



prolife
campaign

Pro Life Campaign

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INTRODUCTION

The Pro Life Campaign (hereafter “the PLC”) is a non-denominational lobby group that promotes pro-life education and policies which defend human life at all stages, from conception to natural death. We also campaign for resources to support and assist pregnant women and those in need of healing after abortion.

In the course of its work in the monitoring and advancement of human rights law in Ireland, the PLC seeks at all times to ensure that the dignity and worth of every human being is recognised and defended. We have been at the forefront of contributing to the ongoing debate on the human rights of all members of Irish society for over 30 years.

This submission focuses on three particular areas where the introduction of abortion in Ireland has led to human rights coming under direct assault from the State, specifically:

- (i) The right to life, and the prohibition against cruel, inhumane, and degrading treatment.**
- (ii) Freedom of speech, and the right to protest, freedom of association, and freedom of assembly.**
- (iii) Freedom of conscience.**

BACKGROUND

In 1983, the PLC led a successful campaign to insert Article 40.3.3, also known as the 8th Amendment, into the Irish Constitution. This amendment read as follows:

“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.”

By a referendum held on 25 May 2018, Article 40.3.3 was abolished. This decision has since led to shocking outcomes for unborn children in Ireland and threats to the human rights of other citizens.

Following this referendum, the Oireachtas passed the Health (Regulation of Termination of Pregnancy) Act 2018¹ (hereafter “the Act”), which came into force on 1 January 2019. This allows abortion on demand up to 12 weeks of pregnancy and for the full 9 months of pregnancy on vague physical and mental health grounds, and what the Act describes as conditions “likely to lead to the death of the foetus”, but more commonly referred to as “fatal foetal abnormalities”. Abortions are carried out either medically via medication

¹ <http://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/html>

administered by general practitioners before the 12-week limit, or surgically in approved public or private hospitals after 12 weeks.

(i) THE RIGHT TO LIFE - PROHIBITION AGAINST CRUEL AND DEGRADING TREATMENT

FOETAL PAIN

When can an unborn child feel pain?

Scientific research has shown that unborn babies can experience pain at 20 weeks gestation.

Recent studies have suggested that the brain and nervous system develop at a rate that indicates that unborn babies might be able to feel pain as early as 13 weeks².

Use of anaesthetics/analgesics in foetal surgery

Separately, it is now routine practice for unborn children who are undergoing life-saving or corrective surgical procedures to be given pain relief to ensure they feel no distress during the procedure. One leading children's hospital in the United States performed almost 1,600 such procedures between 1995 and June 2017³.

Perinatal medicine now treats unborn babies, often as young as 18 weeks gestation, for a range of conditions where specific care is taken to avoid inflicting pain or distress. In the UK, unborn babies receiving a newly developed surgical technique to correct spinal malformations receive pain relief during the procedure as a matter of course⁴.

Implications for the practice of abortion

These facts pose grave questions in the context of surgical abortions and raise the prospect that unborn children are being subjected to immense suffering during an abortion procedure.

The authors of one recent study concluded that:

“Given the evidence that the foetus might be able to experience something like pain ... the clinical team and the pregnant woman are encouraged to consider foetal analgesia [pain relief].”⁵

² Derbyshire and Bockmann, “Reconsidering Fetal Pain”, Journal of Medical Ethics, 2020

³ “Volumes and Outcomes: Fetal Anomalies,” Children’s Hospital of Philadelphia, 2017, <http://www.chop.edu/centers-programs/centerfetal-diagnosis-and-treatment/volumes-outcomes#>

⁴ House of Commons, Reply from Secretary of State for Health and Social Care to Sir Edward Leigh MP (6 February 2019)

⁵ Note 2 above.

An amendment was proposed to the Act in 2018 which would have required the administration of an anaesthetic or analgesic during such procedures⁶, but was rejected by the government.

In December 2020, members of the Oireachtas Life and Human Dignity Group launched a document summarising the new research and suggesting an amendment to the Act⁷, as “a humane response” to the issue.

