

The Queen (on the application of Crowter and Others)

V

Secretary of State for Health and Social Care

Press Summary

Important note for press and public: this summary forms no part of the court’s decision.

It is provided so as to assist the press and the public to understand what the court decided

1. In this claim for judicial review the Claimants sought a declaration that section 1(1)(d) of the Abortion Act 1967, as amended, is incompatible with the European Convention on Human Rights (“ECHR”), as well as some other remedies. The High Court, sitting as a Divisional Court (that is a court with more than one judge), has today (23 September 2021) dismissed that claim. The joint judgment of the Court was given by Lord Justice Singh and Mrs Justice Lieven.

2. At para. 5 of its judgment the Court said:

“The issues which have given rise to this claim are highly sensitive and sometimes controversial. They generate strong feelings, on all sides of the debate, including sincere differences of view about ethical and religious matters. This Court cannot enter into those controversies; it must decide the case only in accordance with the law.”

3. The First Claimant is a 25 year old woman with Down’s Syndrome (“DS”). She pursued her studies up to NVQ level. She is employed and lives in her own flat. She recently got married. She has campaigned to change attitudes towards people with DS and in particular for the removal of what she considers to be the discriminatory provisions of the 1967 Act. The Second Claimant is the mother of

the Third Claimant. During her pregnancy with the Third Claimant, at 35 weeks gestation, he was identified as being very likely to have DS. The Third Claimant is now two years old and has DS.

4. Section 1(1)(d) of the Abortion Act provides:

“Medical termination of pregnancy

(1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith—

...

(d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.”

5. The Claimants relied on various rights in the ECHR: Article 2 (the right to life); Article 3 (freedom from torture and inhuman or degrading treatment); Article 8 (right to respect for private life); and Article 14 (freedom from discrimination in the enjoyment of the other Convention rights).
6. The Court rejected the argument based on Article 2 at paras. 48-71 and the argument based on Article 3 at paras. 72-83, saying that there was no precedent from the European Court of Human Rights that a foetus has rights under the ECHR.
7. The Court rejected the argument based on Article 8 at paras. 84-135, finding that the legislation does not interfere with Article 8 rights. The Court went on to say that, even if there is such an interference, it is in accordance with law and is objectively justified as a proportionate measure which falls within the margin of

judgement enjoyed by Parliament in striking a balance between the rights of pregnant women and the interests of the foetus.

8. For essentially the same reasons, at paras. 136-147, the Court found that any difference of treatment under Article 14 is also justified.
9. The Court granted a request from the Claimants to have until 27 September 2021 to make any application for permission to appeal.