



Right to life review under the Human Rights Commission Act 2000

The IHRC

The Irish Human Rights Commission (“IHRC”) is Ireland’s National Human Rights Institution (“NHRI”), established pursuant to the UN Paris Principles¹, the Belfast Agreement 1998² and specifically by virtue the Human Rights Commission Acts 2000 and 2001. The IHRC has a statutory remit to promote and protect the human rights of all persons in the State. Its functions include keeping under review the adequacy and effectiveness of the law and practice in the State with regard to human rights standards deriving from the Irish Constitution and the international treaties to which Ireland is a party.

Thus section 2 of the Human Rights Commission Act 2000 defines "human rights" as:

- (a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and
- b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party.

Review of law and practice

Pursuant to its statutory function of reviewing the adequacy and effectiveness of law and practice in the State relating to the protection of human rights pursuant to section 8(a) of the Human Rights Commission Act 2000 (“the Act”) the Commission will review the relevant human rights which pertain in situations of pregnancy where there is a risk to life.

The “human rights” concerned include the rights protected under Article 40 of the Constitution and under the European Convention on Human Rights and Fundamental Freedoms as set out in *A, B and C v Ireland*.³

The Commission has further resolved on foot of that review to make such recommendations

¹ *National institutions for the promotion and protection of human rights*, UN General Assembly Resolution 48/134, 1993.

² The Good Friday Agreement was reached at the conclusion of the Multi-Party negotiations in Belfast on 10 April 1998: see <http://foreignaffairs.gov.ie/home/index.aspx?id=335>

³ [2010] ECHR 2032.

to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the State, pursuant to section 8(d) of the Act.

The Commission will also engage with the Committee of Ministers of the Council of Europe under the procedure prescribed in 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.⁴ This procedure provides that the Committee of Ministers “shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.” Thus NHRIs such as the IHRC are entitled to provide their independent views to the Committee on the execution of Court Judgments.⁵

Format and timing of review

The Review will include consideration of:

1. Whether the options put forward by the Expert Group⁶ would, if implemented, meet Ireland’s obligation to execute the Judgment of the Grand Chamber of the European Court of Human Rights in *A, B and C v Ireland*⁷, and in particular whether legislation, and regulations (to include professional guidance and/ or direction) are required;
2. In so far as there are options advanced by the Expert Group in terms of legislation and/or regulations and/or guidelines , what precise subject matter should be addressed in same and the appropriate timescale for implementation;
3. Whether the rights protected under Article 40 including the right of the unborn under Article 40.3.3. of the Constitution can be secured under such options as proposed by the Expert Group
4. If the recommendations of the Expert Group are implemented, whether residual legal risks may accrue to the State in relation to its international human rights

⁴ Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies: see <https://wcd.coe.int/ViewDoc.jsp?id=999329>

⁵ See for example the IHRC’s Submission under Rule 9 in the case of *McFarlane v Ireland*, accessible at www.ihrc.ie/download/pdf/macfarlaneresponse.pdf

In 2010, the Committee of Ministers introduced a twin track system for the supervision of execution: an enhanced supervision procedure and a standard supervision procedure: see CM/Inf/DH(2010)45 final 7 December 2010. Both the *McFarlane* and *A, B and C* Judgments were classified under the “enhanced procedure” denoting their significance.

⁶ Report of the Expert Group on the Judgment in *A, B and C v Ireland*, accessible at www.dohc.ie/publications/pdf/Judgment_ABC.pdf?direct=1

⁷ [2010] ECHR 2032. .

obligations under international conventions it has ratified including the European Convention on Human Rights and Fundamental Freedoms, the Revised European Social Charter, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights and other relevant standards.

The review, any recommendations made to Government and any communication with the Committee of Ministers will be made public.

The Commission has decided that it is not necessary or expedient for it at this time to invoke its enquiry function pursuant to section 8(f)/ 9 of the Act for the purpose of conducting the review, making recommendations to Government consulting with national or international bodies.

It is envisaged that the review will be completed by early 2013 and that the Government's response to the report of the Expert Group will be taken into account. Upon completion of the review, the Commission will consider relevant developments and may then consider whether to invoke its other statutory functions including its enquiry function.

Submissions

Interested persons and organisations may provide short, succinct submissions to the Commission to inform its review. These submissions should address the matters being considered in the review set out above.

Submissions should be type written and no longer than 10 pages in length and be submitted to the Commission by 10 January 2013 by post or by emailing to consultation@ihrc.ie with the subject line 'right to life review'.

Submissions may address the above questions or other issues considered relevant to the subject matter of the review. The Commission will not enter into correspondence regarding the contents of any particular submission.

The submissions will be considered by the Commission when it reviews the adequacy and effectiveness of law and practice in the State and in its formulation of any recommendations to the Government in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the State.

Submissions may be posted on the Commission's website if the author does not object provided it does not, in the Commission's view, contain content that is incompatible with respect for human rights or contain material that is likely to insult, injure or damage another person or body. Where such injurious material is, in the Commission's view, included in the submission, the Commission may decide not to post the submission or may decide to redact part of the submission before posting.

Submissions may also be listed in any appendices to the Commission's review report.