

ECLI:NL:RBDHA:2022:12424

The Hague District Court

Date of judgment - 23-11-2022

Case number - C/09/581972 HA ZA 19-1099 and C/09/604819 HA ZA 20/1244

The State must pay compensation to victims of the bombing of an Afghan qala (a housing complex) during the battle of Chora in mid-June 2007.

The Netherlands was responsible for the bombing of this qala. It was known that this qala was inhabited by civilians. The State relied on the fact that the Taliban used this qala for military purposes and that therefore the bombing of this qala - even though civilians lived there - was not unlawful. However, the court ruled that the State did not make sufficiently clear on what basis it concluded that the qala was being used by the Taliban. From the reports submitted by the State, which included logs of the hours immediately before the bombing, that conclusion could not be drawn. For this reason, the court assumed that the bombing of the qala violated the so-called principle of distinction under international humanitarian law of war. The bombing of this qala was therefore unlawful for that reason.

The court rejected the State's reliance on prescription. Furthermore, the court ruled that the duty of investigation under Article 2 of the ECHR - under which a state is under circumstances obliged to conduct an official investigation if deadly force has been used by that state - does not apply in this case

DISTRICT COURT OF THE HAGUE

Case numbers / role 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

1Mr [claimant 1] ,
(2) Mr [claimant 2] ,

Mr [claimant 3] , 3,

Mr [claimant 4] ,

all residing in [place of residence] , Uruzgan , Afghanistan,

and

the joint heirs of Mr [testator] ,

plaintiffs,

advocaat: ms. L. Zegveld in Amsterdam,

against

THE STATE OF THE NETHERLANDS

domiciled at The Hague,

defendant,

Advocate: W.I. Wisman in The Hague.

The claimants will hereinafter be referred to jointly as "claimants" and separately as [claimant 1] , [claimant 2] , [claimant 3] , [claimant 4] and the heirs. The defendant will hereinafter be referred to as the State.

The cases were heard by the aforementioned lawyers, Mr A. Vossenbergh (plaintiffs) and Mr E.V. Koppe (the State).

1The case in brief

1.1.

This case concerns the bombing of an Afghan quala (a walled residential complex) during the battle of Chora in mid-June 2007. It is undisputed that the Netherlands is responsible for this bombing. In this case, the court answers the question whether the State is also liable and liable to pay damages to plaintiffs, who lived in this quala at the time of the bombardment and/or are surviving relatives of an occupant of this quala.

The plaintiffs argue that the bombing violated, inter alia, the principle of distinction under the International Humanitarian Law of War (IHL). This entails that the quala - a civilian object - could only be bombed if, at the time of the bombing, it was a military target or could be considered as such.

The court concludes that the State has not substantiated concretely enough that at the time of the bombing of the quala there was sufficient data on the basis of which a reasonable commander would be allowed to designate this quala as a military target. In doing so, the State has not sufficiently substantiated the plaintiffs' contention that the bombardment of the quala violated the principle of distinction under IHL. As a result, the bombardment of this quala must be considered unlawful.

The court dismisses the State's reliance on prescription and further finds that the State does not have a duty of investigation arising from Article 2 ECHR in this case.

2proceedings

2.1.

The course of the proceedings is evidenced by:

- The summons in Case I of [plaintiff 1] , [plaintiff 2] , [plaintiff 3] ,
and [claimant 4] with exhibits claim dated 13 September 2019, with
exhibits 1 to 72 and surviving exhibit 73;
 - the statement of reply in Case I dated 11 March 2020, with exhibits 1 to
with 9;
 - the order of 26 August 2020 ordering an oral hearing
ordered;
 - the summons in Case II of the heirs dated 14 December 2020 (which is almost identical in
content to the summons in Case I), with exhibits 1 to 76;
 - the statement of defence in Case II of 3 February 2021 (which is almost identical in content
to the statement of defence in Case I), with exhibits 1 to 9;
- and furthermore, in both cases:
- the deed introducing additional exhibits, also containing additional
843a Rv by plaintiffs, with exhibits 77A, 77B and 78;
 - the deed introducing additional productions, also containing claim increase of
plaintiffs, with productions 79, 80 and 81;
 - the documents containing the State's exhibits, with exhibits 10 through 16
16;
 - the minutes of the oral hearing held on 29 March 2021, in which, among other things,
reference is made to the submission at the hearing on behalf of plaintiffs of exhibits 82A and
82B and the parties' written pleadings;
 - the deed introducing additional productions (82-85) regarding the joint heirs of the late
[deceased] dated 6 October 2021 from the side of the plaintiffs;
 - deed following oral proceedings, also submitting additional exhibits 17-20 of 6 October 2021
from the State side;
 - deed of reply following defendant's deed dated 6 October 2021 dated 15 December 2021
from plaintiffs' side;

- reply deed following oral argument dated 15 December 2021 from the side of the State;
- the reply deed following the respondent's deed dated 15 December 2021 dated 27 July 2022 from the side of the plaintiffs;
- the record of the further oral hearing held on
16 September 2022, during which hearing speaking notes were submitted on behalf of the State.

2.2.

The minutes of the oral proceedings were drawn up without the parties being present. The parties were given the opportunity to comment on the official record insofar as it concerned factual inaccuracies.

The minutes are read taking into account the written comments of the parties.

2.3.

Finally, a date for judgment was set.

3The facts

General

3.1.

After al-Qaeda carried out four terrorist attacks in the United States (US) on 11 September 2001, the US demanded the extradition of al-Qaeda leader Osama Bin Laden, who was holed up in Afghanistan. However, Afghanistan, which was ruled by the Taliban at the time, refused to extradite Osama Bin Laden. During Operation Enduring Freedom, conducted by the US, some allies and a coalition of Afghan opponents of the Taliban, the Taliban was ousted.

3.2.

In late November/early December 2001, after the fall of the Taliban, 25 Afghan leaders met in Bonn under the auspices of the United Nations (UN). The meeting - which resulted in the Bonn Agreement of 5 December 2001 - decided, among other things, to deploy an international peacekeeping force in Kabul and agreed on the establishment of the Afghan interim government headed by Hamid Karzai.

3.3.

By 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, using force if necessary ("all necessary measures"). After individual countries had commanded the ISAF mission on a rotational basis, the North Atlantic Treaty Organisation (NATO) took over from August 2003.

