

**Press release issued by the Registrar**

**INADMISSIBILITY DECISION**

**D. v. IRELAND**

A Chamber of the European Court of Human Rights has **declared inadmissible** the application lodged in the case of **D. v. Ireland** (application no. 26499/02) on the ground that the applicant had not exhausted domestic remedies, in that she had failed to bring an action before the Irish courts. (The decision is available only in English.)

**The applicant**

The applicant, D., is a 45-year-old Irish national who lives in **Ireland**.

**Summary of the facts**

In late 2001 D., who already had two children, became pregnant with twins. In early 2002 an amniocentesis indicated that one foetus had died in the womb and that the second foetus had a chromosomal abnormality known as Trisomy 18 or Edward's Syndrome. A second amniocentesis confirmed those findings. D. was given to understand that Edward's Syndrome was fatal and that the median survival age for children with the syndrome was six days. She therefore decided that she could not carry the pregnancy to term.

D. went to the United Kingdom for an abortion. She did not seek legal advice as to her eligibility for an abortion in **Ireland**. At that time, the only recognised exception to the constitutional prohibition of abortion was "a real and substantial risk to the life of the mother" including one of suicide: this exception was established in the case *Attorney General v. X* (1992) where a 14-year-old pregnant girl who had been raped threatened to commit suicide if denied an abortion.

The abortion was performed in the United Kingdom. D could not remain in the United Kingdom thereafter and could not therefore take advantage of counselling on, amongst other things, the genetic implications for future pregnancies although she was given some statistical information about the recurrence of the abnormality. The applicant required some follow-up medical treatment in **Ireland** but she explained to the hospital and to her own family doctor that she had had a miscarriage.

**Complaints**

The applicant complained about the lack of abortion services in **Ireland** in the case of lethal foetal abnormality a situation unnecessarily exacerbated by the Regulation of Information

(Services outside the State for Termination of Pregnancies) Act 1995. Sections 5 and 8 of the 1995 Act limit what a doctor can tell a pregnant woman with a lethal foetal abnormality and prohibit that doctor from making proper arrangements, or a full referral, for a therapeutic abortion abroad. She also complained that she had been discriminated against as a pregnant woman or as a pregnant woman with a lethal foetal abnormality.

She relied on Articles 1 (obligation to respect human rights), 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), 10 (right to receive information), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention.

## **Procedure**

The application was lodged with the European Court of Human Rights on 11 July 2002. A hearing took place on 6 September 2005.

Four non-governmental organisations made submissions in the case: the Irish Family Planning Association, the Centre for Reproductive Rights, the Pro-Life Campaign and the Society for the Protection of Unborn Children.

## **Decision of the Court<sup>1</sup>**

The Court noted that, at the relevant time, a legal constitutional remedy was in principle available to the applicant to obtain declaratory and mandatory orders with a view to obtaining a lawful abortion in **Ireland**.

It was particularly important in a common law system to allow the courts to develop constitutional protection for fundamental rights by way of interpretation, particularly when the central issue was a novel one, requiring a complex and sensitive balancing of the constitutionally enshrined equal rights to life and demanding a delicate analysis of country-specific values and morals. The *X* case, which had recognised an exception to the constitutional prohibition on abortion when the mother's life was at risk from self harm, had shown that the constitutional courts could develop the protection of individual rights by way of interpretation and had thereby demonstrated the importance of providing those courts with the opportunity to do so. The presumption in the *X* case was that the foetus had a normal life expectancy and there was, in the Court's view, a feasible argument to be made that the constitutionally enshrined balance between the right to life of the mother and of the foetus could have shifted in favour of the mother when the "unborn" suffered from a abnormality incompatible with life.

The Court did not accept that that remedy was not accessible to the applicant or that she would not have been able to obtain legal representation in what would have been a landmark case. In addition, since abortions (in the case of a "real and substantial risk" to the mother's life) were already available in **Ireland** and since the evidence was that the Masters of the main obstetric hospitals were not against terminations in the case of a fatal foetal abnormality, the Court considered that that the relevant declaratory and mandatory orders could have been implemented in good time.

The Court concluded that there was a constitutional remedy in principle available to the applicant, although some uncertainty attached to three relevant matters arising from the novelty of the substantive issue and the procedural imperatives of the applicant's position - the chances of success, the limited time available to conclude the proceedings (the applicant had only six weeks left before the expiry of the 24-week period in which abortion was normally available in the UK) and the guarantees that her identity would be kept confidential.

However, the Court was of the view that, having regard to the potential and importance of the constitutional remedy in a common law system, especially concerning the issue in question, the applicant could reasonably have been expected to have taken certain preliminary steps. She should have obtained legal advice on those substantive and procedural uncertainties and issued a Plenary Summons allowing her to apply for an urgent, preliminary and *in camera* hearing to obtain the High Court's response to her timing and publicity concerns. It was true that it was assumed that the applicant would continue during those steps an already advanced pregnancy. However, the Court was satisfied on the evidence that such preliminary steps could have been completed without disclosing the applicant's identity and in a matter of days and, further, that the evolution of those initial steps would have elucidated some of the uncertainties and allowed her to assess the effectiveness of the remedy in her situation as the days went by. In the absence of those preliminary steps, the Court was unable to dismiss as ineffective the constitutional remedy available in principle to the applicant.

The Court therefore concluded that the applicant did not comply with the requirement to exhaust domestic remedies as regards the availability of abortion in **Ireland** in the case of fatal foetal abnormality.

The Court further noted that the limitations of the 1995 Act, about which the applicant complained also under Articles 3, 8 and 10, concerned abortion services abroad and had no application to a lawful abortion in **Ireland**. Consequently, the applicant's failure to pursue domestic remedies as regards obtaining a lawful abortion in **Ireland** meant that her complaints about the 1995 Act, together with her associated complaints under Article 13 and 14, had also to be rejected on the grounds of a failure to exhaust domestic remedies.

By a majority, the Court declared the application inadmissible.

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The decision is available today on the Court's Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*

<sup>1</sup> This summary by the Registry does not bind the Court.