



BRIEFING ON A, B AND C v IRELAND

## Briefing on A, B and C v Ireland

On 15 July 2005 two female Irish nationals and one female Lithuanian national, all resident in Ireland, lodged a case with The European Court of Human Rights (ECHR) against the lack of availability of abortion in Ireland. All three women became pregnant in Ireland but because the law does not permit abortion they travelled to England to terminate their pregnancies. Their application to the ECHR argues that the constraints on abortion in Ireland breach various Articles of the European Convention on Human Rights. The pro-abortion lobby has taken up the case and is using the women as pawns to bring abortion on demand to Ireland in a manner that would allow it to be legally extended to all member States.

This document shows how the claims made in the application have no legal basis and that the comments made by third party observers, including the Government of Lithuania, Centre for Reproductive Rights, The International Reproductive and Sexual Health Law Programme, Doctors for Choice and British Pregnancy Advisory Service, are flawed. It sets out how the Irish Constitution protects the rights of the unborn in a manner that is democratically consistent with the beliefs of the Irish people and that far from contravening the European Convention it staunchly adheres to the human rights of both the unborn and their mothers as set out in it.

### **1) Pro-life laws in Ireland uphold the human rights set out in the European Convention**

#### ***a) The right to life, Article 2***

The applicants argue that the restrictions on abortion in Ireland compromise women's right to life. This is untrue as Ireland upholds the right to life by protecting *all* human life from the moment of conception. This is enshrined in its Constitution: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right" (Article 40.3.3). The lives of the unborn are given equal status with the lives of the women who bear them. The attempt to interpret Article 2 as requiring the provision of abortion so that women may not endanger their lives by continuing with their pregnancy fails on two counts: firstly, there is no negative right that requires States to permit the taking of one life to save another and secondly, to do so would in fact set up a new right in opposition to the right to life as set out in Article 2.

#### ***b) Prohibition of torture, inhuman or degrading treatment, Article 3***

Ireland's denial of abortion cannot be defined as "torture, inhuman or degrading treatment or punishment" because it requires such behaviour to be inflicted intentionally and to be directed towards gaining information or intimidation. The State does not know at any one point in time which



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women may be pregnant and therefore cannot be accused of deliberately administering something as extreme as torture on such women.

### *c) Right to privacy, Article 8*

This Article states that no public authority shall be allowed to interfere with the individual's "right to respect for his private and family life". This right is not absolute but is qualified by the need to ensure the "protection of health and morals" and "protection of the rights and freedoms of others." Irish law is consistent with these clauses because in the first case the adverse consequences of abortion on women's health compromises their right to "bodily integrity" and in the latter case Irish law recognises that pregnancy is not an entirely private matter and the rights of the unborn must be recognised in conjunction with the woman's rights to privacy.

This claim of breaching Article 8 is particularly important because of a recent case known as *Tysiac v. Poland*. The court ruled that Poland's "abortion" laws violated ECHR Article 8 with respect to "private life" because the law did not provide a procedure for handling patient-doctor disputes over the "threat to health" exception in its national law. The judges expanded "private life" to include the right to health and in doing so created an implied procedural right to abortion. It is a point of major concern that similar grounds were used in the United States in the *Roe vs Wade* judgement which legalised abortion in America. Many experienced pro-life organisations believe that the *Tysiac* case has set the dangerous precedent for the Court to expand this newly found right to declare a presumed "right to an abortion."

However, Irish law is substantially different to Polish law: in Poland abortion was already recognised in certain circumstances whereas Ireland only allows actions that may end the life of the unborn child if it is to save the mother's life. Under the terms of Article 8 therefore Irish law does not violate the right to "private life" as restrictions on abortion in Ireland exist in a law which is clear, reasonable and necessary. And secondly, Irish law has been adopted by referendum, confirmed by the Supreme Court and supported by the court in *D v Ireland*. Under the circumstances Ireland's laws should not be subject to the ruling in the *Tysiac* case.

### *d) Effective remedy, Article 13*

The applicants did not bring their case before an Irish Court and therefore did not seek to exhaust all domestic remedies as: "The Court may only deal with matter after all domestic remedies have been exhausted" (European Court of Human Rights, Article 35).



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### *e) Discrimination, Article 14*

Access to abortion is not a right guaranteed by the Irish Convention and so Ireland cannot be accused of discriminating against the applicants. Conversely, allowing abortion would permit discrimination towards unborn children as well as posing a right in direct opposition of Article 2's foundational right to life. If the concept of discrimination is applied to abortion directly then restricting it to earlier gestational ages – as it is in most States that permit abortion – is in itself a form of discrimination. Whereas, by not permitting any form of abortion Ireland does not impose any form of discrimination against the unborn.

