COUNCIL OF STATE, ADMINISTRATIVE LITIGATION SECTION

THE PRESIDENT OF THE VI[e] VACATION ROOM
REFERRED SEAT

OFF

n[o]t248.129 of August 7, 2020

A. 231.283 / XV-4496

In question :

1. **the non-profit association**
HUMAN RIGHTS LEAGUE ,
2. **the non-profit association**
NATIONAL ACTION COORDINATION FOR PEACE AND DEMOCRACY ,
abbreviated " **CNAPD** ",
3. **the non-profit association**
FORUM VOOR VREDESACTIE ,
abbreviated " **VREDESACTIE** ",

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

versus :

the Walloon Region ,
represented by its Government,

having taken up residence at
M[es] Marc UYTTENDAELE, and
Patricia MINSIER, lawyers,
rue de la Source, 68
1060 Brussels.

Requesting party to intervene:

the public limited company *CMI DEFENSE* ,

having taken up residence at
M[es] Dominique LAGASSE and
Geoffrey NINANE, lawyers,
Chaussée de La Hulpe, 187
1170 Brussels.

---------- ---------- -

I. Subject of the request

By a request lodged on July 15, 2020, the association Ligue des Droits human beings, the National Coordination of Action for Peace and Democracy asbl

(CNAPD) and the association Forum Voor Vredesactie (Vredesactie) request the suspension,

according to the procedure of extreme urgency, of the execution of the decisions taken on April 29 2020 by the Minister-President of the Walloon Region to issue the licenses No. 2208/030812 and No. 2208/030811 for the export of arms to or to the final destination of the Kingdom of Saudi Arabia of material of category ML 6 ("land vehicles and their components").

II. Procedure

By an order of July 16, 2020, the case was set for hearing of July 31, 2020.

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

By a request lodged on July 29, 2020, the public limited company *CMI Defense* requests to be received as an intervener.

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

M[es] Vincent Letellier and Flora Roux, lawyers, appearing for the applicants, M[e] Patricia Minsier, lawyer, appearing for the party opposing, and M[e] Dominique Lagasse, appearing for the applicant in intervention, were heard in their comments.

M[me] Muriel Vanderhelst, auditor at the Council of State, was heard in 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 facts of judgment no.247.259 of March 9, 2020 and complete it with the following:

Execution of licenses n[bons] 2188/031849, 2198/031771, 2198/031773 and 2198/031774 issued on December 17 for the export of arms to the Kingdom of Saudi Arabia is suspended by the aforementioned judgment.

On April 11, 2020, the Minister-President of the Walloon Region proceeds the withdrawal of all export licenses the execution of which has been suspended by the aforementioned judgment.

On April 20, 2020, the advisory committee on export licenses of conventional weapons and dual-use products re-examines the applications for licenses to export arms to Saudi Arabia.

On April 29, 2020, the Minister-President of the Walloon Region grants the license n ° 2208/030812 for final export to Canada with for final destination Saudi Arabia and license n ° 2208/030811 linked to 1208/030504 for temporary export for demonstration to Saudi Arabia, replacing licenses n bone 2198/031745 and 2188/031971 linked to 1188/031272, previously withdrawn.

These are the contested acts.

IV. Intervention

By a request lodged on July 29, 2020, the public limited company *CMI Defense* requests to be received as an intervener.

As the beneficiary of the contested export licenses, it has a sufficient interest to intervene in the context of these proceedings. There occurs to grant this request.

V. Confidentiality of certain documents in the administrative file

V.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 sanctioned by the Court of Justice of the European Union in its judgment of 13 July 2006 (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 control effective legality. Having regard to the jurisprudence of the Council of State, aimed at guaranteeing a balance of interests between a fair trial and protection of the aforementioned interests, 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 the signature of 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.

V.2. Appreciation

As has been pointed out in the decisions of the Council of State no. bone 242,022 to 242.031 of June 29, 2018, the lessons of which were confirmed by the judgments not 244.800 to 244.804 of June 14, 2019 and even 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 documents confidential administrative file is maintained.

VI. Conditions of the extreme emergency suspension

In accordance with article 17, § 1er, 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 of the request for suspension referred to in paragraph 1er.

