



For immediate release

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ARTICLE 19 Review of Ireland's Defamation and Privacy Bills

Commissioned by the Organisation for Security and Co-operation in Europe (OSCE), ARTICLE 19 has prepared an extensive analytical report on the two Bills within the framework of international standards governing the right of freedom of expression. The report is available [here](#).

The OSCE Representative on Freedom of the Media has today presented ARTICLE 19's legal analysis to the Irish government. The press release of the OSCE Representative on Freedom of the Media on ARTICLE 19's report is available [here](#).

ARTICLE 19 welcomes the legislative reforms to harmonise Ireland's defamation and privacy laws with the jurisprudence of the European Court of Human Rights. ARTICLE 19 considers the Bill represent major improvements in national law. However, the Bills still pose some significant issues for the balancing of free expression and the protection of the rights and reputations of others, as is summarised below.

The summary of ARTICLE 19's concerns are as follows:

Defamation Bill

- **No creation of a statutory Press Council** under the Defamation Bill: press councils are complicated and controversial bodies and we urge that that the Defamation Bill is amended to reflect the impossibility of effectively legislating for a press council;
- **Defamation must not be criminalised**: we are highly concerned by the proposal to create a criminal offence of "publication of gravely harmful statements";
- **No additional aggravated or punitive damages for the manner in which the defendant conduct his or her defence**;
- **Necessary amendments to defences to defamation**:
 - *There must be an absolute defence of truth*, with the plaintiff bearing the onus of proving falsity;

- *The defence of “honest opinion” must be amended* to ensure statements of opinion and value judgements are protected;
- *The defence of “fair and reasonable publication” should not be conditional upon a lack of “spite, ill will or other improper motive”;*
- Similarly, *the defence of qualified privilege should reflect the common law threshold of ‘malice’, rather than the lower standard of “spite, ill will or other improper motive”;*
- *The defence of ‘innocent publication’ should be clarified to absolve Internet Service Providers of all responsibility for mere hosting of posts on websites; and*
- **Incorporate the torts of slander of goods, slander of title and malicious falsehood into the tort of defamation, or provide for these in separate legislation;**
- **Affirm the fundamental requirement that journalists are entitled to protect their sources**

Privacy Bill

- **Define privacy in terms of Article 8(1) of the European Convention on Human Rights;**
- **Necessary amendments to ‘public interest’ defences available to the media:**
 - *The requirement of ‘good faith’ should be removed* in Section 5(1)(e)(i);
 - *The requirement of ‘public importance’ should be replaced by ‘public interest’* in Sections 5(1)(e)(ii) and 6(1)(a);
 - *The requirement of ‘for the public benefit’ should be removed* from Sections 5(1)(e)(ii) and 6(1)(a);
- **Necessary amendments to matters to which the court shall have regard:**
 - *The media should be entitled to rely upon information contained in a publicly available register* by deleting Sections 4(3)(a);
- **Restrict the provisions permitting closed hearings:**
 - *The availability of an *in camera* order or court reporting restrictions should be restricted to a very limited range of circumstances, outlined in our report.*

NOTES TO EDITORS:

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ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.