



A, B and C v. Ireland

On December 16, 2010, the European Court of Human Rights (the Court) handed down its decision in *A, B and C v. Ireland*.¹ The applicants in this case contested Ireland’s failure to implement its existing abortion law, which only authorizes abortion if a woman’s life is at risk, and also challenged this restrictive law as such. In its decision, the Court declined to find that Ireland’s harsh abortion law violated the European Convention on Human Rights (ECHR). However, it held that in circumstances in which abortion is legal in Ireland, which is the case when a pregnancy poses a threat to the life of a woman, Ireland had failed to adopt legislation and establish an effective and accessible procedure for women to access lawful abortions. This failure amounted to a violation of Ireland’s positive obligations under Article 8 of the ECHR, the right to respect for private life. Consequently, the Court ordered Ireland to establish a legislative framework to implement its abortion law and to adopt effective procedures to ensure women’s access to legal abortion services.

I. Facts of the Case

a. Facts with Respect to Each Applicant

The case of *A, B and C v. Ireland* was brought by three undisclosed applicants, A, B and C, each of

whom was forced to travel to England in order to procure a safe abortion.²

Applicant A sought an abortion for what the Court called “health and well-being” reasons.³ She was living in poverty when she became pregnant unintentionally, believing that her partner was infertile. She had four young children in foster care, and had experienced depression during each of her previous pregnancies. Applicant A maintained that having another child at that time would have placed her health at risk and jeopardized the potential reunification of her family. She believed that she was not legally entitled to an abortion in Ireland, and therefore decided to travel to England. She borrowed the money needed for travel expenses and treatment at a private clinic in England from a money lender at a high interest rate.⁴

Applicant B sought an abortion for, according to the Court, “well-being reasons.”⁵ She also became pregnant unintentionally, despite her use of emergency contraception following intercourse. She decided to travel to England for an abortion, because she could not care for a child by herself at that point in her life and believed that she was not legally entitled to an abortion in Ireland. She experienced financial difficulties in generating the funds for her travel costs.

Upon her return to Ireland, she began to pass blood clots, but delayed seeking medical care because she was unsure about the legality of traveling abroad for an abortion.⁶

Applicant C unintentionally became pregnant while in remission from cancer. Unaware that she was pregnant, she underwent tests for cancer that were contraindicated during pregnancy. Upon discovering that she was pregnant, she was unable to find a doctor willing to provide sufficient information about the pregnancy's impact on her life and health or the impact of the tests on the fetus. Consequently, she researched the risks to the fetus and decided to travel to England for an abortion.⁷

b. Allegations of Each Applicant

The applicants filed a case at the Court since they did not have an effective domestic remedy available for addressing their complaints about the state's restrictive abortion law. Their allegations included the following:

- Each applicant alleged that the law, which forced her to travel abroad for abortion, caused her to suffer physical and psychological anxiety and distress, amounting to a violation of her right to be free from inhuman and degrading treatment (Article 3).⁸
- Each applicant alleged that the law violated her right to be free from discrimination on the basis of sex because it placed an excessive burden on women. Furthermore, Applicant A alleged that she experienced discrimination as an impoverished woman (Article 14 and Article 8).⁹
- Applicants A and B alleged that the law, which prohibited them from procuring abortion services in Ireland for health or well-being reasons, amounted to a violation of their right to respect for their private life, including their physical integrity. Applicant C alleged that the state's failure to adopt legislation implementing the constitutional right to abortion when a woman's life is threatened violated this right (Article 8).¹⁰
- Applicants A and B alleged that they were denied the right to an effective domestic remedy for challenging the restrictive law.¹¹ Applicant C alleged that the inadequate Irish legal framework regulating legal abortion violated her right to an effective domestic remedy (Article 13).¹²

- Applicant C alleged that the state's failure to implement the constitutional provision on the right to life, Article 40.3.3 of the constitution, which the Irish Supreme Court has interpreted to permit abortion when a woman's life is at risk, rendered abortion unavailable in Ireland even in a life-threatening situation. This, she claimed, amounted to a violation of her right to life (Article 2).¹³

