SCOTLAND: Better protect women's rights amid Brexit threat

Scotland must go "further, faster" on women's rights as Brexit threatens to exacerbate inequality, the Scottish Human Rights Commission has told the UN.

By Kirsteen Paterson

The National (27.02.2019) – https://bit.ly/2EhucRk– The national body delivered its new report to the UN's Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Geneva yesterday.

The paper, which contains 24 recommendations, warns that "harmful" gender stereotypes continue to "limit opportunities" for women and girls.

And though LGBTI issues will now be covered in schools to stamp out hate-based harassment, the country's national approach to addressing bullying makes "little reference to misogyny or gender based" trouble, despite a 2018 report which found female pupils suffer "alarming levels" of sexual harassment.

Meanwhile, women's hourly earnings remain 14% below those of men, females are still underrepresented in decision-making

roles in the political and public sphere and conviction rates for sexual violence remain low.

Without “appropriate training” for police and prosecutors, as well as greater public awareness, the report says new legislation will not be effective.

Moreover, UK welfare reform has had a “significant negative impact on women”, with the problem more acute for single parents, those with disabilities and individuals from black and minority ethnic backgrounds.

The report also states that Brexit is expected to “have more of an adverse impact on women as the primary users of, and workers within, public services”, stating: “It is key that the UK Government ensures that there is no regression in the protection and realisation of women’s rights.”

Judith Robertson, chair of the commission, said: “Our recommendations to government include measures to ensure Brexit has no negative impact on women’s rights.

“It also recommends action to mitigate the impact of austerity on women’s economic and social rights; and improvements to law and policy to tackle the high prevalence of violence against women.

“While the Scottish Government is to be commended for many of its actions to progress gender equality, our latest report to

the UN shows that it must now go further, faster, to ensure that all women in Scotland are able to enjoy all of their rights – economic, social, civil and political – on the same terms as their male counterparts."

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ECJ/UK/ROMANIA: The UK's decision to leave the EU should not affect the execution of a European arrest warrant

EU law applies as long as the UK is a Member State

Court of Justice of the European Union/PRESS RELEASE No 124/18 (07.08.2018) – https://bit.ly/2vPxPtx– In 2016, the UK issued two European arrest warrants ('EAWs') in respect of RO (the first in January 2016 and the second in May 2016) for the purposes of conducting prosecutions of the offences of murder, arson and rape. RO was arrested in Ireland on the basis of these arrest warrants and has been in custody since 3 February 2016. RO raised objections to his surrender to the UK on the basis, amongst other things, of issues related to the UK's withdrawal from the EU.

The High Court (Ireland) has ruled against RO on all of his points of objection, other than the issues of the consequences of Brexit. It therefore asks the Court of Justice whether, in light of the UK on 29 March 2017 having given notice of its intention to withdraw from the EU, and the uncertainty as to the arrangements which will be put in place after the UK's withdrawal, it is required to decline to surrender to the UK a person subject to a EAW whose surrender would otherwise be required.

In today's Opinion, Advocate General Maciej Szpunar proposes that the Court of Justice find that the EAW system should continue to apply for as long as the UK is a Member State. He comments that, from the information submitted by the High Court, there appears to be no reason not to execute the EAW in question.

The Advocate General first reiterates that the principle of mutual recognition, which is based on mutual trust, between the Member States means that the execution of a EAW

constitutes the rule and a refusal to execute is an exception which must be interpreted strictly. The Advocate General notes that none of the mandatory or optional grounds for non-execution of the EAW are present in the case at issue. Specifically, the Irish court has concluded that, with the exception of the consequences of Brexit, there is no separate issue of potential inhuman or degrading treatment in respect of RO's surrender to the UK.

Next, the Advocate General examines whether the UK's notification of its intention to leave the EU has any bearing on the legal assessment to be carried out in relation to the execution of the EAW. He rejects RO's argument that the UK's withdrawal notice constitutes an exceptional circumstance which requires non-execution of an EAW. In his view, **as long as a State is still a Member of the EU, EU law applies, including the provisions of the Framework Decision on the European arrest warrant(1) and the duty to surrender.**

In addition, according to the Advocate General, there are no tangible indications that the political circumstances preceding, giving rise to, or succeeding the withdrawal notification are such as to not respect the substantive content of the Framework Decision and the fundamental rights enshrined by the Charter of Fundamental Rights of the European Union. He agrees with the argument that **the UK has decided to withdraw from the EU, not to abandon the rule of law or the protection of fundamental rights.**Consequently, in the Advocate General's view, **there is no basis to question the UK's continued commitment to fundamental rights.**Moreover, the UK will continue to remain subject to rules of domestic and international law which impose obligations on the UK in the context of extradition.

