

ppi 201502ZU4645

Publicación científica en formato digital

ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185

Depósito legal pp 197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.40

Nº 74

2022



Specific features of the legal regulation of prosecution for contempt of court: judicial rules established in different countries

DOI: <https://doi.org/10.46398/cuestpol.4074.21>

Larysa Nalyvaiko *
Vasyl Ilkov **
Iryna Verba ***
Olha Kulinich ****
Oleksandr Korovaiko *****

Abstract

The purpose of the article is to reveal the specific features of prosecution for contempt of court in different countries. The methodological basis of this research is a set of general scientific methods (dialectics, abstraction, generalization, analysis, modelling) and special methods of scientific cognition (comparative and legal method, etc.). The existing types of responsibility and penalties for committing contempt of court in different countries of the world have been characterized. The authors have carried out the analysis of the experience of legal liability for manifestation of contempt of court rules established in the United States, Canada, France, Australia, Belgium, Poland, Great Britain, New Zealand, Ireland and India, which allowed to highlight the positive provisions for improvement of legislation in this area. It has been concluded that the purpose of establishing the aforementioned responsibility is to guarantee the administration of justice and the rule of law, maintain and strengthen public confidence in the judicial system,

* Doctor in Law, professor, Vice-Rector of Dnipropetrovsk state university of international affairs, professor of the Department of General Legal Disciplines at the Educational and Scientific of Law and Innovative Education of Dnipropetrovsk State University of Internal Affairs, Dnipropetrovsk, Ukraine. ORCID ID: <https://orcid.org/0000-0002-7696-4223>

** Doctor in Law, Professor, professor of the Department of General Legal Disciplines at the Educational and Scientific of Law and Innovative Education of Dnipropetrovsk State University of Internal Affairs. ORCID ID: <https://orcid.org/0000-0002-1419-0605>

*** Ph.D. in Law, associate professor of the Department of General Legal Disciplines at the Educational and Scientific of Law and Innovative Education of Dnipropetrovsk State University of Internal Affairs, Judge, Dnipropetrovsk Regional Administrative Court. ORCID ID: <https://orcid.org/0000-0002-3877-6192>

**** Ph.D. in Law, associate Professor of the Department of General Legal Disciplines at the Educational and Scientific of Law and Innovative Education of Dnipropetrovsk State University of Internal Affairs. ORCID ID: <https://orcid.org/0000-0002-0603-0513>

***** Doctor in Law, president judge of Kherson Court of Appeals. ORCID ID: <https://orcid.org/0000-0003-0347-0887>

safeguarding the continuity of the judicial process. Based on the analysis of regulatory legal acts and the jurisprudence of several countries in the world, the authors have made the classification by categories of actions that qualify as contempt.

Keywords: legal liability; contempt of court; administrative violation; court hearing; case review.

Características específicas de la regulación legal del enjuiciamiento por manifestación de desacato a los tribunales: normas judiciales establecidas en diferentes países

Resumen

El propósito del artículo es revelar las características específicas del enjuiciamiento por desacato al tribunal en diferentes países. La base metodológica de esta investigación es un conjunto de métodos científicos generales (dialéctica, abstracción, generalización, análisis, modelado) y métodos especiales de cognición científica (método comparativo y legal, etc.). Se han caracterizado los tipos de responsabilidad y penas existentes por cometer desacato al tribunal en diferentes países del mundo. Los autores han realizado el análisis de la experiencia de responsabilidad legal por manifestación de desacato o reglas judiciales establecidas en los Estados Unidos, Canadá, Francia, Australia, Bélgica, Polonia, Gran Bretaña, Nueva Zelanda, Irlanda e India, lo que permitió destacar las disposiciones positivas para mejorar la legislación en este ámbito. Se ha concluido que la finalidad de establecer la responsabilidad señalada es garantizar la administración de justicia y el estado de derecho, mantener y fortalecer la confianza ciudadana en el sistema judicial, resguardando la continuidad del proceso judicial. Con base en el análisis de los actos jurídicos reglamentarios y la jurisprudencia de varios países del mundo, los autores han realizado la clasificación por categorías de las acciones que se califican como desacato.

Palabras clave: responsabilidad legal; desacato al tribunal; infracción administrativa; audiencia del tribunal; revisión del caso.

Introduction

Judges in every national legal system have the right to authorize contempt of court in order to ensure the administration of justice and the rule of law, to maintain and strengthen public confidence in the judicial system. Therefore, prosecuting a person for contempt of court is an important element in maintaining the rule of law in a democratic country (Teremetskyi *et al.*, 2021b).

