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Authority	District Court of The Hague
Judgment date	15-12-2023
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Case number	C/09/657026 KG ZA 23-991
Jurisdictions	Civil rights
Special characteristics	Summary proceedings
Content indication	<p>The state is not obliged to stop supplying F-35 parts to Israel</p> <p>The State is not obliged to stop the supply of F-35 parts to Israel on the basis of a previously established permit. This follows from a ruling by the District Court of The Hague in summary proceedings initiated by three interest groups.</p> <p>Claims from three interest groups</p> <p>In this summary proceedings, Oxfam Novib, Peace Movement PAX Netherlands and The Rights Forum represent the interests of (Palestinian) citizens in Gaza who are or are at risk of becoming victims of war violence. They also stand up for the general interest served by compliance with international humanitarian law. These three organizations believe that the State violates international law by supplying Israel with (parts intended for) combat equipment, while according to the interest groups the State knows that Israel is thus violating fundamental principles of the law of war. They demand that the State stop this.</p> <p>Onward delivery of F-35 parts</p> <p>The State points out that the minister made a broad assessment when making the decision to continue supplying F-35 parts to Israel. The minister did not assume that it has already been established that Israel is violating international humanitarian law. She states that the current (war) situation in Gaza is very complex and that much is still unclear. At the hearing, the State explained which other interests the minister took into account. This consideration has resulted in the decision not to stop the onward supply of the F-35 parts to Israel.</p> <p>Judge's verdict</p> <p>The judge first ruled that the minister was not obliged to reassess the permit granted in 2016 for the transport of F-35 parts against the criteria against which it was assessed in 2016, in connection with the conflict between Hamas and Israel. the minister is obliged to consider whether the supply of F-35 parts to Israel should be stopped. The minister also did that.</p> <p>The judge then assesses whether the minister could reasonably have arrived at her decision not to intervene and to uphold the permit. The judge must exercise restraint in this regard. The considerations that the</p>

minister makes are largely of a political and (other) policy nature and the judge must leave the minister a wide degree of freedom in this regard.

The judge comes to the conclusion that the minister has weighed the relevant interests and could reasonably have arrived at her considerations and actions. The provisions claimed by Oxfam Novib with regard to the export and transit of F-35 parts to Israel are rejected.

Locations

Rechtspraak.nl

shɛ [Enriched pronunciation](#)

Pronunciation

District Court of The Hague

Trade team - preliminary relief judge

case / docket number: C/09/657026 KG ZA 23-991

Judgment in summary proceedings dated December 15, 2023

in the case of

- 1 Oxfam Novibte The Hague Foundation,**
 - 2. PAX Netherlands Peace Movement Foundation** in Utrecht,
 - 3. The Rights Forum Foundation** in Amsterdam,
- claimants,
lawyers mrs. L. Zegveld and TJR van der Sommen in Amsterdam,

in return for:

the State of the Netherlands in The Hague,
defendant,
lawyers mrs. RW Veldhuis and EV Koppe in The Hague,

The parties are hereinafter referred to as 'Oxfam Novib et al.' and 'the State'.

In short: what is this case about and what is the decision of the judge in summary proceedings?

This summary proceedings relates to the conflict between Israel and the Palestinian territories. On October 7, Hamas deliberately murdered a large number of civilians in Israel and took hostages to Gaza. In response,

Israel has carried out intensive bombing of the Gaza Strip and Israeli ground forces have invaded Gaza. The bombings caused a large number of civilian casualties and destroyed many houses and other buildings. Parts for the F-35 fighter plane are transported to Israel via the Netherlands. The State has not stopped the export and transit of F-35 parts to Israel since the outbreak of the war.

Oxfam Novib and two other foundations represent the interests of (Palestinian) citizens in Gaza. They are victims of war violence or are in danger of becoming so. Oxfam Novib et al. point out the need to respect international humanitarian law and human rights and the prevention of genocide. They believe that the State is violating international law by not ceasing deliveries of F-35 parts to Israel. According to Oxfam Novib et al., the State has a duty to do this.

