Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1342 (2003)[1]

Office of the Lord Chancellor in the constitutional system of the United Kingdom

Parliamentary Assembly

1. In the United Kingdom, the office of Lord Chancellor combines the functions of cabinet minister (with responsibilities including a central role in making judicial appointments), Speaker (presiding officer) of the House of Lords (the Upper House of the legislature), and head of the judiciary and active judge (as Chairman of both the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council).

2. The Parliamentary Assembly recalls that the separation of powers has become a part of the common basic constitutional traditions of Europe, at the very least in so far as it concerns the attribution of the judicial office to an independent state institution.

3. It further recalls that, to preserve these principles, as well as to ensure the basic right to a fair trial, Article 6 of the European Convention on Human Rights (ECHR) requires, inter alia, that signatory parties respect and protect the entitlement of everyone within their jurisdiction to an independent and impartial tribunal for the determination of civil and criminal proceedings. The ECHR, in its jurisprudence on Article 6, has made clear that independence and impartiality are essential not only in actual substance but also in appearance (see, for example, the judgment in Langborger v. Sweden of 22 June 1989, paragraph 32).

4. The Assembly recognises that the United Kingdom is one of the oldest democracies in Europe, a founder member of the Council of Europe and an originating signatory party to the ECHR. Nevertheless, it considers that the United Kingdom should not wait until the incorporation of the ECHR into domestic law, which took effect in 1999, leads to a direct challenge in the courts to the Lord Chancellor's present position and roles.

5. The Assembly considers that these matters raise the following concerns:

5.1. at present the Lord Chancellor continues actively to engage in his judicial role – albeit infrequently and apparently only in cases not involving government interests – creating a potential conflict of interest with his executive position and thus calling into question the independence and impartiality of the head of the judiciary and of the highest court;

5.2. he also continues to play an important, if limited, role in the legislative process as Speaker of the House of Lords, creating a potential conflict of interest with his judicial position (accentuated by the fact that all other "Law Lords" are also members of the House of Lords capable of intervening in legislative activity);

5.3. it is clear that these potential conflicts of interest raise serious questions of incompatibility between the office of Lord Chancellor as currently defined and the legal and constitutional principles of the Council of Europe.

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 8 September 2003 (see Doc. 9798and addendum, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens).

6. The Assembly very much welcomes the decision taken by the United Kingdom Government on 12 June 2003 – after the adoption on 28 April 2003 and subsequent publication of the report and draft resolution by the Legal Affairs Committee – to abolish, in the near future, the existing office of Lord Chancellor and to introduce legislation which will establish new institutions to discharge the functions currently discharged by the Lord Chancellor.

7. The Assembly takes note of the fact that the newly appointed Lord Chancellor has stated that he will in future not sit as a judge in the House of Lords, nor will the new Secretary of State for Constitutional Affairs, thus putting to an end the combination of judge and minister.

8. The Assembly also takes note of the fact that the new Secretary of State for Constitutional Affairs will no longer hold the presidency of the Upper House of Parliament.

9. The Assembly finally takes note of the fact that the establishment of a supreme court is envisaged, which will be completely separate from the House of Lords.

10. The Assembly recommends that the United Kingdom Government implement these constitutional reforms expeditiously.