On this basis **the Advocate General proposes that the executing judicial authorities can expect, at the moment of executing the EAW, the issuing Member State to abide by the substantive content of the Framework Decision, including for post surrender situations after the issuing Member State has left the EU.**This presumption can be made if other international instruments will continue to apply to the Member State that has left the EU. **Only if there is tangible evidence to the contrary can the judicial authorities of a Member State decide not to execute the arrest warrant.**

Finally, **the Advocate General considers that the fact that Court of Justice will no longer have jurisdiction after 29 March 2019 is not an obstacle to RO's surrender to the UK.**The Advocate General notes, in particular, that the Framework Decision was adopted in 2002, but the Court of Justice only obtained full jurisdiction with regards to the interpretation of the Framework Decision on 1 December 2014, that is to say five years after the entry into force of the Treaty of Lisbon in 2009. Consequently it was neither possible, before that time, for a case such as this to have reached the Court, nor could a UK court have submitted a request for a preliminary ruling to the Court before that time, despite the fact that the EU was firmly anchored on the rule of law, including access to justice.

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NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal

solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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(1) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

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EU/UK: High alert for human rights protection in the future in the UK and beyond

UK withdrawal from the European convention on human rights could have devastating repercussions for the EU, warns Willy Fautré.

By Willy Fautré, *Human Rights Without Frontiers*

The Parliament Magazine (10.03.2017) – http://bit.ly/2ncRiPG – More than 50 British top lawyers and legal experts are sounding the alarm about UK Prime Minister Theresa May's intention to go beyond the scope of Brexit by withdrawing from the European convention on human rights (ECHR) and consequently from the mechanism of the European Court in Strasbourg.

By publishing an open letter to May in The Observer, the group of lawyers and experts have pressured her to abandon the idea of exiting the ECHR system. In their appeal, they also call upon the EU to "make Britain's membership of the ECHR a legally binding requirement for any future free trade deal in the UK.

"The rule of law and human rights are non-negotiable when new countries join the EU, they should be non-negotiable when countries leave and desire a free trade deal," the authors firmly state, emphasising that this provision was incorporated into EU law through the Lisbon treaty.

Under the guise of planning to restore the UK's sovereignty, Theresa May has stated in the past that she would like to

leave the ECHR, although it has been the bedrock of peace and security in Europe since World War II and a remarkable instrument for the growth of democracy in European former Communist countries after the fall of the Berlin Wall.

Brexit is Brexit, and leaving the EU will already entail the withdrawal from several EU mechanisms: the EU charter of fundamental rights, the European Court of Justice, the European arrest warrant, and Europol. It remains to be seen which other mechanisms of cooperation between the UK and the EU will be negotiated in the near future – and at what cost.

Extending the UK's withdrawal from the ECHR might have a pernicious domino effect and could embolden populist leaders in countries such as Hungary and Poland to abandon domestic and international commitments to human rights.

In December 2015 Russia sent out an alarming signal to Strasbourg and Brussels by adopting a law which allows the country to overrule judgements from the European Court of Human Rights (ECtHR).

The EU values enshrined in this historical institution may suffer a devastating setback from Lisbon to Vladivostok if the UK decides to pull out of the ECHR. It would give carte blanche to Putin and others to further weaken the European Court and prevent the expansion of EU values.

The publication of their appeal comes as British campaign agency 89up launches a crowd funding operation to send a 'battle bus' carrying human rights activists to Brussels. The purpose will be to lobby the EU to ensure that any free trade deal that it agrees to with the UK will include a guarantee that London remains a signatory to the European Convention of Human Rights.

These concerns however should not be limited to British human rights advocates and their campaign should not only involve British citizens. It is a battle to be fought by all human

rights watchdogs and civil societies across Europe.

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E.U.: Brexit: Future of the European Arrest Warrant in question

With Brexit and two recent controversial cases of extradition requests made this year by Romania, the future of the European Arrest Warrant (EAW) is re-emerging as an issue of particular concern, not only in the UK but also in other EU member states, writes Willy Fautré.

By Willy Fautré, Human Rights Without Frontiers

EurActiv (06.12.2016) – http://bit.ly/2hddoSH – In 2011, the European Parliament examined a report from the Commission on

the implementation of the Framework Decision of 13 June 2002 about the EAW and the extradition procedures between member states. This then triggered a series of parliamentary questions to the Commission and the Council tabled by each of the four main political groups.

