

**NATIONAL ARCHIVES**

**IRELAND**



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To the Land-Court of Hamburg, Civil Chamber

Statement of claim

of the Irish State, represented by the Minister for Finance,  
Government Buildings, Dublin 2, Ireland, the plaintiff

Attorney Bollmann etc.

against

Otto Schluter, senior businessman, etc., the defendant.

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In the name of and on the authority of the plaintiff we hereby submit a claim and request that a date be fixed for an oral hearing in which we will apply to grant a provisionally enforceable order with costs, against the defendant, to pay the plaintiff 86,120DM together with 4% interest since 25 February 1976. . .

subsidiarily application regarding costs in the event of plaintiff's primary claim being rejected

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To understand the case it is necessary to go far back and retrace the prior history of the actual relations between the parties which gave rise to the present legal action.

Testimony in criminal proceedings before the High Court in Dublin in October 1970, concerning an alleged attempt to import arms illegally to Ireland, indicated that the sums used for



purchase of these weapons had been wrongfully taken out of monies which the Irish Parliament had allotted for the relief of distress in Northern Ireland. The evidence also indicated that the weapons had been acquired in the Federal Republic of Germany.

This evidence led the Irish Parliament to direct one of its committees to carry out a special investigation of the way in which the said monies had been used. A Capt. Kelly, who was involved in the administration of the monies, testified before the committee that part of the money provided for humanitarian aid in Northern Ireland had been diverted and paid into a special account. He stated further that the sums in this account had been used chiefly in connection with the purchase of weapons. Capt. Kelly indicated that, of the approximately £38,000 which passed through the account, altogether £32,500 was used for the purchase of weapons in Germany, £26 - 28,000 being paid for weapons, while the residue served for defraying the ancillary costs. The evidence in the committee's proceedings showed that the defendant was the German weapons-dealer, from whom the weapons in question had been purchased. It further emerged that the defendant had received the payment for weapons and ammunitions, but that they had not been collected for trans-shipment to Ireland. The Parliamentary Committee noted the endeavours of the Department of Finance to recover as much as possible of the money paid and recommended that the Minister for Finance make a report to the Parliament on completion of the endeavours.

On 11.2.1971 Mr. A. Mulloy, then Irish Consul General in Hamburg, called on the defendant in his Office. He referred to the investigations of the Irish Parliament and to the fact that the weapons in question had been paid for out of Irish State



The Irish authorities intended to recover the state funds; this was why he was approaching him, the defendant. He said that he presumed that the defendant would welcome this opportunity to close an uncompleted transaction and to repay to the Irish State the sums which belonged to it. A rather long discussion ensued between the defendant and the Consul-General, in the course of which the defendant indicated that he had had no business relationship with the plaintiff. However at the conclusion he stated that he would get in touch with Mr. Mulloy.

On 23 March 1971 accordingly a further meeting between the defendant and Mr. Mulloy took place. In a long conversation the type and number of the items which the defendant had sold to Ireland were mentioned by Mr. Mulloy. The defendant promised to prepare a statement (report) of his income and expenditures in the matter. He said furthermore that he had received a visit from "Gentlemen from Ireland" but that he preferred to deal with the Irish authorities. For this purpose he needed an affirmative written statement setting forth the rights of the Irish State and reserving the right of recourse to the German authorities, if the rights of the Irish State were not respected. He wanted to show this to the "Gentlemen from Ireland". The conversation turned finally to the sale of the weapons and ammunition in question, the defendant stating that the goods would have to be sold outside the Federal Republic, because nobody would buy them there.



On 27.3.1971 Mr. Fagan, A Senior official in the Irish Department of Finance, and again Mr. Mulloy called on the Defendant. On that occasion Mr. Mulloy acted solely as an interpreter.

The defendant was handed the document dated 26.3.1971, which he had requested from the Department of Finance, from the carbon copy of which I submit (only for the Court) a photocopy as (exhibit) The defendant stated thereupon that the whole affair had already gone on too long and that he wished to put an end to it once and for all. He was glad to have the letter so that he could deal directly with the Irish authorities. He promised once more to draw up a statement of his income and expenditures in the matter. He had receipts for everything and would attach photocopies. The originals could be examined but he could not release them out of his office. He stated that he needed about 7 days to draw up the statement.

The defendant also asked how much the Irish authorities were demanding. Mr. Fagan replied that a sum of about £36,000 spent in the purchase of weapons had been mentioned. The defendant remarked that he had only received about two thirds of that sum. At the conclusion the discussion touched once again on a possible sale of the weapons and the ammunition. The defendant then expressed the view that an immediate sale would lead to a loss, because at the moment no demand existed for the items in question. In about 6 to 12 months time a better price could possibly be fetched.



Messrs. Fagan and Mulloy called on the defendant once more on 18.5.1971. The defendant communicated details of the business orally from his file. Later he handed over to the Irish Officials 12 photocopies of the documents from his file which he regarded as important. He expressed anew his wish to have dealings exclusively with the representatives of the Irish Government.

Messrs. Fagan and Mulloy called on the defendant once again on 9.6.1971 to receive the promised statement from him. They received this however only on 15.6.1971. I submit the defendant's statement dated as of that day, as Exhibit 2. (photocopy, again only for the Court).

