

COUNCIL OF STATE, ADMINISTRATIVE LITIGATION SECTION.

THE PRESIDENT OF THE XV CHAMBER SITTING IN REFERENCE

ARRÊT

n^o 240,898 dated March 6, 2018

223.997/XV-3591

In cause:

1. the National Coordination of Action for Peace and Democracy,

2. the League of Human Rights,

having taken up residence at

M^{me} Vincent LETELLIER, lawyer,

rue Depacqz 78-80/2

1060 Brussels,

versus :

the Walloon Region,

having taken up residence at

M^{me} Geoffroy GENERET, avocat,

rue Capitaine Crespel 2-4

1050 Brussels.

I. Object of the request

Considering the request introduced on December 18, 2017 by (1) the a.sbl National Coordination of Action for Peace and Democracy (CNAPD), and (2) the non-profit League of Human Rights, in that it seeks to suspend the execution of the decision of 18 October 2017 from the Minister-President of the Walloon Region to issue to FN Herstal arms export licenses n^o 2178/030768 and n^o 2178/030769 for the delivery to the Kingdom of Saudi Arabia of ammunition and fuze setting explosives (ML3);

II. Procedure before the Council of State

The note of observations and the administrative file have been filed.

Mr. Christian AMELYNCK, first auditor at the Council of State, wrote a report on the basis of article 12 of the royal decree of December 5, 1991 determining the procedure for summary proceedings before the Council of State.

By order of February 9, 2018, the parties were summoned to the hearing of February 21, 2018 and the report was notified to them.

Mr. Michel LEROY, Chamber President, reported.

M^{re} Harold SAX, *loco* M^{re} Vincent LETELLIER and Olivia VENET, lawyer, appearing for the applicants, and Me Geoffroy GENERET, lawyer, appearing for the opposing party, have heard their observations.

Mr. Christian AMELYNCK, first auditor, was heard in his opinion opposite.

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

III. Facts

Considering that the facts relevant to the examination of the appeal are as following:

During the months of January to July 2017, sa FN Herstal and sa CMI Defense submitted to the opposing party various applications for licenses to export arms or defense-related products to Saudi Arabia. These requests were the subject of opinions by an "Advisory Committee on export licenses for conventional arms/dual-use products", during meetings of this committee which were held on the 17 March, May 9, June 26, and September 11, 2017.

By letter dated 26 September 2017, the first applicant wrote to the Minister President of the Walloon Government to request that he review the mechanisms and criteria for granting arms export licenses to Saudi Arabia.

The newspaper *La Libre Belgique* of October 18, 2017 reports that the Walloon Region has granted various licenses for the export of arms to this State. On October 19, the second applicant asked the Minister-President for confirmation of this information, as well as the communication of a copy of the decisions taken. This request is reiterated on October 27. On November 3, the Minister-President replied by explaining certain aspects of the policy followed with regard to the allocation of authorizations for the export of military equipment. He makes no reference to the export licenses mentioned in the October 18 article. On November 13, the Chief of Staff of the Minister-President replied in these terms:

« The Minister-President is [...] not in a position to take immediate action on your request for the communication of copies of administrative acts.

Indeed, the Minister-President has forwarded your request to the administration so that it can verify in particular the content of the press article in *La Libre Belgique* of 18 October 2017, as well as the merits of the request for access to individual administrative decisions, formulated by the non-profit organization La Ligue des Droits de l'Homme.

This informing you of the reasons for adjourning his decision, the Minister-President will not fail to get back to you within the deadlines set out in article 6, § 5, paragraph 1, of the decree of March 30, 1995 relating to the publicity of the Administration”.

On the same day, the applicants lodged, in accordance with the procedure of extreme urgency, a request for the suspension of those licenses. The administrative file filed during this procedure includes, in particular, various licenses authorizing the import, export or transfer of military equipment, and among others those whose suspension is requested by this appeal. This request was rejected by judgment no. 239.962 of November 24, 2017 for lack of extreme urgency, the applicants not having done all they could to seize the Council of State as soon as possible.

The licenses contested by the present action were issued under the numbers 2178/030768 and 2178/030769; signed copies of the 'original for the applicant', whose particulars identifying their purpose have been omitted, were annexed to the request; copies of the “copy for the license service”, bearing these mentions but not signed, are placed in the file, in the confidential documents;

IV. Admissibility

A. Arguments of the opposing party

Considering that the opposing party disputes the admissibility of the appeal in so far as that it refers to two distinct administrative acts; that it sets out in particular the following:

“The opposing party would like to point out that in principle, it is not permitted to pursue the annulment (and suspension) of several distinct administrative acts by a single and same request, except in the case of connection.

It is therefore necessary for the applicants to demonstrate the existence of a connection between the decisions to grant licenses adopted by the opposing party to Saudi Arabia at issue in the present action.

However, the applicants in no way justify their decision to quarrel jointly over the two disputed licenses even though they have taken the trouble to introduce numerous requests against the various licenses granted by the opposing party to Saudi Arabia. .

The opposing party insists on the fact that each license is the subject of a separate and distinct analysis by the Government, which takes into account in particular the material and the recipient as well as the risks related to the specific case, to the license in question. (approach confirmed by the

Minister-President in his letter of 03/11/2017: "In this regard, I would like to inform you that each file is examined on a case-by-case basis in an extremely meticulous manner..."). The elements of motivation linked to the issue or refusal of a license will therefore be different in each specific case since all the factual elements are analysed. In addition, the execution of said licenses is also separate.

... (*Following case law citations*)

In the present case, as has been developed, the disputed licenses have distinct objects, the cancellation of one does not have any consequence on the other which could subsist, and each of them was the subject separate and differentiated analysis given their different purpose.

In the absence of demonstrated connection between the licenses concerned by the present appeal, it should be considered that the appeal is in any event inadmissible."

B. Assessment by the Council of State

Considering that it appears from the confidential documents added to the file that the two contested licenses do not have the same addressee, that they relate to goods which come under different categories; that there is no need to admit the connection between the two objects of the request; that this is admissible only with regard to the first contested license (no. 2178/030768);

V. Urgency

Considering that the applicants state that the immediate execution of the contested acts risks having irreversible consequences, being:

- the violation of the fundamental rights and freedoms of individuals;
- the use of the material whose export they authorize in the context of an armed conflict, in violation of international law and particularly international humanitarian law;

- the arming of a country which does not respect fundamental rights or international law;

- a risk of arms being diverted to terrorist groups".

that they add that "the danger is serious and would be irreparable since the delivery of the weapons would prevent any possible compensation for the damage which would be suffered by [them] and by the third parties whose [they] are intended to protect";

Considering that the opposing party does not dispute the urgency invoked supporting the request for suspension;

Considering that by letter dated February 14, 2018, the opposing party informed that license n° 2178/030768 has been completely executed;

Considering that there is no reason to doubt the accuracy of this information; that it follows that the request for suspension of the execution of this license no longer has any purpose,

**FOR THESE REASONS,
THE COUNCIL OF STATE DECIDED:**

Article 1er

The request for suspension is rejected insofar as it is directed against the licence n° 2178/030769.

Article 2.

There is no longer any need to rule on the request for suspension as it is directed against license n° 2178/030768.

Article 3.

The costs are reserved.

Thus delivered in Brussels, in open court of the XVth Chamber sitting in summary proceedings, on March 6, two thousand and eighteen by:

Mr. Michel LEROY, Nathalie
M^{me} ROBA,

chamber president,
clerk.

The Registrar,

President,

Nathalie ROBA

Michel Leroy