[GB] Supreme Court judgment on media reporting of court proceedings

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Lorna Woods
School of Law, University of Essex

On 19 July 2017, the Supreme Court delivered its judgment in Khuja (formerly PNM) v Times, on whether an injunction should be granted preventing the media from identifying an individual who had been named in open court during criminal proceedings. Mr Khuja was arrested on the basis of a witness statement that someone with the same commonly used first name as Mr Khuja was involved in sexual offences against children. The witness failed to identify Mr Khuja at an identity parade. Mr Khuja was not charged, although others were. At their trial, evidence was given stating that someone with the same first name as Mr Khuja had been involved in the abuse; furthermore, police evidence named Mr Khuja when informing the court that he had not been identified as the alleged abuser. He was also referred to in cross-examination, closing speeches and in the summing up. Mr Khuja applied to the High Court for an injunction preventing The Times, the Oxford Mail and two journalists from publishing the fact of his arrest (and release without charge) on suspicion of committing serious sexual offences against children. The application was dismissed at first instance and by the Court of Appeal. The matter came before the Supreme Court.

The judgment proceeded on the basis that the principle of open justice is subject to only limited exceptions: the law of contempt, defamation and the law protecting ECHR rights. The Court reaffirmed its approach in Re S (A Child) [2004] UKHL 47 where the Court had set out the “ultimate balancing test” in case of conflict between Articles 8 and 10 ECHR. The test states that neither article has as such precedence over the other; an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary; the justifications for interfering with or restricting each right must be taken into account; and the proportionality test must be applied to each.

The applicant argued that the High Court judge had applied Lord Rodger’s remarks in Re Guardian News and Media [2010] UKSC 1 and in doing so, had applied a legal presumption which was not warranted. Lord Rodgers in Re Guardian News had said: “The identities of persons charged with offences are published, even though their trial may be many months off. In allowing this, the law proceeds on the basis that most members of the public understand that, even when charged with an offence, you are innocent unless and until proved guilty in a court of law”.

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The Court rejected this argument, holding that this was not a general presumption applicable irrespective of the facts; moreover, in referring to Lord Rodgers, all the judge at first instance had done was to say that, while some members of the public would equate suspicion with guilt, most would not. The dissenting judges took a stronger line on this point and described the proposition as a "controversial presumption" for which there was no basis and which could undermine individuals' rights to privacy. The majority of judges then found that "there is no reasonable expectation of privacy in relation to proceedings in open court" (though the extent to which this is an absolute principle is unclear - Lord Sumption noted that the principle of open justice has never been absolute) and that any claim would have to rely on the impact on Mr Khuja's right to family life as a consequence of the damage to his reputation. This impact was found to be indirect and incidental. The majority of judges noted the public interest in reporting on the processes by which such cases are investigated and brought to trial, and which extends to the appellant's identity. The detail of Mr Khuja's name was not therefore peripheral to the story. By contrast, the judges in the minority thought that there was a reasonable expectation of privacy, and despite the public interest in the reporting, the balance was in favour of Mr Khuja's privacy.

United Kingdom Supreme Court, Khuja (formerly PNM) v Times [2017] UKSC 49, 19 July 2017

http://www.bailii.org/uk/cases/UKSC/2017/49.html

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