[IE] Court of Appeal orders reduction in damages for defamation of lawyer in TV news report

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The Court of Appeal has ordered that damages of EUR 140,000 awarded in the High Court against the broadcaster TV3 for defaming a lawyer in a news report be reduced to EUR 36,000 (for High Court judgment, see IRIS 2016-1/18). This was the first time the Court of Appeal considered the “Offer to make amends” provision under the Defamation Act 2009. In November 2013, lawyer David Christie was defamed by commercial broadcaster TV3 in a news bulletin reporting a court case which incorrectly identified him as his client, who he was representing in a criminal trial. Two days after the broadcast, Christie wrote to TV3 claiming the broadcast was defamatory and seeking a retraction, apology, and “substantial compensation”. Shortly after, TV3 broadcast a correction and an apology stating that there was absolutely no suggestion that Mr Christie had been on trial for any offences and apologised to Mr Christie and his family for any distress and embarrassment. Following the apology, Mr Christie initiated defamation proceedings against TV3 and the broadcaster invoked section 22 of the Defamation Act 2009. This section provides that a person who has published a statement that is alleged to be defamatory may make an offer to make amends, which is defined as publishing a suitable “correction” and “apology” and paying compensation or damages. Where parties do not agree as to the amount of damages, the High Court can determine the amount. In 2016, the High Court assessed the starting point of the level of damages in a fully contested case of this kind as being a sum in the region of EUR 200,000. The Court awarded Mr Christie EUR 140,000 in damages taking into account the offer of amends and the apology. TV3 appealed that decision to the Court of Appeal, contending that the starting point of an award of EUR 200,000 in a case of this kind “is just too high” and “appropriate weight had not been given to the nature of the apology and the offer of amends.”

In May 2017, in considering the arguments in the Court of Appeal, Justice Hogan stated that the offer of amends procedure introduced by section 22 of the 2009 Act, “is one of the most significant changes effected by this legislation”. In reaching his decision, Hogan recognised that while this was “a serious defamation” of Mr Christie, “it was not at the level which would merit a starting point of EUR 200,000.” The judge was of the opinion that, taking into account all the relevant factors including the one-off nature of the broadcast, its relatively short duration, the failure to name Mr Christie and the lack of animus towards him, and the fact that it was an obvious error to which those closest to Mr

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Christie, his family, friends, work colleagues and clients, would surely know, he considered that these factors mitigated the otherwise very serious nature of the defamation. Accordingly, the appropriate starting point for the Court of Appeal judge was a figure of EUR 60,000. Justice Hogan also asserted that while the apology published by TV3 was "satisfactory," meaning that TV 3 would be entitled to a substantial discount, he stated that, "that figure could itself have been higher had for example, the apology acknowledged that Mr Christie had been defamed and had apologised for the distress and embarrassment which the public had caused." Justice Hogan allowed the appeal "to the extent" that he reduced the starting figure of EUR 200,000 to EUR 60,000 and increased the level of discount from one-third to 40%. He accordingly substituted a figure of EUR 36,000 for the award of EUR 140,000 made by the High Court as the sum to be paid to Mr. Christie by way of damages for defamation.

Christie v TV3 Television Networks Limited [2017] IECA 128, 04 May 2017

http://www.bailii.org/ie/cases/IECA/2017/CA128.html

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