3.4.

By resolution 1510 of 13 October 2003, the UN Security Council, at the request of the Afghan government, decided to gradually expand the ISAF mission and authorised the use of force to the rest of Afghanistan. The Netherlands was the so-called lead nation in the southern province of Uruzgan from 1 August 2006 to 1 August 2010. The Netherlands and Australia formed a joint task unit: the 1st Dutch/Australian Task Force Uruzgan (hereinafter TFU).

The mission was formed by the Provincial Reconstruction Team, which assisted the Afghan authorities in strengthening their authority and promoting stability in the province, as well as 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 was directly under ISAF's Southern Command in Kandahar (Regional Command South: RC(S)). RC(S) was subordinate to the ISAF commander in Kabul. The Dutch Armed Forces Commander had so-called full command over all Dutch military units at all times. His local representative, the Contingents commander stationed in Kandahar, was designated as red card holder and consequently had the authority to prevent the deployment of Dutch soldiers if that deployment did not meet the preconditions set by the Dutch government.

3.5.

TFU had at its disposal an Armoured Howitzer (PzH) and mortars.

The 155mm shells for the PzH were unguided. Authority for the deployment of the PzH lay with the TFU commander.

3.6.

The Dutch contribution also consisted of the Air Task Force whose tasks included supporting ISAF units with air support as well as reconnaissance and observation activities with F-16 fighters and Apache fighter helicopters. TFU could request air support. Air support consisted of fighter aircraft such as the F-16s, referred to as Fixed Wing (FW), and Apache attack helicopters, referred to as Rotary Wing (RW). ISAF in Kabul handled the deployment of the FW, RC(S) handled the deployment of the RW.

3.7.

The deployment of air support involved the use of a Joint Terminal Attack Controller (JTAC). The JTAC was in direct contact with fire control within the BG and, where appropriate, with the pilots of the FW and RW. The JTAC was responsible for designating and - after obtaining permission from the officer in charge - releasing an attack on his designated targets. In doing so, he used technical aids where appropriate, such as infrared cameras of manned and unmanned aircraft whose images he could see on a laptop. This release was done after the JTAC had satisfied itself that the target the FW or RW had in its sights was actually the intended target; so-called positive identification.

Chora and the stand and fight decision

3.8.

In Uruzgan, the Chora area comprises the area between the western entrance to the Baluchi Valley and the village of Sarab. Chora lies at a crossroads of routes:

north to Gizab district, east to Khaz Uruzgan district, south to Deh Rasnan and west to the Baluchi Valley and Tarin Kowt. This in particular makes Chora of military strategic importance. The map below shows part of the Chora area, showing, among other things, Chora's district centre, the White Compound. It also shows a dark-coloured strip running from lower left to upper right, known as the Green zone.

3.9.

Since February 2007, the Military Intelligence and Security Service (MIVD) had evidence that the Taliban and other militias were preparing an attack in the Chora Valley. TFU requests to the Afghan authorities to expand the Afghan National Security Forces presence in this area had little result. The TFU commander then decided on 26 April 2007 to permanently station two to three platoons (of 20 to 30 soldiers each) in Chora. In the month of May 2007, intelligence became available that a major Taliban attack could be expected. From 6 June 2007, Taliban fighters came to the Chora Valley area from different directions. During reconnaissance, this led to combat contacts between ISAF and the Taliban.

3.10.

In the early morning of 16 June 2007, troop build-up towards Chora took place by large numbers of Taliban fighters. That same morning, the Taliban attacked the Chora valley from the east and west across three axes. Initially, the police posts of Kala Kala, Niazy and Sarab were attacked. The Dutch platoon supporting the Afghan National Police (ANP) in the west was immediately attacked by Taliban and eventually pushed back towards the White Compound. The two Dutch platoons already on the White Compound took positions in directions east and west. Intelligence suggested that the aim of the attack was to capture the White Compound. Reports also came in that the Taliban were committing atrocities against civilians. The ANP was forced to give up police posts in the west after a day of fighting by the Taliban. Around 6.30pm that evening, the intensity of combat contacts subsided and the situation near the White Compound stabilised. ISAF units had been pushed back to an area of about four square kilometres around this compound.

3.11.

The TFU commander and the BG commander assessed the situation as very threatening. On 16 June 2007 around 7.30 pm, the TFU commander had to make the decision to either leave Chora or stay and defend Chora. By 8 pm, the TFU commander decided that Chora should be retained with the deployment of "all necessary means" (hereinafter: the stand and fight decision). A particular factor in that decision was that it was feared that the Taliban would kill civilians who were on the Afghan government's side or who did not want to fight with the Taliban. It was further feared that withdrawing from Chora would damage the credibility of the ISAF mission and that withdrawing would give the Taliban both a strategic, and a psychological advantage. The Dutch Force Commander agreed with this decision, as did the RC(S) commander.

3.12.

Immediately after taking the stand and fight decision, the TFU commander asked the RC(S) commander for allocation of air assets, expressing a desire to "seize" known Taliban targets identified at an earlier stage. These targets included targets on which direct observation was

no longer possible. The RC(S) commander granted the requested air assets. Furthermore, the PzH was to be used to deliver disruptive fire to prevent the Taliban from advancing towards the White Compound under cover of darkness.

The battle of Chora and the plaintiffs' qala

3.13.

Waterways running through Chora allow for the cultivation of land. Along these waterways is the vegetated part of the Chora valley, the previously introduced Green Zone. The qala - a walled residential complex - in [residence] in which [plaintiff 1] , [plaintiff 2] , [plaintiff 3] , [plaintiff 4] and of the late [testator] and their relatives lived, was located in this zone. Said qala is circled on the map below and is located on a river and to the north thereof. The white rectangular sign placed directly above the circle indicates the positions that TFU's parainfantry platoon had engaged. The distance between said qala and these positions is about 500 metres.

3.14.

The air weapon and fire support (from the PzH) were deployed in a coordinated manner in the evening of 16 June 2007 and early morning of 17 June 2007. To this end, a coordination line was established and this was on vertical 21 (shown on the map included under 2.13). West of this vertical (to its left on the map) was the area within which most reports of Taliban fighters had been reported in the last days prior to 16 June 2007. West of vertical 21, fire support was provided from Camp Holland in Tarin Kowt in an easterly direction by the PzH up to vertical 20 (also shown on the aforementioned map). The distance between successive verticals is one kilometre.

