

Expat rights – ignore the scare stories

This helpful article, which appeared in The Brexit Door blog, is a most helpful debunking of a myth which has been doing the rounds recently.

One of the constant themes that I have heard over the last few days, both in discussions and on social media, is a fear over the treatment of ex pat Britons who are now living in the wider European Union if we were to leave it.

This has been fuelled by the media, and used as part of the 'Remain' campaign. I hadn't taken it too seriously until a friend of mine in France posted one of the many UK Labour "mythbusters" links on my facebook time line, which also attempted to sow fear into the minds of Ex Pats and more recent immigrants to the UK. Clearly, she has been unnecessarily concerned by these attempts to misrepresent the facts, which I find both underhand and particularly unpleasant. (This has always been part of the tactical advantage for Remain of going to the polls early and shortening the campaign – fear takes hold quickly but longer to assuage with facts).

The law surrounding the rights of Expats is clear, and they have nothing to worry about (that they didn't have already anyway).

The Doctrine of Acquired Rights.

This has long been a guiding principle of international law, especially in succession issues, where the sovereignty of a nation has changed. An early 20th Century example of how acquired rights are accrued in international law is that of the German residents and descendants living in Poland after

the end of the Great War. Moves to treat them as 'aliens' with reduced rights were spurned by the Permanent Court of International Justice. They had been resident for many years (and some had been born there), and although the court at that time could not bind Poland to the decision (the role of the court in this case of 1923 was only advisory), the doctrine upheld is clear. So this is not a recent legal development.

This is backed up by the more recent (1969) Vienna Convention on the Law of Treaties which in article 70.1.b states that termination of a treaty :

Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination

This would apply to expats just as much as it would to EU citizens living in the UK. The current standing would apply, the obligations of the state would be unchanged. This should extend to anti discrimination laws also, which would be applied in the nation states themselves at a domestic level, and ultimately in the European Courts for the members of the European Union if not upheld correctly. The right to remove a case to the EU would remain unchanged in this aspect (as we see non EU citizens having access to the EU courts in disputes with the UK state based on residency or locus standi).

What does this mean for Expats and EU Citizens on a practical level?

Quite simply, that whatever the outcome, they have nothing to fear. There is no political will here in the UK to do anything prejudicial towards the millions of EU migrants living and working in the UK. It would fall foul of our own anti discrimination laws, before we even got to thinking about how

it would be treated in international law. It is also not in the nature of the UK courts, administration or its people to behave badly to foreigners or immigrants, despite some of the wilder accusations or minority opinions held in pockets by extreme nationalists. This is no different from any other country in Western Europe, we are an open and welcoming nation for all those who come here (observation of our laws and customs being our sole request to the international settler).

For the Expat Briton in the EU, the situation should be exactly the same. The law continues to protect the rights that have accrued under our membership of the EU even after we have left the political structures. There should be no change to the relationship that Expats have with their countries of residence, municipal authorities or the EU institutions as a whole.

One concern raised personally with me was that the French have never signed the Vienna Convention, would that distinctly affect Expats in France? The answer to this is a simple. No, because the Vienna Convention was only in this respect codifying what has always been clear in French Legal Doctrine, and was clear before the Convention was drafted.

I came across this rather old text, in which Law professor Pierre A Lalive, (the President of the Geneva Law Society), explains the doctrine and its history. He makes specific reference to the importance of the Doctrine in French legal history (and to Pillet's theory, p157 if you care to read it). The French have no legal history of setting aside the doctrine of acquired rights. And also, the EU backstops this tradition as it requires France to practice correct anti discrimination law as laid down by the Treaties.

The Final Outcome

Let us be extremely frank here, the Government does not want to leave the EU. The civil service which advises it and will

form the backbone of the negotiating strategy team will always look for the least disruptive method by which to leave the EU if the people force their hand. They do not want to leave the EU either, because their function is now so intertwined with it that it has become hard for all practical purposes to determine where Whitehall ends and Brussels begins.

This leaves (as Rafael Behr points out in the Guardian today) the civil service looking for the closest answer to EU membership while still upholding the strict will of the people. And of course, the question on the ballot paper is very straightforward – about ‘Leaving the EU’. The post EU settlement is not up for discussion as part of the Referendum question, we have discussed it so as to reassure those who have fears about the effect of Brexit that really there is little to worry about.

So this leaves the government open to many options, but it is clear as Behr points out, that it will seek the closest relationship with the EU that it possibly can without actually breaking the directly expressed will of the British people. This will be to retain our membership of the EEA (so therefore keeping the four freedoms in tact) and looking to re enter our relationship with the EFTA. This would give us significant gains in political freedom, especially in Justice, Home affairs, International Affairs, International Trade, Fishing and Agriculture, Environmental regulation, education, transport, social and welfare rules and such employment areas such as health and safety.

Even though this would not change the four freedoms it would allow us access to the ‘Unilateral Emergency Brake’ of EEA 112/113 (which we have seen Iceland use). Many other things would remain unchanged. Labour Law would not significantly change as we have obligations under the ILO (International Labour Organisation). Trade rules and product conformity assessments would not change, this is governed by the EEA rules (EU laws which have EEA application run to about 21% of

the total of EU law and are largely market regulation and competition law). Most of those rules are generated by international bodies such as the WTO, UNECE and Codex Alimentarius. All of these bodies would now have a British direct influence, currently pooled by the EU and operated on our behalf.

So change would be slow and incremental, there would be no threat to businesses, trade, or to individuals working or in business in the EU or here where they are outside their country of nationality. Conformity would remain, the most major change for businesses would be that they would no longer be in the Customs Union, but of course that will free the UK government to reduce tariff and non tariff barriers further to the wider world (and that's something the British have proven to be pretty good at, international relations).

You have absolutely nothing to worry about.

"A lie can travel half way around the world while the truth is putting it's shoes on".

(Mark Twain (*Wit and Wisdom of Mark Twain: A Book of Quotations*)).