CIVIL COURTS
(FAMILY SECTION)

MADAM JUSTICE

Onor. Abigail Lofaro LL.D., Dip. Stud. Rel.,
Mag. Jur. (Eur. Law)

Hearing of the 31st January 2023

Application Number: 289/2021 AL

A B

-vs-

C D E

The Court:

Having seen the application filed by C D E on the 11th February 2022, wherein it stated that:

1. *Whereas, the defendant is submitting this urgent application following the declaration by this Honourable Court of his contumacy and this during the first sitting of these proceedings in the names referred to, held on the 09.02.2022;*

2. *Whereas, defendant's reply was submitted into the acts of these proceedings together with a counter-claim on the 07.02.2022 and this, despite prima facie evidence to the contrary, due to the fact that he was delivered the sworn application filed by the plaintiff on the 17.01.2022;*

3. *Whereas, it transpired during the sitting that the respondent was apparently notified with the acts of the proceedings on the 13.01.2022 given that the Court Marshall's certificate carries the date of the 13.01.2022 with the certification that s/he had notified C D E on that date with the words 'ngħid u niżgura li nnotifikajt lill-…'*[1]*;*

4. *Whereas, the defendant was not notified on this date (applicant's emphasis) and it is equally certain that the Court Marshall certainly did not notify the defendant either, as will be amply shown on this application;*

5. *Whereas, as was stated during that sitting and as has been re-confirmed by the applicant following the hearing, the applicant was delivered the acts of these proceedings on the 17.01.2022 (applicant's emphasis);*

6. *Whereas, as perhaps singularly and distinctly from other forms of notification of acts to persons, legal or physical, within the jurisdiction of Malta, notification of any and all acts to personnel working within Embassies here in Malta occurs through the Foreign Office, situate in Valletta;*

7. *Whereas, to this end the Court Marshall, as in customary and as also will be shown, repairs to the Foreign Office and not the Embassy of concern (applicant's emphasis) with the act and deposits the act with the official responsible at the Ministry of Foreign Affiars in Valletta;*

8. *Whereas, it transpires that the act in question was delivered to the Foreign Office on the 13.01.2022 and delivered to a certain Maria Baldacchino or any one of her subordinates;*

9. *Whereas, the Foreign Office then follows a procedure where it draws up a Note Verbal and encloses the said note in an envelope for delivery by the Foreign Office's courier to the Embassy;*

10. *Whereas, the Note Verbal was prepared on the 14.01.2022, a copy of which note as dated is being attached herewith and marked a Doc 'DSG1';*

[1] Trans. *I declare and ascertain that I notified…*

11. *Whereas, the Foreign Office's dispatcher or courier then effects the delivery and files a note in a register at the Ministry of Foreign Affairs, with the details of the delivery, to whom the note verbal was delivered, the contents of the ote verbal and the person with whom the note verbal was left – the date of the effected delivery is not recorded by this courier however;*

12. *Whereas, it transpires that note verbal in question was delivered to a certain Charlene Sciberras, a copy of the relative portion of the register at the Ministry of Foreign Affairs is being attached herewith and marked as Doc 'DSG2';*

13. *Whereas, the Embassy of the Kingdom of Spain is situate within the Whitehall Mansions building in Ta' Xbiex. Within this building there are a number of offices and embassies within it. A receptionist is employed by the building administrators and caters to receive any postal items intended for the various offices;*

14. *Whereas, it is also important to note that the Embassy of Spain closes at 1500 hrs on Fridays;*

15. *Whereas, the receptionist in question on the 14.01.2022 and the 17.01.2022 was Ms Charlene Sciberras who ether received the envelope with the note verbal in question on the 14.01.2022 or on the 17.01.2022 (the 15.01.2022 and 16.01.2022 was the weekend and the building would have been closed);*

16. *Whereas, without prejudice and subject to the foregoing it is further noted that no deliveries are effected by the Foreign Office couriers during the weekends;*

17. *Whereas, if Charlene Sciberras received the note verbal on the 14.01.2022 in the afternoon she would not have been in a position to deliver it to the embassy within the comlex given that it would have been closed and, equally, a member of staff of the embassy would not have been in a position to retrieve this envelope from her desk either, and this for the same reasons;*

