

Today, **twenty (20) December two thousand and twenty-one (2021)**

At the request of:

- I. The foundation **Stichting Vredesbeweging PAX Nederland**, having its registered office and offices in Utrecht;
- II. The foundation **Stichting Campagne tegen Wapenhandel**, also acting under the name 'Stop Wapenhandel', having its registered office and offices in Amsterdam;
- III. The association with full legal competence **Nederlands Juristen Comité voor de Mensenrechten (NJCM)**, having its registered office and offices in Leiden;

all of them choosing address for service in this case in Amsterdam, at the office of PILP-NJCM, where their attorney is Meester J. Klaas, and for whom Meester L.M. Ravestijn (attorney in Amsterdam), with offices at Buitenveldertselaan 106, (1081 AB) Amsterdam, is hereby appointed as litigator, and will act as such.

TO

The legal person under public law **THE STATE OF THE NETHERLANDS (THE MINISTER OF FOREIGN AFFAIRS)**, serving a writ under section 48 of the Code of Civil Procedure at the public prosecutor's office at the Netherlands Supreme Court (Hoge Raad der Nederlanden), having its registered office and offices in The Hague at Korte Voorhout 8 (2511 CB), and leaving a copy of this summons together with the exhibits to be specified with

1ST NOTIFICATION

that the appellants hereby appeal against the judgment of The Hague District Court, private law section, provisional relief civil court, delivered on 23 November 2021 in the case with reference C/09/618625 KG ZA 21/923 between the appellants as plaintiffs and the respondent as defendant, which proceedings were instituted with a summons in provisional relief proceedings dated 11 October 2021.

2ND SUMMONS

To appear on **Tuesday eleven (11) January two thousand and twenty-two (2022) at 10:00 a.m.**, not in person, but represented by an attorney, at the session of the Court of Appeal of The Hague, which will be held in the Paleis van Justitie at Prins Clauslaan 60 in The Hague.

Since the appellants are encumbered by the aforementioned judgment and it should be set aside.

3RD WITH NOTIFICATION THAT

- a) if a respondent appoints an attorney in the appeal but fails to pay the court registry fee referred to below in time, and the prescribed time limits and formalities have been met, the court will rule against the respondent by default and disregard its defence in the appeal;
- b) if the respondent appears in the case, a court registry fee will be charged, to be paid within four weeks from the time of appearance;
- c) the amount of the court registry fees is set out in the most recent annex to the Wet griffierechten burgerlijke zaken (Civil Cases Court Registry Fees Act), which can be found inter alia on the website www.kbvg.nl/griffierechtentabel

d) a court registry fee for persons unable to pay as determined by or pursuant to the law is levied on a person who are unable to pay if they have submitted the following at the time when the court fee is levied:

1 a copy of the decision to grant legal aid, as referred to in section 29 of the Wet op de rechtsbijstand (Legal Aid Act), or if this is not possible due to circumstances that are reasonably beyond their control, a copy of the application referred to in section 24(2) of the Wet op de rechtsbijstand (Legal Aid Act), or

2 a statement from the Board of the Legal Aid Board as referred to in section 7(3)(e) of the Wet op de rechtsbijstand (Legal Aid Act) showing that their income does not exceed the incomes referred to in the Order in Council under section 35(2) of that Act;

4th IN ORDER

The appellants wish to be deemed to have repeated all their arguments in the first instance on appeal, so that the content of the summons, as well as the exhibits and the pleading submitted by the appellants must be deemed to be repeated and inserted here.

The appellants put forward the following grounds for appeal against the judgment, whereby if and insofar as the explanation of the grounds and/or the other contents of this appeal summons imply/implies separate grounds for appeal which are not/cannot be considered to be included in the ground for appeal itself, these should also be taken as separate grounds for appeal.

Request for urgent appeal (Chapter 9 Rules of Procedure)

1. Appellants request that Your Court treats this appeal as an urgent appeal
2. The appellants have an urgent interest in these appeal proceedings, in the granting of the requests, more specifically the prohibition sought by them (already in the proceedings in the first instance) on the State of the Netherlands allowing/commissioning the export of the military goods, including those for which licences have already been issued.

3. If the requested prohibition is not/cannot be granted in time, there is a risk that military goods for which licences have already been issued will be exported in accordance with an adopted plan/schedule, given the limited validity of the licences granted, and that future deliveries will also be made (in the very near future, given the validity of the licence).
4. Once the goods have been exported, this is irreversible: The Netherlands then loses jurisdiction over the goods - a later judgment cannot undo the export.
5. As will be explained below, the export of military goods to Egypt, at least at this time, would conflict with the Netherlands' obligations under the Common Position, the Besluit Strategische Goederen (Strategic Goods Decree) and thus the Algemene Douanewet (General Customs Act), or at least by allowing the export the State would be acting in conflict with a social duty of care that rests on the State.
6. There is also a risk that the goods will be used in Egypt for, or contribute to, serious violations of fundamental human rights and/or international humanitarian law, which standards aim to protect civilians in conflict areas.
7. If this appeal is treated as an 'ordinary' appeal, it will undeniably result in a judgment that can only be regarded as closing the stable door after the horse has bolted.

THE GROUNDS FOR APPEAL AGAINST THE PROVISIONAL RELIEF JUDGMENT

8. In general terms, the appellants describe their grounds for appeal (which they set out in more detail below) as follows:
9. First of all, it will have to be ruled on appeal that PAX's requests are admissible. In addition, a correct assessment against criteria 2a, 2c and 6 of the Common Position must always lead - independently - to the granting of the requests by the appellants (hereinafter: PAX et al).
10. The court in provisional relief proceedings also adopted a number of incorrect assumptions in its judgment. This relates to - inter alia - the assessment criterion and the question whether PAX et al have adequately substantiated their claims that the State was not entitled to decide to export.

11. The human rights situation in Egypt is very serious and the Egyptian armed forces, of which the navy is a part, are guilty of internal repression, including during operations in North Sinai. In short, the contention of PAX et al is that there is, at the very least, the clear risk that military equipment supplied to the navy will be used for this. Allowing exports is therefore contrary to the correct application of criterion 2a.
12. In addition, Egypt is still a member of the Saudi-Emirati coalition which is committing serious violations of international humanitarian law in Yemen. The Egyptian navy was in any case involved in the maritime blockade of Yemen - which is partly responsible for the biggest humanitarian crisis in recent years. The State only states that "as far as is known" Egypt is not involved in the blockade. But far beyond their own coast Egyptian naval vessels definitely do patrol the straits off Yemen. There is, at the very least, a clear risk that military equipment supplied to the Egyptian navy will be used in this. Allowing exports is therefore contrary to the correct application of criterion 2c of the Common Position.
13. A correct assessment against criterion 6 should also have led to the requests of PAX et al being granted. It is not disputed between PAX et al and the State that an assessment against criterion 6 is negative. By deciding that arms exports to Egypt may continue under the present circumstances, the State is, according to the provisional judgment, acting unlawfully.
14. Furthermore - as explained below in ground 9 - the findings of the provisional relief court about the ban on future exports requested by PAX et al cannot be upheld.
15. The conclusion is that the judgment of the provisional relief court in the first instance must be set aside and the requests of PAX et al must be granted.

