

Pro Life in Ireland in 2019 – have the Irish changed?

Caroline Simons BCL LLM MA Solicitor, legal consultant to the Pro Life Campaign in Ireland

The Irish have changed. In January 2019, state-sponsored abortion services became available in Ireland. 'Termination of pregnancy' (defined as 'a medical procedure which is intended to end the life of a foetus', rather than a procedure to end pregnancy) is available on demand in the first 12 weeks of pregnancy. It is available also up to an undefined time of 'viability' in cases of risk to the woman's life or health (including mental health) where two doctors deem it an 'appropriate' means to avert the risk. In an emergency, where two doctors consider it necessary to avert a risk to a woman's life or health, the procedure can be carried out at any point up to birth. Similarly, if a preborn baby has a condition which is likely to lead to its death before or within 28 days of birth, there is no time limit for the procedure.

Unlike other jurisdictions, where abortion was made lawful by courts or politicians, the Irish people voted to remove the constitutional protection of the preborn baby (the 8th Amendment) and to empower the Irish parliament to regulate termination of pregnancies. On 25 May 2018, on a turnout of 64.13% of the electorate, 66.4% voted to approve repeal of the 8th Amendment. This was the highest turnout of voters for any constitutional referendum, exceeding even the 60.52% who came out in 2015 to vote on same-sex marriage (which was approved by a majority of 62.07%).

The people's decision in 2018 to 'Repeal the Eighth' marks a spectacular reversal of public opinion. In 1983, on a turnout of 53.67% of the electorate, 66.9% approved the 8th amendment to the Irish Constitution. This inserted a new provision into the Constitution that acknowledged the right to life of the preborn baby and undertook to respect, and, 'as far as practicable', to 'defend and vindicate' that right. It stated explicitly that due regard had to be given to the equal right to life of the mother.

Although a contrary impression has been given by national and international media, pregnant women in Ireland have generally received the highest standard of care. The World Health Organisation has recognised this over many decades. Ireland without abortion has consistently better maternal mortality and morbidity rates than most countries where abortion is available. The law and the Medical Council's Guide to Professional Conduct and Ethics permitted termination of pregnancy where there was a real and substantial (not necessarily imminent) risk to the life of a pregnant woman which could not otherwise be averted. Doctors acted in the interest of both patients: the woman and her preborn baby. This meant that where the medical margins of safety allow, doctors acted to prolong pregnancy in the baby's interest. If the baby reached a gestation where survival might be possible, every effort would be made to optimise that survival. While it was permissible to terminate pregnancy to save a mother's life and a baby's life might be lost, it was never permissible to deliberately kill the baby. This was clinical practice before 1983, and accorded with the duty of doctors to practise evidence-based medicine. Although abortion is legal in nearly every European jurisdiction, an evidence base is lacking for the proposition that abortion (as distinct from termination of pregnancy and delivery of the baby) is necessary to avert a risk to the life of a pregnant woman.

Of course, cases of negligent medical care occur and questions regarding the clinical management of patients may require judicial resolution. These cases happen in Ireland as they do elsewhere, and in obstetric as in other areas of medical practice. Notwithstanding these cases, the President of the Institute of Obstetricians and Gynaecologists in Ireland and the Masters of the National Maternity Hospital and the Rotunda Hospital in Dublin told the parliamentary Committee on Health and Children in 2013 that they were not aware of any situation in which a lack of legal clarity prevented appropriate care and said that they had never withheld appropriate treatment for a woman. These sentiments were reiterated in 2018 during the campaign regarding the 8th Amendment. Dr Eamon McGuinness, former Chairman of the Institute of Obstetricians and Gynaecologists, said 'The 8th Amendment has one medical effect only: it prevents Irish doctors from deliberately, as an elective matter, causing the death of an unborn child. It awards to the child in the womb the right to have their life protected in Irish hospitals, in Irish GP [general medical practitioner] surgeries, and in Irish operating theatres.' Reassurance was provided by another consultant obstetrician, Dr Mary Holohan that 'Ireland's law fully provides for the small number of cases relating to necessary obstetric interventions...We have the scope of practice needed to guarantee best international standards of care to women in pregnancy.'

