

District Court of the Northern Netherlands

Leeuwarden

Case number: C/17/190788 / HA ZA 2023-172

Hearing dated 21 February 2024

**STATEMENT OF DEFENCE
ON BEHALF OF CANN AND JANSEN**

Re:

1. Ms **Giselle Jacqueline Marie-Thérèse van Cann**, defendant No. 12, hereinafter referred to as: "**Van Cann**",
2. Mr **Paul Edwin Jansen**, defendant No. 13, hereinafter referred to as "**Jansen**",

Counsels: L. Broers and R.H.W. Lamme

3. Mr **Everhardus Ite Hofstra**, defendant No. 1,
4. Mr **Jaap Tamino Van Dissel**, defendant No. 2,
5. Ms **Maria Petronella Gerarda Koopmans**, defendant No. 3,
6. Mr **Mark Rutte**, defendant No. 4,
7. Ms **Sigrid Agnès Maria Kaag**, defendant No. 5,
8. Mr **Hugo Mattheüs de Jonge**, defendant No. 6,
9. Mr **Ernst Johan Kuipers**, defendant No. 7,
10. Mr **Diederik Antonius Maria Paulus Johannes Gommers**, defendant No. 8,
11. Mr **Wopke Bastiaan Hoekstra**, defendant No. 9,
12. Ms **Cornelia van Nieuwenhuizen**, defendant No. 10,
13. Mr **Feike Sijbesma**, defendant No. 14,
14. **THE STATE OF THE NETHERLANDS**, defendant No. 17,

defendants 1-10, 14 and 17 hereinafter collectively
referred to in the singular as: '**the State**',

lawyers acting on their behalf: R.W. Veldhuis and M.E.A. Möhring

15. Ms **Agnes Catharina van der Voort-Kant**, defendant No. 16,
hereinafter referred to as: "**Kant**".

Counsel: Mr A.H. Ekker

16. Mr **Albert Bourla**, the defendant referred to in paragraph 11,
hereinafter referred to as: "**Bourla**",

lawyer representing him: D. Roessingh, LL.B.

17. **Mr William Henry Bill Gates III**, defendant under 15,
hereinafter referred to as: "**Gates**",

lawyer acting on his behalf: W.H. Heemskerk, LL.M.

against:

1. M [REDACTED] claimant No. 1,
2. Ms [REDACTED], claimant 2,
3. M [REDACTED] claimant 3,
4. M [REDACTED] claimant 4,
5. Mr [REDACTED], claimant 5
6. Mr [REDACTED] claimant 7,

claimants 1–6 hereinafter collectively referred to as "[REDACTED]
et al."

Counsels: P.W.J. Stassen and A.G.W. van Kessel

A. INTRODUCTION

1. The present proceedings relate to the Covid-19 pandemic. The pandemic marked a turbulent – and for many – uncertain and fearful period. Governments worldwide were compelled to take measures to curb the pandemic. These included measures that restricted citizens' freedoms and which were not supported by the whole of society, including [REDACTED]
2. The writ of summons shows that [REDACTED] are convinced that the COVID-19 pandemic never took place. Minks et al. allege that they were misled and 'enticed' by the defendants into receiving COVID-19 vaccinations. Minks et al. claim to have suffered personal injury as a result and hold the defendants liable for this.
3. Van Cann and Jansen are specifically accused of having, as editors-in-chief of 'the mass media', sought to instil maximum fear amongst the population through 'their' reporting on the Covid-19 pandemic. Furthermore, they are alleged to have deliberately withheld reports concerning the alleged safety concerns regarding the Covid-19 vaccines from the public. [REDACTED] even go so far as to accuse Van Cann and Jansen personally of being complicit in 'genocide' against the Dutch population.¹ [REDACTED] do not substantiate these far-reaching allegations, but base their claims on statements by controversial politicians² and disinformation.³
4. The summons reveals that the claims made by [REDACTED] are in fact directed against Van Cann and Jansen's employers: the NOS and De Telegraaf. Nevertheless, Minks et al. have chosen to summon Van Cann and Jansen personally. This decision is based on a strategy set out by Stichting Recht Oprecht, of which [REDACTED] (and their lawyers) are members.⁴
5. Van Cann and Jansen request that this Court dismiss the claims brought by [REDACTED] al. in their entirety and thereby also ensure that they are not subjected to this form of personal intimidation. Van Cann and Jansen will hereafter primarily argue that there is no legal basis for their personal liability and, in the alternative, will defend themselves against the claims which are in fact directed against their employers. For the record, it is noted that the NOS and De Telegraaf are not parties to this dispute. References to the NOS and De

¹ Summons, paragraph 280.

² The Romanian MEP Cristian Terhes of the *Eurosceptic Conservatives* party (see, amongst others: <https://www.brusselstimes.com/197893/six-meps-punished-for-entering-parliament-buildings-without-covid-certificate> and <https://www.ad.nl/buitenland/euoparlement-eist-coronapas-van-leden-diep-triest~a6a6d6ac/>) and *Alternative für Deutschland* leader Alice Weidel (see: <https://www.bloomberg.com/news/features/2023-12-09/will-afd-s-alice-weidel-be-germany-s-first-far-right-leader-since-nazi-era> and <https://www.theguardian.com/world/2024/jan/10/politicians-from-germany-afd-met-extremist-group-to-discuss-deportation-masterplan>).

³ <https://nos.nl/nieuwsuur/collectie/13903/artikel/2438923-bronnen-bij-ophef-over-de-pfizer-papers>.

⁴ <https://rechtoprecht.online/rechtszaak>: 'Each of the defendants is being sued by the claimants jointly and severally and in their private capacity on the grounds of their alleged participation in this project. The claimants allege that the defendants, both individually and as a group, have acted unlawfully and with intent, causing the claimants to suffer considerable damage. The foundation takes the view that bringing these civil proceedings serves a significant public interest'.