II. Context in Ireland

Ireland is one of the few European countries with a restrictive abortion law. The Offenses Against the Person Act 1861 prohibits abortion in all circumstances.¹⁴ According to this statute, a woman or other person, such as a physician, who has been convicted of "procur[ing a] miscarriage" is subject to life imprisonment.¹⁵ Furthermore, Article 40.3.3 of Ireland's Constitution recognizes "the right to life of the unborn and, with due regard to the equal right to life of the mother...."¹⁶ This ambiguous provision has been interpreted by the Irish Supreme Court to permit abortion when a "real and substantial" risk to a woman's life, as distinct from her health, exists, which includes the threat of suicide.¹⁷ Thus, although Ireland's statutory framework on abortion has not been amended to explicitly incorporate this exception, case law has clearly established that abortion in Ireland is legal if a woman's life is at risk. Additionally, the constitution accords women the right to travel abroad to procure abortion services, and to receive information about legal abortion services available abroad.¹⁸

Each year, as a result of Ireland's restrictive abortion law, women who wish to terminate their pregnancies are forced to travel abroad or seek illegal and potentially unsafe abortion services, which place their health and possibly their lives in danger.¹⁹ Since the Irish Government does not collect data on abortion services in Ireland or the number of women that travel abroad to procure safe abortion services, the magnitude of this problem is difficult to quantify.²⁰ The United Kingdom (UK) Department of Health releases annual statistics on the number of women and girls providing Irish addresses to abortion clinics in England and Wales, demonstrating that in 2010 alone, more than 4,000 Irish residents sought abortion services in these regions.²¹ However, these figures underestimate the number of Irish residents who travel abroad for this reason. For example, women may not wish to provide their addresses for several reasons, including confidentiality concerns.²²

Additionally, they may seek abortion services from other European countries, such as the Netherlands.²³

Furthermore, the Irish Medicines Board confirmed that in 2009, 1,216 packages of drugs known to induce abortions were seized by Irish customs authorities.²⁴ This figure indicates that hundreds of women in Ireland are resorting to illegal means in order to terminate their pregnancies due to Ireland's restrictive law.

III. Decision

On December 16, 2010, the European Court of Human Rights determined:

- No violation of Article 3 (prohibition of torture or inhuman or degrading treatment) for any applicant.²⁵
- No separate issue arose under Article 14 (the prohibition of discrimination) that was not already examined under Article 8 for any applicant.²⁶
- Article 8 (the right to respect for private life) was the most appropriate provision under which to review the complaint. However, with respect to Applicants A and B, the Court declined to find a violation of this article.
- With respect to Applicant C, the Court found Ireland in violation of its positive obligations under Article 8. It ruled that Ireland had failed to adopt legislation implementing Article 40.3.3 of the constitution, which would have established an effective and accessible procedure by which Applicant C could have determined whether she qualified for a legal abortion in Ireland.²⁷
- As to Article 13 (the right to an effective remedy), the Court decided that a violation had not occurred with respect to Applicants A and B. With respect to Applicant C, it decided that no separate issue arose under this article that was not already examined under Article 8.²⁸
- No violation of Article 2 (right to life) with respect to Applicant C.²⁹

IV. Remedies

- **Individual measures:**

The Court awarded 15,000 euros to Applicant C in non-pecuniary damages for the anxiety and suffering she experienced due to the lack of an effective

procedure for determining her right to a lawful abortion in Ireland.³⁰ However, it rejected her claim for just satisfaction for pecuniary damages in connection with traveling to England for an abortion, considering that it could not speculate “on whether she would have qualified or not for an abortion in Ireland had she had access to the relevant regulatory procedures.”³¹

- **General measures:**

The Court held that in order to comply with its obligations under the Convention, Ireland needs to establish an “implementing legislative or regulatory regime providing an accessible and effective procedure” so that women can determine whether they qualify for a lawful abortion in circumstances in which the pregnancy threatens their lives.³²

V. Rights Implications

The situation faced by each of the applicants is not uncommon in Ireland. Due to the lack of an effective and accessible procedure by which women can determine whether they qualify for legal abortion services, many women whose pregnancies pose a risk to their life are forced to travel abroad to procure safe abortion services. Similarly, women who wish to terminate their pregnancies for health or well-being reasons must travel abroad.

