

**The Commonwealth Law Conference**  
**An Exploration of the Relevance of International Human Rights Law in**  
**National and Local Courts in Commonwealth Countries - A View from**  
**Northern Ireland**

**The Right Honourable Dame Siobhan Keegan**

**Lady Chief Justice of Northern Ireland**

**7<sup>th</sup> April 2025**

It is both an honour and a pleasure to be invited to the 24<sup>th</sup> Commonwealth Law Conference. I would like to thank the Commonwealth Lawyers Association for organising this wonderful event and providing us all with the opportunity to come together and share our experiences of how international human rights law is influencing domestic law across the Commonwealth.

I am going to speak to you today about how human rights law has formed the foundations of Northern Ireland's legal system, playing a crucial role during the peace process and continuing to influence today as a key tool in advancing social justice across Northern Ireland. International human rights law in particular has played an important role over the years, especially in the 1998 Good Friday Agreement<sup>1</sup> which enshrined human rights as a core principle.

I will start with some background. As many of you will be aware, 1969 saw the advent of the period of my jurisdiction's history known colloquially as "the Troubles", which involved some thirty years of civil and political unrest and the tragic loss of over 3000 lives. Following peace negotiations in the mid-1990s, the Good Friday, or Belfast, Agreement, was signed on 10 April 1998. The Agreement comprises a multi-party political agreement and an adjoining bilateral international treaty between the UK and Irish governments. It is

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<sup>1</sup> *The Belfast Agreement: An Agreement Reached at Multi-Party Talks on Northern Ireland* (Cm 3883, 1998).

prefaced upon the European Convention on Human Rights, setting out at the start that,

“The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights ..., with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency”,<sup>2</sup>

demonstrating the importance of international human rights law in framing rights perspectives in Northern Ireland.

Strand one of the Agreement provided for dedicated protection mechanisms to ensure state compliance with human rights standards. The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland provide oversight mechanisms to ensure that decisions and legislation of the devolved institutions do not infringe human rights.<sup>3</sup>

The status of the Good Friday Agreement was considered in the 2002 House of Lords case of *Re Robinson*<sup>4</sup> in which it was recognised that the Good Friday Agreement does not itself have the force of domestic law but is an interpretive aid to the Northern Ireland Act 1998 which gave legislative effect to the Agreement. This is perhaps somewhat unusual from a constitutional perspective but is also perhaps not surprising given, as Lord Bingham described it in *Robinson*, the “staccato” nature of the devolution arrangements in Northern Ireland, a situation that could be said to still subsist today.<sup>5</sup>

The significant influence of international human rights law in Northern Ireland can also be seen very clearly through the body of case law arising out of the

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<sup>2</sup> Ibid, Rights, Safeguards and Equality of Opportunity, paragraph 2.

<sup>3</sup> Ibid, Strand One, paragraphs 5(b) and 5(e).

<sup>4</sup> *Robinson v Secretary of State for Northern Ireland* [2002] UKHL 32.

<sup>5</sup> Ibid, paragraph 7.

Troubles and in particular the development of article 2 ECHR, right to life, jurisprudence.

Prior to the implementation of the Human Rights Act 1998 which incorporated the European Convention into domestic law, litigants in our jurisdiction turned to the European Court of Human Rights to seek affirmation of their human rights, particularly with regard to the right to life and the effectiveness of investigations involving the state. Decisions of the European Court which emanated from Northern Ireland include *McCann v UK*<sup>6</sup>, in which the Court signalled the birth of the procedural obligation to investigate deaths under article 2. In *Jordan v UK*<sup>7</sup>, the European Court also considered the procedural obligation set out by article 2 of the European Convention. The threshold for investigations into killings was raised once again, with the court developing the jurisprudence so as to require that investigations must be thorough, prompt, impartial and designed to ensure the accountability and responsibility of state agents and armed forces for related deaths.

Following the enactment of the Human Rights Act, domestic courts have been called upon to interpret the European Convention and, in particular for Northern Ireland, the question of the temporal scope of article 2, on a number of occasions. The line of authority began with the UK House of Lords case of *McKerr*<sup>8</sup> in which it was decided that the Human Rights Act 1998 did not have retrospective effect and therefore that the article 2 ECHR obligation to investigate a death did not apply where the death occurred prior to the implementation of the Act. The jurisprudence has since developed over time, informed by developments in the European Court's jurisprudence with the current position to be found in another Northern Ireland case, that of *In re Dalton*.<sup>9</sup> In *Dalton*, the Supreme Court found,

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<sup>6</sup> *McCann v UK* (1996) 21 EHRR 97.

<sup>7</sup> *Jordan v UK* (2003) 37 EHRR 2.

<sup>8</sup> *Re McKerr (AP) (Respondent) (Northern Ireland)* [2004] UKHL 12.

