

ABORTION IN IRELAND?

ANALYSIS AND REPORT ON THE JUDGEMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE **ABC CASE**

Who was behind the case, what the European Court ruled, what that means for Ireland, the political reaction to the judgement, and what the pro-life majority should do now.

IN BRIEF

- The ABC case was sponsored and organised by the Irish Family Planning Association.
- The aim of the case was to establish a “right” to abortion on the false pretext that abortion is sometimes necessary to save the life of the mother.
- The European Court ruled that Ireland's Constitution allowed for abortion in some circumstances. Its interpretation is not correct.
- They also accused Ireland and her people of “violating” human rights and called for an abortion framework to be put in place.
- The Court, at the prompting of Planned Parenthood, purposely confused legitimate medical treatment - which aims to save the life of both mother and child - with abortion, which deliberately ends a child's life. The Irish media has taken this up with gusto, incorrectly describing legitimate treatment for cancer or ectopic pregnancy, as “lawful abortion”.
- A minority of judges in the European Court wrote that Ireland should be obliged to accept what they described as the “European consensus,” which allows for abortion-on-demand.
- The ruling by the Court is not binding, in that it cannot be enforced in a practical sense. However, some legal experts believe that, with the passage of the Lisbon Treaty, the ruling may be used to bring a case before the EU Court - which would be enforceable.
- The ruling is already being used by abortion campaigners and their political allies to push for the legalisation of abortion in Ireland.
- The Labour Party, now in a coalition government with Fine Gael, said they would use the ruling as a basis for introducing abortion-on-demand. Fine Gael will put the issue to an All-party Oireachtas Committee which will hear evidence and make recommendations.



BACKGROUND

The ABC case began with an application to the European Court of Human Rights on 15 July 2005, on behalf of two Irish nationals, Ms A and Ms B, and a Lithuanian national, Ms C.

The action was planned and sponsored by the Irish Family Planning Association (IFPA) in an attempt to use the European Court of Human Rights to force a change in Ireland's abortion laws.

Although the case involved three women, its main focus was applicant C, who had become pregnant while in remission from cancer. The IFPA's aim was to persuade the Court to interpret the Irish Constitution incorrectly, and to claim - falsely - that abortion was medically necessary.

Ireland's Constitution allows for legitimate medical treatment when a pregnant woman's life is in danger - even if that treatment causes the unintended death of the unborn child. This is not the same thing as allowing for abortion.

The abortion industry has long contrived to confuse legitimate medical treatment with abortion, with the aim of establishing a "right" to abortion. They wish to then exploit that "right" to introduce abortion-on-demand.

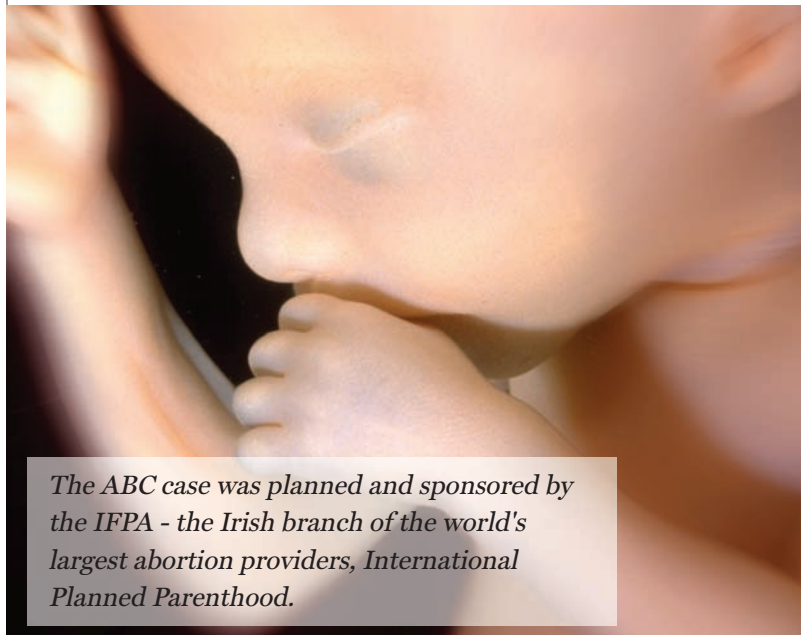
The IFPA used the ABC case to falsely claim that abortion was medically necessary.

As we will see, this effort was assisted by the position adopted by the Irish government in the Court. In addition, the government's political appointees to the Medical Council have done their utmost to prepare the ground for the application of the European Court ruling and the introduction of abortion.

