Judgment n ° 249.991 of March 5, 2021 is corrected by judgment n ° 250.004 of March 8, 2021.

COUNCIL OF STATE, ADMINISTRATIVE LITIGATION SECTION

THE PRESIDENT OF THE XV[e] REFERRAL BEDROOM

OFF

n o 249991 of 5 March 2021

A. 232.975 / XV-4690

In question :

1. the non-profit association
HUMAN RIGHTS LEAGUE,

2. the non-profit association
NATIONAL ACTION COORDINATION
FOR PEACE AND DEMOCRACY (CNAPD),

3. the non-profit association
FORUM VOOR VREDESACTIE (VREDESACTIE),

all having taken up residence at
M e Vincent LETELLIER, lawyer,
Vanderlinden Street 35
1030 Brussels,

versus :

the Walloon Region , represented
by his government,
having taken up residence at
M es Marc UYTTENDAELE
and Patricia MINSIER, lawyers,
rue de la Source 68
1060 Brussels.

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I. Subject of the request

By a request filed electronically on February 20, 2021, the non-profit associations League of Human Rights, National Coordination Action for Peace and Democracy and Forum voor Vredesactie call for the suspension, according to the procedure of extreme urgency, of the execution of "decisions taken on an unknown date by the Minister-President of the Walloon Region of issue licenses for the export of arms to the Kingdom of Saudi Arabia, in particular to replace one or more licenses previously issued under nos . 2208/031132, 2208/031133, 2208/0311130 and 2208/0311131 and of which the execution was suspended by judgment n ° 248.128 of your Council and then withdrawn by the opposing party on November 24, 2020 ”.

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II. Procedure

By an order of February 22, 2021, the case was set for hearing
1 st March 2021.

The opposing party filed a note of observations and the file
administrative.

Mr. Marc Joassart, Councilor of State, acting president, presented his report.

M es Vincent Letellier and Flora Roux, lawyers, appearing for the
applicants, and M e Patricia Minsier, lawyer appearing for the part
opposing party, were heard in their observations.

M me Muriel Vanderhelst, auditor of the State Council, was heard
its assent.

The provisions relating to the use of languages are applied,
listed in Title VI, Chapter II, of the laws on the Council of State, coordinates
January 12, 1973.

III. Facts

Reference should be made to the statement of the facts of judgments no.247.259 of
March 9, 2020 and n ° 248.128 of August 7, 2020 and complete them with the elements
following:

The execution of licenses nos . 2208/031130, 2208/031131, 2208/031132 and
2208/031133, issued on July 8, 2020 for the export of arms to the
Kingdom of Saudi Arabia, was suspended by judgment No. 248.128, cited above.

On November 24, 2020, the opposing party withdrew the licenses
the execution was suspended and decided to resume the proceedings at the stage of
advisory committee.

On December 9, 2020, the advisory committee gave a new opinion
positive on license applications, with the National Guard as final recipient
of the Kingdom of Saudi Arabia.

On December 19, 2020, the Minister-President adopts the contested acts, on the basis of the new positive opinion of the advisory committee and the analysis complementary carried out by its services. The licenses issued bear the numbers 2208/032310, 2208/032312, 2208/032317 and 2208/032318.

These are the contested acts.

IV. Confidentiality of certain documents in the administrative file

IV.1. Submissions of the parties

The opposing party requests, pursuant to article 87 of the rules general procedure, the confidentiality of documents as well as the inventory of confidential administrative file. She recalls that the principle of contradiction debate is not absolute and may be waived due to issues related to international relations of the Walloon Region as well as the business secrecy of economic operators concerned, these exceptions being accepted by the Commission access to administrative documents. She maintains that these exhibits reveal the elements justifying the position of the Walloon Region with regard to the granting of licenses, which are likely to have repercussions on his relationships international and economic with Saudi Arabia and other countries or regions. It notes that these documents include in particular a geostrategic analysis, ethics and economics of the situation, based on diplomatic information harvested. She adds that certain documents must, moreover, remain confidential. because of business secrecy. It emphasizes that, for economic operators concerned, commercial interests are major and it is essential to allow them to meet their contractual commitments, particularly in terms of confidentiality. It argues that the licensed companies have taken confidentiality commitments with regard to their clients which do not concern only the products covered by the disputed licenses, but also the whole information and exchanges concerning the contractual relations between parts. It concludes that the disclosure of strategically sensitive information (final recipient, nature and quantity of products, price, characteristics techniques, etc.) concerning the products concerned would infringe the secrecy of cases established by the Court of Justice of the European Union in its judgment of July 13, 2006 (case C-438/04) and would seriously prejudice the companies concerned by jeopardizing their credibility. She says, however, that she is sensitive to the fact that the maintenance of confidentiality must not be such as to prevent a effective control of legality. Having regard to the jurisprudence of the Council of State, aimed at ensure a balance of interests between a fair trial and protection of interests aforementioned, it files, as a non-confidential document, a table showing the

licenses withdrawn and taken over by the current Minister-President of the Walloon Region, the date of signing of the granting decisions, the expiry date for the validity of licenses, the type of license concerned, the category of products concerned, the purchasing country and the end user.

