

'Brexit and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016

BREXIT

Brexit and rights

Discussion seminar on the human rights and equality implications of the EU referendum

held on 27th September 2016 at the Metropolitan Arts Centre, Belfast



Agenda and Introduction



BREXIT

Brexit and rights

Seminar Agenda

9.30 Registration

9.45 Opening

- Louise Mallinder, TJI, Ulster University/ Chair CAJ, Welcome.
- Daniel Holder, Deputy Director CAJ/Co-Convener Equality Coalition, Introduction

10.00 Panel 1: Chair: Anne Smith, UU

- Colin Harvey, QUB School of Law, "Reflections on Human Rights and Citizenship in a Changing Constitutional Context"
- Paul MacFlynn, Nevin Economic Research Institute, (NERI) "Economic implications of BREXIT"
- Patricia McKeown*, UNISON/Co-Convener Equality Coalition and member EU European Economic and Social Committee, "Equality and socioeconomic rights implications"

11.20 Break

11.40 Panel 2: Chair Brian Gormally, Director CAJ

- Rory O'Connell, Director TJI, "The Political Constitution ten years from now – dodo or phoenix?"
- Claire Archbold, Deputy Departmental Solicitor, Departmental Solicitor's Office, "Brexit - the task ahead for Northern Ireland"?
- Ciaran White, Law School, Ulster University, "Brexit and NI Employment Law – a proposal for an NI-specific framework to defend workers' EU rights?"

*This paper was delivered at the seminar by Anne Speed of UNISON on behalf of Patricia McKeown who had been called to witness the signing of the Colombian peace accord in Cartagena, Colombia.

+ A further speaker, Fionnuala Ni Aolain, was also unable to travel on the day, her working paper 'Brexit: Implications of International Treaty Law Obligations and Customary International Law' was made available on the day.

'Brexit and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016



Welcome

Louise Mallinder, TJI, Ulster University/ Chair CAJ

Good morning everyone, thank you all for coming to today's seminar on Brexit and Rights. As you may know, we had so much interest in this event that we had to change venues to the MAC to accommodate the demand. I think this is a clear reflection of the importance of the issues we are going to discuss here today.



The referendum campaign on leaving the European Union exposed deep fissures in UK society along a number of lines and created a context in which racist language and imagery was allowed to enter mainstream political discourse. Figures released earlier this month by the National Police Chiefs' Council show that a dramatic rise in hate crimes took place in England, Wales and Northern Ireland following the referendum result. Given that human rights are inherently universal, this shows that whether or not Brexit eventually takes place, it has already had a negative impact on human rights in Northern Ireland and the United Kingdom. That said, the referendum result was advisory and it has not yet resulted in any formal legal changes to human rights protections in the UK, nor is it clear to what extent it will do so and at present it seems that it will take several months and years for any legal changes to emerge.

In this uncertain context, events such as today's seminar are important for identifying ways in which Brexit may affect human rights and equality and for developing strategies to work together to ensure that human rights are fully taken into account during the negotiations with the European Union and any subsequent debates on legislative changes. In particular, Northern Ireland's distinct political, legal and social context means that we need to raise awareness of how embedded human rights are within our peace process and the risks that any dilution of existing protections may pose for our society. I am therefore pleased that today's seminar will provide an opportunity for us to begin a public discussion on these issues.

Organisers and Sponsors

Today's event is organised by the Committee on the Administration of Justice and the Transitional Justice Institute, in association with the Equality Coalition, which is a broad alliance of over 80 non-governmental organisations and trade unions in Northern Ireland



'Brexiting and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016

that conducts lobbying and advocacy on equality issues and is convened by CAJ and UNISON.

The Committee on the Administration of Justice (or CAJ) is an independent human rights organisation that lobbies and campaigns on human rights issues both in Northern Ireland and internationally. It focuses in particular on issues that determine peace or conflict and it sees its human rights work as a necessary component of peacebuilding.

The Transitional Justice Institute (or TJI) is an interdisciplinary research institute at Ulster University, which is internationally recognised as a leading academic centre on the study of societies emerging from conflict and repression.

We are also grateful to Ulster University's Office of Research and Impact for co-sponsoring this event.

Speakers

Turning now to our speakers, as you can see from the agenda, we have some several fantastic presentations lined up including Prof Colin Harvey from QUB School of Law, Paul MacFlynn from the Nevin Economic Research Institute; Prof Rory O'Connell from TJI; Claire Archbold, who is the Deputy Departmental Solicitor of the Departmental Solicitor's Office; and Ciaran White from the Law School at Ulster University.