The European Court of Human Rights is an institution of the Council of Europe, which has previously attacked the human rights of the unborn child. In March 2008 the Council of Europe called for Ireland to legalise abortion insisting that women should be guaranteed the 'right' to abortion.

The fact that the hearing of the ABC case took place before the Grand Chamber of the European Court of Human Rights caused some comment. It was expected the case would not be admissible for hearing in the first instance since, as the Irish Attorney General was to argue, the applicants had not exhausted domestic remedies - they had not sought relief from the Irish courts, as required by Article 35 of the European Convention on Human Rights.

However, not only did the Court decide to hear the case, they decided to refer it to the Grand Chamber before a lower court had issued a ruling. Judgement by the Grand Chamber is final and cannot be appealed.



The ABC case was planned and sponsored by the IFPA - the Irish branch of the world's largest abortion providers, International Planned Parenthood.

WHO WAS BEHIND THE CASE?

The Irish Family Planning Association and their wealthy allies planned and sponsored the ABC case. The IFPA is, of course, merely the Irish branch of the enormous global abortion providers, International Planned Parenthood Federation, who are fighting hard to add Ireland to the list of countries where they can kill babies for profit.

Leading the legal team in the ABC case was IFPA lawyer, Julie F. Kay, a wealthy, privileged American committed to working for abortion, who said she had spent 10 years working on the issues arising in the case.

Kay is the daughter of Goldman Sachs director, Stephen B. Kay, and has spent most of her career working for the Legal Momentum Fund - a front for abortion campaigners such as the National Organisation for Women and International Planned Parenthood.

The Legal Momentum Fund enjoys massive funding from Goldman Sachs, Pfizer and others, raising almost €8 million dollars in 2008 alone. Their Annual Report for that year describes Kay as a Senior Staff Attorney and reveals its involvement in planning the ABC case.

Also supporting Kay with the ABC case was the US Centre for Reproductive Rights - a legal centre headquartered on Wall Street. Their 2009 Annual Report shows income for that year at \$13.8 million with donations from the Ford Foundation, Google and others.

Kay is also on the board of Women's Link Worldwide: fellow board member Rebecca Gomberts infamously sailed an abortion ship just outside Irish waters, inviting mothers to abort their babies on board.

Harvard-educated, and married but childless, Kay previously described Ireland's ban on abortion as "the jewel in the crown of the pro-life movement".

Little wonder then that abortion providers poured foreign resources and expertise into the ABC case, hoping that the European Court would rule against Ireland.

This is a familiar tactic in the shameful and grubby history of the abortion industry. They prefer to eschew democracy when pushing for social change - especially in Ireland where the majority of people are pro-life - and invariably seek to use the courts to impose abortion.

Another pattern is also well established however: that of wealthy, privileged ideologues, from Margaret Sanger to Julie Kay, who view abortion as a "solution" for a mother in crisis because of poverty. One of the applicants in the ABC case was a mother described as living in poverty - as if abortion, rather than the natural solution of providing support and assistance, was the answer.

Planned Parenthood's promotion of abortion is dispro-

portionately aimed at those living in poverty, and at minorities; - part of the disturbing legacy of Margaret Sanger.

It should be noted that the IFPA is in receipt of substantial taxpayer funding from the current government - some €1.3 million in 2008 alone - and enjoys charitable status in Ireland. Little wonder that it has the resources to sponsor court cases attacking Ireland's ban on abortion.



Wealthy, powerful and targeting our unborn children: American Julie Kay, lawyer for the IFPA. With €1.3million in Irish taxpayer funding in 2008 alone, little wonder the IFPA have the resources to attack our pro-life laws.

OVERVIEW OF WHAT WAS ARGUED BEFORE THE COURT

The facts of the case as argued are, by now, well known. The three applicants were A, B, and C - all of whom had travelled to Britain for abortions.

MS A

Applicant A was described as being "unmarried, unemployed and living in poverty". She had four young children and, when she became pregnant again, went to Britain to abort her baby. She has since had a fifth child.

MS B

Applicant B at first submitted that she had an abortion because of fears of an ectopic pregnancy. However, the Court found that she was aware the pregnancy was not ectopic before the abortion took place.

