



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 136

December 2010

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***A, B and C v. Ireland [GC] - 25579/05***

Judgment 16.12.2010 [GC]

**Article 8**

**Article 8-1**

**Respect for private life**

Restrictions on obtaining an abortion in Ireland: *violation; no violation*

*Facts* – Abortion is prohibited under Irish criminal law by sections 58 and 59 of the Offences Against the Person Act 1861. A referendum held in 1983 resulted in the adoption of Article 40.3.3 of the Irish Constitution (the Eighth Amendment) whereby the State acknowledged the right to life of the unborn and, with due regard to the equal right to life of the mother, guaranteed to respect the mother in national laws. That provision was interpreted by the Supreme Court in its seminal judgment in the *X* case in 1992 as meaning that abortion in Ireland was lawful if there was a real and substantial risk to the life of the mother which could only be avoided by termination of her pregnancy. The Supreme Court stated at the time that it found it regrettable that the legislature had not enacted legislation regulating that constitutionally guaranteed right. A further referendum in 1992 resulted in the Thirteenth and Fourteenth Amendments to the Constitution, which lifted a previously existing ban on travelling abroad for abortion and allowed information about lawfully available abortions abroad to be disseminated in Ireland.

All three applicants were resident in Ireland at the material time, had become pregnant unintentionally and had decided to have an abortion as they considered that their personal circumstances did not permit them to take their pregnancies to term. The first applicant was an unemployed single mother. Her four young children were in foster care and she feared that having another child would jeopardise her chances of regaining custody after sustained efforts on her part to overcome an alcohol-related problem. The second applicant did not wish to become a single parent. Although she had also received medical advice that she was at risk of an ectopic pregnancy, that risk had been discounted before she had the abortion. The third applicant, a cancer patient, was unable to find a doctor willing to advise whether her life would be at risk if she continued to term or how the foetus might have been affected by contraindicated medical tests she had undergone before discovering she was pregnant. As a result of the restrictions in Ireland all three applicants were forced to seek an abortion in a private clinic in England in what they described as an unnecessarily expensive, complicated and traumatic procedure. The first applicant was forced to borrow money from a money lender, while the third applicant, despite being in the early stages of pregnancy, had to wait for eight weeks for a surgical abortion as she could not find a clinic willing to provide a medical abortion (drug-induced miscarriage) to a non-resident because of the need for follow-up. All three applicants experienced complications on their return to Ireland, but were afraid to seek medical advice there because of the restrictions on abortion.

In their applications to the European Court, the first and second applicants complained that they were not entitled to abortion in Ireland as Irish law did not allow abortion for reasons of health and/or well-being, but solely when there was an established risk to the mother's life. The third applicant complained that, although she believed her pregnancy put her life at risk, there was no law or procedure through which she could have established that and so obviate the risk of prosecution if she had an abortion in Ireland.

*Law – Article 8:* While Article 8 could not be interpreted as conferring a right to abortion, the first and second applicants' inability to obtain an abortion in Ireland for reasons of health and/or well-being, and the third applicant's alleged inability to establish her qualification for a lawful abortion in Ireland, came within the scope of their right to respect for their private lives.

(a) *First and second applicants* – Having regard to the broad concept of private life within the meaning of Article 8, including the right to personal autonomy and to physical and psychological integrity, the prohibition of the termination, for reasons of health and/or well-being, of the first and second applicants' pregnancies amounted to an interference with their right to respect for their private lives. That interference was in accordance with the law and pursued the legitimate aim of the protection of the profound moral values of a majority of the Irish people as reflected in the 1983 referendum.

In view of the acute sensitivity of the moral and ethical issues raised, a broad margin of appreciation was, in principle, to be accorded to the Irish State in determining whether a fair balance had been struck between the protection accorded under Irish law to the right to life of the unborn and the conflicting rights of the first and second applicants to respect for their private lives. Although there was a consensus amongst a substantial majority of the Contracting States towards allowing abortion on broader grounds than those accorded under Irish law, that consensus did not decisively narrow the broad margin of appreciation of the State. Since there was no European consensus on the scientific and legal definition of the beginning of life and since the rights claimed on behalf of the foetus and those of the mother were inextricably interconnected, the margin of appreciation accorded to the State as regards how it protected the unborn necessarily translated into a margin of appreciation as to how it balanced the conflicting rights of the mother.

