**The Irish State’s COVID-19 Response and the Rule of Law: Causes for Concern**

**Conor Casey** *Lecturer in Law, University of Liverpool.*

**Oran Doyle** *Professor in Law, Trinity College, Dublin*

**David Kenny** *Associate Professor of Law, Trinity College, Dublin.*

1. **Outline of State Covid-19 Response**

Since March 2020, the most dominant issue in the Irish legal landscape has been, unsurprisingly, the COVID-19 Pandemic.[[1]](#footnote-1) Ireland has not declared a constitutional state of emergency since the pandemic reached its shores: it cannot, as a public health emergency is not grounds for use of emergency powers in the Irish Constitution. But the Irish State’s approach to tackling the pandemic since March closely resembles a typical constitutional emergency response, heavily reliant on executive action in the form of regulations made by the Minister for Health.[[2]](#footnote-2) The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and Emergency Measures in the Public Interest (Covid-19) Act 2020 (Emergency Measures Act)—the two main statutory planks of the State’s COVID-19 response—delegated broad powers to make regulations for ‘preventing, limiting, minimising or slowing the spread of Covid-19’ and to deal with the harsh economic and social effects of the pandemic.

This authority was used to make ministerial regulations that implemented “lockdowns” of varying stringency, similar to those in other states. This included shutting down non-essential business activity; mandating the wearing of masks on transport and business premises; restricting gatherings in private dwellings; limiting the number of people who could attend events; and preventing you from leaving your home unless you had a “reasonable excuse”. These powers are perhaps the most extensive powers delegated to the executive in the history of the State. To ameliorate the devasting socio-economic effects of the virus and these measures, the Government also issued regulations introducing socio-economic supports such as rent freezes, eviction bans, business subsidies, and emergency social welfare supports. Some major measures—such as mandatory hotel quarantine for certain incoming travellers—were put on a statutory footing. But most restrictions on personal freedom were implemented by the Minister for Health making a regulation to prohibit an action, subject to a type of penalty specified by the Oireachtas. These penalties include the criminal sanctions of fines and imprisonment, supplemented by fixed penalty notices (colloquially referred to as “on-the-spot fines”) and an obligation to comply with directions issued by gardaí.

The Government also relied on its own inherent constitutional executive powers[[3]](#footnote-3) to issue public health advice;[[4]](#footnote-4) unilaterally extend the immigration permissions of thousands of migrants in the State;[[5]](#footnote-5) and to compensate for the economic impact of lockdown measures.[[6]](#footnote-6) The Government has, therefore, drawn liberally upon the three different faces of State power, the ‘force of law (imperium), the force of money (dominium) and the force of information (suasion) to respond to the COVID-19 pandemic.’[[7]](#footnote-7)

1. **Assessing the State Covid-19 Response: Some Positives**

Assessing whether the Government’s response to Covid-19 has been, all-things-considered, optimal or reasonable, is a deeply complex moral, political and public health question, one far beyond the scope of this article. But one positive was the fact the constitutional order’s institutions of government had the capacity to act robustly for the common good in the face of enormous challenges.[[8]](#footnote-8) When the virus reached Irish shores in March 2020, the Irish State was swiftly able to marry Hamiltonian qualities[[9]](#footnote-9) of dispatch, unity of purpose, and flexibility, with the [technocratic expertise](https://scholarship.law.upenn.edu/penn_law_review/vol164/iss7/13/) of its public health advisors and other civil servants to act to protect life, health, and socio-economic stability. The legislature, despite not housing a government majority, passed robust emergency legislation quickly and with some scrutiny. The government utilised these powers decisively, and with consultation with relevant expert advisors. This is no small thing.