VII. First way

VII.1. Arguments of the applicants

The first plea is based on the violation of articles 1er and 6.2 of the Treaty on the arms trade, done in New York on April 2, 2013, ratified by Belgium June 3, 2014, section 1er common to the four Geneva Conventions of 12 August 1949 and Additional Protocol I of 8 June 1977, on the customary law obligation

international "to ensure respect, in all circumstances, of humanitarian law", Articles 55 and 56 of the United Nations Charter, the customary law obligation to ensure respect for human rights and to prohibit the adoption of decisions contrary to "elementary considerations of humanity", Articles 2 and 3 of the Law of 29 July 1991 relating to the formal motivation of administrative acts, lack or insufficiency of reasons, excess of power or error manifesto of appreciation.

The applicants point out that the export licenses weapons are unilateral legal acts of individual scope emanating from a administrative authority and whose purpose is to produce legal effects with regard to one or more citizens or another administrative authority, namely authorize their beneficiary to export arms, and as such, they enter into the scope of the law of 29 July 1991 relating to the formal motivation of administrative acts, which is likely to strengthen judicial control enshrined in Articles 159 and 161 of the Constitution. They argue that weapons licenses are not exempt from motivation by article 4 of this law because the indication of the reasons for the granting of the licenses would not be likely or of jeopardize the external security of the State, or undermine public order, or violate the right to respect for private life, nor constitute a violation of professional secrecy provisions, these circumstances having to to be interpreted in a restrictive manner, as the doctrine notes. They consider that a possible exemption from formal reasons would only serve the interests of the opposing party, combined with that of the beneficiary and that of Saudi Arabia, not to be not expose yourself to judicial review and this in defiance of the right to be able to take knowledge of the grounds for an administrative decision in the act itself which must be guaranteed not only with regard to license applicants, but also for all third parties interested in these licenses.

They note that Article 6.2 of the Arms Trade Treaty absolutely prohibits transfers of arms by which the State Party violates its international obligations and therefore, in particular, when the export disregard the obligation enshrined in Article 1 er common of four Geneva Conventions of August 12, 1949 "to enforce" "in all circumstances ”international humanitarian law, or that of enforcing human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights. They emphasize that the obligations to respect and ensure respect for international humanitarian law are customary, as affirmed by the International Court of Justice, in its judgment of 27 June 1986 in the case concerning military and paramilitary activities in

Nicaragua and against it. They consider that the obligation to ensure that the human rights is just as absolute, as it is notably enshrined in Articles 55 and 56 of the Charter of the United Nations and must be combined with the principle general of international law according to which the action of subjects of international law must be based on "elementary considerations of humanity". They argue that the obligation to ensure respect for international humanitarian law is external dimension which consists in ensuring respect for the Geneva Conventions of 12 August 1949 by other parties to a conflict, which implies that States, that they be neutral, allied or enemy, must do all that is reasonably their power to enforce these conventions by other States parties to a conflict. After recalling that, according to the comment of the International Committee of Red Cross, section 1er of these conventions “requires that the High Parties contracting parties refrain from transferring weapons if one can expect, on the basis facts or knowledge of trends, current or past, that these weapons can be used to violate the Conventions ”, they argue that the the authors of this commentary add a condition relating to the risk that the can be used to violate the Convention, while the mere fact of continue to supply weapons to a State which is guilty of serious violations repeated and repeated international humanitarian law constitutes, according to her, a measure of support for this State incompatible with the negative obligations of Article 1er. They believe that the interpretation of the International Committee of the Red Cross should be excluded for States Parties to the Arms Trade Treaty since Article 6.2 of this Treaty reinforces the requirement not to transfer weapons if this transfer violates the obligation to respect and ensure respect for the law international humanitarian aid.

They indicate that, not only, this obligation to ensure respect for the international humanitarian law is recalled, in the preamble to the aforementioned treaty, title of the principles that the States Parties affirm that they wish resolutely to respect, but above all, that article 6.2 has, according to them, a content independent of article 6.3 which, for its part, prohibits any transfer of arms when the State has knowledge of what the weapons to be exported could be used to commit, in particular, crimes against humanity, serious violations of the Geneva Conventions of 1949, attacks directed against civilians or civilian objects and protected as such, or other war crimes as defined by international agreements to which he is gone. They argue that it is thus necessary to distinguish the two hypotheses of prohibition and that that enshrined in Article 6.2, referred to in the plea, does not require the assessment of a risk that the material concerned will be used directly in the commission of acts constituting a violation of international humanitarian law. They criticize the difference made by the opposing party between products intended for

"The Saudi military aviation, whose interventions in Yemen were

frequent "and products" intended for the Royal Guard and the National Guard [which would therefore] not have the purpose of serving outside the country's borders ".

