



ADF INTERNATIONAL

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IRELAND

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This submission highlights the severe implications of the legalization of abortion in Ireland on the enjoyment of the human right to freedom of conscience, notably in relation to the right of medical professionals to conscientious objection, as well as on the exercise of parental rights and responsibilities. In light of recent parliamentary initiatives to bring about the legalisation of assisted suicide, this report also explains why a so-called right to ‘die with dignity’ is incompatible with Ireland’s obligation to protect the right to life until natural death.
3. This submission is endorsed by the Pro Life Campaign and the Iona Institute.

(a) Freedom of Conscience

4. Following a referendum held on 25 May 2018, the Eighth Amendment of the Constitution of Ireland – which recognised the equal right to life of the pregnant woman and the unborn child – was repealed and replaced by the Thirty-sixth Amendment, allowing the Irish parliament (Oireachtas) to make provision for the regulation of abortion in the country.
5. Ever since the repeal of the Eight Amendment, the Irish abortion legislation has been dramatically liberalized through the Health (Regulation of Termination of Pregnancy) Act of 2018 (hereinafter, the ‘Act’), which provides for unrestricted access to abortion in the first 12 weeks of pregnancy, and until birth when continuing the pregnancy puts the woman’s life at risk or may cause ‘serious harm’ to her health, or is likely to lead to the death of the foetus either before or within 28 days of birth because of a problem with his or her development.¹
6. Articles 44(2) and 44(3) of the Constitution of Ireland guarantee ‘[f]reedom of conscience and the free profession and practice of religion[.]’² The right to conscientious objection to abortion is addressed in Section 22 of the Act, which provides that nothing in the law shall be interpreted to oblige a doctor, a nurse or a midwife to participate in carrying out an abortion.³ However, the Act does not provide for a positive right to conscientious objection as it compels a conscientious objector to refer an abortion case to another doctor willing to carry out the procedure. Indeed, Section 22(3) requires that a doctor with a conscientious objection ‘enable the woman to avail of the termination of pregnancy.’

¹ Health (Regulation of Termination of Pregnancy) Act, 2018.

² Constitution of Ireland, art. 44(2)(3).

³ Health (Regulation of Termination of Pregnancy) Act 2018, Section 22.

7. Further concerns are raised by the fact that the law demands abortion to be performed in emergency situations by all doctors, regardless of whether they are conscientious objectors.⁴ What qualifies as an emergency situation, however, is lacking clear definition, thereby leaving room for ambiguous interpretation and possible abuse.
8. This notwithstanding, citing operational challenges that are preventing the provision of abortion in some facilities and the high number of objectors, pro-abortion advocates argue that conscientious objection represents an abandonment of professional obligations to patients and should not be allowed or severely limited.

Freedom of Thought, Conscience and Religion under International Law

9. Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of thought, conscience and religion to everyone. Likewise, freedom of conscience is guaranteed by article 9 of the European Convention on Human Rights (ECHR).
10. As confirmed by the Human Rights Committee in its General Comment No. 22:

‘The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.’⁵

11. Paragraph 1 of the UN General Assembly Resolution on the Elimination of All Forms of Religious Intolerance reaffirmed that ‘freedom of thought, conscience, religion and belief is a human right derived from the inherent dignity of the human person and guaranteed to all without discrimination.’⁶
12. With regard to the right to conscientious objection, the former Special Rapporteur on freedom of religion or belief, Prof. Heiner Bielefeldt, noted that such a right is an integral aspect of the human right to freedom of thought, conscience, and religion:

‘Conscientious objection to military service... falls within the subcategories of “observance” or “practice” listed in article 18. Conscientious objectors would most likely not be satisfied with having the mere option to publicly “express” their opposition to the use of military force.... Generally speaking, while freedom of religion or belief has a strong communicative component, which it shares with freedom of opinion and expression, the protected dimensions of religious manifestations — worship, observance, practice and teaching — cannot be summed up under the heading of

⁴ Ibid.

⁵ UN Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: <http://www.refworld.org/docid/453883fb22.html>.

