

Implementation Protocol of the Netherlands Compensation Commission Potočari

General

Definitions

Provision 1

- 1.1 For the purposes of this protocol, the Commission applies the following definitions:
- a) Commission: the Netherlands Compensation Commission Potočari, as established by the order establishing the commission to implement the Srebrenica civil-law settlement arrangement;
 - b) Establishment order: the order of 30 June 2020 establishing the commission to implement the Srebrenica civil-law settlement arrangement, no. BS2020012633 (Government Gazette. 2020, no. 35759);
 - c) Unlawful acts: the unlawful acts, as established by the Supreme Court judgment of 19 July 2019 (ECLI:NL:HR:2019:1223), by the State in relation to the male refugees who were present in the Dutchbat compound in Potočari in the late afternoon of 13 July 1995 and who died as a result of violent acts by the Bosnian Serbs;
 - d) Arrangement: the civil-law settlement arrangement of 17 May 2021 to implement the Dutch Supreme Court judgment of 19 July 2019 in the case between the State and Stichting Mothers of Srebrenica, no. 2021010637 (Government Gazette 2021, no. 27109);
 - e) Compensation: an amount of compensation laid down in the arrangement to compensate the pecuniary and non-pecuniary damages of a surviving relative as a consequence of a victim's death, for which a claimant qualifies if, in the Commission's opinion, the claimant demonstrates that he fulfils the requirements and conditions specified in the arrangement;
 - f) Victim: a deceased male refugee who was in the Dutchbat compound in Potočari in the late afternoon of 13 July 1995;
 - g) State: the State of the Netherlands;
 - h) Settlement agreement: the agreement offered to a claimant, on the basis of which the compensation amount laid down in the arrangement is paid to a claimant who has demonstrated that he fulfils the requirements and conditions laid down in the arrangement.
- 1.2 Unless it is otherwise apparent or clearly intended otherwise:
- a) a reference to a term or word in the singular is also deemed to include the plural of this term or word, and vice versa;
 - b) a reference to the masculine form of a word is also deemed to include the feminine form, and vice versa.

Surviving relatives

Surviving relative

Provision 2

For the purposes of the arrangement, the Commission understands a surviving relative to be a surviving relative who:

- a) had a marital relationship with a victim at the time of his death; or
- b) had a cohabitation relationship with a victim for at least three years at the time of his death; or
- c) had a cohabitation relationship with a victim for less than three years at the time of his death and a child was born from that cohabitation relationship; or
- d) is the child of a victim; or
- e) is a parent of a victim; or
- f) is the brother or sister of a victim.

At the time of his death

Provision 3

The Commission understands 'at the time of his death' to mean 'on 13 July 1995' because it is generally not possible to determine the exact date of each victim's death with certainty.

Conditions for entitlement to compensation

Conditions concerning surviving relatives referred to in Provision 2

Provision 4

- 4.1 In order to be eligible for compensation on the basis of the arrangement, a claimant who claims to be a surviving relative within the meaning of Provision 2 must *demonstrate* that:
- a) the victim mentioned in the claim was in the compound in the late afternoon of 13 July 1995; and
 - b) one of the family relationships referred to in Provision 2 exists with the victim mentioned in the claim or existed at the time of his death.
- 4.2 If a claimant who claims to be a surviving relative within the meaning of Provision 2 demonstrates that he fulfils the conditions laid down in Provision 4.1, it will be assumed that he has suffered damages as a consequence of the death of a male relative who was in the compound in the late afternoon of 13 July 1995.

Conditions concerning other surviving relatives

Provision 5

- 5.1 If a different surviving relative than those mentioned in Provision 2 submits a claim, the claimant must generally demonstrate that he suffered damages.
- 5.2 In the situation referred to in Provision 5.1, the Commission will have discretion to act as it sees fit.

Justification of claim

Documents

Provision 6

The Commission will make its assessment on the basis of the documents and/or statements submitted by a claimant, and the reliability thereof, as to whether it believes that the claimant has demonstrated that he fulfils the conditions applicable to him under Provision 4.1.

Presence of victim in compound

Provision 7

- 7.1 In order to demonstrate that the victim mentioned in the claim was in the compound in the late afternoon of 13 July 1995 within the meaning of Provision 4.1 a), a claimant must provide a copy of the victim's death certificate upon submitting a claim.
- 7.2 Further justification for the victim's presence in the compound within the meaning of Provision 4.1 a) is required if, in the Commission's opinion, based on the results of 'the investigation' it is not likely that the victim mentioned by a claimant in his claim was part of the group of deceased male refugees who were in the compound in the late afternoon of 13 July 1995.
- 7.3 'The investigation' refers to the investigation arranged by the Commission in order to obtain greater certainty about the identity of the male refugees who were present in the Dutchbat

compound in Potočari in the late afternoon of 13 July 1995 and who died as a result of violent acts by the Bosnian Serbs.

