

Article 40. 3. 3

The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

What was the legal position before the 1983 referendum?

- Offences Against the Person Act 1861.
- No specific constitutional reference to abortion.
- Developments in the law of other countries.

What was the effect of Article 40. 3. 3?

“[T]he purpose of [Article 40. 3. 3] [w]as ... to prevent the introduction of abortion either by legislation by the Oireachtas or by judicial decision.” (Hardiman J., *Roche v Roche* (2010))

“Nobody could dispute that the primary purpose of the referendum was to prevent decriminalisation of abortion without the approval of the people as a whole.” (Geoghegan J., *Roche v. Roche* (2010))

What does Article 40. 3. 3 mean?

- Is it only about abortion?
- What does “the unborn” mean?
- What does the “equal right to life” of the mother and the unborn mean?

Attorney General v X (1992)

An abortion may be permitted under the Constitution if, as a matter of probability,:

- (i) there is a real and substantial risk to the life, as distinct from the health, of the mother;
- (ii) that risk can only be avoided by the termination of her pregnancy.

Developments after AG v X

When is an abortion permissible?

- The 12th and 25th Amendments.
- The Protection of Life During Pregnancy Act 2013.

Travel and information

- The 13th Amendment.
- The 14th Amendment.
- The Regulation of Information Act (Services Outside the State for Termination of Pregnancies Act 1995).

Article 40. 3. 3 now

The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

This subsection shall not limit freedom to travel between the State and another state.

This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state.