

## **Annex V                    Main changes introduced by the Media and Defamation Act (Act 11 of 2018)**

- i. For words to be defamatory these must be such as to cause, or be likely to cause, serious harm to a person's reputation. This should discourage the filing of actions in libel and slander on the basis of statements which do not bring about serious consequences to a person's reputation;
- ii. The defences to an action for defamation are being strengthened to be brought in line with the latest case law of the European Court of Human Rights. At the same time, the privacy of individuals has also been further strengthened, so that such protection will not extend to public figures where what is said has significant relevance to the individual's public functions or to persons who although not being public figures are involved in incidents of public interest;
- iii. The list of publications which are privileged - since they report on events in respect of which there is a public interest for the public to be informed, and which leads to more journalistic freedom – has been extended;
- iv. The Media and Defamation Act includes no criminal offences and the few criminal offences found in the previous Press Act, which were retained, have been transposed into the Criminal Code. A large number of criminal offences which interfere with freedom of expression and which are currently found in the Criminal Code are to be repealed. The maximum amount of damages which can be awarded in an action for libel is going to remain the same as provided for at present under the Press Act (€11,640);
- v. Defamation by words and not by publication is no longer a criminal offence but will give rise to a civil action where the maximum amount of damages awardable will be €5,000;
- vi. In the hearing of causes for libel and slander a system of preliminary hearing is being introduced whereby the Court will consider whether a case can be decided summarily. Alternative means of dispute resolution and settlement in this field - such as through explanatory statements, apology or mediation, - are encouraged;
- vii. In establishing the amount of damages, the Court will also be obliged to take into account the effect which the payment of the damages will have on the person ordered to pay. This measure aims at better safeguarding the principle of proportionality;
- viii. Editors of websites have additional defences at their disposal which are different to those available to editors of the written press and to broadcasters and this due to the specific nature of websites which receive comments from the public;

- ix. When a statement has already been published or when the same statement is published several times, specific rules regulate the time barring of the action and the possibility to file a collective action in respect of the same statement;
- x. The right of reply has been retained but failure to respect this right will now give rise to a civil rather than a criminal remedy;
- xi. A new article makes provision in respect of the defamation of deceased persons when such a defamation has an effect on living persons;
- xii. Registration of editors, other than editors of broadcasting services, and publishers is on a voluntary basis. This does not apply to editors and publishers of websites. The possibility of having the Media Register administered by the media itself is also provided for;
- xiii. Due to the sensitive nature of regulations in the media field, regulations enacted under the Act will require prior approval by parliamentary resolution before they can come into force;
- xiv. The protection of sources applies to every editor, publisher, author, operator of a website or broadcaster;
- xv. The Code of Organisation and Civil Procedure will be amended to prohibit the issue of precautionary warrants in respect of actions for defamation;
- xvi. The Electronic Communications Regulation Act will be amended so that merely defamatory statements written or spoken on a website and which give rise to an action under the new law will no longer constitute an offence against the Electronic Communications Regulation Act; and
- xvii. Actions for criminal libel which will be pending at the time when the new Act comes into force will be discontinued.