We do not, in making this observation, specifically endorse the choices made by the State and/or its technocratic advisors as compared to possible alternative measures or strategies. Rather, the readiness and willingness of the executive branch to swiftly act in good faith for the common good—with due regard for expert advice—is laudable compared with some of its comparators. Some executives took a distinctly hands-off and casual approach to tackling the virus and its fallout. Professors Pozen and Schepple have highlighted the dangers of what they call ‘executive underreach’; “a national executive branch’s willful failure to address a significant public problem that the executive is legally and functionally equipped (though not necessarily legally required) to address.”[[10]](#footnote-10) This underreach often came at a very steep cost in terms of lives and public health. The capacity and willingness of our constitutional institutions to act is therefore worth valuing. Absent the Government’s spearheading and co-ordinating of the community’s response to the virus (whatever its flaws), the cost in lives and to social stability would likely have been far more serious.[[11]](#footnote-11)

Having said that, the pandemic response has also highlighted the risks that expanded Government discretion can have for other essential principles underpinning good government.[[12]](#footnote-12) One of the most important of these is the rule of law.

I**II: Rule of Law Issues**

The rule of law is a contested concept, with some vehement disagreement on its content and import.[[13]](#footnote-13) For some, the rule of law is a shorthand for a legal system that respects a range of moral commitments, such as human rights, equality, democracy, and the separation of powers.[[14]](#footnote-14) For others, it is a more ‘thin’ concept, concerned not with democracy or human rights, but with ensuring a political community is governed by accessible, stable, and understandable legal rules, rather than the ad-hoc discretion or brute force of powerful individuals. The moral core of this thin conception of the rule of law is a concern for arbitrariness and individual dignity.[[15]](#footnote-15) People, as rational beings, should be facilitated in planning their conduct, lives, and relationships confidently within an ascertainable framework of legal rules; they should not be left at the mercy and whim of the police and other State officials when going about their business. It is against this second, minimalist account of the rule of law that we will assess Ireland’s response in this essay.

Lon Fuller set out eight features of an procedurally moral legal system.[[16]](#footnote-16) (1) There must be government through general rules and not individual prescriptions; (2) they must be promulgated and made know; (3) they must not be retroactive but must be prospective; (4) they must be clear and possible to be understood; (5) they must not be contradictory; (6) they must not require the impossible but only acts capable of being performed; (7) they must not be changed too frequently but stable enough to provide guidance; (8) there must be congruence between the law as written and the law as applied by officials.[[17]](#footnote-17) The first seven desiderata ensure that the law is capable of being obeyed; the eight desideratum requires officials to apply that law properly. Widespread disrespect of these principles, Fuller argued, would lead to a complete failure to maintain a legal system based on rules designed to co-ordinate human action at all. Instead, it would be a regime based on the arbitrary ad-hoc commands of the powerful—a government of *people* and not of laws.[[18]](#footnote-18)

Disrespect for rule of law principles makes it unclear what obligations citizens must follow, leaving them unsure of how to plan their behaviour to accord with the law. This, in turn, implicitly denotes a lack of ‘official recognition and respect for human dignity and individual autonomy’.[[19]](#footnote-19) According to Fuller, severe departure from the rule of law represents an ‘affront to man’s dignity as a responsible agent’ , showing ‘indifference to his power of self-determination’ whatever collateral benefits it might have in securing public compliance with a desired policy.[[20]](#footnote-20)Sunstein and Vermeule point out how even lesser disrespect of these ideas can lead to ‘serious problems — from the standpoint of democratic accountability, liberty, and welfare’ which arise ‘if public officials have the discretion to do whatever they want, if citizens have to guess about what the law is, and if people are unable to plan their affairs.’[[21]](#footnote-21)

The rule of law is not expressly mentioned in our Constitution, but it lives in and is instantiated by many of its provisions, and is regarded by our courts as an important underlying commitment of our legal system.[[22]](#footnote-22) They have, for example, drawn on such principles when holding that the Constitution requires that criminal offences cannot be overly vague, that Government cannot constitutionally be granted statutory power to act arbitrarily, and that restrictions on fundamental rights must be expressed in clear statutory language.[[23]](#footnote-23) Given the importance of this principle to our constitutional order, the Irish State’s treatment of rule of law values during the pandemic is a cause for concern and for reflection.