They add that the pursuit of arms exports, in the factual context established by international bodies and organizations, is by elsewhere contrary to the positive obligations of third States which "must take the proactive measures to stop violations and enforce the Conventions by a party to the conflict who commits such violations, in particular by using their influence on this part ".

They consider that in objective litigation, the assessment of the effect direct from a norm of international law must be assessed in a different way that in dispute of subjective rights and that it is appropriate in this case to speak of the invocability of the higher standard, rather than its direct effect, in order to avoid any confusion. It maintains that in the logic of objective litigation, which is that of a technique for resolving a conflict of norms, the primacy benefits the rule of international law, even without direct effect. According to them, the assessment of the sufficiently clear and precise nature of the legal standard international standard differs from that which must be implemented to establish that the examined confers subjective rights. In objective litigation, they indicate that is sufficient to apply it if the rule of international law has a specific sufficient to allow a compliance check that respects the principle of separation of powers. They conclude that Article 6.2 of the aforementioned treaty does contain an obligation that is sufficiently clear and precise to allow the Council of State to exercise such control.

They argue that "relevant international agreements" to which refers to this provision cannot be interpreted restrictively, and include both the Geneva Conventions and the Charter of the United Nations. They based in this regard on an "Opinion on the international legality of arms transfers to Saudi Arabia, United Arab Emirates and coalition members militarily involved in Yemen "written by authors of doctrine as well as on the direct effect attached to Article 6 of the Treaty which was recognized by the Tribunal de French-speaking first instance of Brussels as well as by the Court of Appeal of Brussels in the context of the summary proceedings brought by the parties applicants seeking to order the Belgian State to refuse for a period of six month any authorization to export to Saudi Arabia.

Page 9

In the first part, they indicate that Article 6.2 of the Treaty on the arms trade implies that a State Party that supplies arms to a State

who is guilty of serious and repeated violations of international law humanitarian law and international human rights law must stop supply it, as a means of influence. They point out that in the present case, the justifications provided by the opposing party to justify the supply of armament of the National Guard and the Royal Guard are identical to those already made in 2017 and contrary to the various resolutions of the European Parliaments and federal, as well as the opinion of the Advisory Council on Policy Coherence in development favor of 24 May 2018. They allege that no measures concrete action has been taken to ensure respect for international humanitarian law and human rights, even as the situation evolves with regard to concerns respect for human rights in Saudi Arabia and Yemen, required a reaction with regard to the international obligations of third States, including Belgium, referred to in means. They conclude that having regard to the knowledge of facts and in the absence of development, Article 6.2 of the aforementioned Treaty, which is based on the commitment to act resolutely in accordance with the obligation to respect and respect international humanitarian and human rights law, combined with the goal of this treaty to "institute the most stringent common standards possible" "in order to contribute to international and regional peace, security and stability, reduce human suffering [and] promote [...] responsible action by States Parties in the international trade in conventional arms "clearly prohibits States Parties to authorize the transfer of arms to a state that leads a coalition that does not only is guilty of serious and repeated abuses and violations of the law international humanitarian law, moreover incriminated by the Penal Code, but refuses to investigate these facts when the community of Nations informs them of their concerns and continues its abuses. According to them, the obligation to enforce human rights implies the same prohibition.

In a second part, in the alternative, the applicants argue that the contested acts had to be provided with a formal statement of reasons showing that the opposing party carried out a careful and accurate examination of the situation in Arabia Saudi Arabia in human rights, as well as its involvement in terrorism and serious violations of humanitarian law in Yemen, which it effectively confronted this situation with the hypothesis of absolute prohibition of Article 6.2 of the aforementioned treaty and that at the end of this examination, it was able to consider that it was not in a situation where its jurisdiction to refuse the license was bound and that it could authorize exports without prejudicing its obligation to ensure respect for international humanitarian law and human rights the man. It maintains that the opposing party limited its examination to the question of

end user (i.e. military aviation, royal guard or national guard of Saudi Arabia) of products authorized for export regardless of their obligation to ensure respect for human rights and international law humanitarian aid, by refusing to continue to feed a regime that commits

abuses. She criticizes the presumed absence of any formal motivation by which the opposing party would justify the adequacy of its decisions with this obligation.