At the hearing, the applicants do not address the issue of the confidentiality of documents in the administrative file.

IV.2. Appreciation

As pointed out in Council of State judgments no . 242.022 in 242.031 of June 29, 2018, the lessons of which were confirmed by the judgments No bones 244800-244804 of 14 June 2019 and more recently in the judgment n ° 247.259 of March 9, 2020, confidentiality must remain exceptional and cannot have the effect, in the context of judicial proceedings, of preventing the exercise of the rights of defense and the adversarial debate between the parties.

In this case, it is justified to maintain the confidentiality of the documents of the confidential administrative file not because it concerns export licenses weapons and opinions of the commission but because these documents, if they were communicated to the requesting parties and to the public, could have important on the international and European relations of the opposing party and the deprive, in the future, of information which is necessary for the purposes of the control that it must exercise when processing export license applications weapons, in particular as regards the situation of the countries receiving these weapons. At with regard to certain provisions (Articles 4, 8 and 9) of the Common Position 2008/944 / CFSP of the Council of 8 December 2008 defining common rules governing the control of exports of military technology and equipment, the Belgium and, consequently, the regions which compose it, have an obligation to confidentiality in the exchange of information they have with others European partners on these exports. It follows that advertising any of the aforementioned documents from the confidential administrative file could Belgium's cooperation with its European partners is poor.

Finally, the confidentiality of these documents in no way prevented the parties applicants to bring the present action and to fully assert their arguments as to the legality of the impugned licenses.

In view of all of these elements, the confidentiality of the parts of the confidential administrative file is maintained.

V. Conditions of the suspension of extreme urgency

According to Article 17, § 1 st , laws on the Council of State, coordinated on January 12, 1973, the suspension of the execution of a decision administrative presupposes two conditions, an urgency incompatible with the deadline handling of the annulment case and the existence of at least one serious remedy likely, *prima facie* , to justify the annulment of this decision. Paragraph 4 of this same article relates to the hypothesis of an appeal for suspension of extreme urgency who must indicate in what way the treatment of the case is incompatible with the deadline processing the request for suspension under paragraph 1 st .

VI. Statement of extreme urgency

VI.1. Submissions of the parties

The applicants state that the contested acts are in contradiction with their social purpose which consists of the defense of essential values democratic societies, as enshrined, in particular, by the instruments international protectors of human rights and fundamental freedoms. They consider that when an arbitrary infringement of these rights and freedoms risks being to produce because of the actions of the Belgian authorities, they have a personal interest in acting. They consider that the immediate execution of the contested acts may well have irreversible consequences, given the situation in the Kingdom of Arabia Saudi Arabia and its involvement in the conflict in Yemen, namely the violation of the fundamental rights and freedoms of individuals, the use of weapons of which the export is authorized by the acts attacked in the context of an armed conflict in violation of international law and more particularly of international law humanitarian aid, the arming of a country that does not respect fundamental rights or international law and the risk of diversion of the weapons concerned to terrorist groups. According to them, this danger is serious and would be irreparable since the delivery of the weapons would prevent any possible compensation for the damage suffered by them as well as by third parties whom they intend to protect. If they had to await the outcome of the annulment proceedings, it seems clear to them that the prejudice will have already occurred.

They note that the objective of their appeal is to prevent arms deliveries that can take place at any time, by sea, air or by train, without them being able to be informed of the moment and the modalities of the different implementations of export licenses. They point out that they ignore the deadlines in which weapons, ammunition and military equipment covered by these licenses could be delivered, but it

seems more than likely that the beneficiaries of these licenses will be able to to carry out the contested acts within a period shorter than the 45-day period provided for by Article 17, § 5, of the coordinated laws on the Council of State. According to them, it results

that the danger which would result from the implementation of the contested acts is imminent, so that only the examination of the request according to the procedure of extreme urgency is likely to make the request useful. They indicate that
experience has shown in the past that the duration of the examination of a request for suspension under the ordinary procedure could not prevent the delivery of all material covered by previously attacked licenses. They also do
argue that if recourse to the procedure of extreme urgency must remain exceptional in because this procedure reduces the rights of the defense to a strict minimum and the investigation of the case, it is necessary to take into account the circumstance that, in arms export litigation, their rights are also very
limited due to the confidentiality of the documents concerned. They conclude that they cannot be reproached for not having acted with due diligence and that the recourse to the procedure of extreme urgency is justified.

