[GB] Court Decision Tests Balance between Privacy, Confidentiality and Expression

IRIS 2002-4:1/31

David Goldberg
deeJgee Research/Consultancy

A man, who happens to be a TV presenter, went out for an evening of drinking with friends. He ended up in a brothel. A prostitute performed a sex act on him. Photographs were taken of him, drunk and partially undressed. The prostitute offered the story and photographs to the media (in this case a newspaper). The newspaper asked for his reaction. He sought an injunction against publication, on the ground that his right to privacy, inter alia, under Article 8 of the European Convention, would be breached.

The High Court (Queen's Bench Division) upheld the claimant's application that publication of the photograph should not be permitted, but allowed the publication of the prostitute's story.

The Court said that, in deciding on the scope of the application of the claimant's privacy right(s), it had to have regard to Section 12 of the Human Rights Act, which concerns giving effect to the right to freedom of expression.

In this case, there were two parties' rights to consider: the media's right to freedom of expression and, also, interestingly, the prostitute's Article 10 right to impart information of a newsworthy nature.

The Court said that publication of the fact that the man had visited a brothel and details of what transpired would be unlikely to be restrained: the media's and the prostitute's freedom of expression should be given greater weight than the degree of intrusion into the claimant's privacy.

However, the publication of photographs of sexual activity - taken without the man's consent - would be likely to be restrained. Such photographs were particularly intrusive and there was no public interest in publication.

As regards confidentiality, the Court acknowledged that in law, confidentiality is afforded to sexual relations in a relationship. However, the Court said that confidentiality did not extend to "any" physical intimacy. The sexual relationship in question in this case was hardly a "relationship" in the ordinary meaning of the word. Further, a brothel was not a "private" place and it was not a place where all and anything attracted the protection of confidentiality. The relationship between a prostitute and a customer was also not, in its nature, confidential.

© European Audiovisual Observatory (Council of Europe) 2026

Theakston v. MGN Ltd., the High Court (Queen's Bench Division), Judgment of 14 February 2002

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026