



# MELLET V. IRELAND

## Ireland must legalize abortion to end violations of women's human rights

In June 2016, the United Nations Human Rights Committee issued a groundbreaking decision in the case of *Mellet v. Ireland*.<sup>1</sup> The Committee held that by prohibiting and criminalizing abortion, and thereby preventing Ms. Mellet from accessing abortion services in Ireland, the state subjected her to severe emotional and mental pain and suffering. As a result, Ireland violated her rights to freedom from cruel, inhuman or degrading treatment, privacy, and equality before the law as enshrined in Articles 7, 17 and 26 of the International Covenant on Civil and Political Rights. The Committee's decision is not only the first ruling of its kind against Ireland — it is also the first time, in a decision on an individual complaint against any state, that an international or regional court or quasi-judicial body has explicitly and unequivocally held that prohibiting and criminalizing abortion violates women's human rights.

### Case History

Ireland's abortion laws are among the most restrictive in the world.<sup>2</sup> Abortion is only permitted when deemed necessary to prevent a "real and substantial" risk to a pregnant woman's life,<sup>3</sup> as distinct from her health<sup>4</sup> and under the law women who undergo unlawful abortion in Ireland, and anyone who assists them, commit serious criminal offences.<sup>5</sup> Irish law does not prohibit women from traveling out of Ireland to access abortion services in another country<sup>6</sup> and every year thousands of women leave Ireland to have abortions.<sup>7</sup>

In November 2011, Ms. Mellet learned that her pregnancy involved a fatal fetal impairment. Her doctors in Dublin told her that either the fetus would die in utero or would not survive long after birth.

### Why this case is important

The Committee's ruling in *Mellet v. Ireland* provides landmark recognition of the degree to which Ireland's abortion laws harm women's mental and emotional wellbeing. The ruling represents the first unequivocal condemnation by an international legal authority, in response to an individual complaint, of the country's prohibition and criminalization of abortion. It provides critical confirmation of the acute impact that preventing women who have decided to end a pregnancy from doing so in their own country can have on their mental health.

In addition, the decision marks the first time that, in dealing with an individual complaint, any international court or committee has explicitly held that criminalizing and prohibiting abortion violates international human rights law.<sup>8</sup> The Committee's decision clearly affirms that domestic laws that prohibit abortion can cause women severe suffering and undermine their personal integrity and autonomy.

Previous international judgments and decisions have affirmed that where abortion is legal under domestic law it must also be available in practice and that the arbitrary denial of access to abortion services can violate women's rights to freedom from cruel, inhuman and degrading treatment and to privacy.<sup>9</sup> However, the Human Rights Committee's decision goes further: it unambiguously holds that prohibiting abortion also gives rise to human rights violations and that, at least in certain circumstances, states must make abortion legal. As a result, the decision not only directs the Irish government to change its laws, it also puts governments in other countries with highly restrictive abortion laws on notice as to the human rights imperative of law reform and the international legal and policy consequences of inaction.

Upon receiving this information, she found the prospect of continuing her pregnancy unbearable and decided to end the pregnancy. However, she was informed by her doctors that in order to end the pregnancy she would have to travel to another country; due to the legal prohibition on abortion, carrying the pregnancy to term was her only option in Ireland. As a result, Ms. Mellet travelled at her own expense to a hospital in the United Kingdom where she underwent the procedure. She flew home to Dublin only 12 hours later, although still weak and bleeding, as she could not afford to stay longer.

In November 2013, Ms. Mellet filed an individual complaint to the Human Rights Committee, under the Optional Protocol to the International Covenant on Civil and Political Rights.

## Context in Ireland

In Ireland, abortion is regulated by Article 40.3.3 of the Irish Constitution and the Protection of Life During Pregnancy Act (2013). Article 40.3.3 stipulates that, “[t]he 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.”<sup>10</sup> This provision has been interpreted by the Irish Supreme Court to allow abortion in Ireland only where it is deemed necessary to avert a “real and substantial” risk to a pregnant woman’s life, and as prohibiting abortion even when necessary to avert harm to a woman’s physical or mental health.<sup>11</sup>

The Protection of Life During Pregnancy Act (2013), which entered into force in 2014, codifies the Supreme Court’s interpretation and reiterates that abortion is permitted only where there is a “real and substantial” risk to a pregnant woman’s life.<sup>12</sup> It delineates a strict and complex certification procedure that medical practitioners must follow in such cases, with even more cumbersome requirements imposed where the risk to the life of the pregnant woman arises from a risk of suicide.<sup>13</sup> It provides that in all other circumstances abortion is a serious criminal offense and prescribes a fourteen-year prison sentence for any woman who undergoes an illegal abortion in Ireland or anyone who assists her.<sup>14</sup> Prior to the adoption of the 2013 Act, at the time of Ms. Mellet’s pregnancy, the relevant criminal penalty was life imprisonment.<sup>15</sup>

Since 1992, the Irish Constitution has explicitly provided that women are not prohibited from travelling out of Ireland to access abortion services in another country.<sup>16</sup> Every year thousands of pregnant women travel out of Ireland to access abortion services in a foreign country. In doing so they face a range of psychological, physical and financial burdens<sup>17</sup> and many experience considerable feelings of fear, stigma, isolation and abandonment because of the criminalization of abortion in Ireland.

