



Irish Council for  
**Civil Liberties**

### **The right to protest and Emergency Health Regulations**

The right to protest is a fundamental right protected by the Irish Constitution and the European Convention on Human Rights, chiefly through the rights to freedom of association and assembly. These rights are not absolute and can be restricted where those restrictions are provided for by law, necessary and proportionate to a legitimate aim.

Protecting the right to life and health during the Covid-19 public health emergency is clearly a legitimate aim that requires limits on the right to protest in order to prevent the further spread of the disease through large gatherings of people protesting in close proximity to each other.

The amended Health Act 1947 (Section 31A – Temporary Restrictions) (Covid-19) Regulations 2020 (S.I. No. 121 of 2020) (**the Regulations**) have imposed significant limits on the rights of people in Ireland to gather, move freely about the country, and leave their homes without reasonable cause.

ICCL is calling on the Government to undertake a human rights impact assessment before extending these restrictions to ensure that the limits on rights are and continue to be proportionate to the exigencies of the public health emergency. It is clear that as time goes on and the health situation stabilises, and the longer restrictions are maintained, the harder it will be to justify ongoing significant interferences.

Over the past few days, we have seen various groups attempt to engage in protests throughout the country. Some have been facilitated by Gardaí and others have not.

ICCL is concerned that it appears that there is a lack of clarity as to what is permitted under the restrictions and, as a result, an inconsistent approach from An Garda Síochána.

It is clear that engaging in protest is not currently listed as a reasonable excuse to leave your home within the Regulations. However, the list of excuses is non-exhaustive and the Gardaí have a large amount of discretion to decide who may or may not have the right to leave their homes. In some instances, they have allowed protests to go ahead while emphasising that social distancing must be observed. In others, they have instructed protesters, who are clearly engaging in social distancing, to move on.

It is also clear that as time goes on and the significant impact of the response to Covid-19 is felt throughout our communities, people will want to and, in some cases, will need to raise their voices to communicate collective concerns to the government. This is particularly true for those who will be immediately affected by decisions relating to issues around their living situation, such as employment, housing or medical care.

The ability to demonstrate and raise a collective voice is the cornerstone of a democracy. The right to protest, therefore, must be protected and facilitated to the greatest extent possible. We note that in other jurisdictions specific legislation has been passed to allow for the right to protest to continue to be exercised during the current circumstances.

The need to continue to curb the spread of Covid-19 should of course remain a key factor in deciding how and when protests can occur and how many people can participate. However, ICCL believes a continuing blanket ban on all protests is likely to be a disproportionate interference with this fundamental right.

ICCL urges the Government to consider defining what form of protest may be acceptable in current times and consider including this as a reasonable excuse to leave one's home if the current regulations are extended. This will lend clarity to policing, inspire confidence in citizens and protect a precious touchstone of our democracy.