

The Netherlands partially liable for losses of Mothers of Srebrenica

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The Dutch State is liable for 30% of the losses suffered by the relatives of approx. 350 Muslim men. The men were made to leave the compound of Dutchbat on 13 July 1995 and were subsequently killed by Bosnian Serbs. By letting the men leave the compound unreservedly, they were deprived of a chance of survival. This has been ruled today by the Court of Appeal of The Hague. The Hague Court of Appeal has also ruled that the State is not liable for the actions of Dutchbat prior to the fall of Srebrenica, as those took place exclusively within the UN chain of command. In addition, the State is not liable for all refugees who had sought refuge in the safe area of Srebrenica and were later killed by the Bosnian Serbs.

Background

In March 1994, Dutchbat, the Dutch battalion, was sent to Srebrenica in Bosnia-Herzegovina under UN command to protect the Muslim enclave. Srebrenica was considered a “safe area”. Nonetheless, the Bosnian-Serb army surrounded the enclave, attacked it on 6 July 1995 and captured it on 11 July 1995. Dutchbat withdrew to the nearby compound. Thousands of refugees turned up there from Srebrenica. Dutchbat allowed more than 5,000 of the refugees on to the compound. Most of them were women and young children, but also approx. 350 men and boys. A much larger number of refugees stayed in the open air outside of the compound.

Conditions were terrible. It was very hot and there was too little water and food and there were insufficient sanitary facilities for all refugees. The UN and the Netherlands therefore took the decision to evacuate the refugees. On 12 July 1995, the Bosnian Serbs appeared with buses. There was a massive run of the refugees for the buses, with people being in danger of getting trampled. Dutchbat attempted to channel the chaos by forming groups of refugees and by forming a kind of “sluice” out of vehicles and a human chain towards the buses. During the walk through the “sluice”, the Bosnian Serbs picked out male refugees. According to them, the men were going to be screened for war crimes. Instead, they were killed by the Bosnian Serbs.

This case

Together with 10 women – all relatives of the men killed in July 1995 – the “Mothers of Srebrenica” Foundation have instituted legal proceedings against the UN and the Dutch State. They want compensation for the losses they have suffered as a consequence of the deaths of their loved ones. At an earlier stage, it was established that the Dutch court is not allowed to judge a claim against the UN (immunity). The legal proceedings against the Dutch State were subsequently continued. Concerning the actions of Dutchbat until the fall of Srebrenica, the Hague Court of Appeal has ruled today that the State had no control over those actions. The soldiers acted within the UN chain of command. The State is not liable for that.

After the fall of Srebrenica, there was a transitional period. The Dutch government started to involve itself in the withdrawal of Dutchbat and the evacuation of the refugees. This renders the State responsible for the actions of Dutchbat during the evacuation on 12 and 13 July 1995.

The Court of Appeal has ruled that, in the evening of 12 July 1995, Dutchbat knew there was a real risk that the male refugees would face inhuman treatments and executions. In view of the terrible situation on the ground, the evacuation itself was allowed to continue after that. This has saved the lives of thousands of women and children. However, Dutchbat was not allowed to form a “sluice” anymore, which made it easier for the Bosnian Serbs to separate the men. The Court of Appeal finds no justification in that the men would otherwise still have been separated and killed or that there would have been chaos again without a sluice. However, the Court of Appeal does not award compensation as the men would also have fallen into the hands of the Bosnian Serbs without the actions of Dutchbat.

The Hague Court of Appeal has also ruled that Dutchbat should have given the approx. 350 men who had sought refuge on the compound the choice to stay behind on the compound. Perhaps they would not have survived either in that case, because the Bosnian Serbs would have blocked access of relief supplies (water, food) or would have removed the men from the compound by force, but they would still have had a chance of survival in that case. The Court of Appeal estimates that chance to be 30%. The State is therefore liable for 30% of the losses suffered by the relatives.

The Court of Appeal ruling can be appealed to the Supreme Court.