

The time is right for Ireland to reform its laws on abortion.

Blog Admin

In 2010, the European Court of Human Rights ruled that Ireland's implementation of abortion laws had violated the rights of a woman who was forced to travel abroad to terminate her pregnancy. [Liz Wicks](#) outlines the legal position, noting that although Ireland has some of the most restrictive abortion legislation in Europe, the Supreme Court has interpreted the Irish Constitution as permitting abortion in cases where the mother's life is at risk. It remains to be seen whether the Irish government's response to the ruling will lead to a wider reform process in which the country's abortion laws can be brought into step with other European states.



These are changing times for Ireland's controversial abortion laws. The recent [government announcement](#) that it will introduce legislation to clarify the circumstances in which abortion is permitted in Ireland is a significant development in an on-going saga on which moral and religious opinions differ greatly.

Ireland has very restrictive laws on abortion, which place it outside of an emerging European consensus in which over forty European states permit abortion where there is a risk to the woman's health. Abortion on demand (without the need for a justifying reason) is legally permitted during the first trimester of pregnancy in over thirty European states. By contrast, the [Irish Constitution's](#) strong protection for the right to life of the foetus severely restricts the circumstances in which abortion could be constitutionally permitted in that state.

The constitutional position is not, however, quite as stark as might be assumed. First, while the Irish Constitution does indeed protect the right to life of the foetus, it also protects the potentially conflicting right to life of the mother. Secondly, the 1992 Supreme Court case of [AG v X and others](#) acknowledged that this provision means that an abortion can be lawfully available if there is a real and substantial risk to the woman's life and, furthermore, extended that prioritisation of the mother's life to situations in which there is a risk of suicide. Thirdly, two constitutional amendments have clarified that

Ireland's strong constitutional protection for unborn life shall not prevent freedom to travel to another state in order to obtain an abortion, nor prevent the provision of information about abortion services lawfully provided in other states. There have, therefore, already been some inroads into the constitutional protection for unborn life.

It was a decision by the European Court of Human Rights in 2010 which inspired the latest development. [A, B, C v Ireland](#) concerned three applicants who had all travelled to the UK in order to obtain abortions. The first two applicants did so because their reasons for seeking a termination of pregnancy would undoubtedly be illegal in Ireland (i.e. for reasons of health and well-being). The European Court of Human Rights granted wide discretion to Ireland to determine the extent to which it would protect the right to life of the unborn due to the lack of a consensus on this specific question. It did, however, recognise 'a



consensus amongst a substantial majority of the contracting states of the Council of Europe towards allowing abortion on broader grounds than accorded under Irish law'. Perhaps surprisingly this emerging consensus did not entice the Court to reduce the degree of discretion (or, in the Court's terminology, 'width of the margin of appreciation') given to Ireland. The illegality of all abortions for health or well-being reasons in Ireland did not amount to an infringement of the first two applicant's right to respect for private life in Article 8 ECHR.

It is, however, the issues raised by the third applicant in the *A, B, C* case that have proven to be of greatest significance. This is because she sought an abortion on the basis of a risk to her life. This should, in theory, have been lawful under the Irish Constitution. She claimed, however, that she was unable to establish her right to an abortion in Ireland due to the lack of an effective procedure for doing so. The Strasbourg Court agreed with her that, despite such an abortion being in theory permissible under the Irish Constitution, the lack of legislative implementation of the risk to life exception 'has resulted in a striking discordance between the theoretical right to a lawful abortion in Ireland on the grounds of a relevant risk to a woman's life and the reality of its practical implementation.' The crux of the problem for Ireland was that there had been no specific legislative implementation of the exception implied in Art 40.3.3 of the Constitution, and no legislative recognition of that exception to the general criminal prohibition of abortion. This meant that in practice, a woman seeking a life-saving abortion could only choose from the two extremes of a medical consultation or a constitutional review. The Strasbourg Court was adamant that neither of these options was an appropriate procedure for clarifying the legal position for a pregnant woman.

It was, therefore, the uncertainty surrounding the circumstances of legality for abortions that led to the finding that Ireland was in violation of Article 8 ECHR, which guarantees a right to respect for private life. The clear message coming from the Strasbourg Court in this and other cases is that a state has considerable discretion to choose the circumstances of legality for terminations of pregnancy, but it must ensure that any legal right given to a pregnant woman is an enforceable and effective one.

The judgement met with much heated debate within Ireland, which was only intensified with the tragic news that, while the government was deciding how to implement the judgement, a woman had died after having been denied an abortion. [Savita Halappanavar](#) died in Galway University Hospital during a miscarriage. Her husband says she repeatedly asked for her 19 week-old pregnancy to be terminated, but this was refused because there was a foetal heartbeat. The swell of public support for clarification of the law has provided a poignant backdrop to the Irish government's recent announcement of new legislation and regulations.

The government's plans followed recommendations from an [expert group](#) on how to implement the *A, B, C* judgment. Although the details are not yet apparent, the Irish government has clarified that it will legislate to permit abortion only in circumstances where it is a last resort and there is a real and substantial risk to a woman's life. The announcement met with horror in some quarters (such as some [Catholic bishops](#)) and relief in others. The perception of the significance of the change to be made is particularly interesting. Headlines declaring '[Ireland to legalise abortions where woman's life is at risk](#)' seem to overlook the fact, crucial to the *A, B, C* judgment, that the Irish Constitution, as interpreted by the Supreme Court, has already conceded the legality of abortions to save the pregnant woman's life. The fact that this is widely unknown only proves that the Strasbourg Court was correct to regard this as a theoretical legality that was not reflective of actual practice. The legislative steps which will now be proposed will strive to turn theory into reality, to the benefit of women such as Mrs Halappanavar. Whether it will prove to be the first step in more widespread legal reform to bring Ireland more into line with the consensus throughout most of Europe remains to be seen.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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