

NATIONAL UNIVERSITY OF IRELAND GALWAY

European Master's Degree in Human Rights and Democratisation
A.Y. 2013/2014

The 2013 Irish legislation on abortion: turning-point or missed opportunity?

A critical analysis from a human rights perspective

Author: Chiara Cosentino

Supervisor: Noelle Higgins

Abstract

While Ireland is being targeted by a worldwide Amnesty International campaign on sexual and reproductive rights, a reflection on the Irish legal framework on abortion is deemed necessary. The present work assesses whether the Protection of Life During Pregnancy Act approved by the Irish Parliament in July 2013 represents a step forward or a missed opportunity for the protection of women's reproductive rights in Ireland. After illustrating the legal, political and social developments on the issue of abortion since the introduction of the Eighth Amendment of the Constitution in 1983, the focus will move to the analysis of the 2013 Act. The assessment will be twofold. On the one hand, at a national level, the alleged shortcomings of its practical impact will be illustrated. On the other hand, at the international level, the legislation will be evaluated in the light of its compliance with the Irish obligations under International Human Rights Law. Finally, it will be concluded that the Protection of Life During Pregnancy Act has to be welcomed, since it fills a thirty-year lasting legislative gap, but it falls short of human rights requirements and does not bring any major practical improvement in the majority of women's lives.

Table of contents

1. Introduction	1
2. Irish legal and social background	4
2.1. Constitution, identity and the fight against abortion	4
2.2. The genesis: criminalisation of abortion and constitutional protection of the life of the unborn.....	6
2.3. 1992: a landmark year in the history of abortion in Ireland	8
2.3.1. Irish Supreme Court: the <i>X case</i>	8
2.3.2. European Court of Human Rights: <i>Open Door and Dublin Well Woman v Ireland</i>	10
2.3.3. The response to the Courts: three constitutional referenda.....	12
2.3.4. Ireland in the EU: anti-abortion clause in the Maastricht Treaty	13
2.4. 2010: <i>A, B and C v Ireland</i> , the final call for legislation.....	14
2.5. The social dimension of the phenomenon	17
3. The Protection of Life During Pregnancy Act 2013: a political and legal analysis ...	20
3.1. The emerging legislation on abortion	20
3.1.1. Governmental and social dynamics on abortion.....	20
3.1.2. Savita's death: the tragedy that shook a nation	23
3.1.3. Expert Group Report: the need to legislate	27
3.1.4. The political pathway of the Protection of Life During Pregnancy Act .	28
3.2. Critical analysis of the 2013 Act	33
3.2.1. The title	34
3.2.2. Part 1: Preliminary and General	36
3.2.3. Part 2: Medical Procedures Lawful Under Act	39
3.2.4. Part 3: Miscellaneous	49

3.2.5. Schedule	57
4. Human rights based analysis	58
4.1. International Human Rights Law and abortion.....	58
4.2. Human rights bodies, Ireland and abortion in the past years.....	60
4.3. Human Rights issues arising from the PLDPA.....	63
4.3.1. Right to life	63
4.3.2. Right to health and safe and accessible services	64
4.3.3. Right to information	66
4.3.4. Right to be free from violence.....	67
4.3.5. Right to be free from cruel, inhuman or degrading treatment (CIDT)	68
4.3.6. Right to privacy and family life	71
4.3.7. Right to reproductive self-determination.....	72
4.3.8. Right to be free from discrimination	73
4.3.8.1. Discrimination against women.....	73
4.3.8.2. Neglected vulnerable categories of women	75
4.3.9. Criminalisation and human rights	77
4.3.10. Right to freedom of thought, conscience and religion.....	79
4.4. Ireland under examination: HRC Fourth Periodic Review, July 2014.....	81
5. Conclusions	83
Bibliography	86

2014

The 2013 Irish legislation on abortion: turning-point or missed opportunity? : a critical analysis from a human rights perspective

Cosentino, Chiara

<https://doi.org/20.500.11825/367>

Downloaded from Open Knowledge Repository, Global Campus' institutional repository