Fire support was delivered in the early evening of 16 June 2007 and on 17 June 2007 between 00:00 and 01:47 when no air support was available and then again from 10:28.

East of vertical 21 (to its right on the map) the air weapon was deployed. A total of 28 guided bombs were dropped by F-16s in the early morning of 17 June 2007, when fighting had subsided somewhat, 18 of them on six or seven qualas in the populated area of Chora. This air weapon deployment was always accommodated 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 non-intended targets.

3.15.

The qala in which the plaintiffs and their relatives lived had been numbered in advance by TFU, as had been done with almost all infrastructure in the Chora Valley, and was given number 4131. This qala will hereafter be referred to as qala 4131. Qala 4131 lies exactly on vertical 22 (this vertical is not plotted on the map included under 3.13). Qala 4131 was destroyed on the night of 16-17 June 2007. This resulted in the death of [plaintiff 1]'s mother, a sister and sister-in-law. His father, a sister and two brothers of [plaintiff 1] were injured. His father is the [testator] . who died in 2017 and thus also lost family members.

The destruction of quala 4131 further resulted in the death of [plaintiff 2]'s wife, three brothers and an uncle. He himself was hit in the arm by a bullet as he tried to leave his burning house and became paralysed in that arm as a result. [plaintiff 3] lost his wife, two daughters, three sons and a daughter-in-law that night. [plaintiff 4] is a son of [plaintiff 3] and thus also lost family members.

3.16.

TFU's Chief Joint Fires led the air support. His report states that quala 4131 was bombed as enemy firing position at 03:10, 03:32 and 03:43 on 17 June 2007 after positive identification by JTAC Windmill 68. That identification means that the quala the pilot had in his sights was also the one previously identified as the target.

The Post Mission Report of JTAC Windmill 68 records about 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 the air weapon and fire support on 16 June 2007, warnings were issued to the Afghan authorities, namely Governor Munib, the police chief, the district chief, the ANP and the tribal leader of [place of residence] . Although the exact wording in which these warnings were given can no longer be traced, they were to the effect that civilians should leave the so-called engagement area by moving east of the vertical 22 mentioned above. The ANP was requested to take the population east of vertical 22. The tribal leader of [residence] informed TFU prior to said engagement that civilians had left the area just referred to.

3.18.

From the morning of 17 June 2007, the situation around the White Compound stabilised. On 18 June 2007, the TFU commander decided to launch a counterattack with the aim of clearing the western part of the Chora Valley of Taliban, retaking the police posts there and restoring the pre-16 June situation. This counter-attack successfully took place on 19 June 2007, after the civilian population was warned to leave the area using a sound truck.

Circumstances regarding quala 4131 prior to the bombing

3.19.

An "ISIS Snapshot" - a map prepared by BG duty officers showing a snapshot of combat operations at 06:58 on 16 June 2007 - shows a red lozenge on vertical 22 just above the river on which quala 4131 was located.

A red lozenge was used to indicate enemy units. The area around quala 4131 was identified as an enemy position at that time. It is not clear from which exact spot these enemy units were observed at the time.

3.20.

The BG (Communications) Log relating to 16 June 2007 contains the following about the observation referred to under 3.19:

"06:50 a.m.

Sender: 10 [command post Alpha company, rb]

Recipient: seedorf [BG command post at Camp Holland in Tarin Kowt, rb].

'[Blacked out] Taliban is nearby, trying to get as close as possible, are now right South of us'

[...]

06:56

Sender: 10

Recipient: seedorf

'[blacked out]: fire raid with 17 RPG [Rocket Propelled Grenades, rb] and 4 x ?'

3.21.

Around noon on 16 June 2007, platoon 1.2 of TFU was moving along the road north of the Green Zone towards Niazy. Platoon 1.2 was under fire from enemy units with RPGs and mortars at the moment it passed the southernmost point of this road. Said southernmost point lies just north of quala 4131 at a distance of about 300 metres from this quala. This point in the road is also known as the choke point. On the map below at 3.23, the choke point is marked with a cross located directly above the circled quala 4131.

The platoon commander reported to the A Company command post over the company net that platoon 1.2 was under fire from a south/south-west direction from a distance of about 300 metres at that time, i.e. around noon. This fire contact is not documented in any log.

3.22.

Later that same day, a little before five in the afternoon, platoon 1.2 came under fire again from enemy units with mortars. The firing location was about 800 metres west of quala 4131. Platoon 1.2 was immediately north of the firing location and thus north-west of quala 4131 at the time. This firing contact is recorded in TFU's log. On the map included below under 3.23, the then position of platoon 1.2 is indicated by the cross in the top left and the firing location by a cross in the middle left (the numbers written next to it refer to paragraphs in the State's act of 6 October 2021).

3.23.

Shortly afterwards, around 5.30pm, persons who were in the bed of the river and who TFU suspected to be part of hostile units came under fire with the board gun of a fighter aircraft. These individuals were located about 400 metres east of quala 4131 at the time. This fire contact was not documented in a logbook. On the map included below, the position of said persons is marked with the rightmost cross.

After the battle of Chora

3.24.

From 21 June 2007, the PRT conducted several missions in Chora to provide emergency relief and damage assessment. The PRT further disbursed ex gratia compensation for repairing infrastructural damage and the authorities paid compensation to bereaved and wounded families.

3.25.

A partially completed, unsigned "Proposal to make damage repairs and handover" form includes the following:

"Place, date and time recording damage.

> Karbala (popularly known as [place of residence])

> 29-06-07

> 1600

Mission team and Mission team member

> M2 [...]

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

> [claimant 2] s/o [name 1] , Achakzai, [place of residence].

> [name 2] s/o [testator] , Achakzai, [place of residence].

Access both through [name 3] , leader of village [place of residence] .