We will examine how two trends related to the presentation and enforcement of Regulations implicate rule of law values. First, official government statements have provided misleading accounts of what the law requires and have regularly blurred the distinction between the regulations and public health advice. This made the actual content of the law unclear to many people. Secondly, regulations have been drafted in a way—due to lack of clarity or extensive reliance on the idea of a ‘reasonable excuse’—that makes it hard for people subject to the law to know whether conduct is permissible or not.

## *Conflation of Law and Advice*

Regulations can be difficult to understand. The complex and technical language in which legal instruments are often drafted can pose real headaches for Governments trying to secure high levels of public health compliance during a pandemic. It is thus unsurprising, and welcome, that the Government supplements its binding regulations by publishing very extensive amounts of public health guidelines explaining the regulations using non-technical language on its websites. The Government also strove to explain and clarify the effect of its regulations through the speeches and press briefings given by the Taoiseach, Ministers, and senior public health technocrats. While this concerted effort to clarify and explain the effect of complex legal instruments is welcome, the way the Government has gone about this task has frequently created uncertainty as to what was law and what was non-legally-binding guidance. This is very concerning from a rule of law perspective.[[24]](#footnote-24)

*Restricting Movement*

The Department of Health website sometimes carries a lay person’s description of what the Regulations do, but these can mislead people about the extent of their legal obligations. For example, at the start of June 2020 a new set of less intensive movement restrictions was introduced.[[25]](#footnote-25) The relevant government website stated:

We can travel within a 20 kilometre radius of our homes or anywhere within our county for social and recreational purposes. This includes travel and leisure.

We can gather for social or recreational purposes in other people’s homes, subject to a maximum of 6 people at such a gathering.

We can exercise outdoors with others or gather outdoors with others for social and recreational purposes, subject to a maximum of 15 people.

People may travel outside of these geographical limits for visits to vulnerable persons.[[26]](#footnote-26)

A casual reader might have gleaned from this guide that the key movement restriction in the Regulations is the distance limit: you may travel 20km or within your own county if it is for social or recreational purposes, but further travel is permitted only to visit a vulnerable person. Such a reading would have been incorrect, however. The 20km limit only applied to movement for social or recreational purposes. If you were travelling for any other purposes—work, shopping, politics, religion, protest, educational, cultural, etc.—no distance limits applied as a legal matter.

*Over 70’s Cocooning*

During the most extreme phase of the lockdown, over-70s were advised to self-isolate but there was never any legal requirement to this effect. But official guidance used language to suggest that cocooning was mandatory: ‘you need to cocoon’,[[27]](#footnote-27) ‘you cannot have visitors to your home’.[[28]](#footnote-28) It took several weeks before the Government confirmed that this strict self-isolation was advisory and not mandatory.[[29]](#footnote-29) This episode helps make concrete how failure to respect rule of law values can affect people’s lives in negative ways. Here, potentially vulnerable or ailing elderly people may have forgone having family or visitors over for company or refrained from engaging in important daily activity like exercise—perhaps at emotional or psychological cost[[30]](#footnote-30)—from a desire to respect what they were led to believe was the law.

*Travel Advice*

Until January 2021, the only legal obligation on international passengers was to provide, confirm, and update information about where they would be residing. Before this, there was never *any* legal obligation to restrict movements. The government’s own website correctly reflected this status, stating that passengers were ‘asked to restrict their movements for 14 days’.[[31]](#footnote-31) The Department of Foreign Affairs website, however, stated ‘the Irish authorities require anyone coming into Ireland … to restrict their movement for 14 days.’[[32]](#footnote-32) In *Ryanair v An Taoiseach*, the High Court rejected a challenge by Ryanair to the Government’s travel advice, partly on the basis that the DFA website, which was changed from that just quoted after Ryanair instituted proceedings, clearly presented the Government position as non-mandatory. Nevertheless, Mr Justice Simons accepted that problems could arise if advice were presented in mandatory terms:

It would seem to be a logical extension of this case law to say that the courts should also intervene where a government has, by way of unequivocal statements, created the false impression that there is legislation in force which regulates certain activities when, in truth, there is no such legislation. Were this to happen, then the executive branch would be able to achieve a result which is similar in effect to legislation, i.e. members of the public might well be coerced into complying with the government’s guidance in the mistaken belief that it is legally enforceable. This is especially so in the context of the coronavirus pandemic. The very fact that the government’s guidance-to use a neutral term-on the measures to be taken to restrict the spread of coronavirus is, of necessity, constantly changing means that members of the public will rely heavily on official sources, such as government websites, to obtain information on what are the current requirements. It is unrealistic to expect that a member of the public will wade through reams of statutory instruments in order to determine what the precise legal requirements are at any given moment.[[33]](#footnote-33)

Again, it is worth considering the concrete consequences this kind of confusion might have on individuals and their families. Many people who might otherwise have travelled to visit family or friends, could have refrained from doing so due to the good faith misconception they legally had to restrict movement for 14 days. Ambiguity over the diving line between advice and law will no doubt have disrupted the normal ebb and flow of family and social life for many.

***B. Vagueness of Regulations***

*Attending Religious Services in Person*

For most of the pandemic, Government regulations did not place explicit legal restrictions on religious services.[[34]](#footnote-34) Public health advice strongly urged people not to attend religious services in person, and most religious congregations provided services remotely. But because of serious ambiguities in wording of the regulations giving legal effect to lockdown restrictions, confusion arose about whether in-person religious services – such as the celebration of Mass – were not merely advised against, but *legally prohibited*.

Ambiguity was heightened due to conflicting messaging emanating from different actors in the executive branch. The Department of Health expressed the view that while people were advised not to attend services in-person, the regulations did not prohibit people from organising and attending such services. This meant that priests could not be sanctioned for saying Mass nor parishioners for attending.[[35]](#footnote-35) However, despite this reassurance the Gardaí fined priests for ostensible breaches of the very same regulations the Department of Health said did not criminalise religious services.[[36]](#footnote-36)

We previously argued in a report commissioned by the *Irish Human Rights & Equality Commission*[[37]](#footnote-37) – that any reasonable reading of the relevant lockdown regulations would lead one to conclude that religious services were not legally prohibited.[[38]](#footnote-38) As Doyle subsequently put it, the Government appeared to be adopting a strategy of setting legal restrictions at a certain level, but implying a ‘higher level of restriction through misleading public pronouncements’, and then allowing ‘legally ungrounded threats of prosecution to bring people in line with that higher level of restriction.’[[39]](#footnote-39) We severely criticised this approach and said the Government should ‘not present public health advice as if it were criminally enforceable’.[[40]](#footnote-40)

Uncertainty over whether legal restrictions were in place prompted the prominent Catholic businessman Declan Ganley to initiate legal proceedings in the High Court in November 2020. Ganley sought a declaration there were no legal restriction in place on religious worship or, if there were, that they were unconstitutional. Proceedings rumbled on for several months and, at times, the State’s legal team appeared unsure about what the Government’s precise position on the existence of legal restrictions was.[[41]](#footnote-41) Eventually, and despite previous emphatic statements from the Department of Health that religious services were not legally prohibited, in March 2021 the Government performed a *volte face* and confirmed through its legal team that its settled position was now that a prohibition did in fact exist.[[42]](#footnote-42)

Shortly after this confirmation, in April 2021 the Government introduced new regulations which made it explicit that religious services were legally prohibited. This move drew criticism, and it was highlighted new regulations should not have been unnecessary at all if, as the State claimed before the High Court, restrictions had always been in place. Doyle suggested the most likely explanation for this shift is that the Government had known all along religious services were not criminally prohibited, and that the litigation caused an ‘accountability moment where the Government either had to create a legal basis for maintaining in court that religious services were criminally prohibited or accept that religious services had not been criminally prohibited. The Government chose the former option.’[[43]](#footnote-43)

While the new-found clarity was welcome on one level from a ‘rule of law perspective and allows an informed debate on whether the law’ is a proportionate and coherent response to the pandemic, the Government’s obfuscation was an indictment of its willingness to lead citizens through the pandemic in a way that respects citizens’ autonomy and dignity.[[44]](#footnote-44) It is hard to overstate the importance of attending religious services for many people. That such a central aspect of the lives of many – and a constitutional right to free practice of religion – was regulated for several months by a combination of Governmental indifference and arbitrary policing, was undoubtedly a low-point in the State’s response to the pandemic.

