

On this day, the **twentieth day of December two thousand and twenty-one (2021)**

At the request of:

- I. **Stichting Vredesbeweging PAX Nederland**, with its registered office and principal place of business in Utrecht;
- II. The **Stichting Campagne tegen Wapenhandel (Foundation Campaign Against Arms Trade)**, also trading under the name 'Stop Arms Trade', with its registered office and principal place of business in Amsterdam;
- III. The association with full legal capacity the **Netherlands Lawyers Committee for Human Rights (NJCM)**, with its registered office and principal place of business in Leiden;

all electing domicile for this case in Amsterdam, at the offices of PILP-NJCM, where their lawyer J. Klaas is employed, and for whom L.M. Ravestijn (lawyer in Amsterdam), having his registered office at Buitenveldertselaan 106 (1081 AB) in Amsterdam, is appointed in this case as legal counsel, who will act as such.

ON

The public-law entity **THE STATE OF THE NETHERLANDS (THE MINISTER OF FOREIGN AFFAIRS)**, acting under the provisions of Section 48 of the Dutch Code of Civil Procedure, served a writ of summons on the Office of the Procurator General at the Supreme Court of the Netherlands, with registered office and place of business at The Hague, Korte Voorhout 8 (2511 CB), and a copy of this writ of summons, as well as the documents referred to below, to

1^e

The appellants hereby appeal against the judgment of the District Court of The Hague, Private Law Division, Civil Interim Injunction Judge, rendered on 23 November 2021 in case C/09/618625 KG ZA 21/923 between the appellants as plaintiffs and the respondent as defendant, which proceedings were commenced with a summons for interim relief dated 11 October 2021.

2^e

To appear, not in person, but represented by an attorney, on **Tuesday the eleventh (11) day of January two thousand and twenty-two (2022) at 10.00 a.m.** at the hearing of the Court of Appeal of The Hague, to be held at the Palace of Justice, Prins Clauslaan 60, The Hague.

Since the appellants are encumbered by the aforesaid judgment, it should be set aside.

3^e WITH NOTICE THAT

- a) if a respondent lodges an appeal but fails to pay in due time the court fee referred to below, and the prescribed time-limits and formalities have been complied with, the court shall declare the respondent in default and disregard her defence on appeal;
- b) in the event that the respondent appears in court, a court registry fee will be charged, payable within four weeks from the date of appearance;
- c) The amount of the court fees is stated in the most recent appendix to the Civil Cases Court Fees Act, which can be found on the website: www.kbvg.nl/griffierechtentabel.

- d) from a person who is insolvent, a court fee for insolvent persons, determined by or pursuant to the law, is levied, if at the time when the court fee is levied, he has submitted:
1. a copy of the decision to grant an addition as referred to in Article 29 of the Legal Aid Act, or if this is not possible due to circumstances that cannot reasonably be attributed to him, a copy of the application as referred to in Article 24(2) of the Legal Aid Act, or
 - 2e a statement from the Board of the Legal Aid Board as referred to in Article 7(3)(e) of the Legal Aid Act showing that his income does not exceed the income referred to in the order in council under Article 35(2) of that Act;

4^e END

The appellants wish to be deemed to have repeated all their submissions on appeal, so that the content of the summons, as well as the exhibits and the memorandum of oral argument submitted by them, should be regarded as repeated and intercalated.

The appellants put forward the following grievances against the judgment, whereby if and in so far as the explanation of the grievance and/or the other contents of this appeal summons contain separate grievances, which cannot be read into the grievance itself, these should also be regarded as separate grievances.

Application for an urgent appeal (Chapter 9 of the Rules of Procedure)

1. The appellants request that E.G.A. treat this appeal as an urgent appeal.
2. The appellants have an urgent interest in these appeal proceedings in the granting of the claims, more specifically the prohibition of the State of the Netherlands (already demanded in the first instance) from exporting military goods, including those for which permits have already been issued.

3. If the requested prohibition is/can not be given in due time, there is a risk that the military goods already licensed will be exported in accordance with an established plan/schedule - given the limited validity of the licenses granted - and that future deliveries (at very short notice given the validity of the license) will also take place.
4. Once the goods have been exported, this is irreversible: The Netherlands then loses jurisdiction over the goods - a later judgment cannot undo exportation.
5. As will be indicated below, export of military goods to Egypt would, at least for the time being, be in violation of the obligations of the Netherlands under the Common Position, the Decree on Strategic Goods and therefore the General Customs Law, or at least by allowing the export the State would act in violation of a social duty of care resting on the State.
6. There is also a risk that the goods will be used in Egypt in or contribute to serious violations of fundamental human rights and/or international humanitarian law, which standards aim to protect civilians in conflict areas.
7. If this appeal is handled as an 'ordinary' appeal procedure, this will undeniably lead to a judgment that can only be regarded as mustard after the meal.

THE GROUNDS OF APPEAL AGAINST THE INTERIM JUDGMENT

8. In general terms, appellants describe their grievances (which they detail below) as follows:
9. First of all, it will have to be ruled on appeal that PAX is indeed admissible in its claims. Furthermore, a correct assessment of both criteria 2a, 2c and 2c should have been carried out.
6 of the Common Position must always - independently - lead to the claims of the appellants (hereinafter PAX et al.) being allowed.

10. The Court in preliminary relief proceedings also applied a number of incorrect starting points in its judgment. This concerns, inter alia, the standard of proof and the question whether PAX et al. have made sufficiently plausible their assertions that the State should not have decided to export.
11. The human rights situation in Egypt is very serious and the Egyptian armed forces, of which the navy forms part, are guilty of internal repression, including during operations in North Sinai. In short, the position of PAX et al. is that there is at least a clear risk that military equipment supplied to the navy will be used for this purpose. Allowing exports is therefore contrary to the correct application of criterion 2a.
12. In addition, Egypt is still a member of the Saudi-Emirati coalition, which is committing serious violations of international humanitarian law in Yemen. In any event, the Egyptian Navy was involved in the maritime blockade of Yemen - which is partly responsible for the largest humanitarian crisis in recent years. The State states only that "as far as we know" Egypt was not involved in the blockade. But far beyond their own coast, Egyptian naval vessels do patrol the strait off Yemen. There is at least the clear risk that military equipment supplied to the Egyptian navy is being used in the process. Allowing exports is therefore contrary to the correct application of criterion 2c of the Common Position.
13. A correct assessment of criterion 6 should also have led to allowance of the claims of PAX et al. It is not disputed between PAX et al. and the State that testing against criterion 6 is negative. By nevertheless deciding that arms exports to Egypt may continue under the present circumstances, the State acts unlawfully in its preliminary opinion.
14. Furthermore - as set out below in ground 9 - the considerations of the court in preliminary relief proceedings concerning the ban on future export claimed by PAX et al. cannot be upheld.
15. The conclusion is that the judgment of the court in preliminary relief proceedings at first instance must be set aside and the claims of PAX et al. must still be allowed.

GRIEF 1

PAX was wrongly declared inadmissible in paragraphs 4.1 to 4.5 inclusive.