Place (GRID), date, time damage occurred

> (42S TB 22003845)

> During bombing (loco positively verified by JTACer, morning 17 June)

Form of compensation (cross out/delete what does not apply):

- compensation to repair damage to infrastructure

- compensation for livestock loss / damage to agriculture

- Compensation for restart due to loss of income

Justification / factual description of damage incident

As a result of multiple aircraft bombs, the qwala group at said coordinate [corresponding to that of quala 4131, rb] was completely destroyed. A total of 18 dead are reported, five of whom must still be under the rubble, from four families. Family heads: [name 4] , [name 5] , [claimant 2] s/o [name 1] , [name 2] s/o [testator] . Also lying around are two more carcasses: one cow and one horse. It is reported that 30 animals are said to have died. The mosque belonging to the qwala group has also been destroyed. Only [claimant 2] and [name 2] were on site at the time of the damage assessment. Of [name 2], a brother, wife and three children died. Claims recording form at the time of recording not yet known, hence missing info how many deaths per family.

[...]

Repayment of the advance provided is made through the G8 through a payment/receipt (payment receipt)."

3.26.

A report by TFU's finance department entitled "Damage Repair Chora" dated 23 August 2007 states, among other things:

"[...]

5. Implementation

a. Completed proposals:

(1) [...]

(2) [...]

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

As a result of multiple aircraft bombs, an entire quala group has been destroyed. A total of 18 deaths were reported, of which five were still under the rubble at the time of recording the damage. Also, two cadavers were still lying around and 30 animals perished. The mosque belonging to the quala group was also destroyed.

(4) [...]

b. Proposals under consideration

(10) [...]

6. Closing

There were a total of 27 proposals for damage repair. Of these, 9 have been settled for an amount of \$31,000. A number of proposals are currently pending, which may be disbursed by the Provincial Reconstruction Team. The total of these proposals amounts to

\$ 15.500,-. Of the proposals currently under review, no amount has yet been determined."

Retrospective reporting / reports

3.27.

An operational report of the battle of Chora, the so-called After Action Report with annexes (including logs) dated 27 June 2007 and the so-called After Action Review dated 23 July 2007, was commissioned and prepared for the benefit of the Force Commander. Both reports were brought into the proceedings (blacked out in parts).

3.28.

Furthermore, an investigation into the battle of Chora was commissioned and conducted on behalf of the ISAF commander. That investigation concluded that the air support was in accordance with ISAF procedures and rules, but that as a result of the fire support by the PzH without direct observation on the targets, military targets and civilian objects may not have been adequately distinguished. Moreover, the Supreme Allied Commander Europe and the NATO Secretary-General did not endorse the latter conclusion; on the basis of an analysis by NATO's legal adviser, they came to the view that TFU action was consistent with the law of war across the board.

3.29.

At the request of the Dutch government, an investigation was conducted by the United Nations Assistance Mission in Afghanistan together with the Afghan Independent Human Rights Commission. It concluded that ISAF forces were not responsible for serious violations of International Humanitarian Law during the battle of Chora. Finally, investigations were conducted by a commission of enquiry, set up by the then Afghan president, consisting of representatives of the ministries of interior and defence, the National Security Council and members of the Afghan House of Commons.

3.30.

At the end of June 2008, the Public Prosecution Service issued a press release to the effect that the Dutch soldiers had acted within the limits of International Humanitarian Law and the Instructions on Force applicable to them during the battle for Chora.

Liability

3.31.

By letter dated 2 February 2012, the State, on behalf of "Mr [testator]

(born 1948)" from [place of residence] was held liable for his damages arising

during the night of 16-17 June 2007. By letter dated 14 December 2016, the

limitation period was interrupted on his behalf.

3.32.

By letter dated 5 January 2017, the State was held liable on behalf of [claimant 2] , [claimant 3] and [claimant 4], among others, for their damages arising during the night of 16 to 17 June 2007.

3.33.

The State disclaimed liability.

4The dispute

4.1.

The plaintiffs claim, after amendment of the claim, that the court should declare by a provisionally enforceable judgment:

I. will rule that the State acted unlawfully towards plaintiffs and [testator] by bombing their houses, their relatives and themselves on 16 or June 2007 and is liable for the damages that plaintiffs and [testator] have suffered and will suffer as a result of the unlawful conduct, which damages are to be made out by statute and settled according to the law, to be increased by statutory interest;

II. will rule that the State violated its obligations under Article 2 of the European Convention on Human Rights (ECHR) by failing to conduct an effective investigation into the events of the night of 16-17 June 2007, thus acted unlawfully towards plaintiffs and is liable for the damages they have suffered and will suffer as a result, to be made out in state, plus statutory interest

III. order the State to pay the costs of these proceedings, to be increased by statutory interest as from fourteen days after final judgment.

4.2.

Plaintiffs argue that the State acted unlawfully by carrying out heavy

air raids on, inter alia, [place of residence], as a result of which family members of

plaintiffs' lives, destroying plaintiffs' homes and killing livestock. These airstrikes were carried out in violation of the (customary) rules of International Humanitarian Law (IHL), namely the principle of distinction, the principle of proportionality and the obligation to take precautionary measures, including effectively warning the civilian population. Moreover, the claimant [claimant 1] and some of his family members were injured as a result of the attack, which violated their right to physical integrity.

4.3.

In addition, the plaintiffs argue that the State violated art. 2 ECHR by conducting insufficient and ineffective investigations into the events on the night of 16-17 July 2007. According to plaintiffs, the investigation that was conducted was neither independent nor adequate: the After Action Report and the After Action Review were drawn up by the same military personnel whose actions are at issue and commissioned by the C-TFU. The prosecution then

apparently relied entirely on these reports. Furthermore, hardly any investigations were conducted on the ground, no members of the armed forces were interviewed, nor were the claimants heard.

4.4.

