

No Compromises on Reproductive Rights – Why Ireland Needs Constitutional Change

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On April 22, the Irish Citizen's Assembly has in an [overwhelming majority](#) confirmed the need for change in Irish abortion laws. According to the majority of members of the assembly, the [8th amendment](#) of the Irish Constitution, that de facto imposes a constitutional ban on abortion in most scenarios, needs to be amended or replaced. To what extent should the Irish constitution be changed?

The 8th Amendment – Constitutional Protection of the Unborn Life

When it comes to abortion, Ireland is among the most restrictive legal systems in Europe. The key to abortion law in fact is the 8th amendment that had been introduced by referendum in 1983 in order to impose a ban on any opening of the laws similar to the US Supreme Court's progressive ruling in "[Roe v. Wade](#)" in 1973. The wording of the 8th amendment imposes constitutional protection of the unborn life and in fact equates the woman's life to the life of the fetus. This is why [under statutory law](#), abortion is prohibited under any circumstance other than in situations where the mother's life is at risk, including the risk of [suicide](#). Abortion for any other reason, be it serious health issues, pregnancy because of rape, fatal fetal impairment or economic considerations, is criminally prohibited and sanctioned with up to 14 years of imprisonment. Doctors who provide unlawful abortion services can be jailed too.

The ruling neglects that health issues very often are not separable from situations where the woman's life is at risk which has been proven by the dramatic death of [Savita Halappanavar](#) in 2012 who was denied an emergency abortion in a Catholic Irish hospital. It also ignores the trauma that comes with carriage of a baby in cases of rape or fetal impairment. Moreover, it completely fails to acknowledge a woman's legitimate right to make a decision over her body and future life. Even in cases of suicide risk, existing laws place women into a position of constant justification: It needs to be confirmed by at least three doctors that the woman is suicidal.

The current laws led, among other examples, to the situation where abortion was unlawfully denied and birth enforced ([Miss Y](#)) or to the much cited situation of a brain dead woman who was artificially kept alive against the will of her family because her fetus' heart was still beating ([PP v HSE](#)).

Currently, approximately ten women per day, 3400 per year travel to the UK in order to terminate their pregnancy. One could go about to say that Ireland is in fact [exporting](#) its human rights obligations. Existing laws do not account for any inconveniences or situations in which a woman is economically not in the position to travel abroad.

Ireland's abortion laws have raised the attention of the international public – and of international Human Rights Bodies. In 2010, the ECtHR ruled in "[A, B and C v. Ireland](#)" that Ireland does not violate Article 8 of the Convention: Regardless of the mostly more liberal laws on abortion in European countries, there is no "European Consensus" that would prohibit Ireland from more or less completely banning abortion. More promising is the UN Human Rights Committee's decision "[Mellet v. Ireland](#)" from 2016 in which the Committee decided in a case of fetal impairment that Irish laws amounted to cruel, inhuman and degrading treatment of plaintiff Amanda Mellet. Ireland was consequently demanded to pay a compensation sum and to change its laws. With the compensation sum being paid, one has to wait for legal change yet to come.

Ireland's [Citizen's Assembly](#) has been constituted in November 2016 in order to review the legal situation of abortion and to hand recommendations within a report to the Irish Oireachtas (legislature) that will then decide whether to introduce a referendum.

A Divided Society

With the perspective of a referendum on the 8th amendment [recent surveys](#) try to depict public opinion on the question of abortion. 63 % would want abortion to be legalized in cases where the woman's health is at risk, 50 % would be in favor of opening it up in cases of fatal fetal impairment and only 24 % think abortion should be legal in cases where the mother believes she is unable to cope because of her age or other circumstances. Interestingly, only 44 % think abortion should be legal in cases where the woman is at risk of committing suicide – one of the rare cases that abortion actually already is legal. This reflects that a majority is not yet willing to believe that a woman should have a right to choose in cases where her physical health is not at stake.

Much hope for a successful referendum on abortion stems from the successful Irish referendum on [same-sex marriage](#) in 2015. One should however bear in mind that abortion for many reasons is a more challenging topic in Ireland than LGBTQI rights: While gay people are quite present in the Irish public, proudly and openly fighting for their rights, abortion is still and to a great extent silenced and stigmatized. The Catholic church and its high influence, regardless of [multiple scandals](#) in Ireland particularly with regards to mother child relations, certainly play an important role here.

In the past years, a strong pro choice movement is emerging and constantly growing in order to break the silence, tell women's stories, normalize abortion. Its goal is to [repeal](#) the 8th amendment and the constitutional protection of unborn life. At the moment, it proves however still difficult to bridge the gaps between generations as well as between urban and rural Ireland.

The Citizen's Assembly has picked up on the divided situation in Ireland and roughly mirrors the poll's outcome in its decision: It goes for an amendment or replacement of the 8th instead of a repeal.

What Change is Needed?

The decision to amend rather than to repeal is mostly disappointing for organizations fighting for reproductive rights. It is true that the proposed changes of the constitution will open up the right to abort to more scenarios than the current status quo. Yet, this will still grant a vast margin of appreciation to the Irish legislation. With regards to the current statutory law, women are put into a position of justification and potentially arbitrary decision making. It is mostly problematic when a state aims at regulating abortion laws – not excluding the German case of [§ 218](#) of the German Criminal Code that makes abortion a crime that only under exceptional circumstances is not criminally prosecuted. With the unborn life being even constitutionally protected in Ireland, the stigma is likely to remain.

One could go about to acknowledge the improvements a referendum or amendment might bring about. The danger of minor changes however is an actual throwback of the movement: With Ireland disappearing from the spotlight of international attention and activists resigning, a further referendum to actually repeal is not very likely to come in the near future. A majority of the Irish sees a need for change in abortion laws, the movement is highly engaged, the matter is timely. If really Ireland wants to make a change, it should make no compromises. It now is the question to what extent the Assembly wants to change the Irish constitution.

The voting within the Citizen's Assembly on Sunday April 23 as to what extent abortion should be legal looks indeed very promising: With a [majority of 64 %](#) seemingly being in favor of access to abortion without any restriction to reasons, a referendum could make a massive change in Irish society.

Needs Constitutional Change, *VerfBlog*, 2017/4/23, <http://verfassungsblog.de/no-compromises-on-reproductive-rights-why-ireland-needs-to-repeal-the-8th-amendment/>, DOI: 10.17176/20170423-154558.