

Statement of Defence re admissibility and breakthrough grounds (Bourla)

Amsterdam Court of Appeal
Case number: 200.360.223/01

**STATEMENT OF DEFENCE REGARDING ADMISSIBILITY AND BREAKTHROUGH
GROUNDS**

In the matter of:

ALBERT BOURLA

residing in Greenwich, United States of America

Respondent in appeal sub 11,

counsel: Mr. D.C. Roessingh and Ms. M. Bredenoord-Spoek,

both with offices at Burgerweeshuispad 201,

1076 GR Amsterdam, who submit this statement of defence.

against:

1. [REDACTED], residing in Leeuwarden,
2. [REDACTED], residing in Brunssum,
3. [REDACTED], residing in Leeuwarden,
(together “[REDACTED] c.s.”),
applicants in appeal,
counsel: Mr. P.W.H. Stassen

INTRODUCTION

1. [REDACTED] c.s. requested preliminary taking of evidence pursuant to Article 196 et seq. Rv. The District Court rightly rejected the request of [REDACTED] c.s. by order of 20 August 2025 and did not open an appeal against that decision. [REDACTED] c.s. also did not request leave to open an appeal. Instead, he approached the Court of Appeal directly relying on various breakthrough grounds. That reliance fails, as will be explained below (chapter 2). In that respect, Bourla aligns himself with the statement of defence filed on behalf of the State of the Netherlands and various natural persons (together, the “State”) dated 13 January 2026 (Annex 1).
2. **BOURLA ALIGNS HIMSELF WITH THE STATE’S STATEMENT OF DEFENCE**

2. Bourla has taken note of the statement of defence filed on behalf of the State. Bourla aligns himself with the State’s defence and adopts all of the State’s submissions as his own, and in particular the following (summarised) submissions:

(I) [REDACTED] c.s. is inadmissible in his appeal, because no higher remedy lies against a decision on a request for a preliminary taking of evidence unless the court determines otherwise (Article 200(2) Rv). In the present case, the court did not determine otherwise. [REDACTED] c.s. also did not request leave to lodge an appeal (paragraph 2 of the State’s statement of defence).

(II) [REDACTED] c.s.’s reliance on breaking through the bar on remedies cannot succeed. There is no violation of such fundamental principles of law that the case can no longer be said to have been dealt with fairly and impartially. [REDACTED] c.s. is therefore, in view of the bar on remedies in Article 200(2) Rv, inadmissible in the appeal (paragraphs 3.1 and 3.21–3.22 of the State’s statement of defence).

(III) Contrary to what [REDACTED] c.s. contends, the District Court paid sufficient attention to the “societal context” asserted by [REDACTED] c.s., inter alia by including in paragraph 2.2 of the order a summary of what the applicants relied on in support of their request. In any event, what [REDACTED] c.s. asserts cannot support the conclusion that the case was not dealt with fairly and impartially (paragraphs 3.3–3.6 of the State’s statement of defence).

(IV) Contrary to what [REDACTED] c.s. claims, the oral hearing was public within the meaning of Article 6 ECHR (which in any event does not apply to proceedings such as the present).¹ The District Court admitted members of the public to the courtroom and additionally opened an extra courtroom; press were present; and a recording of the hearing was made, which was also posted on the website of the foundation behind [REDACTED] c.s.’s proceedings. The fact that persons without accreditation—consistent with the judiciary’s Press Guideline—were not allowed to make photos, audio or video recordings does not lead to the conclusion that such fundamental principles of law were violated that the case can no longer be said to have been dealt with fairly and impartially (paragraphs 3.7–3.10 of the State’s statement of defence).

(V) Contrary to what [REDACTED] c.s. contends, the proceedings did not take too long. The petition dates from 7 March 2025. The oral hearing took place on 9 July 2025, and the decision was given on 20 August 2025. [REDACTED] c.s. moreover acknowledges that such a time frame is normal or even short (paragraphs 3.11–3.13 of the State’s statement of defence).²

(VI) Contrary to what [REDACTED] c.s. contends, the District Court was not biased by designating the persons proposed by the applicants as party experts. The District Court rightly designated the persons whom [REDACTED] c.s. wanted to have heard as party experts by reference to Article 192 Rv, since these are “experts” who were not appointed by the court but whose hearing was requested by a party. Moreover, in the operative part of his petition, [REDACTED] c.s. (repeatedly) refers to “the party experts” (paragraphs 3.14–3.16 of the State’s statement of defence).

(VII) It is not apparent why the case would no longer have been dealt with fairly and impartially because the District Court did not refer preliminary questions to the Court of Justice of the

European Union (CJEU). [REDACTED] c.s. did not request this, nor was there otherwise any reason to do so (paragraphs 3.17–3.18 of the State’s statement of defence).

(VIII) Finally, it is incorrect that, as a result of the rejection of [REDACTED] c.s.’s request, there is no effective remedy and fair trial because [REDACTED] c.s. was thereby deprived of the ability to determine his legal position.³ According to [REDACTED] c.s., he has, by the videos and statements filed by him on appeal, produced evidence for his assertions, so he apparently has been able to determine his legal position (paragraphs 3.19–3.20 of the State’s statement of defence).

3. CONCLUSION

3. On the basis of the foregoing, Bourla concludes that the Court of Appeal, by order, insofar as legally possible provisionally enforceable, will declare [REDACTED] c.s. inadmissible in his appeal and will order [REDACTED] c.s. to pay the costs of the proceedings, increased by statutory interest as referred to in Article 6:119 BW from fourteen days after the date of the decision.

Amsterdam, 13 January 2026

Counsel

This case is handled by

Mr. D.C. Roessingh,
T +31 20 577 1892,
M +31 6 5162 1874,
E Davine.Roessingh@debrauw.com, and
Ms. M. Bredenoord-Spoek,
T +31 20 577 1066,
M [REDACTED],
E Marieke.Bredenoord@debrauw.com.
De Brauw Blackstone Westbroek N.V., P.O. Box 75084, 1070 AB Amsterdam.

¹ Supreme Court of the Netherlands 24 March 1995, ECLI:NL:HR:1995:ZC1683, NJ 1998/414, para. 3.4.5.

² Appeal petition [REDACTED] c.s., paragraph no. 14.

³ Appeal petition [REDACTED] c.s., paragraph no. 13.

Translators Note: Annex 1 in the original Dutch PDF is the State’s statement of defence regarding admissibility and breakthrough grounds. I translated that as “Document 3” below (the contents are substantively the same).