
WRIT OF SUMMONS

(This draft is incomplete and is to be finalized with claims based on applicable national law. It merely contains what we consider relevant (European and international) aspects of our own writ of summons.)

Year 2021,
At the request of:

Council:

I, the undersigned, , judicial officer,

HAVE SERVED WRIT OF SUMMONS ON :

where I was and spoke with
so declared who (not) signs for receipt of the copy

To appear on {date} at {hour}, sitting in the courthouse at
hear and determine the relief sought by this application :

I. INTRODUCTION TO RADIATION STANDARDS

1.

On 29 April 2001, the federal government issued for the first time a 'Royal Decree regulating transmission masts for electromagnetic waves between 10 MHz and 10 GHz'. This decree was annulled by the Council of State on 15 November 2004, because the amended draft text had not been submitted to the Supreme Health Council for its opinion.

On 10 August 2005, the federal government issued a new royal decree with an almost identical content. That RD was in turn annulled by the Council of State on 20 May 2009, because the regions and not the federal government are competent for the protection of the population against electromagnetic radiation.

In its judgment of 15 January 2009, the Constitutional Court ruled that the regional competence under Article 6(1) of the Special Law of 8 August 1980 includes the power to take measures for the prevention and limitation of the risks linked to non-ionising radiation, including the limitation of human exposure to the risk of such radiation spreading through the environment.

2.

As a result of this judgment, the regions had to issue their own radiation standards.

- In the Brussels Capital Region (BCR), an ordinance on the protection of the environment against the possible harmful effects and nuisance of non-ionising radiation has been in force since 1 March 2007, which prescribes 3 V/m for 900 MHz as the global emission standard.

By Ordinance of 3 April 2014, BCR amended the Ordinance of 1 March 2007 on the protection of the environment against the possible harmful effects and nuisance of non-ionising radiation. (*Official Gazette* 30 April 2014)

Article 3, §1 of the current Ordinance stipulates that in all places accessible to the public, the power density of non-ionising radiation must never exceed the standard of 0.096 W/m² (as an indication, 6 V/m) at a reference frequency of 900 MHz.

- In the Flemish Region, the standards were established by the Flemish Government Decision of 19 November 2010 amending the Decision of the Flemish Government of 1 June 1995 containing general and sectoral provisions on environmental health with regard to the standardisation of fixed and temporarily installed transmitter antennae for electromagnetic waves between 10 MHz and 10 GHz (*Official Gazette* 13 January 2011). The Decree of 19 November 2010 comes into force on 23 January 2011.

The decision sets the maximum electric field at 20.6 V/m, which is the same level as the old federal standard. Each transmitting antenna can contribute up to 3 V/m to this general field.

This Decision applies to "transmitting antennae". A transmission antenna is any element that transmits electromagnetic waves at a frequency between 10 MHz and 10 GHz. Mobile phone masts, radio and TV aerials, amateur radio aerials, those of the emergency services, etc. are therefore covered by this Decree. Mobile devices, such as mobile phones, are not covered by the regulation. Federal product standards apply to these.

This Decree was amended by the Decision of the Flemish Government of 16 December 2011 amending various provisions of the Decision of the Flemish Government of 1 June 1995 containing general and sectoral provisions on environmental health and the Decision of the Flemish Government of 19 November 2010 concerning the standardisation of fixed and temporarily installed transmitter antennae for electromagnetic waves between 10 MHz and 10 GHz (*Official Gazette* 13 January 2012).

3.

The current standards of both the Flemish Region and the Brussels Capital Region date back to a time when wireless communication was brief and mainly intended for emergencies. Therefore, organisations such as the International Commission on Non-Ionizing Radiation Protection (ICNIRP) developed safety standards based on short-term exposure of 6 or 30 minutes.

Compared to the 1990s, the use of wireless technology in society has increased exponentially.

On a personal level, mobile phones are no longer used for short-term emergencies. Unwittingly, smartphones, mobile phones and other wireless applications are becoming an important part of everyday life for more and more citizens.