VII.2. Appreciation

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

"Articles 1er and 6 of the Arms Trade Treaty, done at New York on 2 April 2013, provide the following:

"Article 1st

Object and purpose

The purpose of this Treaty is to:

- Establish the most stringent common standards possible for the purposes of regulate or improve the regulation of international trade conventional weapons;
- Prevent and eliminate the illicit trade in conventional arms and prevent the diversion of these weapons;

in order to :

- Contribute to international and regional peace, security and stability;
- Reduce human suffering;
- Promote cooperation, transparency and responsible action by States Parties in the international trade in conventional arms and thus build the trust between these states.

Article 6

Prohibitions

1. No State Party shall authorize the transfer of conventional arms covered by article 2 (1) or any other property referred to in article 3 or 4 that violates its obligations resulting from actions taken by the Security Council the United Nations acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.
2. No State Party shall authorize the transfer of conventional arms covered by article 2 (1) or any other property referred to in article 3 or 4 that violates its international obligations, resulting from relevant international agreements to which it is a party, in particular those relating to the international transfer or illicit trafficking in conventional arms.
3. No State Party shall authorize the transfer of conventional arms covered by Article 2 (1) or any other property referred to in Articles 3 or 4 if it has knowledge, at the time authorization is requested, that these weapons or property could be used to commit genocide, crimes against humanity, serious violations of the Geneva Conventions of 1949, attacks directed against civilians or civilian objects and protected as such, or other war crimes as defined by agreements international organizations to which it is a party ".

Article 1st common to the four conventions signed in Geneva on August 12, 1949, respectively relating to the improvement of the lot of the wounded and sick in the armed forces in the field, to improving the lot of the wounded, sick and of the castaways of the armed forces at sea, to the treatment of prisoners of war and the protection of civilians in time of war, provides as follows:

"The High Contracting Parties undertake to respect and ensure respect for this Convention in all circumstances ".

An international provision can be considered as having direct effect when this provision contains a clear and precise obligation which is not subordinate, in its execution or in its effects, to the intervention of any act ulterior.

Article 6.2 of the Arms Trade Treaty does not cover all
international obligations of the Belgian State, but only those "resulting from
relevant international agreements to which it is a party, in particular those
relating to the international transfer or illicit trafficking of conventional arms ". The
"Serious violations of the 1949 Geneva Conventions" being referred to
expressly in Article 6.3 of the Treaty, it does not appear, *prima facie* , that these
conventions are to be implicitly considered as "
relevant international laws "within the meaning of Article 6.2 which refers rather to the
dealing specifically with the transfer of arms. It follows that Article 6.2 of
Arms Trade Treaty does not contain sufficient obligations
clear and precise to directly govern the legal situation of individuals, without
other clarification or clarification and therefore cannot be recognized
a direct effect ".

Without it being necessary at this stage to determine whether a more direct effect large can be recognized as an international standard in the context of litigation objective, it should be noted that in the context of the suspension procedure established by article 17 of the coordinated laws on the Council of State, examine the condition of serious means consists, in summary proceedings, in deciding whether at least one invoked in the application has the appearance of admissibility and merit, that is to say that it shakes the presumption of legality which attaches to the act of the administration.

Interpretation of Article 6.2 of the Arms Trade Treaty advocated by the applicants does not result from a clear text or from a judgment of an international jurisdiction. Moreover, by the applicants' own admission, their thesis does not comply with the commentary on the Geneva Conventions by the International Committee of the Red Cross.

In addition, the summary proceedings brought before the courts of order by the applicants were rejected both at first instance that at the level of appeal in such a way that it has not been established that these courts enshrine their interpretation of this provision of the aforementioned treaty.

In these circumstances, there is no need, at this stage of the procedure, to depart from what was ruled by judgment no.247.259 of March 9, 2020 and the first means is not serious in any of its branches.

