

PE1491/A

Anne Peat
Clerk to the Public Petitions Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

6 November 2013

Dear Ms Peat,

Petition Number PE 01491

It has recently been brought to my attention that a petition has been submitted to the committee by Tom Minogue. The proposal contained within that petition would, if implemented, have a direct impact on the lives of Scottish Freemasons who reside in Scotland. In my capacity of Grand Secretary of the Grand Lodge of Antient Free and Accepted Masons of Scotland (founded in 1736) part of my duties is to represent the Freemasons of Scotland.

There have been at least 12 petitions similar to that of Mr Minogue which have been submitted to the Public Petitions Committee. These petitions have all sought to cause the Scottish Parliament to enact a legal requirement that the personal details (typically, names, address, occupation and additional information) of everyone engaged in public service, or the judiciary or the judicial system (or variants thereof) be made available in a register which would be accessible to members of the public. Two representative examples of such petitions (items [A](#) and [B](#)) are attached for ease of reference. All of these petitions calling on the Scottish Parliament to create such a public register of Freemasons have been discussed and dismissed.

In the 13 years which have elapsed since Mr Minogue submitted his first petition (number PE 306) there have been a considerable number of developments. For ease of reference I tabulate these below with the supporting documentation enclosed for your information.

1) Following the General Election in May 1997 the Select Committee on Home Affairs under the Chairmanship of Chris Mullin MP (1947 –) considered the role of Freemasonry and Public Life (including the judiciary) and issued the following conclusion:

'All new appointments to the judiciary (including part-time offices such as Recorders, Deputy High Court Judges etc.), to the magistracy, to the police, to the legally qualified staff of the CPS, to the Probation Service and Prison Service shall have as a condition of appointment a requirement to declare

membership of the freemasons (and any later admission to them). We will consult the relevant bodies on the extent to which new appointments may include those currently in service but who are appointed to a wholly new position or transfer in service or who are promoted.'

The full text of the committee's deliberations is available online at:

<http://www.publications.parliament.uk/pa/cm199899/cmselect/cmhaff/467/46701.htm>

As a consequence the then Home Secretary, John Whitaker "Jack" Straw (1946 -) subsequently issued, in 1998, a 'Ministerial Instruction' covering England and Wales to the effect that all applicants for positions as judges, magistrates, police and prison officers had to disclose whether or not they were Freemasons.

The inclusion, here, of the matters described in 1) above will become apparent in item 4) below.

2) The European Court of Human Rights (ECHR) pronounced judgements in two cases: N.F. v. Italy, (Application No. 37119/97) and Maestri v. Italy, Application (No. 39748/98) in 2001 and 2004 respectively. The former related to a Freemason who applied for a position in local government and the latter to a member of the Italian judiciary. For full details see documents [C](#) and [D](#) attached.

3) The ECHR delivered two further judgements in cases relating to Freemasonry in 2001 and in 2007. These were: the Grande Oriente D'Italia Di Palazzo Giustiniani v. Italy (Application No.35972/97) and Grande Oriente D'Italia di Palazzo Giustiniani v. Italy (No.2) (application No.26740/02). The significance of these judgements lies in the fact that, exceptionally, the court permitted an organisation (rather than an individual) to present a case. For copies of these judgements please see documents [E](#) and [F](#) attached. [Document F](#) is in the form of a Press Release issued by the ECHR and is an indication of the importance attributed to the judgement by the court.

In addition please see the attached document [G](#) which was a report prepared by the Grand Lodge of Scotland following the four above mentioned judgements by the ECHR and which was widely circulated but was largely ignored by politicians and the media.

4) In May 2009 the United Grand Lodge of England, wrote to John W. Straw MP (who was by then Justice Minister) pointing out the ramifications of the four judgements issued by the ECHR regarding Freemasonry and indicated that a Judicial Review of the 1998 Ministerial Instruction would be sought. The Ministerial Instruction was then withdrawn. The Justice Minister's reasons were reported in press at the time. See document [H](#) attached.