In addition, government and industry are increasingly using industrial wireless applications such as wireless digital meters, smart street lights and so on.

In order to protect the population and the environment, from the outset organisations such as the ICNIRP have been focusing on thermal effects under laboratory conditions in developing exposure limits. Other non-thermal biological reactions which may occur in living organisms far below the standards thus established were, and still are, not taken into account. This is also the case for the exposure limits of the Flanders and Brussels Capital Region.

All of this has led to a health crisis and a rapidly growing body of alarming scientific evidence - see numbers 5 and 6 - pointing to a huge cost to the welfare and health of humans, plants, animals and the environment.

4.

Thus, current regulations allow a radiation intensity which is harmful and contrary to higher legal norms. The plaintiffs ask for the court to establish the illegality of those regulations.

The plaintiffs further request that the court impose on the defendants limit values that take the health issues suffered by the plaintiffs even in the short term into account and that protect all people, plants and animals.

The plaintiffs also call for a stricter application of the precautionary principle so that policy takes due account of all the biological effects, including at non-thermal levels, in the short, medium and long term.

More concretely the plaintiffs ask for Flanders and Brussels to drastically tighten exposure limits in line with the results of incremental independent and peer-reviewed national and international scientific research. In that regard the plaintiffs are asking for a cumulative exposure limit of maximum 0.6 V/m.

II. HEALTH RISKS AND DAMAGE TO THE ENVIRONMENT

A. Human damages and health risks

5.

The following studies, among others, show that wireless technology does not just lead to negative health effects in the short term. In the long run, excessive radiation levels cause health damage and health risks of all kinds in humans.

a. Reflex study 2002-2004

Major two-year study commissioned by the European Union and led by German Prof. Franz Adlkofer. The results show that even at a SAR value of 1.3 W/kg, representative of many mobile phones, significant biological damage is caused in human cells and DNA.

b. Cerenat study 2004-2006

French study showing a statistical link between heavy mobile phone use and brain tumours.

c. Ramazzini study (2005-2015)

The Italian Ramazzini Institute studied Sprague-Dawley rats for carcinogenic effects of long-term exposure to 1.8 GHz GSM radiation. It is the largest long-term study ever. The study shows that mobile phone radiation causes brain and heart tumours, particularly in male rats.

d. Anghileri et.al. (2006)

This study builds on scientific research from the 1970s (Czerski 1975). A group of mice was exposed to RF radiation of 800 MHz for one hour per week for four months. Compared to a control group not exposed to RF radiation, the radiation caused earlier general infiltration of lymphocyte cells, the

formation of lymphoid ascites and extra-nodal tumours of various histological types, as well as increased premature mortality.

e. Bio-Initiative 2012, updated in 2020

A meta-study of 200 then-available studies on the effect of electromagnetic fields (EMF) on free radicals and the oxidative cell stress it induces. The study showed that there were statistically relevant effects in 180 of the 200 studies consulted. That is a percentage of 90%.

An updated version of this study was released in 2020, examining a total of 1067 relevant studies. Of these, 786 studies point to biological effects of RF radiation.

f. Birks et al 2017

Link between mobile phone use during pregnancy and behavioural disorders of children after birth.

g. National Toxicology Programme (NTP) - 2018 Study

Two-year study by the US government on rats and mice. The study shows a clear link between 2G, 3G and an increased incidence of malignant tumours and DNA damage in mostly male mice and rats.

h. Metastudy Martin Pall 2019 (2nd edition)

A meta-study bringing together and discussing 197 studies showing that EMF disturbs our cellular metabolism, especially the Voltage Gated Calcium Channels (VGCCs) of our cells.¹

i. Other Martin Pall studies (various dates)

Database of Professor Pall's publications on the radiation effects of non-ionising EMF, in particular weak magnetic fields, on chronic inflammation and also the VGCC mechanism.

j. Panagopoulos 2019

Meta-study showing DNA and other damage caused by the use of mobile telephony and other forms of man-made EMF. What is remarkable about this meta-study is that it examined all generations of mobile telephony and all forms of wireless data communication. The research shows that in addition to signal strength, the modulation of the signal plays a role. The more modulated the signal, the more harmful its effects.

k. Epidemiological studies

Large-scale study of people living near transmission masts asking about possible health complaints as a result of increased exposure to electromagnetic fields.