VIII. Second way

VIII.1. Arguments of the applicants

The second plea is based on the violation of Articles 1er and 6.3 of Arms Trade Treaty, ratified by Belgium on June 3, 2014, articles 2 and 3 of the law of July 29, 1991 relating to the formal motivation of acts

administrative, lack or insufficiency of reasons, excess of power or manifest error of assessment.

In the first part, the applicants point out that Article 6.3 of the aforementioned Treaty, to which direct effect has been recognized, enshrines the absolute prohibition for a State to transfer weapons "if it has knowledge, authorization, that these weapons or goods could be used to commit a genocide, crimes against humanity, serious violations of the Geneva of 1949, attacks directed against civilians or objects of character civilian and protected as such, or other war crimes as defined by international agreements to which it is a party ". They note that employment by this provision of the words "could be used for" necessarily implies that the simple the potential for weapons to be used to commit the incriminated acts is sufficient to that the ban is imposed. They indicate that they learned from judgment no.247.259 of 9 March 2020 that the advisory committee, in its negative opinions of 14 May, 25 June, 25 September, November 4 and December 19, 2019, stated that "under the conditions current, the risk of weapons being used for unwanted purposes within the framework of of the war in Yemen remains important due to the involvement of the Guard national in the conflict ". They add that the aforementioned judgment reports the elements following:

"These notices further indicate that the National Guard is a military unit which does not not part of the Saudi army and which is intended for border protection, strategic sites and infrastructures. This unit was put under the leadership of Crown Prince Mohammed ben Salman in November 2017 and she is, in principle, not intended for military operations outside the country. According to these opinions, however, it intervened in Bahrain, at the request of the authorities, and in agreement with the Gulf Cooperation Council (CCG), in law enforcement operations and was seen at Yemen, in 2018, in accordance with the order given to him by the King of Arabia Arabia Salman, in April 2015, to take part in the campaign led by Saudi Arabia in Yemen, in support of the air force and the ground forces. These notices add that while the Royal Guard is a special unit intended for the protection of the royal household, composed of battalions based in Riyadh which depend directly on the King of Arabia, Canadian vehicles of the firm GDLS (*General Dynamics Land Systems*), in principle intended for this unit, have seen in Yemen in Hajjah province and material provided by *CMI Defense* mounted on 8x8 vehicles (LAV) of GDLS, could therefore be used in Yemen ".

They consider that in the present case, in the light of the information available to the the international community, Belgium and in particular the Walloon Region and in view of the elements put forward by the advisory committee in its aforementioned negative opinions, there is no doubt that the opposing party is aware that the exported goods could be used to commit one of the unlawful acts set out in Article 6.3 of the the aforementioned treaty, which should have resulted in a refusal of the requested licenses.

In a second branch, they argue that formal motivation of the contested acts should show that the advisory committee and, subsequently, the

opposing party conducted a careful and accurate examination of the situation in Arabia Saudi Arabia in human rights, its involvement in terrorism and serious violations of humanitarian law in Yemen, investigations reporting the involvement of the National Guard in the conflict in Yemen, the possibility that the weapons fall into the hands of Houthi rebels like this has arrived in the past, as well as information that material in principle intended for the Royal Guard was seen and used in Yemen, which they effectively confronted this situation with the hypothesis of absolute prohibition of Article 6.3 of the Treaty, that at the end of this examination they were able to consider that they did not were not in a situation where the competence to refuse the license was linked in that, in the present case, there would be no possibility that the weapons would be used to commit crimes against humanity, serious violations of the Conventions of Geneva, attacks against civilians or any other violation of the law international humanitarian aid. They add that in the event that the commission opinion would have changed its assessment or would no longer report the elements present in its previous negative opinions, it should be examined whether this reversal attitude in relation to its previous assessment has been motivated specific. In this case, the motivation for the new opinions of the committee should clearly show that the situation has evolved positively and in a significant since December 2019, that there are new reliable elements avoiding any risk that Belgian weapons could be used within the framework of the conflict in Yemen or fall into the hands of Houthi rebels as has happened in the past and why the reports that Canadian vehicles from the GDLS firm - assembled with parts supplied by *CMI Defense* - in principle intended for the Royal Guard were sighted in Yemen ne would suddenly be considered more convincing. The applicants doubt that the possible formal motivation of these opinions or that of the contested acts can meet these conditions.