18. *Wheres, the uptake of the note verbal to the Embassy of the Kingsom of Spain in question occurred on the 17.01.2022, and this known is because it was pcked up by a certain Pedro Santamaria, who is a member of staff at the Embassy in question;*

19. *Whereas, as soon as he was given these acts he transmitted them immediately to the undersigned advocate by email, a copy of which email is being attached herewith and marked as Doc 'DSG3';*

20. *Whereas, the certificate provided by the Court Marshall as well as the mose of service of the acts in question is in contravention of Art. 17, Chap. 12 because of amongst other things, the applicant does not work at the Malta Foreign Office and the Malta Foreign Office cannot substitute itself for the person for whm the act is intended;*

21. *Whereas, technically it is doubtful whether even at this stage may he be considered legally notified with plaintiff's sworn application;*

22. *Whereas, it transpires that the Court Marshall responsabile for the transmission of the act was Raymond Borg and it also transpires from the Court record that the act was returned on the 17.01.2022 as is shown on the Court online system, a screenshot of which is being attached herewith and marked as Doc 'DSG4';*

Therefore, in the light of all tat has been stated above, having heard the evidence of all the witnesses contained in the list attached to this application and examined al the documents submitted hereto and during the hearing of this application, the applicant humbly requests that this Honourable Court to:

1. *Stay and suspend any decision on any application that the plaintiff may file, or may have filed, between the declaratiob of applicant's contumacy and the decision of this application and this until such time as this application has been decided definitively by this Honourable Court; and subsequently, and this due in particular to the adverse and prejudicial effects of contumacy itself; and subsequently;*

2. *Declare that the applicant meets the requirements to clear his contumacy in that he did nor wilfully ignore the order of the Court to submit a timely reply to the claims raised by the plaintiff, that he had a just cause giving rise to a legitimate impediment independent of his will and as a consequence of which he filed his reply within the twenty (20) day limit from the moment he was given the acts; and consequently;*

3. *Allow the defendant to submit his reply, together with a counter-claim at his option, within the time limit established by law.*

Having seen the reply of A B, filed on the 24th May 2022, whereby she stated that:

1. *That by means of an application dated the 11th of February 2022 defendant is seeking to justify his state of contumaciousness and to be allowed to filed his sworn reply together with his counter-claim.*

2. *That the defendant's application us unfounded in fact and at law and should be rejected.*

3. *That according to the constant jurisprudence of Maltese courts, in order for a defendant to justify a state of contumaciousness the defendant must show that he failed to file his reply within the time-limit established by the law for valid reasons that were independent of his will.*[2]

4. *That from the acts of the proceedings it results clear as day that defendant was notified with plaintiff's sworn application in the 13th January 2022. Defendant tries to put this in doubt by means of an allegation which in itself is not even based on a certainty but merely on a possibility. In fact, according to defendant the Note Verbal with the acts that were to be notified to him might have been delivered to the Embassy of Spain on the 14th or on the 17th, on yje 14th they may have been delivered after 3pm at which time the Embassy is closed. It is ludicrous that defendant expects to justify his state of contumaciousness by means of more suppositions that*

[2] See for instance: **Callus vs Chircop** (1926); **Cassar vs Vassallo** (1937); **Market Handle Limited vs Fahrenheit Freight Forwarders Co. Limited** (2012).

coincidentally, benefit his position, but which are not corroborated by any objective evidence.

5. *That Doc. DSG2 submitted by defendant with this application shows clearly that plaintiff's application was delivered to the Embassy on the 14th of January 2022. Since it appears that the Note Verbal was effectively delivered, the logical conclusion is that the delivery was affected at a time when the Embassy was open, because reason dictates that delivery would not have been possible had the Embassy been closed. Putting aside the evident logical conclusion that one may easily reach from this document submitted by defendant himself, the fact remains that this document does not show the time when delivery was affected and defendant failed to produce any evidence that clearly proves that the document was delivered after 3pm on Friday or even on a day after this date as he alleges might be the case. In fact, in his application defendant merely hypothesises about this and its alleged ramifications, which means that there is not even at the very least defendant's sworn declaration that plaintiff's application could not have reached him on the 14th of January 2022.*

6. *This means that frm defendant's application and the documents attached therewith, this Honourable Court can at best reach the conclusion that defendant was notified on the 14th of January 2022 and not on the 13th. From this it would follow that defendant's reply ad counter-claim were in any case filed late, because following service on the 14th of Jauary 2022 defendant effectively had until the 3rd February 2022 to file his reply and counter-claim, whereas he did so on the 7th of February.*

