

judgment *4x*

DISTRICT COURT OF THE HAGUE

Commercial Team

case numbers / cause list numbers:

C/09/581972 HA ZA 19-1099 (case I) and C/09/604819 HA ZA 20/1244 (case II)

Judgment of 23 November 2022

in the cases of

1. Mr [claimant 1],
2. Mr [claimant 2],
3. Mr [claimant 3],
4. Mr [claimant 4],

all living in [city/town], Uruzgan, Afghanistan,

and

the joint heirs of Mr [testator],

claimants,

lawyer: L. Zegveld, LLM, in Amsterdam,

versus

THE STATE OF THE NETHERLANDS

with its seat in The Hague,

defendant,

lawyer: W.I. Wisman, LLM, in The Hague

Hereinafter, the claimants will be referred to jointly as “the claimants” and individually as [claimant 1], [claimant 2], [claimant 3], [claimant 4] and the heirs. Hereinafter, the defendant will be referred to as the State.

The cases were handled by the aforementioned lawyers, lawyer A. Vossenbergh, LLM, (the claimants) and lawyer E.V. Koppe, LLM, (the State).

1. Summary of the case

- 1.1. This case concerns the bombardment of an Afghan qala (a walled residential complex) during the battle for Chora in the middle of June 2007. It is an established fact that the Netherlands is responsible for this bombardment. In this case, the court also answers the question of whether the State is also liable and obliged to pay compensation to the claimants who at the time of this bombardment lived in this qala and/or are surviving relatives of a resident of this qala.

The claimants argue that this bombardment *inter alia* breached the principle of distinction within the meaning of international humanitarian law of war (IHL). This entails that the *quala*, which is a civilian object, could only be bombed if it was or could have been considered to be a military target at the time of the bombardment.

The court concludes that the State did not substantiate concretely enough that there was sufficient information at the time of the bombardment of the *quala* on the basis of which a *reasonable commander* could designate this *quala* as a military target. In so doing, the State insufficiently refuted the argument of the claimants that the bombardment of the *quala* was contrary to the principle of distinction of the IHL. As a result, the bombardment of this *quala* must be considered to be unlawful.

The court rejects the State's reliance on prescription and furthermore holds that the State is not subject to an obligation to investigate as provided for in Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

2. Proceedings

2.1. The course of the proceedings is evident from:

- the summons in case I on the part of [claimant 1], [claimant 2], [claimant 3], and [claimant 4] containing a demand for the production of exhibits dated 13 September 2019, with exhibits 1 up to and including 72 and exhibit 73 sent in later; the statement of defence in case I of 11 March 2020, with exhibits 1 up to and including 9;
- the decision dated 26 August 2020, in which an oral hearing was ordered;
- the summons in case II of the heirs of 14 December 2020 (which is virtually the same in content as the summons in case I), including exhibits 1 up to and including 76;
- the statement of defence in case II of 3 February 2021 (which is virtually the same in content as the statement of defence in case I), including exhibits 1 up to and including 9;

and furthermore each time in both cases:

- the document submitting additional exhibits, also containing a demand for the production of exhibits on the basis of Section 843a of the Dutch Code of Civil Procedure (Rv) on the part of the claimants, with exhibits 77A, 77B and 78;
- the document submitting additional exhibits, also containing an increased claim on the part of the claimants, with exhibits 79, 80 and 81;
- the documents containing submission of exhibits on the part of the State, with exhibits 10 up to and including 16.
- the official record of the oral hearing conducted on 29 March 2021, which, *inter alia*, refers to the submission of exhibits 82A and 82B on behalf of the claimants and the parties' written pleadings;
- the document submitting additional exhibits (82-85) with respect to the heirs of the late [testator] dated 6 October 2021 on the part of the claimants;
- the document submitted following the oral hearing, also submitting additional exhibits 17 up to and including 20 dated 6 October 2021 on the part of the State;
- the reply pursuant to the defendant's document dated 6 October 2021 of 15 December 2021 on the part of the claimants;
- reply following the oral hearing of 15 December 2021 on the part of the State;

- the reply pursuant to the defendant's document dated 15 December 2021 of 27 July 2022 on the part of the claimants;
 - the official record of the oral hearing held on 16 September 2022, during which hearing speaking notes were submitted on behalf of the State.
- 2.2. The official records of the oral hearings were drawn up outside the presence of the parties. The parties were afforded the opportunity to comment on the official record insofar as it concerned factual inaccuracies. The official records were read with due observance of the parties' written comments.
- 2.3. And finally, a date for judgment was scheduled.

3. The facts

General

- 3.1. After Al-Qaeda committed four terrorist attacks against the United States (US) on 11 September 2001, the US demanded the extradition of the leader of Al-Qaeda, Osama bin Laden, who resided in Afghanistan. However, Afghanistan, which was controlled by the Taliban at the time, refused to extradite Osama bin Laden. During *Operation Enduring Freedom*, the US, several allies and a coalition of Afghan opponents of the Taliban drove out the Taliban.
- 3.2. After the fall of the Taliban in late November/early December 2001, 25 Afghan leaders met in Bonn under the auspices of the United Nations (UN). During this meeting, which resulted in the Bonn Agreement of 5 December 2001, it was decided, inter alia, that an international peacekeeping force was to be deployed in Kabul and agreements were made concerning the formation of the Afghan interim government headed by Hamid Karzai.
- 3.3. In resolution 1386 of 20 December 2001, the UN Security Council authorised the deployment of the *International Security Assistance Force* (ISAF) in Afghanistan to support the Afghan interim government in maintaining security in Kabul and its immediate surroundings and to use force if necessary ("*all necessary measures*"). After individual countries had been in command of the ISAF mission on a rotation basis, command was taken over by the North Atlantic Treaty Organisation (NATO) effective as from August 2003.
- 3.4. The UN Security Council resolved in resolution 1510 of 13 October 2003, at the request of the Afghan government, to gradually expand the ISAF mission and authorised the expansion of the use of force to the rest of Afghanistan. From 1 August 2006 to 1 August 2010, the Netherlands was what is known as the *lead nation* in the southern province of Uruzgan. The Netherlands and Australia formed a joint task force: the 1st Dutch/Australian *Task Force Uruzgan* (hereinafter: TFU).