VIII.2. Appreciation

The prohibition formulated against States Parties by Article 6.3 of the Arms Trade Treaty seems, *prima facie* , sufficiently precise to that a direct effect can be recognized.

After the withdrawal of the licenses suspended by the aforementioned judgment, the advisory committee on export licenses for conventional arms and dual-use products gave a favorable opinion on all the criteria provided for by article 14 of the decree of June 21, 2012 relating to the import, export, transit and transfer of civilian arms and defense-related products, in particular the

second, which concerns respect for human rights in the country of destination final and respect for international humanitarian law by this country.

This commission considers that the Royal Guard is not engaged in fighting in Yemen and not taking part in the atrocities committed there. According to her, the elements identified with regard to violations of the right humanitarian aid in wartime does not concern the Royal Guard. She adds that the sophisticated technology of the material excludes the obvious risk of its use by Houthi rebels, because on the one hand, they should go and look for him in Riyadh, and on the other this use requires sufficient basic technological training and training specific on the hardware, which lasts 18 to 24 months and has not yet started. He It therefore seems very unlikely that the technology or military equipment whose export is envisaged serve to commit serious violations of the law international humanitarian aid. It is based in this regard on a judgment of the Court federal government in its decision of January 24, 2017. In reviewing the fourth criterion, it notes that there is nothing to confirm with any plausibility that "Canadian vehicles from GDLS (*General Dynamics Land Systems*) appear to have been seen in Yemen in Hajjah province ”because this information is based only on a video of unknown origin. She in concludes that the risk that the exported supplies will be used as part 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 the Houthi incursions.

This opinion is accompanied by a minority note which notes in particular a discrepancy between the high number of vehicles (on which turrets of the company *CMI Defense* were and should be mounted) and the size of the Royal Guard. She estimates that the likelihood that the final recipient is not the Royal Guard is

extremely high and there is information that vehicles Similar are employed by the National Guard.

The formal motivation of the contested acts, after recalling the content favorable opinion of the committee, adds that reference is made to a possible involvement of vehicles intended for the Royal Guard, in two articles published, on the one hand, in the " *National observer* " of November 30, 2018 and, on the other part, on the website " *Vice News* " on December 20, 2016. However, according to this motivation, it is impossible to establish that the photographs published in the article the aforementioned " *National observer* " would have been taken in Yemen (the legend of the the first photo published in this article also specifies that the photograph was taken in Afghanistan and the GDLS tank presented there is not equipped with a

turret manufactured by *CMI Defense*). In addition, it is further noted that this article specifies that it would be armored vehicles of the Saudi National Guard and does not in no way that the Royal Guard would be involved in the conflict in Yemen. Regarding the article published on the " *Vice News* " website in December 2016, the statement of reasons for the contested acts notes that it mainly refers to a procedure brought before Canadian jurisdictions against export licenses granted by Canada to GDLS which, since then, has been definitively rejected.

Formal motivation also intends to meet critics formulated in the minority note which would be based on obsolete information regarding the number of members of the Royal Guard. According to the contested acts, the number of vehicles and their equipment is specially adapted to fulfill a protection function of the royal family and strategic sites. The size of these vehicles implies that they are not designed for geographic conditions mountainous or difficult, but to be optimally deployed in urban, in accordance with the mandate of the Royal Guard to protect the family royal. It is recalled in this regard that the Royal Guard's mission is to protect the members of the Saudi royal family (15,000 people), the places belonging to the holy places and that there is no evidence to demonstrate a any involvement of the Royal Guard in actions of internal repression in Saudi Arabia or on the border with Yemen.

It follows that the opposing party has concretely examined the risk that military technology and equipment authorized for export can be used to commit genocide, crimes against humanity, serious violations of the Geneva Conventions of 1949, attacks directed against civilians or civilian objects and protected as such, or other war crimes such as defined by international agreements to which it is a party.

Page 16

There is no evidence that the Saudi Royal Guard would participate in a internal repression or that it would participate in operations outside the territory national and the question of a possible hijacking of the vehicles which are intended is specifically addressed in the formal motivation of the contested acts.

The second plea is not serious in any of its branches.

