

Written transcript of Q&A from Sunday 4th March at the Citizens' Assembly. Question from Member about consent during labour.

Member: I'm a member of the table here on table 13 and my question is for Emily. Emily, I just wanted to check is there evidence or I suppose scope for article 40.3.3 to be used during labour when you can't really go into the courtroom with a woman to perform interventions, such as a sweep, an ARM, an episiotomy without consent and almost for midwives and doctors operate on the principle of forgiveness and regardless of whether or not and an unborn's life is at immediate risk.

Justice Laffoy: Do you understand the question?

Emily Egan: I'm not sure if I fully understand the question.

Justice Laffoy: Perhaps just outline your understanding of it, so that we're not at cross purposes, that's what I'm concerned about.

Emily Egan: I think what you're asking is whether or not article 40.3.3 could grant a license to perform certain procedures during labour even where the foetus's life it is not as risk.

Member: Yes, but also I suppose to allow the principle of forgiveness to use these. You know, is there scope for abuse of it in the delivery room?

Emily Egan: Well I think, vis-a-vis the first part of the question; will article 40.3.3 be used to license treatments without consent where the life of the foetus is not endangered, I think the answer is no. Vis-a-vis the second question of whether or not procedures which are necessary might be forgiven and by that I take it you mean forgiving in the sense not viewed as either negligent or without consent or breach of the mother's rights to bodily integrity and autonomy.

Member: If I may just interrupt you for one minute, I'm more talking about maybe a case taken towards the NMBI or the medical council where a doctor has performed a sweep without a woman's consent or a midwife has broken a woman's membranes without her consent. If she has explicitly said I do not consent to this, will they be likely to face penalties or will they be likely to be forgiven because the Eighth Amendment leaves it vague as to where they need to intervene. It's quite difficult to explain. I'm sorry I'm not doing it justice.

Emily Egan: I don't think the Eighth Amendment affects that situation would be my answer.

Justice Laffoy: Yes, I mean I think you're straying into medical negligence territory, which is a totally different terrain. Thank you.