16. In grounds 4.1 through 4.5 the Court in preliminary relief proceedings declared PAX inadmissible because PAX has not demonstrated that it meets the requirements of Section 3:305a of the Dutch Civil Code. The Court in preliminary relief proceedings based this consideration on the statutes of PAX that were brought in as production 4 in the proceedings.
17. PAX is an alliance of IKV and Pax Christi. PAX was founded from the organizations Vereniging Pax Christi Nederland (Pax Christi) and Stichting Interkerkelijk Vredesberaad (IKV), from the 1960s figureheads of the peace movement in the Netherlands. Since 2006 they work together in one peace organization, since 2014 under the name PAX.
18. PAX's statutes refer directly to the statutes of IKV and Pax Christi. These statutes were also referred to during the hearing, but were not produced. The articles of association of IKV and Pax Christi are attached to the appeal as **Production 14 and 15**. This clearly shows that PAX also meets the requirements of Section 3:305a of the Dutch Civil Code.
19. According to Article 2 of PAX's constitution, it has the following purpose (bolded by lawyer):

Carrying out programmes, projects and services for (...) 'IKV' and 'Pax Christi', as well as carrying out programmes, projects and services for third parties, to the extent that these (...) fit within the objectives of IKV and Pax Christi.

The objectives of Vereniging Pax Christi in article 2 of its statutes include:

paragraph 1: **the promotion of peace in the widest sense of the word.** (..)

clause 3: the Association aims to achieve its aim by, among other things, reflection, study, information, formation and action, by actively influencing organisations and institutions in church and society, the publicity media and public opinion, circles of upbringing, education and formation, parliament and government, and appropriate international organisations.

Stichting IKV has as its statutory objective in article 2 of its articles of association:

The aim of the Foundation is (...) **to promote political solutions to crisis and war situations**. To this end, it (...) sets up projects (...) and invites society and (...) to participate and take positions.

20. The judicial review of licences for arms exports to countries where human rights and/or the law of war are violated promotes peace and the search for political solutions to crisis and war situations.
21. On the basis of the integral (text of the) statutes it is therefore clear that PAX, the largest and best-known peace organisation in the Netherlands, can indeed stand up for the interest based on 3:305a of the Dutch Civil Code.

GRIEF 2

The Court in preliminary relief proceedings wrongfully granted itself a limited room for assessment in section 4.9

22. In ground 4.9, the Court in preliminary relief proceedings established that the claims of PAX et al. are closely related to questions of security and foreign policy, and that for this reason the State would have a large margin of policy and discretion. The Court in preliminary relief proceedings concludes from this that the test that it can perform in this case is limited to the question whether the Minister could reasonably arrive at the decision to grant the current arms export licences for Egypt. Subsequently, the Court in preliminary relief proceedings derived the concrete interpretation of this test from the Common Position¹ (ground 4.10).
23. PAX et al. are of the opinion that by doing so the Court in preliminary relief proceedings wrongfully granted itself too limited room for assessment. According to PAX c.s., the test that must be applied is not a test of reasonableness, but the answer to the question *whether the State, in view of (inter alia) the Common Position, must be prohibited from allowing the export of weapons to Egypt, in anticipation of the determination (in a case on the merits) whether/that the State acts unlawfully*. PAX et al. explain this position below.
24. For the answer to the question which room for assessment is entitled to it *in this case*, the Court in preliminary relief proceedings, following the State, relied on the judgment of the Supreme Court of 26 June 2020 (about repatriation of female IS passengers and their children).² In determining the standard by which the Court must assess whether the State

¹ European Union Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, as amended by Council Decision (CFSP) 2019/1560 of 16 September 2019.

² Supreme Court, June 26, 2020, ECLI:NL:HR:2020:1148.

acts unlawfully, the Supreme Court considered that the claims are "closely related to questions of (national) security and foreign policy". This, according to the Supreme Court, involves policy that "depends heavily on political and other policy considerations related to the circumstances of the case."³

25. According to PAX et al. this case differs essentially from the above-mentioned judgment, and therefore the standard set out there cannot be considered applicable to this case. The assessment of an application for an arms export licence does not depend on 'political and other policy considerations', but on the law (the Decree on Strategic Goods), which is fleshed out by the Common Position, the Arms Trade Treaty ('ATT') and human rights.⁴ ('ATT') and human rights. In other words, as the State writes in its Conclusion of Reply: "These agreements made by the State in an international context determine the room for assessment that the State has when deciding whether or not to allow the export of military goods."⁵
26. Whereas in the case concerning the repatriation of female IS-exportees there was no clear national legal framework (simply put, the State had virtually no defined (national-law) obligations), the regulations concerning export licences for military goods are very clear and tightly structured (simply put, the State's obligations are fixed).
27. The case law referred to by the Supreme Court in the repatriation case concerns foreign policy issues for which there is no specific and binding national legal framework. In short, these cases concerned a ban on the "first use" of nuclear weapons, a ban on (further) war.⁶a ban on (further) warfare in (former) Yugoslavia⁷ and a ban on participation in the "war on terror" after 11 September 2001.⁸ Such issues are not comparable with the case that is now before your court. Unlike the judgments in these cases, in the present case there is a clear national and international legal standard that obliges the State to act in line with the claims of PAX et al.

³ Ibid.

⁴ Arms Trade Treaty, New York, April 2, 2013, Trb. 2013, 143 and Trb. 2014, 45.

⁵ Conclusion of reply dated 9 November 2021, recital 3.1.3.

⁶ Supreme Court, 21 December 2001, ECLI:NL:HR:2001:ZC3693, paragraph 3.3 (under C).

⁷ Supreme Court, 29 November 2002, ECLI:NL:HR:2002:AE5164, paragraph 3.3.

⁸ Supreme Court, 6 February 2004, ECLI:NL:HR:2004:AN8071, paragraph 3.4.

28. In short, according to PAX et al. the Court of Appeal should therefore not test with restraint *in this case*, but should examine whether the State, in its preliminary judgment, should be prohibited from permitting arms export, in anticipation of the determination in a case on the merits that there is unlawfulness, because of acting in violation of the law, including the Common Position.
29. However, should your Court of Appeal be of the opinion that this does concern an area of policy where in principle a restrained judicial review is required, PAX et al. take the position that it is not (the political decision-making about) the State's arms export policy *as such that is* the subject of dispute here, but the concrete implementation thereof in concrete cases (the granting of export licences for Egypt). This is not about policy choices, but about execution acts. This also has consequences for judicial review frameworks. According to the opinion of Procurator General (hereinafter: 'PG') Valk in the above-mentioned repatriation case, "judicial review at the individual implementation level is (considerably) more intrusive than at the policy level."⁹
30. According to PG Valk a distinction should be made between government policy and the concrete actions of the government in its individual legal relationship to the citizen.¹⁰ The restrained test of government policy in the field of foreign policy and defence relates, according to Valk, to the lawfulness of that policy as such. "It is a misunderstanding that the same restraint is always appropriate when reviewing implementing acts, even if those implementing acts take place as a result of a policy that is lawful in itself."¹¹ For example, conflict with human rights may mean that an implementing act is unlawful.¹²
31. The export control policy is not called into question by PAX et al. in this case. A number of concrete implementing acts on the basis of that policy (*in this case* allowing ten applications for arms exports to Egypt and issuing similar licences in the near future in case of unchanged factual circumstances) are. These acts are in violation of the legal obligations of the state, which originate from the Common Position, the ATT, the European Convention on Human Rights and the International Criminal Court.

⁹ Proceedings of the Supreme Court, 24 April 2020, ECLI:NL:PHR:2020:412, paragraph 5.28.