Unfortunately, threats and insults against judges, forward behaviour of participants in the proceedings or those present during court hearings are common phenomena in many countries. It is primarily due to the low legal culture of the citizens of such countries, as well as the lack of understanding of court significance and its importance in ensuring the rule of law. The problem of interfering in the normal functioning of the judicial system, which is often manifested in contempt of court is relevant under such conditions (Starovoitova, 2021).

Prosecuting a person for contempt of court is currently used in the world as the way where the justice system protects the smooth running of the legal trial and the administration of justice (Teremetskyi *et al.*, 2021a). Prosecution for contempt of court is used to protect the court's activities and to prevent interference into the legal trial by the way of illegal dissemination of information about the progress of its implementation or disrupting the work of the court during hearings. It should be noted that in resolving the issue of prosecution for contempt of court, the court does not protect its own dignity from insult or harm, but protects and upholds the rights of litigants so that the administration of justice is not distorted or biased.

1. Methodology

The scientific and theoretical basis of this research was the works of experts in the field of administrative law, administrative proceedings, theory of state and law, criminal proceedings, civil proceedings and other disciplines. The normative basis of the research is the current international legal acts, as well as regulatory legal acts of certain countries that regulate legal relations in the field of justice. The informational and empirical basis of the article is a generalization of the practice of judges as subjects that impose administrative liability for contempt of court, reference books, statistics, political and legal journalism.

The methodological basis of this research is a set of general and special scientific methods of scientific cognition, the use of which allowed us to obtain scientifically sound conclusions and recommendations. Thus, the dialectical method has been used for the general characteristic of

administrative liability for contempt of court. Methods of abstraction and generalization have been used to clarify specific features of legal corpus delicti of an administrative offense under the Art. 185-3 of the Code of Ukraine on Administrative Offenses.

The method of documentary analysis has been used to characterize the legal principles of administrative liability for contempt of court. Modelling and forecasting methods are aimed at finding out the ways to improve administrative liability for contempt of court. The comparative and legal method has been used to generalize international experience of administrative liability for manifesting contempt of court or established court rules.

2. Results and Discussion

Bringing a person to liability for contempt of court stems from the law and practice of Great Britain, where disobedience to court orders was regarded as the contempt to the king himself (Goldfarb, 1961). There is no legal definition of “contempt of court” in many countries. It is due to the fact that legal relations are constantly changing, and therefore it is impossible to predict all the actions that can be qualified as a manifestation of such disrespect.

Contempt of court is generally understood as any behaviour that interferes with the administration of justice. Contempt of court covers a variety of behaviors, which can be divided into the following categories:

1. disrespect for a judge in a courtroom or court premises (misconduct in court, interruption of a judge, commenting on a trial, taking photos in a courtroom, insulting a judge), court scandals (behavior leading to disrespect of judges or court, undermines public confidence to the administration of justice);
2. contempt of court, which is expressed in the violation of court orders (refusal to comply with court orders or obligations to the court);
3. contempt of court associated to the breach of official duties by a person related to court proceedings (lawyers, witnesses, jurors). Such disrespect occurs when persons having special responsibilities before the court or play a special role in the trial, fail to perform their duties before the court;
4. contempt of court related to abuse of the process (preparation and submission of court documents for misleading, dishonest or otherwise inappropriate purposes) (Teremetskyi *et al.*, 2021b).

Refusal to appear on a summons, to testify, to comply with a juror's obligation, or to provide certain information may in some countries (particularly Australia, Canada) also be contempt of court and may result in liability.

Publications and public speeches have been recently included to the acts of contempt of court. The growing use of the Internet and social networks has led to new challenges for the justice system. The media is currently a part of everyday life, and the coverage of information about events in society has increased due to the availability of such information. Therefore, the publication, statement or interview about a case during a trial is not allowed in many countries.

The balance between the protection of the administration of justice and the right to freedom of expression is important when covering information. In this regard, the Art. 40.6.i of the Constitution of Ireland states that:

The State guarantees liberty for the exercise of the following rights, subject to public order and morality. However, ...the State seeks to ensure that... radio, press, and cinema, while preserving their legitimate freedom of expression... are not used to undermine public order, morals or the authority of state power. *The publication or utterance of the seditious or indecent matter is an offence which shall be punishable in accordance with law (Constitution of Ireland, 1937).*

There is a discretionary ban in Canada on the publication of any information that may identify a victim or a witness in all criminal investigations at the request of state authorities, a victim or a witness. Besides, prohibitions on publications include the publication of evidence or other information obtained as a result of a bail hearing (Article 517 of the Canadian Criminal Code), a preliminary investigation (Article 539 of the Canadian Criminal Code) or a jury trial (Article 648 of the Canadian Criminal Code) (Government Of Canada, 1985). All juvenile courts in Canada also have a mandatory ban on publishing information about a juvenile (name or any other identifiable information) (S.C., 2002).