<sup>9</sup> *In re Dalton* [2023] UKSC 36.

in broad summary, that the article 2 obligation to investigate is capable of applying only to deaths which occurred within an outer period of 12 years before the Human Rights Act came into force on 2 October 2000, unless the Convention values test is met.

These cases illustrate not only how international human rights law has had a clear and significant influence in Northern Ireland but also that cases from Northern Ireland have too played a pivotal role in contributing to human rights law in the UK and in European Council states.

Turning to more recent constitutional developments, the UK's withdrawal from the European Union meant that Northern Ireland was in a unique position requiring detailed and intricate bespoke arrangements and so, as part of the EU/UK Withdrawal Agreement, the UK and Irish governments entered into the Ireland/Northern Ireland Protocol.

The Northern Ireland Protocol, as it is commonly termed, was aimed at ensuring that the principles and constitutional structure established by the Good Friday Agreement remained steadfast post-Brexit, within the context of human rights and beyond. To that end, Article 2(1) of the Protocol imposes an international law obligation on the UK to:

“Ensure that no diminution of rights, safeguards, or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal of the European Union.”

By virtue of the European Union (Withdrawal Agreement) Act 2020, the rights and obligations arising under the Withdrawal Agreement, including those contained in the Protocol, are recognised and available in domestic law. To complete the picture, the Windsor Framework was adopted subsequently to resolve disagreement between political parties in Northern Ireland about certain aspects of the Protocol.

The resulting constitutional arrangement is undoubtedly complex and so, perhaps inevitably, issues concerning the Protocol have come before the Northern Ireland Courts in recent years. One such example is the case of *Allister and Others*<sup>10</sup> which progressed to the UK Supreme Court. The issues in that case included the claimed incompatibility of the Northern Ireland Protocol and related secondary legislation with the Acts of Union of 1800, which outlined an equal footing guarantee for all citizens of GB and Ireland, generally in respect of trade and treaties, and the Northern Ireland Act 1998. There was also a question as to the correct approach to statutory interpretation to resolve a conflict between the constitutional provisions of constitutional Acts. It was held that all enactments are to have effect subject to the provision of the European (Withdrawal) Act 2018 which incorporated the Northern Ireland Protocol into UK law. Consequently, the pre-existing constitutional statutes remained in place but were modified to the extent, and for the period during which, the Protocol applies.

The Northern Ireland Protocol and the application of the EU Charter of Fundamental Rights has also received particular attention in Northern Ireland, coming to the fore in the recent high profile case of *Re Dillon*<sup>11</sup>. In this case, it was argued that the conditional immunity provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, an Act of the Westminster Parliament aimed at dealing with the legacy of the Troubles, should be disapplied by virtue of Article 2 of the Northern Ireland Protocol/Windsor Framework.

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<sup>10</sup> *In the matter of an application by James Hugh Allister and others for Judicial Review* [2023] UKSC 5.

<sup>11</sup> *Re Dillon* [2024] NICA 59.

The relevant underpinning EU law was Articles 11 and 16 of the Victims Directive<sup>12</sup>, along with the Victim Charter which has been given effect in domestic law in order to “implement a range of obligations arising out of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime.”<sup>13</sup>

The applicants submissions included rights-based arguments, and sought to rely upon, among other things, the EU Charter of Fundamental Rights.

The Court of Appeal found that the EU Charter acts as an aid to interpretation of relevant EU law provisions and therefore EU Charter rights apply only when a state is implementing EU law. On that basis, therefore, certain rights provided in the EU Charter are not directly justiciable.

This case is an example of how the courts in Northern Ireland have looked at international instruments in relation to historic cases arising from the Troubles. As an application for permission to appeal has been lodged with the UK Supreme Court in this case I will say no more.<sup>14</sup>

The courts in Northern Ireland have also looked at international instruments when addressing social justice issues such as abortion. One such example is the case of *Re SPUC*<sup>15</sup>. This case was brought by the Society for the Protection of the Unborn Child, known as ‘SPUC,’ which challenged the constitutional validity of regulations providing for abortion in Northern Ireland on the basis that they offended the Northern Ireland Act 1998 and Article 2 of the Northern Ireland Protocol with regard to persons with disabilities. In the submissions, reliance

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<sup>12</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing council Framework Decision 2001/220/JHA. See also Victim Charter.

<sup>13</sup> Explanatory Memorandum to the Victim Charter (Justice Act (Northern Ireland) 2015) Order (Northern Ireland) 2015, paragraph 2.1.

<sup>14</sup> <https://www.supremecourt.uk/cases/uksc-2025-0013>

<sup>15</sup> *Re SPUC* [2023] NICA 35.

was placed upon the protections offered by the UN Convention on the Rights of Persons with Disabilities.

