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1150th DH Meeting
Communication from an NGO (“National Women’s Council of Ireland”) in the
case of A, B and C v Ireland (Application No. 25579/2005)
Information made available under Rule 9.2 of the Rules of the Committee of
Ministers

Introduction

The National Women’s Council of Ireland (NWCI) is a feminist non-governmental organisation representing women's groups in Ireland. The NWCI currently has 170 member organisations affiliated to it, representing an estimated 500,000 women. As the representative organisation of women in Ireland, our mission is to achieve women’s equality, empowering women to work together in order to remove structural political, economic, cultural and affective inequalities. The vision of the NWCI is of an Ireland where all women and men have equal power to shape society and their own lives.

The NWCI members overwhelmingly supported a motion brought to our Annual General Meeting (AGM) in 2009 which called for a policy seeking provision of safe, legal abortion for women in Ireland. This has echoed many previous motions at our AGM calling for access to abortion services and reflects decades of female activism on this issue. The NWCI as mandated by its members has adopted a pro-choice position on abortion which is rooted in NWCI’s analysis of gender equality, social inclusion and women’s human rights, specifically the right to health including sexual and reproductive autonomy. In 2011 an emergency motion was unanimously passed by our member organisations mandating the NWCI to urge the government to implement the judgement of the European Court of Human Rights in the case of ABC v Ireland without further delay by providing legal certainty on when a physician may carry out an abortion in Ireland. The NWCI is committed to continuously monitoring the government response to the implementation of this judgement.

The NWCI hopes to further the work of the Committee by highlighting the inadequacy of the Action Plan of the Irish Government submitted to the Committee on June 16th 2011 in relation to the execution of the judgment in the case of A, B and C v. Ireland under Article 46, paragraph 2, of the European Convention on Human Rights (the Convention). We base our communication on the provisions of Rule No.9, paragraph 2, of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies).

The Case

Three women, known as A, B and C, challenged Ireland's restrictive regulation of abortion at the European Court of Human Rights. On December 16, 2010, the Grand Chamber of the Court unanimously held that Ireland's failure to implement legislation on abortion in spite of existing domestic case law — the Supreme Court decision in the case of *Attorney General v. X and Others [1992] 1 IR 1* (“the X case”) — constituted a violation of Article 8 of the Convention.

The Court held that the uncertainty generated by the lack of legislative implementation of Article 40.3.3 of the Irish Constitution 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 and the reality of its practical implementation.

The Court highlighted the following three particular issues that need to be addressed by the Government:

- (i) Legislative criteria or procedures that allow for legal certainty for women and their doctors in assessing whether a pregnancy presents a “real and substantial risk to the life of the pregnant woman”;
- (ii) A legal framework to examine and resolve differences of opinion between a woman and her doctor or between doctors;
- (iii) The continued existence of criminal provisions (1861 Offences Against the Person Act) which constitute a significant chilling factor for both women and their doctors in the medical consultation process, regardless of whether or not prosecutions have in fact been pursued under that Act.

Irish Government Submission to the Committee of Ministers

The communication submitted to the Committee of Ministers by the Irish Government on June 16 2011 states that: “Ireland is committed to ensuring that the judgment in this case is implemented *expeditiously*. The judgment highlights the lack of effective and accessible rules in relation to the application of Article 40.3.3. This must now be addressed, while, as the Court also acknowledged, implementation of Article 40.3.3 of the Irish Constitution on the protection of the unborn is a sensitive and complex task.” (italics added)

In relation to general measures to be taken, the Action Plan states (paragraphs 11 to 14):

11. *In response to this judgment the Government will establish an expert group, drawing on appropriate medical and legal expertise with a view to making recommendations to Government on how this matter should be properly addressed.*
12. *It is intended that the Expert Group will be established by November 2011.*
13. *Following the recommendations from the Expert Group, proposals will be drafted and transmitted to Government for approval.*
14. *An Action Report will be filed outlining the Expert Group's detailed terms of reference, membership and meeting schedule by the end of 2011.*

In January 2012 the Government established an expert group which is chaired by a High Court judge Mr. Justice Sean Ryan and comprised of physicians, lawyers and Department of Health officials to examine the judgement and recommend a series of options on how to implement the judgement. The terms of reference of the Expert Group, as approved by the Government, are to examine the A, B and C v Ireland judgement of the European Court of Human Rights, to elucidate its implications for the provision of health care services to pregnant women in Ireland and to recommend a series of options on how to implement the judgement taking into account the constitutional, legal, medical and ethical considerations involved in the formulation of public policy in this area and the overriding need for speedy action. The Action Plan states that the Expert Group will report back to the Government within six months.