Family relationship with the victim

Provision 8

In order to demonstrate that the family relationship referred to in Provision 4.1 b) exists or that it existed at the time of the death of the victim mentioned in the claim, the claimant must provide the following documents and/or statements upon submitting the claim:

- a) in the case of a marital relationship at the time of his death:
 - a copy of a marriage certificate showing that the claimant had a marital relationship with the victim.
- b) in the case of a cohabitation relationship of three years at the time of his death:
 - a copy of a document or written statements by *two* witnesses, who made their statements to a municipal official or a civil-law notary, showing that at the time of the victim's death the claimant had cohabitated with him without being married for three years or more.
- c) in the case of a cohabitation relationship of less than three years at the time of his death:
 - a copy of a child's birth certificate, showing that the child was born from that cohabitation relationship within the three years preceding the victim's death.
- d) in the case of a child:
 - a copy of the claimant's own birth certificate showing that the claimant is a child of the victim.
- e) In the case of a parent:
 - a copy of the victim's birth certificate showing that the claimant is a parent of the victim.
- f) in the case of a brother or sister:
 - a copy of the claimant's own birth certificate and a copy of the victim's birth certificate, which together show that the claimant is a brother or sister of the victim.

Compensation

Amount of compensation

Provision 9

The amount of the compensation laid down in the arrangement is:

- a) for a wife or cohabiting partner who in the Commission's opinion is eligible for compensation under the arrangement: €15,000.00;
- b) for a child, a parent or a brother or sister who in the Commission's opinion is eligible for compensation under the arrangement: €10,000.00.

Number of compensation claims

Provision 10

10.1 Surviving relatives referred to in Provision 2 who have a first-degree family relationship with more than one victim may submit more than one compensation claim. First-degree family relationship refers to the relationship between spouses or cohabitants and the relationship between parents and children.

10.2 A separate claim must be submitted for each victim.

Full and final discharge

Provision 11

Compensation paid on the basis of the settlement agreement in the event of a claim being granted will be deemed to cover all damages suffered by a claimant as a consequence of the unlawful actions

against the victim for whose death the compensation is paid. The compensation will be paid in full and final discharge of all possible claims by the claimant against the State in relation to the unlawful acts against the victim for whose death the compensation is paid, including any claims for extrajudicial costs and costs incurred for the submission of a claim.

Hardship clause

Hardship clause

Provision 12

In cases in which, in the Commission's opinion, unreasonable or unfair consequences would arise from full application of the arrangement and this protocol, the Commission may decide to do otherwise on the basis of reasonableness.

Procedure for the granting of compensation

Submission of claim

Provision 13

- 13.1 A person who wishes to become eligible for compensation must submit a compensation claim by completely filling in the claim form adopted by the Commission and including the documents required on the basis of Provisions 7 and 8 with respect to the surviving relative in question.
- 13.2 A claim can be submitted:
 - a) in person at the Commission's office in Sarajevo (Mehmeda Spahe 26, 3rd floor, 71000 Sarajevo) or The Hague (Lange Voorhout 13, 2514 EA, Den Haag / The Hague);
 - b) by post to the postal address of the Commission's office in Sarajevo (Mehmeda Spahe 26, 3rd floor, 71000 Sarajevo) or The Hague (Postbus 556, 2501 CN, Den Haag / The Hague);
 - c) by e-mail to the Commission's e-mail address: office@nccpotocari.nl;
 - d) by fax to the Commission's fax number: +31 (0)70 3262212;
 - e) through ShareFile by sending an e-mail to office@nccpotocari.nl requesting an e-mail to be sent with a link that allows the request to be uploaded.
- 13.3 Upon submitting a claim in person, the claimant must identify himself at the office by showing a valid passport or valid identity card.
- 13.4 Upon submitting a claim by post, e-mail, fax or ShareFile, the claimant must identify himself by including an authenticated copy of a valid passport or of a valid identity card with the claim. A copy can be authenticated by the municipality or a notary. If this concerns an authenticated copy of a passport or identity card from a country other than Bosnia, the claimant must make the BSN (citizen service number) illegible.
- 13.5 If a lawyer submits a claim on behalf of a claimant by post, e-mail, fax or ShareFile, it will suffice to include a copy of a valid passport or of a valid identity card of the claimant with the claim. If this concerns a copy of a passport or identity card from a country other than Bosnia, the claimant must make the BSN (citizen service number) illegible.
- 13.6 Claims must be submitted to the Commission in full before 15 June 2023. Any claims submitted after 14 June 2023 will not be handled. The State (the Ministers of Defence and Foreign Affairs) may decide to extend that period at the proposal of the Commission.
- 13.7 The possibility of submitting a claim is non-transferrable and the arrangement is not open to the heirs of the surviving relatives referred to in Provision 2.