⁶ Elimination of all forms of religious intolerance, A/RES/48/128, 20 December 1993, 1, available at: <http://www.un.org/documents/ga/res/48/a48r128.html>

communicative freedom only because they also include other aspects of leading one's life in conformity with one's religion or belief.⁷

13. While reference was made to the example of military service, this understanding is equally applicable to the medical field as it involves the same objection to the taking of human life.⁸
14. In Europe, the European Convention on Human Rights provides that 'everyone has the right to freedom of thought, conscience and religion.' In the health sector, the ECtHR has clearly anticipated the existence of right to conscientious objection in holding, 'States are obliged to organize the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services.'⁹
15. Moreover, the Parliamentary Assembly of the Council of Europe (PACE) has affirmed in its Resolution 1763 (2010), entitled 'The right to conscientious objection in lawful medical care', that '[n]o person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human fetus or embryo, for any reason.'¹⁰
16. Major world religions oppose abortion resulting in billions of individuals that reject that the practice can ever constitute legitimate healthcare. Where the right to conscientious objection is not duly protected, numerous healthcare professionals find themselves in a morally unsustainable situation and even forced to choose between their conscience and profession. Depriving healthcare professionals from adequate protection equally deprives the healthcare system from caring practitioners and constitutes a regressive step away from Ireland's international obligations to protect and promote the right to freedom of thought, conscience, and religion.¹¹
17. In order to fulfil its international obligations, Ireland must provide full protection in its national legislation for the right to conscientious objection of healthcare professionals to abortion.

(b) Parental Rights

18. According to instructions provided by Ireland's Health Services, girls who have reached the age of 16 are not required to attain parental consent for an abortion under any circumstances. Under 'exceptional circumstances', even girls under the

⁷ Report of the Special Rapporteur on freedom of religion or belief, A/HRC/31/18, 23, available at: www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf.

⁸ See also the decision of the European Court of Human Rights (ECtHR) in *Bayatan v. Armenia*, Application no. 23459/03, which indicates that the right to consciously object applies equally in contexts other than military service. See in particular §§ 124 – 126.

⁹ ECtHR, *RR v. Poland*, No. 27617/04, 26 May 2011, § 83.

¹⁰ Council of Europe Parliamentary Assembly, Resolution 1763(2010) on 'The right to conscientious objection in lawful medical care'.

¹¹ Moira Stephens, Christopher F.C. Ian H. Jordens, et al., Religious perspectives on abortion and a secular response. *Journal of Religion and Health* (2010) 513–35.

age of 16 may get an abortion without the involvement of their parents or legal guardians, as parental involvement is only 'encouraged'.¹²

19. These provisions have caused distress among doctors on grounds that, according to the law, children generally do not have the legal capacity to give valid consent to medical treatment without the consent of the relevant holder of parental responsibility (parent or other legal guardian).
20. These provisions are therefore in stark contrast with several international human rights instruments Ireland is a party to, including in particular the Convention on the Rights of the Child.

Parental rights under international law

21. Article 5 of the Convention on the Rights of the Child provides that 'States Parties shall respect the responsibilities, rights and duties of parents or, here applicable, [...] legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance' to the child.
22. The notion that parents or, as the case may be, other legal guardians, have no right to be informed about or be involved in decisions with respect to their children, especially in light of the fact that there is no internationally recognized right to abortion, is a clear violation of the right of parents to provide such appropriate direction and guidance to their children.
23. In addition to violating the rights of parents, exposing girls to the harm inherent to the practice of abortion without requiring the necessary involvement of parents or legal guardians violates the rights and best interests of girls.

(c) End of Life Matters

24. According to the Criminal Law Act of 1993, euthanasia and assisted suicide are illegal in Ireland.¹³
25. Initiatives in support of the legalization of these practices have recently been undertaken at the parliamentary level.¹⁴ The Dying with Dignity Bill, introduced in 2020, aims at enabling the ending of one's life with medical assistance in case of an incurable and progressive illness that cannot be reversed and from which a person 'is likely to die.' The stated purpose of the bill is to 'make provision for the assistance in achieving a dignified and peaceful end of life.'¹⁵ In this regard, the Irish Human Rights and Equality Commission, in highlighting the legal deficiencies in the bill, has expressed caution against the risks of legal uncertainty and abuses that its adoption

¹² Health Service Executive (HSE), 'Your Guide to Medical Abortion' (2019) <https://irishpracticenurses.ie/wp-content/uploads/2019/01/3246_HSE_UNPLANNED_PREGNANCY_SURGICAL_A5_LEAFLET_V8_NO_CROPS.pdf>. and HSE, 'Your Guide to Surgical Abortion' (2019) <<https://www2.hse.ie/file-library/unplanned-pregnancy/guide-to-medical-abortion.pdf>>.

¹³ Government of Ireland. Criminal Law (Suicide) Act, 1993.

