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Body	Court of North Holland
Date of judgment	25-08-2016
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Case number	AWBÿ-ÿ16ÿ_ÿ3036
Formal Relationships	Appeal: ECLI:NL:GHAMS:2017:165
Jurisdictions	tax law

Special features First instance - multiple

Content indication

Three organizations have challenged a transfer license on the basis of the Strategic Goods Decree for the transfer of military equipment to France on behalf of the Egyptian Navy. The court has ruled that the Minister of Foreign Trade and Development Cooperation organizations rightly did not receive in their objection because they do not are interested in the decision (the permit).

Legal references General Administrative Law Act 1:2

Locations Rechtspraak.nl
FutD 2016-2122
NTFR 2016/2252
NLF 2016/0088 with annotation by

Pronunciation

District Court of North Holland

Seating location Haarlem

case numbers: HAA 16/3033 and 16/3036

decision of the multiple chamber of 25 August 2016 in the cases between

[X 1] , established at [Z 1] ,

[X 2] , established at [Z 2] ,

[X 3] , established at [Z 3] ,

hereinafter: claimants

(authorized representative: mr. J. Klaas),

in

the Minister for Foreign Trade and Development Cooperation, defendant.

Process sequence

In a letter dated 12 October 2015, the claimants objected to a license granted to a third party for the transfer of military equipment.

Defendant dismissed Plaintiffs' appeal inadmissible.

Plaintiffs have appealed against it.

The claimants have submitted a request for an interim injunction pending the appeal proceedings.

Defendant has filed a statement of defence. Defendant furthermore responded to Plaintiffs' request for an interim injunction.

Plaintiffs submitted further documents before the hearing. A copy thereof has been provided to the defendant.

The hearing took place, with the consent of the parties, in public on 15 August 2016 in Haarlem.

[A] , program leader Security and Disarmament has appeared on behalf of [X 1]. [B] , coordinator, appeared on behalf of [X 2]. [C] has been published on behalf of [X 3]. The representative also appeared. The defendant was represented by its attorneys, mr. C. de Munck and ir. M. ruebzaat.

Considerations

Facts

1. Defendant has to a company established in the Netherlands on the basis of Articles 18 and 21 of the Decree of 24 June 2008, containing rules with regard to the import, export and transit of dual-use goods and military goods (hereinafter: Strategic Goods Decree) granted a transfer license for the transfer of military equipment to France for the purpose of

of the Egyptian Navy. Plaintiffs timely objected to this permit.

Dispute and the positions and conclusions of the parties

2. It is disputed whether the claimants' objection has rightly been declared inadmissible.

3. Claimants take the position that they are the most diligent party to conduct these proceedings. A different opinion would be a major problem from a legal, democratic and human rights point of view. Plaintiffs point to their statutory objectives and actual activities.

Plaintiffs claim that the appeal is well-founded, annulment of the decision on the objection and remand to the defendant for a substantive treatment of the objection.

The claimants request the court to make a provisional injunction pending the objection procedure, in the sense that the granted license will be suspended, so that further transfer of the military equipment is not permitted.

4. Respondent takes the position that claimants are not sufficiently directly affected in their interests. They are not interested parties within the meaning of Article 1:2, third paragraph, of the General Administrative Law Act (hereinafter: Awb).

Defendant claims that the appeal is unfounded and that the request for a preliminary injunction is rejected.

5. At the hearing, the parties requested the court to reopen the investigation in order to provide a written response if the court finds that the admissibility of the objection is governed by Union customs law as a result of the linking provision in the General Customs Act (hereinafter: Adw).

Dispute assessment

6. To begin with, the court will set out the assessment framework.

Article 1:2, first paragraph, of the Awb reads as follows:

"Stakeholder is understood to mean: the person whose interest is directly involved in a decision."

Article 1:2, third paragraph, of the Awb reads as follows:

"With regard to legal persons, their interests are also considered to be the general and collective interests that they promote in particular by virtue of their objectives and as evidenced by their actual activities."

Article 8:1 of the Awb reads as follows:

"An interested party can appeal against a decision to the administrative court."

Article 1:1, fourth paragraph, of the Adw has been amended as follows with effect from 1 January 2014 (Article XX of the Act of 16 October 2013 amending certain tax laws and some other laws (Tax Collective Act 2013), Bulletin of Acts and Decrees 2013, no. 413:

"In the fourth paragraph, "joint actions, common positions,

framework decisions, decisions and agreements adopted or adopted by the Council of the European Union » shall be replaced by: binding EU legal acts.”

With effect from 1 January 2014, Article 1:1 of the Adw reads as follows:

“1ȳ(...)

2 The provisions by or pursuant to this Act also serve the fulfillment of obligations arising from: a.

a. interregional law,

b. treaties binding the Kingdom and

c. binding decisions of international law organizations established in their entirety by such treaties, insofar as these obligations relate to the customs supervision of, or to the customs control of, goods and the movement of goods and furthermore concern subjects falling within the scope of one or more regulations such as referred to in the Annex to this Act.

