



MGN Limited v. United Kingdom

Application No. 39401/04; (2011) 53 EHRR 5; [2011] ECHR 66; [2011] EMLR 20; [2011] 1 Costs LO 84; 29 BHRC 686

Country: United Kingdom

Region: Europe

Year: 2011

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Controlled substances, Health information

Human Rights: Freedom of expression, Right to privacy

Facts

The applicant is a publisher of a national daily newspaper in the United Kingdom, The Daily Mirror (the "applicant"). In early 2001 the applicant carried a front-page article entitled "Naomi: I am a drug addict", placed between two color photographs of Ms. Naomi Campbell, a well-known model. The first photograph showed her dressed in a baseball cap with the caption: "Therapy: Naomi outside meeting", whilst the second showed her glamorously partially covered by a string of beads. The article, which also covered two pages in addition to the front-page, described Campbell's efforts to rehabilitate herself through "Narcotics Anonymous".

Campbell's solicitor wrote to the applicant claiming the article was a breach of confidentiality and an invasion of privacy, and requested that the applicant refrain from publishing further such articles. The applicant responded with further articles, including articles wherein Campbell's threatened proceedings were mocked.

Campbell filed suit against the applicant specifically for publication of the location of her Narcotics Anonymous meetings and not for the disclosure that she had been a drug addict. She claimed damages for breach of confidence (which can be understood as a breach of privacy) and compensation under the Data Protection Act 1998 and Article 8 of the European Convention on Human Rights, as well as a claim for aggravated damages. The High Court ruled in Campbell's favor awarding her GDP 2,500 for compensation and GDP 1000 for aggravated damages due to the public mockery. The Court of Appeal overturned the judgment. The House of Lords allowed appeal and restored the High Court judgment. Campbell was also awarded GBP 1,086,295.47 in legal costs. Of that amount, GBP 584,470 was for litigation in the House of Lords. That number includes a base cost of GBP 288,468, a success fee of 279,981.35 and 26,020.65 in disbursements. The success fee was pursuant to a Conditional Fee Agreement ("CFA") between Campbell and her solicitors, which provided a success fee of up to 100% of base costs.

The applicant appealed to the House of Lords seeking a ruling that it should not be liable to pay the success fees, as they were so disproportionate as to infringe their right to freedom of expression under Article 10 of the Convention. The House of Lords found that the existing CFA regime with recoverable success fees was to promote access to justice for poorer claimants and that it was compatible with the Convention, but expressed some reservations about the impact of disproportionate costs.

The applicant brought a claim to the European Court of Human Rights, alleging violation of Article 10 (freedom of expression) of the Convention concerning the finding of a breach of confidence and the recoverable success fees.

Decision and Reasoning

Regarding the question of breach of confidence, the Court found no violation of Article 10. There was no dispute that the finding of a breach of confidence was an interference in the applicant's freedom of expression but done for the legitimate reason of protecting Campbell's privacy. The primary question was whether the interference was necessary in a democratic society. The Court emphasized the high level of scrutiny the English courts had given on the issue and the general agreement on the relevant principles among the English justices. The Court reiterated the English courts' findings that the publication of intimate and private additional information about Ms. Campbell's physical and mental health and treatment had been harmful to Ms. Campbell's continued treatment with NA and risked causing a significant setback to her recovery as well as being considerably distressing for her. The Court held that the English courts had operated within the margin of appreciation and saw no reason to set aside the holding of the House of Lords.

Regarding the recoverable success fees, the Court found a violation of Article 10. There was no real dispute that the fees amounted to an interference with the applicant's freedom of expression, with the questions being whether the interference had a legitimate aim and was necessary in a democratic society. The Court then accepted as a legitimate aim the goal of increasing access to legal services. The Court noted the House of Lord's concerns about the recoverable success fees, including lack of qualifying requirements for claimants, no incentive to control costs, "chilling" effects on the opposing party, and the cherry picking using CFAs only for winning cases. However, the government had the view that any disproportionality that occurred in individual cases was justified by the value of having a general system. The Court found that the depth and nature of the flaws in the system that had been highlighted by the public consultation process and substantially accepted by the Ministry of Justice exceeded even the broad margin of appreciation given for domestic measures pursuing social and economic interests.

Decision Excerpts

"Against this background, the Court considers that, having regard to the margin of appreciation accorded to decisions of national courts in this context, the Court would require strong reasons to substitute its view for that of the final decision of the House of Lords or, indeed, to prefer the decision of the minority to that of the majority of that court, as the applicant urged the Court to do." Para. 150

"However, the Court considers that the depth and nature of the flaws in the system, highlighted in convincing detail by the public consultation process, and accepted in important respects by the Ministry of Justice, are such that the Court can conclude that the impugned scheme exceeded even the broad margin of appreciation to be accorded to the State in respect of general measures pursuing social and economic interests." Para. 217

"This conclusion is indeed borne out by the facts of the present case, On the one hand, the claimant was wealthy and not in the category of persons considered excluded from access to justice for financial reasons. Her representatives accepted in the domestic proceedings (paragraph 181 above) that they did not do much CFA work, which limited their potential to act for impecunious claimants with access to justice problems. The applicant's case was not without merit, in that the Court of Appeal and a minority of the House of Lords considered that the impugned articles did not violate Ms Campbell's right to private life." Para. 218