
Editorial: A short comment on Ireland abortion liberalisation: the new Law of 31 July 2013

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Biographical notes: Christina Akrivopoulou holds a PhD and two postdoctoral titles in Constitutional Law, Philosophy and Methodology of Law and Comparative Law. She is currently lecturing at Democritus University of Thrace, Hellenic Open University and Aristotle University of Thessaloniki, Greece. She has among others edited, *Personal Data Privacy and Protection in a Surveillance Era: Technologies and Practices* (IGI: 2011), *Human Rights and Risks in the Digital Era: Globalization and the Effects of Information Technologies* (IGI: 2012) and *Digital Democracy and the Impact of Technology on Governance and Politics: New Globalized Practices* (IGI: 2013). Her main research interests concern the protection of human and constitutional rights, the protection of the right to privacy, data protection, the private-public distinction and citizenship.

The recent Law ‘Protection of life during pregnancy’ (31 July 2013) which acknowledges the potential risk for the pregnant woman’s life as a reason justifying abortion represents the greatest evolution regarding the liberalisation of abortions in Ireland ever since the 19th century. The present coalition Irish government has passed the specific Bill on 13 July of 2013 by the Irish parliament (Dáil) and by the Irish Senate (Seanad) on 23 of July and finally the first Law amending the absolute ban of the Irish Constitution regarding abortions has passed also from the Irish president without any reference to the Irish Constitutional Court (it has been signed and enacted on the 31 July 2013).

The Law has amended Art. 40.3.3. of the Irish Constitution by introducing three exemptions in the so far absolute protection of unborn life in the Irish legal order. Thus, Art. 7 of the new Law permits abortion in the case that a risk for the life of the pregnant woman from illness exists. The potential risk should be certified by two practitioners and should be carried out by an obstetrician at an appropriate medical institution. Additionally, Art. 8 provides the ability to proceed with an abortion in cases that an emergency risk of loss of life from physical illness exists, when a practitioner decides in favour of the procedure. Last, an abortion is possible when a risk of life from suicide exists for the pregnant woman certified by three practitioners. Nevertheless, the new Law remains silent regarding the abortions of rape or sexually abused women as well as the criminalisation of abortion in Ireland (up to fourteen years of imprisonment).

The restrictive for abortions legal framework in Ireland is rooted in the strong catholic identity of the Irish society. Abortions were banned in Ireland due to the *Offences Against the Person Act* ever since 1861, a restriction which was afterwards introduced also to the Irish Constitution with the 1983 referendum which lead to the constitutional acknowledgement of the right to life of the unborn. Thus, the Art. 40.3.3 amended now by the new Law reads as follows: “The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right. This subsection shall not limit freedom to travel between the State and another state. This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state”. According to Art. 40.3.3, travelling abroad was in fact the only choice for Irish women in order to access abortion medical services legally.

The first step that challenged this severally restrictive for the Irish women’s rights regime was taken by the Irish Supreme Court in the case *Attorney General versus X et al.* ([1992] 1 I.R. 53-54 (Ir. S. C.)). The case concerned a minor (14 year old) rape victim who was initially denied the right to access abortion services at the lower Irish courts though she was appearing to be suicidal. Nevertheless, in its judgment the Irish Supreme Court set the first red line to the absolute protection of unborn life in the Irish legal order. According to the Irish Supreme Court suicide as an imminent risk for the life of the pregnant woman could justify abortion.

The X case produced a fruitful deliberation within the Irish society that led to the affirmation with the 2003 referendum of suicide as a reason that could justify access to abortion procedures in Ireland. Of relevant significance for the gradual liberalisation of abortions in Ireland was also the case A, B, C of the European Court of Strasburg (No. 25579/05, 16 December 2010). The Court of Strasburg insisted that the subject of abortions is an ethical matter and therefore regulated by the national legislator. Nevertheless, the Court partly condemned Ireland while its reasoning illustrated both the matters of the undue burden imposed to the pregnant women and the chilling effect against abortions produced for such procedures by the extremely restrictive on the subject Irish legislation.

The new Law takes a great move forward regarding the liberalisation of abortions in Ireland especially given that along with Poland are the two only members of the Council of Europe that pose such severe restrictions in abortions. This Law certainly presents a major step for a the achievement of a fair balance between the right of the pregnant woman to her privacy and autonomy and the protection of unborn life, a value so deeply cherished by the Irish legal order. Hopefully, it is a step towards the realisation of Irish women privacy rights that will be followed by many others.