GROUND FOR APPEAL 1

In findings 4.1 to 4.5 PAX is erroneously declared inadmissible

16. In findings 4.1 to 4.5 the provisional relief court declared PAX inadmissible because PAX has not demonstrated that it meets the requirements of section 3:305a of the Civil Code. The provisional relief court based this consideration on the charter of PAX, which was submitted in the proceedings as exhibit 4.
17. PAX is a collaboration between IKV and Pax Christi. PAX was formed from of the organizations Vereniging Pax Christi Nederland (Pax Christi) and Stichting Interkerkelijk Vredesberaad (IKV), standard bearers of the peace movement in the Netherlands since the 1960s. They have been working together in a single peace organization since 2006, under the name PAX since 2014.
18. PAX's charter refers directly to those of IKV and Pax Christi. Those charters were also referred to at the hearing, but were not submitted as a exhibit. The charters of IKV and Pax Christi are submitted as **Exhibits 14 and 15**. These make it abundantly clear that PAX also meets the requirements of section 3:305a of the Civil Code.
19. According to article 2 of PAX's charter, its purpose is as follows (emphasis added by attorney):

The execution of programmes, projects and services on behalf of (...) 'IKV' and 'Pax Christi', as well as the execution of programmes, projects and services on behalf of third parties, insofar as these (...) fit within the objectives of IKV and Pax Christi.

Vereniging Pax Christi's charter objective specified in article 2 of its charter includes:

paragraph 1: **the promotion of peace in the broadest sense of the word.** (..)

paragraph 3: the association aims to achieve its objective through - among other things - reflection, study, education, training and action, by actively influencing organizations and institutions within the church and society, the public media and public opinion, circles of childrearing, education and training, Parliament and the government and appropriate international organizations.

IKV's charter objective specified in article 2 of its charter includes:

The aim of the Foundation is (...) to **promote political solutions to crisis and war situations**. To this end - among other things - projects are established (...) and society and (...) are invited to participate and take a stand.

20. The judicial review of licences for arms exports to countries where human rights and/or the laws of war are violated promotes peace and the search for political solutions to crisis and

conflict situations.

21. Based of the full (text of the) charters, it is therefore clear that PAX, the largest and best-known peace organization in the Netherlands, can indeed act for the interests under section 3:305a of the Civil Code.

GROUND FOR APPEAL 2

The provisional relief court wrongly granted itself a restricted scope for judgment in finding 4.9

22. In finding 4.9 the provisional relief court finds that the requests of PAX et al are closely related to questions of security and foreign policy, and that for this reason the State is entitled to generous leeway in policy and assessment. The provisional relief court concludes from this that the assessment that it can apply in this case is limited to the question of whether the Minister could reasonably have reached the decision to grant the current arms export licences for Egypt. The provisional relief court then derives the concrete implementation of this assessment from the Common Position¹ (finding 4.10).
23. PAX et al are of the opinion that the provisional relief court has thereby wrongly granted itself too limited a scope for assessment. The assessment that must be applied, according to PAX et al, is not a test of reasonableness, but the answering of the question *whether the State, in view of (inter alia) the Common Position, must be prohibited from permitting the export of weapons to Egypt, in anticipation of the establishment (in proceedings on the merits) of whether/that the State is acting unlawfully*. PAX et al explain this position below.
24. To answer the question as to what scope for assessment it has in this case, the provisional relief court followed the State in basing itself on the judgment of the Supreme Court of 26 June 2020 (about the repatriation of female IS joiners and their children).² In determining the criterion by which the court must assess whether the State is acting unlawfully, the Supreme Court takes into consideration that the requests “[are] closely linked to questions of (national) security and foreign policy”. According to the Supreme Court, this involves policy that

¹ European Union Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, as amended by Council Decision (CFSP) 2019/1560 of 16 September 2019.

²Netherlands Supreme Court, 26 June 2020, ECLI:NL:HR:2020:1148.

"depends heavily on political and other policy considerations due to the circumstances of the case".³

25. According to PAX et al, this case is fundamentally different from the aforementioned judgment, and the criterion laid down therein cannot therefore be regarded as applicable to the present case. The assessment of an application for an arms export licence does not depend on "political and other policy considerations", but on the law (the Besluit Strategische Goederen (Strategic Goods Decree)), which is implemented using the Common Position, the Arms Trade Treaty⁴ ('ATT') and human rights. In other words, as the State writes in its statement of reply: "These agreements made by the State in an international context determine the scope for assessment which the State has in authorizing or not authorizing the export of military goods."⁵
26. Whereas in the case about the repatriation of female IS joiners there was no clear national legal framework (put simply, the State had almost no defined obligations (under national law)), the regulations regarding export licences for military goods are very clear and tightly defined (put simply, the State's obligations are established).
27. The case law referred to by the Supreme Court in the repatriation case therefore concerns foreign policy issues for which there is no specific and binding national legal framework. In short, these cases concerned a ban on first use of nuclear weapons⁶, a prohibition on (further) warfare in (former) Yugoslavia⁷ and a ban on participation in the 'war on terror' after 11 September 2001.⁸ Such issues are incomparable with the case now before your court. Unlike in those judgments, in the present case there is a clear national and international legal standard that obliges the State to act in line with the requests of PAX et al.
28. In short, PAX et al argue that your court should therefore not be reticent in making an assessment in this case, but should examine whether the provisional ruling should prohibit the State from permitting arms exports in anticipation of the finding in proceedings on the merits that there is evidence of illegality, because of actions in breach of the law including the Common Position.

³ Ibid.

⁴ Arms Trade Treaty, New York, 2 April 2013, Trb. 2013, 143 and Trb. 2014, 45.

⁵ Statement of reply of 9 November 2021, consideration 3.1.3.

⁶ Netherlands Supreme Court, 21 December 2001, ECLI:NL:HR:2001:ZC3693, finding 3.3 (at C).

⁷ Netherlands Supreme Court, 29 November 2002, ECLI:NL:HR:2002:AE5164, finding 3.3.

⁸ Netherlands Supreme Court, 6 February 2004, ECLI:NL:HR:2004:AN8071, finding 3.4.

29. However, should your court be of the opinion that this does concern a policy area where, in principle, a reticent judicial assessment is required, PAX et al would argue that it is not the State's (political decision-making on) arms export policy *as such* that is the subject of dispute here, but the concrete implementation thereof in concrete cases (the granting of export licences for Egypt). These are not policy choices, but implementing acts. This thereby also has consequences for judicial assessment frameworks. According to the opinion of the Procurator General (hereinafter: 'PG') Valk in the aforementioned case on repatriation, it is the case that "judicial assessment at the individual implementation level is (considerably) more probing than at the policy level."⁹
30. According to PG Valk, a distinction must be made between government policy and the concrete actions of the government in its individual legal relationship with the citizen.¹⁰ The restricted assessment of government policy in the field of foreign policy and defence, according to Valk, relates to the lawfulness of that policy as such. "It is a misunderstanding that the same restraint would always be appropriate in the assessment of implementing acts, even if those implementing acts take place pursuant to a policy that is lawful in itself."¹¹ For example, a breach of human rights may mean that an implementing act is unlawful.¹²
31. The export control policy is not being challenged by PAX et al in this case. A number of concrete implementing acts based on that policy (in this case, allowing 10 applications for arms exports to Egypt and issuing similar licences in the near future if factual conditions remain unchanged) are being challenged. Those implementing acts are in breach of the State's legal obligations stemming from the Common Position, the ATT, the European Convention on Human Rights¹³ ('ECHR', in particular article 2 on the right to life), and other human rights treaties such as the International Covenant on Civil and Political Rights¹⁴ ('ICCPR', article 6). The State currently (still) has jurisdiction over weapons for which there is a clear risk that they may later be used to infringe the right to life.

