



CHECK AGAINST DELIVERY

Opening statement by Professor Caroline Fennell, Commission Member of the Irish Human Rights and Equality Commission.

To be delivered to the Joint Committee on Justice on “Civil Liberties during the Covid-19 pandemic”

Tuesday, 22nd June 2021 at 3.30pm

My thanks to the Chair and the members for the opportunity to speak with you today. The Irish Human Rights and Equality Commission is Ireland’s independent National Human Rights Institution and National Equality Body.

In this role the Commission holds a specific mandate to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality, and to examine any legislative proposal and report our views on any implications for human rights or equality.

While there has been no single Irish legislative act specific to the treatment of civil liberties since the outbreak of COVID. There has instead been a raft of emergency regulation and guidance, which the Commission has examined through our report on “*Ireland’s Emergency Powers During the COVID-19 Pandemic*” with experts from the Trinity College Dublin’s COVID-19 Law and Human Rights Observatory.

Among our conclusions in that report were that:

- The government has blurred boundaries between guidance and regulations, leading to confusion among people;
- Certain groups were potentially disproportionately affected by policing powers, but we lack the data to clarify this because it’s not being published,
- and - defects in the law making and review process have led to a lack of human rights and equality expertise in decision making structures.

There has arguably never been a time in Irish democracy when our normal day to day lives and activities have been so restricted.

The Commission recognises that the COVID-19 crisis has presented an unprecedented challenge to the State and its obligation to protect the rights to life and health, **but** unprecedented times raise the bar for a scrupulous regard for, and safeguarding of, civil liberties. And in this regard our report with TCD has found the State wanting in a number of respects.

In the Commission’s appearance before the Special Committee on COVID-19 in September 2020, we stated that emergency legislation must only be used in exceptional circumstances, and must be subjected to strict human rights standards and oversight.

However, the response to the pandemic has revealed a lack of human rights and equality expertise in the decision-making structures put in place to tackle the pandemic, or in the systems that implement and scrutinise these decisions.

Also, shifting relationships between the Government and the National Public Health Emergency Team (NPHE), and limited opportunities for Oireachtas oversight, have made it difficult to ascertain where, if at all, human rights and equality concerns are being addressed.

The Commission has been clear from this experience that the Government should at all times, and in all communications maintain a clear distinction between measures that are legally obligatory and public health advice. In particular, the Government should not present public health advice as if it were criminally enforceable. A fundamental principle of the rule of law is that people subject to that law have clarity about what is expected of them.

The Commission remains of our longstanding view that a dedicated Oireachtas Committee on Human Rights, Equality and Diversity would bolster parliamentary oversight of the implementation of legislation generally, but particularly emergency legislation introduced in response to COVID-19, and the equality and human rights implications of COVID-19.

Noting the extensive powers afforded to An Garda Síochána under emergency legislation, the Commission has consistently, along with others such as the Policing Authority, raised the need for comprehensive and detailed disaggregated data and information on the implementation of these emergency powers.

The need for this is clear, to ensure the powers are being exercised in a transparent manner and in line with human rights and equality principles, such as non-discrimination. As I speak today this data is still not fully available.

In conclusion, while certain human rights can be limited on the grounds of the protection of public health, restrictions on rights must meet certain minimum requirements – legality, necessity, proportionality and non-discrimination.

Our thanks again to Members for your focus specifically on civil liberties. This is an important discussion to have, particularly now as we hope the mix of our vaccination programme and collective action have allowed us to turn a corner.

But around that corner will there be any lingering of the pandemic powers which were introduced in extremis?

This parliamentary oversight and its insights can act as a significant bulwark in protecting against erosion of our values, our democracy, and the rights which underpin them.

Thank you again

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