The judgment in this case joins a series of decisions by international human rights bodies recognizing that the failure of states to establish effective and accessible procedures for women to access abortion services to which they are legally entitled is a violation of their human rights.³³

Furthermore, human rights bodies are increasingly recognizing that draconian abortion laws, such as Ireland's, violate women's human rights.³⁴ Unfortunately, the Court in this case failed to recognize the human rights violations that stem from Ireland's restrictive abortion law that prohibits women from legally accessing this service in circumstances in which the pregnancy threatens their health or well-being.

- a. Reasoning: Applicant C**

While the Court dismissed the claims of Applicants A and B in connection with Article 8, it decided to review Applicant C's complaint by examining the state's positive obligations under this article.³⁵ It reaffirmed or

established the following principles with respect to Article 8 in the case of Applicant C:

- Private life encompasses a person’s physical or psychological integrity and her right to personal autonomy.³⁶ Furthermore, “legislation regulating the interruption of pregnancy touches upon the sphere of the private life of the woman...”³⁷ Thus, the Court reaffirmed that abortion laws fall within the right to respect for private life.³⁸
- The need to establish the relevant risk to a woman’s life caused by a pregnancy concerns fundamental values and essential aspects of her right to respect for her private life.³⁹
- The Court questioned the effectiveness of the Irish medical consultation procedure as a means of establishing a woman’s qualification for a lawful abortion. The Court relied on the absence of guidelines that specify the criteria by which a doctor is to assess the risk that a pregnancy poses to a woman’s life. Furthermore, it highlighted the lack of a framework for resolving differences of opinion between a woman and her doctors or between the doctors consulted. Such framework could establish as a matter of law whether a specific case presents a risk to the woman’s life so that she can access legal abortion services.⁴⁰ Finally, the Court indicated that the criminal penalties imposed on abortion services, which carry the risk of lifetime imprisonment, “would constitute a significant chilling factor for both women and doctors in the medical consultation process...”⁴¹
- Judicial proceedings are an inaccessible and ineffective means of determining whether an abortion can be lawfully performed.⁴² Specifically, constitutional courts are an inappropriate forum for determining this issue, which is of a medical nature.⁴³ Thus, requiring women to proceed with complex constitutional challenges on this issue is inappropriate.⁴⁴
- The Court thus found Ireland in violation of its positive obligations under Article 8 for fail-

ing to implement the existing constitutional right to a lawful abortion in Ireland.⁴⁵ It noted that the “lack of legislative implementation of Article 40.3.3, and more particularly ... 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.”⁴⁶

- Thus Ireland must establish a legislative framework to implement Article 40.3.3 of the constitution and guarantee women’s right to abortion when their lives are in danger.

b. Reasoning: Applicants A and B

Despite the Court’s important findings with respect to Applicant C, it failed to similarly recognize the human rights violations implicated by the other applicants’ Article 8 complaints. It decided to review the complaints of Applicants A and B by examining the state’s negative obligations under Article 8,⁴⁷ and established the following:

- The Court determined that “the prohibition of the termination of the ... applicants’ pregnancies sought for reasons of health and/or well being amounted to an interference with their right to respect for their private lives,”⁴⁸ but declined to rule that such interference was unjustified.
- In analyzing this interference, the Court indicated that it sought to determine whether the prohibition of abortion for health or well-being reasons struck a reasonable balance between the applicants’ right to respect for their private lives and the “profound moral values of the Irish people as to the nature of life and consequently as to the need to protect the life of the unborn.”⁴⁹
- In balancing these rights, the Court sought to define the appropriate “margin of appreciation” to accord to the state in determining whether it violated its human rights obligations by adopting a restrictive abortion law that interfered with women’s right to respect for their private lives.⁵⁰