De Telegraaf in relation to the defence against the arguments put forward by [REDACTED] al. concerning the reporting by NOS and De Telegraaf.

B. BACKGROUND

B.i. Covid-19 and the vaccination policy

6. Van Cann and Jansen have taken note of the State's statement of defence dated 10 January 2024 ('**the State's statement of defence**'). This statement sets out the principles underpinning government policy regarding the Covid-19 pandemic, and addresses the facts concerning the *World Economic Forum*, *The Great Reset*, the general scientific consensus on Covid-19, the central government's vaccination programme and the safety of the Covid-19 vaccine. Van Cann and Jansen refer to this and will not repeat it here. In particular, this concerns Chapters 1, 2, 5 and 6 of the State's Statement of Case.
7. As for the rest, Van Cann and Jansen confine themselves to challenging the facts put forward by [REDACTED], which, in summary, assert without substantiation that the *World Economic Forum* is carrying out a malicious genocide plot under the banner of 'The Great Reset', of which Van Cann and Jansen are alleged to be a part. There is absolutely no explanation as to why Van Cann, Jansen, the NOS or De Telegraaf would benefit from the *World Economic Forum's* domination of the Dutch population, let alone what purpose it would serve them to facilitate the alleged genocide against the Dutch population. The assertions made by [REDACTED] are therefore – in addition to being unsubstantiated – also implausible.

B.ii. The role of the media during the coronavirus crisis

8. During the Covid-19 pandemic, the NOS and De Telegraaf played a crucial role in informing the Dutch population about all aspects of the pandemic. The Covid-19 pandemic spanned an extremely hectic period, during which the media, amongst others, were under considerable and constant pressure to report daily on newsworthy developments concerning the Covid-19 virus. The overwhelming volume of information arising from (the fight against) the Covid-19 pandemic necessitated editorial decisions.
9. In general, the NOS and De Telegraaf can state that they have included the most important facts relating to the Covid-19 pandemic in their reporting. Although there are differences in content between the NOS and De Telegraaf on certain points, both media organisations have made every effort to report on the Covid-19 pandemic faithfully and accurately. In this context, the NOS and De Telegraaf wish to emphasise that none of their publications on Covid-19 and the coronavirus crisis have been found to be unlawful.
10. The reporting by the NOS and De Telegraaf during the Covid-19 pandemic can primarily be categorised as 'general information' for the public. After all, the vast majority of the publications by both media organisations concerned factual news, for example regarding the spread (and speed of spread) of Covid-19, its contagiousness, the number of deaths, international comparisons in this regard and/or planned coronavirus measures at home and abroad. These articles were underpinned by the accepted scientific consensus at the time and were produced with due care.

11. The NOS and De Telegraaf are aware that their reporting on *social media* has often been used as ammunition in a conflict between supporters and opponents of the Dutch government's coronavirus measures.⁵ However, the use of factual news as a catalyst for conflict on *social media* is no reason to speak of unlawful reporting on the part of the NOS and De Telegraaf, let alone Van Cann and Jansen.

B.iii. Supplementary facts

12. Insofar as separate or supplementary facts are relevant to the legal position of Van Cann and Jansen, they will address these later in this statement of defence.

C. PRIMARY: NO PERSONAL LIABILITY

C.i. No qualitative liability on the part of the editors-in-chief

13. In these proceedings, [REDACTED] hold Van Cann and Jansen personally liable for the alleged unlawful reporting by the NOS and De Telegraaf. In the writ of summons, [REDACTED] et al. rely on Van Cann and Jansen's capacity as editors-in-chief of NOS News and De Telegraaf respectively:

*"Under Van Cann's leadership, the NOS has cooperated fully in the intrusive and fear-mongering dissemination of the Covid-19 narrative, which is clearly aimed at persuading people to take Covid-19 injections through social pressure and a misrepresentation of the facts"*⁶

and

*"Jansen [in his capacity as editor-in-chief, ed.] led the editorial team with the same editorial responsibilities and duties as those set out above in relation to Van Cann. He faces the same allegations as Van Cann" [..]*⁷

14. The writ of summons does not suggest any active involvement on the part of Van Cann and Jansen in the disputed reporting by the NOS and *De Telegraaf*, nor does any direct involvement on the part of Van Cann and Jansen emerge from the publications by the NOS and *De Telegraaf* submitted as Exhibits 46 and 52. [REDACTED] merely suggest, by way of assertion, that Van Cann and Jansen directed the production of the reporting during the coronavirus crisis. However, the specific allegations made by [REDACTED] et al. regarding the alleged unlawful conduct of Van Cann and Jansen consist solely of criticisms that can be attributed to the NOS and De Telegraaf as the publishing media:

"Firstly, Minks et al. wish to draw attention to the fact that the NOS portrayed the first person infected with coronavirus as someone who, as a result of the Covid-19 virus, was instantly transformed from a healthy person into someone who was (as good as) dead. Dead people or sick people on

⁵ See, for example, with regard to De Telegraaf: Schaper et al., 'Coronascepticism in the media', Netherlands Institute for Social Research, The Hague 2023.

⁶ Summons, paragraph 169.

⁷ Summons, paragraph 178.