The mission was formed by the *Provincial Reconstruction Team* that assisted the Afghan authorities in strengthening their authority and promoting stability in the province, and by a combat unit, the *Battle Group*. The command centre of the Battle Group and TFU was located at Camp Holland in Tarin Kowt. TFU fell directly under the southern command of the ISAF in Kandahar (*Regional Command South: RC(S)*). RC(S) was subordinated to the ISAF commander in Kabul. At the time, the Dutch Chief of Defence had what is known as *full command* over all Dutch military units. His local representative, the Contingents commander stationed in Kandahar, was designated as *red card holder* and was therefore authorised to prevent deployment of Dutch soldiers if that deployment failed to meet the preconditions imposed by the Dutch government.

- 3.5. An Armoured Howitzer (PzH) and mortars were available to TFU. The 155 mm shells of the PzH were unguided. The authority to deploy the PzH was held by the commander of the TFU.
- 3.6. The Dutch contribution also included the *Air Task Force*, which was charged, inter alia, with providing ISAF units with air support as well as reconnaissance and observation activities using F-16 fighter jets and Apache attack helicopters. TFU was able to call in air support. Air support consisted of fighter jets such as F-16s, referred to as *Fixed Wing (FW)* and Apache attack helicopters, referred to as *Rotary Wing (RW)*. ISAF in Kabul was in charge of the deployment of FW, and RC(S) was in charge of the deployment of RW.
- 3.7. A *Joint Terminal Attack Controller* (hereinafter: JTAC) was used for the deployment of air support. The JTAC was in direct contact with fire control at the BG and, where relevant, with the FW and RW pilots. The JTAC was responsible for designating and, after obtaining approval from the responsible officer, releasing an attack on the targets designated by him. Where appropriate, he used technical resources, such as infrared cameras of manned and unmanned aircraft that transmitted images to a laptop. This release occurred after the JTAC had ascertained that the target of the FW or the RW was actually the intended target; known as *positive identification*.

Chora and the *stand and fight* decision.

- 3.8. The Chora district is located in Uruzgan and comprises the area between the western access of the Baluchi valley and the village of Sarab. Chora is located at an intersection of routes: north to the Gizab district, east to the Khaz Uruzgan district, south to Deh Rasnan and west to the Baluchi valley and Tarin Kowt. This means that Chora is of particular strategic importance. The small map included below shows part of the Chora district, in which the Chora district centre, the *White Compound*, is indicated among other things. It also shows a dark coloured strip that runs from the bottom left to the top right and is known as the *Green Zone*.

[image]

- 3.9. The Military Intelligence and Security Service (MIVD) had been in possession of indications that the Taliban and other militias were preparing an attack in the Chora valley since February 2007. Requests made by TFU to the Afghan authorities for the expansion of the presence of the *Afghan National Security Forces* in this area had little success. The TFU commander subsequently decided on 26 April 2007 to station two or three platoons (of 20 to 30 soldiers each) in Chora on a permanent basis. In May 2007, intelligence was received that a major attack by the Taliban was expected. Taliban fighters arrived in the area of the Chora valley from various directions as from 6 June 2007. This resulted in fire fights between ISAF and the Taliban during reconnaissance missions.
- 3.10. There was troop build-up consisting of large numbers of Taliban fighters in the early morning of 16 June 2007. That same morning, the Taliban carried out an attack on the Chora valley from the east and west along three axes. Initially, the Kala, Niazy and Sarab police stations were attacked. The Dutch platoon that was supporting the *Afghan National Police* (ANP) in the west was directly attacked by the Taliban and ultimately pushed back towards the *White Compound*. Two Dutch platoons already present at the *White Compound* took up positions towards the east and west. Intelligence revealed that the goal of the attack was to capture the *White Compound*.

Information was also received that the Taliban was committing atrocities against the civilian population. After a day of fighting, the Taliban forced the ANP to give up the police posts in the west. The intensity of combat contact diminished around six thirty that evening and the situation near the *White Compound* stabilised. The ISAF units had been pushed back into an area of approximately four square kilometres around this compound.

- 3.11. The TFU commander and the BG commander assessed the situation as very threatening. Around seven thirty in the evening on 16 June 2007, the TFU commander had to decide whether to leave Chora or stay and defend Chora. At around eight in the evening, the TFU commander decided that Chora should be held using “*all necessary means*” (hereinafter: the *stand and fight* decision). This decision was prompted in particular by the fear that the Taliban would kill civilians who were in favour of the Afghan government or who refused to fight with the Taliban. It was also feared that withdrawing from Chora would harm the credibility of the ISAF mission and that withdrawal would provide the Taliban with both a strategic and a psychological advantage. The Dutch Chief of Defence agreed with this decision, as did the RC(S) commander.
- 3.12. Immediately after the *stand and fight* decision was made, the TFU commander requested the RC(S) commander to allocate *air assets* and indicated that he wished to “engage” Taliban targets that had been identified at an earlier stage. These targets included targets that could no longer be observed directly. The RC(S) commander allocated the requested *air assets*. In addition, the PzH would be deployed to provide disrupting fire, in order to prevent the Taliban from advancing on the *White Compound* under the cover of darkness.

The battle for Chora and the claimants’ qala

- 3.13. Waterways run through Chora that make it possible to cultivate the land. The vegetated area of the Chora valley runs along these waterways, which is the *Green Zone* introduced above. The qala, which is a walled residential complex, in [city/town] where [claimant 1], [claimant 2], [claimant 3], [claimant 4] and the late [testator] and their relatives lived was located inside this zone. The aforementioned qala is circled on the small map included below and is located near a river to the north of it. The white rectangular mark placed directly above the circle indicates the positions that were taken up by the TFU parachute infantry platoon. The distance between the aforementioned qala and these positions is approximately 500 metres.

[image]

- 3.14. The air power and fire support (provided by the PzH) were deployed in a coordinated manner in the evening of 16 June 2007 and the early morning of 17 June 2007. A coordination line was formed for this purpose at vertical 21, which can be seen on the map included under 2.13. The area in which most reports concerning Taliban fighters had been made in the last days prior to 16 June 2007 was located to the west of this vertical (to the left of it on the map). Fire support was provided by the PzH from Camp Holland in Tarin Kowt in an easterly direction to the west of vertical 21 up to vertical 20 (also visible in the aforementioned map). The distance between the successive verticals is one kilometre. Fire support was provided in the early evening of 16 June 2007 and on 17 June 2007 between 00:00 hours and 01:47 hours when no air support was available and subsequently resumed from 10:28 hours.
- Air power was deployed to the east of vertical 21 (to the right of it on the map). A total of 28 guided bombs were dropped by F-16s in the early morning of 17 June 2007, of which 18 were dropped on six or seven qualas in the inhabited area of Chora. This deployment of air power was always approved in the form of a *positive identification* by one of the JTACs present in the valley, namely *Windmill 66*, *Windmill 67* or *Windmill 68*. The latter was located on the roof of the *White Compound*. The FW destroyed the intended targets that night and did not hit any unintended targets.