¹ Voltage-controlled calcium channels.

B. Damage and health risks to plants, animals and the environment

6.

There are also studies pointing to damage to the environment, plants and animals:

a. Mark Broomhall 2000-2015

Electromagnetic fields affect biodiversity. Over a period of 15 years (2000-2015), Australian botanist Mark Broomhall conducted research for UNESCO into the influence of transmission masts on the Mt. Nardi nature reserve in Australia.

Broomhall found that the numbers and species of animals were in sharp decline: 3 bat species have become rare or have disappeared, 11 bird species have disappeared, 11 migratory bird species have disappeared, 86 bird species show unnatural behaviour, 66 once common bird species are now rare or have disappeared, moths, butterflies, ants and bees have become rare, insect populations have been reduced by 80-90%.

b. Ulrich Warneke: Bienen, Vögel und Menschen Die Zerstörung der natur durch, Electrosmog 2008

Contact with the earth's natural electromagnetic field is severely disrupted for all living things by an unprecedented intensity (10^{12}) of man-made electromagnetic fields in comparison to natural background radiation. This disrupts the orientation and communication of animals and the natural functioning of all biological processes in plants, humans and animals.

c. Daniel Fabre 2011

Study investigating the influence of high frequency radiation on honeybee behaviour. Electromagnetic radiation from mobile phones disrupts communication between bees and the normal interaction of the bee population.

d. Balmori study 2015

Exposure to current levels of radiation in cities and in the vicinity of mobile phone masts affects the functioning of the receptors for the earth's magnetic fields that birds and insects use for orientation. This can have serious consequences for migrating birds and insects, not only in the vicinity of cities but also in protected nature areas.

e. Yakymenko et al. 2015

Meta-study of 100 peer-reviewed studies. 93 of the 100 studies point to molecular effects of low-intensity radio waves, including significant activation of oxidative cell stress and DNA damage. This activation gives rise to cancer and other pathogenic disturbances.

f. Shende et al. 2015

Study investigating the influence of high-frequency radiation (telecom) on the house sparrow population in cities. A monthly comparative measurement of the house sparrow population in urban and rural areas shows a significant monthly decline in the number of house sparrows in urban areas, where there is much more high-frequency radiation, than in more rural areas with less radiation.

g. Waldman et al. 2016

Important 10-year German study on the damaging effect of EMF on trees. Trees that were irradiated with less than 0.14 V/m (50 µW/m²) showed remarkably less harmful effects of EMF than trees exposed to higher radiation values.

h. Halgamuge 2017

Meta-study of 45 peer-reviewed studies on non-thermal effects of EMF on 29 plant species. Of the studies reviewed, 89.9% indicated physiological and morphological influences. The research also shows that the plants are more sensitive to certain frequency bands. These are the 800-1500 MHz band, 1500-2400 MHz, 3500-8000 MHz.

i. Thielens et al 2018

Influence of EMF fields from 2-120 GHz on insects. The study indicates temperature increases in insects when using higher EMF frequencies. Frequencies higher than 6 GHz are especially harmful to insects smaller than 1 cm. 5G and 6G technologies want to make use of such high frequencies. These frequencies are currently licence-free.

III. APPLICANTS HAVE A RIGHT TO STAND

7.

The applicants have the requisite interest in bringing these proceedings. Independent of the merits of a case, a plaintiff relying on a subjective right automatically has an interest. The existence and scope of an invoked subjective right rather belong to the merits of the case.