¹⁰ Ibid., r.o. 5.23.

¹¹ Ibid., r.o. 5.24.

¹² Ibid., r.o. 5.23.

Human Rights¹³ ('ECHR', in particular Article 2 on the right to life) and other human rights treaties, such as the International Covenant on Civil and Political Rights¹⁴ ('ICCPR', article 6). The State now (still) has jurisdiction over weapons of which there is a clear risk that they could be used in the future to violate the right to life.

32. Incidentally, it is not at all unusual for the civil courts to check thoroughly whether applicable legal standards, such as human rights, are not violated, even in cases which are generally regarded as politically sensitive issues of (foreign) policy. Extradition cases, for example, offer a striking analogy.
33. In extradition cases too, there is a clear legal framework within which the State must operate. And just like in extradition cases, *in this case there is a threat of human rights violations*: after all, once the goods are exported, they fall outside the jurisdiction and control of the State. And although extradition cases are pre-eminently sensitive foreign policy issues, especially when the relationship with allies is at stake, the civil judge can indeed perform a full test in which the risk of an imminent violation must be taken into account (or even be given priority).
34. A telling example from this category concerned the threatened extradition of a Dutch national to the US authorities.¹⁵ According to the court, in view of his homosexuality and the fact that he was suspected of being a sex offender, the man, if convicted in the US, would run a real risk of becoming the victim of inhuman or degrading treatment in the Oregon prison system, in violation of Article 3 ECHR. Despite the fact that the State has a wide margin of appreciation in this area, the court tested the considerations of the Minister in an intrusive manner, and extradition was prohibited by the court.
35. Finally, PAX et al. wish to emphasise that major interests are at stake here. If the court does not test properly against the standards imposed on the State, human rights may be violated.

¹³ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, Trb. 1951, 154.

¹⁴ International Covenant on Civil and Political Rights, New York, 16 December 1966, Trb. 1969, 99.

¹⁵ Court of Appeal of The Hague, 13 December 2016, ECLI:NL:GHDHA:2016:3606.

could contribute to instability in the region and damage the peace.

GRIEF 3

In grounds 4.11 et seq. the Court in preliminary relief proceedings applied an incorrect test of Criterion 2 of the Common Position

36. In section 4.11, the Court in preliminary relief proceedings summarized the test of criterion 2 Common Position as follows:

Criteria 2a and 2c of the Common Position provide that licences are to be denied if there is a *clear risk* that the military technology or equipment to be exported might *be* used for internal repression or for the commission of serious violations of international humanitarian law. Thus, the fact that the goods *may be used* for repression or human rights violations does not justify a licence refusal either.

37. However, the court in preliminary relief proceedings thus misrepresents the test. Under criterion 2 of the Common Position the risk must be assessed that the military goods to be exported could be used for internal repression or violation of the laws of war. The court in preliminary relief proceedings misjudged this.

38. The Dutch text of the Common Position on Criteria 2(a) and 2(c) reads:

(a) deny an export licence when there is a clear risk that the military technology or equipment to be exported might be used for internal repression;

(c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law. [emphasis added by lawyer]

39. Despite the absence in this text of the word "may" preceding the word "become," the test to be applied, by both the State and the preliminary injunction court, is whether there is a clear risk that the weapons *may be used* for internal repression or violation of international humanitarian law. (This is a lesser test.)

40. The preamble to the original version of the Common Position also uses the term "may" in this context.

(4) Member States are determined to prevent the export of military technology and equipment which might be used for internal repression or international aggression or contribute to regional instability.¹⁶

41. Even in the Dutch translation of the User's Guide to the explanation of criterion 2a, the test relating to risk is whether the weapons "may be used", it is significant that the User's Guide itself states that the text combines "clear risk" with "may be used".¹⁷
42. There is therefore a question of interpretation due to some incongruity in the authentic Dutch text of the Common Position. Primarily, PAX et al. take the position that there can be no misunderstanding that the test must be carried out including the word 'may'. In the alternative, in so far as the Court of Appeal is of the opinion that an interpretation of the Dutch text must be made in order to resolve this incongruity, PAX c.s. point out that all translations of EU texts are considered authentic and therefore equivalent. This means that the Dutch text should be interpreted in the light of the context and of the other authentic translations.¹⁸ It also follows from those contexts and translations that 'may' must be read into the text.
43. In six other authentic translations of the Common Position, the equivalent of "may be used" appears in all cases. In the English, Spanish, Italian, Portuguese, Danish and Swedish versions the text of the preamble, criterion 2a and 2c are congruent.¹⁹
44. According to PAX et al. the conclusion must therefore be that the inconsistency in the Dutch text of the Common Position must be resolved by applying criteria 2a and 2c in such a way that they assess the risk that the goods *can be* used for

¹⁶ Common Position, preamble.

¹⁷ User's Guide to Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, 2189/19 ('User's Guide to the Common Position'), p. 44 and para. 2.7, p. 47.

¹⁸ Also relevant in this context is the clear difference between the risk referred to under criterion 2 and that referred to under criterion 4, where the phrase '(may) become' is missing. ¹⁹ English: "might be used", Spanish: "puedan utilizarse con fines" Italian: "possono essere utilizzate", Danish: "kan blive anvendt", Swedish: 'kan komma att användas', Portuguese: 'serem susceptíveis de utilização'.

respectively internal repression and violation of international humanitarian law.

45. The result of this exegesis is primarily that the court in preliminary relief proceedings was wrong to rule in section 4.11 that "[t]he fact that the goods *can be* used for oppression or human rights violations does not mean that a permit must be refused either". After all, the "*may be* used" is sufficient to refuse the permit.
46. PAX et al. maintain their factual contentions in the first instance, which boil down to the fact that there is indeed a risk that the (ten) licensed goods *could be* used for internal repression and/or violations of the laws of war. PAX et al. request that their statements on this matter from the first instance be explicitly regarded as repeated and inserted here. According to the User's Guide, the addition of "may be used" makes the risk easier to prove.

This is easier to make plausible than a clear risk that the military technology or equipment will be used for internal repression.²⁰

47. To this end PAX et al. refer (again) to the operations of the Egyptian armed forces in North Sinai. With respect to the blockade of Yemen, PAX et al. point out that the State only takes the position that it is "likely" that the Egyptian navy will not (any longer) participate in the blockade of Yemen. These two sets of facts make it clear that there is a risk that goods supplied to the Egyptian navy could be used for internal repression and/or violation of international humanitarian law.
48. In addition, PAX et al. point out that the assessment of a risk for the future inherently involves a degree of uncertainty. This means that your Court should also allow the claims of PAX et al. if it does not apply the test advocated by PAX et al. After all, all facts claimed by PAX et al. are also sufficient to conclude that there is a substantial risk that the licensed goods will be used for internal repression and/or violation of international humanitarian law.

²⁰ User's Guide to the Common Position, para. 2.7, p. 47.

GRIEF 4

In grounds 4.10 and 4.14 up to and including 4.17, the Court in preliminary relief proceedings wrongfully ruled that PAX et al. had not made their claims sufficiently plausible

49. In the first instance, contrary to what the Court in preliminary relief proceedings establishes in ground 4.17, PAX et al. made the violation of standards by the State sufficiently plausible. The State has put up a defense against this that is clearly insufficiently substantiated.