BABIES BORN ALIVE AFTER FAILED ABORTION PROCEDURE

International evidence shows that a significant number of babies survive abortion procedures and are born alive before being left to die, for example in Canada⁸ and the UK⁹.

This is likely a fact in all countries where abortion is legally available on a widespread basis, although often something that is not officially recorded by the authorities.

Recent Irish Study

During the passage of the Act, an amendment was proposed which would have given protection to babies born alive after failed abortion procedures. However, this amendment was rejected by the government.¹⁰

Recent evidence has shown that this now happens in Ireland.

In October 2020, the British Journal of Obstetrics and Gynaecology published a report¹¹ which studied the work of 10 Irish doctors who carried out abortions in cases of so-called “fatal foetal abnormalities”. The report shows that in the first year of abortion in Ireland there have already been several cases where babies survived the abortion procedure and have been left to die. The authors state:

⁶ Amendment number 99, Committee Stage Amendments to the Health (Regulation of Termination of Pregnancy) Bill 2018.

<https://data.oireachtas.ie/ie/oireachtas/bill/2018/105/dail/3/amendment/numberedList/eng/nl-b10518d.pdf>

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<https://www.irishtimes.com/news/social-affairs/anti-abortion-tds-set-up-all-party-group-with-aim-to-amend-legislation-1.4425586>

⁸ Reports from the Canadian Institute for Health Information have shown that 755 late-term live-births occurred after failed abortions in a five-year period from 2013/2014 to 2017/2018.

<http://run-with-life.blogspot.com/2018/08/canada-why-did-766-late-term-livebirth.html>

⁹ 66 cases were reported in one year.

<https://www.standard.co.uk/hp/front/66-babies-in-a-year-left-to-die-after-nhs-abortions-that-go-wrong-6690810.html>

¹⁰ Amendment number 99, Committee Stage Amendments to the Health (Regulation of Termination of Pregnancy) Bill 2018.

<https://data.oireachtas.ie/ie/oireachtas/bill/2018/105/dail/3/amendment/numberedList/eng/nl-b10518d.pdf>

¹¹ S. Power, S. Meaney and K. O’Donoghue, “Fetal medicine specialist experiences of providing a new service of termination of pregnancy for fatal fetal anomaly: a qualitative study”, British Journal of Obstetrics and Gynaecology, 2020. <https://doi.org/10.1111/1471-0528.16502>

“This generated concern for [specialist doctors] as they are ‘unclear as to who will look after those babies’ if a baby is born alive following [termination of pregnancy] by induction of labour and with-out feticide, resulting in them ‘begging people to help’ them in providing palliative care.”

The doctors reported strong resistance among some colleagues to the suggestion that babies who survive should receive any care after birth.

Conclusion

There is mounting evidence that Irish babies who survive abortion procedures are being denied care after birth, abandoned, and left to die. It is clear that unborn babies who can feel pain in the womb are being unjustly denied pain relief during these procedures.

The PLC believes that these practices are an affront to human dignity and a clear violation of the right to life, and the prohibition against cruel, inhuman, and degrading treatment. The State has failed in its obligation to provide for ‘special safeguards and care, including appropriate legal protection, before as well as after birth’ as per the UN Convention on the Rights of the Child, which Ireland ratified in 1992¹².

(ii) FREEDOM OF SPEECH - THE RIGHT TO PROTEST

CENSORSHIP ZONES

Context

In recent years, there have been increasing attempts internationally to restrict protests in the vicinity of abortion facilities. These have been described as “safe access zones”, “exclusion zones”, “bubble zones”, or “censorship zones”, where the right to protest, distribute literature, or to approach third parties is legally restricted or banned.

Various forms of this concept have been introduced at local and national levels in Scotland¹³ and France¹⁴.

Irish Background

In July 2018, the Irish government announced its intention to pre-emptively ban all such protests. The Minister for Health said he would legislate for:

¹²https://www.citizensinformation.ie/en/birth_family_relationships/children_s_rights_and_policy/un_convention_on_the_rights_of_the_child.html

¹³ <https://www.bbc.com/news/uk-scotland-47567943>

¹⁴ Article L2212-1 of the Code of Public Health

“... the provision of safe access zones – areas around premises where abortion services are provided where patients and staff can go without fear of intimidation or harassment, and without being subjected to posters or protests”¹⁵

It is important to note that this announcement was made before the Act came into force and before any such protests had even taken place.

