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Date: 30/08/2011

DH - DD(2011)645E [*]

Item reference: 1120th DH meeting (September 2011)

Communication from a NGO (Irish Council for Civil Liberties) in the case of A., B. and C. against Ireland (*Application No. 25579/05*) (***Anglais uniquement***).

Information made available under 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.

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Référence du point : 1120e réunion DH (septembre 2011)

Communication d'une ONG (Irish Council for Civil Liberties) dans l'affaire A., B. et C. contre Irlande (*Requête n° 25579/05*).

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

[*] In the application of Article 21.b of the rules of procedure of the Committee of Ministers, it is understood that distribution of documents at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers (CM/Del/Dec(2001)772/1.4). / Dans le cadre de l'application de l'article 21.b du Règlement intérieur du Comité des Ministres, il est entendu que la distribution de documents à la demande d'un représentant se fait sous la seule responsabilité dudit représentant, sans préjuger de la position juridique ou politique du Comité des Ministres CM/Del/Dec(2001)772/1.4).

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1120th DH meeting
Communication from a NGO ("Irish Council for Civil Liberties")
in the case of A, B and C against Ireland (Application No. 25579/2005)
Information made available under Rule 9.2 of the Rules of the Committee of Ministers

Introduction

1. The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog. It was founded in 1976 by Mary Robinson (later President of Ireland and United Nations High Commissioner for Human Rights) and others. The ICCL monitors, educates and campaigns to secure full enjoyment of human rights for everyone in Ireland. It is an entirely independent non-governmental organisation which receives no government funding.

2. This communication is submitted to the Committee of Ministers under 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 (adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies).

3. This communication relates to the implementation by the Government of Ireland of the judgment of the European Court of Human Rights ("the Court") in the case of A, B and C v Ireland.[i]

4. In its judgment, the Court found *inter alia* "that the authorities failed to comply with their positive obligation to secure to the third applicant effective respect for her private life by reason of the absence of any implementing legislative or regulatory regime providing an accessible and effective procedure by which the third applicant could have established whether she qualified for a lawful abortion in Ireland in accordance with Article 40.3.3 of the Constitution."[ii]

5. On 16 June 2011, the Government of Ireland submitted an "Action Plan" to the Committee of Ministers indicating that it is "committed to ensuring that the judgment in this case is implemented expeditiously"[iii]

6. In the view of the Irish Council for Civil Liberties, the publication / dissemination measures and the individual measures set out in the Government's "Action Plan" fully comply with the State's obligations; however, the general measures proposed by the Government of Ireland do not amount to expeditious implementation of the Court's judgment.

Shortcomings in the Scope, Extent and Efficiency of the General Measures Proposed

Scope and Extent of General Measures Proposed

7. An "Action Plan" has been defined as "a Plan setting out the measures the respondent State intends to take to implement a judgment, including an indicative timetable. The Plan shall, if possible, set out all measures necessary to implement the judgment. Alternatively, where it is not possible to determine all measures immediately, the Plan shall set out the steps to be taken to determine the measures required, including an indicative timetable for such steps."[iv]

8. The general measures set out in the "Action Plan" submitted by the Government of Ireland are as follows:

   "Article 8
   11. In response to this judgment the Government will establish an expert group, drawing on appropriate medical and legal expertise with a view to making recommendations to Government on how this matter should be properly addressed.
   12. It is intended that the Expert Group will be established by November 2011.
   13. Following the recommendations from the Expert Group, proposals will be drafted and transmitted to Government for approval.
   14. An Action Report will be filed outlining the Expert Group's detailed terms of reference, membership and meeting schedule by the end of 2011."[v]

9. It is questionable whether the scope of these proposed general measures meets the definition of an "Action Plan".

   The only measure specified is the creation of an "Expert Group" and the only indicative timelines relate to the establishment of the Group and to the provision of further information on the Group's "terms of reference, membership and meeting schedule" more than a year after the Court's judgment.

10. As to the extent of the general measures proposed, even if the Government of Ireland has experienced difficulties in presenting a comprehensive action plan at this stage, "it is important that within the initial six-month deadline, the authorities of the respondent State provide the Committee with *an action plan on the steps to be taken to determine the measures required*, i.e. which indicates the actions taken or envisaged in order to overcome the technical difficulty involved: *ad hoc* working group, inter-ministerial reflection group, assistance of the Secretariat, high-level meetings, round tables etc. This work of reflection, consultation and/or research should include clear deadlines (deadline for a working group to submit its report, for example)."[vi]

    Information of this nature has not been provided. The failure by the Government of Ireland adequately to specify, at this stage, the steps to be taken to determine the measures required to implement the Court's judgment could be considered an objective indicator of slowness in execution.

