

# EUROPEAN COURT OF HUMAN RIGHTS

069  
15.2.2005

Press release issued by the Registrar

## CHAMBER JUDGMENT STEEL AND MORRIS v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing a judgment<sup>1</sup> in the case of *Steel and Morris v. the United Kingdom* (application no. 68416/01).

The Court held unanimously:

- that there had been **a violation of Article 6 § 1** (right to a fair hearing) of the European Convention on Human Rights;
- that there had been **a violation of Article 10** (freedom of expression) of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded 20,000 euros (EUR) to the first applicant and EUR 15,000 to the second applicant for non-pecuniary damage, and EUR 47,311.17 for costs and expenses.

(The judgment is available in English and in French.)

### 1. Principal facts

The case concerns an application brought by two United Kingdom nationals, Helen Steel and David Morris, who were born in 1965 and 1954 respectively and live in London. During the relevant period Mr Morris was unemployed and Ms Steel was either unemployed or on a low wage. Both were associated with London Greenpeace, a small group, unconnected with Greenpeace International, which campaigned principally on environmental and social issues.

In the mid-1980s London Greenpeace began an anti-McDonald's campaign. In 1986 a six-page leaflet entitled "What's wrong with McDonald's?" was produced and distributed as part of that campaign.

On 20 September 1990 McDonald's Corporation ("US McDonald's") and McDonald's Restaurants Limited ("UK McDonald's") issued a writ against the applicants claiming damages for libel allegedly caused by the alleged publication by the defendants of the leaflet.

---

<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The applicants denied publication, denied that the words complained of had the meanings attributed to them by McDonald's and denied that all or some of the meanings were capable of being defamatory. Further, they contended, in the alternative, that the words were substantially true or else were fair comment on matters of fact.

The applicants were refused legal aid and so represented themselves throughout the trial and appeal, with only some help from volunteer lawyers. They submit that they were severely hampered by lack of resources, not just in the way of legal advice and representation, but also when it came to administration, photocopying, note-taking, and the tracing, preparation and payment of the costs and expenses of expert and factual witnesses. Throughout the proceedings McDonald's were represented by leading and junior counsel, experienced in defamation law and by a one or, at times, two solicitors and other assistants.

The trial took place before a judge sitting alone between 28 June 1994 and 13 December 1996. It lasted for 313 court days and was the longest trial in English legal history. On appeal the Court of Appeal rejected the majority of the applicants' submissions as to general grounds of law and unfairness, but accepted some of the challenges to the trial judge's findings as to the content of the leaflet. The damages awarded by the trial judge were reduced from a total of GBP 60,000 to a total of GBP 40,000. Leave to appeal to the House of Lords was refused. McDonald's, who had not applied for costs, have not sought to enforce the award.

## **2. Procedure and composition of the Court**

The application was lodged on 20 September 2000 and declared partly admissible on 6 April 2004. A hearing took place in public in the Human Rights Building, Strasbourg, on 7 September 2004.

Judgment was given by a Chamber of 7 judges, composed as follows:

Matti **Pellonpää** (Finnish), *President*,  
Nicolas **Bratza** (British),  
Viera **Strážnická** (Slovakian),  
Josep **Casadevall** (Andorran),  
Rait **Maruste** (Estonian),  
Stanislav **Pavlovschi** (Moldovan),  
Lech **Garlicki** (Polish), *judges*,

and also Michael **O'Boyle**, *Section Registrar*.

## **3. Summary of the judgment<sup>1</sup>**

### **Complaints**

The applicants complained, under Article 6 § 1 of the Convention, that the proceedings were unfair, principally because they were denied legal aid, and, under Article 10, that the proceedings and their outcome constituted a disproportionate interference with their right to freedom of expression.

---

<sup>1</sup> This summary drafted by the Registry is not binding on the Court.

## Decision of the Court

### Article 6 § 1 of the Convention

The applicants' principal complaint under this provision was that they were denied a fair trial because of the lack of legal aid.

The question whether the provision of legal aid was necessary for a fair hearing had to be determined on the basis of the particular facts and circumstances of each case and depended *inter alia* upon the importance of what was at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively.

The Court examined the facts of the case with reference to these criteria.

In terms of what had been at stake for the applicants, although defamation proceedings were not, in this context, comparable to, for instance, proceedings raising important family-law issues, the financial consequences had been potentially severe.

As regards the complexity of the proceedings, the trial at first instance had lasted 313 court days, preceded by 28 interlocutory applications. The appeal hearing had lasted 23 days. The factual case which the applicants had had to prove had been highly complex, involving 40,000 pages of documentary evidence and 130 oral witnesses.

Nor was the case straightforward legally. Extensive legal and procedural issues had to be resolved before the trial judge was in a position to decide the main issue.

