

European Court of Human Rights: Case of Steel and Morris v. the United Kingdom

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The European Court of Human Rights in a judgment of 15 February 2005 has come unanimously to the conclusion that the United Kingdom has violated Article 6 (fair trial) and Article 10 (freedom of expression) of the European Convention on Human Rights in a libel case opposing the McDonald's Corporation against two United Kingdom nationals, Helen Steel and David Morris, who had distributed leaflets as part of an anti-McDonald's campaign. In 1986 a six-page leaflet entitled "What's wrong with McDonald's?" was distributed by Steel and Morris and in 1990 McDonald's issued a writ against them claiming damages for libel. The trial took place before a judge sitting alone from June 1994 until December 1996. It was the longest trial in English legal history. On appeal the judgment of the trial judge was upheld in substance, the damages awarded were reduced by the Court of Appeal from a total of GBP 60,000 to a total of GBP 40,000 and leave to appeal to the House of Lords was refused. Throughout the trial and appeal proceedings Steel and Morris were refused legal aid: they represented themselves only with some help from volunteer lawyers. Steel and Morris applied to the European Court on 20 September 2000, complaining that the proceedings were unfair, principally because they were denied legal aid, although they were unwaged and dependant on income support.

The applicants also complained that the outcome of the proceedings constituted a disproportionate interference with their freedom of expression. With regard to the first complaint, under Article 6 para. 1 the Court is of the opinion that 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, who in this complex case, lasting 313 court days and involving 40,000 pages of documentation, had been represented by leading and junior counsel, experienced in defamation law and by two solicitors and other assistants. With regard to the second complaint, the Court reaches the conclusion that there has been a violation of Article 10 of the Convention. Although it is 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, it is considered essential by the Court that when a legal remedy is offered to a large multinational company to defend itself against defamatory allegations, also the countervailing interest in free expression and open debate must be guaranteed by providing procedural fairness and equality of arms to the defendants in such a case. The Court also emphasizes the general interest in

promoting the free circulation of information and ideas about the activities of powerful commercial entities, as well as the potential “chilling” effect on others an award of damages for defamation in this context may have. Moreover, according to the Strasbourg Court, the award of damages was disproportionate to the legitimate aim served in order to protect the right and reputation of McDonalds, as the sum of GBP 40,000 was not in a reasonable relation of proportionality to the injury to reputation suffered. Given the lack of procedural fairness and the disproportionate award of damages, the Court found that there had been a violation of Article 10 in this case, which in the media has been labelled as the “McLibel” case. The United Kingdom is ordered to pay EUR 35,000 to the applicants in respect of non-pecuniary damages and EUR 47,311 in respect of costs and expenses related to the Strasbourg proceedings.

Judgment by the European Court of Human Rights (Fourth Section), case of Steel and Morris v. the United Kingdom, Application no. 68416/01 of 15 February 2005

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