A choice had emerged from the lengthy, complex and sensitive debate in Ireland as regards the content of its abortion laws. While Irish law prohibited abortion in Ireland for health and well-being reasons, it allowed women the option of seeking an abortion abroad. Legislative measures had been adopted to ensure the provision of information and counselling about the options available, including abortion services abroad, and to ensure any necessary medical treatment both before and after an abortion. The importance of the role of doctors in providing information and their obligation to provide all appropriate medical care, notably post-abortion, was emphasised in the Crisis Prevention Agency's work and documents and in professional medical guidelines. The first two applicants had not demonstrated that they had lacked relevant information or necessary medical care as regards their abortions.

Accordingly, regard being had to the right to lawfully travel abroad for an abortion with access to appropriate information and medical care in Ireland, the prohibition in Ireland of abortion for health and well-being reasons, based on the profound moral views of the Irish people, had not exceeded the State's margin of appreciation. The impugned prohibition had thus struck a fair balance between the first and second applicants' right to respect for their private lives and the rights invoked on behalf of the unborn.

*Conclusion:* no violation in respect of first and second applicants (eleven votes to six).

(b) *The third applicant* – The third applicant’s complaint concerned the respondent State’s alleged failure to introduce a procedure by which she could have established whether she qualified for a lawful abortion in Ireland on grounds of the risk to her life. She had a rare form of cancer and, on discovering she was pregnant, had feared for her life as she believed that her pregnancy increased the risk of her cancer returning and that she would not obtain treatment in Ireland while pregnant. The Court considered that the establishment of any such relevant risk to her life caused by her pregnancy clearly concerned fundamental values and essential aspects of her right to respect for her private life.

There were a number of concerns regarding the effectiveness of the only non-judicial means of determining such a risk – the ordinary medical consultation process – on which the Government had relied. The first of these was that the ground upon which a woman could seek a lawful abortion in Ireland – a real and substantial risk to life which could only be avoided by a termination of the pregnancy – was expressed in broad terms. No criteria or procedures had been laid down in Irish law governing how that risk was to be measured or determined. Nor was there any framework in place to resolve, in a legally binding way, differences of opinion between a woman and her doctor or between different doctors. Against this background of substantial uncertainty, it was evident that the criminal provisions of the 1861 Act would constitute a significant chilling factor for both women and doctors in the medical consultation process, with women risking conviction and doctors risking both conviction and disciplinary action.

As to the judicial procedures that had been proposed by the Government, a constitutional action to determine the third applicant’s qualification for a lawful abortion in Ireland was not an effective means of protecting her right to respect for her private life. Constitutional courts were not the appropriate fora for the primary determination, which would largely be based on medical evidence, of whether a woman qualified for an abortion and it was inappropriate to require women to take on such complex constitutional proceedings when their underlying constitutional right to an abortion in the case of a qualifying risk to life was not disputable. Nor was it clear how an order requiring doctors to carry out an abortion would be enforced. As to the Government’s submission that the third applicant could have made an application under the European Convention on Human Rights Act 2003 for a declaration of incompatibility of the relevant provisions of the 1861 Act and damages, such a declaration placed no legal obligation on the State to amend domestic law and could not form the basis of an obligatory award of monetary compensation.

Consequently, neither the medical consultation nor litigation options constituted effective and accessible procedures that would allow the third applicant to establish her right to a lawful abortion in Ireland. The uncertainty generated by the lack of legislative implementation of Article 40.3.3 of the Constitution and by the lack of effective and accessible procedures to establish a right to an abortion had resulted in a striking discordance between the theoretical right to a lawful abortion in Ireland and the reality of its practical implementation. No convincing explanation had been forthcoming for the failure to implement Article 40.3.3, despite recognition that further legal clarity was required. In sum, the authorities had failed to comply with their positive obligation to secure to the third applicant effective respect for her private life by reason of the absence of any implementing legislative or regulatory regime providing an accessible and effective procedure by which she could have established whether she qualified for a lawful abortion in Ireland.

*Conclusion:* violation in respect of the third applicant (unanimously).

Article 41: EUR 15,000 to the third applicant in respect of non-pecuniary damage.

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