

Legal system has been slow to enforce payment orders on wayward ex-husbands.

www.iwpr.net Roza Yesenkulova is an IWPR contributor in Kazakstan.

Divorced women in Kazakstan have a hard time extracting alimony payments from their ex-husbands. Legal experts say the problem is not the law itself - tougher penalties were introduced at the beginning of the year - but rather a sluggish system of enforcement which has left tens of thousands of complaints unprocessed.

The justice ministry says it has about 215,000 unresolved cases on its books in which wives are seeking court orders to enforce alimony payments. The divorce rate in Kazakstan is three per 1,000 marriages.

"Behind these figures lie the futures of children deprived of decent maintenance," Justice Minister Berik Imashev said during a round-table debate in March. "The defaulters are generally... well capable of meeting their obligations."

A justice ministry spokesperson speaking at the same meeting said that "this department doesn't maintain separate statistics on unpaid sums, but the total amount of unpaid alimony is thought to be over two billion tenge [about 11 million US dollars]".

Gulnar Muslimova, 25, from the city of Almaty is bringing up her six-year-old son on her own, and gets no help at all from her ex-husband.

"I have to work all day and leave him in after-school care as there is no one to collect him. Even then I can barely afford to support him. I have a court order but the bailiffs have failed to get him [former husband] to pay up, in part because he has changed job three times in the last year. His excuse is that he has remarried and has two other children whom he can only just support," - Muslimova told IWPR.

Mikhail Klenchin, a law specialising in divorce cases, told IWPR that filing for a court order is a simple process, and is exempt from the normal state tax.

“It should be noted that alimony payments can be ordered not just after a divorce, but also in cases where there has been no marriage, and also while the couple are still married,” he explained.

The claimant can name any sum she wants in her application, but the rates are set according to the man’s income and depend on the number of children – a quarter of his wages for one child, a third for two, and half when there are three or more. If he is unemployed, the courts can enforce a maximum of 30,000 tenge a month (or 160 dollars).

To enforce payment, a court can seize the offender’s property and turn it into cash, ban him from leaving the country, or bring a civil or criminal action against him.

“The court orders for alimony from a non-payer are often missing a statement of the property that might be subject to confiscation. In such cases, we take the view that the most effective measure of civil or criminal action,” the ministry spokesperson said.

One of the problems facing enforcement is that the bailiff service is short-staffed and overstretched. This adds to the difficulty of serving an order and following it up to ensure the payments happen, as defaulters resist efforts to pursue them and can be hard to track down if they move home or job.

Marianna Gurina, head of the Model Family Foundation, a charity, told IWPR that ex-husbands often ask the mother to prove paternity.

“The woman has to do a DNA test [on the child], which she cannot afford as it costs several thousand dollars,” she said. “Another important issue is that we don’t know how many women in this country never claim alimony.”

Justice Minister Imashev told the round-table event that changes to the law in force include tougher penalties for defaulters. Since the beginning of 2014, a parent who defaults on alimony payments can be jailed for two years, and from 2015, the community service was dropped as an alternative punishment, and prosecutions are classed as matters of public interest, not just family disputes.

Gurina is one of many who want the government to set up a national alimony fund. The idea has been discussed for some years, and is supported by members of parliament from the governing Nur Otan party. Government ministries have opposed it on the grounds that the treasury cannot afford to fund it and also because it might create a culture where non-paying fathers feel absolved from their responsibilities.

Klenchin sides with the government view.

“The idea of creating a state alimony fund is not a new one. It was discussed in parliament two years ago, and the conclusion was that it wouldn't be desirable. And I totally agree with the parliamentarians, because it's exactly the same as earmarking budget money to help [crime] victims without trying to stop burglaries and catch pickpockets,” he said.

He argues that the law does not need to be made tougher than it is now; it simply needs to be enforced with robust action against offenders.

“At the moment, it is not easy to bring a prosecution against a persistent defaulter, for a number of reasons, chief among them the passive stance of bailiffs, courts, and the law-enforcement agencies, And that's despite the fact that the law grants them every kind of leverage,” he said.

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