



Doc. 13849

06 July 2015

Compatibility of national defamation legislation with the European Convention of Human Rights

Reply to Written question¹: Written question No. 677 (Doc. 13696)
Committee of Ministers

1. In reply to Written Question No. 677, the Committee of Ministers would inform the Honourable Parliamentarian that the Committee of Ministers has not made any recommendation with regard to legal aid for defamation claims and it does not have any information as to whether the practice referred to is widespread among member States.

2. The Committee of Ministers has no competence to pronounce on questions concerning the interpretation of the European Convention on Human Rights. However, Article 10 of the Convention protects the right to freedom of expression and Article 6 protects the right to a fair trial. In its case law under Article 10, the European Court of Human Rights has held that sanctions resulting from defamation proceedings constitute an interference with the exercise of the right to freedom of expression, as guaranteed by paragraph 1 of Article 10. In determining whether such an interference is justified, the Court takes into account, among other factors, the person targeted by the defamatory remarks. It has held that the limits of permissible criticism are wider with regard to the government² and politicians³ than as regards private individuals. Civil servants, acting in an official capacity, are also in certain circumstances subject to wider limits of acceptable criticism although, since it is important for them to enjoy public confidence, it may sometimes be necessary to protect them from offensive and abusive verbal attacks when on duty.⁴

3. The Court has principally dealt with the issue of legal aid for the purpose of defending defamation proceedings in its case law under Article 6 § 1. It has held that the question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend upon the importance of what is 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. Moreover, it may be acceptable to impose conditions on the grant of legal aid based on the financial situation of the litigant or his or her prospects of success in the proceedings. In particular, it is not incumbent on the State to seek through the use of public funds to ensure total equality of arms between the assisted person and the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary.⁵ In the case of *Steel and Morris v. the United Kingdom*, where the applicants were defendants in complex libel proceedings brought by the fast food company McDonald's, the Court held that the denial of legal aid deprived the applicants of the opportunity to present their case effectively before the national court and contributed to an unacceptable inequality of arms, in violation of Article 6 § 1. It further found that the inequality of arms and the difficulties under which the applicants laboured were significant in assessing the proportionality of the interference with their right to freedom of expression and that the lack of procedural fairness and equality also gave rise to a breach of Article 10.

1. Adopted at the 1232nd meeting of the Ministers' Deputies (1 July 2015).

2. *Castells v. Spain* (1992) §46.

3. *Lingens v. Austria* (1986) § 42.

4. *Janowski v. Poland* [GC] (1999).

5. *Steel and Morris v. the United Kingdom* (2005) §§ 59-62.



4. It can be seen, therefore, that although the question raised by the Honourable Parliamentarian has not been addressed directly by the Court, issues might arise of disproportionate interference with freedom of expression, or deprivation of the right to a fair trial, if a member State were to have in place a scheme whereby legal aid was systematically granted to civil servants bringing defamation proceedings against defendants who were not legally aided. However, the Court's approach is fact-specific and it is impossible to draw from the case law to date a general rule as to the compatibility of such legislation or practice with the provisions of the Convention.