⁹ Procurator General's Office at the Supreme Court, 24 April 2020, ECLI:NL:PHR:2020:412, finding 5.28.

¹⁰ Ibid., finding 5.23.

¹¹ Ibid., finding 5.24.

¹² Ibid., finding 5.23.

¹³ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, Trb. 1951, 154.

¹⁴ International Covenant on Civil and Political Rights, New York, 16 December 1966, Trb. 1969, 99.

32. Incidentally, it is not at all unusual for the civil courts to thoroughly assess that applicable legal standards, such as human rights, are not being breached, even when it involves matters that are generally regarded as politically sensitive issues of (foreign) policy. For example, extradition cases offer an apt analogy.
33. In extradition cases there is also a clear legal framework within which the State must operate. And just as in extradition cases, in this case there is a risk of human rights violations: after all, with arms exports, once the goods are exported they fall outside the jurisdiction and control of the State. And while extradition cases are eminently sensitive foreign policy issues, especially when the relationship with allies is involved, the civil courts may well carry out a full assessment whereby the risk of a potential breach must be considered (or even be paramount).
34. An apt example from this category involved the impending extradition of a Dutch resident with US citizenship to the US authorities.¹⁵ According to the court, in view of his homosexuality and the fact that he was suspected of being a sex offender, if convicted in the US the man would run a real risk of being subjected to inhuman or degrading treatment in the Oregon prison system that violates article 3 of the ECHR. Despite the fact that the State has a broad scope for assessment in this area, the court assessed the Minister's assessment thoroughly and the court of appeal prohibited extradition.
35. Finally, PAX et al would like to emphasize that this involves important interests. If the courts do not perform a proper assessment against the standards that apply to the State, human rights may be violated, instability in the region may be increased, and peace may be affected.

GROUND FOR APPEAL 3

In finding 4.11 et seq. the provisional relief court applies an incorrect assessment against Criterion 2 of the Common Position

36. In finding 4.11 the provisional relief court summarizes the assessment against Common Position criterion 2 as follows:

¹⁵ The Hague Court of Appeal, 13 December 2016, ECLI:NL:GHDHA:2016:3606.

Criteria 2a and 2c of the Common Position stipulate that licences must be refused where there is a *clear risk* that the military goods or technology to be exported *will be* used for internal repression or to perpetrate serious violations of international humanitarian law. The fact that the goods *might* be used for oppression or human rights violations does not therefore mean that a licence must be refused.

37. However, the provisional relief court thereby misrepresents the assessment. Under criterion 2 of the Common Position, the risk that the military equipment to be exported *might* be used for internal repression or violation of the laws of war must be assessed. The provisional relief court misunderstood this.

38. The Dutch text of the Common Position regarding criteria 2(a) and 2(c) reads:

- (a) deny an export licence if there is a clear risk that military goods or technology to be exported will be used for internal repression;
- (c) deny an export licence if there is a clear risk that the military goods or technology to be exported will be used to perpetrate serious violations of international humanitarian law. [underlining added by attorney]

39. Despite the absence of the word ‘might’ in place of ‘will’ in this text, both the State and the provisional relief court must assess whether there is a clear risk that the weapons *might* be used for internal repression or violation of international humanitarian law. (This is a less stringent test).

40. In the preamble to the original version of the Common Position, the term “might” is also used in this context.

(4) Member States are determined to prevent the export of military technology and equipment which might be used for internal repression or international aggression or might contribute to regional instability.¹⁶

41. In the Dutch translation of the User’s Guide in the explanation of criterion 2a, the assessment with regard to the risk also determines whether the weapons “might be used”, whereby it is significant that the User’s Guide itself states that in the text “clear risk” is combined with “might be used”.¹⁷

¹⁶ Common Position, preamble.

¹⁷ User's Guide to Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, 2189/19 ('User's Guide to the Common Position'), p. 44 and para. 2.7, p. 47.

42. So this involves a question of interpretation due to some incongruity in the authentic Dutch text of the Common Position. Primarily, PAX et al argue that there can be no misunderstanding that the assessment must be performed including the word "might". Subordinately, insofar as your court is of the opinion that an interpretation of the Dutch text must take place in order to resolve this incongruity, PAX et al point out that all translations of EU texts are considered authentic and therefore equivalent. This means that the Dutch text should be interpreted in the light of the context and the other authentic translations.¹⁸ It follows from that context and those translations that "might" must be read into the text.
43. In six other authentic translations of the Common Position, the equivalent of "might be used" appears in all cases. The text of the preamble, criteria 2a and 2c are consistent in the English, Spanish, Italian, Portuguese, Danish and Swedish versions.¹⁹
44. According to PAX et al, the conclusion must therefore be that the incongruity in the Dutch text of the Common Position must be resolved by applying criteria 2a and 2c in such a way that they assess the risk that the goods *might* be used for internal repression and violation of international humanitarian law respectively.
45. The result of this interpretation is primarily that the provisional relief court wrongly ruled in finding 4.11 that "the fact that the goods *might* be used for repression or human rights violations does not mean that a licence should be refused either". After all, "*might be used*" is sufficient to refuse the licence.
46. PAX et al maintain their factual arguments in the first instance, which boil down to the fact that at this moment there is indeed a risk that the (ten) licensed goods *might* be used for internal repression and/or violations of the laws of war. PAX et al explicitly request that their arguments in this regard in the first instance be deemed to be repeated and inserted here. The insertion of "might be used" makes the risk easier to prove, according to the User's Guide.

This is easier to substantiate than that there is a clear risk that the military technology or the military equipment will be used for internal repression.²⁰

¹⁸ Also important in that context is the clear difference between the risk referred to under criterion 2 compared to the risk referred to under criterion 4, where the phrase "(might) be" is absent.

¹⁹ English: "might be used", Spanish: "puedan utilizarse con fines" Italian: "possono essere utilizzate", Danish: "kan blive anvendt", Swedish: "kan komma att användas", Portuguese: "serem susceptíveis de utilização".

²⁰ User's Guide to the Common Position, para. 2.7, p. 47.

47. In that regard, PAX et al refer (again) to the operations of the Egyptian forces in North Sinai. With regard to the blockade of Yemen, PAX et al point out that the State only takes the position that it is "likely" that the Egyptian navy is not participating (any more) in the blockade of Yemen. These two sets of facts make it clear that there is a risk that goods supplied to the Egyptian navy could be used for internal repression and/or violation of international humanitarian law.
48. PAX et al also point out that the assessment of a risk in the future inherently involves some degree of uncertainty. This means that your court should allow the requests of PAX et al even if it does not apply the assessment that PAX et al are advocating. All the facts stated by PAX et al are sufficient in themselves to conclude that there is a significant risk that the licensed goods will be used for internal repression and/or violation of international humanitarian law.