1. **Conclusion**

These examples show a disturbing trend: that the Government was prepared to allow ordinary people believe they were subject to much greater legal restrictions than was in fact the case. We have written elsewhere that:

The more charitable interpretation is that the Government has been wilfully indifferent to whether it is possible for citizens and law enforcement authorities to understand their legal obligations. The less charitable interpretation is that the Government has deliberately encouraged citizens to misunderstand the extent of their legal obligations in order to allow the Government to achieve policy goals that might not achieve political support in the Oireachtas or that could be vulnerable to legal challenge.[[45]](#footnote-45)

In this essay we have tried to show why neither of these alternatives is acceptable, and why the rule of law is important to guiding the actions of the State and its officials. The rule of law is more than a high-minded concept or lofty ideal; it is a set of genuinely important principles which, if abided, significantly reduce the risk citizens will be treated arbitrarily by the State. Respect for the rule of law helps us plan our lives and interactions with others with confidence that we act within the bounds of the law, and will not be subject to the force of the State at the whim of its officials. Disrespect for these principles is not without cost and harm. It creates uncertainty and insecurity about whether one is behaving lawfully. It increases the ability of law enforcement officials to act arbitrarily. Those from disadvantaged backgrounds, perhaps with a history of poor relationships with the gardaí, are most insecure and stand to lose the most from arbitrary power.

Breaches of rule of law principles might also risk undermining the *efficacy* of the State’s response to COVID by distorting the clarity and certainty of the rules or generating resentment or frustration at the conflation of advice and legal obligation. Over time, the presentation of public health advice as mandatory makes it difficult to maintain a coherent account of what is expected of citizens, because this presentation cannot withstand detailed scrutiny in contested cases. Failing to make clear what obligations citizens have by eliding the distinction between advice and legal obligation might sew confusion and ultimately diminish public trust.[[46]](#footnote-46) Far from being a hinderance to law’s efficacy, compliance with the rule of law enhances it: trust and clarity assist voluntary public buy-in to non-binding public health advice. The importance of rule of law values is, we suggest, an imperative lesson to take from this very challenging time.

1. For a detailed examination of some of these issues with a focus on human rights and equality concerns, see Conor Casey, Oran Doyle, David Kenny and Donna Lyons, *Ireland’s Emergency Powers During the Covid-19 Pandemic* (Irish Human Rights & Equality Commission, February 2021). [↑](#footnote-ref-1)
2. # Oran Doyle, ‘Pandemic Response as Accentuation of Existing Characteristics: Vague Requirements and Executive Dominance in Ireland’ *Verfassungsblog* (17 March 2021) available at: <https://verfassungsblog.de/pandemic-response-as-accentuation-of-existing-characteristics-vague-requirements-and-executive-dominance-in-ireland/>.

   [↑](#footnote-ref-2)
3. For an overview of the scope of such powers see Conor Casey, ‘Underexplored Corners: Inherent Executive Power in the Irish Constitutional Order’ (2017) 40 Dublin University Law Journal 1. [↑](#footnote-ref-3)
4. Regularly updated on the Government’s own website: <https://www.gov.ie/en/press-release/0bd80-new-public-health-measures-announced-the-path-ahead/>. [↑](#footnote-ref-4)
5. <http://www.justice.ie/en/JELR/Pages/PR21000065>. [↑](#footnote-ref-5)
6. <https://www.gov.ie/en/collection/339eb-ministers-speeches/>. [↑](#footnote-ref-6)
7. Paul Daly, ‘Governmental Power and COVID-19: The Limits of Judicial Review Forthcoming’ in Flood et al eds., *The Law, Policy and Ethics of COVID-19* (University of Ottawa Press, 2020). [↑](#footnote-ref-7)
8. See Oran Doyle and David Kenny, ‘Submission to the Oireachtas Special Committee on Covid-19 Response’ 1st September 2020, available at <https://www.tcd.ie/law/2020.21/Observatory%20submission%20to%20Oireachtas%20COVID-19%20Response%20Committee.pdf. [↑](#footnote-ref-8)
9. Alexander Hamilton’s political writings on the US Constitution included a contention that public welfare required an efficacious government, one with leadership provided by an accountable executive dedicated to pursuing policies for the common good with ‘decision’, ‘dispatch’ and ‘energy’. *The Federalist Papers* (No. 70). [↑](#footnote-ref-9)
10. David Pozen and Kim Lane Schepple, ‘Executive Underreach, in Pandemics and Otherwise’, 114(4) American journal of international law 608 (2020). [↑](#footnote-ref-10)
11. # See generally Brendan Kennelly et al, ‘The COVID-19 pandemic in Ireland: An overview of the health service and economic policy response’ (2020) 9 Health Policy and Technology 419-429.