- 3.15. The quala in which the claimants and their relatives lived had been numbered in advance by the TFU, as had been done with nearly all infrastructure in the Chora valley, and was assigned number 4131. This quala will be hereinafter referred to as quala 4131. Quala 4131 is located exactly on vertical 22 (this vertical is not shown on the map included under 3.13). Quala 4131 was destroyed in the night of 16 to 17 June 2007. This resulted in the death of the mother, a sister and sister-in-law of [claimant 1]. His father, a sister and two brothers of [claimant 1] were injured. His father was [testator], who died in 2017 and who therefore also lost relatives.
The destruction of quala 4131 also resulted in the death of the wife, three brothers and an uncle of [claimant 2]. He himself was hit in the arm by a bullet when attempting to leave his burning house and became paralysed in that arm as a result. [claimant 3] lost his wife, two daughters, three sons and a daughter-in-law that night. [claimant 4] is a son of [claimant 3] and therefore also lost relatives.
- 3.16. The TFU's *Chief Joint Fires* led the air support. His report states that quala 4131 was bombed as an *enemy firing position* on 17 June 2007 at 03:10 hours, 03:32 hours and 03:43 hours following *positive identification* by JTAC Windmill 68. That identification means that the quala in the sights of the pilot was actually the quala previously designated as a target. The Post Mission Report of JTAC Windmill 68 includes the following concerning quala 4131: "[...] *enemy firing position [...] in compound*" and as *Method of target acquisition*: "*By own troops in front*".
- 3.17. Prior to the deployment of air power and fire support on 16 June 2007, warnings were issued to the Afghan authorities, namely Governor Munib, the chief of police, the district chief, the ANP and the tribal leader of [city/town]. Although the exact wording of these warnings can no longer be established, their purport was that civilians had to leave what was known as the *engagement area* by moving to the east of vertical 22 referred to above. The ANP was requested to bring the population to the east of vertical 22. The tribal leader of [city/town] informed the TFU prior to the aforementioned deployment that the civilians had left the above-mentioned area.
- 3.18. The situation around the *White Compound* stabilised in the morning of 17 June 2007. On 18 June 2007, the TFU commander decided to launch a counterattack for the purpose of clearing the Taliban out of the western part of the Chora valley, retaking the police stations located there and restoring the situation that existed prior to 16 June. This counterattack was successfully carried out on 19 June 2007 after the civilian population had been warned to leave the area with the aid of a sound truck.

Circumstances concerning quala 4131 prior to the bombardments

- 3.19. An "ISIS Snapshot", which is a map created by *duty officers* of the BG including a snapshot of combat operations on 16 June 2007 at 06:58 hours, shows a red diamond at vertical 22 just above the river where quala 4131 was located.
A red diamond was used to indicate hostile units. The area around quala 4131 was identified as an enemy position at that time. It is not clear from which exact location these hostile units were observed at the time.

- 3.20. The BG (communication) logbook up to 16 June 2007 includes the following about the observation referred to under 3.19:

“06:50 hours

Sender: 10 [command post Alpha company, rifles battalion]

Recipient: seedorf [BG command post at Camp Holland in Tarin Kowt, rifles battalion]

‘[redacted] Taliban is near, attempting to get as close as possible, they are now directly to the south of us.’

[...]

06:56 hours

Sender: 10

Recipient: seedorf

‘[redacted]: fired 17 RPG / Rocket Propelled Grenades, rifles battalion / and 4 x ?’

- 3.21. At around noon on 16 June 2007, TFU platoon 1.2 moved towards Niazy along the road to the north of the *Green Zone*. Platoon 1.2 was fired upon by hostile units with RPGs and mortars at the moment they crossed the southernmost point of this road. The aforementioned southernmost point is located directly to the north of quala 4131 at a distance of approximately 300 metres from this quala. This point in the road is also referred to as the *choke point*. On the map below under 3.23, the *choke point* is indicated with a small cross located directly above the circled quala 4131. The platoon commander reported to the A company command post via the company network that platoon 1.2 was being fired upon at that moment, around noon, from a south/south-westerly direction from a distance of approximately 300 metres. This fire contact was not documented in a logbook.
- 3.22. Later that same day, just before five in the afternoon, platoon 1.2 was again fired upon by hostile units using mortars. The firing location was located approximately 800 metres to the west of quala 4131. At that time, platoon 1.2 was located directly to the north of the firing position and therefore to the north-west of quala 4131. This fire contact was recorded in the TFU logbook. The map included under 3.23 below indicates the then position of platoon 1.2 with a small cross at the top left and the firing location with a small cross in the middle to the left (the numbers indicated next to them refer to paragraphs in the State’s document dated 6 October 2021).
- 3.23. Shortly thereafter, around five thirty in the afternoon, persons who were located in the river bed and who the TFU suspected as belonging to hostile units were fired upon using the on-board gun of a fighter jet. At that time, these persons were located approximately 400 metres to the east of quala 4131. This fire contact was not documented in a logbook. The position of the aforementioned persons is indicated on the map included below with the cross furthest to the right.

[image]

After the battle for Chora

- 3.24. As from 21 June 2007, the PRT carried out several missions in Chora to provide emergency assistance and inventory the damage. The PRT also paid *ex gratia* distributions for the repair of infrastructure damage and the authorities paid out compensation to surviving relatives and injured persons.
- 3.25. A partially completed, unsigned form entitled “Proposal for repair of damage and aid” includes, inter alia, the following:

“Place, date and time of the inspection of the damage

- > *Karbala (in popular parlance [city/town])*
- > *29-06-07*
- > *1600*

Mission Team and Mission Team Member

- > *M2 [...]*

Name of injured party, father, tribe, place of residence (possibly including accessibility)

- > *[claimant 2] s/o [name 1] Achakzai, [city/town]*
- > *[name 2] s/o [testator], Achakzai, [city/town]*
- Both accessible via [name 3], leader of the village of [town].*

Place (GRID), date, time damage occurred

- > *(42S TB 22003845)*
- > *During bombardments (location positively verified by JTAC, morning of 17 June)*

Form of compensation (cross out/delete as appropriate):

- *compensation to repair damage to infrastructure*
- *compensation for the loss of livestock / damage to agriculture*
- *compensation to restart in connection with loss of income*

Substantiation/factual description of the loss event

The quala group at the aforementioned coordinate [which corresponds to that of quala 4131, rifles battalion] was entirely destroyed by multiple aerial bombs. A total of 18 dead persons is reported, five of whom must still be under the rubble, from four families. Heads of families: [name 4], [name 5], [claimant 2] s/o [name 1], [name 2] s/o [testator]. There are two more carcasses: one cow and one horse. It is reported that 30 animals were killed. The mosque belonging to the quala group was also destroyed. Only [claimant 2] and [name 2] were at the location at the time the damage was inspected. [name 2] lost a brother, wife and three children. Damage inspection form not yet known at the time of inspection, which is why it is not known how many people died per family.

