High Court verdict on EU Brexit plunges UK deeper into crisis

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Yesterday's High Court ruling that Parliament alone has the right to trigger Britain's exit from the European Union (EU) has created a major constitutional and political crisis.

The verdict, which the government is to appeal, rejected the right of Prime Minister Theresa May to begin Brexit (British exit) without a parliamentary vote by use of the Royal Prerogative. These are archaic powers, once held by British monarchs and now reserved to the government on the advice of the prime minister and the cabinet.

The hearing before Lord Chief Justice, Lord Thomas of Cwmgiedd, Master of the Rolls Sir Terence Etherton and Lord Justice Sales centred on Article 50 of the European Union Treaty, which states that a member state may quit the bloc "in accordance with its own constitutional requirements."

May intended to trigger Brexit next March, bypassing a vote in parliament. This would begin two years of negotiations as to its terms. With EU ministers stating that the UK should be punished for its decision as a warning to other member states, and May (who campaigned as a Remainer) playing up to the vociferous pro-Brexit lobby in her own party, a substantial section of the bourgeoisie is concerned that this could result in a "hard-Brexit" in which the UK loses access to the Single Market.

With the majority of MPs in favour of remaining in the EU, government lawyers argued at the High Court that it was "constitutionally impermissible" for Parliament to be given a vote on the Brexit process as it was tantamount to overturning the "people's will"—as registered in the narrow 52 to 48 percent June 23 referendum vote to leave the EU.

The arguments were presented last month at a judicial review at London's Royal Courts of Justice. Against the government was a group of claimants representing interests in the City of London—led by Gina Miller, a London-based investment manager for the firm SCM Private.

The claimants' lawyers cited the Bill of Rights of 1689, which states that laws should not be discarded or suspended without consent from Parliament. The use of prerogative powers to trigger Article 50 would have the "intended consequence" of depriving citizens of rights they have as EU citizens, and which were enshrined in UK law. Such constitutional rights could not be removed by the executive, they argued, without "breaking the back of the constitution and crippling it."

The High Court upheld this argument, stating that government moves to begin exit negotiations without parliamentary approval would overturn 400 years of legal tradition. While asserting that "nothing we say has any bearing on the question of the merits or demerits" of Brexit, the 32-page judgement states that the "sole question" involved was "whether, as a matter of the constitutional law of the UK, the Crown—acting through the executive government of the day—is entitled to use its prerogative" to trigger Article 50.

The "subordination of the Crown (i.e., the executive government) to law is the foundation of the rule of law in the UK," it states, noting that this has its roots in the English Civil war (1642–1651) and "has been recognised ever since."

As to the argument that the "opinion of the electorate" stands above constitutional law, the judges rejected this on the grounds that "as a matter of law: 'The judges know nothing about any will of the people except in so far as that will is expressed by an Act of Parliament'."

A government spokesman said that ministers would appeal to the Supreme Court against the decision. The hearing will take place on December 7-8. However, any possible delay or further protracted legal wrangling threatens to derail the government's plans and opens the possibility of an early general election.

The opening of a constitutional crisis underscores the

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recklessness of the decision by former Conservative Prime Minister David Cameron to agree a referendum on Brexit. The move was shaped wholly by the attempt to settle a right-wing factional dispute within the Conservative Party and its fringes in the UK Independence Party (UKIP).

Having called a referendum, all sides in the campaign sought to utilise anti-immigrant and nationalist prejudice to divert from the growing social crisis and the danger of war. For the Remain camp, led by Cameron, the aim was to wield a potential Brexit to extract greater concessions from the EU, especially securing beneficial treatment for the City of London. This meant that the Leave campaign—dominated by the most xenophobic and Thatcherite wing of the bourgeoisie—was able to monopolise legitimate opposition to the EU.

Neither side gave any consideration as to the more fundamental consequences of their actions, including the complex constitutional issues raised. Lord Kerr of Kinlochard, who was secretary-general of the European convention that drafted what became the Lisbon treaty, said he had never imagined Article 50 being made use of. “I thought the circumstances in which it would be used, if ever, would be when there was a coup in a member state and the EU suspended that country’s membership,” he said. “I thought that at that point the dictator in question might be so cross that he’d say ‘right, I’m off’ and it would be good to have a procedure under which he could leave.”

The shock 52 percent vote in favour has therefore opened up an existential crisis for the British bourgeoisie. Not only does it threaten to gravely diminish the role of the UK as the premier political and military ally of the US in Europe, but it reopens the possibility of the breakup of the United Kingdom itself.

The Scottish government has already threatened to hold a second referendum on independence in the event of a “hard-Brexit”, while Wales First Minister Carwyn Jones of the Labour Party welcomed the High Court ruling arguing that the devolved administrations should also get a vote on May’s Brexit negotiating position.

Indicating the explosive character of Brexit for political relations in Ireland, last week, Northern Ireland’s High Court rejected a legal bid to secure a parliamentary vote on May’s Brexit plans. The case had been taken on the grounds that May’s executive action threatened to jeopardise the power-sharing arrangements between the Unionist and Republican parties established by the 1998 Good Friday Agreement. Sitting in the Belfast High Court, Mr Justice Maguire had said that it “is the court’s view the prerogative power is still operative and can be used for the purpose of the executive giving notification for the purpose of Article 50.”

If the Supreme Court appeal is unsuccessful, the issue is supposed to turn on whether the government can hold a one-off substantive vote on Brexit or whether parliamentary approval applies to the negotiations and terms of any agreement eventually arrived at. It is generally assumed that most MPs, pro-Remain or otherwise, would not veto the referendum result. If, however, it is found that parliament have oversight on the terms, this opens the way for numerous amendments and an even more protracted and politically incendiary process—including the involvement of the House of Lords and a second vote.

Having campaigned for a Leave vote based on “reasserting” the “sovereignty” of the British parliament, the most strident pro-Brexit forces are the loudest in protesting the High Court ruling.

Posing as the defender of the “popular will” against a “judicial elite”, Nigel Farage, the interim leader of UKIP, said, “I worry that a betrayal may be near at hand ... I now fear that every attempt will be made to block or delay the triggering of Article 50. If this is so, they have no idea of the level of public anger they will provoke.”

Labour leader Jeremy Corbyn said that his party “respects the decision of the British people to leave the European Union.” However, he was the subject of a putsch attempt by the most pro-EU faction of his party and does not command the support of most of his MPs. There is no guarantee that the majority would not vote against triggering Article 50 in a parliamentary vote.

The right wing of the Labour Party, led by Tony Blair, has made clear they are in favour of forming a so-called “progressive alliance” to block or limit a “hard-Brexit”. This position is shared by the Liberal Democrats, whose leader Tim Farron welcomed the High Court ruling, stating, “Ultimately, the British people voted for a departure but not for a destination...”

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