

Citizens Assembly 2020

Gender Equality: The Family

THE FAMILY: Article 41

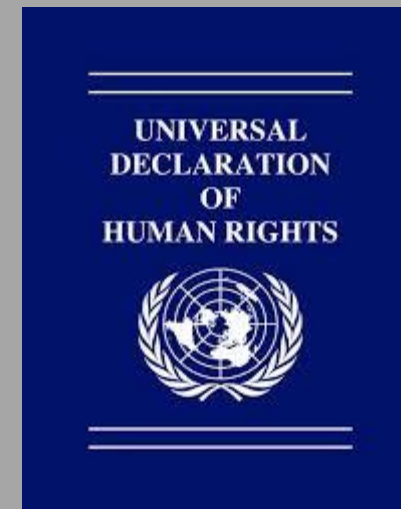
- 1 1° The state recognises the family as the **natural primary and fundamental unit** group of society, and **as a moral institution possessing inalienable and imprescriptible rights**, antecedent and superior to all positive law.



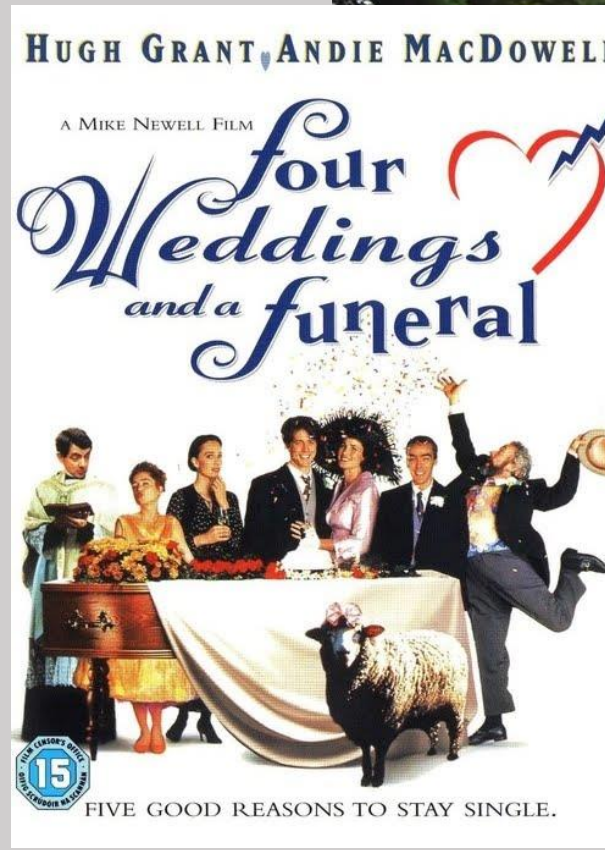
UNIVERSAL DECLARATION OF HUMAN RIGHTS: 1948

- Article 16(3)

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.



Which Families?



THE FAMILY : ARTICLE 41.3.1 ° - MARRIAGE



- 1° the state pledges itself to guard with **special care** the institution of Marriage, on which the family is founded, and to protect it against attack.
- In *The State (Nicolaou) v An Bord Uchtála* [1966] IR 567, the Supreme Court held, “that the family referred to in [Article 41] is the family which is **founded on the institution of marriage**”.
- “For the State to award equal constitutional protection to the family founded on marriage and the ‘family’ founded on an extra-marital union would in effect be a disregard of **the pledge** which the State gives in Article 41.3.1° **to guard with special care the institution of marriage.**”



2015: Marriage Equality : Article 41(4).

Marriage may be contracted in accordance with law by two persons **without distinction as to their sex.**

Child and Family Relationships Act 2015



Minister Fitzgerald signs order for commencement of landmark family law reform

- Key provisions of the Children and Family Relationships Act 2015 to commence on 18th January
- Minister says reforms recognise the increasing diversity of family life
- Step-parents, civil partners and cohabiting partners will be able to apply to become guardians of a child or for custody
- A child's best interests will be the paramount consideration for the court in proceedings on guardianship, custody or access.



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BETA This is a prototype - your feedback will help us to improve it.

Press Release

Minister for Health signs commencement orders and regulations for the Children and Family Relationships Act 2015 Parts 2 and 3

Published: 4 November 2019

From: Department of Health

Minister for Health Simon Harris TD has today signed the commencement orders and regulations for Parts 2 and 3 of the Children and Family Relationships Act 2015.

McD v L and M: equal treatment, guardianship, access and the *de facto family*

- [...family means a family based on marriage ... **There is no institution in Ireland of a *de facto family*.**” (Denham J.)



Anonymous sperm donors



Open sperm donors



Known or directed sperm donors



Sperm bank

M v Minister for Justice (2018) Supreme Court

Clarke CJ:

- [...] the consistent case-law on Article 41, **stretching back decades**, and reaffirmed on several recent occasions;
- An **unmarried family**, with children or without children, **were not, “a family unit** within the meaning of that term *as contained in Article 41.*” (emphasis added).

Article 41.2: women in the home

- “...the State recognises that **by her life within the home**, woman gives to the State a support without which the common good cannot be achieved.”

Denham J (*Sinnott v Mins of Education*)

- “Article 41.2 does not assign women to a domestic role. Article 41.2 recognises the **significant role played by wives and mothers in the home**. This recognition and acknowledgement does not exclude women and mothers from other roles and activities.”



UN Committee on the Elimination of Discrimination Against Women: Ireland (2017)

- “[...] the existing discriminatory provision contained in article 41.2 of the Constitution, which **perpetuates traditional stereotypical** views of the social roles and responsibilities of women and men in the family and in society at large, has not been amended.” (paragraph 10)
- The Committee urged the Ireland to:
 - “Amend article 41.2 of the Constitution in order **to remove the stereotypical language** on the role of women in the home.” (paragraph 11 (a)).

2013 CONVENTION ON THE CONSTITUTION

- Retain and amend Article 41.2 to make it **gender neutral**, and require the State **to ensure a 'reasonable level of support'** for carers.
 - 20 per cent of members ranking 'endeavour to support';
 - 35 per cent of members ranking 'provide a reasonable level of support';
 - 30 per cent of members ranked 'shall support'.

Irish Human Rights and Equality Commission (2018)

- Article 41.2 should be amended to make it **gender-neutral**.
- Article 41.2 should be amended to reference 'family life' and '**family life**' should be understood as including a wide range of family relationships and include situations where family members do not live in the same home;
- Article 41.2 should be amended to recognise and **support care work**.



Task Force Report : Article 41.2

- Option 1: Replace text of Article 41.2 with:

‘The State recognises that home and family life gives to society a support without which the common good cannot be achieved. The State **shall endeavour to support persons caring for others *within the home*** as may be determined by law.’

Task Force Report : Option 2

Retain:

- The State recognises that home and family life gives to society a support without which the common good cannot be achieved.
- Add a provision to [Article 45](#):
 - ‘The State [shall endeavour to ensure that persons caring for others](#) in the home and in the wider community receive support in recognition of the contribution they make to society.

Task Force: Option 3

- Delete Article 41.2 in its entirety