'People on the streets, people in hospitals and people on ventilators in the ICU – that is how the NOS portrayed an infection.'⁸ and

*"From the outset of the alleged Covid-19 pandemic, *De Telegraaf* through its newspaper and websites under the editorial supervision of Jansen, has done everything in its power to instil great fear and panic amongst its readers and viewers"⁹*

15. [REDACTED]. apparently base the personal liability of Van Cann and Jansen on a form of strict liability said to arise from their positions as editors-in-chief of the NOS and De Telegraaf. This is a legally incorrect premise: with regard to press publications, it is the media organisation – and not the editor-in-chief – that bears ultimate responsibility and may be liable for the content of publications. After all, it is the publishing legal entity that performs the relevant formal legal act of publishing a publication or a series of publications.¹⁰
16. The term 'editorial responsibility', as put forward by [REDACTED] in support of qualitative liability¹¹, is a term that refers to the autonomy of an editorial team under the Media Act and is not related to the liability of an editor-in-chief or editorial team.¹² Editorial responsibility is not (chief) editorial liability. Established case law confirms that there is no place within media law for strict liability on the part of the editorial board or for a regime whereby editors-in-chief are, in principle, always legally liable for what a media outlet publishes:

"The claim, in so far as it is directed against [Defendant 3] as editor-in-chief of De Telegraaf, will, however, be dismissed. An editor-in-chief is not automatically personally liable for every unlawful publication that appears in his newspaper; to that extent, no form of strict liability applies either. In this light, it has not been sufficiently explained in what way the unlawful act committed by [Defendant 3] is alleged to have occurred."¹³

C.ii. 'Chilling effect'

17. One of the reasons why liability based on the quality of the content is regarded as unacceptable in media law is the risk of a *chilling effect* on press freedom. Imposing personal liability on (chief) editors may lead to reluctance to investigate or publish reports on social abuses. Even where this concerns authors or editors of specific articles, of whom it can be said that they, in

⁸ Summons, paragraph 162.

⁹ Summons, paragraph 179.

¹⁰ District Court of The Hague (Preliminary Relief), 7 February 2018, ECLI:NL:RBDHA:2018:1301, para. 4.2: "Before proceeding to the substantive assessment of the dispute, the judge in preliminary relief proceedings notes that he – like the Consumers' Association et al. – is surprised that Roompot [defendant 2] has also been summoned. [Defendant 2] is – as a researcher and editor of the Consumentengids – employed by the Consumers' Association. From a legal perspective, it is the Consumers' Association that decides to publish the disputed article. It is not apparent that [Defendant 2] could be held solely responsible for any unlawful publication on the basis of her employment with the Consumers' Association. This is all the more so given that no concrete or specific allegations have been made or have come to light that would (or could) render her (jointly) liable. [...]"

¹¹ Summons, paragraph 178.

¹² See Article 1.1(1b)(a) and (b) of the Media Act 2008.

¹³ Amsterdam District Court, 14 February 2018, ECLI:NL:RBAMS:2018:763, para. 4.43.

Although editors are directly responsible for the content of articles, a court must exercise restraint when establishing personal liability:

“Liability of employed editors must be applied with restraint, partly in view of the ‘chilling effect’.”¹⁴

18. In these proceedings, ██████ act as a legal vehicle for the Recht Oprecht Foundation, which, led by the lawyers¹⁵ representing ██████, has deliberately chosen to launch a personal attack on Van Cann and Jansen.¹⁶ In the eyes of their supporters, ██████ portray Van Cann and Jansen as serious criminals.¹⁷ The intimidating tactics of ██████ are fuelled, amongst other things, by the display of banners directed against Van Cann and Jansen.¹⁸ These banners are placed, amongst other places, in fields and feature an upside-down Dutch flag; a distress signal familiar from recent farmers’ protests (**Exhibit 1**). Combined with the already well-documented violence against journalists¹⁹, the recent warnings from the NCTV about ‘conspiracy extremists’²⁰ and viewed in the context of mass protests organised by the Stichting Recht Oprecht²¹, this casting of suspicion b ██████ creates an extremely threatening and unpleasant situation for Van Cann and Jansen. It can be argued that ██████ are, in fact, aiming precisely to achieve the aforementioned *chilling effect*.²² On this ground alone, the claims against Van Cann and Jansen should be dismissed.

C.iii. No personal blame on Van Cann and Jansen

19. Finally, neither Van Cann nor Jansen can be held personally responsible for the reporting by NOS and De Telegraaf on the Covid-19 pandemic. ██████ argue that:

“[Van Cann] was deputy editor-in-chief of NOS News from 2011 and became the new editor-in-chief of NOS News on 1 September 2022”²³ [..]

¹⁴ Amsterdam District Court, 25 July 2018, ECLI:NL:RBAMS:2018:5130, para. 4.7.3.

¹⁵ <https://www.advocatie.nl/tuchtrecht/voorwaardelijke-schorsing-voor-antivax-advocaat-die-ggd-medewerkers-prikbus-intimideerde/>.

¹⁶ <https://rechtoprecht.online/rechtszaak:> *‘Each of the defendants is being sued by the claimants jointly and severally and in their private capacity on the grounds of their alleged participation in this project. The claimants allege that the defendants, both individually and as a group, have acted unlawfully and with intent, causing the claimants to suffer considerable damage. The foundation takes the view that bringing these civil proceedings serves a significant public interest’.*

¹⁷ Summons, paragraphs 274–280.

¹⁸ <https://rechtoprecht.online/mediadoeken>.

¹⁹ <https://nos.nl/artikel/2395423-verdachten-van-aanslag-op-groningse-journalist-zijn-corona-ontkenners>.

²⁰ <https://nos.nl/artikel/2451478-nctv-waarschuwt-voor-complotextremisten>.

²¹ <https://rechtoprecht.online/nieuwsbrief-3:> *“On 22 November 2023, many people (> 150 people) braved the cold and went to the ‘Het Zaailand’ square in front of Leeuwarden District Court with banners, lorries, and so on to ‘Het Zaailand’ square in front of Leeuwarden District Court to express their support for the seven claimants in these civil proceedings on the merits, or indeed for all Covid-19 victims across the globe. All these supporters were, of course, aware that no members of the public would be present in the courtroom at the hearing on 22 November 2023. As expected, the mainstream media (the MSM) reported that all these people were supposedly naive and thought they could enter the courtroom as members of the public!! Fortunately, the discerning Dutch citizen knows better.....”.*

²² This is precisely what the State argues in its reply, in its submission dated 10 January 2024, paragraph 1.13.

