



Irish Council for
Civil Liberties

Oireachtas Special Committee on Covid-19 Response

ICCL Opening Statement

9 September 2020

Overview

The Irish Council for Civil Liberties is an independent NGO that works to promote and protect human rights law and standards in Ireland.

From the outset of this crisis, we recognized that stemming the spread of the virus would require some restrictions on our rights and freedoms. Such restrictions in times of emergencies are permitted under human rights law but a strict framework exists to ensure they are as minimal as possible. Restrictions must be set out in law, demonstrably necessary, and proportionate, meaning as minimal as possible to achieve a specific legitimate aim.

We have applied this framework in our analysis at all stages of the pandemic response. In our submission to the Committee, we set out how such an approach can be more effectively applied in our legislation and regulations. We set out why we believe a human rights approach can strengthen the Government's public health effort, and we raise some specific rights issues that have arisen over the past few months.

When the first Emergency Health Bill was published in March and we saw the extraordinary powers being granted to the Minister of Health to restrict our rights to liberty, movement and association and assembly, ICCL outlined the human rights framework in a submission to the Oireachtas. In addition to calling for a sunset clause and more safeguards within the legislation, we emphasised the need to ensure that all of the restrictions envisioned in any future regulations must be demonstrably necessary and proportionate to the aim of protecting public health.

We now suggest that any future emergency legislation should be better human rights proofed by integrating these principles explicitly, by introducing a requirement on government to certify legislation as compatible with Ireland's human rights obligations including under the European Convention on Human Rights, as is done in other jurisdictions, and by making consultation with Ireland's statutory human rights body a mandatory requirement where legislation so obviously impacts rights.

With the second Emergency Health Act and each set of subsequent regulations restricting our rights ICCL highlighted our concerns. We made submissions to the Oireachtas, the Taoiseach, Minister of Justice, the Minister for Health, the Garda Commissioner and to this Committee.

For example, we opposed the use of criminal sanctions with regard to movement in the early phases. We welcomed the removal of these sanctions for restrictions on movement in July but remain concerned about significant criminal sanctions attached to ongoing regulations.

We called for more guidance around what constitutes a lawful reasonable excuse for not observing restrictions. In particular, we have called for clarity around the right to protest. Protest is a fundamental avenue for expressing dissent and takes on an even greater importance when decisions are made that have such a monumental impact on our lives and livelihoods. Guidance on this issue is still pressing, for both organisers and for those policing protests.

The expansion of garda powers has been and continues to be significant. This carries a risk to public trust where broader powers of intervention in the private sphere are proposed. We strongly opposed recent proposals to criminalise small gatherings in private homes, and we regard last week's pub grub regulations as unnecessary and inappropriate. It's clear the human rights tests of necessity and proportionality have not been applied to these regulations and if they had they would not have been met.

We have welcomed statistics provided by the Garda during the recent operations, and we also welcome the oversight provided by the Policing Authority. However we echo its calls for more detailed public data on the use of these exceptional powers to enable a proper analysis. We opposed the introduction of spit hoods for detainees during the pandemic because of considerable human rights concerns around hooding and we continue to call for their urgent removal from garda kit.

We have also called for better communication, accessibility and clarity around the making of each set of regulations. Early consultation with relevant actors is key. Fundamental rule of law principles require clarity and precision and take on greater importance when rights are restricted and criminal offences are created. A situation where people are uncertain about what guidelines are legally required or what behaviour is or isn't now illegal is simply untenable. Laws must be published in advance and government must be very clear about what is a law and what is not. We continue to call for wider Oireachtas scrutiny of regulations before they come into force and for a human rights impact assessment of each set of regulations.

Finally, we have called for much greater transparency around the process of translating expert medical advice into government decisions. This is fundamental to ensuring public trust and cooperation. We all need to know that the broader societal concerns including rights implications, are demonstrably being taken into account, as complementary to expert health advice, when policies are drawn up and restrictions on our precious rights and freedoms are signed into law.