L.N. 177 of 2024

EUROPEAN UNION ACT
(CAP. 460)

Strategic Lawsuits Against Public Participation Order, 2024

IN EXERCISE of the powers conferred by article 4(2) of the European Union Act, the Prime Minister and the Minister responsible for Justice, have made the following order:-

Citation, scope and applicability.

1. (1) The title of this order is the Strategic Lawsuits Against Public Participation Order, 2024.

(2) The scope of this order is to transpose Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ("Strategic lawsuits against public participation").

(3) This order applies to matters of a civil or commercial nature with cross-border implications brought in civil proceedings, including procedures for interim and precautionary measures and counter-claims, irrespective of the nature of the competent court or tribunal.

(4) This order shall not extend to revenue, customs, or administrative matters or the liability of the State for acts and omissions in the exercise of State authority or to claims against officials who act on behalf of the State or to liability for acts of public authorities, including liability of publicly appointed office-holders.

(5) This order shall not apply to criminal matters or arbitration and is without prejudice to the laws of criminal procedure.

Interpretation.

2. In this order, unless the context otherwise requires:

"abusive court proceedings against public participation" means court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims, including but not limited to measures such as:

(a) the disproportionate, excessive or unreasonable

nature of the claim or part thereof, including the excessive dispute value;

(b) the existence of multiple proceedings initiated by the plaintiff or associated parties in relation to similar matters;

(c) intimidation, harassment or threats on the part of the plaintiff or the plaintiff's representatives, before or during the proceedings, as well as similar conduct by the plaintiff in similar or concurrent cases; and

(d) the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith;

"Court" includes any Court and any tribunal established by law seised of any matter to which this order applies;

Cap. 249.

"person" shall have the same meaning assigned to it in article 4(e) of the Interpretation Act;

"public participation" means the making of any statement or the carrying out of any activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting, or assisting action directly linked thereto, and which concerns a matter of public interest;

"matter of public interest" means any matter which affects the public to such an extent that the public may legitimately have an interest in it, included but not limited to areas such as:

(a) fundamental rights, public health, safety, the environment or the climate;

(b) activities of a natural or legal person that is a public figure in the public or private sector:

Provided that an activity of a public figure shall not be considered as a matter of public interest when the sole purpose of a statement or activity concerning such a person or entity is to satisfy the curiosity of a particular audience regarding the details of a natural person's private life;

(c) matters under consideration by a legislative, executive or judicial body, or any other official proceedings;

(d) allegations of corruption, fraud, or of any other offence of the same nature, whether criminal or otherwise;

(e) activities aimed at protecting common values, such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, and the protection of democratic processes against undue interference particularly by fighting disinformation;

"third-country" means a State which is not a Member State of the European Union.

Cross-border implications.

3. (1) For the purposes of this order, the Court seised shall, after having due regard to the particular circumstances of the relevant case, consider a matter to have cross-border implications unless both parties are domiciled in Malta and all other elements relevant to the situation concerned are located only in Malta.

(2) Domicile shall be determined in accordance with the relative provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Defendant's safeguards and remedies.

4. (1) In cases where court proceedings to which this order applies are brought against a person on account of his engagement in public participation, such person may apply to the court to provide for:

(a) security, as provided for in article 5;

(b) early dismissal of manifestly unfounded claims, as provided for in article 6; and

(c) remedies against abusive court proceedings against public participation, as provided for in article 7:

Provided that the court may also grant such safeguards and remedies *ex officio*.

(2) A claim filed in accordance with sub-article (1) shall include a description of the elements on which it is based and the relative supporting evidence.

(3) When an application in terms of sub-article (1) is made, the Court may in accordance with article 960 of the Code of Organization and Civil Procedure and if the defendant so approves, allow that associations, organisations, trade unions and other entities which have a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation intervene in the suit to support the defendant or allow such entities to provide information in those proceedings.

Cap. 12.

Security for costs.