7. *That therefore from the above it is manifest that defendant failed to prove to the satisfaction of this Hourable Court that there was a valid cause independent of his will which justifies the tardiness of te filing of his reply and counter-claim. Since it is defendant who is claiming that his state of contumaciousness is justified, the burden of proof in this regard rests upon him. However, defendant manifestly failed to satisfy the burden of proof in order to justify his contumaciousness, since he based his alleged justification on mere possibilities that were not corroborated by concrete evidence and at best only managed to prove that he was served with*

paintiff's sworn application on the 14th of January, which only serves to further confirm his state of contumaciousness rather than justify it.

8. *For these reasons, plaintiff humbly submits that defendant's application of the 11th of February 2022 should be rejected by this Honourable Court, with all costs to be borne by defendant.*

Having seen all the documents exhibited by the defendant;

Having seen all of the acts of the cause in examination;

Having seen the evidence given by Margot Anne Bajada Schembri,[3] Raymond Borg,[4] Maria Baldacchino,[5] Pedro Santa Maria,[6] and the respondent himself;[7]

Having seen the final submissions of both parties;[8]

Having seen the respondent's note of reference filed on the 22nd Novembru 2022;[9]

Having seen the application of the defendant being adjourned for judgement today.[10]

Considered:

The factual aspects of this episode can be listed chronologically as follows:

a. By means of a sworn application filed on the 6th December 2021, the plaintiff A B proceeded against C D E, where she asked the Court to decide on the care, custody, access and maintenance of the minors F and G, siblings D B, which application was served on the defendant on the 12th January 2022 as the judicial act was left in the hands of Maria Baldacchino Bonnici within the Foreign Affairs in Valletta;

[3] Fol. 25.
[4] Fol. 35.
[5] Fol. 37.
[6] Fol. 40.
[7] Fol. 42.
[8] Fol. 44.
[9] Fol. 55.
[10] Fol. 27.

b. The defendant filed his sworn reply together with a counterclaim on the 7th February 2022;

c. During the hearing of the 9th February 2022, the Court declared that the defendant appeared to be in a state of contumaciousness and this in view of the fact that the sworn reply, as well as his counterclaim, had been filed late. Thus, the Court declared that it will no longer take cognisance of the same;

d. By means of an application dated 11th February 2022, the defendant C D E pointed out that although the court marshall left the documents with Maria Baldacchino Bonnici on the 12th January 2022, the documents were handed over to him personally on the 17th of January 2022. He therefore asked the Court to declare that he is not a state of contumaciousness but to have had a legitimate impediment, and consequently to declare further that he had lodged his sworn reply within the period of twenty (20) day period as established by law. To this action, the plaintiff filed her objection by means of a reply dated 24th May 2021;

e. After hearing all the relevant evidence, the application was put off for judgement.

Considered:

In legal terms, Article 158 of Chapter 12 of the Laws of Malta, in so far as is relevant to this case, provides as follows:

"(1) The defendant shall file his sworn reply within twenty days from the date of service, unless he intends to admit the claim

…

(10) If the defendant makes default in filing the sworn reply mentioned in this article, the court shall give judgment as if the defendant failed to appear to the summons, unless he shows to the satisfaction of the court a reasonable excuse for his default in filing the sworn reply within the prescribed time. The court shall, however, before giving judgement allow the defendant a short time which may not be extended within which to make submissions in writing to defend himself

against the claims of the plaintiff. Such submissions shall be served on the plaintiff who shall be given a short time within which to reply."

Pursuant to the above cited provisions and in accordance with the notice as put forward in the sworn application of the plaintiff and this in light of Article 156 sub-section 2 of Chapter 12 of the Laws of Malta, the defendant had a twenty (20) days period in order to file his sworn reply in the register of this Court, which period started running from that day whereby the he was served with the said application, and in this particular case such period expired on the 1st February 2022. However, from the acts of this case it is clear that such sworn reply was not lodged within the above mentioned period.