²³ Summons, paragraph 156.

“The manner in which the NOS reported on the alleged Covid-19 crisis was determined by Van Cann” and “From the outset of the alleged Covid-19 crisis, namely from January 2020, Van Cann chose to use the tone, photographs and suggestions in the NOS’s editorial work to instil maximum panic and fear amongst the population.” and

“Jansen is personally liable for the censorship he caused by, on the one hand, collaborating in a cover-up and, on the other hand, uncritically adopting the official narrative, even though even minimal journalistic investigation should have made it clear that this narrative was false.”

20. These allegations are factually incorrect. Firstly, Van Cann was only appointed as editor-in-chief of NOS News on 1 September 2022 (and therefore not ‘the NOS’) (**Exhibit 2**).^{24 25} Even if this Court were to rule that editors-in-chief are liable for the quality of their work, Van Cann cannot therefore be held personally liable on this ground.
21. Secondly, neither Van Cann nor Jansen can be held personally liable for ‘the reporting’ by the NOS and De Telegraaf on the Covid-19 pandemic, as required under Article 6:162(1) of the Dutch Civil Code. [REDACTED] merely allege that Van Cann and Jansen opted for a particular narrative and are said to have engaged in ‘censorship’. However, this alleged malicious intent is not evident from the documents submitted by [REDACTED] [REDACTED] For the record, and needless to say, Van Cann and Jansen deny that they are part of a cover-up or ‘The Great Reset’, let alone that they are guilty of censorship. From the outset, the documents submitted by [REDACTED] provide no evidence of a ‘cover-up’ in which Van Cann or Jansen could have ‘collaborated’. The unjustified characterisation of the NOS and De Telegraaf therefore has – apart from having no legal basis – no factual basis either.

C.iv. Conclusion on the primary defence

22. The interim conclusion regarding the primary defence is that [REDACTED] have no grounds for holding Van Cann and Jansen liable. There is no strict liability for editors-in-chief. Furthermore, Van Cann and Jansen bear no personal blame whatsoever for the reporting by the NOS and De Telegraaf on the Covid-19 pandemic. [REDACTED] aim, through this summons and the accompanying banners, to exert a *chilling effect* on press freedom. This is a serious matter and a violation of freedom of expression. On these grounds alone, claims I-III brought by Minks et al. against Van Cann and Jansen must be dismissed.

D. IN THE ALTERNATIVE: NO UNLAWFUL ACTS

23. In the unlikely event that this Court were to uphold a claim that Van Cann and Jansen are liable, *contrary to law*, for the general reporting on the Covid-19 pandemic by their employers, they put forward the following defences.

²⁴ See also: <https://nos.nl/artikel/2436821-giselle-van-cann-nieuwe-hoofdredacteur-nos-nieuws>.

²⁵ The evidence submitted by Minks et al. in support of their claims is dated 29 January 2020, two years before Van Cann took up his post.

Namely, the NOS and De Telegraaf

24. The complaints by [REDACTED] regarding the reporting by the NOS and De Telegraaf can be summarised as follows:
 - (i) The tone adopted by the NOS and De Telegraaf in their 'Covid-19 news' coverage is alleged to be unlawful, as they are said to have deliberately and unjustifiably sought to maximise fear and panic amongst the public in the reports in question;²⁶
 - (ii) The NOS and De Telegraaf should have reported on facts which [REDACTED] consider to be newsworthy, such as specific European Commission hearings, the content of Covid-19 vaccine package leaflets and 'countless' health risks which, according to [REDACTED], are said to result from the Covid-19 vaccinations;²⁷ and
 - (iii) NOS and De Telegraaf should have given a voice to scientists and experts who would have articulated the narrative put forward by [REDACTED]²⁸
25. The allegations under i-iii are characterised by [REDACTED] as 'censorship' or 'neglect of the journalistic duty' on the part of the NOS and De Telegraaf over the period from 2020 to 2022 inclusive. [REDACTED] substantiate a breach of the standard under Article 6:162 of the Dutch Civil Code by referring to the 'Bordeaux Convention' and – with regard to the NOS – the NOS's *mission statement* on its website.²⁹ In support of the claims under i-iii, [REDACTED] submit one publication by the NOS (Exhibit 46) and ten publications by De Telegraaf (Exhibit 52). In short, these publications provide factual reports on the spread of the Covid-19 virus based on international sources such as the WHO, governments and bodies such as the RIVM.
26. Van Cann and Jansen are not personally liable for the tone of the reporting by the NOS and De Telegraaf (under i). This also applies to the alleged omissions (under ii and iii), such as the failure to report the stories desired by [REDACTED] or the failure to invite commentators favoured by [REDACTED]. Nor can Van Cann and Jansen simply be equated personally with the NOS and/or De Telegraaf. Nevertheless, Van Cann and Jansen will, albeit briefly and superfluously, address below the substantive objections raised by

²⁶ Writ of summons, paragraphs 160–162 and 179–180.

²⁷ Writ of summons, paragraphs 163–168 and 170–171.

²⁸ See writ of summons, paragraph 172. That Minks et al. are satisfied only with their 'own' experts is evident from the writ of summons, paragraph 181; Minks et al. dismiss the critics of government policy selected by De Telegraaf as 'pseudo-critical' because they pay no attention to 'the great deception of the public', referring to the poisoning of the population through Covid-19 vaccination: "Insofar as Jansen might wish to defend himself by claiming that he has recruited 'critical journalists' in the persons of Ronald Plasterk or Marianne Zwagerman, Minks et al. observe as follows. Both Plasterk and Zwagerman have voiced a pseudo-critical stance on the handling of the alleged Covid-19 pandemic, but have not challenged any substantive aspect of the narrative. Jansen has used Plasterk and Zwagerman to provide a platform for a sham opposition. This was done to maintain the readership's confidence in the journalistic integrity of his editorial team, whilst in reality there was a deliberate and widespread deception of the public. Mink et al. were thus misled by Jansen."