5) Freemasonry is entirely compatible with a democratic society. See document [I](#) attached.

6) Despite all of the above Freemasons in Scotland, particularly in relation to public service, continue to be subjected institutionalised discrimination. One example of this

will suffice to highlight this fact. Some local authorities have included in their 'Code of Conduct' the necessity for employees to declare if they are a Freemason. See document [J](#) attached.

The petitioner has presented no evidence of any wrong doing by any Freemason and yet seeks to have the Scottish Parliament enshrine in law the requirement of Freemasons to declare their membership if they happen to hold a position within the judicial system (in its' widest sense). This is contrary to the judgements of the ECHR and the more recent action of the Justice Minister for England and Wales.

It is my view that should the committee decide to progress this petition it would indicate that a large number of innocent Scottish citizens could be the subject of 'authorised' discrimination. As far as I am aware no other legal and legitimate group in Scottish society is dealt with in this manner.

On behalf of all Freemasons resident in Scotland I request that the committee consider petition number PE01491 to be without merit.

Further I would suggest that the members of the committee might wish to consider using their good offices to inform all parts of the public sector that the existing institutionalised discrimination is contrary to the cases cited above and Codes of Conduct etc. should therefore be reconsidered. An example of institutionalised discrimination against Freemasons is revealed in the Code of Conduct for Council Employees – Conflict of Interest Declaration issued by Fife Council. See document [J](#) attached.

I would take the opportunity to clarify a common misconception. The Grand Lodge of Antient Free and Accepted Masons of Scotland is the governing body of Scottish Freemasonry both in this country and overseas. It is an independent body founded in 1736 and is a recognised part of Scottish Civic Society. It admits individuals of all political and religious persuasions and takes no account of social status. It is therefore not in any way sectarian and has no association whatsoever with any sectarian organisation.

Finally, the above and the enclosed documents contain a considerable amount of material to read and understand in the context of the petition under consideration. I am more than willing to clarify any point as requested either in writing or in the presence of the committee.

It would be greatly appreciated if you would be so kind as to acknowledge safe receipt of this letter and enclosed documents.

Yours sincerely

David M. Begg, C.A.,
Grand Secretary

European Court of Human Rights

A landmark decision in favour of Freemasonry

A preliminary report

Ten years ago a regional government in Italy introduced rules which required that applicants for public posts declare that they were not Freemasons. A Freemason applied for a post on a public body which was overseen by a local authority and which was also responsible for staff recruitment. The Freemason concerned was successful but objected to the fact that during the application process he was required to declare his membership of a Masonic Lodge. At approximately the same time in another part of Italy disciplinary proceedings were instituted against a judge who was a Freemason although he was not active. Both these cases were eventually heard before the European Court of Human Rights (ECHR), which sits at Strasbourg, and the judgments (*N.F. v. Italy* (Application No. 37119/97) and *Maestri v. Italy* Application (No. 39748/98)) were delivered in 2001 and 2004 respectively. The full text of both judgments can be found in the Member Services area of the Grand Lodge of Scotland web site (registration required).

The two individuals were members of Lodges under The Grand Oriente of Italy and that body objected to the fact that because their members were being discriminated against so too as a consequence was The Grand Oriente as a body. It was granted permission to bring cases before the ECHR against the Italian government on the grounds that it was a victim of discrimination in light of the two aforementioned mentioned cases. This was an extremely important decision by the court because the Grand Oriente of Italy, like the Grand Lodge of Scotland, is an unincorporated body and therefore it is not a legal entity. The reason why the court decided to hear the representations of the Grand Orient of Italy are complex but essentially revolve around fundamental tenets of the 'Convention for the Protection of Human Rights and Fundamental Freedoms' - that everyone is entitled to freedom of association and the right to a private life. The court recognised that in this case discriminating against a group (The Grand Oriente of Italy) would affect these fundamental rights of the individual.

