

Executive Summary

Title: Guarantee of Rights and Liberties in Contempt of Court Offence

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Research Question

Contempt of court exists as a legal measure in both the Civil and Common Law traditions. Its objective is to facilitate a judicial procedure with efficiency and swiftness, as well as to upkeep order within and around the courthouse's vicinity. However, Section 31-33 of the Civil Procedure Code of Thailand allows a judge to punish an accused person without a full trial. This judgement is endorsed by the opinion of the Office of Council of State which states that contempt of court is not a criminal offence, hence no procedural safeguard is required. This reading of the law leads to the question whether the offence, as written in the Civil Procedure Code, and the opinion of the Office of Council of State, meets the international human rights standard. How should the right to a fair trial of a person accused of contempt of court be protected? Ultimately, should Thailand's contempt of court be revised? If so, how?

Key Findings

1. Thai Laws: There are two provisions of Thai law that concern contempt of court: the Civil Procedure Code, and the Administrative Court and Administrative Procedure Act B.E. 2542 (1999) [hereinafter the Administrative Court Act]. However, their details about procedures and terms of punishment are different. While a judge under the Civil Procedure Code could promptly punish the wrongdoers with imprisonment and fine, a judge in the Administrative Court Act must appoint a new panel to hear the case of the contempt. Under the Civil Procedure Code, a person who commits the contempt of court shall be punished with imprisonment not exceeding 6-months or fined at no more than 500-baht or both. Whereas the Administrative Court Act limits a punishment at no more than 50,000-baht fine or 1-month imprisonment or both.

2. International Law Obligation: Thailand is a party to the International Covenant on Civil and Political Rights (ICCPR) which encourages state parties to respect civil and political rights of their citizens, including rights to a fair trial.

3. Contempt of Court in Foreign Laws: Comparison has been made among different countries in the Common and Civil Law traditions: The United Kingdom, India, the United States of America, Germany, and France. In every jurisdiction, there is a provision concerning contempt of court but detailingly their implementations differ among each other. The scope of defining ‘contempt’ or the term of punishment also varies. Nonetheless, there are some common features among these countries, for instance, the concept of guaranteeing rights and liberties of an accused person under the criminal justice system and the attempt to find a balance between freedom of expression and protecting judicial integrity.

4. Legality of Contempt of Court Offence: Theoretically, the law must be clear and ascertainable, especially the one constituting a criminal offence. Despite being an offence with imprisonment, Thai court’s precedent on defining an act of contempt lacks clarity and certainty as the Civil Procedure Code allows a court to ‘set a regulation’ concerning the matter, a mandate which is vague and ambiguous. Moreover, due to publicly unavailable, this internal regulation or guideline hinders public access to details of how the court enforces the law for this regulation.

5. The Opinion of the Office of Council of State: The Opinion number 444/2528 (1985) of the Office of Council of State states that contempt of court is not a criminal offence. This interpretation leads to several problems which are related to the international laws. According to the European Court of Human Rights, no matter which name is given to the particular offence, if there is imprisonment involved, guarantee of rights in criminal justice must be invoked. This decision is to prevent any state member from circumventing the obligation to guarantee rights of an accused, or a suspect, by placing that offence elsewhere from the Penal Code.

When contempt of court is not a criminal offence, problems arise as follows;

5.1 *Non bis in idem* principle. *Non bis in idem* or double jeopardy principle forbids punishing a person twice for a single act of crime. Thai criminal law accepts this principle in general but this acceptance does not cover contempt of court. Thus, if a person has committed

a single act that can be considered contempt of court and a criminal offence, Thai courts are known to treat one single act as two separate offences, which leads to double jeopardy.

5.2 Right to a Fair Hearing. Since contempt of court is not considered a criminal offence, an accused person's right to defend himself in a fair trial is not protected, unlike an ordinary criminal case. This exclusion violates an accused person's rights as follows;

1) Impartiality: Normally, a judge must not sit in a case under prejudice or concerning his personal injury. As the Civil Procedure Code does not require contempt of court charge to be tried by a new panel, the same judge can hear and deliberate the case in which he is considered a party. The public may doubt the neutrality and impartiality of judges in that case.

2) Procedural Safeguard: An accused in a contempt of court case is entitled to no basic rights provided to an accused in other ordinary criminal case such as right to legal counsel and right to be heard.

3) Right to Remedy from Wrongful Judgment: As contempt of the court is not considered a criminal offence, convicted of contempt of court charge is not eligible to compensation under the Compensation in Criminal Case Act B.E. 2544 (2001) if an appellate court acquits him.

6. Term of Punishment: Terms of imprisonment and fine have been set since B.E. 2477 (1934), therefore, appropriateness of these terms is questionable. Moreover, the terms as in the Civil Procedure Code are significantly different from the Administrative Court Act B.E. 2542 (1999). Punishment terms in these two laws should be more aligned.

Recommendation

The provisions of contempt of court is still necessary as a tool for maintaining the order in court. Nonetheless, in order to enforce the offenses of contempt of court, the study provides suggestions as follows:

1. If contempt of court occurs in the presence of the court or a judge, the judge in that case may give the wrongdoer a warning or remove such person from the courtroom to maintain order.

2. The court's guideline to hear a case of contempt of court must be clear, ascertainable and publicly available, so the public can familiarize themselves with the law in advance. Initially, the new guideline should be available on the court's website. In the future, contempt of court may have to be legislated into a statute from the Legislative branch.

3. When the case of contempt of court is proceeding, the fair trial and due process of law should be provided to the offender. These include the right to counsel, the right to be heard within a reasonable time, and the right to a public hearing which is guaranteed by the International Covenant on Civil and Political Rights.

4. For the type of contempt of court that have the same elements as the offenses in the Penal Code or Criminal Acts, such contempt should be proceeded as ordinary criminal cases. Moreover, if the contempt occurs in the presence of the judge, the judge shall appoint the prosecutor to prosecute the offender to another tribunal which does not consists of the judge who witness the contempt. This will promote the prompt prosecution and protect the rights of the offender.

In case of the civil contempt of court, the judge should have only the power to warn or dismiss the offender. If the offender disobeys the warning, the prosecutor in the same district of the court shall prosecute the offender as the criminal matter.

5. Term of punishment shall be reviewed. Fine at no more than 500-baht must be raised to 50,000 baht to reflect the current monetary value. Imprisonment shall be reduced from not exceeding 6-month to 1-month because a 1-month period is usually sufficient to upkeep order in the court as the punishment. Moreover, the new term of punishment will be more consistent with the term in the Administrative Court and Administrative Procedure Act B.E. 2542 (1999).

6. While contempt of court is not considered a criminal offence, if an accused is later acquitted by an appellate court, he shall be entitled to remedy according to the Justice Fund Act B.E. 2548 (2005). As a matter of principle, any wrongful imprisonment is a violation of human rights, which is covered by the Justice Fund.