50. In r.o. 4.10 the Court in preliminary relief proceedings considered the following:

Stop Arms Trade and the NJCM take the position that the assessment of the ten applications for which a - currently still pending - permit was granted, should have led to a negative decision on the basis of criteria 2a, 2c and 6b of the Common Position. Unlike Stop Arms Trade and the NJCM argue, it is up to them to substantiate this position and thereby make it plausible that the Minister could not reasonably decide to grant the permits.

In r.o. 4.14 the Court in preliminary relief proceedings, after having quoted the Human Rights Watch report of March 2021, stated that the Egyptian navy was also involved in the actions in the Sinai:

During the hearing the State argued that this information from Human Rights Watch is known to it and that it has verified this information with its own sources in the region, who could not confirm it.

In section 4.15, the court in preliminary relief proceedings cited an article of the medium *Al-Monitor* quoted by PAX et al. which deals with the purchase of the German frigates into which the Dutch frigates will be fitted. She then established:

The State does not share this point of view because insofar as the article is about the actions in North Sinai. In general it refers to the Egyptian army and not specifically to the navy.

In section 4.16 the court in preliminary relief proceedings, after describing the movie shown at the hearing with the horrible actions in North Sinai in which images of frigates can be seen as well, mentions the following:

The State responded by stating that the video contains only sporadic images of the Egyptian navy and that the navy's role in the operations shown remains unclear.

In section 4.17 the Court in preliminary relief proceedings arrived at the following consideration on this basis:

With the above, in the opinion of the Court in preliminary relief proceedings, the State has shown that it has taken cognizance of the information on which Stop Arms Trade and the NJCM base their claims and

the State substantiated why this information did not or should not lead to the rejection of the applications for the permits. In the opinion of the State the information is not sufficiently concrete or in itself insufficient to assume that there is a clear risk that the military goods or technology to be exported will be used for internal repression or for committing serious violations of international humanitarian law. That view is not manifestly wrong or incomprehensible.

51. In the last sentence of ground 4.17 the Court in preliminary relief proceedings missed the mark. Although the view of the State may be clear, the State applies the wrong criterion. The view of the State refers to establishing (assuming) *that* a clear risk exists. This is too absolute. The plausibility that PAX et al. must state in preliminary relief proceedings is about the 'more than reasonable possibility' (the plausibility). This has been argued by PAX et al. sufficiently substantiated and insufficiently refuted by the State.
52. In ground 4.11 the court in preliminary relief proceedings stated that the very worrying human rights situation in Egypt "is a given". It has also been established that the Egyptian population is suppressed by the military apparatus and that the navy is part of this apparatus. PAX et al. have demonstrated with public sources that there are at least serious indications that the Egyptian navy is also involved in human rights violations, at least in North Sinai. Much of the military equipment at issue in this case will be supplied to the navy.
53. With regard to the substantiation of their claim that there is a risk that the Dutch goods could be used in human rights violations and oppression, the assessment of plausibility must therefore be as follows.
54. To substantiate their claim that the Egyptian navy is also involved in the conflict in North Sinai, PAX et al. referred to a recent report by Human Rights Watch about possible war crimes by the Egyptian regime in the region. Human Rights Watch is one of the best known and most renowned international human rights organisations. The authority of Human Rights Watch's reports is also confirmed by the European Court of Human Rights, for example in the case of *Saadi v. Italy*, in which a report by the NGO on the repression and torture of political opponents in Tunisia is central.

Bearing in mind the authority and reputation of the authors of these reports, the seriousness of the investigations by means of which they were compiled, the fact that on the points in question their conclusions are consistent with each other and that those conclusions are corroborated in substance by numerous other sources (see paragraph 94 above), the Court does not doubt their reliability. Moreover, the Government have not adduced any evidence or reports capable of rebutting the assertions made in the sources cited by the applicant.²¹

55. The State stated, without any factual substantiation, that the information from Human Rights Watch "could not be confirmed" (ground 4.14). According to PAX, this bare assertion requires c.s. for further substantiation. Certainly in view of the seriousness of the case, it cannot automatically follow from this mere contestation that this information could *not* and should not have led to the rejection of the permit applications (ground 4.17).
56. Furthermore, to substantiate the above-mentioned argument, PAX et al. referred to an article on *Al-Monitor* (item 4.15) and a propaganda video of the Egyptian army (item 4.16). According to PAX et al. the State also ignores these sources too easily. It is indeed relevant that the article in *Al-Monitor*, insofar as it concerns the actions in North Sinai, does not (for instance) quote an army officer, but the former head of the Port Said Port Authority.

Rear Adm. Ahmed Mohamed al-Sadiq, former head of the Port Said Port Authority, told *Al-Monitor* that the Egyptian armed forces' current policy is to diversify its sources of weapons, as part of efforts to counter any security chaos, whether inside Egypt or outside its borders.

"The first challenge lies in the ongoing unrest in the Sinai Peninsula, where the Egyptian army is trying to keep things under control. The situation in the Sinai is an important factor to determine the size and the type of weapons [the government] needs" Sadiq said.²² (emphasis added by lawyer)

Port Said is an important port near North Sinai with a large naval base.²³ The article on *Al-Monitor* thus does add to the plausibility of naval involvement in the conflict there.

²¹ European Court of Human Rights, *Saadi t. Italy* (2009) 49 EHRR 30, para. 143.

²² *Al-Monitor*, 'Egypt boosts naval power in deal with German shipbuilder', 23 September 2020, <https://www.al-monitor.com/originals/2020/09/egypt-germany-contract-produce-frigate-navy-regional-tension.html>

²³ A major new naval base will open at Port Said in July 2021. See, for example: See.News, June 25, 2021, "Exclusive: 'July 3' Naval Base... Must-Know Facts, Purposes": "*The East Port Said Naval Base will oversee securing the northern entrance to the Suez Canal on the Mediterranean, protecting and securing the port and city of East Port Said and the northern coasts of Sinai, and securing the entire Egyptian economic waters in the eastern Mediterranean.*" <https://see.news/july-3rd-naval-base-must-know-facts-purposes/>

57. The same applies to the propaganda video of the Egyptian army that PAX et al. brought into the proceedings in the first instance (Production 13).²⁴ Relevant is not, as argued by the State, that the video only "sporadically" shows images of the navy, but that in the very violent video images of navy ships are also shown (ships that might as well be equipped with the military equipment from the Netherlands the next time). PAX et al. are of the opinion that with this they have sufficiently demonstrated the risk of involvement of the navy, or at least that the violation of standards by the State has been made sufficiently plausible. It is then up to the State to contest this sufficiently substantiated, which it has not done. On the contrary, the presence of the navy is acknowledged (although 'sporadically').
58. The Court in preliminary relief proceedings observed that the State did not consider these sources to be sufficiently concrete or insufficient in themselves to refuse the permit application (ground 4.17). However, especially when considered together, these are serious indications that also the navy is involved in the conflict in Sinai, and therefore that there is a clear risk that the weapons to be exported could be used for human rights violations and internal repression. The Court in preliminary relief proceedings should have demanded a better substantiation of the State's defense, for instance by bringing forward facts that show that the navy is not involved in the conflict in Sinai. In the first instance the State has neither stated nor demonstrated such facts. Moreover, the State should also have submitted the nine memos on which the other export licences were based.
59. Furthermore, according to PAX et al. the State has insufficiently refuted that the *special forces* can support internal repression in the Sinai. The frigate, in which the Dutch components will be built, can also be deployed to support *special forces* units, such as the Egyptian Navy SEALs. This appears from documents submitted by the State itself.²⁵ The State did not refute, or insufficiently motivated, that there is a clear risk that the operations of Egyptian *special forces* in the Sinai can be supported by a frigate that uses Dutch equipment.
60. In the alternative, PAX et al. argue that they have in any event made their assertions sufficiently plausible, given the means that are (or could be) available to them, in view of the unequal treatment of the parties.