[...]

Repayment of the advance provided takes place via the G8 by means of a payment receipt.

- 3.26. A report of the TFU's financial service entitled "Chora damage repair" of 23 August 2007 includes, inter alia:

"[...]

5. Implementation

a. *Proposals handled:*

(1) [...]

(2) [...]

(3) *\$10,000 damage as follows:*

An entire quala group was destroyed as a result of several aerial bombs. A total of 18 dead persons is reported, 5 of whom are thought to be still under the rubble at the time the damage is inspected. There were still two carcasses and 30 animals died. The mosque belonging to the quala group was destroyed as well.

(4) [...]

b. *Proposals pending (10) [...]*

6. Conclusion

A total of 27 proposals for compensation exists. Of these, nine were settled for an amount of €31,000. Several proposals are being assessed at this time, which may be paid out by the Provincial Reconstruction Team. The total amount of these proposals is \$15,500. No amount has yet been determined concerning the proposals being assessed at this time."

Reporting after the fact / reporting

- 3.27. On the instruction and for the benefit of the Dutch Chief of Defence, an operational report concerning the battle for Chora was drawn up, known as the *After Action Report* with appendices (including logbooks) dated 27 June 2007 and an *After Action Review* dated 23 July 2007. Both reports were submitted to the proceedings with some parts redacted.

- 3.28. The battle for Chora was furthermore investigated on the instruction of and for the commander of ISAF. The conclusion of that investigation is that air support was in accordance with the ISAF procedures and rules, but, as a result of the fire support provided by the PzH without direct observation of the targets, there may not have been sufficient distinction between military targets and civilian objects. Moreover, the *Supreme Allied Commander Europe* and the Secretary General of NATO did not endorse the latter conclusion; on the basis of an analysis carried out by NATO's legal advisor, they concluded that every aspect of the actions of TFU was in accordance with the laws of war.
- 3.29. The United Nations Assistance Mission in Afghanistan together with the Afghan Independent Human Rights Commission carried out an investigation at the request of the Dutch government. It was concluded that the ISAF forces were not responsible for serious breaches of International Humanitarian Law during the battle for Chora. And finally, an investigation was conducted by an investigative committee formed by the former Afghan president, consisting of representatives of the Ministries of the Interior and Defence, the National Security Council and members of the Afghan House of Representatives.
- 3.30. At the end of June 2008, the Public Prosecution Service issued a press release to the effect that the Dutch soldiers acted within the boundaries of International Humanitarian Law and the rules of engagement applicable to them during the battle for Chora.

Notice of liability

- 3.31. In a letter dated 2 February 2012, the State was held liable on behalf of "Mr [testator] (born in 1948)" from [city/town] for damages he suffered during the night of 16 to 17 June 2007. Prescription was interrupted on his behalf in a letter dated 14 December 2016.
- 3.32. In a letter dated 5 January 2017, the State was held liable on behalf of [claimant 2], [claimant 3] and [claimant 4], among others, for damages they suffered during the night of 16 to 17 June 2007.
- 3.33. The State rejected liability.

4. The dispute

- 4.1. Following a change of claim, the claimants claim that the court should render a judgment, provisionally enforceable:
- I. ruling that the State acted unlawfully towards the claimants and [testator] by bombing their houses, their relatives and themselves on 16 or 17 June 2007 and is liable for the damage sustained and to be sustained by the claimants and [testator] as a result of the unlawful conduct, which damage is to be assessed during separate follow-up proceedings and settled according to the law, to be increased by statutory interest;

- II. ruling that the State breached its obligations arising from Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) by not conducting an effective investigation into the events that occurred during the night of 16 and 17 June 2007, and thus acted unlawfully towards the claimants and is liable for the damage they have sustained and will sustain as a result, to be assessed during separate follow-up proceedings and settled according to the law, to be increased by statutory interest;
 - III. ordering the State to pay the costs of these proceedings, to be increased by statutory interest as from fourteen days after the final judgment.
- 4.2. The claimants argue that the State acted unlawfully by carrying out heavy air strikes on [city/town], among other locations, as a result of which the family of the claimants lost their lives and the houses of the claimants were destroyed and livestock was killed. These air strikes were carried out contrary to the rules (under customary law) of International Humanitarian Law (IHL), namely the principle of distinction, the principle of proportionality and the obligation to take precautionary measures, including warning the civilian population in an effective manner. What is more, claimant [claimant 1] and several of his relatives were injured as a result of the attack, which breached their right to bodily integrity.
- 4.3. The claimants furthermore argue that the State breached Article 2 of the ECHR by not sufficiently and effectively investigating the events that occurred during the night of 16 and 17 July 2007. The claimants are of the opinion that the investigation was neither independent nor adequate: the *After Action Report* and the *After Action Review* were drawn up by the same soldiers whose actions are called into question and were drawn up on the instructions of the C-TFU. The Public Prosecution Service apparently based itself entirely on these reports. Almost no investigation was conducted on-site, no members of the armed forces were questioned and the claimants were not heard.
- 4.4. The claimants have requested on the basis of Section 843a of the Dutch Code of Civil Procedure (Rv) that the State provide them with copies of the following documents:
- a) the operational report of the events in Chora (hereinafter: *After Action Report*), commissioned by and for the benefit of the Dutch Chief of Defence, as referred to by the Ministers of Foreign Affairs, Defence and for Development Cooperation in the appendix to what is known as the 'Letter to Parliament regular status report Afghanistan' dated 24 September 2007 (*Parliamentary Papers II*, 2007/08,2795 272, hereinafter: the Letter to Parliament);
 - b) the supplements to the *After Action Report* presented by the Ministry of Defence to the Public Prosecution Service in a letter dated 18 March 2008;
 - c) the report of an investigation into the events in Chora, commissioned by and for the benefit of the ISAF (COMISAF) commander, as referred to in the Letter to Parliament.
 - d) the report concerning an investigation carried out by an investigative committee formed by Afghan president Karzai, consisting of representatives of the Ministries of the Interior and Defence, the National Security Council (NDS) and members of the Afghan House of Representatives, the Wolesi Jirga, as referred to in the Letter to Parliament.

