Achilles C. Emilianides

Contempt in the Face of the Court and the Right to a Fair Trial

The Implications of _Kyprianou v. Cyprus_

1. INTRODUCTION

Contempt of court is an act or omission, which interferes with the due administration of justice. As such, contempt is a criminal offence; even more so, it is a _sui generis_ criminal offence. Not only is the power of contempt, one of uncertain scope, unlike any other criminal offence, but it is also exercised according to a summary procedure, which is unknown to United Kingdom’s law. Furthermore, the power of contempt is regarded to be an inherent power of the courts; a power, which is founded upon immemorial usage. It could thus be accepted, that the offence of contempt and all the peculiarities associated with it, are ‘as ancient as any part of common law’, since it has probably existed in English law since the twelfth century.

Despite this fact, the law of contempt is no longer as untouchable as it once was; the influence of the case-law of the European Court of Human Rights, which was further enhanced by the enactment of the Human Rights Act, 1998, has led to a reevaluation of the general principles, which govern the law of contempt. Any interference with the right to freedom of expression must be necessary in a democratic society, according to article 0 of the European Convention of Human Rights. Consequently, there must be a reasonable relationship of proportionality between the legitimate aim pursued, and the means which are deployed in order to achieve that aim; the contempt of court

---

1 Advocate. Doctoral Candidate of the Aristotle University of Thessalonica.
2 For a general introduction to the problem of contempt of court see e.g. D. Eady, T.A. Smith, _Arlidge, Eady and Smith on Contempt_ (London 1999).
4 See J. Fox, _The History of Contempt of Court_ (Oxford 1927).
must be necessary in a democratic society for maintaining the authority of the judiciary and the due administration of justice.\textsuperscript{5}

The recent judgment of the European Court in \textit{Kyprianou v. Cyprus}\textsuperscript{6} gives rise to a further consideration of the principles governing the most straightforward cases of contempt; those where the offence is committed in the face of the court. The aim of this article is to examine the implications of the \textit{Kyprianou} judgment, in so far as the right to a fair trial is concerned. Section I of this article discusses in brief the problem of contempt in the face of the court and the recent developments following the Practice Direction of 5 June 2001. The early caselaw of the European Court is also examined. Section II examines the decision of the Assize court of Cyprus, as well as the subsequent appeal before the Supreme Court of Cyprus, and analyzes the judgment of \textit{Kyprianou v. Cyprus} and its implications in respect to contempt in the face of the court.

\section*{2. CONTEMPT IN THE FACE OF THE COURT}

\subsection*{2.1. Defining Contempt in the Face of the Court}

The law of contempt is the inevitable result of the necessity to protect the orderly administration of justice from improper interference,\textsuperscript{7} and to safeguard the public’s trust in a fair and unimpeded trial.\textsuperscript{8} It is not the dignity of the judge, which is offended by the contempt, nor is the dignity of the court; rather it is the fundamental supremacy of the law which is challenged.\textsuperscript{9} Criminal contempts are usually divided in two categories; those which are committed in the face of the court, and those which are committed outside the court. Such distinction maintains its importance, due to the different extent of the inherent jurisdiction of superior and inferior courts. Superior courts of record can normally punish both form of contempt, while inferior courts of record can only punish contempt if it is committed in their face.

\begin{footnotesize}
\begin{itemize}
  \item See Phillimore Committee, \textit{Report of the Committee on Contempt of Court}, Cmnd. 5794, 1974 (cited in this paper as Phillimore Committee), para. 1.
  \item \textit{A – G v. Leveller Magazine Ltd} [1979] AC 440, HL, at 459.
\end{itemize}
\end{footnotesize}