



*Submission to UN Human Rights Council on Freedom of Assembly
and Association: February 2020*

prolife
campaign

INTRODUCTION

The Pro Life Campaign (hereafter referred to as “the PLC”) welcomes the opportunity to make this submission to the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, for his report to be presented at the 44th session of the UN Human Rights Council

The PLC is a non-denominational lobby group which draws its support from a cross-section of Irish society. We promote pro-life education and 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 has sought at all times to ensure that the dignity and innate worth of every human being in Irish society is recognised and defended, regardless of age, creed, ability or social standing.

We have been to the forefront of contributing to the ongoing debate on the human rights of all members of Irish society for over 30 years.

OVERVIEW

The PLC believes that the rights to freedom of public assembly and association are currently under a direct threat in Ireland. Specifically, there is an ongoing threat from the Irish Government to the rights of those who oppose legal abortion from exercising their right to peacefully protest against this practice.

In July 2018, the Irish government announced its intention to introduce legislation for what it describes as “safe access zones”. These “zones” would ban all protest against the practice of abortion in the vicinity of hospitals or the premises of general practitioners and medical doctors working in the community (hereafter referred to as “GP Practices”) where such procedures take place.

This is the first time since the 1930s that there has been a legislative proposal to restrict the freedom of assembly of a specific and targeted

group within Irish society. No other legislation has been proposed by the current Government, or implemented by previous Governments, which directly impinges on the right to protest in this way.

These proposals are simply a targeted attempt to suppress freedom of speech and peaceful assembly by groups who oppose the policies of the Government in relation to abortion.

BACKGROUND

In 1983, the PLC was the group largely responsible for promoting the insertion into the Irish Constitution of Article 40.3.3, also known as the 8th Amendment, which 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.”

Sadly, by a referendum held on 25 May 2018, Article 40.3.3 was abolished and replaced by a new Article which states:

“Provision may be made by law for the regulation of termination of pregnancy.”

To the best of our knowledge, this is the first and only example of the abolition of a constitutionally-protected human right by a Western European state, since the end of the Second World War.

Following the introduction of this new Article, the Oireachtas (the Irish houses of parliament) passed the Health (Regulation of Termination of Pregnancy Act) 2018[1] (hereafter referred to as “the Act”), which came into force on 1 January 2019. This legislation allows abortion on demand up to 12 weeks of pregnancy, and up to birth in a wide range of circumstances including based on the risk of suicide, rape, incest, the physical and mental health of the mother, and what the Act describes as conditions “likely to lead to the death of the foetus”.

The Act defines a termination of pregnancy as

“a medical procedure which is intended to end the life of a foetus”^[2]

This is the first piece of legislation to be brought before the Irish legislature which specifically authorises the ending of life since legislation in the 1930s which introduced the death penalty for convicted terrorists.

The legislation allows medical practitioners to conscientiously object to carrying out or participating in a termination of pregnancy, but 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”^[3]

Under the Act, procedures can be carried out either medically in GP surgeries before the 12 week limit, or surgically in approved public or private hospitals between 12 and 24 weeks. As yet, there is no provision for abortions to be carried out in private clinics established for that purpose.

To summarise:-

- A human right which previously had constitutional status has been abolished
- The right to life of unborn children has been replaced with a regime of abortion on demand
- Medical practitioners who object to participating in abortions are forced to act against their conscience and make referrals to other practitioners who will carry out the procedure
- Abortions are being performed in public hospitals and GP Practices accessed by the general public.
- All procedures are carried out from the exchequer, from taxpayers' funds

723,632 Irish people (33.6% of the electorate) opposed the passage of the 2018 referendum[4]. Opinion polls in advance of the referendum showed that a large proportion of those who supported the abolition Article 40.3.3 also opposed the wide-ranging nature of the law that was subsequently introduced, and other measures such as the funding of abortion by taxpayers.

As a result, any one of the above developments would be considered as egregious and deeply wrong by a large proportion of Irish people and, as such, they have an inherent right to advocate that these laws should be overturned in any peaceful manner which is available to them, including through peaceful assembly protest.

It is a fundamental facet of international human rights law that all human persons have a right to peacefully protest against acts which they consider to be wrong, and at any place where they believe a wrong is being committed.

The PLC believes that the “safe zones” proposal by the Irish Government is a direct attack on this right.

DEMONSTRATIONS HELD

Since the passage of the Act, Irish citizens have held small and peaceful demonstrations at a number of hospitals and GP practices across the country. These protests have been grassroots initiatives, which have tended to be comprised of people who live in the nearby community, and are organised locally by groups in those communities. The PLC has not played any part in organising these protests.