The State states that it is not obliged to do so. The State states that the Minister could stop that supply, but must take numerous circumstances into account. The Minister has made a broad assessment in the light of all important circumstances. The Minister did not assume that it has already been established that Israel is violating international humanitarian law. She points out that the current (war) situation in Gaza is very complex and that much is still unclear. The State has explained which other interests the Minister has taken into account.

The judge first established that the State granted a permit for the transport of F-35 parts to (among others) Israel in 2016 and then conducted an assessment. This assessment included whether criteria agreed on in a European context had been met, such as respect for human rights in the country of final destination and compliance with international humanitarian law by that country. This assessment did not lead to any obstacles and permit NL009 could therefore be approved. Under the current circumstances in Gaza, that assessment does not need to take place again. The judge ruled that this does not alter the fact that the State must consider whether there is reason to restrict the transport of the parts to Israel. The Minister has considered this, but has come to the conclusion, all things considered, that this is not the case.

The judge assesses whether the Minister could reasonably have reached this decision. The judge must exercise restraint in this regard. The considerations that the Minister makes are largely of a political and (other) policy nature and the judge must leave the Minister a wide degree of freedom in this regard. Taking this restraint into account, the judge comes to the conclusion that the Minister has weighed up relevant interests and was able to reasonably arrive at her considerations and actions in the light of all the circumstances of the case. There is therefore no reason for the judge in these summary proceedings to grant the provisions claimed by Oxfam Novib that relate to the export and transit of F-35 parts to Israel.

The claim of Oxfam Novib et al. to order the State to refrain from certain statements and, on the other hand, to make certain statements and make certain efforts, is also not allowable. Oxfam Novib et al. have not made it sufficiently clear what exactly the State is accused of and in what respect the State is acting unlawfully.

1 The procedure

1.1. The course of the procedure is evident from:

- the summons with the exhibits submitted therewith and subsequently;
- the statement of defense with the accompanying exhibits;
- the oral hearing held on December 4, 2023, during which pleadings were submitted on both sides.

- 1.2. At the hearing, a claim for intervention brought by the Muslim Rights Watch Netherlands Foundation was rejected by oral ruling pursuant to Article 29a of the Dutch Code of Criminal Procedure. A report has been drawn up of this.
- 1.3. During the hearing, the verdict was determined today.

2 The facts

Based on the documents and what was transacted at the hearing, the following is assumed in this proceeding.

- 2.1. Plaintiff sub 1 (hereinafter: Oxfam Novib) is a foundation with full legal capacity, whose statutory objective, among other things, is *"to promote a world society in which the socio-economic contradictions between rich and poor are broken, in which the prosperity of the world is fairly distributed." , and in which people and population groups can get to know and respect each other's cultures and work together for the benefit of their development on the basis of common responsibility and mutual solidarity."*
- 2.2. Plaintiff sub 2 (hereinafter: Pax) is a foundation with full legal capacity, whose statutory objectives include *"protecting civilians against war violence, ending armed conflicts and contributing to peaceful and just societies, promoting human rights and contribute to the international legal order and a culture of peace in the Netherlands and worldwide and everything that is related to the foregoing or can be conducive to this, all in the broadest sense of the word."*
- 2.3. Plaintiff sub 3 (hereinafter: The Rights Forum) is a foundation with full legal capacity, which, according to its articles of association, is committed to *"ending the conflict between Israel and the Palestinians by concluding peace on the basis of international law: treaties, resolutions of the United Nations, rulings of the International Court of Justice, that the parties to this conflict, even as long as a peace settlement is not reached, behave in accordance with international humanitarian law and with respect for human rights, that the government of the Netherlands takes the task, given to it by the Constitution, to promote the development of the international legal order, including in Israel and the occupied Palestinian territories, and that the European Union, also encouraged by the Netherlands, fully takes its responsibility as an economic and therefore also political superpower. by compelling the parties to this conflict to refrain from violations of international law."*
- 2.4. The Netherlands has been participating in the F-35 Lightning II program (hereinafter also: the F-35 program) since 2001. The F-35 program was established and managed by the United States. In addition to the Netherlands and the United States, there were seven other partners at the start of this program. The number of partners was subsequently expanded. Israel joined as a partner in 2010. Three so-called hubs have been set up worldwide for the maintenance of F-35s. One of them is in the Netherlands. The United States is responsible for the supply of F-35 parts to partner countries in the F-35 program.
- 2.5. In the Netherlands, the transit, export and transfer of military goods is regulated by the Strategic Goods Decree (hereinafter: Bsg). Under the Bsg, a permit is required for each of these activities. Since 2012 (to implement European Directive 2009/43/EC), a distinction has been made between individual, global and general permits. A general permit is granted by ministerial regulation.
- 2.6. In 2016, the Minister of Foreign Trade and Development Cooperation (hereinafter: the Minister) established the General Permit Regulation NL009 (hereinafter: permit NL009). This license NL009 applies to transit, export or transfer to which an agreement in the context of the F-35 program between a 'authority with decision-making authority' and a 'recipient' relates. In short, the license gives the authority to transport F-35 parts from Dutch territory to other countries, EU member states and a number of other states outside the EU. The regulations include rules on the use of the permit, the manner in which a request for registration and notification must be made and the manner of reporting. Pursuant to Article 8, permit NL009 may no longer be used if the registered user or person authorized to make decisions has been informed by the Minister that integrated foreign policy or security considerations preclude continued use of the permit and a notification can be made at any time for those reasons. . Permit NL009 is currently still in force. The State has not stopped the export and transit of F-35 parts to Israel on the basis of permit NL009 since the Hamas attack on Israel on October 7, 2023 and Israel's subsequent military response.

