



**Communication from a NGO (“Irish Council for Civil Liberties”)
in the case of A, B and C against Ireland (Application No. 25579/2005)
Information made available under Rule 9.2 of the Rules of the Committee of Ministers**

Introduction

1. The Irish Council for Civil Liberties (ICCL) is Ireland’s leading independent human rights watchdog. It was founded in 1976 by Mary Robinson (later President of Ireland and United Nations High Commissioner for Human Rights) and others. The ICCL monitors, educates and campaigns to secure full enjoyment of human rights for everyone in Ireland. It is an entirely independent non-governmental organisation that receives no government funding.
2. This communication is submitted to the Committee of Ministers under rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies).
3. This communication relates to the implementation by the Government of Ireland of the judgment of the European Court of Human Rights (“the Court”) in the case of *A, B and C v Ireland*ⁱ, currently under enhanced supervision by the Committee of Ministers.
4. This communication follows on from the previous ICCL communications on 17 August 2011 in advance of the 1120 DH Meeting (13 – 14 September 2011) and 19 September 2012 in advance of the 1150 DH Meeting (24 – 26 September 2012).
5. As the Committee is aware, since then, the Protection of Life During Pregnancy Act 2013 was enacted in July 2013 and its provisions came into effect on 1 January 2014. The legislation and subsequent regulations purport to meet the terms of the *A, B and C* judgment of the European Court of Human Rights, as set out by the Irish Government in their Action Plan submitted on 31 January 2014.
6. The ICCL wishes to bring to the attention of the Committee that, although Regulations on the 2013 Act have been produced, they are not supported by clinical guidelines. Thus, at present, it cannot be said with any certainty that the 2013 Act will in fact provide access to abortion services for women in Ireland in a manner that complies fully with the *A, B and C* judgment.

Protection of Life During Pregnancy Act 2013: Regulations

7. As the information submitted by the Government of Ireland on 31 January 2014 states, three sets of Regulations give effect to certain key clauses in the 2013 Act.ⁱⁱ These Regulations were laid before the Houses of the Oireachtas (Irish Parliament) on 23 December 2013 and in accordance with the Standing Orders, each House had 21 days (on which the House is sitting) to pass a resolution annulling the Regulations.

This period concluded at the end of February and no such resolution was passed;ⁱⁱⁱ consequently, the Regulations have the force of law.

- Protection of Life during Pregnancy Act 2013 (Certification) Regulations 2013 prescribe the form of certificate that requires completion for a termination to proceed under sections 7, 8 and 9 of the Act. Respectively, these provisions relate to risk of loss of life from physical illness; risk of loss of life from suicide and risk of loss of life from illness in an emergency.
- Protection of Life During Pregnancy Act 2013 (Section 10) (Application for review of medical opinion) Regulations 2013 set out the modalities for a review of medical opinion under section 10 of the 2013 Act. Under section 10, a pregnant women (or a person acting on her behalf) may apply for a review of a decision where a doctor does not give an opinion on, or refuses to certify a termination under section 7 (risk of loss of life due to physical illness) or section 9 (risk of loss of life due to suicide). These Regulations provide the form to be completed when applying for such a review.
- Protection of Life During Pregnancy Act 2013 (Section 20) (Notifications) Regulations 2013 provide the form to be completed by the hospital administration and forwarded to the Minister for Health within 28 days of the procedure being carried out. The notice must include the following information: name and medical registration number of the medical practitioner(s) involved in any procedure and the hospital in which the procedure was carried out. Under section 20 (4) of the Act, the Minister for Health must prepare a report on the notifications received and lay this before the Houses of the Oireachtas (Parliament).^{iv} He may also publish a report on notifications in a manner he considers appropriate.^v

State of Execution

8. In light of the enactment of the 2013 Act and the adoption of the Regulations, the Irish Government has requested that the case be closed.^{vi} The ICCL considers that the Committee of Ministers will wish to be aware of the following information when considering that request.
9. In Autumn 2013, the Department of Health appointed an Implementation Committee to draw up clinical guidelines on how the legislation would work in practice.^{vii} This Committee includes representatives from the Department of Health, the Health Service Executive,^{viii} the Institute of Obstetricians and Gynaecologists, the College of Psychiatrists, the Royal College of Surgeons, the Royal College of Physicians, in addition to experts in cardiology and oncology. However, information on the work of the Implementation Committee has been publicly unavailable and it has yet to issue a report or publish clinical guidelines (which are quite distinct from the Regulations mentioned above).
10. Medical representative bodies have raised issues around the commencement of the 2013 Act without clinical guidelines in place. The Irish College of General Practitioners has expressed surprise and concern “to see the legislation passing into law before the guidance document had been completed or published”^{ix} and the Irish college of Psychiatrists had expressed “extreme concern” at the absence of formal written guidance for GPs in accessing suitable psychiatrists to assess a suicidal woman requesting an abortion.^x
11. The establishment of Review Panels is a particularly important component of the 2013 Act. Under section 11 of the 2013 Act, which deals with the establishment of the Review Panels, the Health Service Executive must establish and maintain the panels, and must request nominations for candidates from medical bodies, including the College of Psychiatrists, the Royal College of

Surgeons in Ireland (RCSI), the Royal College of Physicians and the Institute of Obstetricians and Gynaecologists, (the panel must contain at least 10 medical practitioners).