Efficiency of General Measures Proposed

11. The underlying systemic problem identified by the Court in its judgment is that:

"the uncertainty generated by the lack of legislative implementation of Article 40.3.3 [of the Irish Constitution], and more particularly by the lack of effective and accessible procedures to establish a right to an abortion under that provision, has resulted in a striking discordance between the theoretical right to a lawful abortion in Ireland on grounds of a relevant risk to a woman's life and the reality of its practical implementation".[vii]

Moreover, the Court notes that "the Government have not explained the failure to implement Article 40.3.3" of the Irish Constitution and found that "no convincing explanations can be discerned" from reports following multiple public reflection processes including a 1996 Review Group Report, a 1999 Green Paper and the 2002 Fifth Progress Report of the Oireachtas Committee on the Constitution.[viii]

12. The Court's judgment does not explicitly indicate the most appropriate means for the State to comply with its positive obligations; however, it is crystal clear that the only means through which the systemic problem that the Court has identified can resolved is by the adoption of legislation regulating the application in practice of Article 40.3.3 of the Irish Constitution.

Existing legislative processes in Ireland include perfectly adequate provision for public consultation, regulatory impact assessments and input from experts with the requisite medical and legal expertise. Moreover, as the Court has found, "implementation could not be considered to involve significant detriment to the Irish public since it would amount to rendering effective a right already accorded, after referendum, by Article 40.3.3 of the Constitution."[ix]

The Government's proposal to create yet another "Expert Group" with an unspecified membership, undefined terms of reference and no clear work plan does not constitute an efficient means to implement the Court's judgment. On the contrary, it compounds the systemic problem that the Court has identified – the longstanding failure to give effect to Article 40.3.3 – by interposing another purely discursive process between the problem and its legislative solution. In effect, the Government of Ireland has chosen to ignore the central concern of the Court.

13. The Irish Council for Civil Liberties also notes that the Government of Ireland has failed to specify any other efficient interim measures that it intends to take, pending the enactment of the necessary legislation, in order to comply with the Court's judgment.

This means that, in Ireland today, it is probable that a woman in the position of the third applicant would be treated in exactly the same manner, in clear violation of her rights under Article 8 of the European Convention on Human Rights.

No efficient general measures have been proposed by the Government of Ireland to prevent a spate of such "clone" cases involving the same systemic problem reaching the European Court of Human Rights.

Suggested Action by the Committee of Ministers

14. This communication raises special questions regarding the scope, extent and efficiency of the general measures proposed by the Government of Ireland in its "Action Plan" to implement the Court's judgment in the case of A, B and C v Ireland.

15. Given the deficiencies identified in this communication, **the Irish Council for Civil Liberties would be most grateful if the Ministers' Deputies would consider taking the following action at their 1120th DH meeting:**

    - **request that the Government of Ireland submit a revised action plan, in good time for the Ministers' Deputies DH 1121st meeting, clearly indicating the precise steps to be taken to determine the measures required to implement the Court's judgment. Those steps should be accompanied by a detailed timeline as well as an account of the interim measures that the Government of Ireland intends to take in order to address the systemic problem identified in the Court's judgment;**

    - **decide to renew its examination of this case and of the general measures proposed by the Government of Ireland under section 4 of its annotated agenda (cases raising special questions) at its 1121st meeting.**

16. The Irish Council for Civil Liberties remains at the entire disposal of the Committee of Ministers and of the Department for the Execution of Judgments of the European Court of Human Rights in the event that it can provide any additional information that may be of assistance in monitoring the implementation by the Government of Ireland of this judgment.

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[i] Application no. 25579/05, judgment of 16 December 2010.
[ii] Application no. 25579/05, judgment of 16 December 2010, at paragraph 267.
[iii] Document DH-DD (2011) 480E of 17 June 2011.
[iv] Document CM/Inf/DH (2009)29 rev. Action Plans - Action Reports. Definitions and objectives. Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights. 3 June 2009.
[v] Document DH-DD (2011) 480E of 17 June 2011.
[vi] Document GT-DH-PR A(2008)001. Objective indicators of slowness in execution. Document prepared by the Department for the Execution of Judgments of the Court at paragraph 21.
[vii] Application no. 25579/05, judgment of 16 December 2010, at paragraph 264.
[viii] Application no. 25579/05, judgment of 16 December 2010, at paragraph 265.
[ix] Application no. 25579/05, judgment of 16 December 2010, at paragraph 266.