Current high man-made electromagnetic fields cause an impairment of the well-being and the health of the plaintiffs.

The first applicants are electro hypersensitive (EHS). People with EHS are hypersensitive to electromagnetic radiation or fields. According to the 'Mobile phone and health' leaflet issued by the Federal Public Health Service, it is a 'set of physical complaints that people spontaneously attribute to exposure to electromagnetic fields'. The complaints are: sleeping problems, headaches, irritation, stress, nervousness, fatigue, lack of energy, concentration and memory problems (up to the

complete loss of all functions), dizziness, palpitations, and so on. Each patient suffers from several symptoms, although these differ from person to person. The symptoms occur at levels well below current exposure limits.

The more wireless technologies are introduced, the more electro hypersensitivity comes to the fore. According to conservative estimates, by now 1.5 to 3% or 172,000 to 344,000 of the Belgian population are more or less electro hypersensitive.

This is not a new phenomenon. Mainly among military personnel working on radars it has been known since the 1950s. At that time, it was called the "microwave syndrome".

The issue has come a long way since then, as described in the 'Proposed resolution on the recognition of electro hypersensitivity', submitted to the Senate on 8 October 2019. (Senate, 2019-2020, 7-88/1, Proposed resolution of 8 October 2019 on the recognition of electro hypersensitivity)

As a result of this resolution, the Senate held hearings in March and November 2020. Due to covid further hearings were postponed. One of the speakers at the hearings was French professor Dominique Belpomme, a specialist in the relationship between electromagnetic radiation and cancer.

On 8 March 2021 the Swedish professor Olle Johansson took the floor. Professor Johansson is a world-wide authority on the health effects of EMF. According to him, EHS is a functional disease caused by excessive exposure to EM radiation toxicity. By now thousands of studies confirm adverse health effects at non-thermal exposure levels.

8.

In addition to electro hypersensitivity man-made electromagnetic fields cause general health risks.

The health risks of electromagnetic radiation have been repeatedly and sufficiently proven.

As of 2011 radiofrequency radiation is classified as a possible human carcinogen (group 2B).

The International Agency for Research on Cancer (IARC) is part of the World Health Organisation (WHO). Based on all the scientific information available, IARC makes a classification of carcinogenicity. In doing so it uses five categories:

- Group 1: carcinogenic
- Group 2A: probably carcinogenic

- Group 2B: possibly carcinogenic
- Group 3: not classifiable due to insufficient data
- Group 4: probably not carcinogenic

It is clear that high-frequency electromagnetic radiation is not classified in group 3 (insufficient data) or group 4 (probably not carcinogenic).

On top of this, May 11th 2015, a group of 198 scientists (now 258) addressed an international appeal to the United Nations, its member states and the World Health Organisation WHO (<https://www.emfscientist.org>). They warn that electromagnetic radiation affects DNA and poses a huge risk to our future health. For example, they have observed a tripling of brain tumours in children. They argue that current standards are far too lenient and that the time for action is has long passed.

Even if the defendants continue to mislead the public on all of this, the plaintiffs to notice that official government communication is becoming more cautious. A good example is what we read on the website of the Flemish Government:

*"Standards for exposure to radiation have been set. At present, there is no evidence that electromagnetic radiation is harmful to health as long as these standards are not exceeded.
Research into radiation is taking place, but the decisions are not clear-cut. Studies are often carried out on adults and in the short term, so the long-term effects on children are not known. What is known is that children belong to the higher risk group because their brains are still developing."*

This shows that only short-term studies in adults are considered and that studies on chronic exposure and/or in children or more sensitive groups (elderly, chronically ill, electro-hypersensitive people) are ignored.

The Flemish government consistently ignores research, such as cited here above, pointing to biological damage at non-thermal exposure levels.

9.