²⁴ This production will be inserted by USB on the first roll date.

²⁵ Conclusie van antwoord dd. 9 November 2021, Production 9, p. 1.

information position of the parties in these proceedings. In view of this, and the nature of the case, more can and must be demanded from the State to refute the (sufficient) plausibility put forward by PAX et al.

61. According to PAX et al. the court in preliminary relief proceedings did not sufficiently take into account the different information positions of the parties. In an area as opaque as arms export, this inequality is all the more detrimental, especially if the export in question takes place to an area where repression is so intense that journalists have hardly any access to it.

GRIEF 5

In ground 4.17 the court in preliminary relief proceedings wrongfully considered that PAX et al. did not make sufficiently concrete that the so-called Navy SEALs come ashore from the sea to support internal repression

62. In r.o. 4.17 the court in preliminary relief proceedings considered:

In addition, Stop Arms Trade and the NJCM have not made concrete their assumption that so-called Navy SEALs come ashore from the sea to support internal repression.

63. It is certain that the licensed military exports from the Netherlands will be used by the Egyptian Navy in frigates whose purpose is, in part, "support to *special forces* units."²⁶
64. PAX et al. argued in the first instance that these Navy SEALs²⁷ or *special forces* troops of the Egyptian navy, are involved in operations in North Sinai against their own population. They have also adduced sources to substantiate this claim.²⁸ Therefore, they have made it sufficiently plausible that Navy SEALs are involved in the military operations in North Sinai, while it has been established (and is not disputed by the State) that the human rights of the Egyptian population are violated by the Egyptian regime there.

²⁶ Response dated November 9, 2021, Production 9, page 1.

²⁷ The *special forces* of the Egyptian Navy are consistently referred to by experts as 'the Egyptian Navy SEALs', see among others this article from Global Security:
<https://www.globalsecurity.org/military/world/egypt/153commando.htm>.

²⁸ See page 3 of the pleading PAX et al. and the summons at first instance dated 11 October 2021, Productions 10 and 11 and paras. 46 and 47 including the sources cited there.

65. In any case, PAX et al. made it sufficiently plausible in the first instance that there is a great risk that the Dutch military equipment will be used for human rights violations (via the deployment of the Navy SEALs or *special forces units* in North Sinai). After all, these special naval units are supported by frigates, as appears from production 9 in the Conclusion of Reply of the State.²⁹ And it has been established that these units are deployed, inter alia for assassination missions, in North Sinai against its own population.³⁰
66. The Court in preliminary relief proceedings therefore wrongly considered that PAX et al. had not made sufficiently concrete their argument that the Egyptian Navy SEALs come ashore from the sea to support internal repression.
67. PAX et al. cite a number of additional sources showing that Egyptian special naval units are indeed deployed from the sea to contribute to internal repression in North Sinai.
68. For example, an October 31, 2021 article on Al-Ahram Weekly³¹ (**Production 16**), for which the journalist was allowed to accompany a Vice Admiral, the second-highest commander of the Egyptian Navy, for 24 hours, reveals that *special forces are* hunting for "suspicious targets" along the coast in North Sinai.

The navy works closely with the other branches of Egypt's Armed Forces to defend strategic, tactical, and logistical assets within Egypt's national security realm. It has played an important role in the Comprehensive Operation Sinai counter-terrorist drive, isolating the operational theatre from the sea, preventing the escape of terrorist elements, and cutting off supplies to terrorists in Sinai.

In addition to helping secure the northeastern border, the navy has increased its boarding and search operations of suspicious craft in Egyptian territorial waters. The navy's special forces unit hunts down suspicious targets close to shore along the northern coast of Sinai.³²

²⁹ Response dated November 9, 2021, Production 9, page 1.

³⁰ Summons in first instance dated October 11, 2021, Production 10.

³¹ According to Reporters without Borders, Al Ahram is "the most circulated daily newspaper in Egypt, especially its weekend issue. It is a state-owned publication." See: Reports Without Borders, Media Ownership Monitor Egypt, <https://egypt.mom-rsf.org/en/media/detail/outlet/al-ahram/>

³² Ahram Online, 'A day with the Egyptian Navy: High sea strategies', 31 October 2021, <https://english.ahram.org.eg/NewsContentP/50/436611/AIAhram-Weekly/A-day-with-the-Egyptian-Navy-High-sea-strategies.aspx>

69. PAX et al. would also like to draw your Court's attention to the video that will be submitted as **Production 17**.³³ It shows the Egyptian Navy SEALs in training and actions. Although the video is available on the - not affiliated with the Egyptian government - *Military Channel* (Youtube), the video has been composed of official visual material.³⁴ The Navy SEALs can be recognized by the insignia on their uniforms. The video shows that the Navy SEALs, like all *special forces* in the world, are deployed on land, at sea and in the air. Their operation can be led with the C3 (Command, Control, Communication) equipment as supplied by the Netherlands. The Ministry also states that internally.³⁵
70. Dutch company Thales will supply SMART-S MK2 3d radar systems, also to the Egyptian Navy. These systems are, according to Thales, to be used on frigates that can detect hidden targets on land.³⁶
71. The above shows that PAX et al. have made it sufficiently plausible that there is a clear risk that the weapons for which the Netherlands has granted an export licence could be used for internal repression. This means that, in their preliminary opinion, these exports should be banned.

GRIEF 6

The court in preliminary relief proceedings erred in finding that the Minister could arrive at a positive test for criterion 2c of the Common Position

72. The District Court dealt to a large extent with the considerations regarding criterion 2c together with criterion 2a. However, PAX et al. argued separately in the first instance, stating their reasons, why testing against criterion 2c of the Common Customs Tariff is not necessary.

³³ This production will be inserted by USB on the first roll date.

³⁴ See: <https://www.youtube.com/watch?v=juhEE-IDbzk>. These images were clearly made by the army itself, as independent journalists are not allowed to report on army activities.

³⁵ See conclusion of reply dated 9 November 2021, Production 9, p. 1.

³⁶ Thales Group, Smart-S Mk2, <https://www.thalesgroup.com/en/worldwide/defence/smart-s-mk2-3d-medium-long-range-surveillance-radar>: "Pulse-Doppler processing enables fast target track initiation and stealth target detection, even in a cluttered environment. The use of solid-state transmitters extends the system reliability and allows for graceful degradation. The latter consisting of a mix of sea, land, islands, coastal rains and thunderstorms and a multiple of radar targets including small surface targets, helicopters and anti-ship missiles. Furthermore, SMART-S Mk2 is designed to match the full performance of surface to air missiles (SAM), such as the Evolved Sea Sparrow Missile (ESSM). SMART-S Mk2 is extremely suitable as the main air and surface surveillance radar in a one radar concept for light frigates, corvettes and ships such as Landing Platform Docks (LPD)."

position should independently lead to the opinion that the export should not be allowed. The court in preliminary relief proceedings has failed to recognize this.

