Address by Scott Crosby to the Autumn Conference of the European Criminal Bar Association on 3 October 2015 in the European Court of Justice, Luxembourg

Mr Chairman, Advocate-General

It is part of my duty as Human Rights Officer of the European Criminal Bar Association to address you on the official policy of the current government of the United Kingdom on human rights.

The party in power announced in its election manifesto that it wanted to make the British courts the ultimate arbiters of human rights by withdrawing from the jurisdiction of the European Court of Human Rights and to bring common sense to the application of human rights in the United Kingdom.

The implementation of this policy is not part of the current legislative programme of the government, but the policy itself has not changed or been withdrawn. It might be activated at any time. We must therefore remain vigilant because this policy is inimical to human rights in general and to the rule of law in particular.

To understand this it is necessary to understand the British constitutional doctrine which goes under the name of parliamentary sovereignty.

This doctrine means that no act of today's parliament may bind tomorrow's parliament so that a commitment made by act of parliament in year one may be overturned by parliament in year two or three or four or at any time in the future. Parliamentary sovereignty also means that no court of law in the United Kingdom has the power to overturn any act of the British parliament. Parliament, not the courts are sovereign.

To state, then, that the government's policy is to make the courts the ultimate arbiters of human rights is, to put it mildly, to mislead the public. It is in fact a lie. Since no British court may annul any act of the British parliament, the ultimate arbiter of human rights in the United Kingdom is the government of the day, provided it can command a majority in parliament. And since, as a further manifestation of the doctrine of parliamentary sovereignty, no rights are entrenched in the constitution, a majority of one vote suffices. As a result the fundamental rights declared by the European Convention of Human Rights could be rejected by the British parliament by a majority of one single vote. So human rights protection in the United Kingdom is entirely dependent on the discretion and the whims of parliament. Ultimately no British court may stand in its way. For this reason the European Court of Human Rights is of particular importance in the United Kingdom and this is why the government's policy is to withdraw from its jurisdiction.

Many will doubtless say that I exaggerate the danger because, after all, the government and parliament at large would surely not be so unreasonable.

Really? The second element of the stated policy is to bring common sense to the application of human rights in the United Kingdom. What does that mean? Common sense is undefinable. It is a subjective notion. It is a variable and malleable concept. As a criterion for assessing the validity of

laws it is not only unhelpful, but it is very dangerous. More dangerous than one might care to imagine. If, when deciding a point of human rights law, a court were bound to apply common sense, how could it ever be demonstrated that it had acted impartially or independently? It might be said that where a person admits to having committed a crime, common sense dictates that a trial is not necessary. If that view prevailed, then common sense would defeat the requirement of due process.

In a law of 1935 amending the German criminal code it was provided that acts were to be punished if in accordance with healthy popular sentiment (gesundes Volksempfinden) they merited punishment. The common sense criterion of the government's human rights policy is not far removed from that of the German government up to 1945. It is the standard of public opinion.

But a state which uses public opinion as a criterion for deciding rights or judging court cases is not a state based on the rule of law.

In stark terms, then, the policy of the government of the United Kingdom means nothing short of not applying the rule of law to human rights. It means subjecting human rights protection in the United Kingdom to a standard of arbitrariness.

Is this a purely British matter? Well, no. The European Convention of Human Rights works because it constrains and disciplines large states and small states alike. If a large state such as the United Kingdom rejected the European Court of Human Rights and refused thus to apply the Convention, then this would weaken and destabilise the Convention throughout all 47 Convention states. If each Convention state applied its own human rights standards, how, I ask you, could they trust each other? How could the judicial systems of Europe work together if the mutual trust had gone? How could Albion be trusted?

In terms more immediately of the citizen this policy simply means that in the view of the current United Kingdom government, there is no such thing as fundamental rights. That is not just a matter of concern in the UK. It is a matter of concern to the whole of Europe and, indeed, to the world at large, not least given the United Kingdom's role in the United Nations.

In conclusion, the declared official policy of the United Kingdom government to reject the European Court of Human Rights must be opposed. If it is not opposed and is implemented, then ultimately there will be no judicial protection of human rights in the United Kingdom for the reasons I have just explained.

Thank you for your attention. I hope I have been clear.