3 The dispute

3.1. Oxfam Novib et al. claim, in essence, by judgment, as far as possible enforceable in stock:

1. to order the State to immediately cease all (actual) export and transit of F-35 parts with final destination Israel, in any case until the bottom court has ruled or until the moment that the export and transit is no longer in conflict with obligations resting on the State;
2. to prohibit the State from immediately allowing new export and transit of F-35 parts with final destination Israel, in any case until the bottom court has ruled or until the moment that the export and transit is no longer in conflict with obligations imposed on the State resting;
3. to order the State to immediately bring the export and transit on the basis of the General Permit Regulation NL009 with final destination Israel into compliance with the international obligations of the State, which follow from, among other things, the Common Position establishing common regulations for the control of the export of military goods and technology (hereinafter: EUGS) and the Arms Trade Treaty, at least within a period that the court deems appropriate;
4. to order the State to refrain from statements that amount to an (implicit) recognition of the legality of the way in which Israel is currently conducting the armed struggle, to speak out publicly about violations of international humanitarian law committed by all parties and to, in accordance with the obligations laid down in treaties, to make efforts proactively and without limitation due to other considerations to end violations of international (war) law by Israel and to prevent future violations;

all this on penalty of forfeiture of a penalty as further described in the summons,

or to take other measures that the preliminary relief judge deems appropriate,

with the State being ordered to pay the costs of the proceedings in the manner further described in the summons, or with compensation for the costs.

3.2. To this end, Oxfam Novib et al. – in summary – argue the following. The export of F-35 parts to Israel is contrary to the rules that apply to Dutch arms exports and is therefore unlawful. The State also violates international obligations that follow from customary international law and international treaties. In addition, the State has made statements that are contrary to its international obligations. The actions of the State contribute to damage to the civilian population in Gaza whose interests Oxfam Novib et al. represent.

3.3. The State puts forward a defense, which will be discussed below, to the extent necessary.

4 The assessment of the dispute

Admissibility Oxfam Novib et al

4.1. The preliminary relief judge states that a foundation or association with full legal capacity under Article 3:305a of the Civil Code (BW) can institute a legal action aimed at protecting similar interests of other persons, insofar as they protect these interests under its articles of association. and these interests are sufficiently safeguarded. This article also determines, among other things, when these interests are sufficiently safeguarded and sets requirements for the legal entity as referred to in paragraph 1. Paragraph 6 includes an exception on the basis of which a legal entity as referred to in paragraph 1 can be declared admissible without that certain requirements of this Article referred to in paragraphs 2 and 5 need to be met. The procedural requirements that apply to instituting this legal action in summary proceedings, under penalty of inadmissibility, are included in Article 1018c paragraph 1 of the Code of Civil Procedure (Rv).