While the EAW has proven to be an effective instrument in the cross-border fight against crime and terrorism, its disproportionate use, as well as its misuse, have been repeatedly questioned.

In January 2014, the LIBE Committee adopted a resolution (45 votes to 4) calling upon the Commission to table proposals to reform the EAW within a year, including provisions to guarantee that fundamental rights are respected, a "proportionality check" to ensure that the least intrusive measure is applied and the right to effective legal remedies.

"The warrant needs to be used not only effectively but proportionately, with guarantees that human rights are not abused in the process. This will help prevent miscarriage of justice in the future," said then rapporteur Saran Ludford (ALDE, UK).

On the eve of 2017, it can be said that "disproportionate use" of the EAW for minor offences or in cases where less intrusive alternatives might be used persists and still raises serious concerns. Unwarranted arrests and unjustified or excessive time spent in pre-trial detention, disproportionate interference with the fundamental rights of suspects and accused persons as well as burdens on member states' resources are still worrying issues.

Fair Trials International (FTI), the London-based human rights non-governmental organisation, claims to have highlighted a number of cases which demonstrate that the EAW system is causing serious injustice and is jeopardising the right to a fair trial. In particular, FTI alleges that:

- European Arrest Warrants have been issued many years after the alleged offence was committed;
- Once warrants have been issued there is no effective way of removing them, even after extradition has been refused;
- They have been used to send people to another EU member state to serve a prison sentence resulting from an unfair trial;
- Warrants have been used to force a person to face trial when the charges are based on evidence obtained by police brutality;
- Sometimes people surrendered under an Arrest Warrant have to spend months or even years in detention before they can appear in court to establish their innocence.

Moreover, the deliberate misuse of the EAW is not fiction. The notion of pan-European standards of justice has been called into question on several occasions in the UK and other EU member states. On the basis of the mutual recognition of criminal justice systems within the EU, any national political authority in the EU can issue a warrant to extradite a suspect, but this approach equating British and German standards with the ones in force in Romania or Poland is controversial.

The judiciary in Romania is not independent and is vulnerable to political interference. Indeed, more and more reports are highlighting this problem. Last year MEDEL (Magistrats Européens pour la Démocratie et les Libertés) shared the same deep concerns as some Romanian judges and prosecutors who took a stand against the unlawful involvement of the Romanian Intelligence Service (SRI) in the judiciary process. “This situation is a threat to the democracy in Romania,” MEDEL wrote in a statement entitled “European magistrates concerned about the influence of intelligence agency over the judiciary process in Romania.” The National Union of Romanian Judges has also made the European Commission aware of the threats on the

judiciary and the rule of law in their country but has not found an attentive ear to their fears.

Some years ago Sweden refused to send back a Romanian citizen whose extradition had been requested by Bucharest on the basis of an EAW. Stockholm granted him political asylum and justified its decision on the grounds that he would not get a fair trial in Romania.

Another case has now put Romania back in the spotlight with another example of EAW misuse and miscarriage of justice.

In last June, Alexander Adamescu, a German citizen and the son of a prominent Romanian businessman, was arrested in London on the basis of a European Arrest Warrant (EAW) issued by the Romanian government which accused him of complicity with his father in allegedly bribing judges. Any alleged involvement of Alexander Adamescu in his father's case was never raised until he initiated a £200 million arbitration claim for the purposeful destruction of a group of companies controlled by his father, including the liberal newspaper *România Liberă* which had always been critical of Romania's political leaders.

Alexander Adamescu denies the charges and claims that the jail sentence against his father was based only on the false testimony of a former employee in one of the group's companies.

Despite the suspicion of political motives behind this case, British judges cannot review it and must treat this and any EAW issued by Romania with a wholly unmerited level of reciprocity. Were they able to scrutinise the evidence prior to extradition, many cases would have certainly been thrown out.

In the UK, there has always been a strong movement against the EAW since its inception in 2004 because of the loss of judicial sovereignty that it was perceived to entail. Now,

many people in political parties and in the judiciary look forward to the exit from the EAW system and to a new form of judicial cooperation between the EU member states, much like the cooperation that the United States, Canada, Australia, Switzerland, Norway and others have with the EU space.

The EU might be well inspired to use this momentum to consolidate the EAW system by correcting its shortcomings and protecting it against any form of misuse and abuse.

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