

The importance of properly drafting the writ of summons and the exceptio obscuri libelli

The exceptio obscuri libelli is one of the defence means frequently raised by the defendant in court proceedings.

It has its legal basis in Article 154(1) of the New Code of Civil Procedure, which provides that "[...] *the summons must contain [...] the subject-matter and a summary of the pleas [...] failing which it shall be null and void*".

The exceptio obscuri libelli, which when upheld results in the nullity of the claim initiating the proceedings, sanctions in particular the lack of precision of the claims formulated in a too vague and general manner by the plaintiff, thus preventing the defendant from understanding precisely what is being claimed and what exactly he is risking.

Our firm, acting for the defendants, recently had occasion to raise this objection in the context of legal proceedings brought before the interim relief judge.

In an order recently issued, the interim relief judge reiterated the traditional doctrine in this area.

Thus, in order to avoid a lack of clarity, any legal claim must contain :

- the exact nature of the plaintiff's claims ;
- identification of the factual circumstances on which the claim is based in a sufficiently precise manner.



The objective is to enable the judge to determine the legal basis of the claim and not to mislead the defendant as to the purpose of the claim so that he can choose appropriate means of defence.

In this case, the judge upheld the exceptio obscuri libelli and declared the summons null and void on the grounds that although the statement of claim was sufficiently clear and precise, the wording used in the operative part of the summons left doubt in the minds of both the defendants and the court as to the subject matter of the claims.

In the end, the court found that the failure to specify the subject matter of the claim had caused prejudice to the defendants who were prevented from choosing appropriate means of defence and from organising their defence in a proper way.

This is an important decision in terms of the right of defence, reminding us of the strict rules to be followed for any legal claim and equally remarkable as the exceptio obscuri libelli is often raised but very rarely upheld by the courts.

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