The applicants thus take the view that current exposure limits give rise, individually and cumulatively, to an infringement of their subjective rights, including, for example

- Art. 23, paragraph 3, 2° (right to health protection) and Art. 23, 3rd paragraph, 4° (right to protection of a healthy environment) of the Belgian Constitution
- ECHR: Art. 2 (Right to life); Art. 3 (Prohibition of torture); Art. 8 (Right to respect for private and family life);
- Civil Code: Article 1382 (Right to compensation for (future) damage resulting from a tort) and Article 544 (violation of the right to property).

- EU: the precautionary principle in Article 191 TFEU as well as Articles 2(1), 3, 4, 6, 7 and 8 of the Charter of Fundamental Rights

Some of these fundamental rights are absolute and not relative. This means that the government must guarantee them at all times and in their entirety. Absolute fundamental rights cannot be balanced as against other policy considerations.

10.

Article 3 of the BBSB vzw statutes states:

"The aim of the non-profit association is to limit the harmful impact on the environment, people, plants and animals and to safeguard the constitutional and other subjective rights of citizens who are affected by current and future wireless technology, such as 5G, which propagates electromagnetic fields, including the applicable exposure limits for this technology. Other wireless technologies, both current and future, are also covered. An example is Lifi or other techniques that use light as a carrier wave."

In order to achieve this objective, the NPO can take the following actions:

"(...) The association may also defend and achieve its objectives in court. It can take legal action both in response to local events and in response to regulations of any kind issued by the government. The Association may also take legal action for the compensation and cessation of damage caused to the moral interests of its members, insofar as these are closely related to the interests of the Association itself. The association takes into account the procedure and the competence of the various courts as laid down in laws, decrees and treaties."

There can be no doubt that this procedure fits in with the social objective of BBSB. After all, the purpose of this procedure is to prevent the continued propagation of dangerous man-made electromagnetic radiation fields by having an injunction imposed on the defendants to reduce radiation exposure limits.

IV. ON THE MERITS OF THE CASE

A. Principles

11.

Human rights violations constitute an independent legal basis for the applicants' claims. This kind of legal basis distinguishes itself from civil liability with classic elements of liability, cause and damage.

12.

The prevention and precautionary principles constitute autonomous legal grounds justifying the applicants' claims. (...)

(...)

C. Other legal bases

(...)

20.

According to Article 191(2) of the Treaty on the Functioning of the European Union, Union policy on the environment is based, inter alia, on the **precautionary principle**. Article 191(2) does not define in detail what that provision means, but as interpreted by the case-law of the Court of Justice, it implies that, where there is uncertainty as to the existence or extent of risks to human health, protective measures may be taken without having to wait until the reality and seriousness of those risks have been fully demonstrated (Court of Justice, 9 September 2003, *Monsanto Agricoltura Italia and Others*, C-236/01, paragraph 111; 26 May 2005, *Codacons and Federconsumatori*, C-132/03, paragraph 61; 12 January 2006, *Agrarproduktion Staebelow*, C-504/04, paragraph 39; 10 April 2014, *Acino AG*, C-269/13, paragraph 57). However, while the Court of Justice has already ruled that the assessment of risk cannot be based on purely hypothetical considerations, it added that where the existence or extent of the alleged risk cannot be fully determined, because the results of studies are insufficient, inconclusive or imprecise, but actual damage to public health remains likely if the risk materialises, the precautionary principle justifies the adoption of restrictive measures (ECJ, 23 September 2003, *Commission v Denmark*, C-192/01, paragraphs 49 and 52; 28 January 2010, *Commission v France*, C-333/08, paragraph 93; 10 April 2014, *Acino AG*, C-269/13, paragraph 57).

In relevant policy documents Flanders and Brussels-Capital Region often refer to European law. They especially take into account Recommendation 1999/591/EC of the Council and Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 on the European Electronic Communications Code.

These documents are equally invalid.

The Council Recommendation dates from 1999 and focuses on the thermal effects of a 6 minutes exposure time. This is outdated and fails to take current scientific understanding into account.