    [↑](#footnote-ref-11)
12. While we focus on the rule of law, two other constitutional problems that have been highlighted include the rather marginal role the Oireachtas has played in feeding into the pandemic response, and ambiguity over the influence of public health technocrats on the ultimate decisions made by Government. See Doyle and Kenny (n 8). [↑](#footnote-ref-12)
13. John Tasioulas, ‘The Rule of Law’ (ed.) John Tasioulas, *The Cambridge Companion to The Philosophy of Law* (Cambridge University Press 2020) 117. [↑](#footnote-ref-13)
14. Id. 117-118. [↑](#footnote-ref-14)
15. Id. 125. [↑](#footnote-ref-15)
16. See Lon Fuller, *The Morality of Law* (revd ed. Yale University Press 1969). [↑](#footnote-ref-16)
17. Id., 38-39; Adrian Vermeule and Cass Sunstein, *Law and Leviathan: Redeeming the Administrative State* (Harvard University Press 2020); Grégoire Webber, Paul Yowell, Richard Ekins, Maris Köpcke, Bradley Miller and Francisco Urbina, *Legislated Rights: Securing Human Rights Through Legislation* (Cambridge University Press 2019) 166. [↑](#footnote-ref-17)
18. This is paraphrased from the Constitution of the Commonwealth of Massachusetts 1780. [↑](#footnote-ref-18)
19. TRS Allan, *The Sovereignty of Law: Freedom, Constitution, and Common Law* (Oxford University Press, 2013) 110. [↑](#footnote-ref-19)
20. Fuller, *Morality of Law,* (n16) 162. [↑](#footnote-ref-20)
21. Adrian Vermeule and Cass Sunstein, *Law and Leviathan* (Harvard University Press 2020) 88-89. [↑](#footnote-ref-21)
22. Oran Doyle, ‘Administrative Action, the Rule of Law and Unconstitutional Vagueness’ in Laura Cahillane, James Gallen and Tom Hickey (eds.), *Judges, Politics and the Irish Constitution* (MUP, 2016) [↑](#footnote-ref-22)
23. Kenny, Hogan, Walsh and Whyte, *Kelly: the Irish Constitution* (5th ed. Bloomsbury 2018) 1337. [↑](#footnote-ref-23)
24. We have made this point in several other fora at various points throughout the pandemic; see Doyle and Kenny (n 8); Casey et al (n 1). [↑](#footnote-ref-24)
25. Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19) (No. 2) Regulations 2020, [SI 206/2020](http://www.irishstatutebook.ie/eli/2020/si/206/made/en/print?q=health+act+1947&years=2020), reg 5. [↑](#footnote-ref-25)
26. Department of Health, [‘Statutory Instruments related to the COVID-19 pandemic’](https://www.gov.ie/en/collection/1f150-view-statutory-instruments-related-to-the-covid-19-pandemic/). [↑](#footnote-ref-26)
27. HSE, ‘Cocooning’ (18 May 2020). This was removed from the HSE website but the Observatory retains a PDF of the webpage as of 2 June 2020. [↑](#footnote-ref-27)
28. HSE, ‘COVID-19 Cocooning Public Health Advice’ <https://www.hse.ie/eng/services/news/newsfeatures/covid19-updates/partner-resources/a-guide-to-cocooning-easy-read-.pdf> accessed 18 November 2020. [↑](#footnote-ref-28)
29. The Irish Times (2020), Cocooning is advisory, not mandatory, Government confirms, 15 April 2020, available at: <https://www.irishtimes.com/news/ireland/irish-news/cocooning-is-advisory-not-mandatory-government-confirms-1.4229569>. [↑](#footnote-ref-29)
