

Joint Committee on the Eighth Amendment of the Constitution

Opening Statement - Leah Hootor

8 November 2017

I. INTRODUCTION

Thank you very much to the Joint Committee on the Eighth Amendment of the Constitution for the invitation to present today. It was an honour to receive your request in August and I am hopeful that the information I will provide, and that is included in the supplementary materials I have submitted to you, will assist your important and valuable deliberations on behalf of the citizens of Ireland.

Further to the Committee's request, the purpose of this presentation will be to provide an overview of comparative European law on termination of pregnancy. It will describe the grounds and timeframes on which abortion is legal in other European countries. The supplementary materials also provide the Committee with extensive information on this topic.

The Center for Reproductive Rights

The mandate and purpose of the Center for Reproductive Rights (the Center) is well known and detailed information regarding the Center's mission and its work can be found on the website. The Center works to advance legal protection for women's reproductive health and rights across the world, in Africa, Asia, Europe, Latin America and the United States, and it has offices in Colombia, Kenya, Nepal, Switzerland and the United States. The Center uses law to advance women's access to reproductive health care, including safe and legal abortion, quality maternal health care, and affordable contraception. It also works to prevent child marriage and forced sterilisation. A substantial part of this work involves representing women and healthcare providers before

national and international courts and quasi-judicial bodies in relation to cases concerning women's health and human rights.

The Center's work in regard to Ireland has focused on representing Amanda Mellet and Siobhán Whelan in relation to their complaints to the United Nations Human Rights Committee, filed in 2013 and 2014, and the decisions issued by the Human Rights Committee in 2016 and 2017. This work has included representing Ms. Mellet and Ms. Whelan in the process before the Human Rights Committee and in all advocacy, governmental, media and political engagement related to the cases and decisions.

In both decisions, the Human Rights Committee held that Ireland is obliged under international treaties to provide effective remedies and full reparation to Ms. Mellet and Ms. Whelan. It detailed that these remedies must entail compensation, psychological support services, and reform of Irish abortion law, including if necessary the Constitution, in order to prevent similar violations from occurring in the future.

As the representative for Ms. Mellet and Ms. Whelan, the Center must call and advocate for Ireland's compliance with the Committee's decisions and the Government's provision of the specified remedies. All of the Center's advocacy and political or governmental engagement in relation to Ireland since 2013 has been undertaken in the context of these cases. Relevant work to fulfil this responsibility has involved public statements, communication and engagement with the Government regarding the individual remedies Ireland is obliged to provide to both women as well as the remedial obligation on the Government to ensure law-reform occurs. The Center also made a written submission to the Citizens' Assembly on this matter.

In addition to its work representing Ms. Mellet and Ms. Whelan, the Center has made modest contributions to the Irish Family Planning Association to support the organisation of seminars on international human rights standards and

international public health and WHO guidelines on safe and legal abortion, and to the National Women's Council of Ireland to support the organisation of workshops to provide women and men, with a range of views, with an opportunity to engage in non-directive discussions about abortion.

II. COMPARATIVE EUROPEAN LAW ON ABORTION

As outlined above the purpose of this presentation is to provide the Committee with an overview of comparative European law on abortion. The presentation will provide the Committee with a short summary of the relevant laws that exist in the 27 other member states of the European Union, and the 46 other member states of the Council of Europe.¹ Specifically the presentation will describe the grounds and timeframes on which abortion is legal in other European countries and will outline in a general manner what the standard approach is among most other European countries to the legality of abortion.

All of the information outlined in the presentation is legal information based on primary legal sources that can be independently verified. In order to assist the Committee, two supplementary briefing documents have been provided:

- (i) A chart illustrating the grounds on which abortion is legal in each of the 46 other Council of Europe countries.
- (ii) A booklet providing copies of the original versions of most of the relevant laws.

¹ Ireland is a member of both the EU and the Council of Europe and all EU member states are also member states of the Council of Europe.

What is the Standard Legal Approach to Abortion across Europe?

The standard European approach to the lawfulness of abortion is to make access to abortion legal, at least in early pregnancy, either (a) on a woman's request without restriction as to reason or for reasons of distress, or (b) on broad socioeconomic or psychological grounds.

This means that:

- **25 of 28 EU member states** have made it lawful for women to access abortion either on a woman's request, without restriction as to reason or for reasons of distress, or on broad socioeconomic or psychological grounds, at least in early pregnancy.
- **40 of 47 Council of Europe member states** have taken this approach.

