the applicants in *Karácsony and Others*, the applicant in the present case did not face sanction for interfering directly with the orderly conduct of parliamentary business through his behaviour in Parliament. However, this distinction is not material. The integrity demonstrated by MPs in their public life is essential to maintaining both public trust in democratic systems and the political credibility of parliaments. Consequently, the regulation of standards in public life is intimately connected to maintaining the proper functioning of Parliament in a democracy, and the Court therefore has no doubt that the investigation into the applicant's conduct corresponded to the aim of protecting the rights of others. Furthermore, there was a legitimate public interest for the public to know the outcome of the parliamentary investigation into a complaint about the applicant's conduct as an MP (see, for example, *Hoon v. the United Kingdom* (dec.), no. 14832/11 § 36, 13 November 2014, with cases cited therein). Indeed, the legitimate interest of the public in being informed of parliamentary proceedings and their outcome would have been undermined if those proceedings had not been public in nature and the reports in question had not been disseminated (ibid., § 37).

64. With regard to the question of necessity, it is clear that in principle the rules concerning the internal functioning of national parliaments, as an aspect of parliamentary autonomy, fall within the margin of appreciation of the Contracting States, since parliaments are better placed than the international judge to assess the need to restrict conduct by a member which might be harmful to the fundamental interest of ensuring their effective functioning (see *Karácsony and Others*, cited above, §§ 142-143). Having accepted that the regulation of standards in public life is intimately connected to maintaining the proper functioning of Parliament in a democracy (see

paragraph 63 above), the Court cannot accept the applicant's contention that the proceedings before the PCS and the Committee took place at the fringes of parliamentary immunity and that the margin of appreciation should be reduced accordingly (see paragraph 49 above).

65. Moreover, in the present case the relevant provisions of the Code of Conduct did not restrict political speech or debate on matters of public interest (see *Karácsony and Others*, cited above, § 144); rather, they prevented MPs from acting as paid advocates in proceedings of the House, governed the registration of financial interests and the use of expenses, and served to protect the reputation and integrity of the House (see paragraph 21 above). The underlying purpose of the rules (being, in this case, the Code of Conduct and Standing Orders Nos. 149 and 150 – see paragraphs 20-21, 23 and 25 above) was exclusively to ensure the effectiveness of Parliament and the democratic process through the maintenance of public trust, and the respondent State's margin of appreciation was therefore wide (see, *mutatis mutandis*, *Karácsony and Others*, cited above, § 146).

66. On the facts of the case, it could not be said that the respondent State exceeded the wide margin of appreciation afforded to it. First of all, there is no suggestion that either the PCS or the Committee acted clearly in excess of their powers, arbitrarily, or indeed *mala fide* (see *Karácsony and Others*, cited above, § 153). The investigation into the conduct of the applicant – who was at the relevant time a member of the governing party – was initiated following reports in the media to the effect that he had engaged in lobbying for two companies for which he was a paid consultant (see paragraph 6 above). Those reports threatened not just the applicant's reputation but also that of Parliament (see paragraphs 9 and 15 above), and the Court would readily accept that it had been necessary for the PCS to initiate the investigation, which was carried out in accordance with the relevant Standing Orders and fell firmly within the exercise of parliamentary autonomy (see paragraphs 23 and 25 above).

67. Secondly, insofar as the findings of the PCS and the Committee could be said to have interfered with the applicant's Article 8 rights, from the standpoint of the procedural limb of that Article the proceedings before both were accompanied by adequate safeguards against abuse (see, concerning the procedural requirements of Article 10, *Karácsony and Others*, cited above, § 154). In the context of Article 10 of the Convention, the Court has held that an MP sanctioned under a disciplinary procedure cannot be considered to be entitled to a remedy to contest the sanction outside Parliament, although the available procedural safeguards should include, as a minimum, the right for the MP concerned to be heard in a parliamentary procedure before the sanction is imposed (see *Karácsony and Others*, cited above, §§ 156-157, set out at paragraph 54 above). The present case does not concern the applicant's rights under Article 10 of the Convention. However, the freedom of expression of MPs lies at the heart of political debate in a democracy (see

Karácsony and Others, cited above, § 147), and there can therefore be no need for more robust minimum procedural safeguards in the Article 8 context.

68. In the present case the applicant was involved in the proceedings throughout. The PCS informed him of the allegations against him and invited him to respond to questions (see paragraph 7 above); the PCS met with him twice and afforded him the opportunity to comment on her draft Memorandum before it was submitted to the Committee (see paragraphs 7 and 8 above); the PCS considered the applicant's submissions and made clear findings as to how his conduct had breached the relevant provisions of the Code of Conduct (see paragraphs 8 and 9 above); the PCS also addressed the various complaints made by the applicant concerning the procedure she had adopted in the course of her investigation (see paragraph 10 above); the applicant was allowed to adduce evidence before the Committee, both orally and in writing, and was accompanied by his legal representative at the oral hearing (see paragraphs 12 above); the Committee provided reasons for finding that the applicant had breached the Code (see paragraph 15 above); and, like the PCS, also addressed the complaints advanced by the applicant as to the procedure that had been followed (see paragraph 16 above).

69. Finally, the applicant chose to forgo the opportunity to be heard by the ultimate decision-maker, being the House of Commons itself, as he resigned from the House before it could vote on the Committee's report (see paragraph 19 above). In doing so he also pre-empted the House's vote on whether or not he should be suspended for thirty days.

70. Consequently, even assuming Article 8 to be applicable to the facts of the case, and assuming there to have been an interference with the applicant's right to respect for private life, the Court considers that any such interference with the applicant's right to respect for his private life was accompanied by adequate procedural safeguards and was therefore proportionate to the legitimate aims pursued (see, *mutatis mutandis*, *Hoon*, cited above, §§ 38-40).

71. That being the case, the application is inadmissible and should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

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