²⁹ <https://over.nos.nl/organisatie/>.

██████████ expressed in their summons regarding the publications by the NOS and De Telegraaf (submitted by ██████████ as exhibits 46 and 52).

D.ii. Correct framework for assessment

27. The complaints raised by ██████████ relate to the tone (i) and the content (ii-iii) of the reporting by the NOS and De Telegraaf.
28. Under Article 10(1) of the ECHR, the NOS and De Telegraaf have far-reaching rights to report on events that affect public debate. After all, the media fulfil an essential function in a democratic society and their freedom of expression must not be subject to restrictions lightly. It is the media's task to *fulfil* the role of *public watchdog* and to provide information on matters of public interest:

*“In this respect, the essential function that the press fulfils in a democratic society must be emphasised. Although the press must not overstep certain bounds, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest.”*³⁰

29. Freedom of the press entails, amongst other things, that the media, such as the NOS and De Telegraaf, are free to publish both opinions and facts in any conceivable form. This also applies where the content is shocking or offensive (*“offend, shock and disturb”*).³¹ It is (therefore) up to the media to decide how they present their own journalistic publications and how they report on their journalistic investigations.³² It is not the media's task, let alone an obligation, to include every viewpoint (desired by third parties) in their reporting. Indeed, the media do not even always have to be neutral in their reporting, provided there are no frivolous allegations or that a third party is not unjustly cast in a negative light.³³
30. Freedom of the press may only be restricted if this is necessary in a democratic society.³⁴ This restriction may be based on unlawful conduct on the part of the media under Article 6:162 of the Dutch Civil Code. Whether such conduct constitutes unlawful conduct on the part of the media is determined by (European) case law. Any conduct that contravenes non-binding standards such as the ‘Bordeaux Convention’ and the NOS's *mission statement*,

³⁰ ECHR 5 July 2016, 26115/10 (*Kurski v. Poland*), para. 50; see also: ECtHR 24 February 1997, Reports 1997- (*De Haes and Gijssels v. Belgium*), ECtHR 29 March 2016, 56925/08 (*A.B. v. Switzerland*).

³¹ ECtHR 7 December 1976, NJ 1978/283 (*Handyside*); ECtHR 8 July 1986, NJ 1987/901 (*Lingens*) and ECtHR 6 May 2003, Mediaforum 2003/6 (*Perna v. Italy*); ECHR 7 February 2012, LJN: BW0603 (*Axel Springer*); ECHR 14 June 2016, no. 53421/10 (*Jiménez Losantos v. Spain*), ECHR 17 January 2017, no. 31566/13 (*Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal*).

³² See, inter alia, ECHR 10 May 2011, no. 48009/08, RAV 2011/82; EHRC 2011/108, with commentary by A.W. Hins (*Mosley v. UK*), Supreme Court 26 March 1999, LJN: ZC0040, Supreme Court 28 September 2012, NJ 2012, 556 (*Tros v. Pretium*), Vزر. Amsterdam District Court 28 February 2011, LJN: BP6121 (*Party for the Animals v NOS*), District Court of Northern Netherlands 25 November 2015, ECLI:NL:RBNNE:2015:5428 (*X v EO*) and Vزر. Amsterdam District Court 28 February 2017, ECLI:NL:RBAMS:2017:1151 (*Forum for Democracy/NOS*), Appeal Amsterdam District Court 27 November 2020, ECLI:NL:RBAMS:2020:6022 (*Hema/AVROTROS*).

³³ Amsterdam District Court, 27 November 2020, ECLI:NL:RBAMS:2020:6022 (*Hema v AVROTROS*), paras. 4.4 and 4.5.

³⁴ European Court of Human Rights, 26 April 1979, NJ 1980, 146 (*Sunday Times*).

are irrelevant to your Court's (possible) assessment of lawfulness, as will be explained below.

Bordeaux Code: law of conduct

31. The reliance placed by [REDACTED] on the 'Bordeaux Convention' (i.e. the Bordeaux Code) is unfounded. The Bordeaux Code is a unilateral declaration issued in 1954 by *the International Federation of Journalists*. It is an internal code of conduct with no external effect. The Bordeaux Code is one of the principles underpinning the Guidelines for Journalism³⁵ and is therefore part of the complaints procedure before the Press Council ('RvdJ').³⁶ The RvdJ assesses cases against journalistic standards of conduct and determines whether there has been journalistic (lack of) diligence. The court assesses cases against the law, treaties and case law and determines whether an act is (un)lawful.³⁷

The NOS's 'mission statement'

32. As regards the NOS, its *mission statement* is likewise irrelevant to the assessment of whether its publication(s) are unlawful. Under Article 2:34a of the Media Act ("Mw"), the NOS has a statutory duty to report on facts it deems newsworthy. The ECHR draws a clear line when it comes to the broad journalistic freedoms of 'public service broadcasters'. Even where these 'public service broadcasters' operate under an obligation to provide pluralistic and/or objective reporting:

"The Supervisory Board's decision correctly pointed out that the weight to be given to this information was a matter to be assessed, in principle, by the responsible journalists. Even considering that the news item in question concerned the ORF itself and its status under Austrian broadcasting legislation, the Commission is satisfied that this element did not improperly influence the manner of reporting. Nor does the Commission find any indication that the manner of reporting was affected by inappropriate considerations relating to the fact that one of the successful applicants was Mr Haider, an opposition leader who had himself issued a press release on this matter."³⁸

and

The Court reiterates that the weight to be given to a piece of information "is a matter to be assessed, in principle, by the responsible journalists" (see Jörg Haider v. Austria, no. 25060/94, Commission decision of 18 October 1995, DR 83, p. 66), and that journalists and news editors enjoyed, under Article 10 of the Convention, a wide margin of discretion as to how to comment on political matters. The applicants did not sufficiently explain how it was possible, on the basis of the evidence and information available and in the absence of complaints of undue pressure from the journalists themselves, to distinguish between Government-induced propaganda and genuine political journalism and/or routine reporting on the activities of State officials (see, by contrast, Saliyev v. Russia, no. 35016/03, § 68, 21 October 2010)"³⁹

³⁵ <https://www.rvdj.nl/leidraad>.