Judgements in these two cases were delivered in 2001 and in 2007. (*Grande Oriente D'Italia Di Palazzo Giustiniani v. Italy* (Application No.35972/97) and *Grande Oriente D'Italia di Palazzo Giustiniani v. Italy* (No.2) (application No.26740/02)). The text of both can be downloaded from the Member Services area of the Grand Lodge web site. It is the latter judgement which brings to a conclusion the issue of discrimination against Freemasons (as individuals) and Freemasonry (as an institution).

A full analysis of these cases and their possible impact will be provided in due course but for the moment a brief overview might be helpful.

In essence the court has ruled that Freemasons cannot be discriminated against, and specifically cannot be discriminated against when seeking public office - whether appointed or elected. By implication therefore Freemasons cannot be discriminated against in any walk of life for that would strike a mortal blow to the fundamental human rights of the individual.

However, the significance of the fact that The Grand Oriente of Italy was permitted to bring two cases against the Italian government is enormous. From the court's deliberations and final judgements the following points can be made:

- Freemasonry is a legal, legitimate institution.
- Freemasonry is not a criminal organisation.
- Freemasonry is not a secret society.
- Freemasons have a right to freedom of association.
- Freemasons have a right to a private life.
- Freemasons cannot be discriminated on the grounds they are Freemasons.
- Government cannot victimise the institution of Freemasonry (or its members) because it believes there is an adverse public perception of Freemasonry.
- Restrictions on Freemasons are not necessary in a democratic society.
- Section 11 of the Human Rights Convention (freedom of association) applies to Freemasonry as an organisation in the same way as to a trade union or a political party (specifically cited by the court).

The court held that there had been a violation of Article 11 of the Convention in respect of the reputation and image of The Grand Oriente of Italy [thereby highlighting the perception it stated to be the reason for discrimination against Freemasons] and that in finding that such a violation had taken place constituted in itself 'just satisfaction' for the damage sustained by the applicant association and were awarded damages against the Italian government accordingly.

It is to be hoped the Scottish Government will take steps to revoke the discriminatory rules introduced (by the previous Scottish Executive) regarding Freemasonry and MSPs. The above cases and subsequent judgements would seem to provide more than sufficient grounds to submit to the ECHR that Freemasons in Scotland are the subject of institutionalised discrimination orchestrated at the highest levels of government. Some might consider it an embarrassment for the Scottish Parliament and Government be shown to have ignored the rulings of the ECHR and continued to discriminate against thousands of its' own citizens.

Freemasons in Scotland have an advantage in that the deliberations of the Standards Committee (which laid down the rules governing the conduct of MSPs) and those of the Public Petitions Committee are a matter of public record and so the actual *process* of discrimination can be clearly demonstrated.

However, the judgements will take some time to be digested by all concerned and it will no doubt take some time for these rules which are 'not necessary in a democratic society' to be rescinded.

The Court considers, however, that freedom of association is of such importance that it cannot be restricted in any way, even in respect of a candidate for public office, so long as the person concerned does not himself commit any reprehensible act by reason of his membership of the association.

“Freemasonry and Democracy”

by C. Martin McGibbon,

Grand Secretary of

the Grand Lodge of Antient Free and Accepted Masons of Scotland.

Whilst Freemasonry as an institution is, and always has been, strictly non-political and non-religious, we always have had amongst our membership individuals who were active in political life and in the various religions of the world.

I would emphasise that our membership includes individuals from all the World's faiths, including Christians of all denominations and we always have had, over the years, members of the various political parties active at the time.

I am delighted when members of our Order, including those in prominent public positions, such as MSP's, voluntarily choose to acknowledge their membership of our Order. Freemasons are encouraged in terms of our own 'Rules and Regulations' to acknowledge their membership on all proper occasions but I do have difficulty with any form of compulsion being placed upon individuals to 'force' them to register or declare their Masonic Membership.

Democracy and Freemasonry are found together wherever governments believe in tolerance and the right of citizens to a private life, including Freedom of Association.