Contempt of court in Poland is also the filing of a statement or other document in writing that violates respect, peace or order of court actions (Ustawa z dnia 27 lipca, 2001).

Thus, contempt of court in many countries (USA, New Zealand, Australia, India, Ireland) can be considered as a publication that contains truthful information about the case or trial, but published before the court decision; as publication of biased materials in a case pending in court; a publication containing unfounded allegations against the judicial power; a publication containing information about the accused that may affect the jurors. However, fair criticism of a court decision after its pronouncement, as well as contemptuous comments about a judge as an individual and

not as an official, is not considered contempt of court (Teremetskyi *et al.*, 2021b).

Legal regulation of contempt of court varies in different states: contempt of court in some countries is referred to in the Constitution (India), in other cases is regulated by caselaw (Canada, Australia, Ireland, Great Britain), special laws on contempt of court (UK, New Zealand, India) or other laws, which are partly state about contempt of court (USA, Canada, Australia, Poland, France).

The Article 129 of the Constitution of India states that the Supreme Court is the highest court within the judicial system and has all the powers of such a court, including the right to punish for contempt of court (Constitution of India, 1950). Law norms related to contempt of court in Ireland are set out in caselaw to ensure the effective functioning of the judicial system. At the same time, the Law on Final Jurisdiction (1871) enshrines contempt of court. However, the provisions of this law are applied only in Dublin (Summary Jurisdiction (Ireland) Amendment Act, 1871).

Contempt of court is partly regulated in the United Kingdom by caselaw and partly by the Contempt of Court Act of 1981. The main purpose of this law is to protect the integrity of court proceedings, so that any conduct that interferes with the administration of justice can be considered as contempt of court, even if there is no intention to interfere with the court activities, for example, publication as a form of communication addressed to the public (Contempt of Court Act, 1981).

Actions recognized as contempt of court have been established, and procedures for bringing perpetrators to justice have been regulated in India at the legislative level (The Contempt of Courts Act, 1971). Similar provisions are enshrined in the Contempt of Court Act 2019 in New Zeland (Contempt of Court Act, 2019).

There are also countries where there is no special law counteracting contempt of court. However, some provisions on contempt of court are contained in various laws.

The first US federal law concerning to disrespect the judicial power was the Judiciary Act (1789). The Article 17 of this law gave the federal courts “the power to fine or imprison at the discretion of those courts all manifestations of contempt of power in any case or during the proceedings” (Judiciary Act, 1789). Pennsylvania was the first U.S. state to pass a law defining contempt of court, which could be manifested in any misconduct against court officials, disobedience during court proceedings and misconduct in the presence of a court (Goldfarb, 1961).

Manifestation of contempt of court in the United States at the federal level is currently determined by the U.S. Crimes and Criminal Procedure

Code (U.S. Code: Title 18, 1948) and the Federal Rules of Civil Procedure (Federal Rules of Civil Procedure, 1938). At the same time, different states have their own laws that determine what actions are contempt of court and the procedure for bringing a person to justice. For example, the Section 18.2 of the Code of Virginia contains the Article providing an exhaustive list of cases, when judges of Virginia may decide to prosecute a person for contempt of court as soon as possible (Code of Virginia, 1950).

Courts in New York state have the power to punish promptly any manifestation of contempt committed in the presence of a court in exceptional circumstances and under certain conditions (New York Codes, 2011).

The power of judges in Australia to prosecute a person for contempt of court is provided by the “Supreme Court Act” (Supreme Court Act, 1933), “District Court Act” (District Court Act, 1973), “Children’s Court Act” (Children’s Court Act, 1987). Similar powers of the court are provided by the Polish Law “On the System of General Courts” (Ustawa z dnia 27 lipca, 2001).

Analysis of caselaw and laws of different countries on contempt of court allows us to distinguish two types of liability, when a person may be prosecuted for committing actions that will indicate the manifested contempt of court: civil and criminal liability.

The difference between civil and criminal liability is that the purpose of civil liability is not to punish a person, but to force him / her to comply with a court decision. When bringing a person to civil liability, the court seeks to re-educate the person and force him / her to do what the person did not want to do, i.e. it is to force the execution of a previously violated mandatory court order in the future. Civil liability for contempt of court most often arises for non-compliance with a court order and is used to coerce a party to take action. For example, a party who fails to comply with a court decision may be charged with contempt of court under Rule 70 of the Federal Rules of Civil Procedure (Federal Rules of Civil Procedure, 1938).

The purpose of criminal liability is to punish a person and uphold the authority of the courts, i.e., punishment for violating a court order, which prohibited the commission of certain actions or to refrain from committing them (Teremetskyi *et al.*, 2021b).