GROUND FOR APPEAL 4

In findings 4.10 and 4.14 to 4.17 the provisional relief court wrongly held that PAX et al have not adequately substantiated their claims

49. Contrary to what the provisional relief court found in finding 4.17, PAX et al have adequately substantiated the State's breach of standards in the first instance. The State put forward a defence against this which is clearly insufficiently substantiated.
50. In finding 4.10 the provisional relief court considers:

Stop Wapenhandel and the NJCM argue that the assessment of the ten applications for which a - currently still valid - licence has been granted should have led to a negative decision on the basis of criteria 2a, 2c and 6b of the Common Position. Contrary to what Stop Wapenhandel and NJCM argue, it is up to them to substantiate this argument and thus establish a prima facie case that the Minister could not reasonably have decided to grant the licences.

In finding 4.14 the provisional relief court states, after having quoted the report of Human Rights Watch of March 2021 which shows that the Egyptian navy is also involved in the actions in the Sinai:

At the hearing the State argued that this information from Human Rights Watch was known to it and that it had verified it with its own sources in the region, who could not confirm it.

In finding 4.15 the provisional relief court cites an article cited by PAX et al from the medium *Al-Monitor* about the purchase of the German frigates into which the Dutch goods will be installed. It then states:

The State does not share this point of view because insofar as the article is about the actions in North Sinai, it generally refers to the Egyptian army and not specifically to the navy.

In finding 4.16 the provisional relief court states, after describing the film shown at the hearing of the gruesome actions in North Sinai in which images of frigates can also be seen:

The State responded by saying that the video contains only sporadic images of the Egyptian navy and that it remains unclear what the navy's role is in the operations shown.

In finding 4.17 the provisional relief court concludes as follows on the basis of this:

With the above the State has shown, in the opinion of the provisional relief court, that it has taken note of the information on which Stop Wapenhandel and the NJCM base their requests and the State has explained with reasons why this information has not led and should not lead to the rejection of the licence applications. In the State's view, the information is not concrete enough or sufficient on its own to assume that there is a clear risk that the military goods or technology to be exported will be used for internal repression or to perpetrate serious violations of international humanitarian law. That position is not manifestly wrong or incomprehensible.

51. In the last sentence of finding 4.17 the provisional relief court misses the point. The State's position may be clear, but the State is applying the wrong criterion. The State's view relates to determining (the acceptance) *that* a clear risk exists. That is too absolute. The plausibility that PAX et al have to establish in the provisional relief proceedings concerns the 'more than reasonable possibility' (the plausibility). PAX et al have argued this with sufficient substantiation, and the State has not provided a sufficiently substantiated refutation.
52. The provisional relief court stated in finding 4.11 that the very worrying human rights situation in Egypt is "a given". There is also no doubt that the Egyptian people are oppressed by the military apparatus, and that the navy is part of that apparatus. PAX et al have demonstrated with public sources that there are at least serious indications that the Egyptian navy is also involved in human rights violations, at least in North Sinai. Much of the military equipment involved in this case will be delivered to the navy.
53. With regard to the substantiation of their claim that there is a risk that the Dutch goods could be used in human rights violations and oppression, the assessment of plausibility must therefore be as follows.

54. In support of their claim that the Egyptian navy is also involved in the conflict in North Sinai, PAX et al referred to, among other things, a recent Human Rights Watch report on possible war crimes by the Egyptian regime in the region. Human Rights Watch is one of the best known and most reputable international human rights organizations. The authority of Human Rights Watch reports has also been confirmed by the European Court of Human Rights, for example in the case of *Saadi v. Italy*, in which a report by the NGO on the repression and torture of political opponents in Tunisia was a key element.

Bearing in mind the authority and reputation of the authors of these reports, the seriousness of the investigations by means of which they were compiled, the fact that on the points in question their conclusions are consistent with each other and that those conclusions are corroborated in substance by numerous other sources (see paragraph 94 above), the Court does not doubt their reliability. Moreover, the Government have not adduced any evidence or reports capable of rebutting the assertions made in the sources cited by the applicant.²¹

55. The State has argued, without any factual substantiation, that the information from Human Rights Watch "could not be confirmed" (finding 4.14). According to PAX et al, this bare statement requires further substantiation. Particularly given the seriousness of the case, it cannot follow from this simple rejection that this information could and should *not* have led to the rejection of the licence applications (finding 4.17).

56. In addition, PAX et al have referred to an article on *Al-Monitor* (finding 4.15) and an Egyptian army propaganda video (finding 4.16) to substantiate the argument given above. According to PAX et al, the State also brushes these sources aside too easily. Hence it is certainly relevant that the article in *Al-Monitor*, insofar as it deals with the action in North Sinai, does not quote (for example) an army officer, but the former head of the Port Said Port Authority.

Rear Adm. Ahmed Mohamed al-Sadiq, former head of the Port Said Port Authority, told *Al-Monitor* that the Egyptian armed forces' current policy is to diversify its sources of weapons, as part of efforts to counter any security chaos, whether inside Egypt or outside its borders.

²¹ European Court of Human Rights, *Saadi v. Italy* (2009) 49 EHHR 30, para. 143.

“The first challenge lies in the ongoing unrest in the Sinai Peninsula, where the Egyptian army is trying to keep things under control. The situation in the Sinai is an important factor to determine the size and the type of weapons [the government] needs” Sadiq said.²² (underlining by attorney)

Port Said is an important port near North Sinai with a large naval base.²³ The article on Al-Monitor thereby does contribute to the plausibility of the navy's involvement in the conflict there.

57. The same applies to the Egyptian army's propaganda video that PAX et al submitted the proceedings in the first instance (Exhibit 13).²⁴ What is not relevant is that, as the State alleges, the video only "sporadically" shows images of the navy, but that the very violent video also shows images of navy ships (ships that might just as easily be equipped with the military equipment from the Netherlands next time). PAX et al are of the opinion that with this they have sufficiently demonstrated the risk of naval involvement, or at least that the violation of standards by the State has thereby been made sufficiently plausible. It is then up to the State to refute this adequately substantiated argument, which it has not done. On the contrary, the presence of the Navy is acknowledged (albeit "sporadically").
58. The provisional relief court established that the State did not consider these sources to be concrete enough or sufficient in themselves to refuse the licence application (finding 4.17). However, especially when considered together, these are serious indications that the navy is also involved in the conflict in Sinai, and therefore that there is a clear risk that the weapons to be exported could be used in human rights violations and internal repression. The provisional relief court should have required the State to substantiate its defence better, for instance by bringing forward facts showing that the Navy is *not* involved in the conflict in the Sinai. Such facts were neither alleged nor demonstrated by the State in the first instance. Moreover, the State should also have submitted the nine memos underlying the other export licences granted.

²² Al-Monitor, 'Egypt boosts naval power in deal with German shipbuilder', 23 September 2020, <https://www.al-monitor.com/originals/2020/09/egypt-germany-contract-produce-frigate-navy-regional-tension.html>

²³ In July 2021, a major new naval base opened near Port Said. See for example: See.News, 25 June 2021, 'Exclusive: '3 July' Naval Base... Must-Know Facts, Purposes': "*The East Port Said Naval Base will oversee securing the northern entrance to the Suez Canal on the Mediterranean, protecting and securing the port and city of East Port Said and the northern coasts of Sinai, and securing the entire Egyptian economic waters in the eastern Mediterranean.*" <https://see.news/july-3rd-naval-base-must-know-facts-purposes/>

²⁴ This exhibit will be submitted via USB on the first cause list date.