In the 1136th Meeting of the Committee of Ministers (6-8 March 2012) the Committee examined Ireland's proposed measures to implement the judgement and underlined the importance of putting in place substantive measures to execute the judgement. The March 2012 decision also highlighted the continuing lack of interim measures regarding women who find themselves in the position of Applicant C, and strongly encouraged the authorities to ensure that the Expert Group completes its work as quickly as possible and to inform the Committee of the substantive measures the authorities plan to take as soon as possible.

In response to a parliamentary question on the 29th of March 2012 in relation to the Committee of Ministers decision, the Minister for Health explained that it would be the responsibility of a woman's doctor to determine whether the criteria at law were met. If so, a termination could lawfully occur. In the case of a disagreement between a woman and her doctor, or refusal of necessary life-saving treatment, she could seek a second medical opinion or could apply to the High Court for orders directing the necessary treatment to be provided. The seriously ill woman or her family could subsequently bring a complaint to the Medical Council or initiate proceedings on the basis of medical negligence under the law of tort. The Minister's response makes it clear that a woman in the same situation as Applicant C would be treated the same way now as before the ruling was handed down in December 2010. In other words, no progress has been made.

This process by which a woman with a life threatening pregnancy can have a lawful abortion in Ireland shows clearly why such abortions are not carried out – the onus is placed on the seriously ill woman to seek treatment and on an individual doctor to make a legal determination in a context where a medical decision could become the subject of a criminal enquiry, a prosecution and potentially result in a criminal conviction. This is the chill effect of the 1861 Offences Against the State Act which criminalises abortion in all circumstances.

In April Ms. Clare Daly TD tabled a piece of legislation in the Irish parliament, the Medical Treatment (Termination of Pregnancy in Case of Risk to Life of Pregnant Woman) Bill 2012. The Bill was defeated by 111 votes to 20 votes. During the debate in parliament the Minister of State for Health made it clear that the Expert Group was to report by the end of July and that the government will take immediate action to legislate in accordance with its recommendations.

In July the Department of Health confirmed that the Expert Group had been granted an extension until the end of September to release its findings.

NWCI Response to the Implementation

The NWCI has been closely monitoring the Government response to the implementation of the A, B and C v Ireland case and we are deeply concerned with the lack of progress. NWCI views the response to date of the Irish government as inadequate to satisfy the requirements of the judgment. We contend that this continued failure to vindicate women's constitutional rights is disrespectful of the Court and signals a clear disregard by the State for its duty under both the European Convention on Human Rights and the Irish Constitution to make effective the rights guaranteed under Article 40.3.3.

The NWCI would like to highlight its three concerns in relation to the implementation of this judgement:

1. **The unacceptable delay by the Expert Group to publish its findings.** Nearly two years after the judgement was handed down in the A, B and C v Ireland case, there has been no recommendations for change for the case of a woman who finds herself in the same situation as Applicant C. The NWCI is deeply concerned with the unacceptable and unjustified lack of action by the Irish government since December 2010 when the judgement was handed down. No legislation has been enacted and no guidelines exist which would give legal certainty to a pregnant woman and their medical advisers or to social workers on when abortions may lawfully be carried out, or to provide a mechanism for the resolution of differences of opinion, or to address the chilling effect of the 1861 criminal provisions. It is clear that the general measures proposed by the Government in June 2011 do not amount to expeditious implementation of the Court judgement.
2. **The Lack of interim Measures to Give Effect to the Judgement:** The NWCI welcomed the decision of the Committee of Ministers in March 2012 to question the Irish government on what interim measures it has in place to respond to women with life threatening pregnancies until the judgement is implemented. The Government has failed to specify any interim measures it has taken, pending the enactment of the necessary legislation, in order to comply with the Court's judgement. Therefore it is very likely that a woman in a situation like that of Applicant C would be subject to the same treatment, in clear violation of her rights under Article 8 of the European Convention on Human Rights. The lack of interim measures forces women with life threatening pregnancies to travel abroad to access abortion services and to incur all the stress, expense and physical hardship that this implies. Women who require visas or have severe health difficulties may be forced

to parent because of the impossibility of travelling abroad to access abortion services and the lack of interim measures available in Ireland.

- 3. The Need for Legislation to give effect to the Judgement:** The Court's judgement does not explicitly state the most appropriate means for the State to comply with its obligations under the Convention. However there is a strong implication that the only means through which legal clarity can be achieved in the application of Article 40.3.3 of the Irish Constitution is by the adoption of legislation. The introduction of legislation to give effect to the A, B and C case will ensure that women with life threatening pregnancies have timely access to a lawful abortion in cases where there is a real and substantive risk to their lives.

The NWCI hope that the Committee will find this communication useful in the deliberations on the execution of this judgment. Should you need further information, please do not hesitate to contact Orla O Connor, Acting CEO, National Women's Council of Ireland (NWCI) www.nwci.ie