



## Juror's contempt of court conviction for researching defendant on Internet in breach of judge's direction: law was sufficiently clear

In today's Chamber judgment<sup>1</sup> in the case of [Dallas v. the United Kingdom](#) (application no. 38395/12) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 7** (no punishment without law) of the European Convention on Human Rights.

The case concerned Ms Dallas' conviction for contempt of court as a result of her conducting Internet research in relation to the criminal case she was trying as a juror. Ms Dallas complained that the common law offence of contempt of court had not been sufficiently clear.

The Court found in particular that the test for contempt of court applied in her case had been both accessible and foreseeable. The law-making function of the courts had remained within reasonable limits and the judgment in her case could be considered, at most, a step in the gradual clarification of the rules of criminal liability for contempt of court through judicial interpretation. Any development of the law had been consistent with the essence of the offence and could be reasonably foreseen.

### Principal facts

The applicant, Theodora Dallas, is a Greek national who was born in 1977 and lives in Luton (England, UK).

On 4 July 2011 Ms Dallas attended jury service in the Crown Court. Before the case was opened the judge gave a number of directions to the jury underlining the importance of deciding the case only on the basis of what they saw and heard in the courtroom. The judge told the jury that they must not speak to anyone about the case and must not go on the Internet. The trial commenced and, in the course of the trial, evidence of the defendant's previous conviction for assault was adduced. On 6 July 2011 one of the jurors informed the court usher that Ms Dallas had been on the Internet and had found out about additional information, not adduced at trial, about the defendant's previous conviction, which she had shared with the jury. The trial judge was informed. On 8 July 2011, the judge informed Ms Dallas of the allegation and told her that the matter would be referred to the Attorney General and that there would be a police investigation. The trial was aborted.

On 2 December 2011, following permission from the Divisional Court, the Attorney General sought an order of committal (to prison) against Ms Dallas for contempt of court for conducting Internet research and then disclosing information to the jury. In her position statement, Ms Dallas accepted that she had conducted an Internet search but denied a specific intent to impede or cause a real risk of prejudice to the due administration of justice. On 19 January 2012 the application for committal was heard and there was some discussion between the bench and counsel about the correct test for contempt of court. Ms Dallas was found guilty and sentenced to six months' imprisonment of which she would serve three. Following the handing down of the judgment Ms Dallas sought leave to appeal to the Supreme Court on the basis that the Divisional Court had lowered the threshold for

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

establishing a contempt of court and had erred in convicting her because pre-trial judicial directions were unclear and could not be assimilated to a court order prohibiting her from conducting Internet research. On 26 January 2012 the Supreme Court refused permission to appeal on the basis that the application did not raise an arguable point of law.

## Complaints, procedure and composition of the Court

Relying in particular on Article 7 § 1 (no punishment without law) Ms Dallas complained about the lack of sufficient clarity of the offence of contempt of court.

The application was lodged with the European Court of Human Rights on 13 June 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”), *President*,  
Guido **Raimondi** (Italy),  
Kristina **Pardalos** (San Marino),  
Linos-Alexandre **Sicilianos** (Greece),  
Paul **Mahoney** (the United Kingdom),  
Aleš **Pejchal** (the Czech Republic),  
Robert **Spano** (Iceland),

and also André **Wampach**, *Deputy Section Registrar*.

## Decision of the Court

The Court reiterated that Article 7 should be construed and applied in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment. Offences had to be clearly defined by law and be both accessible and foreseeable. The progressive development of criminal law through judicial law-making was a well-entrenched and necessary part of legal tradition in the United Kingdom. Article 7 of the Convention could not be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation. Furthermore, it was primarily for the national authorities to resolve problems of interpretation of domestic law.

The Court noted that there was no dispute between the parties as to the correct test for common law contempt of court. The test required, in particular, that two elements be present: an act which created a “real risk” of prejudice to the administration of justice; and an intention to create that risk.

First, the Court dismissed Ms Dallas’ argument that the Divisional Court in her case had applied a lower threshold to the test for the requisite risk and intention. In particular, it held that Ms Dallas had been found by the Divisional Court to have caused *actual* risk of prejudice and that it must have been evident to any juror that deliberately introducing extraneous evidence into the jury room contrary to an order of the trial judge amounted to intending to commit an act that at the very least carried a real risk of being prejudicial to the administration of justice.

Secondly, the Court held that Ms Dallas’ argument concerning the difference between a direction and an order to be untenable, agreeing with the reasoning of the Divisional Court that the meaning of both a direction and an order depended on the context and both could mean the same.

The Court therefore found that the test for contempt of court applied in Ms Dallas’ case had been both accessible and foreseeable. The law-making function of the courts had remained within reasonable limits and the judgment in her case could be considered, at most, a step in the gradual clarification of the rules of criminal liability for contempt of court through judicial interpretation. Any development of the law had been consistent with the essence of the offence and could be reasonably foreseen.

Accordingly, there had been no violation of Article 7 of the Convention.

*The judgment is available only in English.*

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