- 13.8 If a claimant who claims to be a surviving relative dies after submitting a claim to the Commission and the claim is then granted, a settlement agreement will be concluded with that relative's heir or, in the case of multiple heirs, with the heir of the deceased claimant who has been designated for this purpose by the heirs collectively, subject to the condition that entitlement to the inheritance must be demonstrated.
- 13.9 By submitting a claim the claimant declares that he is familiar with this protocol and agrees:
- a) that this protocol applies to the handling and disposal of the claim;
 - b) that all written correspondence from the Commission can (also) be sent to him by e-mail or by fax using the e-mail address or fax number provided to the Commission by the claimant for this purpose;
 - c) that payment of the compensation will only be made into a bank account in his own name and that, if the claimant does not have such a bank account, he will have to open such a bank account if the Commission grants the claim and proceeds to offer a settlement agreement and compensation and the claimant decides to sign the settlement agreement;
 - d) that the compensation paid on the basis of a settlement agreement in the event of a claim being granted will be deemed to cover all damages suffered by the claimant as a consequence of the unlawful acts against the victim for whose death the compensation is paid and will be paid in full and final discharge of all possible claims by the claimant against the State in relation to the unlawful acts against the victim for whose death the compensation is paid, including any claims for extrajudicial costs and costs incurred for the submission of a claim under the arrangement;
 - e) that payment of compensation may under certain circumstances lead to levies (of taxes) on the claimant (for instance levies by foreign authorities upon payment of compensation to a claimant who lives abroad).

Further procedural matters

Provision 14

- 14.1 The Commission aims to send the claimant written confirmation of receipt within ten working days after receipt of a claim.
- 14.2 If the claim is complete, the confirmation of receipt referred to in Provision 14.1 will state that the claim is eligible for assessment and give the period within which the Commission aims to make its assessment.
- 14.3 If the claim is not complete, the confirmation of receipt referred to in Provision 14.1, will state the documents that are lacking. The claimant will then be given another eight weeks after the date of confirmation of receipt to submit the documents that are lacking or to explain in writing why those documents cannot be submitted.
- 14.4 If the claimant does not within eight weeks submit the documents that are lacking or explain in writing why those documents cannot be submitted, the claimant will be notified once more in writing that he is being given a further two weeks starting from the date of that notification to supply the information that is lacking.
- 14.5 If the claimant does not make use of the opportunity offered referred to in Provision 14.3 and/or Provision 14.4, the claimant will be notified in writing that his claim is not eligible for assessment.
- 14.6 If the claimant submits the documents that are lacking or explains in writing why they cannot be submitted within the periods referred to in Provisions 14.3 and 14.4 and the Commission

has established that the information is sufficient to assess the claim, the claimant will receive written notification that the claim is eligible for assessment and of the period within which the Commission aims to make its assessment.

14.7 If during the assessment of the claim it becomes apparent that the Commission requires further information (for example in the situation referred to in Provision 7.2) in order to be reasonably able to assess the claim, the Commission is free to request further information from the claimant. In such cases the Commission will observe the content of Provision 14.3 and Provision 14.4 insofar as is applicable.

14.8 The Commission may in exceptional cases decide to hear a claimant.

Decision on compensation

Provision 15

15.1 The Commission aims to decide within three months after the date of the confirmation of receipt referred to in Provision 14.1 whether to grant or deny the claim. If a decision cannot be taken within this period, the Commission will notify the claimant in writing, stating the period within which it will be possible to make a decision.

15.2 The period will be suspended starting from the day on which the Commission requests the claimant on the basis of Provision 14.3, 14.4 or 14.7 to provide information that it lacks and that is reasonably necessary for the Commission to assess the claim. This suspension will last until the Commission has received that information and has established that the information is sufficient to assess the claim, or until the expiry of the periods referred to in Provision 14.3 and Provision 14.4 during which the claimant is given the opportunity to submit information requested of him.

15.3 A decision on granting or denying a claim will be notified to the claimant in writing.

15.4 If the claim is granted, the claimant will receive the notification referred to in Provision 15.3, which will include a settlement agreement signed by the Commission and further instructions.

15.5 If the claim is denied, the claimant will receive the notification referred to in Provision 15.3, setting out the reasons for denying the claim.

Payment of the compensation

Provision 16

16.1 If the claim is granted, the compensation will be paid to the claimant by the State (the Ministry of Defence) within four weeks after the Commission receives the settlement agreement signed by the claimant.

16.2 The claimant will receive written confirmation of the date on which the Commission received the signed settlement agreement.

Miscellaneous

General Administrative Law Act does not apply

Provision 17

The Dutch General Administrative Law Act (*Algemene Wet bestuursrecht*) does not apply to decisions made by the Commission in response to a claim, because those decisions cannot be viewed as decisions (*besluiten*) within the meaning of section 1:2 of the General Administrative Law Act, given the civil-law nature of the arrangement.

Final provision**Provision 18**

- 18.1 The Commission is responsible for implementing this protocol. In all cases not provided for by this protocol, the Commission will decide.

- 18.2 This protocol may be cited as the 'Implementation Protocol of the Netherlands Compensation Commission Potočari' and is the implementation protocol of the commission as referred to in article 7, paragraph 1 of the establishment order.