

Landmark High Court judgment on suspended sentences shows urgent need for government

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April 20 2016

Given the snail's pace of current negotiations about the formation of a government, one would be forgiven for thinking that there was little urgency about generating legislation in the 32nd Dáil.

However, events in the High Court yesterday proved just how important it is that the Houses of the Oireachtas are in a position to enact legislation and respond to the daily challenges of governance.

In a landmark judgment, Mr Justice Michael Moriarty declared Section 99 of the Criminal Justice Act 2006, which governs the re-activation of suspended sentences, unconstitutional.

He argued that it allows for significantly different treatment of individuals who come before the courts, particularly in terms of their right of appeal.

Concerns about the practical operation of Section 99 have been bubbling for quite some time.

In an overview of the section in November's 'Bar Review', James Dwyer BL uncovered 'Nine issues with Section 99', which highlighted a whole range of technical problems with its application. Tellingly, the section has already been amended twice, once in 2007, which changed the process through which a suspended sentence can be re-activated.

It was amended further in 2009 to clarify the time frame within which a sentence could be re-activated.

Judge Moriarty's frustration with Section 99 was clearly evident in his judgment, when he commented that it was obviously drafted by people "quite unacquainted with the actual practices of the courts," particularly the District and Circuit Courts.

Here he is echoing the earlier complaints of Supreme Court Judge Mr Justice O'Donnell, who had already commented that Section 99 has given rise to "innumerable practice difficulties and problems of interpretation".

While one can sympathise with the frustration of the judiciary, one could perhaps feel greater sympathy for those who are faced with appearing before the courts in a very uncertain legal situation. There will also be huge levels of concern amongst victims of crime, who have long been vocal about the vagaries of the suspended sentencing system.

Who has the power to resolve this crisis? Clearly, it is the responsibility of our elected representatives in Dáil Éireann. The courts are only one pillar of the Irish state. Perhaps one of the reasons that we have all been so sanguine about the long process of government formation is because the courts and the civil service have trundled along since February, propping up our caretaker government in the current precarious situation.

It is timely that the unsustainability of this approach to government has been so sharply highlighted the day before the Dáil convenes once again to try and form some sort of administration. Despite all the cynicism about Irish politics which has been generated by the behaviour of our political elites over the last two months, it turns out that there are actually things that we need politicians to do.

Adapted from *Irish Independent* 20th April 2016. <https://www.independent.ie/opinion/comment/landmark-high-court-judgment-on-suspended-sentences-shows-urgent-need-for-government-34642896.html> (Accessed 16th April 2019).

These important tasks (which are not about divvying up prestigious ministries or doing deals on roads with Independents) are what we elect them for and, indeed, pay them for. It seems to me that today's the day they need to start taking that responsibility really seriously.

Without urgent legislation on this issue, our courts will be thrown into chaos, placing additional pressure on a criminal justice system that is already stretched to the limits. If our political elite can't get together today, the writing really is on the wall. It's time to go back to the country, get another mandate and start moving on with the real business of government.