These 40 countries are: *Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Moldova, Montenegro, Netherlands, Norway, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom.*

Moreover, in almost all these 40 countries, once the time-period for legal abortion on a woman's request or on broad socioeconomic or psychological grounds ends, doctors can also legally perform abortion for one or more exceptional reasons also specified in laws or regulations.

As a result, only three EU member states do not allow abortion either on a woman's request or on broad socioeconomic or psychological grounds. Those are Ireland, Malta and Poland, in addition to the UK jurisdiction of Northern

Ireland. Within the 47 Council of Europe member states, these three EU countries are joined only by four microstate jurisdictions – Andorra, Liechtenstein, Monaco and San Marino.²

What is the Difference in Law between Abortion on a Woman's Request and Abortion on Broad Socioeconomic or Psychological Grounds?

Although terminology and processes differ across European countries, in general the main difference between laws that allow abortion on a woman's request and laws that instead allow abortion on broad socioeconomic or psychological grounds relates to whether or not medical professionals must certify the existence of a particular reason for abortion to be legal.

- Abortion on a woman's request means that a woman can access abortion on the basis of her own request - doctors are not required to attest to, or certify, the existence of a particular reason or justification.
- Abortion on broad socioeconomic or psychological grounds means that a woman can access abortion if doctors attest or certify that certain socioeconomic or psychological reasons for the abortion exist.

Abortion on a Woman's Request in Europe: Where is it Legal and for what Reasons and within what Timeframes?

Of the 40 European countries that have legalised abortion on a woman's request or on broad socioeconomic or psychological grounds, the vast majority – 36 countries - have legalised abortion on a woman's request, either without

² Of these countries, Andorra, Ireland, Malta and San Marino have the most restrictive laws and allow abortion only to save a woman's life or not at all. Laws in Poland and Monaco allow abortion only when there is a risk to a woman's health or life, a severe or fatal foetal impairment, or the pregnancy is the result of sexual assault. In Liechtenstein and Northern Ireland abortion is legal only to protect a woman's life or health.

restriction as to reason or for reasons of distress or social circumstances, within a specific time limit.

These countries are: *Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Moldova, Montenegro, Netherlands, Norway, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine.*

(a) Reasons:

In the vast majority of these 36 countries women do not need to give any reason when they request an abortion. However in a small number of these countries women must explain that they are seeking an abortion because of social or family circumstances or because continuing the pregnancy would cause them distress.

- **No reason required:** Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Greece, Latvia, Lithuania, Luxembourg, Macedonia, Montenegro, Moldova, Norway, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine.
- **For reasons of distress or crisis:** Belgium, Hungary, Netherlands, Switzerland.
- **For family or social reasons:** Albania, Italy.

(b) Time Limits:

All of these 36 countries have imposed a time limit on when abortion on a woman's request is legal.

Almost all of these countries' laws allow access to abortion on a woman's request in early pregnancy and relevant laws always specify a specific number of weeks up to which abortion on request is legal. 12 weeks is the most common time limit.

- **10 weeks:** Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Portugal, Serbia, Slovenia, Turkey.
- **12 weeks:** Albania, Armenia, Austria (3 months), Azerbaijan, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Greece, Hungary, Italy (90 days), Latvia, Lithuania, Luxembourg, Moldova, Norway, Russia, Slovakia, Switzerland, Ukraine.
- **14 weeks:** Romania, Spain.
- **18 weeks:** Sweden.
- **Viability:** Netherlands.

Abortion on Broad Socioeconomic or Psychological Grounds in Europe: Where is it Legal and for what Timeframes and Reasons?

As outlined, of the 40 European countries that have legalised abortion on a woman's request or on broad socioeconomic or psychological grounds, 36 of them have legalised abortion on a woman's request within a specific time limit.

However the remaining four of these 40 countries have not legalised women's access to abortion on request and instead their laws specify that certain socioeconomic or psychological reasons must exist and be certified by medical professionals or other specialists.