The opposing party notes that the requesting parties indicate that they have taken knowledge of the existence of the contested acts by a press article published on February 10, 2021 and that the appeal was lodged on February 20. She believes that for assess whether this 10-day period is likely to contradict the diligence of the parties applicants to act, consideration must be given to the circumstances of the case. She underlines in this regard that the applicants were notified on 15 January 2021 of the decisions to withdraw licenses whose execution has been suspended by the judgment n ° 248.128 of August 7, 2020 and that these withdrawal decisions specify that the procedure is taken up at the stage of the advisory committee. She criticizes the fact that the parties applicants did not question her about any repairs that had taken place, so even that they feared the occurrence of a risk of serious harm and that they knew that they would not have informed each other directly and personally about the issuance of licenses. In these circumstances, she wonders about the diligence of requesting parties to act and relies on the wisdom of the Council of State in this regard.

VI.2. Appreciation

According to Article 17, § 1 st , paragraph 2, of the consolidated laws on the Council State, the suspension of the execution of an administrative act cannot be ordered only if there is an emergency incompatible with the treatment of the annulment case and if at least one serious means capable *prima facie* of justifying the cancellation of the act is invoked.

Urgency cannot result from the sole circumstance that a decision fund will intervene in the more or less distant future. She cannot be recognized that when the applicant establishes that the implementation of the contested act would present disadvantages of sufficient gravity that they cannot be allowed
produce pending the outcome of the proceedings on the merits.

Paragraph 4 of Article 17, cited above, provides for the implementation of a derogatory procedure in cases of extreme urgency incompatible with the ordinary processing of the suspension request. Extreme urgency in support of recourse to this procedure, which is even more specific than that of ordinary summary proceedings, supposes that this exceptional procedure is able to usefully prevent the damage feared by the applicant when even the ordinary summary proceedings could not not. The extreme urgency must be obvious to everyone or explained indisputably by the applicant in his request, which implies that the latter shows, based on specific and concrete evidence, that if the suspension of execution took place at the end of the ordinary procedure, it would take place irrevocably late manner to prevent damage. It cannot be held only takes into account the elements that the applicant puts forward in his request.

The use of the procedure of extreme urgency, which reduces to a strict minimum the exercise of the rights of the defense and the investigation of the case, must remain exceptional and can only be admitted on condition that the applicant has made diligence to seize the Council of State as soon as possible. The diligence of the applicant and the imminence of the peril are the conditions for the admissibility of the request for suspension insofar as it is introduced according to the procedure of extreme urgency.

The information given on January 15, 2021 by the opposing party about the withdrawal of previous licenses was particularly incomplete since it was limited to indicate that the procedure was resumed at the stage of the opinion of the committee then that at this time, not only, this commission had already delivered a new opinion but that new licenses replacing the previous ones had already been issued. This incomplete information was not such as to suggest that decisions had already been taken on this matter. The applicants declare, without be contradicted on this point, be aware of the existence of the contested acts by the press on February 10, 2021. The present action having been brought on February 20, the delay in action is compatible with the alleged extreme urgency.

The immediate execution of the attacked licenses may have irreversible consequences for the preservation of human rights and freedoms fundamental principles as well as international humanitarian law, Saudi Arabia being directly involved in the conflict in Yemen and subject, moreover, to

numerous criticisms from international organizations regarding the most fundamental human rights violations committed in its territory. It is therefore not excluded that there is a real risk that the weapons targeted by the different export licenses are used in the context of a conflict over Yemen or that they contribute to internal repression. In the head of populations whose requesting parties defend the collective interests and against which these weapons could be used in violation of their rights fundamental, this damage is extremely serious which justifies the urgency.

VII. Third plea - second limb

VII.1. Submissions of the parties

The third plea is made, in the alternative, of the violation of Articles 1 st , § 1 st , 2 and 10, the common position 2008/944 / PESC, supra, of Article 14 § 1 st , al. 2, 2. (second criterion), *letters* a), b) and c), 6. (sixth criterion) and 7. (seventh criterion) of the decree of June 21, 2012 relating to importation, the export, transit and transfer of civilian arms and defense-related products, Articles 2 and 3 of the Law of 29 July 1991 on the formal motivation of administrative acts, the absence or insufficiency of reasons, the excess of power and manifest error of assessment.