3 The provisions by or pursuant to this Act also serve the purpose of fulfilling obligations arising from regulations of international law to provide mutual administrative assistance with regard to goods and the movement of goods.

4 The provisions by or pursuant to this Act also serve to implement binding EU legal acts, insofar as these relate to goods and the movement of goods and furthermore concern subjects that fall within the scope of one or more regulations as referred to in the appendix to this Act.

Article 1:4 of the Adw reads as follows:

“1 By or pursuant to Order in Council, for the elaboration of interregional law, treaties binding on the Kingdom and decisions of international law organizations established by such treaties binding in all their parts, rules of an executive nature may be laid down, which apply to goods upon introduction into , or leaving the areas referred to in Article 1:2 apply.

2 By or pursuant to the order in council referred to in the first paragraph, rules of an executive nature can be laid down with regard to the implementation of binding EU legal acts, which apply to goods when entering or leaving the areas referred to in Article 1:2, apply.”

Until 1 May 2016, Article 1:5 of the Adw reads as follows:

“When applying the provisions by or pursuant to this Act pursuant to Article 1:1, paragraphs 2 to 5, the provisions of Title I, Title II, Chapters 1 and 2, Section 1, Title VIII and Title IX, Chapter 2, of the Community Customs Code and Part I, Titles I to IV, Chapter 1 of the implementing Community Customs Code Regulation applicable mutatis mutandis.”

With effect from 1 May 2016, Article 1:5 of the Adw reads as follows:

“When applying the provisions by or pursuant to this Act pursuant to Article 1:1, paragraphs 2 to 5, the provisions of Title I, Chapter 1, Articles 12, 14, 15, 22 to 30, 43 to 48, 51, 52 and 55, and the provisions of Title II, Chapters 1 and 2, Section 1 of the

Union Customs Code, the provisions of Title I, Chapter 1, Articles 8 to 18, and the provisions of Title II, Chapter 1, Section 1, of the Union Customs Code Delegated Regulation and the provisions of Title I, Chapter 1, Articles 8, 9, 12 and 15, and the provisions of Title II, Chapter 2, Section 1, of the Union Customs Code Implementing Regulation of

similar applications."

Article 3:1 of the Adw reads as follows:

"Without prejudice to EU regulations in this regard, prohibitions or restrictions may be laid down by or pursuant to an order in council with regard to goods that are applicable when entering or leaving the areas referred to in Section 1:2."

Article 8:1 of the Adw reads as follows:

"1 Articles 6:2, preamble and under b, and 8:1 of the General Administrative Law Act do not apply.

2 Article 8:13 of the General Administrative Law Act does not apply, unless an appeal has been lodged against a decision taken on the basis of a regulation referred to in the appendix to Articles 1:1 and 1:3, under B, of this law."

Article 8:2 of the Adw reads as follows:

"1 Chapter V of the General State Taxes Act, with the exception of Articles 25, third paragraph, 26a, 27a and 27e, shall apply mutatis mutandis to decisions as referred to in the second paragraph.

2 For the corresponding application of Chapter V of the General State Taxes Act, a decision is subject to objection if it concerns a decision:

a. (...)

b. taken under this Act."

Insofar as relevant, the preamble to the Strategic Goods Decree reads as follows:

"Having regard to Regulation (EC) No 1334/2000 of the Council of the European Union of 22 June 2000 establishing a Community regime for the control of exports of dual-use items and technology and Articles 1:4, first and second paragraph, and 3:1 of the General Customs Act;"

Article 11, first paragraph, of the Strategic Goods Decree reads as follows:

"It is prohibited to export military goods from the Netherlands without an individual, global or general export permit."

Article 11, third paragraph, of the Strategic Goods Decree reads as follows:

"A license is in any case not granted insofar as this results from international obligations."

Article 18, first paragraph, of the Strategic Goods Decree reads as follows:

"It is prohibited to transfer military goods from the Netherlands without a transfer permit."

Article 18(4) of the Strategic Goods Decree reads as follows:

"A license is in any case not granted insofar as this results from international obligations."

Article 21, first paragraph, of the Strategic Goods Decree reads as follows:

Our Minister will grant an individual transfer license or a global transfer license on request.

Until 1 May 2016, the Community Customs Code (hereinafter: CDW) applies. Article 4, fifth paragraph, of the CDW (belonging to Title I) reads as follows:

"decision" means any administrative decision related to customs legislation taken by a customs authority on a particular case and which has legal effect on one or more persons whose identity is known or can be established, including binding tariff information as referred to in Article 12;"

Article 243, first paragraph, of the CDW (belonging to Title VIII) reads, insofar as relevant, as follows:

"Every person has the right to appeal against decisions of the customs authorities which concern the application of customs legislation and which concern him directly and individually."