³⁶ See <https://www.rvdj.nl/over-de-raad>. De Telegraaf did not join these proceedings.

³⁷ Supreme Court 8 April 2011, LJN BP6165, NJ 2011/449, with commentary by E.J. Dommering (*Pretium/Tros*); Amsterdam District Court, 7 March 2012, ECLI:NL:RBAMS:2012:BV9330 (*accountant RDM/Quote*), para. 4.7. See also, conversely, the Press Council, 25 June 2002, RvdJ 2002/23.

³⁸ ECHR 18 October 1995, no. 25060/94 (*Haider v. Austria*), p. 66.

³⁹ ECHR 19 June 2012, no. 29400/05 (*Communist Party and Others v. Russia*), para. 120.

33. It is also clear from established Dutch case law that the NOS's statutory remit does not detract from its rights to report, under its own editorial control, on issues affecting society.

“Article 2:34a of the Media Act stipulates that the NOS is tasked with providing media content for the national public media service in the fields of news, sport and events, which are particularly suited to joint provision. According to the Explanatory Memorandum to the Media Act, the NOS can only fulfil its remit if it appeals to and reaches various sections of the Dutch public (the term ‘eight’ refers to pluralism). Above all, the NOS is accorded a wide degree of freedom within the framework of the Media Act with regard to the topics it wishes to cover in its radio and television programmes, and the manner in which it does so.”

34. The Amsterdam District Court considered, whilst explicitly recognising the NOS's broad editorial freedom, that the NOS only oversteps the boundaries of free reporting if it makes unreasonable editorial decisions and thereby abuses its statutory remit.

“In the light of the above considerations and within the framework of the Media Act, the NOS is entitled to a wide degree of freedom with regard to the topics it wishes to cover in its radio and television programmes and the manner in which it wishes to do so. The NOS only acts unlawfully if, in doing so, it makes choices that could not reasonably have been made and thereby abuses that freedom.”⁴⁰

35. The correct legal framework will be applied below to the objections raised by Minks et al.

D.iii. Application of the correct legal framework

General considerations

36. The legal framework set out above demonstrates the broad discretion enjoyed by the NOS and De Telegraaf to decide for themselves which news they cover, in what form they do so, and what tone they adopt in doing so. There is no public interest, nor any legal basis, that can compel the media to report on specific facts. There is no ‘must-carry’ obligation in the context of (European) political reporting.
37. The principles misapplied by [REDACTED], such as the Bordeaux Code and the NOS's mission statement, are used as a broad basis for asserting that [REDACTED] consider the NOS and De Telegraaf to have engaged in improper journalism. The writ of summons is nothing more than a string of personal criticisms, followed by the hasty conclusion that ‘therefore’ there is ‘obviously’ a case of censorship and unlawful conduct on the part of the NOS and De Telegraaf.⁴¹ This mere assertion, combined with just one (!) publication from the NOS submitted as evidence and a handful of unelaborated publications from De Telegraaf⁴² containing neutral reporting on the coronavirus crisis, is wholly insufficient to conclude that there has been an unlawful form of editorial conduct over a period of two years. Let alone that this would constitute sufficient evidence

⁴⁰ Amsterdam District Court, 28 February 2011, ECLI:NL:RBAMS:2011:BP6121 (NOS/PvDD), paragraph 4.2.

⁴¹ See, by way of illustration, the writ of summons, paragraphs 164, 175, 181.

⁴² Of the hundreds of reports by the NOS (see <https://nos.nl/zoeken?q=corona&page=1>) and De Telegraaf (see <https://www.telegraaf.nl/zoeken/corona>) during the coronavirus crisis.

regarding the assertion that there was 'deliberate misleading of the Dutch public' by the NOS and De Telegraaf, as forms the basis of the claim by [REDACTED] under I.

38. In addition to being unfounded, the claims of [REDACTED] are thus deemed to be (entirely) insufficiently substantiated. On this basis, it is sufficient for the NOS and De Telegraaf to contest the criticism levelled by [REDACTED].

Re (i) the tone of the reporting

39. With regard to the tone of the reporting by the NOS and De Telegraaf, they refer, first and foremost, to the factual background as set out in the State's Statement of Defence. The NOS and De Telegraaf reported on facts presented by the Health Council of the Netherlands, foreign correspondents, the RIVM and (foreign) government bodies. In short, there was a global pandemic recognised by the WHO that posed a threat to public health. Any instances where the reporting by the NOS and De Telegraaf may have adopted an urgent and cautionary tone (which [REDACTED] fail to specify) were therefore justified.

40. Secondly, the case law cited shows that it is up to the NOS and De Telegraaf to decide what tone to adopt in their reporting. The fact that [REDACTED] themselves interpreted this tone as alarmist does not alter this. As regards the content of news article headlines, it goes without saying that these must be read in the context of the reporting and that a media outlet has far-reaching discretion to draw the readership's attention to a publication by using a sensational headline.⁴³

Re ii and iii) the content of the reporting

41. The content of the reporting by the NOS and De Telegraaf was in line with the general, global scientific consensus regarding (the fight against) Covid-19. In this context, reference is made to chapters 1–6 of the State's Statement of Grounds. The reporting on the Covid-19 pandemic was therefore sufficiently supported by the facts, which illustrates the legitimacy of the reporting by the NOS and De Telegraaf.