MS C

Applicant C was in remission from cancer when she became pregnant. Although no medical evidence was offered in the Court, C said that she feared that her life would be put at risk by a continuation of the pregnancy and that Ireland lacked a regulatory framework through which her entitlement to a “lawful abortion” could be established. She also suggested that her baby might actually have been harmed by tests undergone for cancer but no evidence was offered as to whether the relevant clinical tests had actually been carried out.

Obviously, the deliberate confusion of legitimate medical treatment for cancer (or any other condition) with abortion - the deliberate killing of an unborn child - was the ploy on which the IFPA based this case. They (erroneously) argued that the Irish Constitution allowed for abortion in circumstances where the life of a mother was in danger.

All three applicants complained that their abortions were unnecessarily expensive, complicated and traumatic because they could not have their babies killed in Ireland. They claimed they had been “stigmatised and humiliated” and that their rights had been violated.

There are several striking aspects to what was argued by both the IFPA and the Irish Government before the European Court of Human Rights.

LACK OF EVIDENCE

- No medical evidence whatsoever as to any of the applicants was offered before the Court.
- Most significantly, no medical evidence was offered in relation to the claim that the pregnancy constituted a risk to C's life, and that she would not have received medical treatment to save her life if she had continued with her pregnancy.
- Much like the X case, no evidence was given by a senior medical expert in obstetrics and gynaecology regarding current medical practice in Ireland.

POSITION ADOPTED BY THE IRISH GOVERNMENT

Counsel for the Irish Government, in dealing with Ms A and Ms B, argued that Ireland's ban on abortion was a matter for the people to decide, and that protection under Irish law for the right to life of the unborn was based on “profound moral values deeply embedded in the fabric of Irish society.”

However, in dealing with the third applicant, Ms C, the Irish Government allowed medical treatment for ectopic pregnancy and other life-threatening conditions to be described as 'lawful abortions' when, in fact, that is not the term used by Irish medical practitioners to describe these treatments, and that is not, in reality, what these treatments are.

Adopting this position can only have assisted the IFPA and the Court in arguing and deciding that the Irish Constitution allowed for abortion.

It was, at best, a grievous error, at worst, a deliberate position adopted by the State to assist in the effort to re-classify life-saving medical treatments as abortion.

Counsel for the Irish Government also went on to argue that there was room for interpretation within the pro-life amendment, and said that Article 40.3.3 would not be interpreted with “remorseless logic” by the Irish courts. Counsel pointed approvingly to the D case in 2005 and said that the Irish High Court had found there was a ‘right to abortion’ in the case of severe foetal handicap.

EXHAUSTING DOMESTIC REMEDIES

The IFPA argued that they didn't exhaust any domestic legal remedies before coming to the European Court of Human Rights because it would have been “futile” and “costly”.

The Court, quite incredibly, agreed, deciding that the pursuance of the case in the Irish courts would not have had “any prospect of success”.

OTHER FACTS THAT EMERGED

According to the Court, all three women suffered post-abortion complications. It should be noted that the complications were caused by the so-called 'safe, legal abortion' procedure in the UK, and not by any requirement to travel.

Applicant A suffered profuse bleeding on her journey home and required an ambulance to meet her train; she also experienced pain, nausea and bleeding for weeks thereafter, and continues to struggle with depression.

Applicant B started passing blood clots on her return to Ireland, and needed follow-up care.

Applicant C suffered complications of an incomplete abortion, including prolonged bleeding and infection.

- Although it was submitted that Applicant B requested an abortion because of fear of an ectopic pregnancy the Court noted that she "acknowledged that she knew her pregnancy was not ectopic before her abortion" and "accepted her core factual submission that she travelled for an abortion as she was not ready to have a child."
- The Court was provided with evidence of the position of the Institute of Obstetricians and Gynaecologists' who care for Irish mothers and babies. The judges ignored the statement made by the Institute's then Chairman, Prof John Bonnar, who confirmed that treatment for cancer, ectopic pregnancy, pre-eclampsia and other conditions had never been considered as abortion by Irish medical experts.
- The link between Irish abortion campaigners and the abortion industry was highlighted by the joint submission of the tiny Irish group, Doctors for Choice, and the British Pregnancy Advisory Service - a UK abortion giant.
- The Court noted that the fees claimed for the case (€50,000) represented a global sum for all three applicants. In addition, no breakdown of the costs referable to each individual applicant or of the tasks carried out for each, was submitted and no bills were provided to support the amount claimed.

The Court ruled that Ireland should legislate for abortion. The Life Institute said the ruling was "an unwarranted attack on Ireland's pro-life laws."