59. Furthermore, according to PAX et al the State has also insufficiently refuted the argument that the special forces can support internal repression in the Sinai. The frigate in which the Dutch components will be installed can also be used to support special forces units such as the Egyptian Navy SEALs. This is shown by documents submitted by the State itself.²⁵ The State has not refuted, or has insufficiently substantiated the refutation, that there is a clear risk that the operations of Egyptian special forces in the Sinai could be supported by a frigate using Dutch equipment.
60. Subordinately, PAX et al argue that they have in any case sufficiently substantiated their claims, in view of the resources (that may be) available to them, considering the unequal information position of the parties in this case. In view of this, and the nature of the case, more can and must be demanded from the State in order to refute the plausibility which has been (sufficiently) established by PAX et al.
61. According to PAX et al the provisional relief court did not sufficiently take account of the different information positions of the parties. This inequality is all the more impactful in an area as opaque as arms exports, especially if the export in question is to a region where repression is so fierce that journalists have little access to it.

GROUND FOR APPEAL 5

In findings 4.17 the preliminary relief court erroneously considered that PAX et al have not sufficiently substantiated that the so-called Navy SEALs come ashore from the sea to support internal repression

62. In finding 4.17 the provisional relief court considered:

In addition, Stop Wapenhandel and the NJCM have not substantiated their assumption that so-called Navy SEALs come ashore from the sea to support internal repression.

63. It has been established that the licensed military exports from the Netherlands will be used by the Egyptian navy in frigates whose purpose includes "support for special forces units".²⁶

²⁵ Statement of reply of 9 November 2021, Exhibit 9, p. 1.

²⁶ Statement of reply of 9 November 2021, Exhibit 9, page 1.

64. PAX et al argued in the first instance that these Navy SEALs²⁷, or special forces troops of the Egyptian navy, are involved in operations in North Sinai against their own population. They have also provided sources in support of this argument.²⁸ With this, they have made it sufficiently plausible that the Navy SEALs are involved in the military operations in North Sinai, while it is certain (and also not disputed by the State) that the human rights of the Egyptian population are being violated there by the Egyptian regime.
65. PAX et al have in any case made it sufficiently plausible in the first instance that there is a high risk of the Dutch military equipment being used for human rights violations (through the deployment of Navy SEALs or special forces units in North Sinai). After all, these special naval units are supported by frigates, as is shown in exhibit 9 with the State's statement of reply.²⁹ And it has been established that these units are being used, including for assassination missions, in North Sinai against its own population.³⁰
66. The provisional relief court was therefore wrong in considering that PAX et al had not sufficiently substantiated their argument that the Egyptian Navy SEALs come ashore from the sea to support internal repression.
67. PAX et al thereby cite a number of additional sources showing that Egyptian special naval units are indeed deployed from the sea to contribute to internal repression in North Sinai.
68. Hence an article published on 31 October 2021 on Al-Ahram Weekly³¹ (**Exhibit 16**), for which the journalist was allowed to accompany a Vice Admiral, the second most senior commander in the Egyptian navy, for 24 hours shows that the special forces search for "suspicious targets" along the coast in North Sinai.

The navy works closely with the other branches of Egypt's Armed Forces to defend strategic, tactical, and logistical assets within Egypt's national security realm. It has played an important role in the

²⁷ The Egyptian navy's special forces are consistently referred to by experts as 'the Egyptian Navy SEALs', see inter alia this article from Global Security:

<https://www.globalsecurity.org/military/world/egypt/153commando.htm>

²⁸ See page 3 of PAX et al's pleading notes and the summons in first instance of 11 October 2021, Exhibits 10 and 11 and paras. 46 and 47 including the sources quoted there.

²⁹ Statement of reply of 9 November 2021, Exhibit 9, page 1.

³⁰ Summons in first instance of 11 October 2021, Exhibit 10.

³¹ According to Reporters without Borders, Al Ahram is "the most circulated daily newspaper in Egypt, especially its weekend issue. It is a state-owned publication." See: Reports Without Borders, Media Ownership Monitor Egypt, <https://egypt.mom-rsf.org/en/media/detail/outlet/al-ahram/>

Comprehensive Operation Sinai counter-terrorist drive, isolating the operational theatre from the sea, preventing the escape of terrorist elements, and cutting off supplies to terrorists in Sinai.

In addition to helping secure the northeastern border, the navy has increased its boarding and search operations of suspicious craft in Egyptian territorial waters. The navy's special forces unit hunts down suspicious targets close to shore along the northern coast of Sinai.³²

69. PAX et al would also like to draw your court's attention to the video that will be submitted as **Exhibit 17**.³³ It shows the Egyptian Navy SEALs in training and action. Although the video is available on the *Military Channel* (Youtube), which is not affiliated with the Egyptian government, the video is composed of official footage.³⁴ The Navy SEALs can be recognized by the insignia on their uniforms. The video shows that Navy SEALs, like all special forces around the world, are deployed on land, at sea and in the air. Their operation can be managed with the C3 (Command, Control, Communication) equipment as provided by the Netherlands. The Ministry also notes this internally.³⁵
70. The Dutch company Thales will be supplying SMART-S MK2 3d radar systems, including to the Egyptian navy. According to Thales itself, these systems can be used on frigates that can also use them to find hidden targets on land.³⁶
71. The above shows that PAX et al have made it sufficiently plausible that there is a clear risk that the weapons for which an export licence has been granted by the Netherlands could be used for internal repression. This means that in the provisional ruling these exports should be prohibited.

³² Ahram Online, 'A day with the Egyptian Navy: High sea strategies', 31 October 2021, <https://english.ahram.org.eg/NewsContentP/50/436611/AIAhram-Weekly/A-day-with-the-Egyptian-Navy-High-sea-strategies.aspx>

³³ This exhibit will be submitted via USB on the first cause list date.

³⁴ See: <https://www.youtube.com/watch?v=juhEE-IDbzk>. These images were clearly shot by the army itself, since independent journalists are not allowed to report on army activities.

³⁵ See statement of reply of 9 November 2021, Exhibit 9, p. 1.

³⁶ Thales Group, Smart-S Mk2, <https://www.thalesgroup.com/en/worldwide/defence/smart-s-mk2-3d-medium-long-range-surveillance-radar>: "Pulse-Doppler processing enables fast target track initiation and stealth target detection, even in a cluttered environment. The use of solid-state transmitters extends the system reliability and allows for graceful degradation. The latter consisting of a mix of sea, land, islands, coastal rains and thunderstorms and a multiple of radar targets including small surface targets, helicopters and anti-ship missiles. Furthermore, SMART-S Mk2 is designed to match the full performance of surface to air missiles (SAM), such as the Evolved Sea Sparrow Missile (ESSM). SMART-S Mk2 is extremely suitable as the main air and surface surveillance radar in a one radar concept for light frigates, corvettes and ships such as Landing Platform Docks (LPD)."

