

**COUNCIL OF STATE, ADMINISTRATIVE LITIGATION SECTION.**

**THE PRESIDENT OF THE XV CHAMBER SITTING IN REFERENCE**

**ARRÊT**

n<sup>o</sup> 240,899 dated March 6, 2018

224.009/XV-3603

In cause:

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

**2. the League of Human Rights,**

having taken up residence at  
M<sup>me</sup> Vincent LETELLIER, lawyer,  
rue Depacqz 78-80/2  
1060 Brussels,

versus :

**the Walloon Region,**

having taken up residence at  
M<sup>me</sup> Geoffroy GENERET, avocat,  
rue Capitaine Crespel 2-4  
1050 Brussels,

applicant in intervention: \_\_\_\_\_

**CMI Defense**

having taken up residence at  
M<sup>me</sup> Jean-Marc RIGAUX, lawyer,  
270 Avroy Boulevard  
4000 Liege.

*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 of the Minister-President of the Walloon Region to issue to "an unidentified operator" arms export licenses n<sup>o</sup> 2178/031278 and n<sup>o</sup> 2178/030824 for delivery to the Kingdom of Saudi Arabia, as the final recipient, of land vehicles and their components;

*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.

By a request introduced on February 9, 2018, sa CMI Defense asks to be admitted as an intervener.

Mr. Michel LEROY, Chamber President, reported.

M<sup>re</sup> Harold SAX, *loco* M<sup>re</sup> Vincent LETELLIER and Olivia VENET, lawyer, appearing for the claimants, M<sup>re</sup> Geoffroy GENERET, avocat, appearing for the opposing party, and Me Jean-Marc RIGAUX, lawyer, appearing for the applicant in intervention, were heard in 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 of 26 September 2017, the first applicant wrote to the Minister-President of the Walloon Government in order to request that he review the

mechanisms and criteria for granting arms export licenses to Saudi Arabia 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 communication of a copy 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 2178/031278 and 2178/030824; signed copies of the "original for the applicant", from which the particulars allowing the identification of its object have been omitted been 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; the description of the goods and the destination do not correspond to what the request indicates. Both the confidential copies and those annexed to the request indicate that it concerns the renewal of previous licenses which had the same object;

#### *IV. Intervention*

Considering that sa CMI Defense asks to intervene in the cause; that it is the beneficiary of the contested licenses; whereas his intervention should be allowed;

#### *V. Admissibility*

##### *A. Arguments of the intervener*

Considering that the intervener explains that;

- License No. 2178/031278 for Canada is a license for renewal;
- the fact that the applicants for annulment have not brought an appeal against a similar, earlier decision does not automatically deprive them of their interest in bringing proceedings against a subsequent similar decision;
- however, unless the course of action is broken due to new events since the initial decision, the previous decisions granting the initial license have become final and include the same reasoning as the subsequent renewal decisions;
- unless there is a new element that the annulment applicants would have to demonstrate, the applicants lose their interest in taking action against the renewal licenses;
- the applicants could have taken action against the original licenses since they were aware that the contested acts were renewal licenses, but in November 2017 they did not request a copy of these original licenses;
- further, the applicants fail to demonstrate that Saudi Arabia would be in different conditions today than it was in 2015 when the original license was granted;

##### *B. Assessment by the Council of State*

Considering that the fact that the contested licenses are renewal licenses does not entail that the action must be declared inadmissible; that it could indeed be that the renewal of an original license is tainted with inherent defects;

#### *VI. On the emergency*

##### *A. Arguments of the applicants*

Considering that the applicants state that the immediate execution of the contested act 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 weapons 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";

*B. Position of the opposing and intervening parties*

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

Considering that the intervener states that license No. 2178/030824 for the United States has been fully executed, so that the request for suspension has become devoid of purpose;

*C. Assessment by the Council of State*

Considering that the contested licenses authorize the export of material, one to Canada, the other to the United States of America; that the arguments put forward in support of the urgency are completely irrelevant as regards these two countries; that furthermore, license no. 2178/030824 having been executed, the request for suspension no longer has any purpose as far as it is concerned;

Considering that if the equipment in question is, as the intervener indicates, intended to be incorporated into military equipment which will subsequently be delivered to Saudi Arabia, the export to that country is not an effect of the contested licenses, but authorizations which will, if necessary, be issued by the competent authorities of Canada or the United States of America and which may be contested by the appropriate procedures under the law of these States; that the alleged urgency is unrelated to the execution of the contested licenses;

Considering that one of the conditions required for the Council of State to be able to suspend the contested act is not fulfilled; that there is no reason to grant the request for suspension,

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

**Article 1er**

The request for intervention introduced by sa CMI Defense is welcomed.

**Article 2.**

The request for suspension is rejected insofar as it is directed against the licence n° 2178/031278.

**Article 3.**

There is no longer any need to rule on the request for suspension as it is directed against license n° 2178/030824.

**Article 4.**

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	chamber president,
M <sup>me</sup> ROBA,	clerk.

The Registrar,	President,
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Nathalie ROBA

Michel Leroy