

European Court Finds Against Excessive Legal Fees in Libel and Privacy Cases

Date: January 24, 2011

The European Court of Human Rights ruled last week that excessive legal fees charged by claimants' lawyers in libel and privacy cases violate freedom of expression. The judgment is expected to trigger revision of the current rules by the British government.

The ruling in *MGN Ltd v. the United Kingdom* arose out of a 2001 privacy case brought by the model Naomi Campbell against a British tabloid, and involved the so-called "no win, no fee" agreements that claimants can enter into with lawyers in England and Wales. The Justice Initiative and five other groups submitted a third party brief in the case, arguing that such conditional fee arrangements have an especially severe "chilling effect" on watchdog groups and small media houses. Our arguments were summarized extensively by the Court.

The applicant in the Strasbourg case, the *Daily Mirror*, had been fined a mere £3,500 for publishing details and photographs of Ms. Campbell leaving a Narcotics Anonymous meeting. At the end of a prolonged trial, however, the tabloid was faced with a total legal bill for £850,000, of which £365,000 represented so-called "success fees" claimed by Campbell's lawyers – under a clause that allows a winning claimant's lawyers to add charges which could double their base fees, regardless of the amount of recovery.

The applicant and the third-party interveners argued that, in libel and privacy cases, such an arrangement leads to unacceptable "punitive fines" being levied on media entities and independent watchdogs. An Oxford University study quoted by the interveners showed that libel defense costs in England and Wales are 140 times higher than the continental European average.

Finding for the *Daily Mirror*, the European Court held that the entire costs scheme in England and Wales, due to the "depth and nature of the flaws" inherent in it, runs afoul of Article 10 of the European Convention. The Court highlighted the findings of independent British inquiries – as well as the arguments of the Justice Initiative and its co-amici -- that the "bizarre and expensive" costs scheme has generated pernicious "ransom" effects that force publishers to settle cases or withhold stories on matters of clear public interest, simply because of the threat of exorbitant legal bills.

The ruling was immediately hailed by local media and free expression groups. A spokesperson for the British Ministry of Justice struck a conciliatory tone, [noting](#) that the government is preparing proposals that would seek "to prevent the situation in which, regardless of the merits of their case, defendants are forced to settle for fear of prohibitive costs."

On the privacy question itself, a six-judge majority of the European Court's seven-judge panel sided with Ms. Campbell and the House of Lords majority, finding no violation of Article 10 on that count. The ruling echoed recent judgments of the Court that have upheld the privacy and image rights of celebrities against tabloid coverage. However, the lone dissenter, Judge Thor Bjorgvinsson of Iceland, argued forcefully that the majority had failed to apply the strict scrutiny that its case law required in resolving conflicts between privacy and free speech rights.

The brief filed by the Justice Initiative, jointly with the Media Legal Defense Initiative, English PEN, Global Witness, Human Rights Watch, and Index on Censorship, can be found [here](#). The European Court's judgment is [here](#).