

Grieving mum in legal fight to halt policy of jailing debtors

Landmark case could affect thousands of destitute people

A GRIEVING mother who took out a credit union loan to pay for her newborn baby's funeral is taking a landmark legal challenge to prevent the authorities sending her to prison.

The unemployed mother of two, who has had a warrant issued against her for her arrest and committal to prison, is challenging the constitutionality of a 67-year-old law that allows debtors to be sent to jail for failing to pay a civil debt.

The 35-year-old woman, known as Miss C, who can only afford to repay her credit union at a rate of €10 a week, has incurred debts of some €18,000 after the tragic death of her newborn infant which triggered a financial crisis for the young family.

The *Irish Independent* has learned that the woman's credit union, which has not been identified in order to protect the identity of her children, has so far rejected the €10 instalment offer.

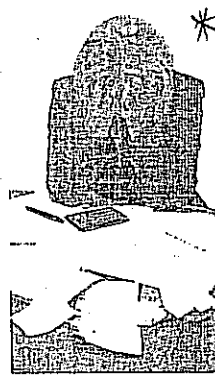
Funeral

Miss C, who receives less than €300 a week in social welfare payments, borrowed thousands because she could not afford to cover the cost of her baby's funeral. Her debt crisis later spiralled, prompting legal action by the credit union.

The milestone case against a district judge, the Commissioner of An Garda Síochána, the Irish Prison Service, the Minister for Justice and the Attorney General, could have wide ranging implications for thousands of destitute people who are sent to prison each year because they can not pay fines or loans.

It has raised questions over the legality of sending people to jail for a minor offence in the absence of a jury trial and when debtors can not afford legal representation.

A temporary injunction has been granted by the High Court which prevents the gardai from arresting Miss C and sending her to prison for the duration of



Grieving mum is taking a landmark legal challenge.

the constitutional challenge.

The woman, who worked as a mushroom picker, to support her family, before the death of her baby, is also seeking a declaration that Irish laws that allow people to be criminally sanctioned for failing to meet a civil debt are incompatible with the European Convention of Human Rights.

She was not legally represented at the 2005 hearing in which a District Court judge ordered her arrest for being in contempt of an order to repay her credit union €82 a week.

Former Attorney General and Attorney General Dermot Gleeson

Ireland's enforcement of debt laws has been condemned as inhumane

Instructed by the Northside Community Law Centre in Dublin, is leading the case on behalf of the woman.

The Irish Human Rights Commission is also a notice party to the proceedings which will challenge the constitutionality of section 8 of the Enforcement of Court Orders Act 1940.

Almost 2,000 people a year, mostly unemployed, are jailed for failing to pay fines and hundreds more are jailed because they fail to repay debts such as credit union loans, bank loans and child maintenance payments.

Ireland's enforcement of debt laws has been condemned as inhumane and archaic and experts have warned that debt enforcement will become a major problem for the State and lenders as the Celtic Tiger boom subsides.

Last week, the *Irish Independent* revealed that 45 families, caught by an overpriced housing market and rising interest rates, were facing the threat of repossession.

"Our entire boom was based on lending and many people are now in difficulty. Often, all it takes is one trigger, such as a bereavement or a redundancy, to spark a financial crisis," said Noeline Blackwell, a human rights lawyer and Director General of the Free Legal Advice Centres (FLAC).

"People who are imprisoned for debt are victims of an archaic system that is totally out of step with reality. They are sent to prison, which is a criminal sanction, for what ultimately is a civil matter (failing to pay a debt). At least when people are sent to prison for failing to pay a fine, their debt is redeemed. That is not the case for those imprisoned for failing to meet a civil debt. That debt, plus legal costs, is still there when they are released."

Earlier this year, the Government announced it would introduce new laws to avoid sending destitute debtors to jail, a move that would alleviate overcrowding in the prison system.

Death of newborn 'triggered financial problems'

THE mother at the centre of a landmark legal challenge to prevent her from being sent to prison over a civil debt first ran into financial trouble when her newborn baby died.

The 35-year-old mother-of-two, who is unmarried, worked at a factory picking mushrooms to provide for her two children, but is now unemployed and living on social welfare benefits.

The death of her newborn baby triggered an unprecedented emotional and financial crisis for the woman, known as Miss C, who left school without any qualifications and has low literacy levels.

Unable to afford her baby's funeral, she turned to her local credit union to pay for the burial. As her grief increased, so too did her debts and she now owes the credit union about €18,000.

Her only source of income is benefits totalling €273.35 per week, including child benefits for her two small children.

Three years ago, when she failed to meet her repayments, Miss C's credit union secured an instalment order from the courts, which allows a debtor to pay off a debt in set amounts at set intervals.

The instalments were set at €82 per week but Miss C could not afford to meet the payment schedule. After 61 failed repayments, the credit union applied to the courts for recovery of almost €6,000 plus their legal costs.

Miss C did not attend court and had no legal representation at the 2005 hearing which saw a warrant issued for her arrest and committal to prison for being in contempt of a court order.

As a prison term loomed, Miss C contacted the Money Advice and Budgetary Service (Mabs), a lifeline for thousands of families struggling with debts.

An interim injunction was secured to prevent her imprisonment and Dublin's Northside Community Law Centre, which is assisting Miss C, pleaded for time to sort her affairs.

With the assistance of debt advisers at Mabs, Miss C worked out that she could afford €10 per week to meet her credit union debt, but this plan was rejected.

Now, Miss C is challenging Irish laws that criminalise people for failing to pay a civil debt.

DEARBHAIL MCDONALD