Such protests have taken place at the National Maternity Hospital in Dublin, as well as at GP practices at a number of locations across the country including

These protests have been organised by grass roots activists who are mostly women. All of these protests have been entirely peaceful, with no public order complaints of any kind have been submitted to an Garda Síochána (the Irish police force, hereafter referred to as “the

Gardaí”) in relation to them. The protesters made no attempt to obstruct entrances to the facilities, or to prevent any person from entering.

GOVERNMENT RESPONSE

Following the 2018 referendum, and before any such protests had even taken place, the Government made clear its intention to pre-emptively ban all such protests in the future. The Minister for Health, Simon Harris TD, stated that he had received Government approval for legislation which would provide for

“... 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”[5]

In the intervening 20 months, however, this legislation has yet to be published. In that time, the Minister for Health has simply repeated his intention to introduce the measures as soon as possible, and that he is consulting with the Attorney General (the legal adviser to the Government) and with the Gardaí in relation to the proposals[6].

It is the view of the PLC that the reason for this delay is that Government legal advisers cannot reconcile the proposals for “safe access zones” with the protections offered to the right of protest by the Irish Constitution (Bunreacht na hEireann) and by the European Convention on Human Rights, due to the likelihood that any new law may be struck down by either the Irish Supreme Court, or by the European Court of Human Rights, if subsequently challenged.

IRISH CONSTITUTION

The Irish Constitution (Bunreacht na hEireann) enshrines strong protections for the freedom of assembly and association. Article 40.6.1 states:-

“The State guarantees liberty for the exercise, subject to public order and morality, of:-

i.

ii. The right of the citizens to assemble peaceably and without arms”[7]

This right has been upheld by the Irish courts, who have made it clear that any persons who assemble peacefully in any public place for the purpose of protesting can avail of the protection afforded by this Constitutional right, provided that the protests do not amount, in themselves, to a breach of the peace or a danger or nuisance to the general public[8]. Put simply, any legislation which seeks to ban protests by targeting specific groups, at specific locations in relation to a specific issue, is almost certainly a violation of the Irish Constitution.

The only exclusions on the right to assembly are protests which trespass on private property, obstruct a public road, which have the aim of committing disorder or violence, and certain protests held in the vicinity of the Houses of the Oireachtas (the Irish houses of parliament). The prohibition of public demonstrations in so-called “Safe access zones” do not constitute a breach any of these conditions.

There are already wide-ranging laws in place concerning the regulation of public assemblies, including protests[9]. These powers allow the Gardaí to intervene in any situation where there is disorderly conduct, a breach of the peace, abusive behaviour, violence or threats of violence, or intoxication in a public place. It is also an offence to obstruct the free passage of any person. Other laws, not specifically related to protests or public assembly, give the Gardaí the power to prosecute offences such as assault, threatening behaviour, coercion, harassment, endangerment, and false imprisonment[10].

Taken together, these provisions provide wide-ranging powers to the Gardaí to police and regulate protests and to ensure that they are conducted peacefully and in accordance with the Constitution. Any individuals taking part in protests who engaged in such behaviour could

be prosecuted under these existing laws. These laws are utilised on a daily basis by the Gardaí to prosecute offenders in the Irish courts.

To date, no complaints of any such behaviour has been made against those taking part in protests against abortion.

Letter from the Garda Commissioner

In September 2019, the Commissioner of the Garda Commissioner (the chief of police) wrote to the Minister for Health confirming that new laws were not necessary in order to police such protests. In his letter, the Commissioner 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.”^[11]

Freedom of Information Request

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 had written to the Department or to the Minister for Health to request new laws implementing “safe access zones”.

So, to summarise:-

- There have been no complaints made to Gardaí of any abusive, threatening, or other illegal behaviour at pro-life protests
- The Gardaí have confirmed that no new laws are necessary to regulate these protests

- No medical practitioners, hospitals, or GP practices have sought new laws to ban protests outside their premises.

The PLC asserts that the lack of any justification or demand for these new laws shows that they are being proposed for purely political and ideological reasons, to silence critics of Government policy.

TARGETTING PRO-LIFE GROUPS

The most concerning and egregious aspect of this attack on the right to protest is that, in spite of a recent upsurge in protests by a large number of groups campaigning against a wide range of other issues, anti-abortion protesters are the first and only group to be targeted by such laws.