The applicants point out that, even if the preamble to the Common Position 2008/944 / CFSP, cited above, refers to Article 15 of the Treaty on the European Union, this provision has been re-numbered, following the entry into force of the Lisbon Treaty, and became Article 29. This article provides that Member States must ensure the compliance of their national policies with the Union's foreign policy positions and common security. They argue that decisions adopting such positions are mandatory in application of Article 288, paragraph 4, of the Treaty on functioning of the European Union. They indicate that in this regard, Article 14 of Decree of 21 June 2012, cited above, constitutes the implementation by the Walloon Region of Belgium's obligation to implement Common Position 2008/944 / CFSP, above. They note that the criteria defined by this common position are specified in Article 14 § 1 st , paragraph 2 of the aforementioned decree. According to them, this provision involves the principle of linked competence when certain criteria are met, including the second.

In this branch, formulated in the alternative, they argue the absence or insufficiency of the reasons for the contested decisions with regard to the second, sixth and seventh criteria.

With regard to these criteria, they dispute the fact that reading the opinions of the commission and that of the decisions, of which they were not able to take cognizance due to their confidentiality, can reveal:

- that the advisory committee and, following it, the opposing party carried out a review careful and accurate (i) the situation in Saudi Arabia with regard to human rights man, (ii) his involvement in terrorism and in the violations serious humanitarian law in Yemen, (iii) the involvement of the National Guard in the conflict in Yemen or its interventions on its territory, and (iv) the possibility that the weapons fall into the hands of Houthi rebels like

this has happened in the past,

- that they have effectively compared this situation to the criteria defined by Article 14 § 1 st , paragraph 2 of the Decree of 21 June 2012, cited above, as required by Common Position 2008/944 / CFSP, cited above,
- and that at the end of this careful examination of the situation in Saudi Arabia and in the region, and in particular the worsening situation in Yemen, they have considered that they were in a position to rule out any risk that the Guard may still intervene in Yemen in the future, even taking into account account of the duty of care imposed on them, or that the weapons may still fall into the hands of the Houthi rebels as it has already happened by the past, and hence that they were not in a hypothesis where the jurisdiction to refuse the license was linked and that there was otherwise to authorize exports to this country with regard to the second, fourth and seventh criteria of article 14 of the decree of June 21, 2012, cited above.

They add that the committee's opinion, if it is favorable, should justify reasons which allow its members to deviate from what the commission had advocated in its unfavorable opinions of May 14, June 25, September 25, November 4 and December 19, 2019.

They consider that both the opinion of the committee and the decision of the Minister-President could not establish, in an adequate and relevant manner, by making "Proof, in each case and taking into account the nature and technology or military equipment in question, with particular caution ”:

- that the situation has evolved positively and significantly since December 2019 (which would constitute a manifest error of assessment);
- and that there are reliable elements ruling out any risk that the Belgian weapons may be used in the context of the conflict in Yemen or fall in the hands of Houthi rebels as has happened in the past (this which is contradicted, according to them, by the objective elements stated in the facts and retroacts of their request).

They point out, in this regard, that the advisory committee considered, in its 2019 opinions, that "the risk of weapons being used for unwanted purposes in the context of the war in Yemen remains important due to the involvement of the National Guard in the conflict ”, the National Guard not being only intervened in Bhareïn but "that it was seen in Yemen, in 2018, in accordance with the order given to him by the King of Saudi Arabia Salman, in April 2015, to take part in the Saudi-led campaign in Yemen in support of the air force and land forces ”, which the opposing party did not contradict in the motivation of previous decisions. They also highlight the makes that on the occasion of the opinion on CMI DEFENSE's license application, the advisory committee - in its new composition this time - concluded, on April 20

2020, "that the risk that the exported supplies will be used within the framework of the conflict in Yemen is minimal because the recipient is the Royal Guard which is, in principle, not involved in the conflict, unlike the National Guard, which protects the borders, in particular against Houthi incursions ".

They do not understand why the reports that the National Guard has intervened in Yemen in the past suddenly wouldn't no longer considered sufficiently convincing, nor even sufficiently credible, or could simply be challenged, to establish a risk that the weapons can be used in Yemen when the Council of State has already noted this and there is nothing to establish that this will no longer be the case in the future.

They also recall that the opposing party should have shown the "very particular caution" required in its assessment given the case law according to which "the opacity surrounding the actions of the security forces Saudi women during repressive operations involving the National Guard should be a ground for refusal rather than granting an export license weapons to a country where serious human rights violations have been ascertained by the competent United Nations bodies, by the Union European Union or by the Council of Europe ". They believe that it is the same if he There must have been some doubt as to the National Guard's involvement in Yemen, this that they dispute.

