

Is Praemunire returning through the back door?

For centuries, it was illegal to appeal to any foreign court. The three acts of Praemunire, passed in the 14th Century, made it a criminal offence. These acts remained on the statute books until the 1960s, rarely (if ever) used in the last few hundred years, but still symbolising the concept that a self-governing nation should have its own legal system. The Praemunire acts were repealed with little fanfare in the run-up to the UK's accession to the EEC. Our courts ceased to be the final authority in 1973.

It must be pointed out from the start that the European Convention of Human Rights, which the Conservative Justice Minister Chris Grayling has talked recently of giving our judges and the power to overrule or ignore, was not created by the EU but by the Strasbourg-based Council of Europe. This organisation, founded in 1950 by a number of European countries including the UK, 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, unlike the EU, cannot pass binding laws and does not require its member states to transfer any sovereignty. The European Convention on Human Rights was drafted as far back as 1960, although it was not incorporated into UK law until 1998, through the Human Rights Act, even though the UK was one of its founding members. One reason for the long delay was the reservations felt particularly by some Conservative MPs that it would result in a replacement of the older common-sense UK concept of human rights with a more politically correct variant. Their reservations have proved well-founded. It has been the ECHR appeals system which delayed the deportation of the extremist Moslem cleric Abu Qatada by 10 years and the ECHR which is insisting that the UK ends its blanket ban on

prisoners being allowed to vote.

So talk of pulling out of the ECHR appears at first glance to be a good move towards reasserting the sovereignty of our courts and indeed, of our Parliament. Perhaps *Praemunire* is sneaking in by the back door. Well, possibly, but there are some serious questions which need to be answered.

Firstly, would the EU allow us to ignore the rulings of the Strasbourg judges? The Open Europe think tank thinks it is a possibility and Grayling has insisted his proposals are consistent with EU membership. However, the outgoing Justice Commissioner Vivianne Reding made it clear that while we are part of the EU, the UK must be a signatory of the ECHR and implement its decisions. In other words, withdrawal from the ECHR would require not just withdrawal from the Council of Europe but withdrawal from the EU. If this sounds confusing, things get even more complicated. The Lisbon Treaty gives the EU the legal basis to accede to the Convention in its own right. This could see the European Court of Human Rights court ruling on EU laws which apply in Britain and greater use of the convention by the EU Court of Justice. The new European Commission President Jean-Claude Juncker has said he would like to see the EU accede to the convention under his term. Would the UK seek to veto such a proposal as part of its plans to shake off the yoke of the ECHR?

Secondly, if the desire of Chris Grayling and other senior Tories is to return power back to the UK judiciary and Parliament, they will need to tackle the European Court of Justice and repeal the EU's Charter of Fundamental Rights of the EU. This is as equally stuffed with political correctness as the ECHR. It was an ECJ ruling which, for instance, banned insurance companies from using gender as a factor when setting motor insurance premiums. It also fined the National Museum of Labour History in Manchester £7,223 for failing to display a representation of the EU flag on a billboard. If the Tories are serious about cracking down of foreign interference in our

nation's legal system, they cannot ignore the ECJ. So far, there has been no mention of standing up to this EU institution. Is it possible that the Tories are just engaging in window-dressing to attract back disillusioned voters? After all, many ordinary people are unaware that the ECHR is not an EU institution. Is this a ploy to confuse people into thinking that power is being reclaimed from the EU when it is nothing of the sort? Given the enthusiasm of Theresa May, the Home Secretary, to opt back into 35 Justice and Home Affairs measures contained in the Lisbon Treaty which were among the 135 which the UK initially opted out of, some degree of scepticism is justified.

Finally, there is a plan to replace the ECHR, which was incorporated into UK law in 1998 through the Human Rights Act, with a specifically UK Bill of Rights. This would be fine if it is based on, for example, the 1689 Bill of Rights and rooted in our historic Common Law. If so, it would give the lie to the critics who claim that withdrawing from the ECHR would put us on a par with dictatorships like Belarus, Common Law has historically given us far greater freedoms than anything available on the Continent, be it a dictatorship or even a democracy like France or Germany. However, concerns have been expressed that this new bill of rights, supposedly based on "British Values" will turn out to be a medium for enforcing political correctness. Andrea Williams of Christian Concern has pointed out that on some occasions the Strasbourg Court has overturned some pretty daft decisions by the UK courts. She therefore has reservations about Grayling's proposals. "This is a very worrying development," she wrote recently. "Our national courts have seriously let down the Christian community and do not have a track record of recognising and respecting Christian faith. The European Court of Human Rights has shown a better understanding of Christian belief and a greater commitment to protecting Christian freedoms than we have seen in the UK courts in recent years."

So while the restoration of national sovereignty is to be welcomed, if the Tories are serious, they must combine it with a root and branch clear-out of political correctness and a restoration of true "British values" that do not penalise people for holding positions which were mainstream in our country for hundreds of years.