The plaintiffs claimed under Section 843a of the Code of Civil Procedure (CPC) 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 Commander of the Armed Forces, as referred to by the Ministers of Foreign Affairs, of Defence and for Development Cooperation in the annex to the so-called 'Kamerbrief periodieke stand van zaken Afghanistan' of

24 September 2007 (Parliamentary Papers II, 2007/08, 2795 272, hereafter: the Parliamentary Letter);

b) the supplements belonging to the After Action Report presented by the Ministry of Defence to the Public Prosecution Service (OM) by letter of 18 March 2008;

c) the report of an investigation into the events in Chora, commissioned by and for the benefit of the Commander of ISAF (COMISAF), as referred to in the Parliamentary Letter;

(d) the report of an enquiry by an Afghan commission set up by President Karzai, consisting of representatives of the Ministries of Interior and Defence, the National Security Council (NDS) and members of the Afghan House of Commons, the Wolesi Jirga, as referred to in the Kamerbrief

(e) the piece '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 Prosecution by letter dated 24 September 2007;

(f) the document 'NATO legal advisor's assessment on civilian casualties during the troops in contact incident, North of Gereshk on 22nd June 2007, and during the prolonged engagement at Chora on 16-20 June 2007', as presented by the Ministry of Defence to the Prosecution by letter dated 24 September 2007;

(g) all other documents held by the Ministry of Defence and other administrative bodies relating to the combat operations in and around Chora from 16 to 20 June 2007;

and subsequently:

(h) the log of the F16s, apache attack helicopters and forward air controllers / JTAC on 16 and 17 June 2007;

(i) the logbook of the PzH on 16 and 17 June 2007;

(j) a summary of the total numbers of munitions fired during the defence of Chora: bombs (500 and 1,000 pounds), onboard weapons munitions from fighter jets and helicopters, 81mm mortar shells (divided by type), armoured howitzer shells (divided by type), hydra and hellfire missiles and small arms ammunition;

(k) the logbook 42 BLJ (Supplement C to AAR) without blackened blocks of text;

(l) the legend to Logbook 42 BLJ (Supplement C to AAR) from which the functions of the various callsigns can be derived;

(m) the map showing the numbered residential houses in the bombed area and a list of destroyed residential houses in that area;

(n) the Collateral Damage Estimate (CDE);

(o) the Battle Damage Assessment (BDA).

4.5.

The State raises a defence. It argues that the deployment of fire and air support on the night of 16-17 June 2007 was in accordance with 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. Furthermore, the State relies on prescription of the plaintiffs' claims.

4.6.

The parties' contentions will be discussed in more detail below, insofar as relevant.

5 The assessment

5.1.

This case concerns the bombing of quala 4131, where plaintiffs lived, during the so-called Battle of Chora in mid-June 2007. It is undisputed that the Netherlands is responsible for this bombing. The court must answer the question whether the State is liable and liable to pay damages to the plaintiffs in connection with and whether the State violated the duty of investigation arising from Article 2 ECHR. The bombing of quala 4131 resulted, among other things, in the death and injury of a large number of plaintiffs' relatives. The State acknowledges the tragedy of these deaths and injuries, but argues that the claims are time-barred, that at the time of the bombing there were sufficient indications that quala 4131 was also being used by the Taliban for military purposes making the bombing not unlawful and disputes the alleged violation of the duty to investigate arising from art. 2 ECHR.

5.2.

Before addressing the question whether the bombardment was lawful and the question whether the State violated its obligation to investigate under Art. 2 ECHR, the Court will first address the applicable law and the State's reliance on prescription of the claims.

Applicable law

5.3.

The parties have correctly assumed that this case should be judged according to Dutch civil law. This is because the unlawful acts of the State in Afghanistan alleged by plaintiffs took place in the exercise of public authority (*acta jure imperii*), as a result of which the law of acting state applies. This common law rule of referral, now codified in Section 10:159 of the Civil Code, also applies to state action in the context of a UN mission in so far as that action can be attributed to the State (cf. District Court of The Hague 16 July 2014, *Mothers of Srebrenica v State*, ECLI:NL:RBDHA: 2014:8562, 4.166 et seq.) That the bombing at issue in this case is attributable to the State is not in dispute between the parties.

5.4.

Under Dutch private international law (pursuant to Article 10:14 of the Civil Code), the question whether a claim is time-barred is governed by the law applicable to the legal relationship from which that right or claim arose. The law thus applicable determines whether prescription is possible, what the applicable term is, and, if so, under what circumstances interruption and suspension of prescription take place. Accordingly, the parties rightly took as their starting point that Dutch law applies with regard to the limitation of claims.

Claims time-barred?

5.5.

Under Dutch civil law, a legal claim for compensation of damages pursuant to Section 3:310(1) of the Dutch Civil Code lapses five years after the moment the injured party had become aware of both the damage and the (possibly) liable person. According to the Supreme Court's established case law, the requirement that the injured party had become aware of both the damage and the person liable for it must be interpreted as meaning actual awareness, so that the mere presumption of the existence of damage is not sufficient. The limitation period only begins to run on the day following the day on which the injured party is actually in a position to bring an action for compensation for the damage he has suffered. This will be the case when the injured party has obtained sufficient certainty - which need not be absolute certainty - that the damage was caused by deficient or wrongful acts of the person concerned. This does not imply that the running of the limitation period requires that the injured party - apart from being familiar with the facts and circumstances relating to the damage and the person liable for it - is actually familiar with the legal assessment of those facts and circumstances. Nor does this mean that it is required that the injured party is always also familiar with the (exact) cause of the damage. The answer to the question when the limitation period started to run depends on all relevant circumstances (see Supreme Court 31 March 2017, ECLI:NL:HR: 2017:552).

5.6.

The limitation period can be interrupted by giving written notice to the (potentially) liable party within that five-year period or by unambiguously reserving the claim for payment of damages.

The case of joint heirs (Case II)

5.7.

It is not in dispute that the State on behalf of "Mr [testator]"

(born 1948)" from [place of residence] was held liable for his damages arising during the night of 16-17 June 2007 by letter dated 2 February 2012. This liability claim therefore took place within the five-year period referred to under 5.5 and extended the limitation period by five years. The limitation period was then timely (again) interrupted on behalf of the same person by letter dated 14 December 2016, after which "the joint heirs of the late Mr [testator] " sued the State in the present proceedings on 14 December 2020.

5.8.

In the summons issued by the joint heirs, the names of these heirs had not been mentioned. After the State objected to this, it eventually emerged that, according to the plaintiffs, they were the following sons and daughter: [plaintiff 1] (plaintiff sub 1 in Case I), [name 6] , [name 7] , [name 8] (not the same person as plaintiff sub 2 in Case I [plaintiff 2]), [name 2] , [name 9] and [name 10] .

5.9.