73. PAX et al. refer to what they stated in the first instance and also in this appeal summons about the maritime blockade of Yemen and why these facts should lead to a refusal to export arms to the Egyptian navy.
74. They repeat here that with regard to the maritime blockade of Yemen the State only takes the position that it is "likely" that the Egyptian navy does not (any longer) participate in the blockade of Yemen. This is insufficient to negate the clear risk of such participation, also because the Egyptian navy, also according to the State, patrols far beyond its own coast in the Bab el Mandeb, the strait that lies off Yemen.
75. Allowing exports is therefore contrary to the correct application of criterion 2c of the Common Position.

GRIEF 7

The Court in preliminary relief proceedings wrongfully ruled in rulings 4.18 through 4.20 that under criterion 6 of the Common Position the State is free in the present circumstances to allow arms exports to Egypt

76. In r.o. 4.18 the Court in preliminary relief proceedings stated that:

Criterion Six(b) of the Common Position states that Member States shall take into account the record of compliance with international commitments, in particular on the non-use of force, and with international humanitarian law by the buyer country.

77. In r.o. 4.19 the interim relief judge continued by considering that:

There is no doubt that testing against this criterion is always negative in the case of Egypt because - as the memo of 2 July 2020 states - Egypt has not ratified the Biological Weapons Convention, is not a party to the Chemical Weapons Convention and is in violation of the arms embargo on Libya.

78. However, the court in preliminary relief proceedings next considered:

However, it follows from the wording of criterion 6 that a negative opinion on this point does not mean that a Member State is obliged to refuse a licence. Stop Arms Trade and the NJCM have submitted a User's Guide to the Common Position, which - contrary to what can be deduced from the text of criterion 6 itself - does state in a binding manner that Member States do not grant a licence if the assessment of the buyer country's record against criterion 6 does not lead to a positive result. The State took the position that this user guide is an aid for the Member States in the interpretation of the Common Position, but is not a legally binding document from which third parties may derive rights. The Court in preliminary relief proceedings is of the opinion that, although it is understandable that Stop Arms Trade and the NJCM see the User Guide as a starting point for substantiating their claims, from a formal point of view this position of the State is correct.

79. And finally in r.o.4.20 the court in preliminary relief proceedings stated:

In line with the advice in the memo, the Minister did not consider the negative assessment for criterion 6 to be decisive for the final assessment, because the goods in the application were not related to Egypt's compliance with its obligations regarding the non-use of force and humanitarian law of war, and because the Egyptian navy, insofar as the goods were intended for that purpose, was not involved in any violations of these standards. That assessment is not clearly erroneous or incomprehensible.

80. However, a negative test against criterion 6 of the Common Position should have led to an export ban.

81. PAX et al. explicitly maintain all that they stated in the summons at first instance and which should be considered repeated and inserted here.³⁷ They add the following to that.

82. The Court in preliminary relief proceedings has rightly determined with the State that the assessment against criterion 6 of the Common Position for export of arms to Egypt is always negative. As the Court in preliminary relief proceedings has also rightfully considered, the User's Guide indicates that export must be omitted in case of negative assessment against criterion 6. However, the Court in preliminary relief proceedings wrongfully *did not* subsequently conclude that export of military goods should not be allowed.

³⁷ Summons in first instance dated 11 October 2021, para. 48 to 51.

83. The User Guide is not simply a document but, according to Article 13 of the Common Position, serves as "guidance for its implementation."³⁸ Thus, the legal basis for the User Guide is provided in the (binding) Common Position. The English version of Article 13 of the Common Position also refers directly to the role of the User Guide: "*shall serve as guidance for the implementation of this Common Position*".

84. The State also took the position that the User Guide is an important source when applying the assessment criteria. The State is in favour of a uniform application of the assessment criteria, which includes the *best practices* from the User Guide.

In addition to the Common Position, the User's Guide (adopted in April 2009) is an important source for the uniform application of the assessment criteria.³⁹

In answer to the Labour Party's questions about harmonisation, all EU Member States are in favour of a uniform application of the assessment criteria, which is what the Common Position stands for. The uniform application of best practices in the User's Guide is part of this.⁴⁰

The User's Guide contains EU agreed best practices for the implementation of the EUGS, thus contributing to the harmonisation of EU arms export policies.⁴¹

And in 2018, the State added that "[The User Guide] is in fact guiding companies and applications."⁴²

85. Therefore, the State itself rightly believes that the User Guide should be leading for applications. This means that it is not necessary to examine whether it is legally binding: the State's discretion is limited in the sense that, in principle, it must be followed.

³⁸ Common Position, Article 13.

³⁹ House of Representatives, session year 2010-2011, 22 054, no. 165.

⁴⁰ Ibid. The remainder of the quote is included here for completeness but is not strictly applicable to this dispute. "The government will make every effort to ensure that the User's Guide is also included in the review of the Common Position. In doing so, it will examine which elements from the User's Guide could possibly be added to the criteria. An example could be the "track record" of military assets in relation to internal repression and human rights violations to be included in permit reviews."

⁴¹ House of Representatives, 2014-2015 session, 34 103, no. 3.

⁴² House of Representatives, session year 2017-2018, parliamentary paper 22 054, no. 299.

86. The User's Guide to the Common Position concludes that no permit shall be issued if the assessment of criterion 6 is negative.
87. There is no reason why exports should be allowed, so allowing them is unlawful in the preliminary view.
88. However, as far as PAX et al. have been able to see, the State did not even include the considerations from the User's Guide regarding criterion 6 in its decision making, at least with regard to one of the ten permitted exports.
89. Even stronger: in the (only) submitted memo, the State also weighed the intended end use of the weapons to be exported when assessing criterion 6.

In this case, the DVB advises that the negative assessment under Criterion Six is not decisive in the final judgement as the goods in this application are not related to the concerns described under this criterion and because the end-user (the Egyptian Navy) is not known to be involved in arms supplies to Haftar. ⁴³

90. But according to the User's Guide, the aim of Criterion 6 is to avoid exporting arms at all to countries whose governments do not respect their international commitments:

As noted above, the end-user and the nature of the goods to be exported are not the main focus of the analysis when assessing Criterion 6, as this criterion aims to avoid exporting military technology and goods at all to countries whose governments do not respect their international commitments. ⁴⁴

91. Neither the use of the goods by the end user nor the precise role of the Egyptian navy are relevant in the context of Criterion 6 and therefore should not have been taken into account by the State. After all, criterion 6 explicitly only considers the behavior of the receiving country as a whole. The Court in preliminary relief proceedings has misunderstood this.
92. Egypt's alliance with the Saudi-Emiral coalition also has a negative impact on the assessment of arms exports to this country: this coalition has violated international humanitarian law and international human rights on a large scale over the past five years and continues to do so. Egypt has actively contributed to this through military and political support.

⁴³ Conclusie van antwoord dd. 9 November 2021, Production 9, p. 6.

⁴⁴ User's Guide to the Common Position, p. 113, subsection 6.6.