- e) the document entitled ‘*Advance Copy of SecGen’s letter to the NAC and executive summary’s of reports on the incidents at Chora and Gereshk*’, as presented by the Ministry of Defence to the Public Prosecution Service in a letter dated 24 September 2007;
- f) the document entitled ‘*NATO legal advisor’s assessment on civilian casualties during the troops in contact incident, North of Gereshk on 22th June 2007, and during the prolonged engagement at Chora on 16-20 June 2007*’, as presented by the Ministry of Defence to the Public Prosecution Service in a letter dated 24 September 2007;
- g) all other documents in the possession of the Ministry of Defence and other administrative bodies concerning the combat operations in and around Chora from 16 to 20 June 2007;

and at a later stage:

- h) the logbooks of the F16s, the Apache attack helicopters and the *forward air controllers* / JTAC on 16 and 17 June 2007;
- i) the logbooks of the PzH on 16 and 17 June 2007;
- j) an overview of the total numbers of ammunition fired during the defence of Chora: bombs (500 and 1000 pounds), on-board weapons ammunition of the fighter jets and helicopters, 81 mm mortar shells (divided by type), armoured Howitzer grenades (divided by type), Hydra and Hellfire missiles and small-calibre ammunition;
- k) the 42 BLJ logbook (Supplement C to AAR) without redactions;
- l) the legend to Logbook 42 BLJ (Supplement C to AAR) from which the functions of the various callsigns can be deduced;
- m) the map showing the numbered houses in the bombed area and an overview of the destroyed houses in that area;
- n) the *Collateral Damage Estimate* (CDE);
- o) the *Battle Damage Assessment* (BDA).

4.5. The State conducts a defence. It argues that the deployment of fire and air support on the night of 16 and 17 June 2007 was in accordance with the IHL and that this deployment was sufficiently investigated despite the fact that the obligation to investigate arising from Article 2 ECHR did not apply in this case. The State furthermore argues that the claimants’ claims have prescribed.

4.6. The parties’ arguments will be discussed in more detail below, insofar as relevant.

5. The assessment

5.1. This case concerns the bombardment of quala 4131, where the claimants lived during the battle for Chora in mid-June 2007. It is an established fact that the Netherlands is responsible for this bombardment. The court must answer the question whether the State is liable and obliged to pay compensation in connection with [the above] and the question of whether the State breached the obligation to investigate arising from Article 2 of the ECHR. The bombardment of quala 4131 resulted, inter alia, in the death and injury of a large number of relatives of the claimants. The State acknowledges the tragedy of these deaths and injuries, but argues that the claims have prescribed, that there were sufficient indications at the time of the bombardment that quala 4131 was also being used by the Taliban for military purposes, which means that the bombardment was not unlawful and it contests the alleged violation of the obligation to investigate arising from Article 2 of the ECHR.

- 5.2. Before addressing the question of whether the bombardment was lawful and whether the State breached its obligations to investigate arising from Article 2 of the ECHR, the court will first rule on the applicable law and the State's reliance on prescription of the claims.

Applicable law

- 5.3. The parties correctly assumed that this case must be assessed in accordance with Dutch law. The unlawful conduct on the part of the State in Afghanistan alleged by the claimants took place in the exercise of public authority (*acte jure imperii*), which means that the law of the acting State applies. This rule governing the choice of law under customary law currently codified in Article 10:159 of the Dutch Civil Code (DCC) also applies to state actions within the context of a UN mission insofar as such actions can be attributed to the State (cf. District Court of The Hague 16 July 2014, *Mothers of Srebrenica versus the State*, ECLI:NL:RBDHA: 2014:8562, 4.166 et seq.). It is not in dispute between the parties that the bombardment being assessed in this case is attributable to the State.
- 5.4. Dutch private international law (based on Article 10:14 DCC) provides that the question of whether a claim has prescribed is governed by the law that applies to the legal relationship from which that right or that claim arose. The law that therefore applies determines whether prescription is possible, the applicable term, and, if so, in which circumstances interruption and suspension of prescription take place. The parties therefore rightly assumed that Dutch law applies with respect to the prescription of claims.

Have the claims prescribed?

- 5.5. Dutch civil law provides that claims for compensation based on Article 3:310, first paragraph, DCC prescribe five years after the moment at which the injured party became aware of both the damage and the person (potentially) responsible for it. Established case law of the Supreme Court provides that the requirement that the injured party became aware of both the damage and the party liable for it must be interpreted to mean that it concerns actual knowledge, which means that the mere suspicion of the existence of damage is insufficient. The prescription period does not commence until the day after the day on which the injured party was actually able to bring a legal claim for compensation of the damage sustained by said party. This is the case if the injured party has obtained sufficient certainty, which does not have to be absolute certainty, that the damage was caused by inadequate or incorrect conduct on the part of the person involved. This does not mean that commencement of the prescription period requires that - apart from the facts and circumstances that concern the damage and the person liable for this - the injured party was actually aware of the legal assessment of those facts and circumstances. Nor does this mean that it is required that the injured party was also always aware of the (exact) cause of the damage. The answer to the question at what moment the prescription period commenced depends on all relevant circumstances (see Supreme Court 31 March 2017, ECLI:NL:HR: 2017:552).

- 5.6. Prescription may be interrupted by a written demand to the person who is liable or might be liable within that term of five years or by unambiguously reserving the claim for payment of compensation.

The case of the joint heirs (case II)