### **2) Ireland's pro-life laws reflect the democratic and cultural beliefs of its people and should be afforded a wide margin of appreciation by the European Court**

The comments submitted by the pro-abortion lobby to the ECHR claim that Ireland's laws are inconsistent with international and comparative abortion laws are patently false. There is no international consensus on abortion. International law does not establish a right to abortion and neither does it define sexual and reproductive health as including abortion. In fact all major human rights documents demand the protection of all human life. The Universal Declaration of Human Rights, 1948, states that "everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind" and the United Nations Convention on the Rights of the Child, 1989, declares that "...the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." In fact Article 6(5) of the ICCPR, which states that capital punishment "shall not be carried out on a pregnant woman" in order to "save the life of an innocent unborn child", demonstrates a consensus in favour of the right to life of the unborn child by nation States.

The right to life of the unborn is explicitly recognised by many other nations and recent European case law has seen constitutional strengthening in such protection in Poland, Germany and Spain. 68 countries worldwide prohibit abortion entirely or permit it only to save the mother's life. These include countries like Malta, Andorra, Monaco and San Marino who are also signatories to the European Convention.

The Irish Constitution has been ratified by the Irish people who have consistently voted to protect the unborn in numerous national referenda. This is reflected in the respect shown by the European Union's confirmation that nothing in its treaties shall affect the application in Ireland of Article 40.3.3. In issues of public morals, and where there is no uniform European consensus, a wide margin of appreciation should be afforded to Member States to legislate themselves with respect to national interests.



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### **3) Abortion has many physical and psychological implications for women and failure to provide abortion does not compromise the care provided by doctors**

The fact that all three applicants in this case suffered complications following their abortions contradicts the argument made in the pro-abortion lobby's comments to the Court that relaxing abortion laws would result in greater welfare for women. A 25 year longitudinal study in New Zealand found that abortion is associated with an increased incidence of substance abuse and other mental health problems such as depression, anxiety and suicidal behaviour. Statistics in the *Royal College of General Practice* journal show that 10% of abortions cause physical complications including incomplete abortion, infection, perforation of the uterus and infertility. Abortion also causes an adverse effect on subsequent pregnancies, such as preterm births and a risk to the health of babies born in those pregnancies. Irish law is directed towards the best possible outcomes for mother and child and has resulted in providing Europe's lowest maternal mortality rate (compared to the UK which has far more liberal abortion laws and the figure is three times as high according to the 2005 *Report on Vital Statistics* for the Central Statistics Office) thus demonstrating its success in protecting women's health.

Doctors are not compromised in the care of their patients by not being able to perform abortions. The fourteenth amendment to the Irish Constitution permits doctors to give advice to women about lawful abortion services in other nation States and the Irish Medical Council recommends that "full support and follow up service made be available for all women whose pregnancies have been terminated, whatever the circumstances." In providing women with information and full abortion after care Irish doctors can in no way be accused of compromising their duties towards their patients.

### **4) The Irish State offers equal protection for the rights of the unborn and their mothers**

The interveners have accused Ireland of protecting pre-natal rights through disproportionate means but the Irish Constitution affords an equal right to life for the unborn and their mothers. The comments made by the pro-abortion lobby to the Court have wilfully misinterpreted Article 40 of the Irish Constitution by arguing that it awards the unborn child more rights than the mother. The life of the unborn depends upon the life of the mother and the Constitution seeks to protect both where possible.

The applicants argue that the guidelines for when a woman may have an abortion and when one may be necessary to save her life are unclear. Irish women are entitled to receive treatment to save their lives and if this treatment results in the death of the unborn child this is not abortion. In cases where the mother's life is at risk, such as an ectopic pregnancy, an abortion is permitted in order to save her. These guidelines are clear and there is no need for further clarification.



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A woman's right to make decisions about her body within the context of pregnancy is not absolute and must always be analysed in conjunction with the right to life of the unborn. The right to autonomous decision-making is not a right without restriction otherwise doctors would be obliged to carry out whatever procedure was requested of them without regard to their best clinical judgements. The Irish State does not suppress the rights of the mother but acknowledges they must be considered in tandem with the rights of the unborn child and that the right to life takes primacy over all other rights. With rights come responsibilities. The right to freedom is qualified by the rights of others. Freedom of choice therefore cannot be exercised to violate the rights of others.