

Civil-law settlement arrangement implementing the Supreme Court judgment of 19 July 2019 in the case of *The State of the Netherlands v. Stichting Mothers of Srebrenica*

The Minister of Defence and the Minister of Foreign Affairs have announced that the Committee¹ they have established will apply this arrangement to reach civil-law settlements to provide compensation for damage incurred by the surviving relatives of the deceased male refugees who were in the Dutchbat compound in Potočari in the late afternoon of 13 July 1995.

1 Introduction

The purpose of this settlement arrangement is to implement the judgment of 19 July 2019 of the Supreme Court of the Netherlands concerning the State's liability towards the surviving relatives of the deceased male refugees who had been in the Dutchbat compound in Potočari at the end of the afternoon on 13 July 1995. In its judgment the Supreme Court declared that the State acted wrongfully towards this group of male refugees (referred to below as 'victim(s)') and assessed the State's liability at 10% of the damage incurred by the surviving relatives as a result of the State's wrongful conduct.

This arrangement makes it possible to settle the compensation claims of the surviving relatives out of court by concluding settlement agreements with the State under private law. The arrangement sets out who is eligible for a settlement agreement and what conditions apply.

The Committee will decide how the arrangement will be implemented and lay down the chosen method in an implementation protocol.

Given the purely private-law nature of the claims that the surviving relatives have against the State and the decision to dispose of these claims by means of settlement agreements under civil law, this settlement arrangement has no basis in public law, nor is there any intention to create such a public-law basis.

2 Scope of application of the settlement arrangement

A settlement agreement and compensation under this arrangement are available to surviving relatives who:

- had a marital relationship with a victim at the time of the victim's death;
- are the child of a victim;
- are the parent of a victim;
- are the sibling of a victim.

Persons who belong to one of the categories described above may submit an application under this arrangement; eligibility to submit an application is not transferable and does not transfer by succession to heirs of persons in the above categories. However, if a person belongs to one of these categories dies after submitting an application to the Committee, if the application is granted a settlement agreement will be concluded with and compensation will be paid to the heir or, if there is more than one heir, the heir of the deceased applicant designated jointly by the heirs, on condition that proof of heirship is provided.

A cohabitation relationship that had been in existence for at least three years at the time of the victim's death will be equated with a marriage. A cohabitation relationship of less than three years will also be equated with marriage if a child was born of that relationship.

The Committee will act as it sees fit with respect to applications submitted in other cases.

¹ Government Gazette 35957 of 2 July 2020, Order establishing the Committee implementing the Srebrenica Civil-Law Settlement Arrangement (*Instellingsbesluit Commissie Uitvoering civielrechtelijke regeling Srebrenica*).

3 Conditions of eligibility for compensation

- a. The applicant must submit the following documentation when submitting his or her application:
- valid proof of identity containing at least his or her full name, place of residence and place and date of birth.
- b. In addition, the applicant must make a plausible case, stating reasons, that:
- the victim was in the compound at the end of the afternoon on 13 July 1995; and
 - the applicant belongs to one of the categories of surviving relatives described in section 2.

The applicant must submit all documents and evidence in writing in so far as this can reasonably be expected.

The Committee will assess whether a plausible case has been made for an application and decide whether to grant or deny the application. If necessary in the Committee's view, it can perform or commission further investigation of an application. The Committee will decide what to do in situations it considers to be unreasonable or unfair.

4 Compensation

If, in the opinion of the Committee, the applicant has made a plausible case that he or she satisfies the requirements and conditions set out in this settlement arrangement, the applicant will be offered a settlement agreement on the basis of which – after signature by both parties – compensation will be paid for 10% of the pecuniary and non-pecuniary damage incurred by the applicant as a result of the victim's death.

The total amount of compensation is:

- €15,000 for persons who were in a marital relationship with a victim;
- €10,000 for other applicants mentioned in section 2 above.

If an applicant makes a claim on the basis of section 2 of this settlement arrangement for more than one victim, these compensation claims will be awarded only if and to the extent that the applicant was married or related in the first degree to the victim. This applies to parents of one or more victims, spouses of a victim who are also the parent of one or more victims and surviving relatives whose father and husband were among the victims. In all other cases, only one application per applicant will be granted.

The compensation paid to an applicant pursuant to the settlement agreement is deemed to cover all damage incurred by the applicant as a result of the death of the victim for whose death the compensation is awarded, and by accepting it the applicant grants full and final discharge of all claims against the Dutch State related to the death of the victim for whose death the compensation is awarded, including any claims for extrajudicial costs and the costs of submitting an application under this settlement arrangement.

5 Time limit

To be eligible for compensation as set out in this arrangement, the complete application (including all the documents and evidence to be submitted with it) must be received by the Committee before 15 June 2023.

6 Implementation procedure

The Committee will adopt an implementation protocol to ensure that the procedure for implementing the arrangement is simple and transparent.