The first President of the United States, George Washington, was a Freemason. Indeed, it was Freemasons from Edinburgh, who were also stonemasons, who built The White House; a Scotsman, who was Grand Master of the Freemasons of New York, laid the foundation stone of the Statue of Liberty and many Scottish Freemasons have made a lasting contribution in other democracies, for example in Canada, New Zealand and India.

Many famous Scots were proud to have been Freemasons, for example, Robert Burns, Sir Walter Scott, Adam Smith and very many more.

However, it should be borne in mind that for every famous individual who was, or is, a Freemason there were, and are, many, many more 'ordinary' members drawn from all walks of life.

Many old Scottish Lodges, such as George Washington's, are still in existence and are cherished by the Freemasons in those countries.

Scottish Lodges exist in countries as diverse as; Malaysia, New Zealand, Australia, South Africa, Botswana, Jamaica, Chile and India - to name but a few. Indeed there is

not a single continent where Scottish Freemasonry does not exist. Scottish attitudes and culture are therefore disseminated across the democratic world and Freemasons in these countries are proud to be SCOTTISH Freemasons.

Freemasons (whether Scottish or otherwise) throughout the world look to Scotland as being the home of Freemasonry. Each year many thousands visit this country to attend meetings of the Grand Lodge of Scotland and the Masonic Lodges here 'at home', making a useful contribution to our national tourist industry.

However, in living memory, regimes which have suppressed Freemasonry have included, Hitler's Germany, Franco's Spain, Mussolini's Italy and Stalin's Soviet Union.

The suppression of Freemasonry in those countries began with a seemingly innocuous request from the 'authorities' for a list of Freemasons in public service – the police, judiciary, civil service, etc. and I hope your that your readers, therefore, can understand why Freemasons are gravely concerned that they may be, in this liberal democracy of ours, compelled to disclose their membership.

The German Gestapo had a special section to 'deal' with Freemasons just as it had sections to 'deal' with other groups and whilst, in comparison to some of those other groups, Freemasonry was numerically small, very many Freemasons were tortured

and executed but, unlike other persecuted groups, the Freemasons are seldom mentioned.

All Freemasons are taught that their responsibilities to the organisation come a long way behind their duties to their family, their civic responsibilities, their faith, and their occupation. Thus a question posed to a Judge as to his impartiality because he is a Freemason is spurious, for it is clear that the duties and responsibilities of a Judge would, at all times, take precedence.

Freemasons' Hall (including our Museum and Library) at 96 George Street, Edinburgh, EH2 3DH (telephone 0131 225 5304) is very much open to the public.

The Grand Lodge of Scotland website is: www.grandlodgescotland.com

These are hardly the trappings of a "secret" society.

The existence of Freemasonry is sometimes likened to a 'litmus test' of democracy, a test of 'democratic health' if you like, and I am sure that for Scotland to be placed in a position where it could be compared with countries with intolerant regimes, countries that have a poor human rights record and have persecuted or have suppressed Freemasonry, would be distasteful to the large majority of Scots. Across the world, Scottish Freemasons would be appalled and people throughout world

would, in my view, consider Scotland to have failed, abysmally, this ‘test’ of democracy.

Freemasonry has been part of Scottish society and culture for well over 400 years. Indeed, the oldest Masonic record in existence is held within our building here in Edinburgh, and is dated 1598. It is an on going record, so to speak, and proves the existence of Freemasonry here, in Scotland, well before that date.

During all this time Freemasons have attended Masonic meetings, raised money for charity and encouraged one another to be better citizens.

All this has been done quietly and without fuss.

It is surely ironic that the tradition of quiet good works, liberty and Freedom of Association so valued by Scottish Freemasons is now being used to argue for the removal of that Freedom by some of those who ultimately are charged with protecting the rights of all citizens.

Voluntary acknowledgement of membership – No problem!

Compulsory lists – No thank you!

(12th February 2002)