5. The Court may, after having due regard to the right of access to justice, order the plaintiff to provide security for the estimated costs of the proceedings or apply other specific safeguards, taking into account all costs and, or penalties which may potentially be due to the defendant in accordance with this order:

Provided that after having due regard of the circumstances of the case, the right to an effective remedy and the right to a fair trial, an application in accordance with this article shall be treated in an accelerated manner.

Early dismissal.

6. (1) The Court may at the preliminary hearing and after hearing the parties and such evidence as it deems necessary, dismiss the case if it is satisfied that the claim is manifestly unfounded:

Provided that:

(a) the burden of proving that the claim is well-founded rests on the plaintiff who filed the case;

(b) in such cases it shall rest upon the plaintiff to substantiate the claim to the extent that it enables the court to evaluate if the claim is not manifestly unfounded; and

(c) having due regard of the circumstances of the case, the right to an effective remedy and the right to a fair trial, a claim under this article shall be treated in an accelerated manner.

(2) The Court's decision under sub-article (1) shall be subject to appeal in accordance with the provisions regulating appeals in the Code of Organization and Civil Procedure or in any other applicable law.

Cap. 12.

Liability for costs and dissuasive penalty.

7. (1) In cases where the Court declares the proceedings as abusive against public participation, it shall proceed to condemn the plaintiff to pay the defendant all the legal costs of the cause as taxable in accordance with the Schedule A of the Code of Organization and Civil Procedure or the costs provided for in any other applicable law and if the costs as claimed by the defendant exceed the costs as

Cap. 12.

provided in the said schedule or other law the court may at its discretion grant additional costs as it deems appropriate provided that it does not consider the costs requested by the defendant to be excessive.

(2) Apart from the costs provided for in sub-article (1) the Court may also impose at its discretion and according to all the circumstances of the case a dissuasive penalty on the plaintiff in an amount which shall not exceed ten thousand euro (€10,000) which shall be payable to the defendant as a civil debt.

(3) Claims under sub-articles (1) and (2) may be treated in an accelerated manner where possible, taking into account all the circumstances of the case, the right to an effective remedy and the right to a fair trial.

(4) Without prejudice to the Court's discretion under the proviso to article 4(1), the withdrawal of the case or any amendments to the initial claim by the plaintiff shall not affect the defendant's rights to apply to the Court for the award of costs and damages under this order.

Non-enforcement of manifestly unfounded or abusive third country judgments.

8. The court shall ensure that the recognition and enforcement of a third-country judgment in Court proceedings against public participation by a person domiciled in a Member State is refused, if those proceedings are considered to be manifestly unfounded or abusive under this order.

Protection against third country proceedings.

9. In cases where abusive court proceedings against public participation have been brought by a plaintiff domiciled outside the European Union in a court of a third-country against a person domiciled in Malta, that person may claim from the Court compensation for the damages and the costs incurred in connection with the proceedings before the court of the third-country:

Provided that if the case is still pending before a court of a third-country, the Court shall stay proceedings until such court of the third country delivers its final judgement.

Saving.

10. This order shall be without prejudice to the application of bilateral and multilateral conventions and agreements between a third-country and Malta or between a third-country and the European Union concluded before the 6th May 2024.

This order prevails.

11. This order shall apply and prevail to the exclusion of any other law in matters falling within the scope of its application.

Access to information.

12. (1) The court shall ensure that a person who files an application in accordance with article 4 shall have access to information on available procedural safeguards, remedies and support measures under this order and under any other applicable law.

(2) The Court shall ensure that final judgments delivered by Maltese Courts on any provisions of this order shall be published online.

(3) The Court Services Agency shall keep data on:

(a) the number of abusive court proceedings against public participation initiated in the relevant year;

(b) the number of such Court proceedings, classified by the type of defendant and plaintiff;

(c) the type of claim submitted on the basis of this order.

(4) The data referred to in sub-article (3) shall be submitted to the European Commission on an annual basis.

Legal aid in civil cross-border proceedings. Cap. 12.

13. Legal aid as provided for in Title X A of Book Third of the Code of Organization and Civil Procedure shall be granted in proceedings to which this order applies.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — *Printed at the Government Printing Press on FSC certified paper*

Prezz/*Price*
€0.54