30. The Irish Times (2020), Blanket cocooning for over-70s has done more harm than good, 21 May 2020, available at: <https://www.irishtimes.com/news/science/blanket-cocooning-for-over-70s-has-done-more-harm-than-good-1.4254477>. [↑](#footnote-ref-30)
31. Department of the Taoiseach, ‘COVID-19 Passenger Locator Form’ (31 August 2020) <https://www.gov.ie/en/publication/ab900-covid-19-passenger-locator-form/> accessed 18 November 2020. [↑](#footnote-ref-31)
32. The Department of Foreign Affairs later removed this from its website, but the Observatory retains a screenshot of the webpage from 27 July 2020. [↑](#footnote-ref-32)
33. [[2020] IESC 461](https://www.bailii.org/ie/cases/IEHC/2020/2020IEHC461.html#PROPER) at para 38. [↑](#footnote-ref-33)
34. Oran Doyle, ‘Religious Services and the Rule of Law: Authority and Coercion’ (9 March 2021) <https://tcdlaw.blogspot.com/2021/03/religious-services-and-rule-of-law.html>. [↑](#footnote-ref-34)
35. Ceimin Burke, ‘Department of Health says priests can’t be jailed for holding mass during coronavirus restrictions’, thejournal.ie, (6 November 2020) <https://www.thejournal.ie/priests-cant-be-arrested-mass-ireland-coronavirus-5254820-Nov2020/>. [↑](#footnote-ref-35)
36. Marese McDonagh, ‘Gardaí give “last warning” to parish priest over “open door” Mass’, The Irish Times (19 November 2020) <https://www.irishtimes.com/news/social-affairs/garda%C3%AD-give-last-warning-to-parish-priest-over-open-door-mass-1.4414096>. [↑](#footnote-ref-36)
37. The current authors were co-authors of the report, along with Dr. Donna Lyons. [↑](#footnote-ref-37)
38. Casey et al (n 1) at 35. [↑](#footnote-ref-38)
39. Doyle, ‘Religious Services and the Rule of Law’ (n34). [↑](#footnote-ref-39)
40. Casey et al (n1). [↑](#footnote-ref-40)
41. <https://www.irishtimes.com/news/crime-and-law/courts/high-court/state-asked-to-clarify-basis-for-covid-19-restrictions-on-attending-mass-1.4518152>. [↑](#footnote-ref-41)
42. # Oran Doyle and David Kenny, Opinion: 'In legal terms, there is no prohibition on attending or organising religious services' Journal.ie (1 April 2021), <https://www.thejournal.ie/readme/level-5-religious-services-5397140-Apr2021/>.

    [↑](#footnote-ref-42)
43. Oran Doyle, ‘The evolution of legal prohibitions on religious services’ COVID-19 Law and Human Rights Observatory (21 April 2021) <https://tcdlaw.blogspot.com/2021/04/the-evolution-of-legal-prohibitions-on.html>. [↑](#footnote-ref-43)
44. Id. See also Conor Casey and David Kenny, ‘Ireland-COVID-19 response raises some rule of law concerns’, (2021) *Public Law* 480-483. [↑](#footnote-ref-44)
45. Casey et al (n1) 66 [↑](#footnote-ref-45)
46. ### Oran Doyle, ‘Quarantine after international travel: legal obligations, public health advice, pervasive confusion’ COVID-19 Law and Human Rights Observatory (27 July 2020) <https://tcdlaw.blogspot.com/2020/07/quarantine-after-international-travel.html>.

    [↑](#footnote-ref-46)