WHAT THE COURT RULED

THE GOOD...

The Court decided that the European Convention on Human Rights did not confer a human right to abortion, ruling that "Article 8 cannot, accordingly, be interpreted as conferring a right to abortion". (§ 214 of the ruling)

They also found that the Irish people had a right to decide "the prohibition in Ireland of abortion for health and well-being reasons, based as it is 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 the unborn". (§ 241).

The majority of judges decided that the evidence offered by the IFPA - who selectively used opinion polls to argue a shift in public opinion - was not "sufficiently indicative of a change in the views of the Irish people, concerning the grounds for lawful abortion in Ireland". (§ 226)

The Court also found that "the first two applicants [A and B] did not demonstrate that they lacked relevant information or necessary medical care as regards their abortions". (§ 239)

THE BAD...

The Court found that the Irish Constitution contained a "right" to abortion. It decided that Ireland had failed Applicant C by denying her right to establish "whether she qualified for a lawful abortion in Ireland in accordance with Article 40.3.3 of the Constitution." (§ 267)

It ruled that Ireland had a "positive obligation" to secure "a legislative or regulatory regime" allowing for abortion under Article 40.3.3. (§ 267)

The Court - at the direction of the IFPA, and without sufficient opposition from the legal counsel for the Irish Government - simply decided to confuse legitimate medical treatment with abortion. Despite the fact that all medical evidence has always pointed to the contrary, and that Irish medical experts have stated otherwise, the European Court is insisting that interventions to save mothers with conditions such as cancer or pre-eclampsia are abortions - and that these 'abortions' are approved by the Irish Constitution.

This is patently untrue. It has long been established that Irish medical practice means trying to save both mother and child. The unborn baby is never deliberately killed, though the child may sometimes unfortunately die as a result of the treatment necessary to preserve the life of the mother. The practice of saving both mother and child has led Ireland to become the safest place in the world for a mother to have a baby.

The flawed ruling of the ECHR is now being used by the IFPA and their media allies to repeatedly and persistently describe treatment to save the life of a mother as an abortion. **Lenin's maxim springs to mind: A lie told often enough becomes the truth.**

AND THE UGLY

The Court accused Ireland of violating human rights. The fact remains that Ireland has a proud record of protecting mothers and babies from the abortion industry. The judgement attempted to force Ireland to overturn its protection of unborn children by insisting that our Constitution allows for abortion.

The Court's ruling was contradictory: On the one hand it stated that Ireland's national sovereignty allowed us to decide on the abortion issue, but at the same time it ruled that we must allow for abortion according to the Court's interpretation of our Constitution.

It's worth noting that a minority of judges (six in total) in the European Court wrote that Ireland should be obliged to accept what they described as the "European consensus", which allows for the killing of children. It seems their arrogance knows no bounds.

THE ACTUAL LEGAL POSITION

There are three important considerations in relation to Irish law protecting the unborn child.

1. The ruling of the European Court of Human Rights is not binding, in a practical sense. However, legal experts have pointed out that the passage of the Lisbon Treaty brings a new dimension to the ECHR. Articles 52 and 53 of the Charter of Fundamental Rights attached to the Treaty state that where the Charter corresponds to ECHR decisions, then the Charter shall be interpreted in accordance with such decisions.

2. **The actual legal position in Ireland in relation to the unborn is that the Constitution, in Article 40.3.3, protects both mother and baby** (the pro-life amendment). The 1992 X case ruling interpreted this to mean that if a threat to a mother's life, including the risk of suicide, could only be avoided by a termination of pregnancy, abortion was permissible. However, the relief granted by the Supreme Court was to allow the right to travel to Britain for an abortion. Abortions are not carried out in Ireland, since there has never been any public support for legislation which would enact the X case ruling. It has been pointed out, of course, that all the medical evidence shows that, in the real world, any threat to a mother's life can be avoided without recourse to abortion i.e. the test in X would fail if applied properly.

3. Irish medical ethics have always served both mother and child - and Irish medical experts have clearly stated

that they do so without recourse to abortion. The All-Party Oireachtas Committee's Fifth Report on Abortion noted that there was no medical evidence to suggest that doctors in Ireland did not treat women with cancer or other illnesses on the grounds that the treatment would damage the unborn.

