



Use of parliamentary privilege to disclose confidential information, no violation of privacy rights in case concerning well-known businessman

In today's **Chamber** judgment¹ in the case of [Green v. the United Kingdom](#) (application no. 22077/19) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerned the question of whether States have a duty to take measures to prevent parliamentary privilege being used to circumvent a court injunction. In 2018 the applicant in the case, Philip Nigel Ross Green, a well-known businessman, was granted an interim injunction against the Telegraph group to prevent it from identifying him as the subject of allegations of sexual harassment and bullying made by former employees. Invoking parliamentary privilege, a member of the House of Lords took the floor of the House after a debate and identified Mr Green as the subject of the allegations, despite the interim injunction.

The Court found that it should be left to the respondent State, and Parliament in particular, to decide on the controls required to prevent parliamentary members from revealing information subject to privacy injunctions. To find otherwise would run contrary to the principle of the autonomy of Parliament, which had already considered and rejected the need for further controls.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Philip Nigel Ross Green, is a British national who was born in 1952 and lives in Monaco. He is a well-known businessman and was chairman of the Arcadia Group, a multinational retail company which owned a number of major high street brands, including Topshop.

In July 2018 Arcadia was contacted by a journalist from the Telegraph Media Group Limited, who intended to publish an article on allegations that Mr Green had sexually harassed and bullied former employees. Mr Green had previously reached settlements with the former employees known as non-disclosure agreements ("NDAs").

Mr Green, Arcadia and Topshop went to the courts, seeking an injunction to prevent the Telegraph from publishing material disclosed to it in breach of confidence. They also sought an interim injunction preventing disclosure pending trial.

The High Court refused the interim injunction, but the Court of Appeal subsequently granted it, as well as anonymity orders, to protect the confidentiality of the material in the NDAs pending an expedited trial. It examined in detail the Convention rights relevant to the case (the claimants' rights under Article 8 and the Telegraph Media Group's rights under Article 10) and concluded that publication would cause immediate, substantial and possibly irreversible harm to all of the claimants, including the applicant.

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.

On 24 October 2018 the Telegraph published its article but respected the terms of the interim injunction.

On 25 October 2018 a member of the House of Lords, Lord Hain, took the floor after a parliamentary debate and made a short personal statement revealing Mr Green as “the powerful businessman using NDAs and substantial payments to conceal the truth about serious and repeated sexual harassment, racist abuse and bullying”. He said that he was exercising his parliamentary privilege and that it was his duty to name Mr Green, given the injunction preventing the media from publishing the story.

Lord Hain’s comments were widely reported and the orders for anonymity, having become pointless, were later terminated (“discharged by consent”).

Mr Green sought damages against the Telegraph for the consequences of Lord Hain’s statement. He sought to establish in particular who had provided his identity to Lord Hain and what role the Telegraph had played in that disclosure. He dropped the proceedings in January 2019, explaining that there was insufficient confidentiality left in the case to justify the risk, staff time and disruption involved in continuing with the claim.

In the meantime, the House of Lords Commissioner for Standards had assessed a formal complaint lodged against Lord Hain for violating the House of Lords Code of Conduct. The Commissioner found that allegations concerning parliamentary privilege were outside her remit.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), the applicant complained of the lack of controls on the use of parliamentary privilege to reveal information subject to an injunction. He also relied on Articles 6 § 1 (right to a fair trial) and 13 (right to an effective remedy) to complain that he had not been able to bring proceedings against Lord Hain whose statement rendered his claim for breach of confidence against the Telegraph futile.

The application was lodged with the European Court of Human Rights on 23 April 2019.

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

Lado **Chanturia** (Georgia), *President*,
 Tim **Eicke** (the United Kingdom),
 Lorraine **Schembri Orland** (Malta),
 Ana Maria **Guerra Martins** (Portugal),
 Anne Louise **Bormann** (Denmark),
 Sebastian **Rădulețu** (Romania),
 András **Jakab** (Austria),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

Decision of the Court

Article 8

Firstly, the Court found that there had been an interference with Mr Green’s right to respect for his private life as the impact on his reputation had undoubtedly been serious. His anonymity, once lost, had been lost forever.

It went on to examine his argument that the UK had an obligation under the Convention to take measures to prevent parliamentary privilege being used to circumvent a court injunction.

It considered, however, that it was first and foremost for national parliaments to assess the need to restrict their members' conduct. This is in keeping with the well-established constitutional principle of the autonomy of Parliament.

In the UK there was a rule which required Members of the House of Lords to give the Lord Speaker at least 24 hours' notice of any proposal to refer to a matter which was before the courts. However, as it was not incorporated into the Code of Conduct, breaches of the rule were not within the remit of the House of Lords Commissioner for Standards. The need for further controls had been considered – and rejected – by a Joint Committee of both Houses of Parliament in 2011. Although that was over ten years ago, Mr Green had not suggested that there had since been a significant increase in such incidents.

Indeed, according to a recent survey by the Court², other member States did not apparently have more robust controls than the UK. On the contrary, most States gave absolute protection from external legal actions to any statements made by parliamentarians in Parliament or, more broadly, in the course of their parliamentary duties. Only a small number of States excluded statements of a particular type from the scope of parliamentary privilege.

The Court therefore considered that it should be left to the respondent State, and Parliament in particular, to decide on the controls required to prevent parliamentary members from revealing information subject to privacy injunctions. However, the Court considered that the need for appropriate controls should be kept under regular review at the domestic level.

It concluded that there had been no violation of Article 8 of the Convention.

Article 6 § 1 and Article 13

The Court, by five votes to two, rejected as inadmissible Mr Green's complaints that he had been denied both access to court and an effective remedy because he had not been able to bring a claim against Lord Hain. It held, unanimously, that no separate issues arose concerning the fairness of the proceedings against the Telegraph.

Separate opinions

Judge Rădulețu expressed a partly dissenting opinion joined by Judge Guerra Martins. It is annexed to the judgment.

The judgment is available only in English.

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² See paragraphs 43-50 of the judgment, which set out the findings of a recent survey carried out by the Court in 41 member States.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.