- 5.7. It is not in dispute that the State was held liable on behalf of “Mr [testator] (born in 1948)” from [city/town] in a letter dated 2 February 2012 for damages he suffered during the night of 16 to 17 June 2007. This notice of liability was therefore given within the term of five years referred to in 5.5 and extended the prescription period by five years. Subsequently, prescription was interrupted (again) on behalf of the same person in a letter dated 14 December 2016, after which “the joint heirs of the late Mr [testator]” summoned the State in the present proceedings on 14 December 2020.
- 5.8. The summons of the joint heirs did not mention the names of these heirs. After the State objected to the above, it ultimately became clear that, according to the claimants, it concerns the following sons and daughter: [claimant 1] (claimant 1 in case I), [name 6], [name 7], [name 8] (not the same person as claimant 2 in case I [claimant 2]), [name 2], [name 9] and [name 10].
- 5.9. Within the context of the prescription, the State pointed out that the case of the heirs is not prescribed only if “Mr [testator]” is the same person as [testator] and called into question that this concerns the same person. The court agrees with the claimants that it may be assumed that this concerns one and the same person. The claimants have argued that it is not uncommon in Afghanistan to incorporate the father’s names in one’s own name when registering in the Registry of Births, Deaths and Marriages. The State has not put forward sufficient arguments against the above. The court finds that this must have been the case for [testator] as well. It bases this in particular on the contents of the proof of identity of son [claimant 1]. It includes “[testator]” as the name of the father, and the name of his grandfather, and thus the father of [testator], as “[name 11]”. This latter name explains the addition of “[initials]” to the name of [testator] in the letters interrupting the prescription period addressed to the State. The claimants further argued that the conversion of Afghan names into Western spelling is not an exact process and that different translators may choose different (phonetic) conversions. The court holds that this explains the differences between “[testator]” and “[testator]” and “[testator]” and “[testator]”. The State has not put forward sufficient arguments against the above.
- 5.10. Apart from the uncontested circumstance that [claimant 1] was granted a mandate without specific formalities to conduct these proceedings also on behalf of the other heirs, it has also been sufficiently proven with respect to the other heirs that they are children of ([initials]) [testator]. The proof of identity of [name 6] contains (virtually) the same names of the father and grandfather as those included in [claimant 1]’s proof of identity. The name [name 2] is included on the form referred to in 3.25 with the addition “s/o [testator]”. As regards the other heirs, the file contains written declarations and video messages in which their blood relationship is (ultimately) confirmed.

- 5.11. Finally, the claimants sufficiently explained the fact that the Dutch lawyer of [initials] [testator] wrote a letter to the State on their behalf as late as 2018, while [testator] is said to have died in 2017, by means of their explanation that their lawyer was not yet aware of that death partly as a result of the fact that it was difficult to establish communication with their client in rural Afghanistan.
- 5.12. In view of the foregoing, the claim of the joint heirs has not prescribed. It is not in dispute that the right of claim of [initials] [testator] passed to the joint heirs upon his death. The State's reliance on prescription is therefore rejected in case II.

The case of [claimant 1] et al. (case I)

- 5.13. The court rejects the reliance on prescription in case II on the basis of the specific circumstances of this case. The case is characterised by the circumstances that the claimants in both cases claim compensation in connection with the bombardment of qala 4131 where they lived. The facts and circumstances relevant to the assessment of the lawfulness of this bombardment are the same in both cases. The State's evidentiary position and the degree to which it is affected by the rejection of the reliance on prescription is the same in both cases. These specific circumstances of this case imply that as the reliance on prescription was rejected in case I, the State has no legally-relevant interest in its reliance on prescription in case II. In this connection, the court takes into account that the rationale of prescription lies in legal certainty and that the prescription scheme also serves to protect the debtor against 'old' claims, which he no longer needs to take into account after the prescription period had ended. The starting point is that prescription periods must be strictly observed, partly in view of the difficulties that may arise if facts have to be established and accusations have to be assessed long after the fact. The specific circumstances of this case justify an exception to this starting point. The difficulties set out above do not apply with respect to prescription in case I in view of the decision.

Unlawful bombardment?

- 5.14. The court now proceeds with the assessment of the question of whether the bombardment of qala 4131 was unlawful or not.
- 5.15. Pursuant to the liability for unlawful acts law, an unlawful act is defined as an infringement of a right and an act or omission contrary to a statutory obligation or to what is generally accepted according to unwritten law (Article 6:162, second paragraph, DCC). In case of an unlawful act attributable to the perpetrator, there exists a right to compensation for the damage that arose as a result of that act.

- 5.16. The parties assume that the unwritten standard of due care included in this Article 6:162, second paragraph, DCC, is implemented in this case (also) on the basis of the standards of IHL, which contains standards that regulate the relationships between parties to the conflict during an armed conflict. The court concurs.
- 5.17. The claimants rely, inter alia, on the principle of distinction within the meaning of IHL, which is elaborated. It is not in dispute that this principle applied to the Dutch forces during the battle for Chora, which was fought within the context of non-international armed conflict within the meaning of IHL.
- 5.18. As regards the substance of the principle of distinction, the court follows the parties and aligns with what is included in this connection in the First Additional Protocol to the Geneva Conventions (AP I), which does not directly apply, and which applies as codification of international customary law that applies during all conflicts.

Article 48 AP I provides that the parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military targets and accordingly shall direct their operations only against military targets.

Article 52 AP I provides, inter alia, that attacks must be strictly limited to military targets and that military targets are limited to those objects which by their nature, location, purpose or use make an actual contribution to military operations and whose total or partial destruction, capture or neutralization, in the circumstances at the time, offers a clear military advantage.

Furthermore, the article provides that in case of doubt as to whether an object normally used for civilian purposes, such as a house or other type of dwelling, is being used to make an effective contribution to military operations, it shall be presumed not to be so used.

Finally, Article 57 AP I provides that before an attack is carried out, everything feasible must be done to verify that the targets to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military targets. This obligation applies until the moment at which the attack is carried out.

- 5.19. When answering the question of whether (the principle of distinction included in) IHL was respected, the touchstone is whether the responsible commander, which was the C-TFU in this case, could reasonably have decided to deploy force; the assessment of the *reasonable commander*. Naturally, the answer to that question only takes account of the information that was available to this commander at the time of the use of force. It is not assessment with hindsight bias.
- 5.20. The claimants argue that the principle of distinction was not respected sufficiently during the bombardment of quala 4131. The claimants argue that this quala concerns a residential complex from which no combat took place, which means that this quala was not a military target and that there were insufficient facts and circumstances on the basis of which the C-TFU could reasonably have assumed that this quala concerned a military target.