4.2. In the opinion of the preliminary relief judge, Oxfam Novib et al. have demonstrated that they meet the requirements of Article 3:305a, paragraph 1 and 3, of the Dutch Civil Code, and that they can rely on the exception referred to in Article 3:305a, paragraph 6 of the Dutch Civil Code. The State has not refuted this with regard to Pax and The Rights Forum. The State has disputed this with regard to Oxfam Novib, because according to the State it does not represent the interests it claims to represent in accordance with its articles of association. The preliminary relief judge does not follow the State in this. Oxfam Novib's

statutory objective (as quoted under 2.1) is broadly formulated, namely to promote a world society. Reference is made, among other things, to a fair distribution of prosperity, respect for each other's culture and cooperation on the basis of common responsibility and mutual solidarity. In view of this, in the opinion of the preliminary relief judge, it can be assumed that Oxfam Novib also represents the interests of (Palestinian) citizens in Gaza who are, or are at risk of becoming, victims of war violence and can stand up for the general interest that is served by compliance of international humanitarian law, human rights and the prevention of genocide, as Oxfam Novib claims to do. Oxfam Novib et al. are therefore admissible in their claims.

4.3. Oxfam Novib also has its own interest as an employer to stand up for its employees who reside in Gaza and who, according to Oxfam Novib, fear for their lives. An employer has the right to bring a claim for the protection of its employees, both on the basis of the interest it has in the protection of its employees, and for the protection of those employees, partly on the grounds of good employment practices (Article 7 :611 BW). This authority also exists without mandate and power of attorney by the employee (see Supreme Court 31 March 2017, ECLI:NL:HR:2017:569).

4.4. The claims of Oxfam Novib et al. will therefore be substantively assessed below.

Assessment of claims sub 1 to 3

Urgent interest

4.5. The preliminary relief judge is of the opinion that Oxfam Novib et al. have an urgent interest in assessing their claims under 1 to 3 in these summary proceedings, given their position that the State contributes to violations of international humanitarian law and human rights and that there must come to an end as soon as possible. The State has also not disputed the urgency of this case. The State does put forward a substantive defense against the allowance of the claims. That will be discussed next.

What is the State obliged to do on the basis of legislation, regulations and treaties?

4.6. Oxfam Novib et al. do not (any longer) dispute the authority of the State to establish a general permit. The preliminary relief judge therefore takes the starting point that the State was authorized to establish permit NL009 in 2016. As shown above under 2.6, this is a general license that applies to the transit, export or transfer of goods pursuant to an agreement in the context of the F-35 program between a person authorized to make a decision and a recipient. Prior to its adoption in 2016, this permit was assessed against the criteria stated in the EUGS (in particular compliance with international obligations, respect for human rights in the country of final destination and compliance with international humanitarian law by that country). , the State has stated uncontested.

Parties' positions

4.7. According to Oxfam Novib et al., the State cannot suffice with a reference to the assessment against the criteria stated in the EUGS at the time of the adoption of permit NL009 in 2016. They have argued that the State is obliged to carry out a new assessment if In short, there are new circumstances that force a reassessment. It is not a matter of dispute that new circumstances have arisen since the Israeli-Palestinian conflict flared up last October. According to Oxfam Novib et al., the implementation of such a test will undoubtedly lead to the fact that several of the criteria mentioned in the EUGS are not met, so that license NL009 will have to be withdrawn insofar as F-35 parts are imported from the Netherlands on the basis of that license. be transported to Israel.

4.8. The State has denied that it is obliged to reassess the criteria mentioned by Oxfam Novib et al. after the adoption of permit NL009 in 2016. The State states that the Minister recently assessed whether developments gave reason to prevent license NL009 from being used any longer for the onward supply of F-35 parts to Israel. The Minister has decided not to intervene after having made – in the words of the State – 'broad consideration', which included considerations in the areas of foreign policy, security policy and obligations under international law, according to the State.