93. This coalition is also responsible for the maritime blockade that qualifies as a war crime, which was carried out, inter alia, with warships. The Court in preliminary relief proceedings, together with the State, has apparently and wrongfully not considered this fact correctly.
94. Therefore, also in light of what PAX et al. have argued about the actual situation regarding Egypt, the State was not free, without compelling reason, to allow the export in violation of the standards in the User Guide, namely: no export in case of negative assessment of criterion 6. The State has violated the standards applicable to it, or at least the State could not reasonably have taken the decision to allow the export. The Court in preliminary relief proceedings has misjudged this.

GRIEF 8

In section 4.21 the court in preliminary relief proceedings wrongfully assigned value to the question whether other EU countries refrain from arms deliveries to Egypt

95. In r.o. 4.21 the Court in preliminary relief proceedings considered, inter alia:

In addition, it has not been stated or shown that other EU countries currently refrain from similar supplies to the Egyptian Navy.

96. The question whether other countries refrain from similar supplies to the Egyptian Navy is not legally relevant. The question is whether export to Egypt, under the current circumstances and given the facts, is unlawful. The fact that other countries may or may not have a stricter policy regarding arms exports to Egypt has no influence on this.
97. It also happens that countries themselves decide to adopt a stricter arms policy or even an arms embargo, without other countries doing so. A well-known example is arms embargo imposed by Germany against Saudi Arabia in 2018, following the murder of a journalist.⁴⁵

⁴⁵ RD, 18 September 2019, 'Germany extends arms embargo against Saudis', <https://www.rd.nl/artikel/814442-duitsland-verlengt-wapenembargo-tegen-saudis>

As recently as April 2021, Canada was the only country to backtrack on 25 previously granted export licenses to Turkey after seeing credible evidence that previously supplied material had been used in Nagorno-Karabakh conflict.⁴⁶

The UK, as the only country, reversed the export of five permits for Egypt in 2013, when it emerged that the Egyptian army used extreme violence against protesters after the fall of Morsi.⁴⁷

The United States announced in September 2021 that it would change its policy and suspend \$130 million in military aid until Egypt improved its human rights record.⁴⁸

98. Nor was the Netherlands' *presumption of denial* policy towards Egypt, which applied between 2018 and 2019, inspired by how other countries handled arms exports to Egypt, but was purely concerned with the facts and circumstances in Egypt and the region (especially around Yemen).⁴⁹
99. Moreover, even though no EU countries may currently be refraining from supplying arms to the Egyptian navy, exports to Egypt have been widely criticised. For example, 20 human rights organisations wrote a statement last year condemning France's export relations with Egypt.⁵⁰ The French parliament also issued a report recommending a stricter arms export policy towards Egypt.⁵¹ Various other EU countries also do not supply military goods to Egypt at all, without having published a policy on the subject.

⁴⁶ CBC, April 12, 2021, "Canada cancels permits for high-tech arms exports to Turkey," <https://www.cbc.ca/news/politics/arms-sales-turkey-canada-1.5984453>.

⁴⁷ The Guardian, 19 July 2013, 'UK halts export of arms components to Egypt due to fears over state force', <https://www.theguardian.com/world/2013/jul/19/uk-revokes-arms-export-licenses-egypt>.

⁴⁸ Reuters, 14 September 2021, 'US to hold 130 mln of Egypt's military aid over human rights', <https://www.reuters.com/world/middle-east/us-hold-130m-egypts-military-aid-over-human-rights-sources-2021-09-14/>

⁴⁹ Central Government, Publication 1 August 2019, 'Presumption of denial for countries involved in the Yemen conflict', <https://www.rijksoverheid.nl/documenten/publicaties/2019/08/01/presumption-of-denial-voor-countries-involved-in-the-yemen-conflict>.

⁵⁰ DW, 7 December 2020, 'France's Macron defends arms sales to Egypt despite rights concerns', <https://www.dw.com/en/frances-macron-defends-arms-sales-to-egypt-despite-rights-concerns/a-55846151>.⁵¹ Assemblée Nationale, Rapport d'information sur le contrôle des exportations d'armement, No 3581, 18 November 2020, https://www.assemblee-nationale.fr/dyn/15/rapports/cion_afetr/l15b3581_rapport-information.pdf.

GRIEF 9

In ground 4.8 the court in preliminary relief proceedings wrongfully dismissed the claimed prohibition of future exportation

100. In section 4.8 the court in preliminary relief proceedings considered, insofar as relevant here:

Insofar as it concerns (...) a total ban for the future on the export of military goods to Egypt, the Court in preliminary relief proceedings is of the opinion that this claim is not compatible with the legal system of assessment of arms exports, which is case-oriented. The Minister is obliged to assess each licence application on its own merits, based on all relevant and current circumstances of the case. This assessment cannot take place in advance and in a general sense. Only in case a general arms embargo for Egypt would be in force, a case-by-case assessment would not be necessary, but the State has argued without contradiction that arms embargoes are usually imposed in an international context and Stop Arms Trade and the NJCM have stated that they do not pursue an arms embargo with their claim. Therefore, the claim aimed at prohibiting future exports will be denied.

101. PAX et al. take issue with two considerations that are contained in section 4.8: with the consideration that the court in preliminary relief proceedings could only say something about future export (without carrying out a case-by-case test) if there is an arms embargo, and with the consideration that, because PAX et al. do not say that they are aiming for an arms embargo with their claims, the court in preliminary relief proceedings does not have to look at the claims concerning future export at all.

8.1. The consideration that the court in preliminary relief proceedings could only say something about future exports (without applying a case-by-case test) if there is an arms embargo

102. The situation in Egypt is such that a ban for the future, for a limited period of time to be determined by the judge in preliminary relief proceedings (which can also be relatively short), can be compatible with the legal system of case by case review by the State of applications for arms export licences. Even if no arms embargo is in force.

103. After all, PAX et al. have argued that in view of the current situation in Egypt - the human rights violations (established by the court in preliminary relief proceedings and not disputed by the State) and the role of the army in these human rights violations, the role of the Egyptian navy in the region and the developments in Yemen and North Sinai - (allowing) military export to Egypt will be unlawful. This is because, given the current situation, such exports are contrary to

the State will be in breach of its obligations. Based on the facts as they are now before us, export of military equipment to Egypt will have to be judged as unlawful.

104. However, since the State apparently takes a different view and has granted about ten permits in the past period, and it is likely that new applications will follow in the near future, it is important and also possible under civil law to at least temporarily halt the (threatening) unlawful conduct, which will occur again with every grant and delivery. Precisely because the State is not fulfilling its obligations, and because there is also a great threat that the State will not fulfil its obligations in the near future (in case of future permits under the same circumstances), it is pre-eminently up to the court to temporarily freeze the situation.
105. There are many examples in case law in which an injunction is granted in summary proceedings for future actions, based on the circumstances evidenced by the facts, whereas individual actions could also have been challenged. PAX c.s. mention some of them below:

A. In 2005, for example, the Amsterdam Court in preliminary relief proceedings prohibited a municipality from continuing to disrupt a family.⁵² The family was disrupted by order of the mayor with the aim of changing their minds. There was a fear that the family would become radicalized, and for that reason numerous acts were carried out to influence the family, from keeping an eye on them to ringing their doorbell. The legal basis of the policy was not unlawful, and against each individual act the family could have complained or litigated, as in the present proceedings. Because the facts had shown that, summarily, little was wrong, the judge chose to uphold the claim to prohibit the council from harassing the family in the future, given the present circumstances.

