

## **Brexit in court. Supreme Court ruling of 24 January 2017**

Joaquín Tornos Mas  
Tenured Professor of Administrative Law  
Universitat de Barcelona

The UK Government appealed to the Supreme Court over the ruling of 3 November 2016, by virtue of which the Government needed parliamentary authorization to start Brexit. On 24 January 2017 the Court ruled by a majority of 8 to 3 against Government. According to the Court, the UK constitutional system requires an Act of Parliament authorizing Government to notify the EU of the country's withdrawal.

The Brexit case is over. In fact, we are talking about the case of Gina Miller and other claimants against the Secretary of State for Exiting the European Union, which has had an enormous political significance given its capacity to control the constitutionality of the Governments' actions.

The Supreme Court has carefully repeated and reasoned the legal grounds of the appealed ruling.

Firstly, the Supreme Court determines the scope of its powers. The Court does not decide upon the option adopted as a consequence of the referendum results. On the contrary, it does on the steps to follow towards withdrawal from the EU according to domestic law. This control places the Government action within the scope of the Constitution and the rule of law.

According to this assumption, the legal problem focuses on determining if the Crown has prerogative powers to freely decide to apply Article 50 of the Treaty on European Union on the notification of the country's withdrawal.

The Court recognizes the Government's power to enter into and withdraw from treaties. Based on precedents, however, the Court adds that the intervention of the Parliament is a requirement if the rights of the citizens are affected by these treaties.

UK withdrawal from the EU directly affects UK citizenship's rights. Additionally, the 1972 Act on UK accession to the EU did not expressly authorize the Government to revoke the accession agreement and decide upon the EU withdrawal. Once Article 50 starts to operate the EU withdrawal becomes irreversible and involves a deep change in UK domestic law and in the rights of the citizenship. This is the reason why such decision requires parliamentary authorization. That is, it requires a law, and this law does not exist.

The Court also recognizes the importance and high political value of the 2016 referendum:

“Thus, the referendum of 2016 did not change the law in a way which would allow ministers to withdraw the United Kingdom from the European Union without legislation. But that in no way means that it is devoid of effect. It means that, unless and until acted on by Parliament, its force is political rather than legal. It has already shown itself to be of great political significance.”

In essence, while the political value of the referendum is acknowledged, it does not allow the results (clearly favoring withdrawal from the EU) to oppose the principles laid down by the UK Constitution. The Parliament’s sovereignty and the rule of law are the essence of democracy, for which reason the decision arising from the referendum shall be carried out in compliance with the constitutional rules and principles.

Now it is the Parliament who will decide if, and when, it starts the process laid down by Article 50 of the Treaty on European Union.

The Parliament will most probably respect the decision of the citizenship expressed through the referendum. At the same time, however, it will vindicate its preponderant constitutional role and remind the Government of their respective powers and of the fact that all institutions are subject to the Constitution. The Parliament will authorize the decision to withdraw from the EU albeit emphasizing that it is solely the Parliament who takes this sovereign decision.