

Article 50 case referred to the Court of Justice of the EU

by Joanna Cherry QC MP

In the wake of Theresa May's Salzburg humiliation the British government was dealt a double blow when Scotland's most senior judges [referred the question](#) of whether the Article 50 notification can be unilaterally withdrawn to the Court of Justice of the EU.

The case is now likely to be heard at the Luxembourg court before Xmas.



Joanna Cherry QC MP

I was one of the cross-party petitioners in the case along with my SNP colleague Alyn Smith MEP, Andy Wightman MSP and Ross Greer MSP from the Scottish Greens and Labour MEPS Cathy Stihler and David Martin MEP. Jolyon Maugham QC of the Good Law Project who organised the crowd funding of the case was also a Petitioner.

We argued that Article 50 can be revoked if MPs vote to do so, and given the mess the negotiations are currently, we need to know whether this is an option. Legal opinion on whether Article 50 can be revoked without the permission of the other 27 member states is divided.

The UK Government tried to argue the question was hypothetical because it has no intention of cancelling the Article 50 process.

However Scotland's most senior judge, the Lord President, Lord Carloway, said that whether to revoke Article 50 is up to Parliament not the UK Government.

He stated : "It is clear, in terms of the European Union (Withdrawal) Act 2018, that MPs will be required to vote on whether to ratify any agreement between the UK Government and the EU Council. If no other proposal is proffered, a vote against ratification will result in the UK's departure from the EU on 29 March 2019; a date which is looming up. It seems neither academic nor premature to ask whether it is legally competent to revoke the notification and thus to remain in the EU.

"The matter is uncertain in that it is the subject of a dispute...The answer will have the effect of clarifying the options open to MPs in the lead up to what is now an inevitable vote.

"Whatever the interest of MSPs and MEPs, MPs have an interest in seeing the matter resolved. On that basis the petition is competent at least at the instance of an MP."

I am proud to be the sole MP who was prepared to take this case to appeal after we had failed to persuade the lower courts.

Given Theresa May's humiliation at the Salzburg summit the answer to this question is now particularly important.

I look forward to the Court of Justice of the European Union's ruling.

Joanna Cherry is SNP MP for Edinburgh South West.