European Court of Human Rights: MGN Limited v. United Kingdom

IRIS 2011-3:1/1

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Ten years ago, in 2001, the newspaper Daily Mirror published an article on its front page under the title: “Naomi: I am a drug addict”. Another longer article inside the newspaper elaborated on top model Naomi Campbell’s addiction treatment, illustrated by photos taken secretly near the Narcotics Anonymous centre she was attending at the time. As the newspaper continued to publish more articles and new pictures related to her attendance at Narcotics Anonymous, Ms. Campbell sued the Daily Mirror for breach of her privacy. At a final stage of the domestic proceedings, the House of Lords found that the publication of the articles could have been justified as a matter of public interest, as Ms Campbell had previously publicly denied drug use. The publication of the pictures however, in combination with the articles, had breached her right to the respect for her private life. Apart from a modest award of damages of 3500 GBP, the Daily Mirror’s publishing group, MGN, was ordered to pay Ms. Campbell’s legal costs, including the “success fees” agreed between Ms Campbell and her lawyers. The total amount of the legal costs was more than 1 million GBP.

Relying on Article 10 of the European Convention MGN lodged an application with the European Court of Human Rights, complaining that the finding by the British courts that it had breached Ms Campbell’s privacy disregarded the right to freedom of expression. MGN also argued that the requirement to pay disproportionately high success fees amounted to a violation of Article 10 of the Convention. This part of the application was supported by third parties, such as the Open Society Justice Initiative, the Media Legal Defence Initiative, Index on Censorship and Human Rights Watch, all referring to the chilling effect of high costs in defamation proceedings in the United Kingdom on NGOs and small media organisations.

Regarding the breach of privacy, the European Court recalled that a balance had to be struck between the public interest in the publication of the articles and the photographs of Ms Campbell and the need to protect her private life. By six votes to one the Court held that there was no breach of Article 10. The Court agreed with the reasoning of the House of Lords that the public interest had already been satisfied by the publication of the articles, while adding that the photographs was a disproportionate breach of her right to respect for her private life. Therefore, the interference in the right to freedom of expression of the Daily Mirror was

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considered necessary in a democratic society in order to protect the rights of Ms Campbell.

However, the order to pay the success fees of up to more than 365.000 GBP was considered by the European Court as a disproportionate interference in the right to freedom of expression, having regard to the legitimate aims sought to be achieved. The Court took into consideration that the system of recoverable success fees may have a chilling effect on media reporting and hence on freedom of expression. The Court unanimously found a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Fourth Section), case of MGN Limited v. United Kingdom, No. 39401/04 of 18 January 2011

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