Against this background, it was necessary to assess the extent to which the applicants were able to bring an effective defence despite the absence of legal aid. The applicants appeared to have been articulate and resourceful and they had succeeded in proving the truth of a number of the statements complained of. They had moreover received some help on the legal and procedural aspects of the case from barristers and solicitors acting *pro bono*: their initial pleadings were drafted by lawyers. For the bulk of the proceedings, however, including all the hearings to determine the truth of the statements in the leaflet, they had acted alone.

In an action of this complexity, neither the sporadic help given by the volunteer lawyers nor the extensive judicial assistance and latitude granted to the applicants as litigants in person, was any substitute for competent and sustained representation by an experienced lawyer familiar with the case and with the law of libel. The very length of the proceedings was, to a certain extent, a testament to the applicants' lack of skill and experience.

In conclusion, the denial of legal aid to the applicants had deprived them of the opportunity to present their case effectively before the court and contributed to an unacceptable inequality of arms with McDonald's. There had, therefore, been a violation of Article 6 § 1.

In view of its finding of a violation of Article 6 § 1 based on the lack of legal aid, the Court did not consider it necessary to examine separately additional complaints under that provision directed at a number of specific rulings made by the judges in the proceedings.

### Article 10 of the Convention

The central issue which fell to be determined was whether the interference with the applicants' freedom of expression had been "necessary in a democratic society".

The Government had contended that, as the applicants were not journalists, they should not attract the high level of protection afforded to the press under Article 10. However, in a democratic society even small and informal campaign groups, such as London Greenpeace, had to be able to carry on their activities effectively. There existed a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment.

The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest was subject to the proviso that they acted in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism, and the same principle applied to others who engaged in public debate. In a campaigning leaflet a certain degree of hyperbole and exaggeration could be tolerated, and even expected, but in the case under review the allegations had been of a very serious nature and had been presented as statements of fact rather than value judgments.

The applicants, who, despite the High Court's finding to the contrary, had denied that they had been involved in producing the leaflet, had claimed that it placed an intolerable burden on campaigners such as themselves, and thus stifled public debate, to require those who merely distributed a leaflet to bear the burden of establishing the truth of every statement contained in it. They had also argued that large multinational companies should not be entitled to sue in defamation, at least without proof of actual financial damage. Complaint was further made of the fact that under the law McDonald's were able to bring and succeed in a claim for defamation when much of the material included in the leaflet was already in the public domain.

Like the Court of Appeal, the Court was not persuaded by the argument that the material was in the public domain since either the material relied on did not support the allegations in the leaflet or the other material was itself lacking in justification.

As to the complaint about the burden of proof, it was not in principle incompatible with Article 10 to place on a defendant in libel proceedings the onus of proving to the civil standard the truth of defamatory statements.

Nor should in principle the fact that the plaintiff in the present case was a large multinational company deprive it of a right to defend itself against defamatory allegations or entail that the applicants should not have been required to prove the truth of the statements made. It was true that large public companies inevitably and knowingly laid themselves open to close scrutiny of their acts and the limits of acceptable criticism are wider in the case of such companies. However, in addition to the public interest in open debate about business practices, there was a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good. The State therefore enjoyed a margin of appreciation as to the means it provided under domestic law to enable a company to challenge the truth, and limit the damage, of allegations which risk harming its reputation.

If, however, a State decided to provide such a remedy to a corporate body, it was essential, in order to safeguard the countervailing interests in free expression and open debate, that a measure of procedural fairness and equality of arms was provided for. The more general interest in promoting the free circulation of information and ideas about the activities of powerful commercial entities, and the possible “chilling” effect on others were also important factors to be considered in this context. The lack of procedural fairness and equality which the Court had already found therefore also gave rise to a breach of Article 10.

Moreover, under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered. While it was true that no steps had so far been taken to enforce the damages award against either applicant, the fact remained that the substantial sums awarded against them had remained enforceable since the decision of the Court of Appeal. In those circumstances, the award of damages in the present case was disproportionate to the legitimate aim served.

In conclusion, given the lack of procedural fairness and the disproportionate award of damages, the Court found that there has been a violation of Article 10.

The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

**Registry of the European Court of Human Rights**

**F – 67075 Strasbourg Cedex**

**Press contacts: Roderick Liddell (telephone: +00 33 (0)3 88 41 24 92)**

**Emma Hellyer (telephone: +00 33 (0)3 90 21 42 15)**

**Stéphanie Klein (telephone: +00 33 (0)3 88 41 21 54)**

**Fax: +00 33 (0)3 88 41 27 91**

*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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court’s judgments. More detailed information about the Court and its activities can be found on its Internet site.*