The criminalization and prohibition of abortion in Ireland also mean that doctors and other healthcare practitioners are prevented from providing medical care and information to their patients that accords with international ethical standards and medical guidelines.<sup>18</sup>

## Decision Highlights and Key Findings

The Human Rights Committee issued its decision on the case on June 9, 2016. It found that Ireland had violated Article 7 (right to be free from cruel, inhuman or degrading treatment), Article 17 (right to privacy), and Article 26 (right to equality before the law) of the International Covenant on Civil and Political Rights.

In reaching these findings the Committee made a series of important pronouncements:

### **Prohibiting and criminalizing abortion can result in cruel, inhuman or degrading treatment**

The Committee held that by prohibiting and criminalizing abortion in situations of fatal fetal impairment, Ireland subjected Ms. Mellet to “conditions of intense physical and mental suffering.”<sup>19</sup> In the Committee’s view this suffering was sufficiently serious as to give rise to cruel, inhuman or degrading treatment in violation of Article 7 of the Covenant.<sup>20</sup> It was of no relevance that the denial of abortion care to Ms. Mellet was in accordance with Irish law, and the Committee reiterated that states parties to the Covenant may not invoke any kind of justification or extenuating circumstances to excuse a violation of Article 7, which is absolute in nature and allows for no limitations.<sup>21</sup>

### **Prohibiting and criminalizing abortion can cause serious harm to women by severing the continuum of reproductive health care**

The Committee found that as a result of the legal prohibition on abortion Ms. Mellet was not able to receive the medical care she sought from the Irish health care system. Instead, the continuum of reproductive health care was severed, and Ms. Mellet had to leave the country in order to end her pregnancy.<sup>22</sup> The Committee held that because under Irish law she was unable “to continue receiving medical care and health insurance coverage for her treatment from the Irish health care system,”<sup>23</sup> Ms. Mellet’s anguish was exacerbated. It determined that many of the negative experiences Ms. Mellet endured “could have been avoided if ... [she] had not been prohibited from terminating her pregnancy in the familiar environment of her own country and under the care of health professionals whom she knew and trusted.”<sup>24</sup>

The Committee also held that because Irish law limits what health care providers may say to their patients about abortion services, Ms. Mellet’s suffering was “further aggravated by the obstacles she faced in receiving needed information about her appropriate medical options from known and trusted medical

providers.”<sup>25</sup> It found that the Irish legal framework’s chilling effect on doctors further disrupted “the provision of medical care and advice” that Ms. Mellet needed.<sup>26</sup>

### **Forcing women to choose between continuing a pregnancy and travelling to another country to access legal abortion services can cause anguish and suffering**

The Committee recognized the financial, social and health-related burdens and hardships that are placed on women when laws force them to choose between continuing a pregnancy or travelling to another country to access abortion care. In Ms. Mellet’s case, the Committee found that her suffering was exacerbated because Ireland’s highly restrictive abortion law forced her to “choose between continuing her non-viable pregnancy or traveling to another country while carrying a dying foetus, at personal expense and separated from the support of her family, and to return while not fully recovered.”<sup>27</sup> It held that having to travel abroad to access abortion services imposed significant “financial, psychological and physical burdens” on Ms. Mellet.<sup>28</sup>

### **Criminalizing abortion can subject women to harmful stigma and shame**

The Committee also found that criminalizing abortion can generate painful stigma for women. In Ms. Mellet’s case it held that “the shame and stigma associated with the criminalization of abortion” had exacerbated her suffering.<sup>29</sup> The stigma and shame which Ireland’s criminalization of abortion imposes on women was also the subject of concurring opinions by individual Committee members, who expressed the view that Ireland’s prohibition of abortion is “punitive and stigmatizing.”<sup>30</sup>