Even so, this Recommendation still forms the scientific basis for the public health considerations set out in Directive 2018/1972. Also Directive 2018/1972 is thus based on outdated insights that no longer protect humans, plants, animals and the environment.

The applicants therefore consider that the European legislation in force infringes a number of primary legal principles of the European Union. In particular, they invoke the precautionary principle under Article 191 TFEU and Articles 2(1), 3, 4, 6, 7 and 8 of the Charter of Fundamental Rights. Consequently, in setting exposure limits the defendants can no longer rely on Recommendation 1999/519, Directive 2013/35/EU and all of the European legislation derived from these legal instruments.

21.

According to established case law of the European Court of Justice, national courts may review national legislation against European law (C-6/64, *Costa v. Enel*, ECLI:EU:C:1964:66). European law also takes precedence over national law. If national legal norms violate directly effective norms of European law, the court must align its interpretation of national law with European law. If this is not possible, the court must disregard infringing national law. Over the past decades the European Court of Justice has confirmed all of this numerous times.

In the well-known "Le Ski" judgment of 27 May 1971, the Court of Cassation translated the precedence of European law into the Belgian legal order. The judgment confirms the duty of Belgian judges to set aside national rules that conflict with directly applicable international legal standards.

In addition to European law, the E.V.R.M. is also, according to established Belgian case law, a directly effective treaty taking precedence over national law.

(...)

E. The defendant's negligence constitutes a tort

(...)

26.

The plaintiffs request that the defendants apply a cumulative radiation standard of 0.6 V/m (or lower) following the advice of the Supreme Health Council.

On 6 May 2011, the Council of Europe published a report on health risks associated with electromagnetic fields. It called for a reduction in exposure limits. The recommended exposure limit is 0.2 V/m. This is 100 $\mu\text{W}/\text{m}^2$ or about 100,000x (!) lower than the defendant's current exposure limit. (Council of Europe, *Doc. 12608*)

In 2012 the BioInitiative also proposed a much stricter exposure limit than is currently in force in Flanders and in the Brussels Capital Region (BioInitiative 2012, section 17: Key Scientific Evidence and Public Health Policy Recommendations). They propose a cumulative precautionary limit of 1000 $\mu\text{W}/\text{m}^2$ or 0.614 V/m outdoors.

V. SUBORDINATE: VIOLATION OF ARTICLE 13 OF THE EEC

27.

If it were to be held that it is not possible under Belgian law to order the defendants to reduce their current exposure limits, it would have to be concluded that the plaintiffs have no effective legal remedy to counter the violation of their rights on the basis of Articles 2 and 8 ECHR. This in itself constitutes a violation of Article 13 ECHR, which also has direct effect in the Belgian legal order. The only way to put an end to this violation is to impose on the defendants an order to adjust their exposure limits.

(...)

ON THESE GROUNDS,

(...)

Further rule that the Decision of the Flemish Government of 19 November 2010 amending the Decision of the Flemish Government of 1 June 1995 containing general and sectoral provisions on environmental health with regard to the standardisation of fixed and temporarily installed transmitter antennae for electromagnetic waves between 10 MHz and 10 GHz (*Official Gazette* 13 January 2011) is unlawful and must be disregarded.

Order the defendants to obtain the advice of the Supreme Health Council on radiation standards and exposure to radiation within one month after service of the judgment to be intervened, failing which the defendants will be liable to a penalty of € xxx/day with a maximum of € xxx.

Subsequently, to order the defendants to apply a cumulative radiation standard of 0.6 V/m (or lower) within four months after becoming aware of the advice of the Supreme Health Council, failing which the defendants will owe a penalty of € xxx/day with a maximum of € xxx.

Order the defendants to pay the costs of the proceedings, including the costs of the summons and the legal costs of the proceedings provisionally estimated at € xxx.

Authorise the provisional enforcement of this judgment within the meaning of xxx of the Judicial Code.

To rule that, where appropriate, an appeal against court judgment shall not have suspensory effect.