Our Courts' case-law have by now established that contumaciousness is based on the presumption that the defendant, by failing to reply to the plaintiff's legal claim and requests, he has shown a degree of disobedience - in Maltese it is called *'kontumelja'* - and this towards the Court's official call to appear before it, which as per law such disobedience in itself contains and shows an element of social disorder and is considered as an act which merits to be punished by means of a sanction whereby the defendat will be precluded from participating in the action in the sense that he cannot put forward his own evidence or even contest the evidence submitted by the plaintiff. Therefore, by default, contumaciousness is generally considered to be a punitive measure that is necessary to ensure respect towards the Court.

In the judgement of **Samchrome FZE vs Danko Koncar et**,[11] a reference is made to the judgement of **Kenneth Abela v. Aplan Limited et**[12], whereby the Court held that:

*"Trattandosi ta' norma legali, l-osservanza tat-terminu fiha prefiss kellu jigi mhares ad unguem, in raguni ta' l-element dekadenzjali insit. Dan anke ghaliex kif sewwa jinsab ritenut "l-osservanza tat-termini stabbiliti fil-Kodici ta' Organizzazzjoni u Procedura Civili u f' ligijiet ohra specjali li jirregolaw il-kondotta tal-proceduri quddiem il-Qrati u quddiem it-Tribunali huma ta' ordni pubbliku u ma jistghux jigu bl-ebda mod injorati u lanqas bil-kunsens tal-partijiet rinunzjati jew mibdula" ("**Giuseppi Caruana -vs- Charles Psaila**", Appell mill-*

[11] Decided by the Court of Appeal on the 11th March 2016 (Application Number 843/14).
[12] Decided by the Court of Appeal (Inferior Jurisdiction) on the 6th February 2008.

*Bord li Jirregola l-Kera, 21 ta' Marzu 1997); Jikkonsegwi mill-espressjoni ta' fehma fis-silta mis-sentenza appena citata illi t-termini procedurali la jista' jigi sanar b'adezjoni tal-kontro-parti fil-proceduri u lanqas prorogat; sospiz jew interrott. Kif gie minn din il-Qorti sa recentament hafna osservat, "in-natura inderogabbli tat-termini processwali ggib b'konsegwenza illi dwarhom ma jistghux jigu applikati provvediment sanatorji jew ta' rimessjoni ankorke d-dekors inutli taghhom ma jkunu imputabbli lill-parti interessata. Dan ghaliex ghal motiv illi dik l-improrogabilita hi hekk necessarja ghal raguni ta' certezza u, wkoll, ta' uniformita". (**Salina Wharf Marketing Limited –vs- Malta Tourism Authority**", Appell mill-Bord ta' l-Appelli dwar it-Turizmu, 12 ta' Dicembru 2007)".*

In view of this rigorous approach in the application of the procedural time limits laid down by law, the severe effects and the most often irreversible sanctions brought about by non-compliance with the time limit laid down in Article 158 sub-section 1 for the filing of the sworn reply, through time it was generally accepted that this institute of contumaciousness should be defined and thereafter applied restrictively. Despite the fact that contumaciousness is described as a disrespect to the judicial authority, it never translates into any form of admission, in whole or in part, of the plaintiff's claim. Defending oneself in a civil case is a right and certainly not an obligation, from which derives the autonomy of that party who may choose not to act and react, except for the relative procedural consequences which might be incurred due to such decision.

However, as set out in sub-section 10 of Article 158, the defendant who will be declared contumacious may nonetheless attempt to regain his procedural rights so as reactivate himself and to fully participate in the proceedings. Therefore, the defandant has the possibility to justify his disobedience by filing an application and subsequently the Court is required to assess the intention of the defendant, whereby it has to distinguish between the defendant showing absolute disinterest (*'kontumaċja bi ħtija'*) and the defendant showing that he intended to contest the lawsuit but failed to do so for a just impediment.[13] To justify the defendant's state of contumaciousness, *"din trid tkun involontarja, mhux kolpuza (i.e., li tohrog minn ghemil traskurat), skatenata minn (jew rizultat ta') kawza gusta konsistenti f'impediment legittimu, tali impediment irid ikun indipendenti mill-volontà tal-*

[13] **Gloria Beacom vs Perit Anthony Spiteri Staines**, decided by the First Hall Civil Court on the 9th December 1993.

konvenut, tali impediment jista' jkun frott ta' zball basta jkun wiehed invincibbli, tali impediment legittimu ghandu jkun fiziku u mhux wiehed merament morali".[14] In this regard, *vide* judgements of **Vittoria Cassar vs. Carmelo Vassallo**,[15] and **Simone Eve Collett Sammut et vs. Adam Sammut et**.[16]

Considered:

After the Court took cognisance of the submitted evidence, it will now proceed to the examination of the case in examination and assess whether the pleas put forward by the defendant are adequate to justify his current state of contumaciousness.