We have a change to our advertised speakers. Patricia McKeown from UNISON is no longer able to join us as she was invited to witness the signing of the Colombian peace agreement in Cartagena yesterday. We are delighted however that Anne Speed from UNISON will speak in her place.

In addition, Prof Fionnuala Ni Aolain was invited to speak at today's workshop. Unfortunately, she was unable to travel from the United States due to other commitments, but she has contributed a 'work in progress' paper that is included in the conference pack.

Format

The format of today's event will be two panels of three speakers, who will each speak for 15 minutes. In each panel, this will be followed by time for discussion. We will have a short break at 1120 between the panels and the event will conclude with closing remarks delivered by CAJ Director Brian Gormally.

Introduction

Daniel Holder, Deputy Director CAJ and Co-Convener the Equality Coalition

It is so good to see a full house here today it goes to show that whilst most of us are no doubt sick of the word 'BREXIT' by this stage – we hear it so often –we are conscious of the range of rights-based implications from the referendum. This is our topic today.

The genesis for this seminar emerged from discussions between CAJ and TJI on the back of a Roundtable Discussion held at CAJ shortly after the vote covering similar ground. We discussed holding a broader public event which evolved into today's seminar that will feature for seven expert inputs and is also supported by the Equality Coalition, which we co-convene with UNISON, whose many members are facing a range of implications for their work following the referendum. At the roundtable we discussed 'threats to human rights' under five agenda items. By way of introduction to the topics today I would like to briefly summarize them:



Number 1: 'Who's next?' – the threat to the ECHR

Whilst I have looked on at some attempts to portray the Leave vote in England and Wales as a grassroots uprising I do find this bemusing given the Leave campaign was led by powerful elements of the political and media establishments – including the Daily Mail and Express, and figures including our former Secretary of State Theresa Villiers and others.

On the back of the referendum many of these campaigners are very much in the ascendancy, and have a number of other issues in their sights which should concern human rights activists. At the very top of this list and often a twin, conflated and confused demand alongside EU withdrawal, are moves to repeal the domestic incorporation of the European Convention on Human Rights (ECHR). The new cabinet has now said it will press ahead with plans to essentially dis-incorporate the ECHR. At home this would be a *prime facie* breach of the Belfast/Good Friday Agreement and would dismantle, for example, the entire legal framework for human rights compliant policing within the PSNI. Abroad if other countries with worse human rights records than the UK follow suit such a move risks unravelling the whole system of post-WWII human rights protection in Europe.

'Brexit and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016

A number of our experts today, including Colin Harvey and Fionnuala Ni Aolain will address the issue of rights protection, and treaty based compliance, along with constitutional implications that will also be discussed in the paper by Rory O'Connell.

Number 2: Racism: the rise and legitimisation of anti-migrant racism

The second issue we discussed was racism and its rise. A number of you will have seen the recent comments of the UN Committee on the Elimination of all forms of Racial Discrimination (CERD), which raised the increased number of hate crimes but also expressed deep concern *"that the referendum campaign was marked by divisive, anti-immigrant and xenophobic rhetoric...which created and entrenched prejudices"*.

To give an insight into how the international human rights movement perceived the vote I can share with you a message received by CAJ the day after the referendum from the head of the International Federation of Human Rights (FIDH- of which CAJ are members). This expressed solidarity and similar sentiments to CERD but also added *"This result is also a tragic wake up call for the EU, which will now suffer the consequences of its own failure to protect the rights and values on which it was founded and which we still believe in."* This sentiment sums up how CAJ ourselves understood the context of the referendum. We have no rosy view of the current EU as bastion of human rights given its treatment of migrants and, for example, the manner in which socioeconomic rights in Greece were trounced by Eurogroup. On the other hand we are conscious of the positive aspects of EU policy too; it has brought anti-discrimination and workers rights legislation and funds to disadvantaged regions and groups. We recognise however that whilst such matters were issues for *some* people during the vote they were not the issue on which the Leave campaign was actually fought. Last week at a seminar down the road in the Law Centre one leading London-based Immigration Lawyer described that in her view the referendum was essentially a "plebiscite on migration". It is the case that despite a section of the establishment leading the Leave campaign, the bulk of who voted leave in England and Wales were among the more disadvantaged sections of the population who have seen their living standards eroded over the last 30 years. We will be hearing from UNISON later on who would no doubt point out that such legitimate grievances against regression in socioeconomic rights should best be channelled into the politics of collective type-action for improved rights for all. In the alternative there is also the risk that grievances can be turned into the type of politics which scapegoats some other ethnic group for a country's problems. Let us not deny that it is the latter that is clearly in the ascendency in the context of the referendum. This itself has to be seen in the context of a dangerous rise of far-right politics across Europe and elsewhere. This is becoming, again, the issue of our age.