It also reported that the Institute of Obstetricians and Gynaecologists, which represents 90%-95% of the obstetricians and gynaecologists in Ireland, wrote:

“In current obstetrical practice rare complications can arise where therapeutic intervention is required at a stage in pregnancy when there will be little or no prospect for the survival of the baby, due to extreme immaturity. In these exceptional situations failure to intervene may result in the death of both the mother and baby. We consider that there is a fundamental difference between abortion carried out with the intention of taking the life of the baby, for example for social reasons, and the unavoidable death of the baby resulting from essential treatment to protect the life of the mother.”

In oral evidence to the Committee its then Chairman, Professor John Bonnar said:

“We have never regarded these interventions as abortion. It would never cross an obstetrician's mind that intervening in a case of pre-eclampsia, cancer of the cervix or ectopic pregnancy is abortion. They are not abortion as far as the professional is concerned, these are medical treatments that are essential to protect the life of the mother. So when we interfere in the best interests of protecting a mother, and not allowing her to succumb, and we are faced with a foetus that dies, we don't regard that as something that we have, as it were, achieved by an abortion. Abortion in the professional view to my mind is something entirely different. It is actually intervening, usually in a normal pregnancy, to get rid of the pregnancy, to get rid of the foetus. That is what we would

consider the direct procurement of an abortion. In other words, it's an unwanted baby and, therefore, you intervene to end its life. That has never been a part of the practice of Irish obstetrics and I hope it never will be.”

As Dr Seán Ó Domhnaill of the Life Institute told the Committee at the time: "Irish medical practice recognises the difference between terminating a pregnancy and terminating a life."



Pre-eclampsia: The baby is delivered early, because Irish medical practice protects mother and baby

A REAL-LIFE EXAMPLE

The recent birth of Irish baby, Sive McDonald, at just 23 weeks, is an example of how Irish medical ethics work to save both mother and child.

Sive's mother, Aisling McDonald, developed severe pre-eclampsia just 23 weeks into her pregnancy. The condition was life-threatening and she was in danger of having a stroke.

In other jurisdictions doctors would have rushed to abort the baby. In Ireland, where both mother and baby are protected, doctors saved both lives.

The mother's life becomes the priority - but the pregnancy is terminated by delivering the baby early, not deliberately killing the child. So baby Sive was delivered at just 23 weeks to save her mum's life - and now both mum and baby are doing very well.

REACTION TO THE RULING

Immediately after the ruling, the then Minister for Health, Mary Harney, insisted that the European Court judgment was binding, and that the government would bring forward proposals "in time".

Ms Harney also referred to the Irish Medical Council guidelines on abortion which she suggested could reflect the ruling: but she failed to disclose that she had stacked the Medical Council with political appointees who continue to target the Council's guidelines on abortion.

THE CURRENT SITUATION

A new government has now been formed since the election in February of 2011. Prior to the election, Fine Gael said that they were "opposed to the legalisation of abortion" and would establish an All-party Oireachtas Committee to consider the implications of the recent ruling of the European Court of Human Rights and to make recommendations. They did not clarify that they would maintain the important distinction between abortion and legitimate medical treatment necessary to preserve life. Fine Gael did not commit to a pro-life referendum on the issue.

Labour is Fine Gael's partner in government. The Labour party leader Eamon Gilmore told RTE's News at One (04/01/2011) that Labour wanted to legislate for abortion on life and health grounds, following the British model which results in the death of more than 180,000 babies every year. Labour also said they would refuse the people the right to decide the matter in a referendum.

Fianna Fáil said during the election campaign that they would maintain Ireland's ban on abortion, but their record on this issue is far from satisfactory. Sinn Féin said the ruling "vindicated their call for legislation to deal with the X case".

It's time to remind our politicians of Article 6 of the Irish Constitution which says that the people, not the legislature, are sovereign, and as such will decide on all matters of national importance.

As barrister Johanna Higgins wrote: "What no one has really reckoned on yet is the reaction of the Irish people who will resist this insult to their integrity and who, as a nation, surely have a love of their children, born and unborn, sometimes equalled but never surpassed."

THE PRO-LIFE MAJORITY MUST NOW:

- 1. DEFEND** the sovereign right of the people to decide on the abortion issue. We must not be overruled by the European Court.
- 2. EDUCATE & INFORM** the public so that the deliberate attempt to confuse life-saving medical treatment with abortion is countered with extensive educational campaigns giving the evidence as to why abortion is never medically necessary.
- 3. REJECT** any move to introduce abortion legislation.
- 4. INSIST THAT** Ireland's pro-life ethos is maintained, so that mothers and babies can be protected from the abortion industry.



LIFE INSTITUTE