They argue that this motivation should include the assessment of the respect for international humanitarian law by Saudi Arabia, and not only by the National Guard, as required by the sixth criterion of article 14 of the decree of June 21, 2012, supra. They write, in this regard, that the user guide for the Common Position 2008/944 / CFSP, cited above, specifies that "the sixth criterion must be considered for purchasing countries whose government has a

negative behavior with regard to the aforementioned provisions; [by therefore, the focus is not on the identity and nature of the assessment during the assessment. of the end user of the equipment to be exported. In fact, the analysis focuses on the behavior of the purchasing country rather than on possible concerns arising from the risk that a particular transfer may have consequences specific negative ".

The opposing party notes that when the Council adopts a position common under Article 29 of the Treaty on European Union, it does not exercise no legislative function since it is limited to defining orientations and priorities general policies of the European Union which the Member States must respect as part of the adoption of their own laws and policies. She supports that the Walloon Region ensure that its policy conforms to the Common Position 2008/944 / CFSP, cited above, via the decree of 21 June 2012, cited above, which transposes it and

more particularly of its article 14 which takes again the criteria. She considers that since the Common Position is not a rule of law, its user guide cannot more to be seen as such.

She adds that the legality of an act is assessed at the time of its adoption and that there is no need to take into account the final report of the Office of the United Nations Commissioner for Human Rights deposited with the Council of security on 25 January 2021, of the adoption of a new resolution by the Parliament European Union on February 11, 2021 or the report of the third party requesting month of February 2021 which would demonstrate the intervention of the National Guard in a battle that took place in Yemen in 2019 and the diversion of weapons by rebels houthis. She considers that she cannot be reproached for not having carried out research similar to that of the requesting parties. She argues that the advisory committee is made up of experts in geopolitics, technologies of armaments and international political science which are the basis of their work analysis on elements, documents and official sources and possible sources civilians included therein, after having been verified and cross-checked with other information and that the same applies to the opposing party. It indicates that neither one neither researches the Internet because the information found in this context cannot be invalidated or confirmed. She considers that it is not possible for videos or photos found through check the dates and locations of filming or even sometimes their publication date, nor their content.

She disputes the fact that the National Guard can participate in repressive operations. It considers that, contrary to what the judgment held n ° 248.128, cited above, the analysis of the sources cited by the advisory committee and the

minority that had been given regarding previous licenses do not allow to conclude that the National Guard was involved. She also recalls that in principle, the role and mission of the National Guard is not to intervene in outside the country's borders, as recalled by the opinion of the advisory committee, since other forces, under the Saudi army, are responsible for intervening in abroad. She admits that the National Guard intervened in Bahrain but, according to her, it was an isolated operation and limited to the protection of strategic infrastructure such as oil and electricity facilities, as well that banks, at the request of a friendly country within the framework of the Gulf cooperation.

She also acknowledges that King Salman ordered the Guard in April 2015 to take part in the Saudi Arabia-led campaign in Yemen, in support of the air force and the ground forces, but considers that it does not have proof of the execution of this one and only instruction, which would not have been renewed for six years now. Even if violations of the law

international humanitarian aid were observed by the leader of the coalition intervening in Yemen, she argues that Saudi Arabia participates only through its "military" armed forces, its National Guard not participating. She emphasizes that the report of the Group of Eminent International and Regional Experts Moreover, it does not even explicitly mention this unit. She deduces that the any violations found could not have been committed with weapons concerned which are intended only for the National Guard. She adds that new additional elements that it has taken into consideration, such as latest developments in Saudi Arabia and internationally (in particular the report of the expert group of September 2020), did not provide any evidence to the contrary. In view of this observation, it considers that it cannot conclude the existence of a risk that the material affected by the attacked licenses will be used in Yemen and also participates in the commission of violations of humanitarian law international or human rights.

VII.2. Appreciation

The fact that the applicants characterize that branch as "Subsidiary" does not prevent the Council of State from examining its seriousness, any more that it does not force him, in the context of a procedure of extreme urgency, to proceed prior to the examination of other means and branches.

Since Common Position 2008/944 / CFSP, cited above, was transposed into the law of the Walloon Region by the aforementioned decree of June 21, 2012, whose violation is also claimed and that the adequacy of this

transposition is not contested, there is no need, at this stage of the procedure, to examine the legally binding nature of such a decision.

However, Article 14, § 1 st , paragraph 2 of the Decree of 21 June 2012, cited above, expressly provides that export applications are rejected after examination at the with regard to criteria "based" on this common position. It follows that for application of these criteria, the Walloon Government cannot disregard this common position and its user guide, provided for in Article 13 thereof ci, which is periodically reviewed and summarizes the guidelines agreed for the interpretation of these criteria.