### **Prohibiting abortion can give rise to an unreasonable interference with women’s right to privacy**

The Committee reaffirmed that a woman’s decision to have an abortion falls within the scope of her right to privacy as enshrined in Article 17 of the Covenant,<sup>31</sup> and it held that Ireland’s prohibition and criminalization of abortion interfered with Ms. Mellet’s decision not to continue her pregnancy.<sup>32</sup> The Committee found that the interference was unreasonable because “the balance that the State party has chosen to strike between protection of the fetus and the rights of the woman in this case cannot be justified.”<sup>33</sup> In this regard, the Committee noted that Ms. Mellet’s pregnancy was non-viable and that the options available to her were “inevitably a source of intense suffering”, and that being legally prohibited from obtaining an abortion in Ireland had caused her intense suffering and involved a violation of Article 7.<sup>34</sup>

### **Prohibiting and criminalizing abortion can result in discrimination against women and inequality before the law**

The Committee observed that women in Ireland who decide to carry to term a non-viable pregnancy continue to receive the full protection of the Irish public health care system.<sup>35</sup> These women’s medical needs are covered by health insurance, they continue to benefit from the care and advice of known medical professionals at all stages of pregnancy, and they receive medical attention after the end of the pregnancy.<sup>36</sup> In contrast, the Committee found that because of Ireland’s prohibition on abortion, Ms. Mellet was placed entirely outside of the Irish public health system and had to rely on her own resources to obtain the care she needed in another country.<sup>37</sup> As a result, the Committee held that Irish law “failed to adequately take into account her medical needs and socio-economic circumstances,” and thus discriminated against Ms. Mellet and denied her equal protection of the law.<sup>38</sup>

## **Remedies**

The Committee underlined that under Article 2(3)a of the Covenant Ireland has an obligation to provide an effective remedy to Ms. Mellet as a victim of human rights violations.

As a result, the Committee held that Ireland must make full reparation to Ms. Mellet for the harms that she suffered, including by providing her adequate compensation and making available any psychological treatment she may require.<sup>39</sup>

It also directed Ireland to make guarantees of non-repetition by taking steps to prevent similar violations from occurring in the future. In this regard the Committee instructed Ireland to:

- “amend its law on voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant;”
- ensure “effective, timely and accessible procedures for pregnancy termination in Ireland;” and
- “take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions.”<sup>40</sup>

In order to ensure its compliance with the Covenant Ireland must now fulfil each of the steps outlined by the Committee and report back to the Committee within six months with a full account of measures taken to implement the decision.