4.9. Below, it will first be assessed whether the State has acted contrary to its obligations by making the aforementioned broad assessment, because - as Oxfam Novib et al. believe - it was obliged to reassess

permit NL009 against the criteria of the EUGS.

The provisions of permit NL009, the EUGS and the Arms Trade Treaty

- 4.10. The position of Oxfam Novib et al. that the State is obliged to reassess whether the EUGS criteria have been met after permit NL009 has been established in 2016 and has remained in force, is not confirmed in the Bsg nor in the text of that permit. Such an obligation is not included in the Bsg, the order in council that forms the basis for, among other things, general permits such as permit NL009. In Article 8 of permit NL009, the State has reserved the authority to determine that the permit may no longer be used if 'integrated foreign policy or security considerations' oppose continued use and the minister notifies the registered user or person with decision-making authority thereof. This reservation to Article 8 does not refer to criteria set out in the EUGS.
- 4.11. Until 2019, the EUGS itself only contained rules that obliged Member States to refuse (not to adopt) a permit, but no rules on circumstances under which a granted permit should be withdrawn or amended. A new article paragraph was added in 2019 (1bis). This includes an encouragement for Member States to reassess previously granted export licenses for goods listed on the EU Common List of Military Goods, on the basis of new information (that is, made available after licensing). This is therefore an encouragement, which cannot be interpreted as an 'obligation' to carry out an assessment during the term of a general permit.
- 4.12. The Arms Trade Treaty also contains no obligation to carry out a new assessment after a (general) license has been established, based on circumstances that subsequently arise. Article 7(1) of the Arms Trade Treaty concerns an assessment *before* export is permitted. The seventh paragraph of this article again, as in the EUGS, encourages an executing state to reassess the authorization if it becomes aware of new relevant information after an authorization has been issued.

The provisions of the Geneva Convention and the Genocide Convention and customary international law, which prohibit supporting unlawful acts of another country

- 4.13. From the provisions of Article 1 of both the Geneva Convention and the Genocide Convention, and also from customary international law, a clear task for the State follows: if it becomes aware of new relevant information, it must assess whether there is reason to intervene. Oxfam Novib et al. rightly argue that there is no freedom of choice here, so this is more than just encouragement. It follows from these international obligations that the State must, among other things, make efforts to ensure that other treaty countries respect international humanitarian law. Furthermore, it is prohibited to provide support to unlawful actions of another state. In order to meet this obligation, the State must therefore, as stated, assess on the basis of current relevant information whether there is reason to take action.
- 4.14. It does not follow from this obligation, contrary to what Oxfam Novib et al. have argued, that the State must assess on the basis of (only) the criteria of the EUGS whether intervention is necessary, and that an intervention can then only consist of prohibiting the transit and export of F-35 parts to Israel. Such an obligation on the State can only be assumed if this is explicitly stated, but this is not the case. States, including the State, are subject to an 'obligation of best efforts' with regard to compliance by other treaty countries with international humanitarian law, the fulfillment of which is left to the states.

Interim conclusion

- 4.15. The State was therefore, contrary to what it has defended, obliged to assess whether the continued use of license NL009, with regard to the transit and export of F-35 parts to Israel, could be maintained. Contrary to what Oxfam Novib et al. state, the State does have the freedom to make a broader assessment; When making this assessment, the State is not obliged to assess exclusively the criteria of the EUGS. The State has actually made a decision. This has resulted in a decision *not* to prevent permit NL009 from being used for the onward supply of F-35 parts to Israel.
- 4.16. The question that must then be answered is whether the State could reasonably have reached that decision.

Was the State able to decide to maintain permit NL009?