A person who has committed actions that indicate a conscious desire to disrupt a trial, to create a scandal in court, to spread false statements about a court or a judge, to publish biased materials about a court case is brought to criminal liability for contempt of court. For example, in Robertson and Gough case (Scotland), the court ruled that contempt of court is behavior that “means intentional disobedience or contempt of court, or deliberate challenge or opposition to the authority of the court or the rule of law. It is

this behavior that threatens the administration of justice, which requires punishment from a public point of view” (Robertson and Gough V. Her Majesty’s Advocate, 2007).

Contempt of court defined as a crime is the only criminal offense in Canada that is an exception to the general principle that all criminal offenses are set out in the Criminal Code (Government Of Canada, 1985).

There is direct and indirect contempt of court. For example, if an action in the form of contempt occurs in the presence of a court, it is a direct one, if an action of contempt occurs outside the court, then it is an indirect one (Criminal Resource Manual, 2020).

In general, the countries, where contempt of court is regulated at the legislative level, have a clear definition what actions are contempt of court, which offenses committed by a person are prosecuted by civil or criminal norms, as well as there is a clear definition of the range of persons who may be subject to contempt of court, the procedure for hearing the case and bringing to liability. Let’s consider this in details.

The United States Court has the right to punish individuals for contempt of court in the form of fines or imprisonment, or to apply both punishments at its discretion only if there are three reasons:

- 1) the misconduct was committed in the presence of a judge or certain actions were committed in order to obstruct the administration of justice;
- 2) the misconduct was committed by any official of the court while exercising their powers;
- 3) there was disobedience or resistance to a lawful order during the process or in execution of a decision or ruling (Crimes and Criminal Procedure: Title 18, 1948).

Courts at all levels in Canada have the power to prosecute individuals for contempt of court occurred in the court, but only higher courts have the right to prosecute individuals for contempt of court committed elsewhere (The Canadian Justice System and the Media, 2007).

The Supreme Court in Australia can prosecute for contempt of court, which is disrespect to court either during a hearing, disobedience to a judge’s decision or order or breach of court obligations. In addition, the Supreme Court has the power to consider both disrespect for itself and disrespect for any lower court (Supreme Court Act, 1970). At the same time, lower courts also have the right to prosecute for contempt (District Court Act, 1973).

Higher courts in India according to the Art. 10 of the Law “On contempt of court” (1971) are empowered to prosecute subordinate courts for contempt of court. The Article 15 of this Law states that even in case of contempt of court, which imposes criminal liability, contempt proceedings must be initiated by a higher court at the request of a subordinate court or at the request of the Advocate General (Legal Adviser to the State Government) (The Contempt of Courts Act, 1971).

Judges in the United Kingdom have broad powers to hear cases against those who have shown contempt of court. There are minimum requirements to ensure a fair trial: the court provides information about the action of contempt of court and explains what has been done wrong by a person against whom the decision of contempt of court will be made; the court provides an opportunity to get acquainted with the available protections; the court gives a person the opportunity to apologize for own actions. The case is heard on the day of contempt of court or the next day (Contempt of Court Act, 1981).

Bringing a person to liability for contempt of court in Australia stipulates that judges comply with a certain procedure consisting of four rules: 1) identifying a person whose case is heard; 2) bringing a person to a court; 3) informing the parties in the case; 4) granting permission to the court to make a decision on taking a person into custody or his / her release pending the indictment for contempt of court, which may include bail.

A judge who believes that a person is guilty of contempt of court may verbally punish the offender or issue an arrest and detention warrant until the person is brought to court to answer the charges. A judge presiding over the relevant proceedings may not be obliged to testify in the proceedings for contempt of court. However, an official transcript or official audio or video recording of the proceedings in the court may be admissible evidence (Supreme Court Act, 1970).

The court in Canada cannot prosecute a person until it is established that his or her behavior has seriously impeded or obstructed the administration of justice or posed a serious risk of interference or obstruction of the administration of justice (*R. v. Glasner*, 1994 CanLII 3444 (ON CA)). Besides, the Code of Civil Procedure of Quebec (Canada) states that courts may impose a penalty on any person found guilty of contempt of court, which took place inside or outside the court. However, if contempt of court is committed against the Court of Appeal, but out of the premises, the case is referred to the High Court (Code de Procédure Civile, 2014).

Prosecution of a person for contempt of court in Ireland is subject to the following conditions:

1. a case on the commission of any action that indicates on contempt of court during the trial shall be considered by a judge as soon as possible;
2. a case of contempt in regard to a judge's personality (statements against a judge) is considered by another judge;
3. a judge has the right to detain a person and detain him / her for no more than 24 hours;

4. a person must be informed of the time and date of the hearing about the case of contempt of court, which is conducted as soon as possible from the moment of the offense;
5. a person who has committed contempt of court is given the opportunity to defend oneself or get legal representation, including legal assistance;
6. if contempt of court was expressed in statements against a judge, the judge shall not be summoned as a witness, and a copy of the digital audio recording of the trial where the offense occurred shall be attached to the case file (Donal O'Donnell, 2002).

