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## THE LEGITIMACY OF LIMITATIONS TO RIGHTS - EXERCISE 2 (1/1 point)

2. May the strong feelings of the majority of the population towards a certain issue be invoked by a State to justify imposing certain limitations, for instance, to certain forms of expression or to certain kinds of conduct? Imagine that in country A, the majority of the population strongly opposes abortion, because they consider that the right to life of the unborn child should take precedence. Is this an argument in favor of restriction the freedom of the women to terminate their pregnancy?

- ☐ No. Minority opinions, feelings and preferences should always be protected, even if this implies overriding the feelings and opinions of a strong majority;
- ☒ Yes. Under democratic rule the majority might limit certain conducts that are considered important for a minority, provided that such limitations have been the object of an open, public debate, and that the restrictive measures are limited and justified; ✓
- ☐ No. Majority rule can produce clearly abhorrent results due to the vagaries of fickle public opinion: if rights were no longer effective trumps against such policy changes, they would become meaningless;
- ☐ Yes. A strong majority may prohibit certain conducts, even when the latter are considered important for a particular minority, because that is the requirement of democratic rule.

### EXPLANATION

In principle, human rights are precisely conceived to protect the minority from the majority, and to ensure that unpopular or disturbing viewpoints can be expressed without fear or censorship. Therefore, the first and third answers are consistent with the role of human rights in a democratic society. At the same time, in the name of the protection of "public morals", it has occasionally been accepted from States that they take certain measures to protect the feelings of the majority. This is why the second response reflects the position human rights courts have usually taken.

For instance, in the case of *Open Door and Dublin Well Woman v. Ireland*, the European Court of Human Rights considered (in a judgment of 29 October 1992) that certain restrictions could be imposed on organisations to restrain them from providing certain information to pregnant women concerning abortion facilities outside the jurisdiction of Ireland, where abortion is criminalized except under narrowly defined circumstances. Ireland put forward the fact that Article 40(3)(3) of the Irish Constitution (the Eighth Amendment) came into force in 1983 following a referendum. This provision protects the life of the unborn child. It read at the time: '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

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practicable, by its laws to defend and vindicate that right'. The Court commented: "it is evident that the protection afforded under Irish law to the right to life of the unborn is based on profound moral values concerning the nature of life which were reflected in the stance of the majority of the Irish people against abortion as expressed in the 1983 referendum ... The restriction thus pursued the legitimate aim of the protection of morals of which the protection in Ireland of the right to life of the unborn is one aspect" (para. 62). (The Court went on, however, to find that the restriction to the freedom of expression of the organisations concerned, due to its absolute nature, was disproportionate, going beyond what was required to take protect public morals in Ireland).

Note that in the more recent case of *A, B and C v. Ireland*, the European Court of Human Rights found that the refusal of Ireland to decriminalize abortion except where there is a danger to the life of the mother did not reveal a breach of Article 8 of the European Convention on Human Rights: 'having regard to the right to lawfully travel abroad for an abortion with access to appropriate information and medical care in Ireland, the Court does not consider that the prohibition in Ireland of abortion for health and well-being reasons, based as it is on the profound moral views of the Irish people as to the nature of life (...) and as to the consequent protection to be accorded to the right to life of the unborn, exceeds the margin of appreciation accorded in that respect to the Irish State. In such circumstances, the Court finds that the impugned prohibition in Ireland struck a fair balance between the right of the first and second applicants to respect for their private lives and the rights invoked on behalf of the unborn' (Eur. Ct. HR (GC), *A, B and C v. Ireland* (Appl. No. 25579/05) judgment of 16 December 2010, para. 241).

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