GROUND FOR APPEAL 6

The provisional relief court was wrong to rule that the Minister could have arrived at a positive assessment against criterion 2c of the Common Position

72. The court has largely dealt with the considerations regarding criterion 2c together with criterion 2a. However, PAX et al argued separately with reasons in the first instance why verification of criterion 2c of the Common Position should independently lead to the conclusion that the exports should not be allowed. The provisional relief court misunderstood this.
73. PAX et al refer to what they argued in the first instance and also in this appeal concerning the maritime blockade of Yemen and why these facts should lead to refusal of arms exports to the Egyptian navy.
74. They reiterate here that, with regard to the maritime blockade of Yemen, the State merely argues that it is "likely" that the Egyptian navy will not participate (any longer) in the blockade of Yemen. This is insufficient to negate the clear risk of such participation, partly because the Egyptian navy, as confirmed by the State, patrols far beyond its own coast in the Bab el Mandeb, the strait that lies off Yemen.
75. Allowing exports is therefore contrary to the correct application of criterion 2c of the Common Position.

GROUND FOR APPEAL 7

The provisional relief court was wrong to find in finding 4.18 to 4.20 that the State is free to allow the export of arms to Egypt in the present circumstances under criterion 6 of the Common Position.

76. In finding 4.18 the provisional relief court considers that:

Criterion 6(b) of the Common Position states that Member States shall take into account the degree to which the country purchasing military goods or technology has complied with its international commitments, in particular on the non-use of force, and international humanitarian law in the past.

77. In finding 4.19 the provisional relief court continued by considering that:

There is no doubt that in the case of Egypt assessment against this criterion is negative, because - as the memo of 2 July 2020 states - Egypt has not ratified the Biological Weapons Convention, is not a party to the Chemical Weapons Convention and is violating the arms embargo on Libya.

78. However, the provisional relief court then considers:

But it follows from the wording of criterion 6 that a negative assessment against this point does not mean that a Member State is obliged to refuse a licence. Stop Wapenhandel and the NJCM have submitted a user's guide for the Common Position, which - contrary to what can be deduced from the text of criterion 6 itself - does state in a compelling manner that Member States will not grant a licence if the assessment of the buyer country's track record against criterion 6 does not give a positive result. The State has argued that this user's guide is an aid to the Member States in interpreting the Common Position, but is not a legally binding document from which third parties can derive rights. The provisional relief court is of the opinion that, although it is understandable that Stop Wapenhandel and the NJCM see a basis in the User's Guide for supporting their requests, this argument by the State is formally correct.

79. And finally, in paragraph 4.20, the provisional relief court states:

The Minister did not consider the negative assessment against criterion 6, in line with the advice in the memo, to be decisive for the final decision, because the goods in the application are not related to Egypt's obligations regarding the non-use of force and the humanitarian laws of war, and because the Egyptian navy, insofar as the goods are intended for it, has not been involved in any violations of these standards. That view is not manifestly wrong or incomprehensible.

80. However, a negative test against criterion 6 of the Common Position should have resulted in a ban on exports in this case.

81. PAX et al explicitly maintain everything they argued in the summons in the first instance, which must be deemed to be repeated and inserted here.³⁷ They add the following to this.

82. The provisional relief court was right to agree with the State that the assessment against criterion 6 of the Common Position for the export of weapons to Egypt is always negative. As the provisional relief court also rightly considered, the User's Guide indicates that export must not take place in the event of a negative assessment against criterion 6. However, the

³⁷ Summons in first instance of 11 October 2021, para. 48 to 51.

provisional relief court wrongly *did not* subsequently conclude that the export of military goods should not be permitted.

83. The User's Guide is not any document but, according to article 13 of the Common Position, serves as "guidance for its implementation."³⁸ The legal basis for the User's Guide therefore lies in the (binding) Common Position. The English version of article 13 of the Common Position also refers in a directive manner to the role of the User's Guide: "*shall serve as guidance for the implementation of this Common Position*".

84. The State has also stated that the User's Guide is an important source when applying the assessment criteria. The State is in favour of a consistent application of the assessment criteria, of which the best practices from the User's Guide form part.

In addition to the Common Position, the User's Guide (adopted in April 2009) is an important source for the consistent application of the assessment criteria.³⁹

In answer to questions about harmonization from the PvdA (Dutch Labour Party), it can be stated that all EU Member States are in favour of a consistent application of the assessment criteria, which is what the Common Position stands for. The consistent application of 'best practices' in the User's Guide is part of this.⁴⁰

The User's Guide contains the best practices for the implementation of the EUCP as agreed within the EU, thus contributing to the harmonization of EU arms export policy.⁴¹

And in 2018, the State added that "In practice, [the User's Guide is] determinant for companies and applications."⁴²

85. The State itself is therefore - rightly - of the opinion that the User's Guide should be determinant in applications. This means that it is not necessary to examine whether it is legally binding: it restricts the State's freedom of policy in the sense that, in principle, the State must follow it.

³⁸ Common Position, article 13.

³⁹ House of Representatives, session year 2010-2011, 22 054, no. 165.

⁴⁰ Ibid. The remainder of the quotation is included here for the sake of completeness but is not, strictly speaking, applicable to this dispute. "The Government will strongly advocate that the User's Guide is included in the review of the Common Position. This will look at which elements from the User's Guide might be added to the criteria. An example of this could be to include the track record of military goods in relation to internal repression and human rights violations in licensing assessments."

⁴¹ House of Representatives, session year 2014-2015, 34 103, no. 3.

⁴² House of Representatives, session year 2017-2018, Parliamentary Paper 22 054, no. 299.

86. The User's Guide to the Common Position concludes that no licence will be issued if the assessment against criterion 6 is negative.
87. There is no reason why export should take place, so allowing that export is, in the provisional assessment, unlawful.
88. However, as far as PAX et al have been able to establish the State did not even consider the User's Guide's considerations with regard criterion 6 for at least one of the ten permitted exports.
89. In fact, in the (only) submitted memo the State also included the intended end-use of the weapons to be exported in the assessment under criterion 6.

In this case, the DVB (Security Policy Department) recommends that the negative assessment of criterion 6 should not be a decisive factor in the final decision, since the goods in this application are not related to the concerns described under this criterion and, as far as is known, the end user (the Egyptian navy) is not involved in the supply of arms to Haftar.⁴³

90. But according to the User's Guide, the aim of Criterion 6 is to avoid exporting arms at all to countries whose governments do not respect their international commitments:

As noted above, the end user and the nature of the goods to be exported are not the main focus of the analysis when assessing on criterion 6, as this criterion is intended to prevent all exports of military technology and goods to countries whose governments do not respect their international commitments.⁴⁴

91. Neither the use of the goods by the end user nor the precise role of the Egyptian navy are relevant in the context of criterion 6, and should therefore not have been taken into account by the State. After all, criterion 6 explicitly considers only the conduct of the recipient country as a whole. The provisional relief court misunderstood this.
92. Moreover, Egypt's alliance with the Saudi-Emirati coalition also negatively affects the assessment of arms exports to this country: this coalition has committed massive violations of international humanitarian law and international human rights law over the past five years and continues to do so today. Egypt has actively contributed to this through military and political support.

⁴³ Statement of reply of 9 November 2021, Exhibit 9, p. 6.

⁴⁴ User's Guide to the Common Position, p. 113, at 6.6.

93. This coalition is also responsible for the maritime blockade, which can be classified as a war crime, and which was carried out using warships amongst other things. The provisional relief court, together with the State, apparently and incorrectly did not take this fact into consideration in the correct manner.
94. Partly in view of what PAX et al have argued about the actual situation with regard to Egypt, the State was therefore not free, without a compelling reason, to allow the export in violation of the standards of the User's Guide, namely: no exports if the assessment against criterion 6 is negative. The State has violated the standards incumbent upon it, or at least the State could not reasonably arrive at the decision to allow the export. The provisional relief court misunderstood this.