If a judge or another court employee in New Zealand considers that any person intentionally violates the behavior in the courtroom or intentionally and without legal grounds disobeys any order of a judge or another court employee during the hearing, then the judge or another court employee may take one or more of the following actions: remove the person from the courtroom and order that the person be taken into custody. During the detention, a person accused of violating public order will be given the opportunity to get legal representation, as well as the opportunity to apologize to the court.

The judge or another court employee must consider detention issue before the announcement of the time and place of the hearing, and, if an additional sentence is to be imposed, the judge or another court employee must provide a person with a written statement describing the action, which is the basis for bringing a person to liability for contempt of court. If contempt of court has been recorded by a judge, then the judge must consider the circumstances of transferring the case to another judge. Consideration of the case from the moment of the action's commission, which indicates on contempt of court, begins within 7 days (Contempt of Court Act, 2019).

The presiding judge in Poland may remove a person from the courtroom who commits certain actions indicating on contempt of court (violates respect for the court, peace or order of court actions) only after repeated remarks about misconduct and in the absence of response to those remarks, as well as after prior notice of the legal consequences of such conduct in the courtroom (Ustawa z dnia 27 lipca, 2001).

The court's authorities in Canada to consider contempt of court as a criminal offense does not follow from the Canadian Criminal Code. However, judges generally use common criminal law practices and procedures to sentence on contempt of court. Such a sentence on contempt of court will be aimed at deterring others from committing such actions that undermine the rule of law (Ziegel, 1960).

It should be noted that some world countries may prosecute both individuals and legal entities for contempt of court (New Zealand, India). For example, if a person in India found guilty of contempt of court in respect of any obligations given to the court is a legal entity, then any person of that legal entity who was liable for the legal entity or for certain actions on behalf of such legal entity at the time of committing contempt of court, is guilty of contempt and the measure of responsibility may be imposed by the court on each person (The Contempt of Courts Act, 1971).

There are various types of penalties for contempt of court in different countries. The most severe punishment is imposed in Great Britain and Scotland. Thus, a person can be sentenced to up to two years in prison or a fine of £ 2,500 under the Contempt of Court Act. (Contempt of Court Act, 1981). The type of punishment for contempt of court is imposed in accordance with the general principles of sentencing, taking into account the nature of the committed offense, as well as the offender's personality. The UK courts focus on the fact that a fine is an alternative to imprisonment, and a fine may be the appropriate punishment for those who committed contempt of court for the first time.

An individual in New Zealand is punished with imprisonment for up to six months with a fine of up to 25,000 dollars for committing such actions as the intentional publication of any information about criminal proceedings, information relevant to any trial of a person, information, if there is a real threat that it may prejudice the rights of the individual to a fair trial. A legal entity is punished with a fine of not more than 100,000 dollars. A judge prosecutes a person in the form of a fine of not more than 10,000 dollars or community services not exceeding 200 hours, and may issue a warrant for imprisonment for the term not more than 3 months for intentional refractoriness to a judge's order during the hearing, which had no legal grounds. For disclosing jury discussions an individual is subject to imprisonment for a term not exceeding 3 months or a fine of not more than \$ 10,000, a legal entity – for a fine of not more than \$ 40,000. An individual is liable to imprisonment for a term not exceeding 6 months or a fine of up to \$ 25,000, a legal entity – to a fine not exceeding \$ 100,000 for the publication that contains false information about a court or a judge (Contempt of Court Act, 2019).

District courts in Australia can impose a fine of up to 20 penalty units or up to 28 days in prison for contempt of court (District Court Act, 1973). A person in India can be imprisoned for a term not exceeding six months, or receive a fine of up to two thousand rupees, or even imprisonment and a fine.

In Canada, a person who fails to appear in court as a witness and, if there are no valid reasons for not appearing, is found to have committed contempt of court and may be prosecuted for a fine not exceeding 100

dollars or imprisonment for a term not exceeding 90 days or these two penalties together, and may be obliged to pay the costs associated with the maintenance of this process or costs for the detention, if applicable (Government of Canada, 1985).

A fine of up to \$ 10,000 may be imposed on an individual for contempt of court within civil proceedings in Quebec (Canada), and a legal entity may be fined \$ 100,000. If a person refuses to comply with an order or prohibition, the court, in this case, may impose a penalty of imprisonment for a certain period in addition to the imposed penalty until the person obeys. Besides, this person will be periodically summoned to explain own behavior. However, such imprisonment may not exceed one year period (Code de Procédure Civil).