In each of these countries the socioeconomic or psychological reasons are broadly framed and the time limit varies:

- **Finland and Iceland:**
 - Reasons: Personal, social or family situation.
 - Time limit: 12-weeks (Finland) and 12-16 weeks (Iceland).
- **United Kingdom:**
 - Reason: Pregnancy involves a risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of a woman or any existing children in her family. Account may be taken of a woman's actual or reasonably foreseeable environment.
 - Time limit: 24-weeks.
- **Cyprus:**
 - Reason: Continuation of the pregnancy would mean that physical, mental, or psychological injury would be suffered by a pregnant woman or by any existing child she may have, greater than if the pregnancy were terminated.
 - Time limit: No limit.

When is Abortion Legal after the Timeframe for Abortion on a Woman's Request or Broad Socioeconomic or Psychological Grounds Ends?

In all of the 40 European countries described above (except Cyprus), relevant laws specify that after the time period for abortion on a woman's request or broad socioeconomic or psychological reasons ends, abortion is lawful for one or more exceptional reasons.

Terminology and approach differs across countries. In some countries these exceptional reasons are articulated separately as explicit grounds in the relevant law while in others they are implicitly included.

These exceptional reasons usually include:

- When a woman's life is at risk.
- When a woman's health is at risk.
- Where there is a severe and/or fatal foetal impairment.

These reasons sometimes include:

- Where a pregnancy results from sexual assault.
- Particular socioeconomic reasons.

In many instances, the relevant laws specify a particular authorisation procedure that is applicable in these exceptional situations and which requires certification of the existence of the relevant reason.

Risk to a woman's health:

While the legal terminology used can differ, almost all these laws implicitly or explicitly allow abortion when a woman's health is at risk.³ The vast majority of these laws do not specify a time limit for this ground. For example:

- **No time limit:** *Austria, Belgium, Bosnia Herzegovina, Croatia, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Lithuania, Luxembourg, Macedonia, Norway, Portugal, Romania, Russia, Serbia, Slovenia, Sweden, Switzerland, Turkey, United Kingdom.*
- **Some time limit:** *Albania, Armenia, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Italy, Latvia, Moldova, Montenegro, Slovakia, Spain, Ukraine.*

Fatal and severe foetal impairment:

Again, although terminology differs across jurisdictions, abortion in situations of serious and/or fatal foetal impairment is allowed, explicitly or implicitly, by almost all of these countries' laws.⁴

Most of these 40 countries' laws include an explicit provision to cover this situation, while others include this circumstance implicitly within grounds for therapeutic abortion or abortion on medical grounds.

Several of these countries' laws do not distinguish between fatal and severe impairments, while some do. In several countries no time limit is specified in law and in some countries time limits are imposed.

³ Laws in Liechtenstein, Monaco, and Poland also allow abortion on this ground. As a result 43 European countries out of 47 allow abortion on this ground.

⁴ Ibid.

How have European Countries made Access to Abortion Lawful following Sexual Assault?

In all of the 36 European countries that have legalised abortion on a woman's request, women who are pregnant as a result of sexual assault can access abortion within the relevant time limit under the request ground.

This means that in early pregnancy, within all these 36 countries, women who have survived sexual assault can follow the generally applicable process to obtain a lawful abortion, and thus do not have to take exceptional steps or fulfill special procedures to qualify for legal abortion. As a result, in early pregnancy, women do not have to report sexual assault or obtain certification from police, prosecutors or medical professionals in order to access abortion services.

In the four European countries that have legalised abortion on broad socioeconomic or psychological grounds, women who have become pregnant as a result of sexual assault can access abortion either under the general socioeconomic ground or in three of these countries under a specific ground addressing sexual assault.

No explicit ground

Approximately half of the 40 countries in Europe that allow access to abortion on a woman's request or on broad socioeconomic or psychological grounds do not name sexual assault as a separate explicit ground for lawful abortion.

These countries are: *Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Czech Republic, Estonia, France, Italy, Lithuania, Luxembourg, Netherlands, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.*

Explicit ground

While terminology differs, laws in the other half of these 40 countries do explicitly outline sexual assault as a separate ground for legal access to abortion. In many of these countries a later time limit is assigned than that prescribed for abortion on the grounds of a woman's request or broad socioeconomic or psychological reasons.

These countries are: *Albania, Bosnia Herzegovina, Croatia, Cyprus, Denmark, Finland, Georgia, Germany, Greece, Hungary, Iceland, Latvia, Macedonia, Moldova, Montenegro, Norway, Portugal, Russia, Serbia, Turkey, Ukraine.*