- 5.21. The claimants invoke the legal consequence of the State's liability to pay damages on the basis of an unlawful act and the main rule on the division of the burden of proof laid down in Section 150 of the Dutch Code of Civil Procedure (Rv) provides that they bear the burden of proving the facts alleged by them. Contrary to the claimants, the court sees no reason to make an exception to the main rule referred to above. However, this does not alter the fact that the State is obliged to refute the claimants' arguments in a substantiated manner.
- 5.22. The court agrees with the State that the assessment should devote particular attention to the extreme circumstances in which decisions had to be made during the fighting around Chora in the period from 16 to 19 June 2007. TFU was confronted with a large-scale Taliban attack, which not only implied risks to its own troops, in particular the troops at the *White Compound*, but also to part of the local population that were under serious threat of very violent reprisals by the Taliban.
- 5.23. However, the matters set out above do not alter the fact that the principles of IHL must also be respected, or perhaps especially, in difficult circumstances during armed conflict. The task of the court is to establish with due observance of the relevant facts and circumstances of the case, including the (time) pressure on the decisions, whether this also took place with respect to the claimants' *quala*. In this case, which involved deliberate bombardment of the *quala* after the fighting had died down several hours earlier, the State must provide within the context of its refutation of the claimants' arguments the most accurate insight possible into the circumstances that led the responsible commander to classify this *quala* as a military target and to bomb it.
- 5.24. The claimants argue that the Taliban did not operate from *quala* 4131 and that there was no or insufficient reason to classify this *quala*, which was a walled residential complex, as a military target and bomb it at the time of the bombardment. This means that they have complied with their obligation to provide facts in principle.
- 5.25. The State is of the opinion that *quala* 4131 could reasonably be regarded as a military target and could be bombed. The State argues that there was sufficient reason to consider *quala* 4131 a Taliban combat position (*enemy firing position*, cf. 3.16), which means pursuant to its use the *quala* made an actual contribution to the military operations. The State considers it relevant in this connection that this *quala* was located in a strategically-favourable position when compared to the *choke point* and the dry river bed. That river bed served as an alternative to the roads controlled by TFU around the *Green Zone* and TFU was vulnerable to hostile fire at the moments TFU passed the narrow *choke point*. The court takes into account the matters argued by the State concerning the strategic location of the *quala*.

- 5.26. The court furthermore considers the “ISIS Snapshot” including the snapshot of the combat operations on 16 June 2007 at 06:58 hours in which enemy units are indicated in the area *around* qala 4131 relevant to the assessment. It also considers relevant the hostile fire that was opened around noon on 16 June 2007 *more or less* from the direction of qala 4131 in the direction of TFU platoon 1.2 that was at that time located near the *choke point*.
- 5.27. However, the court holds that the circumstance deemed relevant by the State that platoon 1.2 was fired upon again by enemy units a little before five in the afternoon of 16 June 2007 from a firing location that was located approximately 800 metres to the west of qala 4131 does not carry any weight. The court fails to see how that circumstance could reasonably have contributed to the qualification of qala 4131 as a military target at the time of the bombardment. This also applies if it is taken into consideration that the Taliban were advancing to the east. The same applies to the circumstance that shortly thereafter, at around five thirty in the afternoon, persons who may have been Taliban were located in the river bed approximately 400 metres to the east of qala 4131 and were moving to the east when fired upon with a fighter jet on-board gun. The connection apparently assumed by the State with the strategic location of qala 4131 along this river bed was not specific enough, all the more so because several qualas were located along that river bed.
- 5.28. The relevant facts have therefore merely established that firing took place from the vicinity of qala 4131 approximately 20 hours and approximately 15 hours before the bombardments. In the first place, it does not follow therefrom that firing took place *from* qala 4131. This is of particular importance because it is not in dispute that the Taliban were involved in a mobile advance on the *White Compound* that also passed by qala 4131. This is in line with the statements made by Adbul Raziq (claimant 2 in case I) to a local Afghan journalist, reading in the flawed English translation: “*Well Taliban was there only for few minutes than they left [...] my cousin saw them [...] while they Taliban wanted to fire and run, he told them don’t fire they will bomb our houses, [...] in the presence of Taliban they bombing was not started yet*”. In addition, these circumstances were not recent enough to reasonably justify the bombardment. No evidence was found of any verification of the presumption that qala 4131 contained a combat position.
- 5.29. It was rightly acknowledged by the State during the first oral hearing, in keeping with the IHL, that the bombardment of qala 4131 could not have been justified merely on the basis of the circumstances included under 5.26 and that this required more recent information concerning the status of qala 4131. In that context, the State argued that it is *plausible* that there was information available that one or more persons had been identified who formed part of the Taliban command structure and who were in qala 4131. It also put forward in a general sense that not all communication and information had been recorded.
- 5.30. However, the matters put forward by the State concerning the possible existence of information is not sufficiently specific. The court agrees with the claimants that the State does not assume the position that it is an established fact that this information actually existed and that it cannot, for example, be linked to a (later) moment during the day or the night. Nor does the State argue that the content of certain information cannot be made specific because this might jeopardise the safety of informants for example.

The position of the State that the information must have existed constitutes an insufficiently-substantiated contestation of the claimants' argument that at the time of the bombardment the quala was not a military target nor could it have reasonably been considered as one. The court takes into account in this connection that in a situation in which the State bombards a quala, which is a walled residential complex, in a targeted manner, it must be able to explain which circumstances justified the assumption that it concerned a military target. There is all the more reason for this in the present case because the following is included in the Post Mission Report of JTAC Windmill 68 as *method of target acquisition*: "*By own troops in front*", which according to the State should be translated "by own ground troops in the area". This method does not imply information (from shortly before the bombardment), but rather the observations of own troops in the morning of 16 June 2007 referred to under 5.26. It is furthermore relevant in this connection that the *positive identification* by JTAC shortly before the bombardment says no more than that the predetermined target is actually the target in the sights of the F-16. This identification does not concern (repeated) identification/verification of the target as a military target.

- 5.31. Insofar as the State intended to argue that the passage of time meant that the information can no longer be traced back, this argument cannot benefit the State. The reason being that the State was held liable with respect to this specific bombardment within the prescription period of five years. This means that the State could and should have taken account of the possibility that it would be obliged to submit information during legal proceedings within the regular prescription period.
- 5.32. Given this insufficiently-substantiated contestation of the claimants' arguments, the court must therefore assume that at the time of the bombardment of quala 4131 there was insufficient information on the basis of which a *reasonable commander* would be justified in designating this quala as a military target. It is also relevant in this connection that it is not disputed that the State was aware that quala 4131 was inhabited by civilians and the State has acknowledged that at the time of the bombardment TFU was not under the assumption that all civilians (therefore including the inhabitants of quala 4131) had left their houses and the area. It is also relevant in connection with the latter that it did not become clear whether the warnings to leave the area, if they were received by the population at all, were relevant to quala 4131, which was located more or less on the boundary of the vertical that was assumed as the border of the area in which the population was warned: this occurred to the west of this vertical.
- 5.33. The court must therefore assume that quala 4131 was bombarded without observing the principle of distinction, which is unlawful and should result in compensation of the claimants' damage. It is relevant in this connection that it is not in dispute between the parties that this act should be attributed to the State, which always maintained *full command* of its own forces and, moreover, was the *red card holder* concerning the deployment of those troops. Finally, the fact that a causal link (*condicio sine qua non*) exists between the act and the claimants' damage is also not in dispute.