Belgium does not provide any specific sanctions for “contempt of court”. However, in certain cases, if a person during a court hearing behaves particularly aggressively and abusively, clings to a judge or other participants in the hearing, interrupts or performs other actions that impede the process, the judge classifying these actions as contempt of court has the right to complete a report, to hear the accused and witnesses and immediately impose a penalty in the form of a fine provided by law (Strafprozessgesetzbuch, 1808).

Contempt of court in France results in a double penalty: imprisonment combined with a fine provided by the Criminal Code. In particular, insults with words, gestures or threats, letters or images of any nature that have not been made public, or sending any subject to a judge, juror or any person from a judicial agency exercising his or her powers or in regard to this activity, which may lead to humiliation or disrespect for the position, is punishable by one year of imprisonment and a fine of € 15,000. If contempt of court occurs during a court hearing or in a judicial panel, the penalty is increased to two years of imprisonment and a fine of € 30,000 (Article 434-24). For attempting to discredit a court decision under conditions that may undermine the authority or independence of government, a person is liable to imprisonment for 6 months and a fine of 7,500 euros (Article 434-25) (Code pénal, 2002).

In case of contempt of court in Poland, the court may impose a fine of up to 3,000 PLN or imprisonment for up to 14 days. If the fine is not paid, this type of penalty is replaced by imprisonment for up to 7 days taking into account the type of offense, the personal characteristics of the convict, the degree of the guilt (Ustawa z dnia 27 lipca, 2001).

The peculiarity of bringing to civil liability for contempt of court in India is the fact that if the court considers that the imposition of a fine as a measure of civil liability does not achieve the goal of justice and that it is necessary to apply an imprisonment, such imprisonment may be applied for a period not exceeding six months.

The peculiarity of prosecuting for contempt of court in some world countries is that a person can apologize for the offense in court, which can be considered as a ground for releasing from liability. For example, a person in India, who has committed contempt of court and has already been the subject of a criminal decision, may be released from punishment because of an apology to a court, which should be accepted by a court.

One of the relevant issues in many countries around the world (Ireland, Australia) is the review of caselaw in regard to contempt of court and amendments to the legislation by resolving contempt of court at the legislative level. For example, the Irish Legislative Reform Commission, whose duties are to review laws by conducting expert examinations and research to reform Irish legislation (Law Reform Commission Act, 1975), studied the issue of contempt of court in the country in 1994.

The Commission in its report on contempt of court noted that criminal and civil contempt of court are difficult to distinguish, since there is a blurred line and a lack of legal norms to address the issue. This leads to various difficulties for a person sentenced to imprisonment for contempt of court, as well as for judges who apply this punishment, which gives the latter a large scope of discretion.

Based on the results of the conducted study, the Commission made recommendations on reforming the legislation in this area, in particular on the need to consolidate contempt of court at the legislative level instead of the existing norms of common law. However, those recommendations have not been implemented for more than 15 years, although the attempts have been made. All issues related to the need to regulate contempt of court manifestations at the legislative level, in particular clarifying the procedure for bringing a person to justice, as well as penalties for contempt, which can guarantee fair trial are being currently discussed in Australia (Contempt of Court: Report, 2020).

Thus, bringing to justice for contempt of court in the world is used as the way for the justice system to protect the smooth running of the trial and the administration of justice, non-interference in the trial by illegally disclosing information about the process.

Conclusion

The authors of the article have studied specific features of the prosecution for contempt of court or established court rules in the United States, Canada, France, Australia, Belgium, Poland, Great Britain, New Zealand, Ireland, India. It has been established that legal regulation of contempt of court differs between countries: some countries refer contempt of court in the

Constitution (India), in other countries it is regulated by caselaw (Canada, Australia, Ireland), by laws on contempt of court (UK, New Zealand, India), by other laws (USA, Australia, Poland, Belgium, Canada).

At the same time, prosecution for contempt of court in various countries around the world is used to ensure the administration of justice and the rule of law, to maintain and strengthen public confidence in the judicial system, to protect the continuity of the legal trial.

The analysis of regulatory legal acts and caselaw of the world countries made it possible to single out actions that are classified as contempt of court and to divide them into categories: contempt to a judge, which takes place in a courtroom or court premises; contempt of court, which is expressed in violation of court orders; contempt of court, which is expressed in the form of breaking official duties by a person that are related to court proceedings; contempt of court, which is related to abuse of proceedings; contempt of court, which consists in publishing materials or covering information about the legal trial or its participants.

There are two main types of liability for contempt of court in the world: civil and criminal. The purpose of civil liability is not to punish a person, but to force him / her to comply with a court decision. The purpose of criminal liability is to punish a person and to uphold the authority of judges.