GROUND FOR APPEAL 8

In finding 4.21 the provisional relief court wrongly attaches importance to whether other EU countries refrain from supplying arms to Egypt

95. In finding 4.21 The provisional relief court considers, among other things:

In addition, it has not been argued or demonstrated that other EU countries are currently refraining from similar supplies to the Egyptian navy.

96. The question of whether other countries are refraining from making similar supplies to the Egyptian navy is not legally relevant. The question is whether, under the present circumstances and given the facts, exports to Egypt are unlawful. The fact that other countries may or may not have stricter policies on arms exports to Egypt has no bearing on this.
97. It also happens that countries themselves decide on a stricter arms policy or even an arms embargo, without other countries doing so. A well-known example is the arms embargo imposed by Germany on Saudi Arabia in 2018 following the murder of a journalist.⁴⁵

⁴⁵ RD, 18 September 2019, 'Duitsland verlengt wapenembargo tegen Saudis' ('Germany extends arms embargo against Saudis'), <https://www.rd.nl/artikel/814442-duitsland-verlengt-wapenembargo-tegen-saudis>

In April 2021, Canada was the only country to reconsider 25 export licences previously granted to Turkey, after it had seen credible evidence that equipment previously supplied had been used in the Nagorno-Karabakh conflict.⁴⁶

The United Kingdom was the only country to reverse the execution of five licences for Egypt in 2013 when it emerged that the Egyptian army had used extreme violence against demonstrators after the fall of Morsi.⁴⁷

The United States announced in September 2021 that it would change its policy and suspend USD 130 million in military aid until Egypt improves its human rights record.⁴⁸

98. Similarly, the Netherlands' presumption of denial policy towards Egypt, which applied between 2018 and 2019, was not motivated by how other countries dealt with arms exports to Egypt, but was purely based on the facts and circumstances in Egypt and the region (particularly around Yemen).⁴⁹
99. Furthermore, even though there may not currently be any EU countries that are refraining from supplying arms to the Egyptian navy, there is much criticism of exports to Egypt. Hence 20 human rights organizations issued a statement last year condemning France's export relationship with Egypt.⁵⁰ The French parliament also issued a report recommending a stricter arms export policy with regard to Egypt.⁵¹ In addition, several other EU countries do not supply military goods to Egypt at all, without having a (published) policy on this.

GROUND FOR APPEAL 9

⁴⁶ CBC, 12 April 2021, 'Canada cancels permits for high-tech arms exports to Turkey', <https://www.cbc.ca/news/politics/arms-sales-turkey-canada-1.5984453>.

⁴⁷ The Guardian, 19 July 2013, 'UK halts export of arms components to Egypt due to fears over state force', <https://www.theguardian.com/world/2013/jul/19/uk-revokes-arms-export-licenses-egypt>.

⁴⁸ Reuters, 14 September 2021, 'US to hold 130 mln of Egypt's military aid over human rights', <https://www.reuters.com/world/middle-east/us-hold-130m-egypts-military-aid-over-human-rights-sources-2021-09-14/>

⁴⁹ Rijksoverheid (Netherlands Government), publication of 1 August 2019, 'Presumption of denial voor landen betrokken in het Jemen conflict' ('Presumption of denial for countries involved in the Yemen conflict'), <https://www.rijksoverheid.nl/documenten/publicaties/2019/08/01/presumption-of-denial-voor-landen-betrokken-in-het-jemen-conflict>.

⁵⁰ DW, 7 December 2020, 'France's Macron defends arms sales to Egypt despite rights concerns', <https://www.dw.com/en/frances-macron-defends-arms-sales-to-egypt-despite-rights-concerns/a-55846151>.

⁵¹ Assemblée Nationale, Rapport d'information sur le contrôle des exportations d'armement, No 3581, 18 November 2020, https://www.assemblee-nationale.fr/dyn/15/rapports/cion_afetr/l15b3581_rapport-information.pdf.

In finding 4.8 the provisional relief court wrongly rejected the requested prohibition on future exports

100. In finding 4.8 the provisional relief court considers, insofar as is relevant here:

As far as it concerns (...) a general prohibition for the future on the export of military goods to Egypt, the provisional relief court is of the opinion that this request is not compatible with the legal system of assessment of arms exports, which is done on a case-by-case basis. The Minister is obliged to assess each licence application on its own merits, taking into account all relevant and current circumstances of the case. Such an assessment cannot take place in advance and in a general sense. Only if a general arms embargo on Egypt was in force would a case-by-case review not be necessary, but the State has argued without challenge that arms embargoes are usually imposed in an international context, and Stop Wapenhandel and the NJCM have stated that they are not seeking an arms embargo with their request. The request seeking an injunction against future exports will therefore be rejected.

101. PAX et al's have grounds for appeal against two considerations which are contained in finding 4.8: against the consideration that the provisional relief court can only say something about future exports (without carrying out a case-by-case assessment) if there is an arms embargo, and against the consideration that, because PAX et al claim not to be seeking an arms embargo with their requests, the provisional relief court does not have to look at the requests relating to future exports at all.

8.1. The consideration that the provisional relief court would only be able to say something about future exports (without carrying out a case-by-case assessment) if there is an arms embargo

102. The situation in Egypt is such that a ban for the future, for a limited period of time to be determined by the provisional relief court (which can also be relatively short), can indeed be reconciled with the legal system of case-by-case assessment by the State of applications for arms export licences. Even if there is no arms embargo in force.

103. After all, PAX et al have argued that in view of the current situation in Egypt - the human rights violations (established by the provisional relief court and not disputed by the State) and the role of the army in those human rights violations, the role of the Egyptian navy in the region and the developments in Yemen and North Sinai - (permitting) military exports to Egypt would be unlawful. This is because, given the current situation, such exports would be in breach of the State's obligations. Based on the facts as now presented, exports of military equipment to Egypt would have to be judged unlawful.

104. However, since the State evidently takes a different view and has granted ten licences in the recent period, and it is likely that new applications will follow in the near future, it is important and also possible under civil law to at least temporarily halt the (threatened) unlawful conduct that will occur afresh with each granting and delivery. Precisely because the State is not fulfilling its obligations, and because there is also a significant risk that the State will not fulfil them in the near future (in the event of future authorizations in the same circumstances), it is pre-eminently up to the court to freeze the situation temporarily.

105. There are many examples in case law where an injunction is granted for future acts based on the circumstances shown by the facts, while the individual acts could also have been challenged. PAX et al has listed some of them below:

A. For example, in 2005 the Amsterdam provisional relief court prohibited a municipal council from continuing to take disruptive action against a family.⁵² The family was disturbed by order of the mayor, with the aim of changing their minds. There was a fear that the family would become radicalized, and for that reason numerous actions were taken to influence the family, from surveillance to ringing the doorbell. The legal basis for the policy was not unlawful, and the family could have complained or sued with regard to each individual act, as in these proceedings. Because the facts had shown that, in short, there was little to worry about, the judge chose to grant the request to prohibit the municipal council from harassing the family in the future, given the current circumstances.