IX. Third way

IX.1. Arguments of the applicants

The third plea is based on the violation of Articles 1 er , § 1 er , 2 and 10 of Council Common Position 2008/944 / CFSP of 8 December 2008 defining

common rules governing the control of technology exports and military equipment, Article 14, § 1er, al. 2, 2. (second criterion), *litteras* a), b) and c), 4. (fourth criterion), *letters* a) and c) and 6. (sixth criterion), *letters* a) and b), of the decree of 21 June 2012 relating to import, export, transit and transfer of civilian weapons and defense-related products, Articles 2 and 3 of the law of July 29, 1991 relating to the formal motivation of administrative acts, lack or insufficiency of motives, excess of power and error manifesto of appreciation.

The applicants point out that, in accordance with Article 29 of Treaty on European Union, Member States must ensure the compliance of their national policies with the Union's policy positions foreign affairs and common security and, as such, article 14 of the decree of 21 June 2012 constitutes the implementation by the Walloon Region of the obligation of Belgium to implement Common Position 2008/944 / CFSP of the Council of 8 December 2008. They note that the criteria defined by this common position are included in Article 14, § 1er, al. 2, 2., b), of the aforementioned decree. According to them, this provision implies the principle of linked competence when certain criteria are encountered, including the second and fourth. They point out that the guide use of Common Position 2008/944 / CFSP specifies the duty of care imposed by Article 2, § 2, b) of the Common Position - and transposed to Article 14, § 2, b), of the decree of 21 June 2012 - and indicates that, among the competent bodies to find serious violations of human rights, include the European Parliament, the United Nations Human Rights Council and the High Office of the United Nations Commissioner for Human Rights. They indicate that both the European Parliament, through its various resolutions relating to the situation in

Page 17

Yemen, that the United Nations Human Rights Council in particular through the two reports of the Office of the United Nations High Commissioner for Human Rights man (A / HRC / 39/43 and A / HRC / 42/17), report the humanitarian crisis without precedent taking place in Yemen, as well as the numerous human rights violations human rights and international humanitarian law by Saudi Arabia. They do reference to the user guide which indicates in this regard that "during the evaluation depth of the risk of seeing the technology or military equipment of which the export is considered to be used to commit serious violations of the law humanitarian aid, it should be considered whether the recipient country has has always been respectful of this right and if it continues to be so, to see what intentions it has expressed through official commitments and to determine whether it is able to ensure that the technology or equipment transferred is used in accordance with international humanitarian law and that they are not diverted or transferred to other destinations where they could be used for to commit serious violations of this right ".

In the first part, they argue that by authorizing the delivery weapons to Saudi Arabia, the contested acts violate the ban under the second criterion referred to in article 14, § 1 er, paragraph 2, 2., taking into account the risk manifest that the weapons delivered are used for internal repression, indications, towards the destination country, that the export there will contribute to a flagrant violation human rights, the duty of care imposed on it by *letter* b) and the obvious risk that these weapons will be used to commit serious violations of the international humanitarian law. They consider that the fourth criterion referred to in Article 14, § 1 er, paragraph 2, 4, is also ignored, given the obvious risk that Saudi Arabia uses the delivered weapons aggressively against another country, due to the armed conflict against Yemen and the behavior of Saudi Arabia towards the international community.

In a second branch, they argue the absence or insufficiency of the reasons for the contested decisions. They recall that during the previous applications for export licenses to Saudi Arabia, the advisory committee issued opinions on May 14, June 25, September 25, November 4 and December 19 2019, unfavorable opinions on compliance with criteria 2 (human rights and humanitarian), 4 (regional situation) and 6 (respect for international law) provided for by article 14 of the aforementioned decree of June 21, 2012. They also underline that the Council of State, in its judgment n ° 247.259 of March 9, 2020, ruled that the licenses were insufficiently motivated with regard to the second criterion. In with regard to this criterion, they do not perceive what serious reasons the advisory committee and following it the opposing party could move forward to demonstrate

that the export cannot contribute to a flagrant violation of human rights and that there is no obvious risk that these weapons could be used to commit serious violations of international humanitarian law, even taking account of the special duty of care imposed on it. They note that in case of change of attitude of the advisory committee on this criterion, as well as on the fourth or sixth, a specific motivation is required in accordance with the jurisprudence of the Council of State and that they do not see what serious reason could be advanced on this.

