



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

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## FOURTH SECTION

Application no. 39449/21  
Grzegorz Zenon MALKIEWICZ and Others  
against the United Kingdom  
lodged on 30 July 2021  
communicated on 21 April 2022

### SUBJECT MATTER OF THE CASE

The applicants are the owner and editors of a Polish-language monthly magazine widely read by the London Polish community. They were sued for libel by the subject of an article published in the magazine, who was funded by a conditional fee arrangement (“CFA”). A High Court judge dismissed the claim, having found that most of the allegations against the claimant were true and that the public interest defence applied to all of them. The Court of Appeal allowed the claimant’s appeal, finding, *inter alia*, that the judge had been wrong to uphold the public interest defence; that he had not been entitled to find that the most serious allegation against the claimant was true; and that the trial had been unfair. The Court of Appeal remitted the case for an assessment of the quantum of the claimant’s damages. The Supreme Court dismissed the applicants’ appeal but ordered that there should be a full retrial. It made no order for the costs of the original trial (although the costs incurred by the ultimately successful party were to be reserved to the judge at the retrial), but ordered the applicants to pay 60% of the claimant’s costs in both the Court of Appeal and the Supreme Court. The applicants were also ordered to make an interim payment of GBP 50,000 to the claimant.

Prior to the retrial the matter settled with no order as to costs, on the proviso that the applicants did not seek the return of the interim payment.

**QUESTIONS TO THE PARTIES**

1. Did the recoverability of the claimant's success fees violate the applicants' rights under Article 10 of the Convention (see, *mutatis mutandis*, *MGN Limited v. the United Kingdom* (no. 39401/04, 18 January 2011))?

2. Did the operation of the costs regime in the present case raise any other issues under Article 10 of the Convention?

3. Have the applicants exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention?

4. As the applicants settled the defamation claim brought against them, have they ceased to be victims of the alleged violation within the meaning of Article 34 of the Convention?

MALKIEWICZ AND OTHERS v. THE UNITED KINGDOM –  
SUBJECT MATTER OF THE CASE AND QUESTIONS

APPENDIX

No.	Applicant's Name	Year of birth/ registration	Nationality	Place of residence
1.	Grzegorz Zenon MALKIEWICZ	1956	Polish	London
2.	Teresa BAZARNIK- MALKIEWICZ	1957	Polish	London
3.	CZAS PUBLISHERS LIMITED	2006	British	London