In the 35 years after the 8th Amendment, there were a number of cases around which prochoice activists built a successful narrative that pregnant women were dying because of the unavailability of abortion and that the 8th Amendment restricted obstetric care. On close examination, none of these cases support this contention. Two cases in particular lit a touchpaper for change in public opinion. These were the case of *X v Ireland* in 1992 ('the X case'), and the tragic death of Savita Halappanavar in 2012.

The X case concerned a 14 year old girl, Miss X, who was pregnant as a result of rape. She travelled with her parents to England to have an abortion. Prior to leaving Ireland, they sought advice from the Irish authorities in relation to scientific testing of the foetus to establish paternity in a criminal prosecution for rape. The Attorney General applied to the High Court for an injunction preventing Miss X from travelling to England for an abortion. A psychologist gave evidence that she might commit suicide if she was refused an abortion. The High Court issued an injunction preventing her from leaving Ireland and from arranging the procedure. Although they were already in England making these arrangements, the family returned to Ireland when they learned of the injunction. The case was appealed to the Irish Supreme Court. It decided (in the absence of psychiatric evidence, and on the basis of a concession by the Attorney General) that her threat of suicide because of her pregnancy was a risk to Miss X's life which could only be avoided by termination of pregnancy, and that termination was lawful in these circumstances. The court directed that Miss X should not be prevented from leaving the country. It was reported subsequently that she did not have an abortion, but suffered a miscarriage in an English hospital.

After the X case, the prolife movement in Ireland feared that allowing abortion for suicide or mental health reasons would 'open the floodgates'. Abortions performed in the UK for risk of injury to a woman's physical or mental health have consistently accounted for over 97% of all abortions. (In 2017, 98% of abortions in the UK (England and Wales) were performed on this basis. 99.5% of those abortions were done because of risk to the woman's mental health.) In a referendum in 1992 however, the people rejected an amendment which would have excluded the risk of suicide as a basis for

lawful termination of pregnancy. (Prolife and Catholic advocates had also called for a No vote because of the flawed wording of the proposal.) They approved amendments that provided that the 8th Amendment would not limit freedom to travel to another state, and to allow freedom of access in Ireland to information about services lawfully available elsewhere. Thus, where termination of pregnancy had been available where it was necessary to avoid a risk to the woman's life, it was now available, at least in theory, where there was a risk of her suicide.

A referendum in 2002 offered the renewed possibility of removing the threat of suicide as a basis for legal abortion. This was supported by the government and by the Catholic Church. A minority among prolife voters considered that the proposed wording might inadvertently remove protection from the embryo prior to implantation. Post referendum analysis suggests that this minority was sufficient to tip the balance in favour of defeat of the referendum proposal. On a turnout of 42.89%, it was rejected by 50.42% of voters.

Savita Halappanavar died in October 2012 while under hospital care for inevitable miscarriage. Five days before she died, Mrs Halappanavar's request for a termination of pregnancy was denied on the grounds that her miscarriage appeared to be progressing normally and her foetus was still alive. Three official and independent enquiries found that her death resulted from sepsis and poor miscarriage management. Official investigators acknowledged that 'clinical circumstances can and have arisen in Ireland where a termination of pregnancy is an appropriate and necessary clinical step in the medical treatment and care of a patient.' They said that appropriate monitoring and evaluation 'would likely have lead [sic] to reconsideration of the need to expedite delivery', which 'would likely have helped to prevent rapid deterioration of the patient.' These acknowledgements and findings have been almost excised from public consciousness. The announcement in the Irish Times that 'Woman 'denied a termination' dies in hospital' alerted prochoice activists immediately to the potential of her death to win support for the campaign to repeal the 8th Amendment. It triggered an outpouring of public mourning that was reported by media from Ireland to India. The haunting image of Savita and the suggestion that an abortion might have saved her life hugely influenced public debate and fuelled the growing public appetite for some measure of abortion.

In 2013, the Protection of Life During Pregnancy Act became law. Its stated intention was to legislate for the decision of the Supreme Court in the X case in 1992. It provided that where a pregnant woman's life was at risk, including by her own threat of suicide which could not be otherwise averted, termination of pregnancy was permitted. It prohibited the intentional destruction of the preborn baby. This did not satisfy the prochoice lobby, but a broader abortion law was not possible while the 8th Amendment remained.