On 1 May 2016, the Union Customs Code (hereinafter: UCC) came into force to replace the CDW. Article 5 of the UCC (belonging to Title I) reads, in so far as relevant:

"1) "customs authorities" means the customs authorities of the Member States which are competent for the application of customs legislation, and any other authorities responsible under national law for the application of certain elements of customs legislation;(…)

(39) "decision" means any decision related to customs legislation taken by a customs authority on a particular case and which has legal effect on the person or persons concerned;"

Article 44 of the UCC (belonging to Title I) reads, in so far as relevant:

"Everyone has the right to appeal against decisions of the customs authorities which concern the application of customs legislation and which concern him directly and individually."

7. On 8 December 2008, the Council of the European Union adopted Common Position 2008/944/CFSP establishing common rules for the control of exports of military technology and technology, which provides eight criteria for the export of conventional arms, in a notification and consultation mechanism for denials and in a transparency procedure under which EU annual reports on arms exports are published.

8. The court infers from the amendment of 1 January 2014 of Article 1:1, fourth paragraph, of the Adw that "binding EU legal acts" also include "common positions".

It is not in dispute that the defendant granted the contested license with due observance of the

Common Position referred to under 7 of this ruling. As a result, the linking provision, Article 1:5 of the Adw, applies to decisions taken on the basis of a common position, provided that the other conditions stated in the linking provision are met. The court is of the opinion that the latter is the case, since the license relates to (military) goods and the movement of these goods (transport to Egypt via France) and also concerns a subject that falls within the scope of one or more regulations as referred to in the Annex to the Adw, namely the Adw itself (the former Act on the Annex, Part B., National Regulations). The contested license, issued on the basis of the Strategic Goods Decree, ultimately finds its legal basis in the Adw, as follows from the preamble of the Strategic Goods Decree.

9. As a result of the applicability of customs legislation, not the stakeholder concept of the Awb applies, but the relevant provisions of the CDW or (as of 1 May 2016) the UCC. The provision on the possibility to lodge an appeal (including an objection to the customs authorities) is identical in both EU regulations, so that no distinction needs to be made between the period before and after 1 May 2016. The court will therefore leave it open. which Union law regulation applies. The license has no legal consequences for claimants and does not affect them directly and individually. The fact that human rights protected and defended by the claimants are or may be at stake is not sufficient to be able to speak of being directly and individually affected. An extension as included in Article 1:2, third paragraph, of the General Administrative Law Act is not available to both EU regulations. All this leads to the conclusion that the claimants cannot be regarded as addressees within the meaning of the CDW and the UCC and that they cannot be received in their objection to the contested permit.

10. It was pointed out at the hearing that in the United Kingdom it is possible for third parties to object to a license such as the present one. This comment does not lead the court to a different conclusion. It was the choice of the Dutch legislator to declare the provisions of the CDW or the UWU specifically referred to in the linking provision of Article 1:5 of the Adw to be analogously applicable to (decisions taken on the basis of) the provisions in Article 1:1. , paragraphs 2 to 5 of the Adw. This adoption of EU law provisions is not prohibited and the decision-making about the choice made is reserved to the Dutch legislator. If the British legislator has made a different choice and has designed its own formal legal framework around the judicial assessment of licenses such as the present one, this does not affect the legitimacy of the choice of the Dutch legislator.

11. The parties have requested the court to reopen the investigation for a new written round if the court comes to the conclusion that the correct assessment framework is the CDW or the UCC and not the Awb. The court denies this request. In view of the structure of the provisions cited in the judgment and its own knowledge of customs law, the court sees no added value in a new written round. The assessment framework of the CDW has been sufficiently crystallized in the case law of the Court of Justice of the European Union and does not include the possibility or scope for legal persons such as claimants to challenge individual decisions that are addressed to others.

12. In view of the judgment on the admissibility of the objection, the court does not arrive at a further assessment of the dispute. The court rejected the request for a preliminary injunction on the same ground.

13 In view of the foregoing, the action must be dismissed as unfounded.

Process costs

14. There is no reason for an order to pay costs.

Decision

The court:

- declares the appeal unfounded; rejects the
- request for an interim injunction.

This statement was made by mr. A. van Dongen, chairman, mr. MCA Onderwater and mr. MW Koenis, members, in the presence of E. Hoekman, Registrar. The decision was made in public on August 25, 2016.

registrar senior judge

The chairman is unable to sign the statement. The oldest judge signs in her place.

Copy sent to parties on:

Remedy

The parties can appeal against this decision within six weeks after it has been sent to the Amsterdam Court of Appeal (customs chamber), PO Box 1312, 1000 BH Amsterdam.

The following must be taken into account when lodging an appeal:

1. A copy of this decision is submitted with the notice of appeal.
2. the notice of appeal must be signed and state at least the following:
 - a. the name and address of the applicant;
 - b. a date;
 - c. a description of the decision against which the appeal has been lodged;
 - d. the grounds of the appeal.