- The Court indicated that the margin allowed to the state is narrower where (i) an important facet of an individual's identity is at stake or (ii) a consensus among the Council of Europe member states exists.⁵¹ Although the Court recognized that Ireland's abortion law interfered with the applicants' right to respect for their private lives,⁵² affirmed the existence of a broad consensus among Council of Europe member states that permit abortion "on broader grounds than accorded under Irish law,"⁵³ and remarked upon the European trend toward liberalization of abortion laws,⁵⁴ it ultimately decided to accord the state a broad margin of appreciation. It indicated that the "acute sensitivity of the moral and ethical issues raised by the question of abortion" entitled Ireland to a broad margin of appreciation in determining "whether a fair balance was struck between ... the protection accorded under Irish law to the right to life of the unborn, and the conflicting rights of the first and second applicants to respect for their private lives"⁵⁵ Thus, it deferred to Ireland to determine on what grounds a woman should be lawfully entitled to an abortion.⁵⁶
- In reaching the conclusion that the state should be accorded a broad margin of appreciation in balancing these rights, the Court specifically relied on Irish women's option to travel abroad to obtain legal abortion services, their access to information about obtaining abortions abroad, and their access to medical care in Ireland, including post-abortion care.⁵⁷

VI. Analysis

As noted in the dissenting opinion, this decision marks a rare instance in which the Court disregarded the existence of a European consensus in determining the scope of the margin of appreciation to accord to a state.⁵⁸ The vast majority of the 47 Council of Europe member states recognizes a woman's right to choose to terminate her pregnancy or permit abortion on broad grounds. Specifically, 35 countries permit abortion without restriction as to reason and five countries allow abortion for health and well-being reasons, otherwise known as socioeconomic grounds.⁵⁹ Three member states permit abortion on health grounds, whereas only three member states have an abortion law that is more restrictive than Ireland's in that it does not explicitly permit abortion on any grounds.⁶⁰

Furthermore, as recognized by the dissenting opinion, this judgment marks the first time that the Court has disregarded a broad consensus on the basis of "profound moral views."⁶¹ The Court explained that Ireland's prohibition of abortion for health or well-being reasons did not exceed the margin of appreciation because it was based "on the profound moral views of the Irish people as to the nature of life ... and as to the consequent protection to be accorded to the right to life of unborn ..."⁶² Citing its past jurisprudence, the Court concluded that states benefit from the margin of appreciation in determining the balance between the rights of women and the "protection of the unborn."⁶³ The dissenting opinion, however, recognizes that overriding an overwhelming European consensus on the basis of moral beliefs is a concerning departure from the Court's previous jurisprudence.⁶⁴

Moreover, the Court's suggestion that Irish law sufficiently protects women's health in that it allows women to travel abroad for abortion, permits women the right to information about procuring abortions, and generally provides access to medical care is both unusual and troubling.⁶⁵ Although the Court recognizes that women residing in Ireland are forced to travel outside their country to exercise their human rights, by noting that neighboring states provide the necessary information and services to guarantee this right, it fails to hold Ireland accountable for its own obligation to secure the right to respect for private life for all women in its territory. This conclusion is a remarkable departure from well-established human rights principles according to which each state's compliance with the human rights set forth in international treaties is judged based only on the performance of that state. This decision excuses Ireland of its human rights obligations by pointing to the adherence of neighboring states to such obligations, rather than demanding a consistent application of human rights principles among the Council of Europe member states.