In the Court of Appeal, we held that the UN Convention on Rights of Persons with Disabilities is an unincorporated international treaty which binds the UK government on the international plain and is not part of domestic law. Thus the only way it can be applied is if domestic legislation is passed incorporating it into domestic law.

This is an example of a reiteration of an important principle with regard to the status of international treaties and conventions, as UK courts must ensure they interpret the law that Parliament has directed with reasonable legal certainty, in line with our domestic legal system.<sup>16</sup>

Another key Northern Ireland case which addressed the issue of abortion is the reference to the UK Supreme Court by the Attorney General for Northern Ireland of the Abortion (Safe Access Zones) (Northern Ireland) Bill, a case in which I had the honour of being a member of the Supreme Court panel.<sup>17</sup> This case is an example of the facility for the Attorney General of Northern Ireland to refer draft legislation to the Supreme Court where she considers that an issue of ECHR compatibility arises, thereby providing a further protective mechanism for human rights in Northern Ireland.

Under the Northern Ireland Act 1998<sup>18</sup>, the legislative competence of the Northern Ireland's legislative assembly is limited. Any provision of a Bill is outside the Assembly's legislative competence, and therefore cannot become law, if it is incompatible with any of the rights protected by the European Convention.

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<sup>16</sup> Lord Sales, *Retained EU Law: Purposive Interpretation when the Constitutional Architecture Changes*, Annual Lecture of the UK Association for European Law, 20 November 2023.

<sup>17</sup> *Reference by the AG for NI – Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32.

<sup>18</sup> Northern Ireland Act 1998, sections 6(1) and 6(2)(c).

The purpose of the Bill was to protect women accessing abortion and associated services by prohibiting anti-abortion protests within “safe access zones” around abortion clinics and related premises.

The Bill’s wider context included a February 2018 report<sup>19</sup> by the UN Committee on the Elimination of Discrimination against Women, which monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women<sup>20</sup> or ‘CEDAW’. This report found that the UK was responsible for grave and systematic violations of women’s rights and one of the recommendations which focused on Northern Ireland was that the UK should “protect women from harassment by anti-abortion protestors by investigating complaints and prosecuting and punishing perpetrators”.<sup>21</sup>

The Attorney General’s reference to the Supreme Court concerned clause 5(2)(a) of the Bill, which made it a criminal offence “to do an act in a safe access zone with the intent of, or reckless as to whether it has the effect of ... influencing a protected person, whether directly or indirectly.” The persons protected by clause 5(2)(a) included patients, persons accompanying them, and staff who work at the premises where abortion services are provided.

The Attorney General was concerned that, because clause 5(2)(a) of the Bill did not provide any defence of reasonable excuse, it disproportionately interfered with anti-abortion protesters’ rights to freedom of thought, conscience and religion, freedom of expression, and freedom of assembly as protected by articles 9, 10 and 11 of the ECHR.

In considering the question of whether the restriction was necessary in a democratic society to achieve the legitimate aims pursued the Supreme Court

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<sup>19</sup> *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.*

<sup>20</sup> 1979.

<sup>21</sup> Paragraph 86(g).



looked at whether there was a fair balance between the rights of the individual and the general interest of the community, including the rights of others. A number of considerations were of particular importance, among which was that the Safe Access Zones Bill was intended to implement the UK's international obligations under CEDAW, and more specifically, the recommendation about protecting women from harassment by anti-abortion protestors.

A wide margin of appreciation is generally appropriate in situations where it is necessary to strike a balance between competing Convention rights, especially in a context, such as abortion, which raises sensitive and controversial questions of ethical and social policy.<sup>22</sup> Ultimately, the Court concluded that the Attorney General's Reference should be answered in the negative – the referred provision in the Bill was not incompatible with the Convention rights of those who seek to express opposition to the provision of abortion services in Northern Ireland.

Even though the clause under scrutiny was directed against non-violent protest, it was in an area where women wished to access medical services. In the Court's view such behaviour could be said to amount to improper influence against the individual rather than the policy itself, the opponents of which could validly protest outside of the immediate clinic grounds.

The courts in Northern Ireland have also looked at international human rights law in the context of same sex marriage. *Re Close & Others*<sup>23</sup> was quite a nuanced case in which the Northern Ireland Court of Appeal considered in detail the jurisprudence of the European Court of Human Rights which ultimately did not impose an obligation on a Council of Europe state to provide access to same sex marriage. UK domestic jurisprudence is clear that "courts should, in the absence of some special circumstances, follow any clear and constant jurisprudence of the

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<sup>22</sup> See *A, B and C v Ireland* (2011) 53 EHRR 13.

<sup>23</sup> [2020] NICA 20.

