

The Civil Law of Defamation

In December 1991, the Commission published a Report on [*The Civil Law of Defamation \(LRC 38-1991\)*](#), following a 1989 request by the Attorney General and building on a [*Consultation Paper on the Civil Law of Defamation \(LRC CP 3-1991\)*](#) published earlier in 1991. The Report contains a particularly detailed analysis of the role which can, or should, be played by the Constitution in shaping a reformed law of defamation as well as the relevant provisions of the European Convention on Human Rights.

The Report makes 58 recommendations in total including:

- (1) Abolishing the distinction between libel and slander;
- (2) A new definition of defamation;
- (3) A provision that defendants in defamation actions may make payment into court without admission of liability;
- (4) A provision that an apology is not to be construed as an admission of liability and will be taken into account in any award of damages;
- (5) Changing the law of privilege, so as to remove the defence of absolute privilege from communications between members of the Executive as well as communications between spouses;
- (6) A provision for a defence to a claim for general (but not special) damages that the defendant exercised reasonable care prior to publication in attempting to ascertain the truth of the allegation;
- (7) Placing the burden on the plaintiff to prove that the words complained of were untrue;
- (8) A provision that all issues of fact in defamation actions in both the Circuit Court and the High Court, other than damages, should be determined by juries, subject to the entitlement of juries to make a finding that the plaintiff is entitled to nominal damages only;
- (9) Clarification of the law of providing that the Supreme Court can assess damages on an appeal;
- (10) Introduction of a new remedy of a declaratory judgement providing the plaintiff with a speedy method of correcting a false statement;
- (11) A provision for the obtaining of correction orders and/or declaratory judgments where the defendant has failed to establish the truth of a defamatory allegation of fact;
- (12) A provision for a new cause of action in respect of defamation of the dead; and
- (13) A provision that distributors and printers should be immune from defamation.

Draft Legislation in Report

Draft legislative provisions were included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Defamation Act 2009*.