

ABORTION IN IRELAND

THE LEGAL POSITION

THE EIGHTH AMENDMENT (1983)

Article 40.3.3°, also known as the Eighth Amendment, was introduced into the Constitution of Ireland by referendum in 1983. It reads:

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. (Constitution of Ireland, Article 40.3.3°)

The Eighth Amendment equates a pregnant woman's life with continued foetal development and it remains the single greatest barrier to access to abortion services in Ireland. This means that the health and well being of a pregnant woman comes second to that of a foetus, as demonstrated by the tragic and fully preventable death of Savita Halappanavar in 2012.

Article 40.3.3° violates international human rights standards and norms. Until it is repealed, the sexual and reproductive rights and health of women and girls in Ireland cannot be fully protected.

It should also be noted that the Irish state has taken an extremely conservative approach towards its responsibility to uphold this Article of the Constitution by enshrining harsh criminal sanctions in legislation, which are not a constitutional necessity.

THE 'X' CASE (1992)

In 1992, the Supreme Court ruled in Attorney General v X (known as the 'X' case) that abortion is legal in Ireland when the life of a pregnant girl or woman is at risk, including the risk of suicide.

The 'X' case centred on a 14-year old girl who was raped, and became pregnant as a result. X became suicidal fearing that she would have to continue to carry the pregnancy, and her parents made arrangements for her to travel to the UK for an abortion. In advance of travelling, X's family contacted the Gardaí to ask if DNA from the aborted foetus would be admissible as evidence in a rape trial. This query was referred to the Attorney General who sought an injunction to prevent the girl from travelling for the procedure, under Article 40.3.3°. An injunction was granted by the High Court, but overturned on appeal of the Supreme Court who found that a girl or woman had a right to an abortion under Article 40.3.3° if there was a "real and substantial risk" to her life, including the risk of suicide.

Following this judgment, the government held three referenda:

- 1** The first asked voters to overturn the Supreme Court judgment, removing suicide as a ground for abortion. This proposal was rejected by voters.
- 2** The second stated that the constitutional prohibition on abortion would not limit freedom of travel in and out of Ireland. This proposal was accepted by voters.

- 3** The third stated that the constitutional prohibition on abortion would not limit the right to distribute information about abortion services legally available in other countries. This proposal was accepted by voters.

As a result, Article 40.3.3° was amended to allow for the right to travel and the right to information. Thus, in its entirety, it reads:

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.

This subsection shall not limit freedom to travel between the State and another state.

This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state. (Constitution of Ireland, Article 40.3.3°)

A, B AND C V IRELAND (2010)

In December 2010, the European Court of Human Rights (ECtHR) ruled in a case taken by three women (known as A, B and C) against Ireland, challenging the country's restrictive abortion laws.

The Court found that Ireland's failure to implement the existing constitutional right to a lawful abortion in Ireland when a woman's life is at risk (as set out in the 'X' case judgment) violated Article 8 (Right to Respect for Family and Private Life) of the European Convention on Human Rights.

In response, the Irish government established an 'expert group' to advise them how best to implement the ECtHR judgment. This expert group reported in late 2012 and presented the government with a series of options. On the basis of this report, the government announced it would introduce legislation and regulations to address the matter.