First and foremost, the Court starts by stressing that with regard to the matter of contumaciousness, as a guideline it adheres to the most consistent case-law, namely that the justification for comtumaciousness should be the exception and not the rule, and this due to the fact that it considers that the procedural timeframes for the filing of judicial acts as established by law, are there to create a stable and uniform procedural system, which timeframes are essential elements in any judicial process. Therefore, the Court also agrees that while the defendant must assert a just cause in order to remedy his state of contumaciousness, a cause which is attributable to his will or fault, it is not a *'just cause'*.[17] In this regard the Court makes reference to the judgement of **Carmelo Bugeja vs. Mary xebba Farrugia**,[18] whereby it reiterated that: *"f'materja ta' purgazzjoni tal-kontumacja gie dejjem ritenut li m'ghandux ikun hemm negligenza jew htija tal-parti, ghaliex allura minflok il-prova tal-kawza gusta jkun hemm il-"culpa" u f'dak il-kaz, il-persuna ma tkunx tista' tilmenta minn xejn ghaliex "qui culpa sua damnum sentit non videtur damnum sentire".*

Having established the above, the Court sees that the whole issue at hand revolves around the fact whether the notificaton and the twenty (20) day time period from service of the sworn application shall start running from the: (i) 12th January 2022 as declared in the notification report written by Court Marshall Raymond Borg

[14] **Margal Limited (Reġ. Nru. C-28583) vs Euharist Bajada**, decided by the Small Claims Tribunal on the 5th February 2019.
[15] Decided by the Court of Appeal (Inferior Jurisdiction) on the 29th May 1937; reported in Collection XXIX-I-1581.
[16] Decided by the Furst Hall Civil Court on the 17th March 2015.
[17] *Vide* judgement of **Victoria Tabone et vs. Daniel Orsini**, decided by the First Hall Civil Court on the 4th of July 2017.
[18] Decided by the Court of Appeal on the 16th February 1996.

where the latter left the judicial act with a certain Maria Baldacchino Bonnici within the Foreign Affairs, or, alternatively from the, (ii) 17th January 2022, precisely when the defendant alleges that he personally got hold of the acts and this after the Foreign Affairs passed on such acts as received by them on 12th January 2022 to the Spanish Embassy in Malta by means of a Note Verbal dated 14th January 2022.

In the light of the foregoing, the Court finds that it is not disputed that the defendant is a Spanish diplomat in Malta and therefore on the basis of Chapter 191 of the Laws of Malta he enjoys certain diplomatic immunities and privileges. However, in order for the Court to reach its conclusions on the merits of the matter in question, it must assess how judicial documents are to be served on diplomatic representatives by looking at the provisions of Chapter 191 (Diplomatic Immunities and Privilege Act) as the special law, as well as Chapter 12 of the Laws of Malta (Code of Organisation and Civil Procedure) as the general law regarding legal procedure:

i. Chapter 191 of the Laws of Malta incorporates the articles from the Vienna Convention on Diplomatic Relations, and on the basis of such provisions it appears that even the attempt to send a court marshall onto embassy premises is a violation of international law. This means that the only method of serving a diplomat is through official diplomatic channels, whereby all documents should be transmitted to the diplomat through the Foreign Ministry of the receiving state. Thus the Foreign Ministry of the receiving state is responsible for delivering the documents through the appropriate channels;

ii. Article 187 sub-section 1 of Chapter 12 of the Laws of Malta, does not mention anything in respect to the service of documents to diplomatic representatives, but only states that *"service shall be effected by the delivery of a copy of the pleading to the person on whom the pleading is to be served, whereversuch person may be found. Service may also be effected by leaving such copy at the place of residence or business or place of work or postal address of such person with a member of his family or household or with a person in his service or with his attorney or person authorized to receive his mail. If service is not effected on a first attempt, the officer charged with the service shall make two other attempts to serve the copy of the pleading*