Judgment No. 247.259 of March 9, 2020 ruled in particular as follows:

“According to article 14 of the decree of June 21, 2012, cited above, referring to second criterion of Common Position 2008/944 / CFSP, cited above, the government must “demonstrated, in each case and taking into account the nature technology or military equipment in question, with utmost caution particular with regard to the issuance of licenses to countries where serious human rights violations have been observed by the organizations competent authorities of the United Nations, by the European Union or by the Council of Europe ”. The guide to the use of Common Position 2008/944 / CFSP, planned by Article 13, specifies that, among the bodies competent to ascertain

serious human rights violations, including Parliament
European Union, the United Nations Human Rights Council and the High
Office of the United Nations Commissioner for Human Rights. According to this guide, “When
a thorough assessment of the risk of seeing the technology or equipment
military personnel whose export is considered to be used to commit violations
serious areas of international humanitarian law, it should be considered whether the country
recipient has always been respectful of this right and if it continues to be, to see
what intentions he has expressed through official commitments and
determine whether it is able to ensure that the technology or
transferred equipment is used in compliance with humanitarian law
international and that they are not diverted or transferred to other
destinations where they could be used to commit serious violations of this
law".

The European Parliament has adopted several resolutions relating to the situation in
Yemen (in particular those of February 25, 2016 and June 15, 2017 on the
humanitarian aid in Yemen, as well as those of July 9, 2015, November 30, 2017 and
of 4 October 2018 on the situation in Yemen) in which it notes that
some EU Member States continue to allow arms transfers and
related equipment to Saudi Arabia since the start of the war
while these transfers are “contrary to common position 2008/944 / CFSP
on the control of arms exports ”. Even though these resolutions do not
binding effect and that the embargo desired by this institution has not yet
been instituted, the fact remains that, contrary to what the
motivation of the contested acts, there is a clear position of one of the institutions
of the European Union on this matter.

Furthermore, in its resolution 36/31 of September 29, 2017, the Human Rights Council
UN Human Rights Council urged the United Nations High Commissioner for Human Rights
of man to establish a group of eminent international and regional experts
responsible for monitoring and reporting on the human rights situation in Yemen
account. This group was further tasked with carrying out an in-depth review of

all violations of international human rights law and other
relevant and applicable areas of international law and all infringements
to this right which would have been committed by all parties to the conflict since
September 2014, and establish the facts and circumstances surrounding the violations
and the infringements which would have been committed and, where possible, of
identify the perpetrators.

In two reports by the Office of the United Nations High Commissioner for Human Rights
man (A / HRC / 39/43 and A / HRC / 42/17) presented respectively during the
thirty-ninth and forty-second sessions of the Human Rights Council
man, organized respectively from 10 to 28 September 2018 and from 9 to
September 27, 2019, the expert group indicates that there are reasonable grounds
to believe that all parties to the armed conflict in Yemen, including Arabia
Arabia, are responsible for human rights violations and have committed a
significant number of violations of international humanitarian law. According to these
experts, “The legality of arms transfers made by France, the United
United, the United States and other states remains questionable and is the subject of several
legal proceedings in these states. The Group of Experts notes that the weapons
that continue to be provided to parties to the conflict in Yemen fuel the
conflict and perpetuate the suffering of the population ”. In the list of people
“Likely to be responsible for international crimes” which is established by these
experts, including Crown Prince Mohammed ben Salman. The passage
of the reasons for the contested acts relating to the absence of convictions of these
violations are irrelevant as neither Saudi Arabia nor Yemen
are parties to the Rome Statute of the International Criminal Court.

While the involvement of the National Guard in the conflict in Yemen is controversial,
the formal motivation of the contested acts does not however contradict the assertion
appearing in the opinions of the commission according to which the King of Saudi Arabia
reportedly ordered him to intervene in the Yemen countryside. This
motivation does not address the risk that weapons intended for the Guard

national government fell into the hands of Houthi rebels in attacks on outposts, as has happened in the past according to the opinions of the commission. Motivation does not allow us to understand the reasons either for which the elements provided by the advisory committee concerning the use in Yemen of equipment similar to that intended for the Royal Guard does not are not considered conclusive.

Regarding the renewal license n ° 2188/031849 of December 17 2019, preceded by a favorable opinion from the Commission on September 14, 2018, to note that it was the subject of a refusal by the competent Minister on the basis non-compliance with criteria 2 and 4 of the aforementioned article 14, then a “revocation” of this refusal on May 29, 2019. In any event, the granting of this license is based on on the same grounds as those set out for the other licenses attacked. The motivation for this license therefore incurs the same criticisms of legality.

In these conditions, taking into account the duty of care provided for in Article 14 of the Decree of 21 June 2012, cited above, for the second criterion relating to compliance with human rights in the country of final destination and respect for the law international humanitarian aid by this country (point b), the contested acts are not adequately motivated as to the obvious risk that the technology or military equipment considered for export are used to commit crimes serious violations of international humanitarian law in Yemen.