VII. Impact

Despite the Court's findings, the reality for many women in Ireland, particularly disadvantaged women, is that they are unable to travel abroad to receive safe abortion services, they do not have access to accurate information about abortion, and post-abortion medical care is inaccessible.⁶⁶ For example, despite a constitutional right to travel to procure abortion services, in 2007, a 17-year-old girl carrying a fetus with a fatal abnormality was forced to initiate a proceeding at the High Court in order to

claim this right.⁶⁷ She was in the care of Ireland's Health Service Executive, which tried to prevent her from traveling abroad to procure an abortion. The High Court ruled that no statutory or constitutional grounds existed to prevent her from traveling to obtain this service.⁶⁸ Furthermore, as a result of the media coverage surrounding this case, which highlighted the steps taken by the government to prevent the girl from traveling abroad to seek abortion services, and the lack of clear information about a woman's right to travel abroad to procure an abortion, many women still believe that it is prohibited to travel abroad for this reason.⁶⁹ Additionally, women who are unable to travel for any reason, whether as a result of their immigration status, financial situation or because they are in state custody, are forced to choose between continuing a pregnancy that places their health or well-being at risk or procuring illegal, and possibly unsafe, abortions. Since the Irish Government does not compile data on the number of legal or illegal abortions performed in Ireland, the scope of this problem is impossible to determine.⁷⁰

In addition, many women still face obstacles in obtaining information about the possibility of traveling abroad to procure abortion services. For example, the Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act 1995 imposes strict limitations on the provision of information about abortion, which may make such information difficult for many women to access. Furthermore, unregulated agencies that oppose women's access to abortion often provide inaccurate and misleading information about abortion to women.⁷¹

Finally, as a result of the ambiguous legal framework on abortion in Ireland, many Irish women are confused about the legal status of post-abortion care. Although post-abortion care is legal, women may be reluctant to access it because they fear persecution.⁷² Moreover, since the Irish Government does not compile statistics about post-abortion care, it is impossible to determine whether medical services for post-abortion care are actually available and acceptable to women.⁷³

VIII. Developments Subsequent to the Judgment

The state has compensated Applicant C for the non-pecuniary damages awarded by the Court.⁷⁴

In June 2011, the state submitted an Action Plan to the Committee of Ministers of the Council of Europe, which supervises the execution of judgments issued by the Court, committing to the expeditious implementation of the decision and to the establishment of an expert committee to make recommendations to the government on "how this matter should be properly addressed."⁷⁵ In January 2012, the Irish Government established the expert committee, which is chaired by High Court Justice Seán Ryan and comprised of physicians, lawyers and Department of Health officials, to examine the judgment. The committee's terms of reference include recommending "a series of options on how to implement the judgment 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."⁷⁶ The committee will report back to the Irish Government within six months and subsequently file an Action Report with the Committee of Ministers by the end of October 2012 to update it on the implementation of the judgment.⁷⁷

In March 2012, the Committee of Ministers issued a decision in connection with Ireland's execution of the judgment in this case. It expressed concern over "the situation of women who believe their life may be at risk due to their pregnancy in circumstances similar to those experienced by the third applicant."⁷⁸ The Committee also "strongly encouraged the authorities to ensure that the expert group completes its work as quickly as possible ... and to inform it of the substantive measures that the authorities plan to take as soon as possible."⁷⁹

Notably, since 1996, three expert groups have made recommendations and outlined policy options in connection with abortion, but, as the Court lamented in its decision, the state has failed to act on any of these previous recommendations.⁸⁰

The Council of Europe Commissioner for Human Rights recently expressed concern that legislation establishing a framework for allowing abortion in the limited circumstances where a woman's life is in danger because of her pregnancy is not in place in Ireland.⁸¹ Similarly, in the concluding observations issued to Ireland in 2011, the United Nations (UN) Committee against Torture expressed concern "about the absence of an effective and accessible domestic procedure in the state party for establishing whether some pregnancies pose a real and

substantial medical risk to the life of the mother”⁸² Additionally, it urged Ireland “to clarify the scope of legal abortion through statutory law and provide for adequate procedures to challenge differing medical opinions as well as adequate services for carrying out abortions ... so that its law and practice is in conformity with the Convention [against Torture].”⁸³

