

# DOES A CHILD HAVE A RIGHT TO ASSISTED SUICIDE UNDER IRISH LAW?

When it comes to determining whether a child has a right to assisted suicide under Irish law, it is to be noted that the Constitution of Ireland 1937 does not explicitly provide anything in this regard (Irish Law Reform Commission, 2011). Instead, it is implied that a child under 16 years of age's family that makes the decisions regarding their medical treatment (Irish Law Reform Commission, 2011). This is because the circumstances when a child has the capacity to consent to and/or refuse medical treatment is currently considered to be legally uncertain in the Republic of Ireland (Irish Law Reform Commission, 2011).



As for those children over the age of 16, they are only actually entitled to make decisions with regard to if they should have medical treatment without the involvement of their parents (Non-Fatal Offences against the Person Act 1997, s.23). This is because Articles 41.1 and 42 of the Constitution of Ireland 1937 endorses all parents' "inalienable right and duty" to take care of their children's welfare in every possible respect. However, it is also to be noted that Article 40.3 of the same Constitution recognises that it is still possible for a child to be able to enjoy constitutional rights in their own right (*In re Article 26 and the Adoption (No 2) Bill 1987* [1989] IR 656).

Consequently, only truly compelling reasons or exceptional circumstances will permit state intervention in this kind of case. (*North Western Health Board v. W(H)* [2001] IESC 70). Specifically, the state would only intervene in the event that child's life, health and/or welfare is severely threatened so that it was considered to be in their best interests to act (*North Western Health Board v. W(H)* [2001] IESC 70). However, there is also a need to account for the Four Principles of Autonomy, Beneficence, Non-Maleficence and Justice to avoid any unnecessary conflict that could arise (Macklin, 2003—see also Houses of the Oireachtas (2018)).



On this basis, Irish law seems to take a different approach to the law of England and Wales regarding the issue of a child seeking assisted suicide. To illustrate, the law of England and Wales uses the 'Gillick Test' which endorses the fact that someone under 16 years of age can elect to have specific medical treatment where they have sufficient maturity (*Gillick v. West Norfolk and Wisbech Area Health Authority* [1986] AC 112—see also European Convention on Human Rights 1950, Article 8). Nevertheless, a child's decision may still be overridden if it is deemed to be in their best interests (*Re E (A Minor) (Wardship: Medical Treatment)* [1993] 1 FLR 386). As a result, although Irish law has recognised the 'Gillick Test's' persuasive value, the Constitution of Ireland 1937 prevent this test's application by emphasising a child's family's value in making medical treatment decisions. However, there is also a need to consider a child and their family's rights that could be provided under the European Convention on Human Rights 1950 at Article 8 when making a decision regarding that child's treatment (Cantillon, 2019). Consequently, the state/courts can only intervene in Ireland where a severe threat to a child's life, health and welfare and/or best interests (*North Western Health Board v. W(H)* [2001] IESC 70).