In recent years, Ireland has experienced a significant amount of political turmoil and has seen a large upsurge in activity by protest movements. Many of these protests have involved significant amounts of disruption to the lives of ordinary citizens, economic disruption to workers and to businesses, and, in some cases, violence, harassment and other criminal behaviour.

In the last 12 months alone, the following protests have taken place:-

- A parade held by “Saoradh”, a dissident republican group which supports continued republican violence in Northern Ireland, which was adorned with flags which glorified terrorist activity. This event occurred just days after the murder of a journalist, Lyra McKee by republican dissidents in Derry. The Minister for Health denounced those marching as “pathetic cowards”. A number of other Government Ministers condemned the event but made no calls for intervention by the Gardaí or for new legislation[12].

- Protests at the private family residences of Government ministers - including the Minister for Health - by groups campaigning on housing issues[13]
- A blockade of Dublin city centre by farmers protesting against low beef prices, during which a large number of farm vehicles were driven into the city with the intention of causing serious traffic disruption[14].
- A blockade of meat processing factories by farmers, which brought the beef industry to a halt and caused a large number of workers to lose their employment for a number of weeks[15].
- Protests by “Extinction Rebellion” which had the aim of obstructing public roads in Dublin city[16].
- Protests organised in Dublin city centre during the Covid-19 pandemic to show solidarity with the Black Lives Matter movement and the killing of George Floyd at the hands of a police officer in the United States of America.[17]

Each of these protests involved breaches of existing laws, and yet no prosecutions were mounted by the Gardai and there were no calls from Government for new laws to prevent their reoccurrence.

And yet, a small number of entirely peaceful and lawful protest outside hospitals and GP surgeries has prompted the Government to repeatedly state that it intends to ban such protests.

This is clear evidence that these new laws are being specifically targeted at anti-abortion campaigners, motivated by political reasons to silence their views.

CONCLUSION

Parliamentary elections to the Dáil (lower house) took place on 8 February 2020 and resulted in a heavy defeat for the current government, led by the Fine Gael party. However, all of the main political parties in the Dáil appear to be supportive of the “safe zones” proposal. Indeed the draft Programme for Government published by the three parties likely to join together to form a Government (Fine Gael, Fianna Fáil and the Green Party) contains a commitment to legislate for ‘safe zones’ during the lifetime of the next Government. Under the heading of ‘Women’s Health’ it agrees to ‘Establish exclusion zones around medical facilities’.[18]

We are calling on the Special Rapporteur to use their mandate to make clear to the Irish Government that these proposals amount to a blatant assault on peaceful assembly, and to continue to work to oppose such actions by Governments everywhere, and to clearly protect the rights of all to assemble and protest peacefully.

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

[2] Definitions

[3] Section 22

[4] https://www.housing.gov.ie/sites/default/files/publications/files/referendum_results_1937-2019.pdf

[5] <https://www.gov.ie/en/press-release/e288ff-minister-harris-gets-government-approval-for-legislation-which-will-/>

[6] See for example, news reports from July 2019 (<https://www.irishtimes.com/news/health/harris-will-examine-exclusion-zone->

[proposals-for-anti-abortion-protests-1.3952284](#)) and January 2020 (<https://www.irishtimes.com/news/health/anti-abortion-protest-sparks-renewed-calls-for-exclusion-zones-1.4128381>)

[7] [http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/\(WebFiles\)/28CD6947F5021BCB802580A6005D1F09/\\$FILE/Constitution%20of%20Ireland.pdf](http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/(WebFiles)/28CD6947F5021BCB802580A6005D1F09/$FILE/Constitution%20of%20Ireland.pdf)

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

[9] Criminal Justice Public Order Acts 1994 and 2003

[10] Non-Fatal Offences Against the Person Act 1997

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

[12] <https://www.irishtimes.com/news/crime-and-law/taoiseach-joins-condemnation-of-saoradh-paramilitary-parade-1.3867417>

[13] <https://www.irishtimes.com/news/crime-and-law/protesters-gather-outside-simon-harris-s-home-again-1.3874486>

[14] <https://www.irishtimes.com/news/ireland/irish-news/traffic-disruption-to-continue-overnight-as-dublin-tractor-protest-continues-1.4140815>

[15] <https://www.irishtimes.com/news/ireland/irish-news/beef-dispute-meadow-meats-says-100-jobs-at-risk-as-factory-faces-closure-1.4019481>

[16] <https://www.irishtimes.com/news/environment/extinction-rebellion-activists-begin-dublin-climate-protest-1.4042550>

[17] <https://www.irishtimes.com/news/black-lives-matter-protest-takes-place-in-dublin-1.4272820>

[18] <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf>