

Supreme Court declares Northern Ireland Abortion Services ‘safe zones’ law compatible with European Convention on Human Rights



Today, the UK Supreme Court gave judgment in the case of ***Reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill***. The reference, in which JUSTICE was an intervener, concerned the Abortion Services (Safe Access Zones) Bill (the “**Bill**”), which the Assembly of Northern Ireland passed on 24 March 2022. The Bill provides for the designation and enforcement of “safe access zones” around abortion clinics within Northern Ireland.

The case considers one of the Bill’s clauses, which 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 asked the Supreme Court to consider whether this constitutes a proportionate interference with the 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**”). The Attorney General argued that the offence was incompatible with the ECHR, in particular because the clause does not include a “reasonable excuse” defence. The case does not concern wider issues regarding abortion services in Northern Ireland, or safe zones more generally.

JUSTICE’s intervention concerned a narrow matter of statutory construction. Our position was that the lack of an express “reasonable excuse” defence did not make the Bill incompatible with the ECHR. Numerous criminal offences 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 defence. We argued that when these rights are engaged, criminal courts are obliged under the Human Rights Act to consider whether a conviction would be a proportionate restriction on those rights, regardless of whether the offence has a “reasonable excuse” defence.

The Supreme Court has held that the clause is compatible with the ECHR. Whilst we welcome enhanced legal protections for those accessing abortion services, we are disappointed that the Supreme Court declined to find that courts are required to undertake a proportionality exercise when deciding whether to convict in circumstances where Articles 9, 10 and/or 11 are engaged. In particular, the judgment failed to consider key arguments within our submissions, including the case of *Lee Brown v Public Prosecution Service for Northern Ireland* [2022] NICA 5, which determined that proportionality exercises are an important part of ensuring public bodies, including courts, adhere to appropriate human rights standards.

This finding has significant implications for protest rights in other contexts, from climate change to racial inequality, not least because there exist a significant range of criminal offences which engage Article 10 and 11 rights. As a result of the judgment, there is risk that legal certainty is undermined and that members of the public involved in protesting will not know whether their actions amount to a criminal offence. This concern is all the more palpable given the increased restrictions placed on protest rights by the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Bill, currently in the House of Lords.

JUSTICE’s Chief Executive, Fiona Rutherford, said:

“Today’s judgement has wider and potentially serious implications for those seeking to express legitimate grievances, from climate change to racial inequality. This is because the decision makes it harder for protesters, police, prosecutors, and courts to know with certainty whether certain actions constitute a crime, thereby undermining vital rights to freedom of expression and assembly.”

Notes to Editors:

1. JUSTICE is a cross-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 was represented *pro bono* by Raj Chada (Hodge Jones & Allen), Blinne Ní Ghrálaigh, Tim James-Matthews, and Robbie Stern (Matrix Chambers). Our submissions to the Supreme Court can be found on our website [here](#).
3. The Supreme Court heard the case on 19 and 20 July 2022. The judgment can be found on the Supreme Court's website [here](#).
4. 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.
5. 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).
6. 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. For more information, see our website [here](#).
7. Please direct queries to Maddy Breen, Membership and Communications Coordinator, press@justice.org.uk.