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Freemasonry. Is Freemasonry Lawful in England? Can the Government or Other Public Body or Employer Prevent or Penalise Membership of Freemasonry?

Alec Samuels

Freemasonry is a somewhat controversial institution. It has been in existence for three hundred years. Some people support it, belong to it and participate in it, claiming that it is a discreet Christian benevolent association. Some people oppose it, condemn it and seek to prevent or penalise membership of it, claiming that it is a secret society always promoting its own members at the expense of others.¹

The issue has come before the European Court of Human Rights (“ECHR”) in *Maestri v Italy*² and *NF v Italy*³ and *Grande Oriente D’Italia Di Palazzo_Guistiniani v Italy*.⁴

The critical article of the European Convention on Human Rights is article 11:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

¹ Freemasonry does not appear to have generated much literature. The masonic legacy and early anti-masonry are traced by J.M. Roberts, *The Mythology of the Secret Societies* (Secker and Warburg, 1972), chapters 2 and 3.

² (2004) 39 EHRR 38, p 832.

³ (2002) 35 EHRR 4 p 106.

⁴ (2002) 34 EHRR 22, p 629.

The ECHR has emphasised three conditions or requirements that must be fulfilled to justify restrictions on Freemasonry, as they are clearly an “interference”:

1. the restrictions must be prescribed by law;
2. the law must have a legitimate aim and
3. the restrictions must be necessary in a democratic society.

Prescribed by Law

Many continental countries have a written constitution, which, directly or indirectly, may be interpreted to make provision for Freemasonry or have specific laws or decrees, which specifically make provision for Freemasonry.

In England there is no such constitutional or statutory law. However, the European Convention on Human Rights, including Article 11, is incorporated into English law by the Human Rights Act 1998.⁵ Treason, sedition, anti-terrorist legislation, official secrets, conspiracy and similar criminal laws, are directed to the protection and safety of the state. In England the issue normally arises in respect of public office and in respect of employment, public or private, and may arise in respect of membership of a particular group or association or club. For example, appointment to the judiciary may involve an undertaking not to belong to Freemasonry. Also, a prospective employer, public or private, may require a prospective employee not to belong to Freemasonry. The Lord Chancellor, and in due course the Judicial Appointments Commission, appoints the judges. References, good character and medical fitness are required, not unreasonably and, lawfully. The prospective employer may require any number of terms in a contract of service subject to the restrictions placed by law on sex, race and disability discrimination. Is a “no-Freemasonry” requirement prescribed by law? However, even if prescribed by law, a requirement may still infringe the Convention.

Legitimate Aim

There must be a legitimate aim. By reason of their membership of Freemasonry a Freemason may be incompetent, biased, unfair, favouring Freemasons at the expense of others, promoting conflicting loyalties and/or acting on outside instruction or influence; their membership and

⁵ s 1(3) and schedule 1.

conduct may be altogether incompatible with the appointment or work. In *Maestri* there was even a suggestion that Freemasonry in Italy was involved in the mafia, crime and improper infiltration and perversion of the public service. Apparently British Freemasonry expressed some concern about Italian Freemasonry.

Conversely, the restrictions may be imposed for non-legitimate reasons, such as dislike, hostility, spite, malice or jealousy.

Necessary in a Democratic Society

The nature of the work done by the Freemason may well be significant. The Judge must be independent, the Minister must act with integrity, the lecturer and researcher must be open-minded and the manager must be fair; but, with no disrespect to perfectly useful members of society, Freemasonry may not much affect the work of the bus driver, the road mender or the plumber.

In *Grande Oriente* an applicant for a post in the public service had to make a declaration of non-membership of Freemasonry. The Court held that membership of Freemasonry was not reprehensible, the prohibition of membership in the public service was not proportionate and the right of association could not be restricted for those in the public service.

Ultimately the issue must turn on the evidence. So far as is known, no credible evidence has ever been produced in a court of law in England to support any accusation of impropriety in their work against Freemasonry or Freemasons. People belong to all kinds of associations, religious, political, social, cultural or whatever, which do not normally interfere with the proper performance of work although sometimes a measure of restraint or discretion has to be exercised.

Clear and Precise

The restrictions or limitations must be clear and precise, not vague or ambiguous, though a degree of flexibility may be permitted as not every situation can be foreseen. They must clearly set out what can, and cannot, be done. They must be published, available, accessible and appropriately targeted, e.g., different language and different presentation may be necessary for senior professional people than for ordinary manual workers. Freemasons must be able to regulate their conduct and behaviour in any given situation. The consequences of any breach must be clear and foreseeable. Supposing “participation in Freemasonry activities” is

prohibited, can the person remain a member, a dormant member, just paying a subscription and receiving the literature? Particular care must be taken where sanctions may be involved, e.g., financial penalties, reduction in status, loss of promotion or dismissal. A proper disciplinary procedure will be required; there can be no exercise of unfettered arbitrary discretionary power. The scope and manner of exercise of any sanction must be clear.

Judge

The position of a judge is particularly sensitive. He must be, and be seen to be, independent and impartial. He takes the oath of allegiance and the judicial oath⁶: "... and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will. So help me God". The judge must be beyond criticism. In *Pinochet*⁷ it emerged after judgement that the wife of one of the judges, Lord Hoffman, was connected with Amnesty International which had intervened in the case. The judgement was set aside, reluctantly, because of the reasonable apprehension or suspicion of bias. No personal bias or impropriety was attributed to Lord Hoffman.

In the famous Seddon case the convicted murderer made a masonic sign to the judge. Mr Justice Bucknill said:

From what you have said, you and I know we both belong to one brotherhood, and it is all the more painful to me to have to say what I am saying. But our brotherhood does not encourage crime; on the contrary it condemns it. I pray you again to make your peace with the Great Architect of the Universe.⁸

He then proceeded to sentence Seddon to death in the normal way.

Subsidiarity

In accordance with the principle of subsidiarity, a considerable margin of appreciation must be given to the national law in the light of the

⁶ Promissory Oaths Act 1868.

⁷ *R v Bow Street Magistrates, ex parte Pinochet (no 2)* (2000) 1 AC 119.

⁸ *Trial of the Seddons*, edited by Filson Young, Notable British Trials, William Hodge, second edition (1952).

particular national circumstances; the situation in Italy may be very different from the situation in England.

Other articles

In addition to Article 11 (freedom of assembly and association), Article 7 (no punishment without the law), Article 8 (respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 14 (prohibition of discrimination) have been pleaded and argued, but the ECHR has determined the Freemasonry cases solely on Article 11.

Conclusion

The position in English law, subject to appeal to the ECHR, over Freemasonry remains open to doubt. The ECHR principles on article 11 seem clear, namely, that any interference with freedom of association must be prescribed by law, clear, precise, unambiguous, accessible, with foreseeable consequences, legitimate and justified. One would hope that, for such interference to be upheld, there would need to be evidence conforming to those principles.⁹

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⁹ The author is not, and never has been, a Freemason and has never had any connection with Freemasonry.