[IE] Jurisdiction in Television Libel Cases

IRIS 1998-3:1/12

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In 1997, the Irish High Court gave judgment on a preliminary issue of jurisdiction in relation to three actions in which the plaintiffs claimed damages, including aggravated and exemplary damages, arising out of a television documentary made by Carlton Television and distributed by Ulster Television (Ewins v Carlton [1997] 2 ILRM 223). The documentary concerned the activities and experiences of a member of the Provisional IRA, an unlawful organisation.

Carlton broadcast only in mainland Britain but supplied the programme to other companies, including Ulster Television, which, simultaneously with Carlton, transmitted the programme to viewers in Northern Ireland. The programme was also received by approximately 110,000 people in the Republic of Ireland in three ways: by unavoidable spillage of the signal in areas bordering Northern Ireland, by use of aerials to intercept signals from Northern Ireland, and by cable and deflector systems.

The issue of whether the Irish courts had jurisdiction to hear the cases rested on the Brussels Convention of 1968, which had become part of Irish domestic law in 1988. Article 5(3) of the Convention provides an exception to the general rule in Article 2 that persons shall be sued in the courts of their domicile. The exception in Article 5(3) allows a person to be sued for tort, delict or quasi-delict in the courts of the place where the harmful event occurred. The European Court of Justice in Shevill v Presse Alliance SA (Case C-68/93 [1995] 2 AC 18) had ruled that Article 5(3) allowed the victim of a libel by a newspaper distributed in several contracting states to bring an action for damages against the publisher either before the courts of the State where the publisher was established or before the courts of each contracting State in which the publication was distributed and where the victim claimed to have suffered injury to his/her reputation. In the former, the courts have jurisdiction to award damages for all the harm; whereas, in the latter, the courts have jurisdiction to rule solely in respect of the harm caused in their own State (see IRIS 1995-4: 6).

The Shevill case related to libel by newspaper, but the same problem in the context of television broadcasting had since been considered by the Northern Ireland High Court in Turkington v BBC (Turkington & others v Baron St. Oswald and British Broadcasting Corporation High Court, Northern Ireland, 6 May 1996) and the Article 5(3) exception applied. Adopting the reasoning in Turkington, the Irish court was satisfied that in terms of a television or radio broadcast there is no

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distinction between publication and distribution where both happen simultaneously. The rule of domestic law, that the original publisher of a defamatory statement is liable for its republication by another person, where inter alia the repetition or republication of the words was the natural and probable result of the original publication, was met. The natural and probable consequence of Carlton supplying the programme to Ulster Television for distribution was that it would reach a significant number of viewers within the jurisdiction of the Irish courts and that harm - if there was harm - would be done in the Irish State. The plaintiffs, therefore, were entitled to take their action in the Irish courts but, under Article 5(3) of the Convention, to claim damages only for the harm done to them in this State and not on a worldwide basis.

David Ewins v. Carlton U.K. television Ltd and Ulster television plc; Michael Collins v. Carlton Television Ltd and Claran McBride v. Carlton Television plc, High Court 1995 No. 2899P, 1995 No. 6175P and 1995 No. 2935P (Barr J) 3 March 1997

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