Assessment framework

- 4.17. First, we must consider how the judge in summary proceedings tests choices that the State has made (and is making) in this case for (un)lawfulness.
- 4.18. The progress of Oxfam Novib et al. is closely related to questions of (national) security and foreign policy. In the areas of (national) security and foreign policy, the State has a large scope for policy and assessment. The State's policy depends largely on political and (other) policy considerations in connection with the circumstances of the case (Supreme Court 26 June 2020, ECLI:NL:HR:2020:1148, legal notice 3.10.3). The judge cannot make these considerations; the judge will be able to assess the considerations that the State has made, but will have to exercise restraint in doing so. To the extent that the State's actions fall within its policy and discretion, the judge will examine whether the State has weighed all the interests involved and whether it could reasonably have reached its decision in the light of all the circumstances of the case. or course of action. The seriousness of the circumstances in which so many innocent people suffer from the (literally) devastating war situation in Gaza does not give the judge any more room in his assessment of the State's considerations. In view of the content of the international obligations incumbent on the State (discussed above), if there is a clear risk of serious violations of humanitarian law of war due to the deployment of the F-35, that circumstance is a compelling factor in the assessment should be expressly taken into account by the State.

The assessment made by the State

- 4.19. The State has made the aforementioned broad assessment, and states that it has taken into account considerations in the field of foreign policy, security policy and obligations under international law. At the hearing, the State explained these considerations in more detail.
- 4.20. What divides the parties in particular is whether the Minister was able to use the principle that it cannot currently be established that there is a clear risk of serious violations of humanitarian law of war due to the deployment of the F-35. From what is considered below it appears that the Minister was able to assume this.
- 4.21. The preliminary relief judge does note the following. Insofar as the State has wished to take the position that it cannot in any case be established that any violations are the result of the use of the F-35, because it is not clear whether the bombings were actually carried out with an F-35, the State cannot be followed in this. What is relevant is whether the parts to be executed *are used in* the commission of serious violations of international humanitarian law (cf. The Hague Court of Appeal, May 17, 2022, ECLI:NL:GHDHA:2022:834, legal grounds 3.10-3.15). If the F-35 contributes to the ability to carry out bombings by other aircraft, this requirement is of course also met. In light of the State's explanation of the advanced features of the F-35, in particular the ability to accurately determine the locations of strategic targets in hostile territory, the preliminary relief judge considers it very likely that the F-35 makes this contribution. where there are alleged violations.
- 4.22. The preliminary relief judge considers the following with regard to whether or not a clear risk of serious violation of humanitarian law of war can be established by the deployment of the F-35.
- 4.23. It seems obvious to anyone who sees the images of the armed conflict, reads the news reports about it and hears the statements made by Israeli ministers about the response that will follow from Israel to the terrorist acts committed by Hamas against Israel on October 7, 2023. this concerns violations of humanitarian law. The preliminary relief judge also considers it understandable that if this is not subsequently taken as a starting point by the State, this gives rise to the feeling of being seeing blind, as Oxfam Novib et al. explained at the hearing.
- 4.24. The State has pointed out that the massacres by Hamas and their indiscriminate rocket attacks on Israel can simply be qualified as war crimes, that Israel's survival is threatened by this and that Israel has the right to self-defense against the armed attacks. According to the State, it is beyond dispute that Israel must respect the humanitarian laws of war. The State states that, in view of the major concerns about the situation in Gaza, it has also taken action and has emphasized this in the contacts it has had with Israel. However, according to the State, it is very complex under the circumstances outlined above to be able to form a judgment about this remotely at this time. In this context, the State points out that there is only limited information available about Hamas's method of warfare, their infrastructure in Gaza and the

magnitude of the threat that Hamas still poses. He points to the indications that Hamas command centers and facilities are located underneath several hospitals in Gaza. Whether Israel complies with the requirements of necessity and proportionality when exercising its right to self-defense can only be assessed if all relevant facts are available, the State said. Given the unclear situation on site, this is not possible at the moment, according to the State. In this context, the State has pointed out that specific information about the circumstances and considerations regarding the concrete combat actions, including bombings, is lacking. This argument of the State is, in the opinion of the preliminary relief judge, not incomprehensible. Once again it must be remembered: the Minister's assessment relates exclusively to Israel's use of the F-35. The consequences of other (war) actions by Israel, however reprehensible they may be, cannot be included in this assessment. This summary proceedings only concerns the strict legal framework that must be applied to the decision to (temporarily) continue the onward supply of F-35 parts to Israel.

