

LORDS SPIRITUAL (WOMEN) BILL

ECHR MEMORANDUM

1. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Lord President of the Council has made the following statement:

"In my view the provisions of the Lords Spiritual (Women) Bill are compatible with the Convention rights."

2. The principal human rights issue raised by the Bill is whether a male bishop who would otherwise have become a member of the House of Lords has any Convention rights relating to the loss of that entitlement to a female bishop. Possibly relevant rights are those in Articles 6, 8 and 14 and Article 1 of Protocol 1. However, both Strasbourg and domestic case-law establish that none of the rights in Articles 6, 8 and A1/P1 is engaged, and it therefore also follows that there can be no breach of Article 14 on discrimination either.

3. Whether Article 6 applies depends on whether there is a civil right or obligation. In *X v United Kingdom* (App. No. 8208/78) the Commission considered "that the right to participate in the work of the House of Lords cannot be regarded as a 'civil right' within the meaning of Article 6. It is of the opinion that such a right, connected as it is to the composition of part of the legislature, falls into the sphere of public law rights outside the scope of Article 6". This reasoning also applied to the question whether membership of the House of Lords was an obligation within the article. The same conclusion has been reached by the Strasbourg authorities in more recent cases in relation to other matters concerning elections and legislatures (see for example *Estrosi v France* (App. No. 24359/94), *Tapie v France* (App. No. 32258/96), *Gorizdra v Moldova* (App. No. 53180/99) and *Boskoski v FYROM* (App. No. 11676/04)).

4. The clear implication of these decisions is that future parliamentary allowances, or membership itself, would not be held to be a possession if there were a claim under Article 1 of Protocol 1.

5. The decisions have also been followed by the High Court in England and Wales. In *Baron Mereworth v Ministry of Justice* [2011] EWHC 1589 (Ch) Lewison J held that the right to receive a writ of summons and to sit and vote in the House of Lords was a public right and that Article 6 was therefore not engaged. Nor was the right to receive a writ a part of private life for the purposes of Article 8, or a possession for the purposes of Article 1 of Protocol 1.

6. As to whether the presence of Church of England bishops in the House of Lords generally is discriminatory, the government is not aware of any Strasbourg case-law as to requirements for the composition of the second chamber of a member state of the Council of Europe.

7. In *Sejdic and Finci* App. Nos. 27996/06 and 34836/06, 22 December 2009, the court said at paragraph 40 -

“...the *travaux préparatoires* demonstrate (vol. VIII, pp. 46, 50 and 52) that the Contracting Parties took into account the particular position of certain parliaments which included non-elective chambers. Thus, Article 3 of Protocol No. 1 was carefully drafted so as to avoid terms which could be interpreted as an absolute obligation to hold elections for both chambers in each and every bicameral system (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 53, Series A no. 113).”

8. There is a variety of types of membership: in the Czech Republic all members of the Senate are directly elected; in Austria all members of the Bundesrat are indirectly elected; the Seanad in Ireland includes appointed members; the Senate in Italy includes a few appointed members and a few *ex officio* members; the Belgian Senate contains directly elected members, indirectly elected members, co-opted members and hereditary/*ex officio* members. In other words, while first chambers must be elected by the people in order to comply with the Convention, second chambers will frequently have a different form of composition, which may or may not involve direct election.

9. Although the government understands that the United Kingdom is unique among member states in having religious representatives in its second chamber it believes that the European Court of Human Rights would regard the composition of the House of Lords as a matter for the United Kingdom and one which does not involve any Convention rights, and that it would not entertain any challenge in relation to the composition of the House of Lords. Consequently the government does not believe that there is any Convention right in relation to which an argument under Article 14 might arise, for example that it was discriminatory to have religious representatives in the House of Lords or to confine them to people of one faith or from one part of the United Kingdom. Even if Article 14 was relevant, the special position of Church of England bishops could be justified by reference to the constitutional traditions of the UK. Cases on disqualification from elected office make clear that historical and political factors specific to each state are relevant considerations when assessing the compatibility of constitutional rules (see *Podkolzina v Latvia* (App. No. 46726/99) and *Gitonas and others v Greece* [1997] ECHR 35).

10. Finally it should be noted that the non-discrimination provisions of the Equality Act 2010 do not apply to the Bill (although of course the Bill is part of a process which seeks to remove discrimination). This had been the generally accepted opinion, given that a Lord Spiritual's membership of the House of Lords arises as a matter of common law and the Bishops Act 1878 and is not an appointment by or on the recommendation, or subject to the approval, of a member of the executive, within the 2010 Act. This is also consistent with paragraph 3 of Schedule 6 to the 2010 Act, which provides that neither a life peerage nor a hereditary peerage is a public office for the purposes of the Act. The matter has now been put beyond doubt by the Bishops and Priests (Consecration and Ordination of Women) Measure 2014, which provides that the office of a diocesan or suffragan bishop is not a public office under the Equality Act. (This was included for reasons unconnected with the Bill.)