

The ECHR, prisoners' rights and the potential for confusion all round

☒ On 12th August, the European Court of Human Rights in Strasbourg decreed that our country's refusal to allow prisoners to vote breaches their human rights. Fortunately, there was no demand for the UK to pay any compensation. Were the judges aware of the hostility felt towards them by the UK government after the long-drawn out battle it fought with them before being able finally to extradite the extremist Moslem cleric Abu Qatada? Quite possibly.

However, even without insisting on any compensation, the Court's ruling has led to renewed calls from senior Conservative ministers to include a commitment to withdraw our country from the European Convention for Human Rights, which the Strasbourg court attempts to enforce, in the party's 2015 General Election manifesto. There is much to be said for this. Firstly, for some 600 years – until the run-up to our accession to the EEC, in fact – not only did foreign courts have no jurisdiction in our land, but it was illegal to appeal to them. It is only natural for a sovereign nation to resist any impositions by a foreign power on its legal system. Secondly, when the European Convention on Human Rights was first drafted in 1950, the UK did not put it onto the statute books for a further 48 years, as it was felt that its stance on human rights was inferior to our historic legislation, such as the 1689 Bill of Rights. Pressure groups such as Charter 88 accused the Strasbourg judges of abusing their power. It was the Blair government which finally incorporated the Convention into domestic law through the Human Rights act of 1998. Sections of the Conservative Party have never been comfortable with it. In 2005, Michael Howard stated that “the time has come to liberate the nation from the avalanche of political

correctness, costly litigation, feeble justice, and culture of compensation running riot in Britain today.” He warned that “the politically correct regime ushered in by Labour’s enthusiastic adoption of human rights legislation has turned the age-old principle of fairness on its head.” He then went on to list a number of examples, including a schoolboy arsonist allowed back into the classroom because enforcing discipline apparently denied his right to education and a burglar given taxpayers’ money to sue the man whose house he broke into. David Cameron has been equally forthright. “It makes me physically ill even to contemplate having to give the vote to anyone who is in prison,” he said in 2010.

But would we be able to repeal the Human Rights Act? At this point, some clarification is needed. The Strasbourg-based European Court of Human Rights is not an EU institution. The European Charter of Human Rights was created by the Council of Europe, an organisation which dates from 1949. It shares the same flag as the EU – the so-called “ring of death” – and also exists to promote European integration. However, it is a separate organisation which cannot pass binding laws and does not require its member states to transfer any sovereignty. Although many nations who are not members of the EU are members of the Council of Europe, including Russia, Turkey, Switzerland and Greenland, it is something of a paper tiger. The aspirations of a number of its founders was for it to become what subsequently became the European Union, but one founding state – the UK – was none too keen on sharing its sovereignty, so apart from the ECHR, it never developed into anything more than a talking shop and was subsequently sidelined. It has been argued that if we withdrew from the ECHR, we would have to withdraw from the Council of Europe too. Shock, horror! If we did this, it would put us on a level with Belarus, which was suspended from the Council of Europe because of concerns about human rights abuses.

In reality, would this matter one iota to most of the

electorate? It would be interesting to know what percentage of UK voters were even aware of the existence of the Council of Europe. Probably not many. Even fewer would probably be aware that the European Convention of Human Rights was nothing to do with the EU. The moment the average British voter sees the word "European" in the title of any institution, the instinctive assumption is that it is somehow connected to the EU.

This, unfortunately, gives the Conservative Party a chance to sow more confusion. Scrapping the Human Rights Act and withdrawing from the jurisdiction of the European Court of Human Rights could be touted as a return of powers from Brussels when it is nothing of the sort. It also throws a smokescreen over the ongoing surrender of powers to the EU, including the opt-in to the European Arrest Warrant. When Theresa May, the Home Secretary, took up the cudgels earlier this week to insist that we must determine our own human rights rules, she came across as a real fighter for UK law. Can this really be the same person who began her period in office by opting in to the planned European Investigation Order – a piece of legislation which is intended to give foreign courts and prosecutors the power to order the British police to investigate, search, interrogate and gather evidence against British citizens; as well as to put us under surveillance, tap communications, monitor bank accounts and take DNA samples and other biometric data? Regrettably it is.

However, even more confusion surrounds the Conservatives' talk of scrapping the Human Rights Act. The EU, which was given a legal personality by the Lisbon Treaty, is considering signing up to the European Convention on Human Rights in its own name. Legally, this creates a minefield, but the logical and most probable consequence is that all member states would *de facto* be signed up by such an action. Of course, only the UK is uncomfortable with this, although quite how uncomfortable our government feels is debatable, as accession of the EU required

a unanimous decision of the European Council (Heads of Government), so David Cameron could have exercised his veto, but presumably did not. Was he asleep at the time, perhaps?

So it appears that for anyone really irritated by the political correctness of the European Charter of Human Rights, it is essential to support not just withdrawal from the Council of Europe but from the EU as well.

Photo by Mathieu Nivelles 