B. In a 2015 case brought by Post.nl against striking parcel deliverers, the Central Netherlands District Court in preliminary relief proceedings prohibited a strike leader from organizing further collective actions.⁵³ This unless subsequent actions would fall under the protection of the right to strike. As in the current case, it only concerned the actions which, judging

⁵² Court of Amsterdam, 1 December 2005, ECLI:NL:RBAMS:2005:AU7314.

⁵³ Central Netherlands District Court, 20 July 2015, ECLI:NL:RBMNE:2015:5373.

on the actions that had already taken place and would therefore be unlawful only under the current circumstances. Here too, Post.nl could have challenged the individual actions, but Post.nl chose to claim an injunction for the future, which was granted by the court in preliminary relief proceedings.

C. The Court in preliminary relief proceedings of The Hague, in a 2017 preliminary relief case of Milieudefensie v. the State on clean air, prohibited the State, immediately after service of the judgment, to "take or cause to be taken any measure which, in the opinion of RIVM, must be statistically expected to lead to continued or renewed exceedances of the limit values for NO₂ and PM₁₀."⁵⁴ Because under the current circumstances, on the basis of the facts submitted, the judge had established that the exceeding of the limit values was certain, this prohibition could be imposed for future actions (including actions with a possible administrative law basis).

106. Even without an international arms embargo, the court in preliminary relief proceedings may, based on the present circumstances and the facts presented, decide to impose a temporary ban on future exports. It also fits in with the nature of summary proceedings to only claim and impose a temporary ban, only for a period determined by the court, or only until after judgment in proceedings on the merits, in which all (inter)national rights, facts, interests and grounds are examined more closely and more carefully.

8.2. The consideration that, because PAX et al. claim not to pursue an arms embargo with their claims, the court in preliminary relief proceedings need not look at the claims concerning future export at all

107. An arms embargo, according to information provided by the State itself, is a "ban on the import and export of military goods, such as weapons and army vehicles."⁵⁵ An arms embargo is a sanction, a coercive measure, and is a response to human rights violations in the countries against which the sanction is directed.⁵⁶ Although the Netherlands prefers not to do this, arms embargoes and other sanctions *can* also be imposed by a country on its own (outside the EU or UN context).⁵⁷ A well-known example is the aforementioned arms embargo that

⁵⁴ Court of The Hague, September 7, 2017, ECLI:NL:RBDHA:2017:10171.

⁵⁵ See: Central Government, International Sanctions Policy:

<https://www.rijksoverheid.nl/onderwerpen/internationale-sancties/beleid-voor-internationale-sancties>.

⁵⁶ Ditto.

⁵⁷ Ditto.

Germany instituted against Saudi Arabia in 2018 following the killing of Saudi journalist Khashoggi.⁵⁸

108. Therefore, the Netherlands could indeed impose an arms embargo against Egypt independently, but because this is normally done in an international context and for a longer period of time, PAX et al. have not pressed for this.

109. However, there is still quite some space between an arms embargo on the one hand, and the claim of PAX et al. to make it impossible for the near future to export arms to Egypt from the Netherlands on the other hand. The second claim of PAX et al. in the summons concerned:

To prohibit the State of the Netherlands from allowing (actual) future export of military goods and technology for/for the benefit of the Egyptian State and/or the Egyptian Navy, or at least to order the State to make (actual) export of all military goods and technology to Egypt impossible, this for an indefinite period of time or until the court in the proceedings on the merits has rendered a judgment or until the moment at which in the preliminary opinion of the Court in preliminary relief proceedings this export would no longer be in violation of the obligations resting upon the State.

110. This claim is therefore considerably less far-reaching than a general arms embargo. For example, the duration can be limited until a decision is made on the merits of the case or until the export is no longer in breach of the State's obligations.

111. Furthermore, relatively recently, from 27 November 2018 to July 2019, the Netherlands still had a *presumption of denial* policy in place with respect to Egypt without an international political arms embargo.⁵⁹ Under the *presumption of denial*, a 'no, unless' policy applies to all exports.⁶⁰

⁵⁸ RD, 18 September 2019, 'Germany extends arms embargo against Saudis', <https://www.rd.nl/artikel/814442-duitsland-verlengt-wapenembargo-tegen-saudis>

⁵⁹ Central Government, Publication 1 August 2019, 'Presumption of denial for countries involved in the Yemen conflict', <https://www.rijksoverheid.nl/documenten/publicaties/2019/08/01/presumption-of-denial-voor-countries-involved-in-the-yemen-conflict>. *Presumption of denial policies have also applied to other facts in the somewhat distant past.*

⁶⁰ Ibid. "The *presumption of denial* means that export of military goods to these end-users will only be allowed if it is absolutely clear that these goods will not be used in the fighting in Yemen. This policy therefore implies that, contrary to the usual risk assessment in arms export policy, a reversed burden of proof applies (presumption of denial)."

112. Given the - uncontested - facts about the regime in Egypt, the human rights violations there, the fact that Egypt is breaking through the arms embargo of Libya, plays a role in the blockade of Yemen and given the operations in North Sinai against its own population, PAX et al. are surprised that the State did not switch to a *presumption of denial* much earlier (or that it stopped the *presumption of denial* policy in 2019).
113. After granting the claim of PAX et al. the State could also decide to adopt a new *presumption of denial* policy towards Egypt.
114. Therefore, the Court in preliminary relief proceedings wrongfully did not pay attention to the views of PAX et al. that lead to the conclusion that also in the future, at least for a term to be determined by the Court, no export of arms to Egypt may be allowed. This claim should have been granted because the facts surrounding the situation in Egypt can only lead to the conclusion that no export of military goods and technology to Egypt may be allowed as long as this situation does not drastically improve.
115. A ban on allowing future exports is of great importance for another reason. The State has developed a practice of informing Parliament about arms export licences granted, both after the event and to a limited extent. This means that some licences have been granted months before they become public. As long as the State would continue to perform its incorrect review, it would have to go to court for each individual permit granted. That is an undesirable situation. It is also not in the interest of the State to have to conduct legal proceedings each time about the same set of facts.
116. PAX et al. no longer have an interest in this claim if the State declares that, in the case of unchanging factual circumstances in Egypt, it will no longer issue an export licence, unless there is no risk that the goods can be used for human rights and/or war violations.

CONCLUSION

117. On the basis of all of the above, the grievances put forward separately, but certainly taken together, the appellants are of the opinion that the judgment of which they appeal cannot be upheld and that their prima facie claim(s) should be allowed, as follows:

MITSDIEN

Your Court may be pleased to give its ruling by way of provisional enforcement insofar as permitted by law:

- I. set aside the judgment in preliminary relief proceedings rendered on 23 November 2021 by the Court of The Hague, private law division, case and role number C/09/618625 KG ZA 21/923, and adjudicate afresh, in so far as permitted by law, to allow the claim(s) submitted by the appellants in the prima facie case;
- II. order the respondent to pay the costs of the proceedings at first instance and on appeal.

The cost of this is mine,

Bailiff

Production list

Production 13 Shortened video Egyptian Army (shown at hearing in firstinstance)

Production 14 Statutes IKV

Production 15Statutes Pax Christi

Production 16 Al-AhramOnline, 'A day with the Egyptian Navy: High sea strategies', 31 October 2021

Production 17Video Egyptian Special forces