The accomplished analysis of international experience in prosecuting a person for contempt of court or established court rules has assisted to distinguish the following positive provisions for improving legislation in this area: the need to legislative consolidation of the procedure for bringing to administrative liability (New Zealand); to consider publications, statements and interviews during the legal trial before the final decision as contempt of court (USA, New Zealand, Canada); the case of insulting a judge must be heard by another judge (Ireland); a person has the right to legal aid, so cases cannot be heard without giving a person the opportunity to exercise that right (Ireland, New Zealand); the possibility of prosecuting legal entities for contempt of court (New Zealand, India).

Bibliographic References

AUSTRALIAN PARLIAMENT. 1933. Supreme Court Act. Available online. In: http://classic.austlii.edu.au/au/legis/act/consol_act/sca1933183/. Consultation date: 23/05/2022.

CANADIAN JUDICIAL COUNCIL. 2007. The Canadian Justice System and the Media. Available online. In: https://cjc-ccm.ca/cmslib/general/news_pub_other_cjcm_en.pdf. Consultation date: 27/05/2022.

- COURT OF APPEAL FOR ONTARIO. R. V. GLASNER, 1994 CANLII 3444 (ON CA). Available online. In: <https://www.canlii.org/en/on/onca/doc/1994/1994canlii3444/1994canlii3444.html>. Consultation date: 27/05/2022.
- DONAL O'DONNELL. 2002. "Some Reflections on the Law of Contempt" In: *Studies Institute Journal*. Vol. 2, No. 2, pp. 87-128.
- FRENCH PARLIAMENT. 2002. Code pénal. Available online. In: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006181767/#LEGISCTA000006181767. Consultation date: 24/05/2022.
- GOLDFARB, Ronald. 1961. "The History of the Contempt Power" In: WASH. U. L. Q. No. 1. Available online. In: https://openscholarship.wustl.edu/law_lawreview/vol1961/iss1/6/. Consultation date: 23/05/2022.
- GOVERNMENT OF CANADA. 1985. Criminal Code (R.S.C., 1985, c. C-46). Available online. In: <https://laws-lois.justice.gc.ca/eng/acts/c-46/>. Consultation date: 27/05/2022.
- GOVERNMENT OF CANADA. 2002. Youth Criminal Justice Act (S.C. 2002, p. 1). Available online. In: <https://www.laws-lois.justice.gc.ca/eng/acts/y-1.5/page-20.html#h-471612>. Consultation date: 27/05/2022.
- NEW YORK CODES. 2011. Rules and Regulations. Title 22 – Judiciary (Sec. 1.0 to Undesignated UCS-124). Available online. In: <https://www.law.cornell.edu/regulations/new-york/NYCRR-Tit-22-Sec-701-2>. Consultation date: 21/05/2022.
- NEW ZELAND PARLIAMENT. 2019. Contempt of Court Act. Available online. In: <https://www.legislation.govt.nz/act/public/2019/0044/latest/LMS24753.html>. Consultation date: 22/05/2022.
- SEJM RZECZYPOSPOLITEJ POLSKIEJ. 2001. Ustawa z dnia 27 lipca. Prawo o ustroju sądów powszechnych. Available online. In: <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/prawo-o-ustroju-sadow-powszechnych-16909701>. Consultation date: 22/05/2022.
- STAROVOITOVA, Svitlana. 2021. "Administrative Liability for Direct Contempt in Ukraine" In: Synopsis of the thesis for candidate's degree in law. Sumy, Sumy State University, 21 p.
- STEWART ROBERTSON AND STEPHEN GOUGH V. HER MAJESTY'S ADVOCATE. 2007. HCJAC 63. Available online. In: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=a5a886a6-8980-69d2-b500-ff000d74aa7>. Consultation date: 21/05/2022.

