



Promoting Justice / Protecting Rights

Opening Statement to the Oireachtas Joint Committee on Justice and Equality

Wednesday 23rd January 2019

I would like to thank the Chair and members of this Joint Committee for the invitation to give evidence today. As you know, the Committee on the Administration of Justice, CAJ, is a Belfast based independent human rights organisation which founds its analysis on international standards and takes no position on the constitutional position of Northern Ireland.

There is no doubt that Brexit would damage and reduce protections for human rights and equality in a range of different ways. However, today I wish to concentrate on the damage that may be done – and to an extent has already been done – to the peace agreement which has brought twenty years of relative peace and stability to our island. Since conflict means a bonfire of rights, defending the peace is the first priority for human rights activists.

At the moment, we still do not know if Brexit will actually happen or, if it does, in what particular way. However, the events of the past two and a half years have already damaged the peace settlement and relations across this island. We presently have no devolved institutions in Northern Ireland and the two major political parties are on opposite sides of an increasingly fractious debate. In our view, whatever happens, we need to rebuild our intertwined societies on the basis of a new dispensation based on human rights and equality. In the coming years, there will be further dislocation and disagreement, whatever happens with Brexit, as the constitutional status of Northern Ireland again comes to the fore with a probable Border Poll. We need a resilient society and politics with institutions across the island which people can trust to be fair and transparent. In this briefing we wish to make some proposals that come out of our enhanced understanding of the weaknesses and pressure points that the Brexit debate process has laid bare.

The citizenship issue shows how basic assumptions of the Good Friday Agreement have been undermined. It recognised the birthright of the people of Northern Ireland to hold Irish or British citizenship on the basis of equality. The basic breach of this principle of equality by Brexit would be that Irish citizens would remain EU citizens whereas British citizens

wouldn't. It amounts to a new focus of division between the two main communities here. But it has also become clear that Brexit could make the status of Irish citizens born in Northern Ireland constitutionally and practically insecure. If Brexit goes ahead, Irish citizens will be EU citizens living in a non-member state. What rights do they have to live, work, access health and social services and fully participate in social and political life in that state where they were born? There are several possible answers to that.

The first possibility is that the Home Office will regard Irish citizens as "really" British since UK nationality law decrees that most of those born in the UK have British citizenship. The second possibility is that the Common Travel Area will sort all this out. In fact, as the Human Rights Commission has suggested, Common Travel Area rights are "built on sand." The third possibility is that, under the Withdrawal Agreement, EU citizens living in the UK can retain many of their current rights by applying for "settled status." You must pay £65 and make an application to the Home Office before the Transition Period ends.

None of these options is appealing as they all involve the implication that those who choose Irish identity are in some way second class citizens. Their rights as full participants in NI life would depend on either a denial of their Irish nationality, as yet unknown bilateral agreements between the UK and Ireland about the CTA or paying to ask the Home Office to graciously allow them leave to live in the land of their birth. The reality is that Irish citizens, born and living in Northern Ireland, have no legal connection to the jurisdiction in which they were born.

Legislation is needed both in the UK and Ireland to recognise the particular status of Irish citizens born in Northern Ireland and their unequivocal right to participate fully in that region and as fully as feasible in Irish society and full equality in the rights the two categories can access. A treaty enshrining these provisions in international law would repair the damage done to the principle of the Agreement.

The other measures to protect rights we propose are the following:

To prevent a racist immigration policy and the territory of Northern Ireland becoming "one big border," we propose that the Irish Government reject any practices of racial profiling and begin an open and transparent debate about how immigration into the Common Travel Area is managed.

The Charter of Rights for the island of Ireland signed by political parties should be revisited: commitments to human rights and equality based decision-making, with all the principles of transparency and public involvement that would involve, could be the basis of an island-wide code of political behaviour.

Equivalence in the protection of rights North and South is a basic principle of the Agreement: it is important that some way of guaranteeing that rights are and will in perpetuity be protected in an equivalent manner in both jurisdictions is developed, whether in compatible legislation or treaty.

Abuses of power, sectarian decision making and a corrosive lack of trust between the two major parties in the North led to the downfall of the devolved institutions. We need a human rights and equality based return to devolution based on the full implementation of the rights provisions of the peace settlement, addressing international rights obligations and working fully within the existing rules.

Brexit threatens human rights and equality protections in a number of specific ways. However, its main impact has already been to destabilise both the provisions of the peace settlement and the relations between the two jurisdictions on this island. The current uncertainty and political turmoil may subside to an extent, especially if Brexit does not actually go ahead, but trust and confidence have already been undermined. Questions of identity and citizenship have been opened up in a way not seen since well before the Agreement – those genies cannot be put back in the bottle. We therefore need a set of measures, across the island and, where possible, on the basis of formal treaties between the two sovereign states involved, which can stabilise trust and build resilience as we move into a future of change and challenge.