'Dripping water hollows out stone, not through force but through persistence' (Ovid)

After Mrs Halappanavar's death, the campaign for a referendum to 'Repeal the 8th' intensified, focusing initially on abortion for 'hard' cases, like rape and 'fatal foetal abnormality'. Money poured in to Irish campaigning bodies from organisations overseas, including Soros' Open Society Foundations. Prominent obstetricians campaigned, (including some who had said in 2013 that the law had not prevented appropriate obstetric care) complaining that the law had a 'chilling effect' on their clinical practice.

Feminist academic lawyers increased their efforts for Repeal. Wearers of 'Repeal' clothing and costumes from Atwood's *Handmaid's Tale* became visible advocates for the prochoice cause.

By 2018, all political parties and political leaders supported and campaigned for the Repeal of the 8th. These included the Taoiseach (Prime Minister), the Minister for Health and the Minister for Children. The Repeal campaign relied largely on personal stories and feelings to garner support. Prominent obstetricians, including the President of the Institute of Obstetricians and Gynaecologists (only a handful of colleagues spoke against them) pronounced the law unworkable. Cases which had nothing to do with the 8th Amendment or with abortion became part of the Repeal campaign's narrative. The campaign was reinforced by blanket support in the mainstream media. A very successful prolife campaign across social media was scuppered weeks out from the polling day by advertising bans introduced by both Facebook and Google – which the Irish Times reported were precipitated by pressure from government circles.

Misinformation, false analysis and euphemism were used to persuade the Irish that abortion is 'healthcare' and the preborn baby is a 'choice'. A member of parliament (a pharmacist and a mother) insisted that a pregnant woman was 'not carrying a life', she was 'carrying a pregnancy', and that 'there is no baby anywhere being terminated' in the abortion legislation. The Minister for Health promised that his legislation would prohibit abortion for disability (it does not) and late term abortions (certain abortions can take place throughout pregnancy). All prolife amendments proposed to the abortion legislation were rejected, even those which the public might conceivably support. These include amendments which would require that the baby be administered pain relief prior to the abortion, which would have prohibited abortion for disability or gender selection, which would have prohibited the sale of foetal tissue and which would have required dignified burial of foetal remains following surgical abortion rather than disposal as waste. Doctors now seek permission for foeticide prior to medical (non surgical) abortion to ensure that babies 'are born sleeping'.

In a country where 78.8% of the population identify as Catholic (Census 2016) and weekly mass attendance is high by European standards, the decision to remove the right to life of the preborn baby from the Constitution in order to enable abortion is confusing. It points to a failure of the Catholic Church in Ireland over several decades to impart to and/or convince even its own congregations of its teachings on the sanctity of life. Writing in *The Catholic World Report* in June 2018, Russell E. Saltzman recalled a 1958 lecture titled 'The New Pagans and the Church' in which Joseph Ratzinger stated that the Church 'is no longer, as she once was, a Church composed of pagans who have become Christians, but a Church of pagans, who still call themselves Christians, but actually have become pagans.' Saltzman observed that the pagans in Ireland have reached a 66% critical mass and that default paganism has become the norm governing life for many, if not most, people in Ireland today. If this is a default rather than a considered position, we may only hope that the realities of abortion will encourage people to reprise the traditional precepts.

Subject to copyright, suggested links for photographs/video to accompany this article:

<https://www.irishexaminer.com/breakingnews/ireland/pro-choice-campaigners-dress-as-the-handmaids-tale-characters-in-protest-outside-dail-806704.html#.XDqre8Lr6KA.link>

<https://www.youtube.com/watch?v=571vnkdrWC0&t=2s>

https://www.google.com/imgres?imgurl=https%3A%2F%2Fwww.irishtimes.com%2Fpolopoly_fs%2F1.3510170.1527418217!%2Fimage%2Fimage.jpg_gen%2Fderivatives%2Fbox_620_330%2Fimage.jpg&imgrefurl=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fpolitics%2Fireland-gets-an-update-1.3510171&docid=VXxFjdnVPd31-M&ttbnid=3T3m5Pau2AEUdM%3A&vet=10ahUKEwjXmvCf9enfAhUBTRUIHcbPCDMQMwhHKAqwCA..i&tw=620&th=330&client=safari&bih=662&biw=1095&tq=dublin%20castle%20referendum%20result&ved=0ahUKEwjXmvCf9enfAhUBTRUIHcbPCDMQMwhHKAqwCA&iact=mrc&uact=8