

**Philip Hannon Solicitors – Submission to European Criminal Bar Association (edited extract)**

27 April 2020

**Re: Possibility of Increased Use of Video Conferencing in Criminal Trials Post Covid-19**

Dear Anne-Marie

Thank you for your email and as a relatively new member of ECBA I wish to give some input from an Irish perspective on the increased use of video conferencing facilities in connection with the criminal trial process in Ireland during Covid 19 and our thoughts and fears for the post Covid era. I am a criminal law practitioner based in Dublin where I am a Partner in Philip Hannon Solicitors, [www.philiphannonsolicitors.com](http://www.philiphannonsolicitors.com).

The primary area where we have encountered this matter in our criminal defence practice so far is in connection **Prison visits via video Link**. This has become the norm in recent weeks as the dangers of visiting prisons in person increase due to Covid 19.

(Despite the current Lockdown of Irish citizens the Department of Health and the Department of Justice and Equality have left it up to practitioners to decide whether or not to visit a client in custody in person). This stance correctly allows continued physical access to prisoners in the interests of Justice. There are serious risks for lawyers who visit prisons at present due to Covid 19 so the use of videoconferencing for virtual prison visits has become the norm in recent weeks.

On frequent occasions a Prison Visit which has been booked close to a hearing date does not happen due to lack of resources on the prison side. This places the defendant at a disadvantage at the hearing date and is a colossal waste of the valuable time of their legal team.

While video link visits are now available in place of visits to clients in person during Covid-19, our experience is that these visits have been unsuccessful in a high percentage of cases. Instances of pre-booked video calls where the link does not work due to technical difficulties or staff shortages in Irish Prisons are common. Our recent experience is that approximately 50% of booked consultations via video link over the last two weeks have been unsuccessful due to technical issues or lack of prison resources.

This is a deep concern in circumstances where clients are in lockdown within the prison system, family visits are also only available via video link, we are told by clients that education and supports for prisoners have been stopped due to Covid measures. It is a time where contact with their legal teams is most important for prisoners and this is not available at an acceptable level.

While video link facilities may seem like a great solution to the current crisis and an opportunity to modernise and reduce inefficiencies in the criminal justice system, it is a matter of great concern to us that access to prisoners by defence lawyers is very limited. Official statements in Ireland about the matter of access to Prisoners by phone or video link are not borne out on the ground when lawyers try to avail of access. Poor resourcing of virtual and physical visits due to lack of staff and facilities within the prison system (whether by telephone, video call or in person) are the reasons given for failure to deliver this service.

Currently in Ireland (due to Covid) most criminal cases, whether remanded for trial, plea or sentence have been adjourned for up to 12 weeks while courts are operating at a minimal level. The risk of

prisoners being detained for an excessive period in cases where the allegations are less serious or where they are ultimately found to be not guilty will be heightened where access to lawyers continues to be stymied by the system.

With respect to the Post Covid time – in our view, except in the limited circumstances where vulnerable witnesses or minors may give evidence via video link, the use of video links for actual criminal trial hearings and for all but minor procedural pretrial hearings / case management listings cannot be supported. To allow this is not compatible with the fundamental rights of individuals to a fair trial and of justice being administered in public. The ability for lawyers to consult with their clients in person could not be replaced with video consultations, nor could a jury fairly adjudicate in a criminal trial which is conducted at a remove via a screen.

If the video link is to be more frequently used in the Post Covid legal system, this must be done in a manner where the rights of the accused person to the fair administration of justice and a fair trial remain paramount. We strongly feel that the ECBA must lobby to ensure that there are robust safeguards for Defendants rights throughout European member states, including Ireland so that introduction of further technological innovations to the trial process are not merely for the administrative convenience of the Courts, the Director of Public Prosecutions and / or the Irish Prison Service.

**What is needed in our view is:**

1. Consultation and Engagement with all stakeholders including both solicitors and barristers and their representative bodies, the Law Society, the Bar Council and the Irish Criminal Bar Association in a consultation process with Courts Services and the Judiciary and the Department of Justice and Equality to agree any changes and ensure that the required safeguards for the accused persons rights are built into any procedural innovations.
2. Increased funding, training and investment to ensure that the Irish Prison Service, and the Courts Service are able to deliver an improved service to defendants and their lawyers as well as to the Courts and Judiciary to ensure that access to a fair trial does not continue to be impeded by the lack of resources. In tandem with this, the cuts made 11 years ago to the Irish Criminal Legal Aid Scheme must be reversed to ensure continued delivery by Irish criminal lawyers of a high quality of service to accused persons in a time of great change and challenge in the fields of human rights and criminal law. The continued entry of young and talented lawyers to the Criminal Justice system in Ireland is needed more than ever and will continue to be required as a strong element of our Constitutional Democracy and as a European member state.
3. Without a properly resourced and integrated criminal legal system in Ireland and in each member State, there is a real risk that advancement of technology within the trial and pre-trial process could be used as a tool to reduce rather than safeguard the guiding principles of our democracy and our criminal justice system. Now is the time to ensure that that does not happen and that advancement of technology is applied in a careful manner to bring reduced delay, increased access to justice and is a tool for positive change.

I hope that the above submission is of use. If I can be of any further assistance, please contact me.

Yours sincerely,

Nuala Eustace  
Solicitor