

5 July 2022

Reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill



JUSTICE has been granted permission to intervene in the United Kingdom Supreme Court case of ***Reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill***.

The reference concerns the Abortion Services (Safe Access Zones) Bill (the “**Bill**”), which the Assembly of Northern Ireland passed on 24 March 2022, providing for measures which allow for the designation and enforcement of “safe access zones” around abortion clinics within Northern Ireland.

One of the Bill’s clauses makes it an offence for a person to act in a designated safe access zone “with the intent” of, or “reckless as to whether” their act has the effect of “influencing”, “directly or indirectly” a person attending a designated abortion clinic, their companions, or people working at the premises. The Attorney General for Northern Ireland has asked the Supreme Court to consider whether this constitutes a proportionate interference with rights to freedom of conscience, expression, and assembly in Northern Ireland, as protected under Articles 9, 10 and 11 of the European Convention on Human Rights (“**ECHR**”), because the clause does not include a “reasonable excuse” defence.

JUSTICE’s intervention argues that the lack of an express “reasonable excuse” defence does not make the Bill incompatible with the ECHR. Numerous criminal provisions applicable in Northern Ireland – and in the United Kingdom more broadly – are capable of engaging Articles 9, 10, and 11, and do not include an equivalent provision. Our position is that that criminal courts must always consider whether a conviction would be proportionate restriction when Articles 9, 10, or 11 ECHR apply, regardless of whether the offence has a “reasonable excuse” defence.

JUSTICE’s intervention concerns a narrow matter of statutory construction. It relates to the consideration of Articles 9, 10, and 11 ECHR in the context of a criminal trial, capable of impacting a broad range of criminal offences engaging those rights. It does not concern wider issues regarding abortion services in Northern Ireland, or safe zones more generally.

JUSTICE unequivocally supports reproductive rights and the ability to access abortion healthcare services privately, safely and with dignity. This is in accordance with Article 8 ECHR, and is especially important at a time where such rights are subject to threat – not least in the United States of America, following the overturning of the case of *Roe v Wade* (1973). We support the establishment of safe zones as an important tool to protect those rights.

JUSTICE’s Chief Executive, Fiona Rutherford, said:

“The European Convention on Human Rights is central to our devolution settlement, protecting the UK’s constitutional integrity. At its heart, this intervention is about safeguarding our fundamental freedoms across the UK, from Belfast to London, from Edinburgh to Cardiff, something which the new ‘Bill of Rights’ would severely undermine”.

Notes to Editors:

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system in the United Kingdom. For more information, please visit www.justice.org.uk.
2. JUSTICE is an experienced third party intervener with extensive expertise in intervening in cases involving important matters of public interest, especially those concerning the protection of fundamental rights. It has intervened in cases on matters of public importance, including before the Court of Appeal, the House of Lords, the UK Supreme Court, and the European Court of Human Rights. Notably, JUSTICE has intervened in many cases where the jurisdiction of the courts to consider questions of the compatibility of State acts with the ECHR, including, by way of example:
 - a. *Al-Rawi v The Security Service* [2011] UKSC 34 concerning the use of secret evidence in a civil claim for damages;
 - b. *Secretary of State for Foreign and Commonwealth Affairs v Rahmatullah* [2012] UKSC 48 concerning the application of the writ of habeas corpus where a detainee is held outside the State;
 - c. *Smith v Ministry of Defence* [2013] UKSC 41 on the application of the ECHR to British troops overseas and exclusion of liability due to combat immunity;
 - d. *Belhaj and Others v Jack Straw & Others* [2017] UKSC 3 on the reach of the doctrines of sovereign immunity and foreign act of state, which could not displace the courts' jurisdiction to hear claims alleging UK involvement in human rights violations by foreign governments; and
 - e. *R (Hallam & Nealon) v Secretary of State for Justice* [2019] UKSC 2 (on appeal to the European Court of Human Rights), concerning access to compensation for victims of miscarriages of justice.
3. The Northern Ireland Act 1998 provides that all of the Assembly's laws must be compatible with the ECHR, otherwise they will fall outside of its competence, and allows the Attorney General of Northern Ireland to ask the Supreme Court whether a clause of a bill is within its legislative competence. This reference seeks to establish whether one clause of the Bill is compatible, or can be read to be compatible, with the European Convention on Human Rights.
4. The relevant rights under the European Convention on Human Rights include Article 9 (Freedom of thought, conscience, and religion); Article 10 (Freedom of expression); and Article 11 (Freedom of assembly and association).
5. JUSTICE is represented *pro bono* by Raj Chada (Hodge Jones & Allen), Blinne Ní Ghrálaigh and Tim James-Matthews (Matrix Chambers).
6. The case is scheduled to be heard on 19 and 20 July 2022, and is listed on the Supreme Court's website [here](#).
7. Please direct queries to Maddy Breen, Membership and Communications Coordinator, mbreen@justice.org.uk.