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Court: Ireland's abortion laws breach European rules

by Michael Kelly by Catholic News Service

DUBLIN -- The European Court of Human Rights has ruled that Ireland's laws banning abortion breach European human rights law.

In a landmark and binding case that could have implications for other European countries, the court ruled that Ireland had breached the human rights of a woman with a rare form of cancer who feared it would relapse when she became unintentionally pregnant.

However, the woman was unable to find a doctor willing to make a determination as to whether her life would be at risk if she continued her pregnancy to term.

Early Dec. 16, the court concluded that neither the "medical consultation nor litigation options" relied on by the government constituted an effective or accessible procedure.

"Moreover, there was no explanation why the existing constitution right had not been implemented to date," the court ruled.

While abortion remains a criminal offense under 1861 legislation, a technical constitutional right to abortion does exist in Ireland following a 1992 Supreme Court ruling. In a controversial judgment known as the "X case," the court established the right of Irish women to an abortion if a pregnant woman's life was at risk as a result of the pregnancy.

However, successive governments have not legislated on the issue, and several constitutional referenda variously aimed at either enacting or revoking the judgment have proved inconclusive.

Guidelines from the Irish Medical Council describe abortion as "professional misconduct."

The European court case was filed in 2005; in 2009 it had an oral hearing before the court's grand chamber. This 17-judge court is reserved to hear cases that raise serious questions affecting the interpretation of the European Convention of Human Rights. As a signatory to the European Convention on Human Rights -- now incorporated into Irish law -- the government is obliged to remedy any breaches of the convention.

Ireland and Malta are the only member-states of the Council of Europe in which abortion remains illegal.

Two other Irish women who took cases before the court in Strasbourg, France, were unsuccessful in their bids. The first woman, who was claiming the right to an abortion because she was living in poverty and felt unable to raise the child, had her case struck down. Her case, if successful, would have forced Ireland to legislate for abortion-on-demand. The second of the two unsuccessful candidates ran the risk of an ectopic pregnancy, in which the fetus develops outside of the womb. Her case also was rejected because there was no clear medical certainty over the diagnosis of an ectopic pregnancy.

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All three women were among an estimated 4,000 Irish women who travel to neighboring Britain for an abortion each year.

The Irish government defended its laws and said Ireland's abortion laws were based on "profound moral values deeply embedded in Irish society."

It argued that the European Court of Human Rights has consistently recognized the traditions of different countries regarding the rights of unborn children. However, it maintained that the women's challenge sought to undermine these principles and align Ireland with countries with more liberal abortion laws.

Government spokesmen were initially unwilling to comment on whether the state would appeal the decision.

Independent Sen. Ronan Mullen called on the government to hold a referendum to overturn the 1992 Supreme Court decision.

"The only reason the ECHR made this judgment is because the Supreme Court made its flawed interpretation of the (Irish) constitution. We now need to have a referendum that will restore the full legal and constitutional protection for the unborn that was undermined by the Supreme Court," Mullen told Catholic News Service.

William Binchy, a constitutional lawyer and legal adviser to the Pro-Life Campaign, told CNS: "The most important (thing) is that the judgment does not require Ireland to introduce legislation authorizing abortion. On the contrary, it fully respects the entitlement of the Irish people to determine legal policy on protecting the lives of unborn children.

"The Irish people must now make a choice. If they were to choose to endorse the Supreme Court decision in X, this would involve legalizing abortion contrary to existing medical practice and the best evidence of medical research. If, on the other hand, the Irish people choose to endorse the current medical practice, they will be ensuring the continuation of Ireland's world-renowned safety record for mothers and babies during pregnancy," Binchy said.

The ruling is set to put the issue of abortion back on the political agenda as the country prepares for a general election early in 2011. Both main parties -- the current governing Fianna Fail party and the main opposition Fine Gael -- have policies opposed to abortion. Only the minority Labor Party supports the introduction of abortion.

The issue has emerged over the years as a lightning rod in Irish politics, with most politicians unwilling to touch the issue. Opinion polls consistently show that the majority of Irish people are opposed to the introduction of laws permitting abortion.

A poll in February of this year, for example, asked respondents: "Are you in favor of or opposed to constitutional protection for the unborn that prohibits abortion but allows the continuation of the existing practice of intervention to save a mother's life in accordance with Irish medical ethics?"

The finding showed that 70 percent supported constitutional protection for the unborn, 13 percent oppose it and 16 percent did not know or had no opinion.

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