Since the passage of the Act, small pro-life demonstrations have taken place at several hospitals and GP practices across the country. All of these events have been entirely peaceful.

Irish Constitution

The Irish Constitution guarantees:

“The right of the citizens to assemble peaceably and without arms”¹⁶

This right has been upheld by the Irish courts, which have made it clear that protesters can avail of this right, provided that all protests are peaceful¹⁷.

Any legislation which seeks to ban protests by targeting specific groups, at specific locations concerning a specific issue, is almost certainly a violation of the Irish Constitution.

Is the existing law sufficient?

In September 2019, the Garda Commissioner (the chief of police) wrote to the Minister for Health confirming that new laws were not necessary. He told the Minister that any such legislation would be “redundant” because:

“... no incidence of criminality has been reported or observed...”

and that there was:

“... no evidence to suggest that there is threatening, abusive or insulting behaviour directed towards persons utilising such services.”¹⁸

Separately, in response to a Freedom of Information Request issued on 22 October 2019, the Department of Health confirmed that no medical practitioner, hospital, or GP practice requested new laws to ban such protests.

¹⁵ Note 5 from doc

¹⁶ At Article 40.6.1. <http://www.irishstatutebook.ie/eli/cons/en/html>

¹⁷ *Hyland v Dundalk Racing (1999) Ltd [2004]*, a case before the High Court.

¹⁸

<https://www.irishtimes.com/news/health/existing-laws-adequate-to-deal-with-abortion-protests-says-garda-commissioner-1.4031727>

Recent Developments

In its 2021 legislative programme, the Government signalled its intention to proceed with this legislation by listing a “Safe Access to Termination of Pregnancy Bill” and stated that “preparatory work is underway”¹⁹.

However, in a response to questions from a member of parliament in March 2021, the Minister for Health has cast doubt on whether this legislation will proceed²⁰.

Conclusion

In 2020, the PLC made a submission to the United Nations Human Rights Council on the Freedom of Assembly and Association which included more detailed observations on this issue²¹.

The PLC again asserts that there is no justification for this proposed restriction on the right to protest and that there is no demand for them from those who access or provide abortions. They are motivated by purely political and ideological reasons, to silence critics of the policies of the Irish government on abortion. As such, they are a clear breach of both the Irish Constitution and the European Convention on Human Rights.

(iii) FREEDOM OF CONSCIENCE

RIGHT OF HEALTHCARE WORKERS TO CONSCIENTIOUS OBJECTION

Irish legislation

The Act allows medical practitioners to conscientiously object by refusing to carry out or participate in an abortion. However, it then compels them to:

“... make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of the termination of pregnancy.”²²

The PLC believes that this provision is incompatible with the international guarantee of the human right to conscientious objection since it compels medical professionals to facilitate the ending of a life in violation of their conscience.

¹⁹ Legislative Programme, Spring Session 2021 (published 13 January 2021)

https://www.oireachtas.ie/en/debates/question/2021-03-03/1021/#pg_1021

²⁰ https://www.oireachtas.ie/en/debates/question/2021-03-03/1021/#pg_1021

²¹

https://prolifecampaign.ie/wp-content/uploads/2020/07/Submission_to_UN_Human_Rights_Council_on_Freedom_of_Assembly_and_Association_-February_2020.pdf

²² Section 22 of the Act: <http://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/html>

Nature of the Right

Freedom of conscience is an essential human right²³. Conscientious objection, therefore, flows directly from that right and is the refusal to participate in any activity that a person considers incompatible with his/her religious, moral, philosophical, or ethical beliefs.

The right to Conscientious Objection is largely recognised in European and International Human Rights Law. For example, Article 18(1) of the International Protocol on Civil and Political Rights states that:

“Everyone shall have the right to freedom of thought, conscience, and religion”.