Insofar as it is taken from the violation of articles 2 and 3 of the law of July 29, 1991 relating to the formal motivation of administrative acts, the second plea is, at this stage of the procedure, considered serious ”.

Judgment n ° 248.128 of August 7, 2020 notably added the following:

" *Prima facie* , the opacity surrounding the actions of the Saudi security forces during law enforcement operations in which the National Guard participates should be a ground for refusal rather than granting an arms export license taking into account the special duty of care with regard to the issuance of licenses to a country with serious human rights violations have been ascertained by the competent United Nations bodies, by the Union European Union or by the Council of Europe. In addition, the role of the Guard national is not strictly limited to the national territory since it is already intervened in Bahrain and that the King of Saudi Arabia Salman ordered in April 2015 to the National Guard to take part in the Saudi-led campaign Arabia in Yemen, in support of the air force and the ground forces. If the Group of experts did identify violations of international law humanitarian actions that could have been committed in the context of the airstrikes in Yemen, these experts also denounced many other violations committed by all parties to the conflict, including Saudi Arabia, and in particular “Attacks using curved-fire weapons and small arms fire in violation of the principle of distinction, acts capable of constituting war crimes ” (Report of the Group of Eminent International and Regional Experts such as submitted to the United Nations High Commissioner for Human Rights, A / HRC / 42/17, p. 19) which could, in the absence of contrary indications in the motivation of the acts attacked, be carried out by means of technology or military equipment affected by the contested acts. These experts do not distinguish these violations according to the different components of the forces Saudi women involved. Moreover, the formal motivation of the act does not address nor the question of the risk of these weapons falling into the hands of Houthi rebels whereas this situation has already arisen in the past ”.

In this case, the favorable opinion of the committee on the licenses issued by the contested acts is essentially linked to the limited role of the National Guard which would be a military unit intended for the protection of borders, sites and strategic infrastructure and not to military operations abroad, which is

yet contradicted by his intervention in Barheïn. Even though this intervention had take place at the request of the authorities of that country and in agreement with the Council of Gulf cooperation, the fact remains that this unit has already intervened to maintain order following a popular uprising, which does not allow to exclude *a priori* the obvious risk that it could participate in a repression.

In this regard, a minority note again mentions signs involving the National Guard in repressive actions. This note also makes reference to the “human rights” sheet of the Walloon Region for this country which mentions the National Guard and the security services about violations of human rights. The reasons for the contested acts are intended to minimize the scope of these repressive actions by indicating that the participation of the National Guard is not certain because it is not always explicitly mentioned among the security forces or that the conditional is used in the information expressly designating or because this information is only reported by *Twitter* accounts appearing to be affiliated or close to the Ministry of the Interior. In a country where press freedom is practically non-existent, the simple fact

that information is uncertain or only accessible via the Internet does not imply not that it should not be taken into consideration as part of the duty "to Particular caution any "imposed by Article 14 § 1 st , of the Decree of 21 June 2012, cited above, and recalled by the two above-mentioned judgments. In addition, motivation does not address not specifically the question of the nature of the weapons and technologies the export is authorized in relation to the risk of use in a context repressive.

With particular regard to the situation in Yemen, the fact that the order given by the King to the National Guard to intervene in support of the forces air and land has not been renewed does not necessarily imply that it would be more applicable. If the National Guard is located in the border area, the formal motivation of the contested acts nevertheless recognizes that its radius of action extends over Yemeni territory. The requesting parties file a report entitled "Belgian Arms in Yemen: the Battle in the Jabara Valley" describing in detail and substantiated a military operation that took place in 2019 during which the National Guard would have intervened in Yemen in support of Yemeni forces put in difficulty by the Houthi rebels and where, in the of a counter-attack, the latter would have seized weapons of this unit. The photos of the weapons in the hands of these rebels show serial numbers allowing them to be identified, one of them mentioning "FN Herstal Belgium".

This information is not contradicted by the administrative file, the formal motivation of the acts attacked even recognizing that similar weapons to those affected by the licenses have effectively fallen into the hands of

rebels but in small numbers and independently of the will of the authorities Saudi women. These last two elements are not sufficient to justify the absence of a obvious risk that weapons stored in an apparently insecure manner in the border area fall again into the hands of the rebels who, like the other belligerents do not respect international humanitarian law either, according to the various reports of the Group of Eminent International Experts and regional. However, in accordance with the guide for the use of the Common Position 2008/944 / CFSP, supra, the authority responsible for issuing export licenses must ensure that there are adequate procedures to ensure the management and stockpile security, including for surplus weapons and ammunition.

