

Human rights court

'is a threat to democracy'

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Criticism: Lord Judge

THE European Court of Human Rights is a threat to democracy, a former Lord Chief Justice said yesterday.

Lord Judge said the way the Strasbourg-based court ordered Britain to follow its instructions was 'a negation of the democratic process'.

Strasbourg demands, he said, meant that political decisions were left 'exclusively to a body of

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unelected judges'. And Lord Judge, who retired last year as the most senior judge in England and Wales, said the campaign by the human rights court to impose its will on Parliament 'represents a dramatic and unconstitutional extension of judicial authority'.

In the strongest attack on Strasbourg made by a leading British legal authority, Lord Judge's

comments came at a key moment in the political struggle over Europe between the Tories and Ukip and at a time when Strasbourg is pressing the Coalition to heed the court's requirement that Britain allows convicted prisoners to vote.

Lord Judge, 73, has previously made measured criticisms of the court. But in an article for the Bar Council's magazine, *Counsel*, he accused the court and its leaders of trespassing beyond the bounds

of Britain's constitution and the democratic practices that underpin it.

'In any country which embraces the principle of democracy, and certainly in the United Kingdom, ultimate authority over constitutional and societal questions is not vested in a body of judges, however wise and distinguished, and even if the system for their appointment is beyond criticism,' Lord Judge said.

He added that the Human Rights Act did not give Strasbourg the right to impose its rule on Britain.

'The debates in Parliament show that the suggestion that legislative authority should be given to the Strasbourg court to bind our courts here was expressly rejected,' he said. 'And if it could not bind our courts, it certainly could not bind Parliament.'

In 2004, the court backed claims made by axe killer John Hirst and ordered that Britain must overturn centuries of practice and allow at least some convicted prisoners to vote in elections.

Lord Judge noted that the president of the Strasbourg court, Dean Spielmann, has said governments must change their laws when told to

do so. 'If he is right, whether or not Parliament agrees, Parliament is bound to enact laws which will bring the decisions of the Strasbourg court into effect.'

'In my view it would be a negation of the democratic process for Members of Parliament to be obliged to vote for a measure with which they disagree.'

Lord Judge also pointed to a section of the controversial Article Eight of the code, which is supposed to guarantee the right to private and family life and says the right operates only as far as 'is necessary in a democratic society'.

Lord Judge said: 'If what the President says is correct, what constitutes a necessity in a democratic society is left, in the ultimate analysis, exclusively, to a body of unelected judges, and has been removed from the legislative body elected through ordinary democratic processes.'

'The respect owed by Parliament to the views expressed by that court is embodied in the Human Rights Act itself. But, using the President's language, the imposition of those views on Parliament represents a dramatic and unconstitutional extension of judicial authority.'