



## A, B and C v. Ireland

A, B, and C v. Ir., App. No. 25579/05, Eur. Ct. H.R. 2032 (2010).

**Country:** Ireland

**Region:** Europe

**Year:** 2010

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Chronic and noncommunicable diseases, Health care and health services, Health information, Health systems and financing, Medicines, Mental health, Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Right of access to information, Right to bodily integrity, Right to due process/fair trial, Right to family life, Right to health, Right to life, Right to privacy

### Facts

Three applicants, two Irish nationals and one Lithuanian national, travelled to the United Kingdom in 2005 to have an abortion, each applicant believing they were not entitled to an abortion in Ireland. The first applicant decided to have an abortion to avoid jeopardizing her chances of reuniting her four previous children who were in foster care at that time. The second applicant primarily felt unprepared to become a single parent and eventually feared the possibility of an ectopic pregnancy. The third applicant suffered from a rare form of cancer and unexpectedly became pregnant when her cancer went into remission. She subsequently believed that there was a risk that her pregnancy would cause a relapse of the cancer and was thus concerned for her health and life. She was also concerned about a risk to the fetus if she continued to term without the possibility of obtaining clear advice. On their return to Ireland the applicants claim they experienced medical complications. In fact, Irish criminal law prohibited abortion under section 58 of the Offences Against the Person Act of 1861 and imposed a life imprisonment sentence for those convicted of the act. However, a referendum held in 1983 resulted in the Eighth Amendment to the Constitution (Article 40.3.3 of the Irish Constitution), which acknowledged the right to life of the unborn but with due regard to the equal right to life of the mother. Nevertheless, all three women complained that the impossibility for them to have an abortion in Ireland made the procedure unnecessarily expensive, complicated and traumatic. In particular, they claimed that the restriction on abortion stigmatized and humiliated them and risked damaging their health and, in the third applicant's case, even her life. Third parties also provided lengthy submissions both in favor and against widening access to abortion services in Ireland.

### Decision and Reasoning

There was no violation of Article 8 of the Convention, or of Article 13 taken in conjunction with Article 8, as regards the first and second applicants. The criminal sanctions in Ireland applicable to abortion had had no direct relevance to the complaints of the first and second applicant. The psychological and physical burdens that each applicant suffered had also not been sufficiently grave to represent inhuman or degrading treatment prohibited under Article 3. However, Ireland had breached the third applicant's right to respect for her private life under Article 8 given the failure to implement the existing Constitutional right to a lawful abortion in Ireland. Under Article 41 (just satisfaction) of the Convention, the Court held that Ireland was to pay the third applicant 15,000 euros in respect of non-pecuniary damage.

### Decision Excerpts

The Court recalls that a number of factors must be taken into account when determining the breadth of the margin of appreciation to be enjoyed by the State when determining any case under Article 8 of the Convention. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will normally be restricted. Where, however, there is no consensus within the Member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider. (at ¶ 232, p. 66).

Against this background of substantial uncertainty, the Court considers it 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, regardless of whether or not prosecutions have in fact been pursued under that Act.

Both the third applicant and any doctor ran a risk of a serious criminal conviction and imprisonment in the event that a decision taken in medical consultation, that the woman was entitled to an abortion in Ireland given the risk to her life, was later found not to accord with Article 40.3.3 of the Constitution. (atÂ Â¶ 254, p. 72-73).

The Court considers that the uncertainty generated by the lack of legislative implementation of Article 40.3.3, and more particularly by the lack of effective and accessible procedures to establish a right to an abortion under that provision, has resulted in a striking discordance between the theoretical right to a lawful abortion in Ireland on grounds of a relevant risk to a woman's life and the reality of its practical implementation. ( atÂ Â¶ 264, p. 74-75).

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