

Statement of Defence re admissibility and breakthrough grounds (Van der Voort-Kant)

Amsterdam Court of Appeal

Roll session dated 14 January 2026

Case number: 200.360.223/01

STATEMENT OF DEFENCE REGARDING ADMISSIBILITY AND BREAKTHROUGH GROUNDS

In the matter of:

A.C. VAN DER VOORT-KANT, residing in Doesburg

Respondent in appeal sub 15

Counsel: Mr. A.H. Ekker

Against:

1. [REDACTED], residing in Leeuwarden
 2. [REDACTED], residing in Brunssum
 3. [REDACTED], residing in Leeuwarden
- Applicants in appeal
Counsel: Mr. P.W.H. Stassen

INTRODUCTION

1. Applicants in appeal (hereinafter “[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. Respondent in appeal sub 15 (hereinafter “Kant”) aligns herself in that respect with the statement of defence filed on behalf of the State of the Netherlands and various natural persons (together the “State”) and the statement of defence of Bourla.

KANT ALIGNS HERSELF WITH THE STATEMENTS OF DEFENCE OF THE STATE AND BOURLA

2. Kant has taken note of the statements of defence on behalf of the State and Bourla. Kant aligns herself with the defence of the State and of Bourla and adopts all of the State's and Bourla's submissions as her own, in particular the following (summarised) submissions:
 - a. [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).
 - b. [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).
 - c. 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 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).
 - d. 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).
 - e. 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
 - f. Contrary to what [REDACTED] c.s. contends, the District Court was not biased by designating the persons proposed by 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 the petition, [REDACTED] c.s. (repeatedly) refers to “the party experts” (paragraphs 3.14–3.16 of the State’s statement of defence).

g. 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 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).

h. 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).

CONCLUSION

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

This case is handled by Mr. Dr. A.H. Ekker
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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.