



ICCL Policy on a Right to Die, October 2020

Is there a right to die?

A number of rights are engaged by the concept of the right to die including: the right to life; the right to dignity and the right not to be subjected to inhuman or degrading treatment; the right to private and family life; the right to freedom of thought, conscience and religion; and the right not to be discriminated against.

The Irish Supreme Court considers that there is no stand alone right to die within the Irish Constitution.¹

There has been little guidance at the international level on the scope of a right to die.

The European Court of Human Rights, while accepting the principle of autonomy as a basis of the right to private life and recognising the importance of choice when it comes to quality of life and the end of life, has made clear that it views legislating for such a right as falling within the margin of appreciation of each country.² This means the European Convention for Human Rights does not require a State to legislate for a right to die but it also does not prohibit provision for such a right at national level.

Legislating for a right to die in Ireland

ICCL is not opposed to the concept of a right to die nor to the potential for enshrining such a right in legislation that would outline the circumstances where a person could request and receive assistance with ending their own life. However, ICCL considers that there are a number of steps that must be taken before we consider the precise parameters of such a right in legislation.

First, existing laws and mechanisms designed to enable autonomy and agency, as well as to support informed decision making for those who may need assistance must be enacted as a matter of urgency and certainly before new legislation is proposed. Second, more information around the current situation in Ireland is needed. Third, other legal and policy measures that could achieve the same aim of decriminalising those who assist people seeking to end their life may be sufficient and should be considered. Each of these steps are examined below.

1. Agency and Autonomy

The debate around and content of such a proposed bill must be informed by an agency and autonomy perspective. The focus should be on the right to a quality life for those who are terminally ill as a first principle before considerations around a right to die are raised.

¹ *Fleming v. Ireland* [2013] 2 IR 417

² See *Pretty v UK*; *Haas v Switzerland*

Does the current system ensure that proper supports are in place to enable informed decision making? There are a number of relevant legal mechanisms already on the Statute Book that would enable and empower assisted decision making but they either haven't been enacted or are not properly resourced. These must be enacted and properly resourced as a matter of urgency. This requires:

- i. Commencing the outstanding provisions of the Assisted Decision Making (Capacity) Act 2015, including providing for Advance Healthcare Directives.³
- ii. Properly resourcing the Decision Support Service.⁴

2. More information is needed

New legislation should be enacted in response to a demonstrated need. There is a lack of information and data about numbers seeking such assistance and in what circumstances. More research, studies and investigations are needed into the current Irish context, the results of which should inform the government's approach. The process of examining the need for a legislative or other response and of drafting an appropriate response should be participative and include a wide range of stakeholder voices, including all those who may be directly affected by such a Bill.

3. Other legal and policy measures should be considered

If the aim of the Act is to decriminalise people who would assist others in ending their life, we should examine whether there are other appropriate legal or policy mechanisms to ensure they are not prosecuted. For example, assisting a suicide could be removed as a criminal offence from the Criminal Law (Suicide) Act 1993.

Both the Irish and UK Supreme Court have indicated that they consider that a proper exercise of prosecutorial discretion can go some way towards protecting those who would seek to assist someone with ending their life who acts in good faith. While this is unsatisfactory from a rule of law perspective that demands clarity and predictability from the law, it may be that public guidelines for prosecutors with clear criteria for prosecutions of this nature could assist as one measure among a range of measures. A range of other relevant offences that exist in criminal law may in fact be sufficient to address concerns that assistance might be provided without proper consent. These offences include murder, manslaughter and assault.

In the same vein, proper guidelines or codes of practice for medical practitioners could be drafted and adopted, as part of and as a result of, a participative consultative process. There are a number of precedents for responding to complex legal and ethical medical issues through such guidelines.

³ See http://www.irishstatutebook.ie/eli/isbc/2015_64.html

⁴ This service, according to its own website, is "not yet operational". See <https://decisionsupportservice.ie/>.