- TEREMETSKYI, Vladyslav; KOROVAIKO, Oleksandr; VASYLENKO, Maryna; ZHURAVEL, Yaroslav; KHOVPUN, Oleksii; KRAVCHENKO, Viktor; MULIAR, Halyna. 2021a. "The Contempt of Court: Balance Between the Protection of the Administration of Justice and the Right to Freedom of Expression" In: *Journal of Legal, Ethical and Regulatory Issues*. Vol. 25(S2), pp. 1-7.
- TEREMETSKYI, Vladyslav; STAROVOITOVA, Svitlana; HUTS, Nataliia. 2021b. "Features of contempt proceedings in selected countries of the world" In: *Our Law*. Vol. 1, pp. 145-150.
- THE DÁIL. 1871. Summary Jurisdiction (Ireland) Amendment Act. Available online. In: <http://www.irishstatutebook.ie/eli/1871/act/76/enacted/en/print>. Consultation date: 24/05/2022.
- THE DÁIL. 1937. Constitution of Ireland. Available online. In: <http://www.irishstatutebook.ie/eli/cons/en/html#article40>. Consultation date: 24/05/2022.
- THE GERMAN BUNDESRAT. 1808. Strafprozessgesetzbuch. Available online. In: <https://www.scta.be/Startseite-Direkt/Strafrecht>. Consultation date: 21/05/2022.
- THE GOVERNMENT OF INDIA. 1950. Constitution of India. Available online. In: <https://Legislative.Gov.In/Constitution-Of-India>. Consultation date: 21/05/2022.
- THE LAW REFORM COMMISSION. 1975. Law Reform Commission Act. Available online. In: https://www.lawreform.ie/_fileupload/RevisedActs/WithAnnotations/HTML/EN_ACT_1975_0003.htm. Consultation date: 23/05/2022.
- THE MINISTRY OF LABOUR, EMPLOYMENT AND SOCIAL SOLIDARITY. 2014. Code de Procédure Civile. Available online. In: <http://legisquebec.gouv.qc.ca/fr/showdoc/cs/c-25.01>. Consultation date: 22/05/2022.
- THE NSW GOVERNMENT. 1970. Supreme Court Act. No. 52. Available online. In: <https://legislation.nsw.gov.au/view/html/inforce/current/act-1970-052>. Consultation date: 24/05/2022.
- THE NSW GOVERNMENT. 1973. District Court Act. No 9. Available online. In: <https://legislation.nsw.gov.au/view/html/inforce/current/act-1973-009>. Consultation date: 24/05/2022.
- THE NSW PARLIAMENTARY COUNSEL'S OFFICE. 1987. Children's Court Act No.53. Available online. In: <https://legislation.nsw.gov.au/view/html/inforce/current/act-1987-053#sec.21>. Consultation date: 24/05/2022.

- THE PARLIAMENT OF THE REPUBLIC OF INDIA. 1971. The Contempt of Courts Act. Available online. In: <https://www.indiacode.nic.in/bitstream/123456789/1514/1/197170.pdf#search=Contempt%20of%20Courts%20Act,%201971>. Consultation date: 21/05/2022.
- THE UK PARLIAMENT. 1981. Contempt of Court Act. Available online. In: <https://www.legislation.gov.uk/ukpga/1981/49>. Consultation date: 23/05/2022.
- THE US CONGRESS. 1789. The Judiciary Act. Available online. In: https://avalon.law.yale.edu/18th_century/judiciary_act.asp. Consultation date: 21/05/2022.
- THE US CONGRESS. 1938. Federal Rules of Civil Procedure. Available online. In: <https://www.federalrulesofcivilprocedure.org/frcp/title-viii-provisional-and-final-remedies/rule-70-enforcing-a-judgment-for-a-specific-act/>. Consultation date: 21/05/2022.
- THE US DEPARTMENT OF JUSTICE. 2020. Criminal Resource Manual. Available online. In: <HTTPS://WWW.JUSTICE.GOV/ARCHIVES/JM/CRIMINAL-RESOURCE-MANUAL-759-INDIRECT-VERSUS-DIRECT-CONTEMPT>. CONSULTATION DATE: 21/05/2022.
- U.S. STATE OF VIRGINIA. 1950. CODE OF VIRGINIA. AVAILABLE ONLINE. IN: <HTTPS://LAW.LIS.VIRGINIA.GOV/VACODE/18.2-456/>. CONSULTATION DATE: 21/05/2022.
- US HOUSE OF REPRESENTATIVES. 1948. U.S. CODE TITLE 18 – CRIMES AND CRIMINAL PROCEDURE. AVAILABLE ONLINE. IN: <HTTPS://USCODE.HOUSE.GOV/VIEW.XHTML?PATH=/PRELIM@TITLE18&EDITION=PRELIM>. CONSULTATION DATE: 21/05/2022.
- VICTORIAN LAW REFORM COMMISSION. 2020. CONTEMPT OF COURT: REPORT. AVAILABLE ONLINE. IN: <HTTPS://WWW.LAWREFORM.VIC.GOV.AU/PUBLICATION/CONTEMPT-REPORT/2-CONTEMPT-OF-COURT-AND-THE-NEED-FOR-REFORM/>. CONSULTATION DATE: 23/05/2022.
- ZIEGEL, JACOB. 1959. “SOME ASPECTS OF THE LAW OF CONTEMPT OF COURT IN CANADA, ENGLAND, AND THE UNITED STATES” IN: MCGILL LAW JOURNAL. VOL. 6, NO. 4, PP. 229-266.



UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 N° 74

*Esta revista fue editada en formato digital y publicada en octubre de 2022, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

www.luz.edu.ve
www.serbi.luz.edu.ve
www.produccioncientificaluz.org