In a third branch, they maintain that the opposing party has have come to the conclusion that the analysis of the situation with regard to criteria 2, 4 and 6 of the aforementioned decree would not result in the finding of illegality of any export of arms to Saudi Arabia without making a manifest error of appreciation, and all the more so as a duty of care is imposed with regard to concerns the second criterion when it concerns a country where serious violations of human rights have been ascertained by the competent bodies of the Nations United, by the European Union or the Council of Europe.

IX.2. Appreciation

Common Position 2008/944 / CFSP adopted by the European Council refers in its preamble to "the Treaty on European Union, and in particular its article 15 ", which provides in paragraph 1 er that "The European Council gives the Union the necessary impulses for its development and defines its orientations and general political priorities "; but also that "he does not exercise any legislative ". It follows that this "Common Position" does not in itself constitute even a rule of law whose violation can be invoked in court.

However, Article 14, § 1 st , paragraph 2, of the decree of the decree of June 21, 2012 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 of this common position, which is subject to periodic review and which summarizes the agreed guidelines 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 27 September 2019, the expert panel 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 ".

As has already been explained on the occasion of the examination of the second medium, the contested acts do not incur the same criticism as those considered serious by the aforementioned judgment since the question of vehicles similar to those of the Guard that were reportedly sighted in Yemen is specifically addressed in the formal motivation. The contested acts do indeed contain a formal motivation relating to the second criterion provided for by article 14 of the aforementioned decree of June 21, 2012.

With regard to the fourth criterion, the formal motivation is, for the reasons already explained during the examination of the second criterion, that there is no there is a clear risk that the intended recipient, namely the Royal Guard, will use the technology or military equipment the export of which is envisaged aggressively against another country or to assert by force a land claim. She adds that there is also no claim territoriality that Saudi Arabia would assert against another country and that it

is not at war with Yemen but intervenes legally, at the call of the president in exile recognized by the international community.

With regard to the sixth criterion, the advisory committee ruled that the risk that the present supplies are mounted on vehicles which would be used for purposes other than those intended, namely the protection of the royal family by the Royal Guard, is minimal. The motivation for the contested acts adds several considerations in this regard and in particular that Saudi Arabia is a political ally and military of the West who support international efforts to counter the state Islamic rule in Iraq and Syria and that this country still constitutes to this day the main bulwark against Iran's attempts to expand its influence in the region by allies interposed in Syria, Lebanon and Yemen while nuclear ambitions Iran pose a threat to the region and to international security in its together. It also emphasizes that this country is actively participating in the fight against terrorism and that although it is not yet a signatory to the Trade Treaty weapons, it is a party to the Non-Proliferation Treaty, to the Convention on the prohibition of chemical weapons, to the Convention on the prohibition of weapons biologicals and the Convention on Certain Conventional Weapons.

It follows that the contested acts are provided with a statement of reasons. formal relating to the various criteria provided for in article 14 of the decree of 21 June 2012, cited above and in particular the second, the fourth and the sixth. Given the

discretion which must be recognized in the administration, it does not appear, this stage the procedure, that the contested acts are vitiated by a manifest error of appreciation.

The third plea is not serious in any of its branches.

One of the conditions required by article 17, § 1er, laws on Council of State, coordinated on January 12, 1973, so that it can order the suspension of the execution of the contested act is lacking. The request for suspension does not can therefore be accepted.

FOR THESE REASONS,
THE COUNCIL OF STATE DECIDES:

Article 1er.

The application for intervention brought by the public limited company *CMI Defense* is welcomed.

Article 2 .

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

Article 3 .

The request for an extremely urgent suspension is rejected.

Article 4 .

The immediate execution of this judgment is ordered.

Article 5 .

In accordance with article 3, § 1er, 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 parties who have not chosen the procedure electronic.

Article 6 .

The applicants are to bear the costs, namely the right of 600 euros and the contribution of 20 euros.

The intervening party bears the right of 150 euros related to his intervention.

Thus pronounced on August 7, 2020 by the VIe sitting vacations room in summary proceedings, composed of:

Marc Joassart,	Councilor of State, acting president,
Florence Van Hove,	clerk.

The Registrar,	President,
Florence van hove	Marc Joassart