The State has pointed out in the context of limitation that the heirs' case is not time-barred only if "[testator] " is the same person as [testator] and has disputed that it is the same person. With the plaintiffs, the court finds that it can be assumed that this is one and the same person. Plaintiffs have argued that it is not unusual in Afghanistan to incorporate names of the father in one's own name when registering in the civil registry. The State has not sufficiently argued against this. The court finds that this must also have been the case in the case of [testator]. It bases this in particular on the contents of the identity document of son [plaintiff 1] . It includes " [testator] " as the father's name and " [name 11] " as the name of his grandfather, and thus the father of [testator] . The latter name explains the addition of " [initials] " to [testator's] name in the letters of interruption to the State. The plaintiffs have further argued, giving reasons, that the conversion of Afghan names into Western spelling is not an exact process and that different translators arrive at different (phonetic) conversions. In the court's opinion, this explains the differences between " [testator] " and " [testator] " and " [testator] " and " [testator] ". The State has not sufficiently argued against this.

5.10.

Apart from the uncontested circumstance that [plaintiff 1] has been given a formless charge to conduct these proceedings also on behalf of the other heirs, it has also been conclusively established with regard to the other heirs that they are children of ([initials]) [testator]. Indeed, the identity proof of [name 6] contains (virtually) the same names of father and grandfather as those in [claimant 1]'s identity proof. The name of [name 2] appears on the form cited under 3.25 with the addition "s/o [testator] ". With regard to the other heirs, the file contains written statements and video messages confirming their blood relationship (eventually).

5.11.

Finally, plaintiffs have adequately explained the State's observation that it is remarkable that [testator's] Dutch lawyer still wrote a letter on his behalf to the State in 2018 while [testator] is said to have died in 2017, with their explanation that partly due to the difficult to establish communication with their client in rural Afghanistan, their lawyer was not yet aware of that death at the time.

5.12.

In view of the foregoing, the claim of the joint heirs is not time-barred. It is not in dispute that [testator's] right of action passed to the joint heirs upon his death. The State's reliance on prescription is therefore dismissed in Case II.

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

5.13.

The court dismisses the reliance on prescription in Case II based on the specific circumstances of this case. This case is characterised by the circumstances that the plaintiffs in both cases claim damages as a result of the bombing of quala 4131 where they lived. The facts and circumstances relevant to assessing the lawfulness of this bombardment are identical in both cases. The State's evidentiary position and the extent to which it is affected by the dismissal of the reliance on prescription is the same in both cases. These specific circumstances of this case entail that now that the reliance on prescription in Case I has been dismissed, the State has no legally respectable interest in its reliance on prescription in Case II. In this respect, the court takes into account that the rationale of prescription lies in legal certainty and that one of the purposes of the statute of limitations is to protect the debtor against 'old' claims, which, after the limitation period has expired, he no longer has to take into account. Partly because of the difficulties that may arise if facts have to be established and reproaches assessed long afterwards, the principle is that strict adherence to limitation periods must be observed. The specific circumstances of this case justify an exception to this principle. The difficulties referred to here do not apply in view of the judgment in respect of the limitation period in Case I.

Unlawful bombardment?

5.14.

The court now turns to assessing whether the bombing of quala 4131 was unlawful or not.

5.15.

Under the tort law applicable in this case, an unlawful act means an infringement of a right and an act or omission contrary to a statutory duty or to what is proper in society according to unwritten law (Art. 6:162(2) BW). If there is an unlawful act attributable to the perpetrator, there is a right to compensation for the damage incurred as a result of that act.

5.16.

The parties take as their starting point that this unwritten standard of care included in Section 6:162(2) of the Dutch Civil Code is (partly) fleshed out in this case on the basis of the standards in the IHL, which contains standards regulating the relations between warring parties during an armed conflict. The court endorses this.

5.17.

The claimants rely, inter alia, on the principle of distinction under IHL, which has been elaborated. It is not in dispute that this principle applied to Dutch troops during the Battle of

Chora, which was conducted in the context of a non-international armed conflict within the meaning of IHL.

5.18.

For the content of the principle of distinction, the court, following the parties, follows what is included on that subject in the (not directly applicable) First Additional Protocol to the Geneva Conventions (AP I), which is to be considered as codification of customary international law applicable during all conflicts.

Article 48 AP I provides that parties to a conflict must at all times distinguish between civilian populations and combatants and between civilian objects and military targets, and that they may direct their operations only against military targets.

Article 52 AP I provides, inter alia, that attacks should be strictly limited to military targets and that military targets are only those objects which, by their nature, location, destination or use, make an effective contribution to the martial operations and whose total or partial destruction, capture or disabling would, under the circumstances of the time, confer a clear military advantage.

Furthermore, that article provides that in case of doubt as to whether an object normally serving civilian purposes, such as a house or other type of dwelling, is being used to make an actual contribution to the warfighting operations, it should be assumed that it is not being used for the latter purpose.

And finally, Article 57 AP I stipulates that before an attack is carried out, all practicable steps should be taken to ascertain, that the targets to be attacked are not civilians or civilian objects and do not enjoy special protection, but constitute military targets. This obligation applies up to the time the attack is carried out.

5.19.

In answering the question whether (the principle of distinction from) IHL has been respected, the touchstone is whether the commander in charge - in this case C-TFU - could reasonably have decided to deploy the force; the reasonable commander test. Of course, the answer to that question only involves the information available to that commander at the time the force was used. It does not involve an assessment with hindsight.

5.20.

The claimants contend that the bombing of qala 4131 did not adequately respect the principle of distinction. The plaintiffs argue that this qala is a residential complex from which no combat was fought, so that this qala did not therefore involve a military target and that there were insufficient facts and circumstances on the basis of which C-TFU could nevertheless reasonably have assumed that this qala involved a military target.

5.21.

The plaintiffs invoke the legal effect - liability for damages on the part of the State in tort - and, pursuant to the main rule of burden of proof laid down in Section 150 Rv, bear the burden of proving the facts alleged by them. Unlike plaintiffs, the court sees no reason to

make an exception to said main rule. However, this does not alter the fact that the State is obliged to refute plaintiffs' assertions with reasons.

5.22.

With the State, the Court is of the opinion that in the assessment, special attention must be paid to the extreme circumstances under which decisions had to be taken during the fighting in the period from 16 to 19 June 2007 around Chora. TFU faced a large-scale Taliban attack that posed risks not only to its own troops, and in particular to the troops on the White Compound, but also to the part of the local population that seriously feared very violent Taliban reprisals.