Strasbourg court.”<sup>24</sup> The corollary of this position is that domestic courts are required “to keep pace with the Strasbourg jurisprudence as it evolves over time: no more, but certainly no less.”<sup>25</sup>

However more and more member states were granting legal recognition to same sex marriage to include our neighbours in England & Wales, Scotland and the Republic of Ireland. The law in this area was therefore picking up pace rapidly. Article 6(6)(e) of the Marriage (Northern Ireland) Order 2003 prohibited same sex marriage in Northern Ireland.

The Northern Ireland Court of Appeal had to consider, as the European Court of Human Rights had granted states a margin of appreciation, whether intervention by a domestic court was appropriate in this “sensitive social issue”.<sup>26</sup> The law of marriage is a transferred matter within the competence of the Northern Ireland Assembly. The Court of Appeal however was satisfied that it was clear by the time of the delivery of the first instance judgment in this case in August 2017 that the absence of same-sex marriage in Northern Ireland discriminated against same-sex couples, that a fair balance between tradition and personal rights had not been struck and therefore the discrimination was not justified. Given the legislative developments at that time in 2020 the court held that there was no purpose in granting a declaration of incompatibility. Same sex marriage was granted legal recognition in Northern Ireland on 13 January 2020.<sup>27</sup>

Climate change litigation is another area on which I would like to touch briefly.

According to the Sabin Centre’s climate litigation database as of December 2024 there are now 2,895 climate litigation cases across the world.<sup>28</sup> In 2023, 24 cases

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<sup>24</sup> *R (Ullah) v Special Adjudicator* [2004] UKHL 26, paragraph 20.

<sup>25</sup> *R (Al-Skeini) v Secretary of State for Defence* [2007] UKHL 26, paragraph 105 & 106.

<sup>26</sup> *Re Close & Others* [2020] NICA 20 paragraphs [41] and [56].

<sup>27</sup> Following the enactment of the Northern Ireland (Executive Formation etc) Act 2019.

<sup>28</sup> Maria Antonia Tigre and Margaret Barry, ‘Climate Change in the Courts: A 2024 Retrospective’ (2024) Sabin Centre for Climate Change Law, Columbia Law School, page 3.

were filed in the UK, ranking it among the countries outside the US with the highest number of recorded cases for that year.<sup>29</sup>

The European Court has extended states' human rights obligations to implementing effective climate change policies.<sup>30</sup> In the UK, the recent Supreme Court judgment in *Finch v Surrey County Council and others*<sup>31</sup> illustrates the importance of thorough environmental impact assessments for oil and gas developers in the United Kingdom and different views in this area.

Northern Ireland has seen its share of climate jurisprudence in recent years, with innovative cases being brought to the High Court to challenge environmental policy and decision-making. One such case was that of *An Application by No Gas Caverns Ltd and Friends of the Earth Ltd*.<sup>32</sup> In this case the grant of a number of consents by the Minister for the Department of Agriculture, Environment and Rural Affairs in respect of the installation of an underground gas cavern in Larne Lough was successfully challenged on constitutional principles in the Court of Appeal. The court outlined with reference to the explanatory notes of the Climate Change Act (Northern Ireland) 2022 that, 'climate change is a defining crisis of our time on a global and national scale.'<sup>33</sup> The court held that,

"An agreed metric in this case is the path to net zero targets by 2050 which followed the signing of the Paris Agreement in 2016 and ensuing instruments. As a result, Northern Ireland has alongside the rest of the United Kingdom committed to net zero targets by 2050. This involves the phasing out of fossil fuels and the promotion of renewable energy. This policy drive found

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<sup>29</sup> Joana Setzer and Catherine Higham, 'Global trends in climate change litigation: 2024 snapshot' (2024) Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, page 2.

<sup>30</sup> *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [2024] ECHR 304.

<sup>31</sup> *Finch v Surrey County Council and Others* [2024] UKSC 20.

<sup>32</sup> *No Gas Caverns and Friends of the Earth's Application* [2024] NICA 50.

<sup>33</sup> *Ibid*, paragraph 10.

expression in the Northern Ireland Energy Strategy issued in December 2021 and more recently received legislative imprimatur in the Climate Change Act (Northern Ireland) 2022..."<sup>34</sup>

However, as this case demonstrates, environmental cases thus far have been brought on constitutional principles, rather than rights-based arguments though implementation of the Climate Change Act (Northern Ireland) 2022 has provided a legal basis to challenge environmental decision-making which fails to meet domestic and/or international standards. We can therefore anticipate that there will be rights-based cases of this type coming before the Northern Ireland courts in the not too distant future.

To end, I want to say this. The Northern Ireland constitutional arrangements have been, and remain, nuanced, complex, delicate and shifting. International human rights law has had a significant influence on our constitutional arrangements over the years, forming the foundations of the path to peace, particularly through the Good Friday Agreement, and continuing to inform the present day framework as our modern society develops and adapts to societal changes.

Thank you.

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<sup>34</sup> Ibid, paragraph 9.