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## **Unmarried fathers**

IT IS clear that legislative reform is required to uphold the rights of unmarried fathers, taking account of social changes which have had such a significant effect on the shape of family formulation and make-up. The High Court ruled on Wednesday that an unmarried father could not contest the removal of his children to England by their mother, as he had not sought guardianship of them in the District Court.

The existence of a “de facto” family is not recognised in Irish law.

More than two years ago the High Court did give recognition to a “de facto” family, stating that an unmarried couple and their children constituted family life under the European Convention on Human Rights, and that this deserved protection. In that case the court ruled that “Mr G” was entitled to seek the return of his children to Ireland after they were removed by their mother without his consent. However, Mr G had sought guardianship of the children through the District Court, and the children were removed while these proceedings were under consideration. The court had rights under the Hague Convention on Child Abduction and this made their removal unlawful.

Then last December the Supreme Court ruled that there was no such thing as a “de facto” family under Irish law and stated that the Irish Constitution gave protection only to the marital family. This had precedence over European law, it said. This ruling was further clarified and emphasised by the High Court this week.

The outcome is a very unsatisfactory one for unmarried fathers and their children, especially when disputes arise between the parents. A father who spent many years devotedly caring for his children could find that, unless he had obtained guardianship through agreement with his partner or through a court order, he had no rights when the relationship broke up. The fact that one in three children is born outside of marriage in Ireland underlines the potential scale of the problem.

The Law Reform Commission has published a consultation paper on this and related issues and its final report is expected before the end of the year. The consultation paper provisionally recommended that unmarried fathers should automatically be guardians of their children unless this was not in the interests of the child. The Minister for Justice has indicated he will consider carefully any legislative proposals in the forthcoming LRC report. This is welcome because the present unsatisfactory situation must not be allowed to continue.