4.25. In her decision, the Minister stated that the situation in the region in which Israel is located is currently fundamentally unsafe and that Israel must be able to respond to threats from the region, within the framework of international law. The Minister took into account that the F-35 is also of great importance to Israel in preventing the conflict from spreading to the region, partly due to its deterrent effect. That is not an incomprehensible argument. This also applies to the negative impact that the violation of permit NL009 will have on the relations that the Netherlands maintains with the countries that collaborate within the program, including the United States and Israel, which the Minister has also taken into account. This will lead to loss of confidence, but also influence, according to the State. In that context, the State has noted that it finds it more functional to call on Israel to comply with its obligations on the basis of good ties than in an atmosphere of anger and incomprehension about a cessation of the onward supply of F-35 parts. In the opinion of the preliminary relief judge, the Minister was also able to reasonably take this into account in her decision.

4.26. The Minister also took into account in her decision that impairment of permit NL009 will have a disruptive effect on the functioning of the hub in Woensdrecht. The Minister seems to assume that the permit cannot be changed in the manner advocated by Oxfam Novib et al. and that intervention in the delivery process would mean that the party that supplies to Israel must be excluded and that all customers of that supplier must receive their parts. would only be able to obtain through licensing per onward delivery. However, the State has not made this sufficiently plausible in the light of the challenge thereto by Oxfam Novib et al., who have referred, among other things, to the State's conduct with other permits. Article 8 of permit NL009 also appears to provide the option to (only) notify a registered user (in this case Israel) that continued use of the permit is no longer permitted. However, even if this is a possibility, it is likely that a change in the logistics chain of the program will result in deteriorated operational readiness and could therefore have a negative impact on the national security of those involved in the F-35 project. countries involved. To that extent, the Minister was able to reasonably take this aspect into account.

4.27. Although comments can be made on aspects of the motivation given, and have also been placed under 4.21 and 4.26, the conclusion based on the foregoing is that the Minister was able to reasonably arrive at her decision and that in the light of the limited judicial assessment framework as mentioned above, there is no room for the preliminary relief judge to intervene.

Final conclusion with regard to claims 1, 2 and 3

4.28. In view of all that has been considered above, there is no basis for granting the claims sub 1, 2 and 3 of Oxfam Novib et al. These will therefore be rejected.

Assessment of claim sub 4

4.29. The mere comment in the summons that an (implicit) endorsement by the State of the legality of Israel's actions in Gaza can be inferred from certain facts and circumstances constitutes, especially in view of the detailed explanation that the State subsequently provided about the Dutch position. (as also expressed in a letter dated November 19, 2023 from the Cabinet to the House of Representatives), insufficient substantiation for granting the claim under 4 (to order the State to refrain from certain statements, to make other statements correctly and to make an effort for certain things). This claim will therefore also be rejected.

Submission of documents

4.30. The preliminary relief judge considers, for the sake of completeness, that he sees no reason to order the State to produce the documents mentioned by Oxfam Novib et al. in the summons. It follows from the

foregoing that these are not necessary for the assessment of the claims.

Procedural costs order

- 4.31. Oxfam Novib et al., as the unsuccessful party, will be ordered to pay the costs of these proceedings. The legal costs also include the subsequent costs. The additional costs are estimated at the amount stated in the civil liquidation rate (as of February 1, 2023: € 173). In the event of service, an additional amount of salary (as of February 1, 2023: € 90) and the costs of service will be awarded.

5 The decision

The preliminary relief judge:

5.1. rejects the advanced;

5.2. orders Oxfam Novib et al. to pay the costs of these proceedings, so far estimated on the part of the State at € 1,755, of which € 1,079 in lawyer's salary and € 676 in court fees, plus additional costs such as mentioned in 4.31.

This judgment was delivered by Mr. HJ Vetter and pronounced in public on December 15, 2023.

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