## Endnotes

- <sup>1</sup> Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).
- <sup>2</sup> For an overview of abortion laws, see CENTER FOR REPRODUCTIVE RIGHTS, *The World's Abortion Laws 2015*, available at <http://worldabortionlaws.com/>.
- <sup>3</sup> Protection of Life During Pregnancy Act 2013, sec. 7, 8 & 9 (Act No. 35/2013) (Ir.), available at <http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0035.pdf>. See the "Context in Ireland" text box on p. 2 for more details.
- <sup>4</sup> *Id.* sec. 7, 8 & 9; See also Attorney General v. X and Others, [1992] IESC 1; [1992] 1 IR 1 (Ir.).
- <sup>5</sup> Protection of Life During Pregnancy Act 2013, sec. 22 (Act No. 35/2013) (Ir.), available at <http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0035.pdf>.
- <sup>6</sup> IR. CONST., 1937, art. 40.3.3, available at [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_Archive/Publications\\_2012/Bunreacht\\_na\\_h%C3%89ireann-Aug2012.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2012/Bunreacht_na_h%C3%89ireann-Aug2012.pdf).
- <sup>7</sup> IRISH FAMILY PLANNING ASSOCIATION, *Abortion in Ireland: Statistics*, available at <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics>.
- <sup>8</sup> Following periodic reviews, the treaty monitoring bodies have repeatedly in concluding observations criticized legislation that criminalizes and/or severely restricts access to abortion, and have specified that in order to ensure women's rights states should liberalize their abortion laws, including by repealing legislation criminalizing abortion. In this context they have specified that at a minimum states must legalize abortion and enable access in practice in situations where there is a risk to a woman's life or health, severe fetal impairment, and when pregnancy results from rape or incest. See e.g., Human Rights Committee, *Concluding Observations: Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014); *Ireland*, para. 13 U.N. Doc. CCPR/C/IRL/CO/3 (2008); *Ireland*, paras. 444-445 U.N. Doc. A/55/40 (2000); *El Salvador*, para. 10, U.N. Doc. CCPR/C/SLV/CO/6 (2010); *Jamaica*, para. 14, U.N. Doc. CCPR/C/JAM/CO/3 (2011); *Honduras*, para. 8, U.N. Doc. CCPR/C/HND/CO/1 (2006); *Paraguay*, para. 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); *Poland*, para. 8, U.N. Doc. CCPR/C/82/POL (2004); *Dominican Republic*, para. 15, U.N. Doc. CCPR/C/DOM/CO/5 (2012); *Malta*, para. 13, U.N. Doc. CCPR/C/MLT/CO/2 (2014); *Sierra Leone*, para. 14, U.N. Doc. CCPR/C/SLE/CO/1 (2014); *Philippines*, para. 13, U.N. Doc. CCPR/C/PHL/CO/4 (2012); U.N. Doc. CCPR/C/CHL/CO/5 (2007); *Nicaragua*, para. 13, U.N. Doc. CCPR/C/NIC/CO/3 (2008); Committee against Torture, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011); *Peru*, para. 15, U.N. Doc. CAT/C/PER/5-6 (2013); *Poland*, U.N. Doc. CAT/C/POL/CO/5-6 (2013); *Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); *Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Ireland*, para. 30, U.N. Doc. E/C.12/IRL/CO/3 (2015); *Peru*, para. 22, U.N. Doc. E/C.12/SLV/CO/3-5 (2014); *Nicaragua*, para. 26, U.N. Doc. E/C.12/NIC/CO/4 (2008); Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations: Chile*, para. 19, U.N. Doc. CEDAW/C/CHI/CO/4 (2006); *Mauritius*, para. 30, U.N. Doc. CEDAW/C/MAR/CO/5 (2006); *Andorra*, para. 48, U.N. Doc. A/56/38 (2001); *Indonesia*, para. 42(e), U.N. Doc. CEDAW/C/IDN/CO/6-7 (2012).
- <sup>9</sup> See R.R. v. Poland, No. 27617/04 Eur. Ct. H.R., paras. 153-62, 192-214 (2011); P. and S. v. Poland No. 57375/08 Eur. Ct. H.R., paras. 128-37, 157-69 (2013); K.L. v. Peru, Communication No. 1153/2003, paras. 6.3-6.4, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); L.M.R. v. Argentina, Human Rights Committee, Communication No. 1608/2007, para. 9.2-9.4, U.N. Doc. CCPR/C/101/D/1608/2007 (2011).
- <sup>10</sup> IR.CONST., 1937, art. 40.3.3.
- <sup>11</sup> Attorney General v. X and Others, [1992] IESC 1; [1992] 1 IR 1 (Ir.).
- <sup>12</sup> Protection of Life During Pregnancy Act 2013, sec. 7, 8 & 9 (Act No. 35/2013) (Ir.).
- <sup>13</sup> *Id.* sec. 9.
- <sup>14</sup> *Id.* sec. 10-14 & 22.
- <sup>15</sup> Offenses Against the Person Act 1861, sec. 58 & 59 (Ir.), available at <http://www.irishstatutebook.ie/eli/1861/act/100/enacted/en/print.html>.
- <sup>16</sup> IR. CONST., 1937, art. 40.3.3.
- <sup>17</sup> IRISH FAMILY PLANNING ASSOCIATION, *Abortion in Ireland: Statistics*. See also IRISH FAMILY PLANNING ASSOCIATION, *Psychological, Physical and Financial Costs of Travel*, available at <https://www.ifpa.ie/node/506>.
- <sup>18</sup> See Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013, para. 7.5 (2016); Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995, sec. 2 (Act No. 5/1995) (Ir.). See also CENTER FOR REPRODUCTIVE RIGHTS, *Abandoned and Stigmatized: the impact of the Irish abortion law on women*, 22 (2014), available at [http://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/AbandonedAndStigmatized\\_ImpactOfIrishAbortionLaw.pdf](http://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/AbandonedAndStigmatized_ImpactOfIrishAbortionLaw.pdf).
- <sup>19</sup> Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013, para. 7.4 (2016).
- <sup>20</sup> *Id.* para. 7.4.
- <sup>21</sup> *Id.* para. 7.6.
- <sup>22</sup> *Id.* para. 7.4.
- <sup>23</sup> *Id.*
- <sup>24</sup> *Id.*
- <sup>25</sup> *Id.* para. 7.5.
- <sup>26</sup> *Id.* para. 7.4.
- <sup>27</sup> *Id.*
- <sup>28</sup> *Id.* para. 7.10.
- <sup>29</sup> *Id.* para. 7.4.
- <sup>30</sup> Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013, Appendix I, Individual opinion of Committee member Yadh Ben Achour (concurring), para. 4.
- <sup>31</sup> Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013, para. 7.7 (2016).
- <sup>32</sup> *Id.*
- <sup>33</sup> *Id.* para. 7.8.
- <sup>34</sup> *Id.*
- <sup>35</sup> *Id.* para. 7.10.
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.* para. 7.11.
- <sup>39</sup> *Id.* para. 9.
- <sup>40</sup> *Id.*