- 5.34. Needless to say, and in order to prevent misunderstandings, the court holds that this does not constitute a judgement concerning the qualification of the bombardment as a war crime. Apart from the fact that disregard of IHL does not automatically result in such a crime and, moreover, such a judgement is not up to the civil courts, it is important to emphasise that the court did not *establish* that the quala was not a military target and that at the time of the bombardment of quala 4131 there was insufficient information on the basis of which a reasonable commander would be justified in designating this quala as a military target. It merely held that given this insufficiently-substantiated contestation on the part of the State, it must be assumed that at the time of the bombardment of quala 4131 there was insufficient information on the basis of which a *reasonable commander* would be justified in designating this quala as a military target, because the State did not refute the claimants' argument in a sufficiently-substantiated manner.
- 5.35. As it has been established that [testator] was present in quala 4131 at the time of the bombardment, his heirs argued convincingly that there is a possibility of damage, which is sufficient for referral to follow-up proceedings for the determination of damages. The exact damage will be determined during these separate proceedings. This must also take account of the State's argument, with reference to the documents referred to under 3.25 and 3.26, that an *ex gratia* payment of ten thousand dollars was made to one of the heirs of [testator], namely [name 2], shortly after the bombardment. As [name 2] declared in a video clip submitted to the proceedings that approximately two thousand dollars was paid for each person who had died, the correctness of this uncontested argument of the State will have to be assumed in those proceedings. The claimants in case I have also argued convincingly that there is a possibility of damage, which means that this case is also referred to the follow-up proceedings for the determination of damages.
- 5.36. In view of the opinion of the principle of distinction, there is insufficient interest in a (further) assessment of the breach alleged by the claimants of the principle of proportionality and of the principle that precautionary measures must be taken. This also applies to the claimants' argument that their right to bodily integrity was breached.
- 5.37. In addition, the court rejects the claimants' claims for submission to the proceedings the documents listed in 4.4. as there is no longer any interest in the provision of those documents in view of the opinion of unlawfulness. The State submitted part of the documents requested by the claimants during the course of the proceedings.

Obligation to investigate?

- 5.38. The claimants argued that their arguments concerning the failure to comply with the obligation to investigate the bombardment arising from Article 2 of the ECHR were made within the context of an independent unlawful act that caused damage other than the unlawful act concerning the bombardment itself. The court holds as follows concerning these arguments.

- 5.39. Applicability of (the obligations to investigate arising from Article 2 of) the ECHR is subject to the condition that the State had jurisdiction over the area in which quala 4131 was located. The main rule is that the jurisdiction of a State is limited to its own territory. The rationale behind this main rule is that each State has sovereignty in its own territory and that each State is pre-eminently able to safeguard human rights in its own territory. The sovereignty of a State in its own territory would be prejudiced at the moment that another State would (also) have jurisdiction over that territory. A State has jurisdiction outside its own territory only in exceptional circumstances. Whether such exceptional circumstances exist must always be assessed on the basis of all circumstances of the case under consideration.
- 5.40. In short, it is assumed that a State has jurisdiction outside its own territory in cases in which the State in question exercised *effective control* outside its own territory and in cases in which a State exercised authority over a person through its representatives abroad. It is not in dispute that this exception does not apply in this case.
- 5.41. In addition, jurisdiction within the meaning of the ECHR outside the own territory is based on a *jurisdictional link* that was deemed to exist in view of the *special features* of the case. The claimants refer to the following *special features* that they believe confirm jurisdiction: the circumstance that the Afghan authorities did not have the means to conduct their own investigation and the circumstance that the Dutch Public Prosecution Service investigated whether criminal offences were committed, which is an obligation under the Rome Statute as war crimes may have been committed by Dutch citizens.
- 5.42. However, the court agrees with the State that the present case involves insufficient *special features* to conclude that the State had jurisdiction in this case. To date, no report of a war crime has been filed concerning the bombardments (of quala 4131) and no circumstances have been put forward or demonstrated that justify a suspicion of a *potential war crime*. The claimants' reference to appendix L of the After Action Report, in which the TFU's *Functional Specialist Health* provided, inter alia, as reason for *field visits* in the period 21-25 June 2007 was to "*clarify persistent rumours of human rights violations that were allegedly committed in the period June 16-19*" does not constitute such a circumstance. The reason being that the (other) text of this appendix cannot be read other than that this is not a reference to possible war crimes on the part of TFU, but possible war crimes by the Taliban ("*While facts are hard to establish, several interviewees claim that OMF have killed and subsequently burned at least three civilians*").
- 5.43. In view of the matters set out above, it cannot be assumed that the State was required to conduct a criminal investigation, partly because such an opinion of the criminal court that is an expert and competent in this connection on the basis of Section 12 of the Dutch Code of Criminal Procedure was not requested or provided.
- 5.44. The claim pertaining to the breach of the procedural (investigative) obligations arising from Article 2 of the ECHR is rejected in view of the above.

Final conclusion and costs of the proceedings

- 5.45. In view of the matters set out above, the court rules that the State acted unlawfully towards [testator] and the claimants in case I by bombarding quala 4131 and that the State is liable for the damage, which will be determined by the court. The court refers the case to separate proceedings for the determination of damages.
- 5.46. As the more unsuccessful party, the State is ordered to pay the costs of the proceedings on the part of the claimants in both cases. The costs incurred to date are estimated by the court in both cases at €3,382.72 + court fees case I (€304 + €81 in court fees, 5 points at rate II of €563 per point in lawyer's fees and €100.89 and €81.83 in bailiff's fees).

6. The decision

The court

in both cases

- 6.1. rules that the State acted unlawfully towards [testator] and the claimants in case I by bombarding quala 4131 on 17 June 2007 and that the State is liable for the damage incurred by [testator] and the claimants in case I as a result of the unlawful act, which will be increased by statutory interest;
- 6.2. orders the State to compensate the heirs of [testator] and the claimants in case I for the damage sustained by [testator] and the claimants in case I, which damage is to be assessed later during separate follow-up proceedings and settled according to the law;
- 6.3. orders the State to pay the (subsequent) costs of these proceedings, estimated on the part of the claimants in both cases to date at a total of €3,382.72 to be increased by statutory interest as from fourteen days after today;
- 6.4. declares the orders under 6.2 and 6.3 provisionally enforceable;
- 6.5. rejects all other claims.

This judgement was delivered by L. Alwin, LLM, and D.R. Glass, LLM, and J.S. Honée, LLM, and pronounced in open court on 23 November 2022.

[signatures]

[stamp] 23 NOV 2022