On the next visit to the defendant on 22 and 23 July 1971 the two Irish officials already named were accompanied by Mr. M.N. Murphy, another senior official of the Department of Finance. The defendant was handed over the further letter from the Department of Finance dated 21.7.1971 - Exhibit 3 (photocopy only for the Court). It contains a demand for re-payment of a sum of 123,417.55 DM less some minor expenses. A translation - Exhibit 4 - (photocopy, only for the Court) was annexed. The defendant promised to name a fixed figure for the present sale-price of the goods. He would also give figure for his total costs. The defendant proposed a further meeting in about 5 weeks' time. A weapons-expert, whom the officials from Ireland had brought with them, was given the opportunity by the accused to inspect specimens of the goods in question.



A further meeting of the defendant with the last-named 3 Irish officials took place on 14.10.1971.

The defendant informed them that he was in the process of selling the goods in question abroad as part of a substantial bigger deal. The shipment was due to take place on 22 October. For the pistols he would receive 94 DM each and for the ammunition 280 DM per 1000 rounds. He promised that he would also furnish a complete account for the present sale. He would deduct the chargeable costs and would then hand over to the Irish officials a cheque for the amount of the difference. When asked whether his oral agreement to pay bound him morally or legally, the Defendant replied that it did both. He would contact the plaintiff's representatives again around the 26th October 1971.

Evidence for all the foregoing:

Testimony 1 of Mr. Aidan Mulloy etc.

Testimony 2 of Mr. Anthony Fagan etc.

Testimony 3 of Mr. M.N. Murphy etc.

Each of the three witnesses is prepared to travel to Hamburg to appear before the Court. It is hereby declared on behalf of the plaintiff that, irrespective of the outcome of these proceedings, he is not holding the defendant responsible for the added costs arising out of the appearance of the witnesses at the location of the Court

On 31.10.1972 three Irish officials called again on the defendant in Hamburg. Mr. Murphy and Mr. Fagan were again present, but there was a different interpreter. The Irish Consul General in Hamburg had changed in the interim with the result that Mr. Cradock took over Mr. Mulloy's role.



The defendant stated that he was sticking to the agreement with the Irish officials, but on a personal basis.

Evidence: Testimony 1 of Mr. Patrick Cradock etc.  
Testimony 2 of the already named Mr. A. Fagan  
Testimony 3 of the already named Mr. M.N.  
Murphy.

Same undertaking as above regarding Mr. Cradock's  
appearing before the Court

At a final meeting with the three named officials on 1.11.1972 the defendant confirmed his oral undertaking to them. He gave them his word that he would keep his promise. The firm Otto Schluter GmbH could not recognise any legal obligations; however Otto Schluter as a person would honour his personal undertaking. His oral declaration was personally binding for him. His precise words were "a businessman's word is his bond".

Evidence: Testimony of the three officials named above.

The defendant confirmed his undertaking finally one last time. The Irish officials stated to him that they would report to the Minister that the firm Otto Schluter GmbH would in writing refuse the liability but that Herr Schluter had personally given an undertaking to pay out to the Irish Government the proceeds of the sale of the goods less expenses and that this personal undertaking was binding on him. The defendant agreed to this part of the Irish officials' statement.

Evidence: as above.



The defendant <sup>has</sup> ~~was~~ thereby, by virtue of his acknowledging liability, bound himself towards the plaintiff to pay out to him the proceeds of the sale of the weapons and ammunitions less costs. By virtue of S 350 of the code of commercial law the defendant cannot rely on the absence of written form. Although he did not make the statement of obligation in his capacity as representative of the company GmbH he however, acted in inseparable connection with a commercial transaction, so that he must to this extent allow himself to be treated as a merchant.

Moreover the defendant must accept the accusation of malicious intent if he wishes to rely upon the absence of the written form. He has manifestly shifted the declaration of obligation from the limited liability Company to his own person, in order to evade the provisions of Article ( ) 350 of the Act of Commercial Law (=MGB) and to be able to invoke later if required the absence of the written form. By reason of his declaration that his obligation is personally binding on him, he kept the representatives of the plaintiff from insisting on observance of the written form. He consciously created the impression in the minds of the representatives of the plaintiff, that his personal declaration of obligation was also orally binding and he therefore maliciously kept them from the observance of the form. His recognisance of liability is therefore to be looked upon as valid (R62..... various precedents and cases .....b(caa)). Moreover it must in particular be taken into consideration that the defendant made this declaration to foreigners, who were in no way conversant with the provisions of German law. One arrives at the same conclusion before one qualifies the manner of acting of the plaintiff as immoral wilful damage pursuant to article ( ) 826 of the Civil Code.



I hand over further as Exhibits 5 to 8 (in photocopy again only for the Court) the accounts of the firm Otto Schluter GmbH of 11.2.1970 and 16.2.1970. These show that 380 pistols and 180,000 rounds of ammunition were sold. The prices of 94 DM for the pistols and 280 DM per 1000 rounds of ammunition, which the defendant said he was getting for the further sale by him, were already mentioned above. The sum at issue in the action viz. 86,120 DM, is based on this.

According to the written statement of the firm of Otto Schluter GmbH of 15.6.1971 (Exhibit 2), the defendant in respect of his total outlays enumerated there, was already satisfied by the payments from Ireland. The defendant has not claimed any further payments from the plaintiff.

The defendant has been summoned by the Koln-based agent of the plaintiff, the lawyers Boden, Oppenhoff and Schneider, by letter of 3 February - Exhibit 9 - (in photocopy only for the court) to effect payment by the 25 February, 1976. This is the basis of the date from which interest is claimed.