5.23.

However, the foregoing does not alter the fact that even, or perhaps especially, under difficult circumstances during an armed conflict, the principles of IHL must be respected. The court's task is to ascertain, taking into account the relevant facts and circumstances of the case, including the (time) pressure that lay upon the decisions, whether this was also done in respect of the *quala* of the plaintiffs. In doing so, it applies that in this case, where the *quala* was deliberately bombed after the battle had already subsided some hours before, the State, in the context of its challenge to the plaintiffs' contentions, must provide as precise an insight as possible into the circumstances that prompted the responsible commander to qualify and bomb this *quala* as a military target.

5.24.

The plaintiffs argue that the Taliban did not operate from *quala* 4131 and that there was no, or at least insufficient, reason to nevertheless qualify and bomb this *quala* - a walled residential complex - as a military target at the time of the bombardment. In doing so, they have in principle fulfilled their duty to propose.

5.25.

The State believes that *quala* 4131 could reasonably be qualified as a military target and bombed. According to the State there was sufficient reason to consider *quala* 4131 as a Taliban fighting position (enemy firing position, cf. 3.16), so that according to its use, the *quala* made an actual contribution to the war effort. The State considers it relevant that this *quala* was in a strategically favourable position in relation to the choke point and the dry riverbed. That riverbed could serve as an alternative to TFU-controlled roads around the Green Zone and at times when TFU passed the narrow choke point, TFU was vulnerable to enemy fire. The court weighs what the State argues about the strategic location of the *quala*.

5.26.

The court further considers relevant for the assessment the "ISIS Snapshot" with the snapshot of combat operations on 16 June 2007 at 06:58 on which enemy units are drawn in the area around *quala* 4131. It also considers relevant the hostile fire that more or less opened from the direction of *quala* 4131 around noon on 16 June 2007 on platoon 1.2 of TFU which was near the choke point at that time.

5.27.

However, the court finds that no weight is given to the circumstance, deemed relevant by the State, that platoon 1.2 came under fire again by hostile units a little before five in the afternoon of 16 June 2007 from a firing location located about 800 metres west of quala 4131,

The court does not see how that circumstance could have reasonably contributed to the qualification, at the time of the bombardment, of quala 4131 as a military target. This is also true if it is taken into account that the Taliban was advancing eastwards. The same applies to the circumstance that shortly afterwards, at around 5.30 p.m., persons, possibly Taliban, who were about 400 metres away east of quala 4131 in the riverbed and moving eastward were fired upon with the board gun of a fighter plane. The link apparently assumed by the State to the strategic location of quala 4131 on this riverbed is not sufficiently concrete, especially as there were more qualas on that bed.

5.28.

It has thus only been established by relevant circumstances that fire was fired from the vicinity of quala 4131 about 20 hours and about 15 hours before the bombing. In the first place, it does not follow that there was firing from quala 4131. This is of particular importance, because it is not in dispute that the Taliban was making a (mobile) advance towards the White Compound that also passed quala 4131. This is in line with the statements made by [claimant 2] (apparently claimant sub 2 in case I) before a local Afghan journalist, which read in poor 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 too recent to reasonably justify the bombing. There was no evidence of any verification of the assumption that quala 4131 included a combat position.

5.29.

On behalf of the State, it was rightly, because in accordance with IHL, acknowledged during the first oral hearing that only the circumstances listed under 5.26 could not have justified the bombardment of quala 4131, and that more recent information on the status of quala 4131 was a prerequisite for this. In that context, the State submitted that it was plausible that intelligence was available that one or more persons had been identified who were part of the Taliban's command structure and were holed up in quala 4131. In doing so, he further submitted in general terms that not all communications and intelligence would have been recorded.

5.30.

However, what the State puts forward about the possibility the existence of intelligence is insufficiently concrete. In this respect, the Court observes, together with plaintiffs, that the State does not take the position that it has been established that this intelligence actually existed and cannot, for instance, be linked to a (later) time of day or night. Nor does the State argue that the content of certain information cannot be made concrete because this could, for example, jeopardise the safety of informants. The State's position that it cannot be other than that intelligence was available constitutes an insufficiently substantiated challenge to plaintiffs' assertion that the quala was not a military objective at the time of the

bombardment and could not reasonably be regarded as such. The court takes into account that in the situation where the State bombs a qala - a walled residential complex - in a targeted manner, it must be able to explain which circumstances justified the assumption that there was a military objective. There is all the more reason for this in this case as the Post Mission Report of JTAC Windmill 68 includes as method of target acquisition: "By own troops in front", which according to the State should be translated as "by own ground troops in the neighbourhood". This method does not refer to intelligence (from shortly before the bombardment), but rather to the observations of its own troops in the morning of 16 June 2007 referred to under 5.26. In this context, it is also important to note that the positive identification by the JTAC shortly before the bombing says no more than that the predetermined target is actually the target the F-16 has in its sights. This identification does not refer to (repeated) identification/verification of the target as a military target.

5.31.

To the extent that the State has sought to argue that the lapse of time has resulted in the intelligence being untraceable, it cannot do so. After all, in relation to this particular bombing, the State was held liable within the five-year limitation period after the bombing. Thus, within the regular limitation period, the State could and should have taken into account the possibility that it would have to produce information in proceedings.

5.32.

In view of this insufficiently substantiated challenge to the plaintiffs' contentions, the court should therefore assume that at the time of the bombardment of qala 4131, there was insufficient data on the basis of which a reasonable commander would be allowed to designate this qala as a military objective. It is also of importance that it is not in dispute that it was known that qala 4131 was inhabited by civilians and that the State acknowledged that at the time of the bombardment TFU was not under the impression that all civilians (and therefore also the residents of qala 4131) had left their homes and the area. With regard to the latter, it is also significant that it has not been made clear whether the warnings to leave the area, if they reached the population at all, were relevant to qala 4131, which was more or less on the boundary of the vertical that was adopted as the boundary for the area in which the population was warned: it was west of this vertical.

5.33.

The court should therefore hold that qala 4131 was bombed without observing the principle of distinction, which is unlawful and should lead to compensation for the plaintiffs' damages. In this respect it is of importance that it is not disputed between parties that this act should be attributed to the State, which has always maintained full command over its own troops and moreover has been a red card holder with regard to the deployment of those troops. Finally, that there is a (*condicio sine qua non*) causal connection between the act and the damages of plaintiffs is also not in dispute.

