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Dr Tony Holohan,
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CC: Minister for Health, Stephen Donnelly
CC: Taoiseach, Tanaiste

ICCL Calls for Ending of Covid Pass System

BY EMAIL

January 19, 2021

Dear Dr Holohan,

As we have done at all stages of the pandemic, the Irish Council for Civil Liberties (ICCL) strongly supports Ireland's public health response to Covid, and in particular Ireland's successful vaccination programme which is based on the principle of consent. ICCL also acknowledges that public health emergency powers and the making of policies which restrict human rights and regulate ordinary aspects of life may be necessary in response to a pandemic in order for the Government and health authorities to uphold their duty to protect our rights to life and health.

However, all measures undertaken by the State must be compatible with Ireland's human rights obligations and human rights standards must shape that response. The key human rights principles of legality, necessity, proportionality and non-discrimination, enshrined in

international law and our own Constitution, must be explicitly considered *before* any rights-curtailing measure is implemented, and regularly reviewed *during* its implementation. If the State neither takes steps, nor is able, to demonstrate that a rights-intrusive measure is necessary and proportionate to achieve a legitimate aim, or that it is the least-restrictive measure available to meet that aim, then it fails the crucial human rights test and should be abandoned.

ICCL supports the State's Covid-19 vaccination programme. The vaccine curtails serious illness, reduces hospitalisation and saves lives. However, ICCL does not support the domestic Covid-19 vaccination certification system, primarily because the Government has not demonstrated how the system passes that crucial human rights test. In our view, it fails.

In light of the extraordinarily high vaccine uptake rate in Ireland; the exclusion of negative tests from the system; the absence of an exemption for people who cannot take the vaccine for medical reasons (which we note was previously recommended by NPHET); and the fact that transmission occurs between vaccinated people and unvaccinated people; ICCL believes the certificate system fails the tests of proportionality and necessity.

Additionally, whenever a State considers deploying a surveillance tool, such as a vaccine pass, it must first consider its efficaciousness. This is because if it isn't efficacious then there is very little, if any, debate to be had about whether or not the tool should be used. A tool's efficacy speaks to its necessity and proportionality.

We are in a situation where the current system marginalises and ostracises a small cohort of people who are exercising their right to choose not to be vaccinated and/or people who cannot be vaccinated for medical reasons. It does so without any empirical analysis of the benefits that relate to the Covid vaccination certification system in hospitality settings in Ireland, or how any such benefits might compare with the effects of other measures such as testing or investment in ventilation.

This continuance of the Covid vaccination certification system also presents a glaring discrepancy in Government policy. On the one hand, the Department of Enterprise, Trade, and Employment is correctly warning employers *not* to create "a false sense of security or undermining of other public health measures" by focusing on an employee's vaccination status. Instead, the Department's Work Safely Protocol says an emphasis must remain on other public health infection prevention and control measures such as wearing masks/face coverings, ventilation, physical distancing, hand hygiene, respiratory etiquette, and proper use of PPE. It

outlines that while vaccination is a “useful supplement” to these measures, it “should not replace them” because “a vaccinated person can also still transmit the virus”.¹

On the other hand, the Department of Health has expanded and embedded a system since July 2021 based on the very premise that the Department of Trade is warning against, at a cost to the rights of those who are unvaccinated.

Vaccination is not mandatory in Ireland with a key pillar of our approach based on freely given and informed consent. This is an approach that has not only served us well but is deeply intertwined with the importance of the constitutional rights to bodily integrity and privacy. The success of that voluntary approach is also based on trust between the public and our public health system. ICCL believes that coercive measures which fail to meet the required thresholds of necessity and proportionality seriously risk jeopardising that social contract and future vaccination programmes.

In the context of reports this week that NPHET and the Government may consider the relaxation or removal of current Covid restrictions, ICCL requests that NPHET give specific consideration to recommend the immediate ending of any requirements for Covid vaccination certificates in those settings where they are currently being used, and the complete cessation of the Covid certification system at the earliest possible opportunity.

Yours sincerely,



Liam Herrick,
Executive Director,
Irish Council for Civil Liberties

¹ Department of Trade, Enterprise and Employment: *Work Safely Protocol*, p.36, updated January 17, 2021.
Accessible here: <<https://www.gov.ie/en/publication/22829a-return-to-work-safely-protocol/>>