Moreover, during Ireland’s recent Universal Periodic Review, a UN mechanism that permits states to directly examine each other on their human rights practices, despite reaffirming its commitment to the implementation of the judgment, the Justice Minister rejected recommendations from the United Kingdom, Slovenia, Norway, Denmark, Spain and the Netherlands, related to increasing access to abortion in Ireland.⁸⁴

Key Human Rights Provisions from the European Convention

The European Convention for the Protection of Human Rights and Fundamental Freedoms⁸⁵ recognizes the following human rights, as relevant for this case:

Article 2(1). Right to Life

Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 3. Prohibition of torture or inhuman or degrading treatment.

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 8. Right to respect for private and family life.

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Endnotes

- 1 A, B and C v. Ireland, No. 25579/05 Eur. Ct. H.R. (2010).
- 2 The Irish Family Planning Association, a non-governmental sexual health organization based in Dublin, Ireland, supported the applicants in filing the case. The Center for Reproductive Rights and the International Reproductive and Sexual Health Law Programme, Faculty of Law, University of Toronto submitted third-party comments in connection with this case. The comments addressed the regulation of abortion under international and comparative law, with a particular emphasis on member states of the Council of Europe.
- 3 *A, B and C*, No. 25579/05, para. 125.
- 4 *Id.* paras. 13-15.
- 5 *Id.* para. 125.
- 6 *Id.* paras. 18-21.
- 7 *Id.* paras. 22-25.
- 8 *Id.* paras. 160, 163.
- 9 *Id.* para. 269.
- 10 *Id.* paras. 167-168.
- 11 *Id.* paras. 271, 273.
- 12 *Id.* para. 274.
- 13 *Id.* para. 157.
- 14 Offenses Against the Person Act, 1861, 25 Vict., c. 100, sec. 58-59 (Eng.).
- 15 *Id.* sec. 58.
- 16 IR. CONST., 1937, as amended in 1992, art. 40.3.3, available at http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20IrelandNov2004.pdf.
- 17 Attorney General v. X and Others, [1992] 1 I.R. 1(Ir.).
- 18 IR. CONST., 1937, as amended in 1992, art. 40.3.3.
- 19 HUMAN RIGHTS WATCH, A STATE OF ISOLATION: ACCESS TO ABORTION FOR WOMEN IN IRELAND 36 (2010), available at <http://www.hrw.org/sites/default/files/reports/ireland0110webw-cover.pdf> [hereinafter A STATE OF ISOLATION].
- 20 *Id.* at 39 (“the government does not gather information about abortion services in Ireland, nor about the number of women traveling for services ...”).
- 21 UK DEPARTMENT OF HEALTH, ABORTION STATISTICS, ENGLAND AND WALES: 2010, 35 (2011), available at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digital-asset/dh_127202.pdf.
- 22 See Irish Family Planning Association, Sexuality, Information Reproductive Health & Rights, Statistics, <http://www.ifpa.ie/Hot-Topics/Abortion/Statistics> (last visited Mar. 12, 2012).
- 23 A STATE OF ISOLATION, *supra* note 19, at 10.
- 24 *Customs seized 1,216 packs of illegal abortion drugs*, THE IRISH TIMES, Oct. 26, 2010, <http://www.irishtimes.com/newspaper/frontpage/2010/1026/1224282004957.html>.
- 25 A, B and C v. Ireland, No. 25579/05 Eur. Ct. H.R., para. 165 (2010).
- 26 *Id.* at 70.
- 27 *Id.* paras. 264, 267.
- 28 *Id.* paras. 273, 274.
- 29 *Id.* para. 159.
- 30 *Id.* para. 279.
- 31 *Id.* para. 277.
- 32 *Id.* para. 267.
- 33 K.L. v. Peru, Human Rights Committee, Commc’n No.