5.34.

For the sake of completeness and in order to prevent misunderstandings, the Court considers that in doing so it has not given an opinion on the qualification of the bombardment as a war crime. Apart from the fact that disregard for IHL does not automatically lead to such a crime and, moreover, such a judgement is not for the civil court to make, it is important to

emphasise that the court did not find that the quala was not a military target and that at the time of the bombing of quala 4131 there was insufficient data on the basis of which a reasonable commander would be entitled to classify this quala as a military target. It only ruled that in view of the State's insufficiently substantiated challenge, it should be assumed that at the time of the bombardment of quala 4131, there was insufficient data on the basis of which a reasonable commander would be allowed to designate this quala as a military target, because the State did not refute that claim by plaintiffs with sufficient grounds.

5.35.

Now that it has been established that [testator] was present in quala 4131 at the time of the bombardment, his heirs have made the possibility of damage plausible, which suffices for a referral to the damages state proceedings. In these separate proceedings, the precise damage will be determined. This will also have to include the State's assertion, with reference to the documents cited under 3.25 and 3.26, that one of [testator's] heirs, [name 2] , was granted an ex gratia compensation of ten thousand dollars shortly after the bombing. Since [name 2] stated in a video excerpt brought into the proceedings that approximately two thousand dollars was paid per person killed, the correctness of this uncontested statement by the State will have to be assumed in those proceedings. The plaintiffs in Case I have also made the possibility of damage plausible, so that case will also be referred to the damage state proceedings.

5.36.

Given the opinion on the principle of distinction, there is insufficient interest in a (further) assessment of the violation of the principle of proportionality and the principle that precautionary measures should be taken, as alleged by plaintiffs. This also applies with regard to the claim of plaintiffs that their right to physical integrity has been violated.

5.37.

Furthermore, in view of the unlawfulness judgement, the District Court will reject plaintiffs' claims to disclose the documents listed under 4.4, as there is no longer any interest in such disclosure. For that matter, the State has brought some of the documents requested by plaintiffs into court during the course of the proceedings.

Duty to investigate?

5.38.

Plaintiffs have brought forward that their contentions about the waiver of the obligation arising from Article 2 of the ECHR to conduct an investigation into the bombing were made in the context of an independent unlawful act that caused damage other than the unlawful act concerning the bombing itself. The court considers these contentions as follows.

5.39.

A condition for the applicability of (the investigation obligations arising from Article 2 of) the ECHR is that the State had jurisdiction over the area in which quala 4131 lay. The main rule is that a State's jurisdiction extends only to its own territory. The rationale behind this main rule is that each State is entitled to sovereignty in its own territory and that in its own territory each State is uniquely able to safeguard human rights. The sovereignty due to a state on its

own territory would be impaired the moment (also) another state has jurisdiction on that territory. Only in exceptional circumstances does a state have jurisdiction outside its own territory. Whether such exceptional circumstances arise must always be assessed on the basis of all the circumstances of the case at hand.

5.40.

That a State has jurisdiction outside its own territory has - in short - been assumed in cases where the State in question exercised effective control outside its own territory and in cases where 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 its own territory is based on a jurisdictional link that was deemed present in view of special features of the case. Plaintiffs point to the following special features which, according to them, establish jurisdiction: the circumstance that the Afghan authorities had no possibilities to conduct their own investigations and the circumstance that the Dutch Public Prosecution Service had investigated whether criminal offences had been committed, which is an obligation under the Rome Statute now that war crimes might have been committed by Dutch nationals.

5.42.

With the State, however, the court is of the opinion that there are insufficient special features in this case to conclude that the State has jurisdiction. With respect to the bombing (on quala 4131), no war crime has been reported to this day and no circumstances have been alleged and shown to justify a suspicion of a potential war crime. The claimants' reference to Annex L of the After Action Report, in which the TFU Functional Specialist Health, among others, gives as the reason for field visits in the period 21-25 June 2007 "clarify persistent rumours of human rights violations that were allegedly committed in the period June 16-19" does not constitute such a circumstance. Indeed, the (remaining) text of this annex cannot be read otherwise than to mean not possible war crimes by 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 light of the foregoing, it cannot be assumed that the State had to initiate a criminal investigation, partly because such an opinion of the competent and competent (criminal) court pursuant to Article 12 Code of Criminal Procedure was not requested and given.

5.44.

In view of the above, the claim regarding the violation of the procedural (investigative) obligations arising from Article 2 ECHR will be dismissed.

Final conclusion and costs of proceedings

5.45.

On the basis of the above, the court will rule that the State acted unlawfully towards [testator] and the plaintiffs in case I by bombing quala 4131 and that the State is liable for the damages, to be stated. The court will refer the case to the damages state proceedings.

5.46.

The State, as the predominantly unsuccessful party, will be ordered to pay the costs of these proceedings on the side of the plaintiffs in both cases. The Court estimates the costs incurred to date in both cases at € 3,382.72 + court fees in case I (€ 304 + € 81 for court fees, 5 points at tariff II of € 563 per point for attorney's fees and € 100.89 and € 81.83 for bailiff's costs).

6The decision

The court

in both cases

6.1.

Rule that the State acted unlawfully towards [testator] and the plaintiffs in Case I by bombing quala 4131 on 17 June 2007 and that the State is liable for the damages suffered by [testator] and the plaintiffs in Case I as a result of the unlawful conduct, to be increased by statutory interest;

6.2.

orders the State to compensate the heirs of [testator] and the plaintiffs in Case I for the damage thereby incurred by [testator] and the plaintiffs in Case I, to be assessed by the State and to be settled in accordance with the law;

6.3.

orders the State to pay the (additional) costs of these proceedings incurred on the side of the plaintiffs in both cases and estimated up to this day at in total € 3,382.72, to be increased with statutory interest as from fourteen days after today;

6.4.

Declares the orders under 6.2 and 6.3 provisionally enforceable;

6.5.

Dismisses the further or different claims.

This judgment was rendered by Messrs L. Alwin, D.R. Glass and J.S. Honée and publicly pronounced on 23 November 2022.