42. Secondly, it is not for [REDACTED] to determine which facts are reported by the NOS and De Telegraaf. The fact that [REDACTED] became aware of the European hearings they cited, the repeated views of controversial politicians and the conspiracy rhetoric used in the writ in a different manner shows that there was no need for [REDACTED] to obtain this information via the NOS and De Telegraaf. The NOS and De Telegraaf do not have a news monopoly. Nor is it for [REDACTED] to determine who should be consulted as 'experts' by the NOS and De Telegraaf in their reporting.

⁴³ See, inter alia, ECHR 1 June 2010, no. 16023/07 (*Suárez v. Spain*) and ECHR 10 November 2015 (*Couderc and Hachette Filipacchi Associés v. France*), Mediaforum 2016/10, no. 3, with commentary by W.F. Korthals Altes.

43. Thirdly, it should be noted that, with regard to the articles submitted (Exhibits 46 and 52), the NOS and De Telegraaf primarily acted as messengers in relation to information originating from another source. That [REDACTED] acknowledge the messenger role of the NOS and De Telegraaf is also evident from the writ of summons:

“Van Cann slavishly followed the official narrative as imposed worldwide by the WHO and uncritically adopted by all the defendants”⁴⁴and

“[...] which was uncritically reproduced by the NOS from international news agencies and other sources”⁴⁵

44. On the basis of this role as messengers, it cannot be asserted without further explanation or substantiation that the NOS and De Telegraaf are liable for conveying information originating from reliable sources, such as scientifically recognised bodies and governments worldwide.⁴⁶
45. Finally, neither the writ of summons nor the evidence submitted by [REDACTED] shows why the publications by the NOS and De Telegraaf that were submitted are not supported by the facts. Furthermore, no justification is provided as to why the experts quoted by the NOS and De Telegraaf are not competent,⁴⁷ let alone why the NOS and De Telegraaf could be held liable for this. The same applies to the information taken over and cited by the NOS and De Telegraaf from recognised bodies or press agencies. [REDACTED] rely exclusively on a contradictory, delusional and suggestive narrative concerning a so-called ‘Great Reset’ initiated by the *World Economic Forum*, ‘toxic’ vaccinations and/or the *Pfizer papers* and their incorrect interpretation thereof.⁴⁸ The NOS and De Telegraaf cannot be compelled to report on facts which they do not consider to be of significance.
46. Indeed, had they presented the aforementioned topics as facts, the NOS and De Telegraaf might very well have acted in breach of journalistic codes or social decency.

Needless to say, the NOS acts in accordance with its statutory remit

47. With regard to the NOS, it can be argued that, in line with the above arguments, it has lawfully exercised its editorial freedoms. Nevertheless, the NOS will briefly address the arguments put forward by [REDACTED] in the context of its *mission statement* and the underlying obligations under Article 2:34a of the Dutch Civil Code.

⁴⁴ Summons, paragraph 160.

⁴⁵ Summons, paragraph 162.

⁴⁶ Amsterdam District Court, 15 November 2023, ECLI:NL:RBAMS:2023:7180 (*X/BIND et al.*), paragraph 4.22.

⁴⁷ In the writ of summons, Minks et al. do not in any way specify which NOS experts were wrongly appointed, nor what ‘false’ information they are alleged to have disseminated. With regard to *De Telegraaf*, the only individuals mentioned are Ronald Plasterk and Marianne Zwagerman, who – in so many words – did not go far enough in their conspiracy rhetoric. Without further explanation of the ‘falsehoods’ allegedly propagated by experts at the NOS and De Telegraaf, both the NOS and De Telegraaf can simply maintain that they did indeed give a voice to reputable experts during the coronavirus crisis.

⁴⁸ <https://nos.nl/nieuwsuur/collectie/13903/artikel/2438923-bronnen-bij-ophef-over-de-pfizer-papers>.

48. The evidence submitted by [REDACTED] does not show that the NOS acted in breach of its obligations under Article 2:34a of the Dutch Civil Code, let alone that there were deliberately unreasonable editorial choices that led to an abuse of its freedom of the press. As stated, the NOS's reporting is grounded in the scientific consensus surrounding the coronavirus crisis; it has, in particular, acted as a messenger and enjoys far-reaching editorial freedom under European and Dutch case law. [REDACTED] al. argue, above all, that the NOS's news coverage cannot be regarded as objective and pluralistic because it does not align with the conspiracy rhetoric in circulation.
49. For the record, the NOS cannot be accused of having reported one-sidedly during the COVID-19 pandemic. **Exhibits 3 to 22** consist of NOS publications which show that it also covered criticism of the State's coronavirus policy and gave attention to alternative COVID-19 vaccinations and treatments.

D.iv. Conclusion on the subsidiary defence

50. Should this Court find that Van Cann and Jansen can be held liable for the reporting by the NOS and De Telegraaf, it follows, in the alternative, that the NOS and De Telegraaf enjoy far-reaching protection with regard to freedom of the press and the exercise of editorial independence. This freedom is also accorded to Van Cann and Jansen in their capacity as editors-in-chief.
51. The allegations that the NOS (Van Cann) and De Telegraaf (Jansen) exercised editorial control unlawfully are not substantiated in any way by [REDACTED] or at least find no basis in the alleged facts, the law or case law. The reporting by the NOS and De Telegraaf was supported by the scientific consensus and was carried out, in particular, in the context of a (lawful) role as messengers. Finally, the NOS reported in accordance with its obligations under Article 2:34a of the Media Act by providing a pluralistic and objective account of the coronavirus crisis.
52. The foregoing leads to the conclusion that the claims of [REDACTED] must also be dismissed on subsidiary grounds due to the absence of any unlawful acts on the part of the NOS and De Telegraaf.