- 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); L.C. v. Peru, Commc'n No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011); *Tysiāc v. Poland*, No. 5410/03 Eur. Ct. H.R., (2007); R.R. v. Poland, No. 27617/04 Eur. Ct. H. R. (2011).
- ³⁴ Human Rights Committee, *Concluding Observations: Ireland*, para. 23, U.N. Doc. A/55/40 (2000) (“The Committee is concerned that the circumstances in which women may lawfully obtain an abortion are restricted to when the life of the mother is in danger and do not include, for example, situations where the pregnancy is the result of rape”); *Ireland*, para. 13, U.N. Doc. CCPR/C/IRL/CO/3 (2008) (“The Committee reiterates its concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in the State party”); *LC*, Commc'n No. 22/2009, para 9(iii) (“The State party should also review its legislation with a view to decriminalizing abortion when the pregnancy results from rape or sexual abuse”).
- ³⁵ *A, B and C*, No. 25579/05, para. 246. The Court has interpreted Article 8 as including a positive as well as a negative obligation. The positive obligation requires the state to adopt measures that ensure effective respect for the person’s private life. *Id.* para. 245.
- ³⁶ *Id.* paras. 212, 216.
- ³⁷ *Id.* para. 213.
- ³⁸ In the case of *Tysiāc v. Poland*, the Court recognized this principle and thus reaffirmed it in this decision. *Tysiāc*, No. 5410/03.
- ³⁹ *A, B and C*, No. 25579/05, para. 250.
- ⁴⁰ *Id.* paras. 253, 255, 263.
- ⁴¹ *Id.* para. 254.
- ⁴² *Id.* para. 257.
- ⁴³ *Id.* para. 258.
- ⁴⁴ *Id.* paras. 259, 263.
- ⁴⁵ *Id.* paras. 267-268.
- ⁴⁶ *Id.* para. 264.
- ⁴⁷ The Court has interpreted Article 8 as including a negative as well as a positive obligation. Under the negative obligation, the state is required to refrain from an interference with the person’s private life. *Id.* para. 216.
- ⁴⁸ *Id.* para. 216.
- ⁴⁹ *Id.* para. 230.
- ⁵⁰ *Id.* para. 231. “Margin of appreciation” refers to “the space for manoeuvre ... grant[ed to] national authorities, in fulfilling their obligations under the ... Convention.” The Margin of Appreciation, Council of Europe, http://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/ECHR/Paper2_en.asp#P65_400 (last visited Mar. 12, 2012). This doctrine allows for different approaches in the application of the Convention in different member states, and is applied in considering the proportionality of an interference with a Convention right. Under this doctrine, state authorities are, in principle, in a better position to decide on the measures necessary in a particular area. *Handyside v. The United Kingdom*, 24 Eur. Ct. H.R. (ser. A) sec. 48 (1976). Specifically, in the context of Article 8, the Court must determine whether a law that interferes with an individual’s right to personal life under the ECHR strikes a fair balance with the relevant competing interests that the state is trying to pursue. *A, B and C*, No. 25579/05, para. 229.
- ⁵¹ *A, B and C*, No. 25579/05, paras. 232, 234.
- ⁵² *Id.* para. 216.
- ⁵³ *Id.* para. 235. The Court noted that “[o]nly 3 [out of 47] States have more restrictive access to abortion services than in Ireland.” *Id.*
- ⁵⁴ *Id.* para. 235.
- ⁵⁵ *Id.* para. 233.
- ⁵⁶ *Id.* para. 237.
- ⁵⁷ *Id.* para. 239.
- ⁵⁸ *Id.* at 86, paras. 4-5.
- ⁵⁹ *The World’s Abortion Laws 2011*, CENTER FOR REPRODUCTIVE RIGHTS (2011), <http://worldabortionlaws.com/index.html>.
- ⁶⁰ These states are Andorra, Malta and San Marino. *Id.*
- ⁶¹ *A, B and C*, No. 25579/05, at 87, para. 9.
- ⁶² *Id.* para. 241.
- ⁶³ *Id.* paras. 237, 241.
- ⁶⁴ *Id.* at 87, para. 9.
- ⁶⁵ *Id.* paras. 239, 241.
- ⁶⁶ A STATE OF ISOLATION, *supra* note 19, at 2-3, 15, 30.
- ⁶⁷ Owen Bowcott, *Irish court battle over teenager’s abortion right*, THE GUARDIAN, May 1, 2007, <http://www.guardian.co.uk/society/2007/may/02/health.comment>; *see also*, *Abortion in Ireland: Legal Timeline*, IRISH FAMILY PLANNING ASSOC., <http://ifpa.ie/eng/Hot-Topics/Abortion/Abortion-in-Ireland-Legal-Timeline> (last visited Mar. 30, 2012).
- ⁶⁸ *Irish teen wins abortion battle*, BBC NEWS (May 9, 2007, 15:02 GMT), <http://news.bbc.co.uk/2/hi/6639673.stm>.
- ⁶⁹ A STATE OF ISOLATION, *supra* note 19, at 13.
- ⁷⁰ *Id.* at 14.
- ⁷¹ For more information, *see id.* at 24-27.
- ⁷² *Id.* at 11.
- ⁷³ In this case, the Court determined that Applicant A sought to terminate her pregnancy for reasons of “health and well-being” whereas Applicant B sought an abortion for well-being reasons. *A, B and C v. Ireland*, No. 25579/05 Eur. Ct. H.R., para. 125 (2010). Thus, the Court highlighted the difficult socio-economic circumstances of each of these women in considering the reasons for which they sought to procure abortions. However, the decision that the Court would have reached if presented with applicants for whom it determined that the continuation of the pregnancies posed a serious risk to their physical health, rather than their socioeconomic circumstances, is unclear. Notably, two of the judges that issued a concurring opinion suggested that “it cannot be excluded that in other cases, in which there are grave dangers to the health or the well-being of the woman wishing to have an abortion, the State’s prohibition of abortion could be considered disproportionate and beyond its margin of appreciation.” In such circumstances, they suggest that a violation of Article 8 of the ECHR would result. *Id.* at 81, para 5.
- ⁷⁴ *A, B and C v. Ireland*, Action Plan, Information submitted by the Government of Ireland, Eur. Ct. H.R., para. 3 (June 16, 2011), *available at* <http://www.dohc.ie/press/releases/2011/20110616.html>.
- ⁷⁵ *Id.* para. 11.
- ⁷⁶ *A, B, and C v. Ireland*, Action Report, Information submitted by the Government of Ireland, Eur. Ct. H.R., para. 5(3) (Jan.