Number 3: The border and entitlements

The next issue also engages the risks of heightened racism, this time in its more institutional form. In our view fixed passport controls the length of the land border are politically and economically untenable and hence unlikely. However if not a 'hard' border for all we are concerned there is a real risk of a 'racist' border emerging with selective checks which single out persons for questioning and potential detention on the basis of skin colour and other

'Brexit and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016

ethnic identifiers. Far from the UK-Ireland Common Travel Area (CTA) being a stable entity since partition as it is now being portrayed, we should not forget that the CTA as a passport free zone was only a few votes in the House of Lords from being abolished in 2008. The then policy intentions were precisely to introduce 'ad hoc' selective checks targeting people who were 'non British and Irish citizens', whilst at the same time *not* requiring British and Irish citizens to carry passports, a clear recipe for further racial profiling. The concerns about such racial discrimination coupled with opposition against port and airport immigration controls from Northern Ireland to Great Britain– led to the defeat of the attempt to change the law. Post-Brexit, with even greater hostility to migrant rights, this could be revisited.

There is also the context of entitlements for Irish citizens in Northern Ireland, and British citizens in the Republic – and the related entitlements of both and other EU nationals to be joined by their spouses or other family members if they are from elsewhere in the world, which would cease to have effect when EEA treaty rights go. What about cross-border workers rights? As things stand our legislation provides that cross-border workers working in NI will lose their rights to use the NHS once EEA treaty rights cease to have effect, there is a plethora of legislation that will need re-examined if such issues are to be addressed.

Number 4: legislation with EU-originated rights

Issue number four focuses specifically on legislation. What happens to workers rights, anti-discrimination legislation, maternity rights and environmental rights that originated in EU law? Government is yet to clarify what is going to happen. This issue is a great concern for members of the Equality Coalition. Our equality law having been among the most advanced in its day now lags behind other jurisdictions. It is difficult to envisage some protections, for example in the area of sexual orientation, passing through our assembly. We will shortly be hearing from Ciaran White, whose paper outlines a model for retaining workers rights in the context of such matters being uniquely devolved to the NI Assembly. We will also hear from Anne Speed of UNISON regarding a trade union perspective.

A 2015 internal civil service paper on the implications of a leave vote to Northern Ireland was obtained under Freedom of Information by *the Detail* website and published yesterday. It states that *"There are likely to be very significant legal implications, which will require a significant workload to disentangle and restructure the NI statute book..."* It is clear that there will be significant bulging in-trays already given the enormous reach of EU law into so many aspects of policy and the mountain of a task of working through it all. We will be hearing from the Deputy Departmental Solicitor Claire Archibald later on who may give us some indication of how the civil service is likely to go about this task.

Number 5: Money

The final theme we discussed at our earlier roundtable is that of money – and we will shortly hear a specific presentation on the economic implications of the referendum from Paul MacFlynn of the Nevin Economic Research Institute. The economic implications are a broad topic – it encompasses any further austerity prompted by the vote, the implications

'Brexit and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016

for trade and economic sustainability – but it also of course refers to EU funds. The Civil Service paper I have just mentioned notes that whilst the UK is a net contributor to EU funds, Northern Ireland by contrast is a net beneficiary– the official paper raises concerns about losing access to €862million of structural funds in the (2014-20) period and €2.5 billion of CAP funding in the same period. It is of course the case that the UK Treasury could step in and replace this funding, but will they? Will for example the UK authorities recognise that proportionately there are far greater numbers of farmers here than over the water, or will pro-rata funding be provided to the devolved institutions regardless? Also who decides the criteria? Matters which were dealt with far away will now be thrown into the local political dynamic, with potential adverse impacts on equality if criteria are not designed around objective need. This is the same with any replacement for peace process funding – where some groups, such as ex-prisoner organisations, have been heavily dependent on EU funding that could now either disappear or be put within the local political-decision making context. The economic implications are multifaceted and will only become clear over time.

The above matters are just five rights issues we discussed, I am certain plenty more will be discussed today as a result of the seven inputs we are about to hear.