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“What are the unresolved privacy issues - legal and practical - over the reporting of crime and arrests pre-charge, following the decision in *ZXC v Bloomberg*”

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'SUSPECTS OF CRIME' - PRIVACY CASES

- *Hannon -v- News Group Newspapers Ltd* [2015] EMLR 1
- *PNM -v- Times Newspapers Limited* [2014] EMLR 30 (CA)
- *ERY -v- Associated Newspapers Limited* [2017] EMLR 9
- *ZXC -v- Bloomberg LP* [2017] EMLR 21
- *Khan -v- Bar Standards Board* [2018] EWHC 2184 (Admin)
- *Richard v BBC* [2018] EWHC 1837 (Ch) [2019] Ch 169.
- *ZXC v Bloomberg LP* [2019] EWHC 970 (QB) [2019] EMLR 20
- *ZXC v Bloomberg LP* [2020] EWCA Civ 611 [2020] 3 WLR 838
- *Sicri v Associated Newspapers Ltd* [2021] 4 WLR 9, [2020] EWHC 3541

ZXC V BLOOMBERG [2020] 3 WLR 838

Court of Appeal:

“...those who have simply come under suspicion by an organ of the state have, in general, a reasonable and objectively founded expectation of privacy in relation to that fact and an expressed basis for that suspicion. The suspicion may ultimately be shown to be well-founded or ill-founded, but until that point the law should recognise the human characteristic to assume the worst (that there is no smoke without fire); and to overlook the fundamental legal principle that those who are accused of an offence are deemed to be innocent until they are proven guilty.” [82]

EXCEPTIONS TO THE 'GENERAL RULE'

The general rule stands “*not as an invariable or unqualified right to privacy during an investigation but as the legitimate starting point*”: *ZXC v Bloomberg*, CA, [81]

Examples of when the media *can* identify criminal suspect:

- If the police have named them, e.g. in a press release
- If they have knowingly or intentionally been involved in a very public criminal activity, e.g. public riot (*In re JR38*)

SICRI V ASSOCIATED NEWSPAPERS

‘STAGE 1’: FACTORS THAT DID NOT DISPLACE THE GENERAL RULE

- Identification of suspect in local media
- Police visibly searching suspect’s home
- Information obtained by lawful journalistic enquiries
- Arrest as part of a high-profile operation
- Publication of identity by other media publisher(s)

SICRI V ASSOCIATED NEWSPAPERS

‘STAGE 2’: FACTORS THAT DID NOT TIP THE BALANCE IN FAVOUR OF ART 10

- Nature/Importance of the investigation
- Acute public concern about the terror attack
- Importance of names for reader engagement
- Editorial latitude

SUSPECTS OF CRIME / PRIVACY: DAMAGES

Richards v BBC: £210,000 general/aggravated damages

ZXC v Bloomberg: £25,000 damages

Sicri v ANL: £83,000 damages

- £50,000: General/aggravated damages
 - no award for damage to reputation BUT
 - damages awarded for impact of the article on C's 'dignity or standing'
- £33,000: Special damages

PRACTICAL POINTS FOR MEDIA

- What information to publish?

Distinction between being a ‘police suspect’ and there being ‘reasonable grounds to suspect’

- Does the report name or identify the suspect?

“On 29 October 2013 a man {Yewtree 15 – 64 years} was arrested at an address in South London on suspicion of sexual offences and was taken into police custody”.

- Create and maintain a record of the editorial decision and thought-process behind it

PRACTICAL POINTS/ISSUES FOR CLAIMANTS

- Online articles in prominent cases: which version?
- Defamation considerations
 - Issue within 1 year
 - (i) Include a libel claim?
 - (ii) Plead 'meaning' within privacy claim?
 - (iii) Challenge *Sicri* that reputational damages are not available in privacy claims
- 'Cleaning up the internet': Special damages for republications and repetitions

UKSC: ZXC V BLOOMBERG

ZXC v Bloomberg to be heard 30 Nov – 1 Dec 2020

- Will consider whether there is a ‘general rule’ that a suspect of crime had a reasonable expectation of privacy under Article 8
- No appeal in relation to damages

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