- 13, 2012), *available at* http://www.dohc.ie/publications/pdf/Action_Report.pdf?direct=1.
- ⁷⁷ Document 1 *Id.* paras. 7-9.
- ⁷⁸ Council of Europe, Committee of Ministers, 1136th meeting on 8 March 2012, Case against Ireland, Case No. 12, *available at* <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282012%291136/12&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.
- ⁷⁹ *Id.*
- ⁸⁰ A, B and C v. Ireland, No. 25579/05 Eur. Ct. H.R., paras. 62-76 (2010).
- ⁸¹ Commissioner for Human Rights of the Council of Europe, *Report by Thomas Hammarberg, following his visit to Ireland from 1 to 2 June 2011*, para. 15, CommDH (2011) 27 (Sept. 15, 2011), *available at*: <https://wcd.coe.int/ViewDoc.jsp?id=1831077>.
- ⁸² Committee against Torture, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011).
- ⁸³ *Id.*
- ⁸⁴ Ruadhan MacCormaic, *State rejects UN findings on abortion legislation*, IRISH TIMES, Oct. 11, 2011, <http://www.irishtimes.com/newspaper/ireland/2011/1011/1224305578862.html>.
- ⁸⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, *adopted* Nov. 4, 1950, 213 U.N.T.S. 222, Eur. T.S. No. 5 (*entered into force* Sept. 3, 1953).