It follows that the contested acts are not adequately reasoned subject to the absence of obvious risk that the technology or equipment military whose export is envisaged are used for internal repression or commit serious violations of international humanitarian law, taking into account the particular caution imposed with regard to the issuance of licenses to

countries where serious human rights violations have been observed by competent United Nations bodies, by the European Union or by the Council from Europe.

The second part of the third plea is serious.

The conditions required by Article 17 § 1 st , laws on the Council State, coordinated on January 12, 1973, so that it can order the suspension of the execution of the contested act, are met.

Since the supplies authorized by the contested acts could take place at any time, it is necessary to order the immediate execution of this judgment and also notify the beneficiary of the licenses whose execution is suspended, namely the limited company FN Herstal.

FOR THESE REASONS,
THE COUNCIL OF STATE DECIDES:

Article 1 er .

The suspension of the execution of decisions taken on December 19, 2020 by the Minister-President of the Walloon Region to issue licenses export of arms to the Kingdom of Saudi Arabia, under nos . 2208/032310 2208/032312, 2208/032317 and 2208/032318 is ordered.

Article 2 .

The immediate execution of this judgment is ordered.

Article 3 .

According to Article 3, § 1 st , paragraph 2 of the Royal Decree of December 5, 1991 determining the summary proceedings before the Council of State, the this judgment will be notified by fax to the party not having chosen the procedure electronic.

This judgment will also be notified to the limited company FN Herstal.

Article 4 .

The costs, including the procedural indemnity, are reserved.

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Delivered in Brussels, at a public hearing of the XV th room sitting in summary proceedings, on March 5, 2021, by:

Marc Joassart,	Councilor of State, acting president,
Frédéric Quintin,	clerk.

The Registrar,	President,
Frédéric Quintin	Marc Joassart

COUNCIL OF STATE, ADMINISTRATIVE LITIGATION SECTION

THE PRESIDENT OF THE XV[e] REFERRAL BEDROOM

ARRECTIFICATIVE

n ° 250004 of March 8, 2021

A. 232.975 / XV-4690

In question :

1. the non-profit association
HUMAN RIGHTS LEAGUE,
2. the non-profit association
NATIONAL ACTION COORDINATION
FOR PEACE AND DEMOCRACY (CNAPD),
3. the non-profit association
FORUM VOOR VREDESACTIE (VREDESACTIE),
having taken up residence at
M [e] Vincent LETELLIER, lawyer,
Vanderlinden Street 35
1030 Brussels,

versus :

the Walloon Region , represented
by his government,
having taken up residence at
M [es] Marc UYTTENDAELE
and Patricia MINSIER, lawyers,
rue de la Source 68
1060 Brussels.

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I. Subject of the request

By a request filed electronically on February 20, 2021, the non-profit associations League of Human Rights, National Coordination Action for Peace and Democracy and Forum voor Vredesactie call for the suspension, according to the procedure of extreme urgency, of the execution of "decisions

taken on an unknown date by the Minister-President of the Walloon Region of
issue licenses for the export of arms to the Kingdom of Saudi Arabia,
in particular to replace one or more licenses previously issued
under nos . 2208/031132, 2208/031133, 2208/0311130 and 2208/0311131 and of which
the execution was suspended by judgment n ° 248.128 of your Council and then withdrawn by
the opposing party on November 24, 2020 ".

II. Procedure

A judgment n ° 249.991 of March 5, 2021 suspended the execution of
decisions taken on December 19, 2020 by the Minister-President of the Region
Walloon to issue licenses for the export of arms to the Kingdom of Arabia
Arabia, under nos . 2208/032310, 2208/032312, 2208/032317 and 2208/032318 and a
reserved the costs.

The provisions relating to the use of languages are applied,
listed in Title VI, Chapter II, of the laws on the Council of State, coordinates
January 12, 1973.

III. Correction

In the above-mentioned judgment no.249.991, it was omitted to indicate in the operative part
maintaining the inventory and documents of the confidential administrative file as it is
was decided in the reasons for this judgment. This error should therefore be corrected
as indicated in the operative part of this judgment.

FOR THESE REASONS,
THE COUNCIL OF STATE DECIDES:

Single article .

An article 5 is added to the operative part of judgment n ° 249.991 of March 5
2021:

" **Article 5** .

Confidentiality of the inventory and documents in the file
administrative confidential is maintained ".

Delivered in Brussels, at a public hearing of the XV th room
sitting in summary proceedings, on March 8, 2021, by:

Marc Joassart,	Councilor of State, acting president,
Frédéric Quintin,	clerk.
The Registrar,	President,
Frédéric Quintin	Marc Joassart

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