12. However, the College of Psychiatrists has publicly stated that it has declined to participate in the nomination procedure until the clinical guidelines regarding the operation of the Act have been agreed and published by the Implementation Committee. It has been reported that “the College of Psychiatrists is concerned at the lack of clarity as to how a pregnant woman with suicidal thoughts, and the doctors caring for her, will access psychiatric first and second opinions and how she may access review panels if she is unhappy with the decisions of the first three practitioners”.^{xi} It was further reported that, the “college is also calling for a mechanism for GPs to “bypass” the local HSE psychiatrist if they have concerns about their ideological stance on abortion”.^{xii}

Suggested Action by the Committee of Ministers

13. Given the current state-of-play regarding the implementation in practice of the 2013 Act and Regulations, taken together with the absence of appropriate clinical guidelines, the ICCL respectfully suggests that the Committee of Ministers reject the Irish Government’s request that this case be closed.^{xiii} On the contrary, the Irish Council for Civil Liberties considers that unless and until the Irish Government produces compelling evidence that the 2013 Act has been rendered fully effective in practice, this case should remain subject to enhanced supervision.
14. The Irish Council for Civil Liberties remains at the entire disposal of the Committee of Ministers and of the Department for the Execution of Judgments of the European Court of Human Rights in the event that it can provide any additional information that may be of assistance in monitoring the implementation by the Government of Ireland of this judgment.

ⁱ Application no. 25579/05, judgment of 16 December 2010.

ⁱⁱ These Regulations are available at http://www.dohc.ie/legislation/statutory_instruments/?year=2013. There are four Regulations in total: SI No.537 of 2013 sets down routine commencement procedures.

ⁱⁱⁱ This was confirmed by the Library and Research Services of the Houses of the Oireachtas (responsible for the laying down of motions before the House of Parliament) on 16 April 2014.

^{iv} Section 20 (4).

^v Section 20 (5).

^{vi} “In light of the information above the Government considers that all necessary measures have therefore been taken and the case should be closed”, Communication from Ireland concerning the case of A. B. and C. against Ireland (Application No. 25579/05), 5 February 2014, para 21.

^{vii} O’Regan, E., (27 September 2013), “Abortion rules won’t be ready for three months”, *Irish Independent*, available at <http://www.independent.ie/irish-news/politics/abortion-rules-wont-be-ready-for-three-months-29614338.html> (last accessed 5 June 2014).

^{viii} The statutory body charged with the provision of public health services in Ireland. www.hse.ie.

^{ix} Irish College of General Practitioners, *ICGP concerns at the early enactment of the Protection of Life in Pregnancy Act*, available at http://www.icgp.ie/go/about/policies_statements/2014/0773A810-0A14-787E-1F9E449F08FDD88B.html.

^x Holland, K. (3 January 2014), “College tells psychiatrists not to do abortion assessments”, *Irish Times*, available at <http://www.irishtimes.com/news/social-affairs/college-tells-psychiatrists-not-to-do-abortion-assessments-1.1642834> (last accessed 5 June 2014).

^{xi} Holland, K. (4 January 2014), “GP Group adds voice to worries about abortion Act”, *Irish Times*, available at <http://www.irishtimes.com/news/social-affairs/gp-group-adds-voice-to-worries-about-abortion-act-1.1643922> (last accessed 5 June 2014).

^{xii} *Ibid.* The same news article also reported the concerns expressed by the Irish College of General Practitioners.

^{xiii} For additional comment on the substantive challenges within the 2013 Act which may limit access to abortion in compliance with the A, B and C judgment, please refer to Irish Human Rights Commission, (July 2013), *Observations on the Protection of Life During Pregnancy Bill 2013*, available at http://www.ihrc.ie/download/pdf/ihrc_observations_protection_of_life_in_pregnancy_bill_2013.pdf (last accessed 5 June 2014) and *Communication by the Irish Family Planning Association (IFPA) to the Committee of Ministers in relation to the Execution of the European Court of Human Rights Judgment in the case of A, B and C v Ireland* (7 November 2013), available at http://ifpa.ie/sites/default/files/ifpa_execution_communication_in_relation_to_abc_v_ireland_november_2013.pdf (last accessed 5 June 2014).