E. FURTHER IN THE ALTERNATIVE: DEFENCE AGAINST THE (REST OF THE) CLAIMS

53. In the unlikely event that this Court were to rule that the reporting by the NOS and *De Telegraaf* on the Covid-19 pandemic was unlawful and that Van Cann and Jansen are personally liable for this reporting, Van Cann and Jansen put forward the following further defence in the alternative.

E.i. No evidence of the alleged intent or prior knowledge

54. [REDACTED] allege that they have suffered personal injury because they were allegedly deliberately induced by Van Cann and Jansen to receive a Covid-19 vaccination, which Van Cann and Jansen allegedly knew to be neither safe nor effective.⁴⁹
55. The arguments put forward by [REDACTED] in these proceedings consist solely of unsubstantiated allegations. [REDACTED] have in no way demonstrated the existence of a 'global conspiracy' or an associated 'cover-up'. Above all, the available evidence does not show that Van Cann and Jansen 'deliberately' induced [REDACTED] to receive a COVID-19 vaccination and/or that Van Cann and Jansen knew that the COVID-19 vaccine would be unsafe or ineffective.
56. The claim under I brought by [REDACTED] is therefore, a priori, not admissible against Van Cann and Jansen, even if this Court were to find Van Cann and Jansen personally liable for the unlawful reporting by the NOS and De Telegraaf.

E.ii. No damage and/or causation

57. With regard to the alleged damage suffered by [REDACTED] and the alleged causation, Van Cann and Jansen concur with the defence put forward by the State in Chapter 7 of the State's Statement of Defence.
58. In short, there is a complete lack of evidence on the part of [REDACTED] to substantiate the alleged damage suffered. For instance, there is no evidence that [REDACTED] have been vaccinated at all, nor which vaccine they received. Furthermore, the frankly biased 'medical statements' from [REDACTED] originate from occupational health doctor and anti-Covid activist Alexander van Walraven⁵⁰, which in itself constitutes, at the very least, a dubious basis for the alleged physical injury. Nor is it plausible that [REDACTED] suffered harm as a result of receiving the Covid-19 vaccinations: after all, the authorised vaccines have been shown to be safe on a large scale; at the very least, there is no evidence of the 'genocide' against the Dutch population through 'unsafe' vaccines, as predicted by [REDACTED]
59. Specifically with regard to the role of Van Cann and/or Jansen, it should also be noted that [REDACTED] do not explain how the 'serious physical injury' relates to the role of Van Cann and Jansen as editors-in-chief of the NOS and De Telegraaf. Thus, it remains unaddressed and unproven which specific articles [REDACTED] actually read in their individual cases, and which articles led to them – each in their own right – being compelled to receive a vaccination without reading the package leaflet.
60. It is also noteworthy that [REDACTED] refer in particular to information from October 2022, which is said to demonstrate that the Covid-19 vaccines are dangerous and which the NOS and De Telegraaf allegedly failed to publish without justification (Exhibits 48–50). Although

⁴⁹ Summons, claim under I.

⁵⁰ See *Manifesto by Alexander van Walraven to all doctors in the Netherlands* via <https://www.youtube.com/watch?v=sOPfIZOaqmU>. And <https://www.spoor3.com/alexander-van-walraven-bedrijfsarts/>.

Although [REDACTED] have not provided evidence of their own vaccinations, the Covid-19 vaccination campaign took place largely before October 2022.⁵¹ It is therefore plausible from the outset that [REDACTED] were also vaccinated before October 2022. It can be inferred from this that the failure of the NOS and De Telegraaf to report on the events of October 2022 could not have played a role in [REDACTED] decision to take the Covid-19 vaccine.

E.iii. Conclusion on the further subsidiary defence

61. The very wording suggesting that Van Cann and Jansen acted 'deliberately' to cover up the matter and were 'aware' of the 'toxic' Covid-19 vaccination means that Claim I brought by [REDACTED] cannot be upheld. After all, the evidence submitted by [REDACTED] et al. does not demonstrate any malicious intent or prior knowledge regarding the Covid-19 vaccinations. Furthermore, [REDACTED] have failed to demonstrate that they actually suffered personal injury, having submitted insufficient evidence. [REDACTED] have also failed to establish any causal link between the publications by the NOS and De Telegraaf and the damage they have suffered, let alone – as [REDACTED] claim – that there is a *conditio sine qua non* link.
62. On the basis of (also) the more subsidiary defence, the claims of [REDACTED] must be dismissed in their entirety.

F. EVIDENCE

63. Van Cann and Jansen have at their disposal exhibits 1 to 22 and any further supplementary exhibits to be submitted in due course to demonstrate the accuracy of the assertions contested by Minks et al.

G. OFFER OF EVIDENCE

64. In so far as this Court finds that Van Cann and Jansen bear any burden of proof, Van Cann and Jansen offer to prove these assertions by calling witnesses.

IN CONCLUSION

- I. To dismiss the claims of [REDACTED], either by declaring their claims inadmissible or by denying them their claims;
- II. That [REDACTED] be ordered jointly and severally to pay the costs of the proceedings, plus subsequent costs amounting to EUR 173 without service of process, increased by EUR 82 in the event of service of process, all to be paid within fourteen days of the date of the judgment, and – in the event that payment of the (subsequent) costs is not made within the specified period – to be increased by statutory interest on the (subsequent) costs, calculated from the said period for payment,

⁵¹ <https://www.rijksoverheid.nl/documenten/publicaties/2020/12/17/tijdslijn-start-coronavaccinaties>.

AC&R

all of the foregoing, to the extent permitted by law, being provisionally enforceable.



Solicitors