

Change in the law re Committals



In a judgment given by Judge Laffoy in the High Court on Thursday 18 June, the applicant Caroline McCann obtained – in judicial review proceedings – an order quashing a committal order of Monaghan District Court, providing for her arrest and imprisonment for arrears of instalments not paid. Judge Laffoy ruled that the legislation that allowed the District Court to make such an order - section 6 of the Enforcement of Court Orders Act 1940 - was unconstitutional on a number of grounds, chiefly that the legislation breached Ms. McCann's rights to fair procedures and personal liberty under the Constitution.

The decision was given in judicial review proceedings taken by Ms. McCann against a number of State organs, including the District Court Judge, the Garda Commissioner, the Prison Service, the Minister for Justice and the Attorney General.

In the absence of a stay on the judgment - which does not seem to have been given, or a successful appeal to the Supreme Court – it seems that the declaration of unconstitutionality of section 6 amounts to a judicial death certificate for the provision itself. Obviously, section 6 deals with the committal order part of the procedure – and the decision will presumably not affect a creditor's entitlement to obtain an instalment order - for what one is worth, on its own.

Implications

The implications for a declaration of unconstitutionality might be far-reaching, especially given that there are currently a certain number of people serving time in prison, for contempt of court, arising from their imprisonment for the non payment of arrears on instalment orders.

Moreover though, it seems fairly clear that arising out of yesterday's judgment District Court Offices will presumably not now issue any more committal orders in the absence of fresh legislation and District Judges are also likely to strike out any committal applications, currently before them. In the absence of any legal alternative, one can only conclude that creditors have one less option for the collection of money due to them that they had before 18 June.

Alternatives

There seems to be an implication in Judge Laffoy's judgment (though the text is not yet available) that an alternative scheme, with appropriate safeguards might be appropriate – one which would not have the effect of a net result of the imprisonment of a Debtor unable to pay the arrears ordered, the creditor bearing the costs of that application and the State footing the bill for the imprisonment of that debtor. It is unclear if Judge Laffoy was considering attachment of earnings/social welfare payments, draft legislation for which had previously been before the Oireachtas. At any rate, even when striking down legislation they hold to be unconstitutional; a High Court Judge cannot propose an alternative. It will be interesting to see whether there will be any legislative action by our elected representatives now.

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