> *without further authorisations by the court and such attempts shall be made at different times of the day with the last attempt at service to be made after judicial hours. Each attempt of service is to be made after the payment of the appropriate fee due to the registry. The officer charged with the service shall file a separate certificate of service for each attempt made in the acts of the proceedings".*

From the premise it is clear that when a party to the case is a diplomat, the service of judicial acts onto such diplomat must be carried out through the Foreign Affairs in Valletta and this is on the basis of the Vienna Convention on Diplomatic Relations provisions. This procedure is ideal in such circumstances since it provides notice to both domestic and foreign heads of state and thus preventing any potential conflict between nations, and keeping diplomats and ambassadors on both sides safe. In fact, the Court itself sees that the defendant is aware of all this as in his own application he stresses that *"notification of any and all acts to personnel working within Embassies here in Malta occurs through the Foreign Office, situated in Valletta. Whereas, to this end the Court Marshall, as is customary and as also will be shown, repairs to the Foreign Office and not the Embassy if concern with the act and deposits the act with the official responsible at the Ministry of Foreign Affairs in Valletta"*. However, he holds that *"the certificate provided by the Court Marshall as well as the mode of service of the acts in question is in contravention of Art. 187, Chapter 12 because amongst other things, the applicant does not work at the Malta Foreign Office and the Malta Foreign Office cannot substitute itself for the person for whom the act is intended"*.

However, the Court does not agree with this reasoning. The notification appears to be valid, and in no way contrary to Article 187 of Chapter 12 of the Laws of Malta. This is because Chapter 191 of the Laws of Malta fails to explain in an elaborate way how to serve a diplomatic representative in a serving country, but only explains that the court marshall is precluded from going to the Embassy for service, and therefore in the absence of an *ad hoc* procedure, service must be effected through Foreign Affairs on the basis of the provisions of Article 187 of Chapter 12 of the Laws of Malta. In fact, this article of the law stipulates that service may be effected by the delivery of a copy of the judicial act even to that person authorised to receive his/her mail. In the present case, the person who can and is authorised to receive service of a judicial act of a diplomatic representative

in Malta is precisely a representative of the Foreign Affairs under the Ministry of Foreign and European Affairs and Trade, and acts as an intermediary between Malta and the foreign embassy located in Malta.

In light of the above, the Court finds that the defendant's argument is unfounded, and the manner in which the service was effected is indeed the only method permissible in terms of the law. Therefore, in the Court's opinion, the date on which the defendant was validly served with the judicial act is indeed the 12th January 2022. Should the Court take into account the defendant's argument and accepts that the service was effected on the 17th January 2022 as claimed by himself, that is when the documents have personally reached the defendant, this Court will be discriminating between those who are not diplomatic representatives in our country and those who in fact are. Being a diplomat in a serving country will provide you with certain immunities and priviliges, but does not place you above the law, and since Chapter 191 of the Laws of Malta fails to provide for a certain method of service of documents on diplomats, Article 187 of Chapter 12 of the Laws of Malta shall *ipso jure* apply. Whilst establishing that the method of service in this particular case was valid, the Court finds that in any case, the fact that the defendant got hold of the sworn application on the 17th January 2022, it shows that: (i) the Foreign Affairs sent the documents to the Embassy of Spain within two (2) days, and this on the basis that it was proven that the Foreign Affairs sent the documents by means of a Note Verbal on the 14th Janury 2022, and (ii) there were still fifteen (15) days left from the 17th January 2022 for the defandant to file his sworn reply, which period is undoubtedly considered sufficient time for a party to draft a reply and a counterclaim.

Furthermore, in the judgement of **Giovanni Cilia La Corte noe vs. Edgardo Camilleri**,[19] the Court of Appeal (Inferior Jurisdiction) confirmed that, *"Che la notifica di un atto e` validamente fatta colla consegna di copia dello stesso nel luogo della sede di affari, della persona a cui quello e` diretto ... ..."*, and thus the Court therefore finds that the defendant had no legitimate impediment to file his reply within the time-limits laid down by law, and thus his claim for justification of contumaciousness is not justified.

DECISION:

[19] Decided on the 24th April 1917.

Accordingly, and for the above reasons, the Court finds that the defendant has failed to justify his state of contumaciousness and therefore rejects his resquests as set out in the application of the 11th February 2022.

The costs of this legal procedure shall be borne by the defendant.