¹⁴ Bottone, Angelo. 'Assisted Suicide submission sows confusion about passive euthanasia'. February 5th, 2021. <https://ionainstitute.ie/assisted-suicide-submission-sows-confusion-about-passive-euthanasia/>

¹⁵ Houses of the Oireachtas. Dying with Dignity Bill 2020, <<https://www.oireachtas.ie/en/bills/bill/2020/24/>>.

would create, as well as its harmful impact on ‘respect for and acceptance of persons with disabilities, or older people, as part of human diversity.’¹⁶

26. Should this unethical bill pass and turn into new legislation, Ireland would not only fall short of its obligations to protect the right to life as enshrined in international law, but also threaten the equality and non-discrimination and health of older persons and persons with disabilities. In addition, it would undermine the freedom of conscience of healthcare professionals, similarly to the abovementioned abortion law.

The Right to Life under International Law

27. Article 6 of the ICCPR which Ireland ratified in 1989, recognizes that every person has the right to life.¹⁷ The same right is guaranteed by Article 2 of ECHR, as well as by Article 10 of the CRPD.¹⁸
28. The legalization of practices such as euthanasia is an egregious violation of the right to life. This right is to be protected by law, and nowhere is it indicated that the duty of the State to protect human life is abrogated if the person aiming to violate it is the rights-holder himself. As affirmed inter alia by the European Court of Human Rights in *Pretty v United Kingdom* and *Haas v Switzerland*, the right to life does not include a diametrically opposite right to die.¹⁹
29. These cases affirm that the right to privacy under Article 8 of the European Convention on Human Rights (ECHR) and the prohibition of torture, inhuman or degrading treatment or punishment under Article 3, must be understood in conjunction with Article 2, which not only prohibits the State from intentionally taking life, but also obliges it to take appropriate steps to safeguard the lives of those within its jurisdiction.
30. In addition, not only is there an absence of any references to euthanasia in any international human rights treaty, but treaty monitoring bodies have questioned the practice in the small minority of countries that have legalized the practice. For instance, in September 2014, the UN Committee on the Rights of Persons with Disabilities expressed concern that Belgium’s Euthanasia Law could be ‘misused to kill off persons with intellectual disabilities.’²⁰
31. In the context of the Council of Europe, while the European Court of Human Rights has explained that there is no ‘right’ to assisted suicide under the Convention, the Parliamentary Assembly of the Council of Europe has stated in Recommendation 1418 (1999) that:

¹⁶ Irish Human Rights and Equality Commission, Submission to the Committee on Justice on the Dying with Dignity Bill 2020 (January 2021). Available at: <https://www.ihrec.ie/app/uploads/2021/02/IHREC-Submission-on-Dying-with-Dignity-Bill-Final-PDF-03022021.pdf>.

¹⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 6.

¹⁸ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, art. 10.

¹⁹ *Pretty v United Kingdom* (2002) 35 EHRR 1; *Haas v Switzerland* (2011) 53 EHRR 33

²⁰ UN Human Rights Office, “Committee on the Rights of Persons with Disabilities considers the initial report of Belgium” (19 September 2014) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15073>>.

'The Committee of Ministers [should] encourage the members of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects ... by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while (i) recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the [ECHR] which states that 'no one shall be deprived of his life intentionally'; (ii) recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person; [and] (iii) recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death.'²¹

32. In Resolution 1859 (2012), the Assembly went even further by stating that 'euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.'²²

33. Instead of enshrining a so-called 'right to die' in its legislation, Ireland should recommit to protecting the right to life as the supreme right requiring protection until natural death, thereby focusing on providing patients with quality medical care, including palliative care, and treatment. Rather than ending lives, Ireland should effectively safeguard the human dignity and rights of the sick and the vulnerable by providing all the necessary material, psychological, social and spiritual assistance.

(d) Recommendations

34. In light of the aforementioned, ADF International suggests the following recommendations be made to Ireland:

- a. Ensure that the right to freedom of conscience is duly recognized and respected in accordance with the international human rights law, particularly Article 18 of the International Covenant on Civil and Political Rights;
- b. Ensure that medical professionals have a right to object to performing, assisting, or referring for abortions or related procedures on the grounds of conscientious objection;
- c. Amend Section 22(3) of the Health (Regulation of Termination of Pregnancy) Act, 2018 in order to remove any requirement in law for a medical practitioner, nurse or midwife who is conscientious objector to refer women seeking abortions;
- d. Require parental notification and consent to abortions being performed on their children under the Health (Regulation of Termination of Pregnancy) Act 2018;
- e. Resist pressures to legalize euthanasia and assisted suicide, acknowledging that there is no 'right to die' under international law and that such practices violate the right to life, health and non-discrimination;
- f. Commit to public support, both financially and with an information campaign, for the provision of palliative care and other life-affirming treatments for terminal illness.

²¹ Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1418 (1999).

²² PACE, Resolution 1859 (2012).



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