The Human Rights Committee has commented that the “far-reaching and profound” nature of this right, as well as its “fundamental character”, reflected the fact that:

“this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.”

Can the right be restricted or delimited?

Generally, it is agreed that human rights in conflict with each other need to be balanced against each other in a proportionate manner that does not unduly discriminate against one of those rights.

In this regard, the Human Rights Committee has observed that:

“Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”²⁴

So, the question arises: can a doctor’s right to freedom of conscientious objection be limited, so that it be balanced with a woman’s right to obtain an abortion?

The answer must be an unequivocal “No” since it is also quite clear that no right to abortion exists in international law.

The 1994 Cairo Conference on Population and Development affirmed that:

“In no case should abortion be promoted as a method of family planning”

and called on states to prevent abortion²⁵. The European Court of Human Rights has also repeatedly stated that the European Convention on Human Rights cannot be interpreted as conferring a right to abortion”.²⁶

²³ See Jim Murdoch, *Freedom of thought, conscience, and religion* (Council of Europe 2007)

²⁴ Article 18.6, Human Rights Committee, General Comment 22 (Forty-eighth session, 1993), from Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

²⁵ International Conference on Population and Development Cairo, Egypt 5-13 September 1994

²⁶ *P. and S. v. Poland*, 57375/08, 30 October 2012, § 96

Since there is no right for a woman to access abortion, it is not open to national governments to seek to limit the right to conscientious objection since there is no other competing right against which to balance it.

This means that any attempt to restrict or limit the right has no basis in international human rights law.

Attempts to Strengthen Conscientious objection

During the passage of the Act, several amendments were proposed which would have fully preserved the right of medical staff to conscientious objection. One such amendment:

“... no healthcare worker or other person shall be under any obligation to carry out, or to make a certification in respect of, or to participate in carrying out or to make arrangements for the carrying out of, a termination of pregnancy... which that person has a conscientious objection.”²⁷

This amendment would have fully protected the right to conscientious objection but was rejected by the Government and by the Oireachtas. A significant lobbying campaign from doctors and campaigners on this issue took place in late 2018 and 2019, but so far to no avail.

The emotional toll with carrying out abortions on medical professionals is outlined well in a report published in October 2020 in the British Journal of Obstetrics and Gynaecology referenced above²⁸.

The report also includes heart-breaking accounts of the feelings of doctors themselves who carried out the abortion procedures. The doctors surveyed described the procedure as “brutal”, “awful” and “emotionally difficult”. One doctor described “stabbing the baby in the heart”, to induce a fatal heart attack before inducing delivery and said:

“I remember getting sick out in the corridors afterwards because I thought it was such an awful procedure and so dreadful”.

This underscores the need for strong protections of the rights of medical professionals to conscientiously object to abortion.

Conclusion

The protections contained in the Act for the freedom of conscience for medical professionals are wholly inadequate since it compels doctors to facilitate the carrying out of an abortion by other doctors. Irish legislation needs to be amended to fully vindicate that right in line with international human rights standards.

²⁷ See for example amendment no. 147, Committee Stage Amendments to the Health (Regulation of Termination of Pregnancy) Bill 2018.

<https://data.oireachtas.ie/ie/oireachtas/bill/2018/105/dail/3/amendment/numberedList/eng/nl-b10518d.pdf>

²⁸ See note 11 above

RECOMMENDATIONS

In light of the details contained in this submission, the PLC suggests that the following recommendations be made to Ireland:

- Vindicate the right to life of children who survive abortion procedures by ensuring clear protections in law and medical practice for their right to proper medical care.
- Acknowledge the prohibition against cruel and degrading treatment by providing in law and in medical practice pain relief for unborn children who are subjected to surgical abortion procedures later in pregnancy.
- Recognise and affirm the right of all citizens to protest peacefully as acknowledged in the Constitution of Ireland by abandoning planned legislation that would ban or restrict pro-life protests; and
- Ensure that the right to freedom of conscience is recognised and respected fully by amending Irish law to give full protection to the right to conscientious objection of medical professionals.

Ends
