

Irish Times
Monday, June 22, 2009

Ruling may undermine orders to pay family maintenance



Geoffrey Shannon:
recent judgment appears to remove deterrent of imprisonment

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THE ENFORCEMENT of family maintenance orders may become more difficult following last week's High Court ruling on financial debt, a leading family lawyer has said.

The State could also encounter problems in recouping money under the Liability to Maintain a Family scheme.

In a test case before the High Court last week, Justice Mary Laffoy ruled that committing a person to prison for their inability to repay a debt was unconstitutional. She found Section 6 of the Enforcement of Court Orders Act 1940 breached the right to fair procedures and personal liberty under the Constitution.

Family maintenance is a financial payment made by one person to another for the upkeep of a child and or a spouse. It can be agreed between the parties or a maintenance order can be applied for through the courts.

Non-payment of a maintenance order is an offence and may result in a prison sentence.

Family lawyer Geoffrey Shannon said the enforcement of maintenance orders has always been fraught with difficulty.

The ultimate penalty facing someone who refuses to pay maintenance is imprisonment, but the recent judgment appears to remove that deterrent, he said.

“It could have a significant impact on the enforcement of maintenance payments,” Mr Shannon said.

The judgment could also present difficulties for the State when they attempt to recoup payments of some social welfare allowances. Since 1990, the Department of Social and Family Affairs has operated the Liability to Maintain a Family scheme.

Under its terms, those who fail to maintain their spouses and/or children adequately must contribute to the cost of any social welfare payment made to their families as a result of their failure to do so.

The payments include one-parent family allowance, lone parent’s allowance, deserted wife’s payment and supplementary welfare allowance.

The maintenance recovery unit seeks contributions, usually on a weekly basis, from the “liable relative”.

It may apply to the District Court for an order directing the contributions be paid, and it may also apply for an order directing the arrest and imprisonment of the person for non-compliance with the order. Mr Shannon said last week’s judgment may be used to resist such an order.

Meanwhile, at a Father’s Day eve march in Dublin, the Unmarried and Separated Fathers of Ireland have claimed the number of men being jailed for non-payment of maintenance has increased over the last few months.

The chief executive of the organisation, Ray Kelly, added that a lot of these men were living below the poverty line due to the recent economic downturn.

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This article appears in the print edition of the Irish Times