B. In a 2015 case involving Post.nl versus striking parcel delivery workers, the Midden-Nederland provisional relief court prohibited a strike leader from organizing further collective actions.⁵³ This was unless subsequent actions fell under the protection of the right to strike. As in the present case, it was only about the actions that would be unlawful, based on the actions that had already taken place and therefore only under the present circumstances. Once again, Post.nl could have challenged the individual actions, but Post.nl chose to seek an injunction for the future, which was granted by the provisional relief court.

⁵² Amsterdam District Court, 1 December 2005, ECLI:NL:RBAMS:2005:AU7314.

⁵³ Midden-Nederland District Court, 20 July 2015, ECLI:NL:RBMNE:2015:5373.

C. In a 2017 provisional relief case brought by Milieudefensie against the State on clean air, the provisional relief court in The Hague prohibited the State from taking "any measure which, in the opinion of the RIVM (National Institute for Public Health and the Environment), must be statistically expected to lead to the continued or renewed breach of the limit values for NO₂ and PM₁₀" with immediate effect from service of the judgment.⁵⁴ Since that breach was established for the court under the present circumstances, on the basis of the facts presented, this prohibition could be imposed for future acts (including acts with a possible basis in administrative law).

106. Hence even without an international arms embargo, the provisional relief court may, based on the present circumstances and the facts presented, decide to impose a temporary ban on future exports. It is also in keeping with the nature of provisional relief proceedings to request and impose only a temporary prohibition, solely for a period determined by the court or only until after judgment in proceedings on the merits in which all (inter)national laws, facts, interests and grounds are considered further and more carefully.

8.2. The consideration that, because PAX et al claim not to be pursuing an arms embargo with their requests, the provisional relief court need not look at the requests concerning future exports at all

107. An arms embargo, according to information from the State itself, is a "ban on imports and exports of military goods, such as weapons and army vehicles."⁵⁵ An arms embargo is a sanction, a coercive measure, and is a response to human rights violations in the countries targeted by the sanction.⁵⁶ Even though the Netherlands prefers not to do this, arms embargoes and other sanctions *can* also be imposed by a country on its own (outside the EU or UN context).⁵⁷ A well-known example is the aforementioned arms embargo imposed by Germany on Saudi Arabia in 2018 following the murder of the Saudi journalist Khashoggi.⁵⁸

⁵⁴ The Hague District Court, 7 September 2017, ECLI:NL:RBDHA:2017:10171.

⁵⁵ See: Rijksoverheid (Netherlands Government), Beleid voor internationale sancties (International sanctions policy): <https://www.rijksoverheid.nl/onderwerpen/internationale-sancties/beleid-voor-internationale-sancties>.

⁵⁶ Ditto

⁵⁷ Ditto

⁵⁸ RD, 18 September 2019, 'Duitsland verlengt wapenembargo tegen Saudis' ('Germany extends arms embargo against Saudis'), <https://www.rd.nl/artikel/814442-duitsland-verlengt-wapenembargo-tegen-saudis>

108. The Netherlands could therefore indeed independently impose an arms embargo on Egypt, but because this would normally be done in an international context and for a longer period of time, PAX et al have not sought this.

109. However, there is still quite a distinction between an arms embargo on the one hand, and on the other the demand by PAX et al that the Netherlands should not allow any arms exports to Egypt in the near future. The second request from PAX et al in the writ of summons included inter alia:

To prohibit the State of the Netherlands from allowing (actual) future exports of military goods and technology for (the benefit of) the Egyptian State and/or the Egyptian navy, or at least order the State to make the (actual) export of all military goods and technology to Egypt impossible, for an indefinite period of time or until the court has ruled in the case on the merits, or until the moment when, in the provisional judgment of the provisional relief court, this export would no longer be in conflict with the obligations incumbent on the State.

110. This request therefore falls well short of a total arms embargo. For example, the duration can be limited until a ruling has been made on the merits of the case or until the export no longer conflicts with the State's obligations.

111. Furthermore, a presumption of denial policy has been in place in the Netherlands in relation to Egypt until relatively recently, from 27 November 2018 to July 2019, without an international political arms embargo in place.⁵⁹ With the presumption of denial, a 'no, unless' policy applies to all exports.⁶⁰

112. Simply considering only the - undisputed - facts about the regime in Egypt, the human rights violations there, the fact that Egypt is violating the arms embargo on Libya, plays a role in the blockade of Yemen and in view of the operations in North Sinai against its own population,

⁵⁹ Rijksoverheid (Netherlands Government), publication of 1 August 2019, 'Presumption of denial voor landen betrokken in het Jemen conflict' ('Presumption of denial for countries involved in the Yemen conflict'), <https://www.rijksoverheid.nl/documenten/publicaties/2019/08/01/presumption-of-denial-voor-landen-betrokken-in-het-jemen-conflict>. In the more distant past, presumption of denial policies have also applied to other facts.

⁶⁰ Ibid. "The presumption of denial means that the export of military goods to these end users will only be allowed if it is absolutely clear that these goods will not be used in the war in Yemen. This policy therefore means that, in contrast to the risk assessment which is customary in arms export policy, a reversed burden of proof applies (presumption of denial)."

PAX et al are amazed that the State did not proceed to a presumption of denial much earlier (or that it stopped the presumption of denial policy in 2019).

113. After PAX et al's request is granted, the State could also decide to implement a new presumption of denial policy towards Egypt.
114. The provisional relief court therefore wrongfully failed to consider the arguments of PAX et al that lead to the conclusion that no arms export to Egypt should be allowed in the future either, at least for a period to be determined by the court. This request should have been granted because the facts surrounding the situation in Egypt can lead to no other conclusion than that no exports of military goods and technology to Egypt should be allowed until that situation improves dramatically.
115. A ban on allowing future exports is also very important for another reason. The State has established a practice of providing Parliament with limited information after the event on granted arms export licences. This means that some licences may have been granted months before they become known. As long as the State continues to carry out its incorrect assessment, court action would be needed for every single permitted export. This is an undesirable situation. It is also not in the State's interest to have to conduct legal proceedings over and over again about the same set of facts.
116. PAX et al have no further interest in this request if the State declares that, if the factual circumstances in Egypt remain unchanged, it will no longer grant an export licence unless there is no risk that the goods could be used for violations of human rights and/or the laws of war.

CONCLUSION

117. On the basis of all of the above, the grounds for appeal considered separately, but certainly in conjunction with each other, the appellants are of the opinion that the judgment being appealed cannot be upheld and that the request(s) made by them in the first instance must be granted, as follows:

THEREFORE

May it please your Court of Appeal by way of a judgment which is provisionally enforceable insofar as the law permits:

- I. to set aside the judgment in provisional relief proceedings rendered on 23 November 2021 by the provisional relief court of the District Court of The Hague, private law section, case and cause list number C/09/618625 KG ZA 21/923, and give judgment afresh, insofar as the law permits, in favour of the request(s) made by the appellants in the first instance;
- II. to order the respondent to pay the costs of the proceedings in the first instance and on appeal.

The costs of this are for me,

Bailiff

Product list

- Exhibit 13 Abridged Egyptian Army video (shown at hearing in the first instance)
- Exhibit 14 Charter of IKV
- Exhibit 15 Charter of Pax Christi
- Exhibit 16 Al-Ahram Online, 'A day with the Egyptian Navy: High sea strategies', 31 October 2021
- Exhibit 17 Video of Egyptian Special Forces