

## **Explanatory notes to the 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***

### *§ Civil-law settlement arrangement*

The State has established this settlement arrangement to implement the Supreme Court judgment of 19 July 2019 in which the court found the State liable under civil law for 10% of the damage incurred by surviving relatives of the deceased male refugees who were in the Dutchbat compound in Potočari at the end of the afternoon on 13 July 1995.

By means of this settlement arrangement, the State wishes to offer the surviving relatives the opportunity to obtain compensation in an easily accessible, extrajudicial manner and – if desired – without the need to engage legal representation. The arrangement offers the surviving relatives an alternative to what would likely be protracted, complicated and emotionally taxing proceedings. The aim of the arrangement is to provide a procedure that is quick and simple as well as carefully designed and dependable, and takes account of the specific circumstances of the situation in Bosnia and Herzegovina. This means, however, that there is less scope for taking account of specific individual circumstances and that the scope of application is limited.

The arrangement provides the surviving relatives with clear information in advance concerning where applications for compensation can be submitted, what they can expect and what they need to do to show that they are eligible for compensation.

The State is keenly aware of the profound impact that the horrible events that took place during and after the fall of Srebrenica have had on the surviving relatives of the victims. The fall of Srebrenica was a catastrophic experience for all who lost loved ones.

### *§ Implementation of the settlement arrangement*

By order of 2 July 2020 the State established an independent external committee, chaired by Ms S.F.M. Wortmann, to process and assess the applications of the surviving relatives. The committee has been charged with this task and authorised to carry it out by the Minister of Defence and the Minister of Foreign Affairs.

The committee will adopt an implementation protocol describing how it will perform its tasks.

### *§ 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 his death (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 marriage; a cohabitation relationship of a shorter duration will also be equated with marriage if a child was born of that relationship);
- are the child of a victim;
- are the parent of a victim;
- are the sibling of a victim.

In this arrangement, the State assumes that the categories of surviving relatives described above incurred damage due to the death of a male family member who was in the Dutchbat compound in Potočari on the afternoon of 13 July 1995.

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

In order to avoid protracted procedures the arrangement is not available to heirs of the surviving relatives described above. Allowing eligibility to be inherited would, as experience has shown, lead to evidentiary problems and significantly increase the number of assessments. This would undermine the basic principles of this arrangement – simplicity and speed.

### *§ Damages*

Non-pecuniary damage. The Emotional Distress Claims (Compensation) Act (*Wet affectieschade*), incorporated in Book 6, article 108, paragraph 3 et seq. of the Civil Code, was not in effect at the time of the fall of Srebrenica. However, in view of recent developments in case law, the State is going to grant compensation for non-pecuniary loss.

Determining the damages to be awarded. In its judgment the Supreme Court made a declaration that the State acted wrongfully in respect of a specific group by failing to offer them protection from ill-treatment by the Bosnian Serbs. The Supreme Court made no pronouncement regarding damages. It is common in situations such as this for individual damages to be determined in follow-up proceedings for that purpose. These proceedings are time-consuming, complicated and often emotionally draining. The State wishes to avoid this by implementing a civil-law settlement arrangement to award compensation amounts that have been fixed in advance.

One of the basic principles underlying the settlement arrangement and the fixed compensation amounts it provides for is that on the basis of the Supreme Court's judgment the amount to be awarded is 10% of the actual damage incurred. Another principle is that the award should reflect, as accurately as possible, the actual damage suffered by the surviving relatives. The amounts set out in the arrangement (€15,000 for widows and €10,000 for other surviving relatives) correspond to damages of €150,000 for widows and €100,000 for other surviving relatives. This includes compensation for emotional distress – the non-pecuniary component. The State considers it probable (partly on the basis of what it knows about previous compensation claims) that in most cases the damage incurred by the surviving relatives will not exceed these amounts. As explained above, the settlement arrangement is based on fixed amounts in order to avoid having to assess the damage in each individual case.

The State is well aware that a uniform settlement arrangement cannot do justice to each individual situation. However, the advantages far outweigh this disadvantage. A uniform arrangement makes it possible for the surviving relatives to obtain compensation in an easily accessible, extrajudicial manner and (if desired) without the need to engage a lawyer. There may be surviving relatives who believe that they have incurred damage that exceeds €100,000 or €150,000. They are free to bring individual compensation proceedings before The Hague District Court, so that the court can assess the damages to which they are entitled individually. The arrangement does not allow applicants to claim more compensation or negotiate the amount of compensation. Nor is it possible to apply to the court for additional damages after receipt of a compensation award, since by accepting the compensation awarded under the settlement arrangement the applicant grants full and final discharge of all claims.

Differentiation in damages paid to different subcategories of surviving relatives. In terms of the amount of compensation awarded, the settlement arrangement distinguishes between widows of victims on the one hand and other surviving relatives on the other, because in all likelihood widows will have incurred more damage than other surviving relatives eligible for compensation.

### *§ Conditions for applying for the settlement arrangement*

Number of compensation awards per person. It is a basic principle of this settlement arrangement that each surviving relative is entitled to only one compensation award, unless a surviving relative had a marital relationship or first-degree family relationship with more than one victim. This applies to parents, children and spouses. For example, a mother who lost her husband and her son can be awarded compensation for each of these family members, as can a parent who lost more

than one child. However, an applicant who lost a brother and a parent, a brother and a husband or more than one brother is eligible for only one compensation award.

#### *§ Settlement of applications*

If, in the committee's opinion, a surviving relative has satisfactorily demonstrated that he or she fulfils the conditions for eligibility for compensation under the settlement arrangement, he or she will be offered, on behalf of the State, a settlement agreement and, after signature by both parties, will receive payment of €15,000 if the applicant is a widow of a victim or €10,000 in all other cases. This amount is deemed to compensate the applicant for all damage incurred as a result of the death of the victim for whose death the compensation is awarded by the surviving relative and by accepting it he or she grants full and final discharge of all claims against the 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.

Given that the settlement arrangement is governed by civil law, the committee's decision to offer or refuse a settlement agreement in response to an application is not regarded as a decision governed by administrative law. As a result, no objection or appeal can be lodged against the decision.

The arrangement is intended to avoid emotionally taxing proceedings and related legal complexities. Nevertheless the suffering that arose during and after the fall of the enclave of Srebrenica has had a profound impact on the lives of all those involved. It is therefore understandable that some surviving relatives may consider the arrangement to be inadequate in light of their personal circumstances. As no uniform arrangement can provide for every case or give every person concerned the sense that justice has been done, this arrangement is not in any way intended to prevent surviving relatives from claiming compensation for damage in court. It goes without saying that that path remains open to those who cannot or do not wish to submit an application under the arrangement.