

DPP v Ziegler [2021] UKSC 23

Judgment date 25th June 2021

The Supreme Court ruled that deliberate obstructive conduct by protesters was capable of constituting a lawful excuse [on the basis of their Convention Rights of freedom of thought, conscience and religion, freedom of expression and freedom of assembly] for the purposes of an offence under s.137(1) the Highways Act 1980 Pt IX where the impact of that obstruction on other highway users was more than de minimis.

R. v Brown [2022] EWCA Crim 6, unreported, 14 January 2022, CA.

The CoA observed that it is not the case that, following the Supreme Court decision in *DPP v Ziegler and others*, there is now a free-standing ground for staying a criminal case as an abuse of process on the basis that the prosecution is disproportionate under the European Convention on Human Rights. The Court said the Ziegler decision appears to have been misunderstood by some as immunising peaceful protestors from arrest and from the operation of the criminal law in broad circumstances, which on any view it does not,

The Attorney General's Reference No. 1 of 2022 [2022] EWCA Crim 1259 [2023] 1 All E.R. 549 [2022] 9 WLUK 223 [2023] 1 Cr. App. R. 1

Judgment date 28th September 2022

The Lord Chief Justice in the Court of Appeal delivered judgment saying the prosecution and conviction for causing significant damage to property during protests would fall outside the protection of the Convention either because the conduct in question was violent or not peaceful, or alternatively (even if theoretically peaceful) prosecution and conviction would clearly be proportionate.

Violent or non-peaceful conduct would fall outside the protection of the Convention altogether. If significant damage were caused, even “peacefully”, it would not even be arguably disproportionate to prosecute and convict of criminal damage. They did not rule out the possibility that committing minor or transient criminal damage might be protected by convention rights; that would have to be assessed on a case-specific basis. But, that said, the circumstances in which such as assessment would be needed were very limited.

Reference by the Attorney General for Northern Ireland — Abortion Services (Safe Access Zones) (Northern Ireland) Bill [2022] UKSC 32, 2022 WL 17476832

Judgment date 7th December 2022

The Abortion Services (Safe Access Zones) (Northern Ireland) Bill cl.5(2)(a) was not outside the legislative competence of the Northern Ireland Assembly. The clause would make it an offence to do an act in a "safe access zone" with the intent of, or reckless as to whether it had the effect of, influencing women who were attending premises to access services relating to the lawful termination of pregnancy, those accompanying them and those working there. The failure to provide for a defence of reasonable excuse did not involve a disproportionate interference under ECHR art.9, art.10 and art.11 with the rights of those who sought to express opposition to the provision of abortion treatment services in Northern Ireland. DPP v Ziegler [2021] UKSC 23 considered: An assessment of proportionality was not a question of fact. The decision in DPP v Ziegler [2021] UKSC 23, [2022] A.C. 408, [2021] 6 WLUK 347 did not establish that every criminal conviction of protestors involved a restriction upon their ECHR rights, and had to be proved to be justified and proportionate after assessment of the particular facts. Where the exercise of rights under articles 9 to 11 was raised by the defendant to a criminal prosecution, there did not always have to be an assessment of the proportionality of any interference with those rights on the facts of the case. Where an offence was liable to give rise to an interference with the exercise of those rights, the ingredients of the offence did not have to include the absence of reasonable excuse in order for a conviction to be compatible with those rights. An assessment of proportionality in criminal proceedings did not necessarily have to be carried out by the body responsible for determining the facts at the trial of the offence.

Leigh and others v Commissioner of Police of the Metropolis [2022] EWHC 527 (Admin), unreported, 11 March 2022, DC.

Police had made unlawful decisions in March 2021 that a vigil prompted by the murder of Sarah Everard would be illegal in light of statutory restrictions to protect public health during the COVID-19 pandemic. The police should have started from the proposition that the right to freedom of expression and freedom of peaceful assembly might provide a reasonable excuse for organising a gathering, and should then have reached a rational and informed assessment as to whether the organisers could claim to have a reasonable excuse, which would have involved considering the public health risks and the steps taken to mitigate those risks.

By Paul Keleher KC