

Irish Times

New Expert Group Must Vindicate Right to Abortion

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On Friday, the Government published the terms of reference and named the expert group tasked with addressing the outcome of the A, B & C v Ireland ruling at the European Court of Human Rights. The ruling in December 2010 reaffirmed the Supreme Court X Case judgment of 1992.

The new expert group must now propose concrete measures to implement the ruling of the court and to comply with the wishes of the people as expressed in the 1992 and 2002 constitutional referendums.

It is clear that the State can no longer ignore the imperative to legislate so that women and girls needing life-saving abortions are guaranteed access to appropriate services in an effective, timely and humane manner.

The expert group is tasked with resolving the three central issues that result in what the court termed “the striking discordance between the theoretical right to a lawful abortion in Ireland and the reality of its practical implementation”.

This requires both legislation to provide for lawful medical treatment and medical guidelines so that doctors can make a practical assessment of what constitutes a “real and substantial risk” to the life of a pregnant woman.

Doctors require clear, workable guidelines in relation to conditions likely to be worsened by the continuation of pregnancy. Decisions in these cases are not always straightforward, as it is not possible to predict every possible medical situation, but they are always urgent. In situations where every day counts, doctors must have sufficient room for discretion to allow them to treat their patients.

Currently, when pregnant women in life-threatening conditions choose to travel for an abortion, they are forced to do so without a referral letter from their doctor outlining their medical history. This is quite simply unacceptable.

A doctor would not expect any patient to access any other medical treatment in this way, in particular in the case of a patient with a life-threatening illness.

If it is to give full legal effect to the judgment of the European Court of Human Rights, the expert group must also propose draft legislation and guidelines which ensure that the right of patients to access life-saving medical care can never be held hostage to refusal of care by individual doctors; institutions, such as hospitals and medical clinics; or third parties, such as hospital personnel not directly involved in providing the treatment.

The expert group also needs to address the lack of a clear framework to examine and resolve differences of opinion between a woman and her doctor or between doctors. In any such case, the paramount consideration must be that the woman's health is not further endangered by a delay.

Pregnant women's rights to privacy, freedom and dignity must be respected and they must be represented in any dispute resolution process.

And doctors must be free from the fear of criminal prosecution.

The European Court of Human Rights highlighted the chilling effect on the doctor-patient relationship caused by the criminal penalties attached to abortion (up to life imprisonment). However clear any clinical guidelines are, they will be unworkable as long as this law remains on the statute books.

Ireland is not the only country where abortion is or has been a sensitive political issue. But Ireland is one of the very few countries that have failed to make any legal provision for abortion.

Other European countries do not make the distinction between abortion to save the life and abortion to protect the health that was made by the Supreme Court in its interpretation of article 40.3.3 in the X case judgment. This distinction is unworkable in practice and presents doctors with a serious ethical dilemma in treating their patients and flies in the face of medical best practice.

The expert group may well find that this distinction casts a long shadow over its work.

Of the thousands of women each year who contact the Irish Family Planning Association's pregnancy counselling services, a small but significant number face grave dangers to their lives.

For decades, the State has ignored its legal responsibility and has turned a blind eye to protecting the life and health of pregnant women in dire medical circumstances.

The Government has now assembled a group of experts who are exceptionally well-placed to draft legislation and propose guidelines which will finally give clarity to women and their doctors.

No woman in a life-threatening situation should be forced to endure the uncertainty, humiliation and distress that these women face. It is in the hands of the expert group to ensure that this never happens again.

Time is of the essence. Every day the State fails to reform its restrictive abortion laws, it is violating the judgment of the Supreme Court and the European Court of Human Rights and showing a callous disregard for women's human rights.

Ends.

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