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Nieuws

Over de Hoge Raad

Reglementen

Wetenschappelijk bureau

Supreme court of the Netherlands

Veelgestelde vragen

Bezoekinformatie

Contact

Volg de Hoge Raad op Twitter

State responsible for death of three Muslim men in Srebrenica

Den Haag, 6-9-2013

The Dutch State is responsible for the death of three Muslim men from Srebrenica. This was the ruling given by the Dutch Supreme Court today. The men had sought refuge in the compound of the Dutch battalion (Dutchbat). Dutchbat decided not to evacuate them along with the battalion and instead sent them away from the compound on 13 July 1995. Outside the compound they were murdered by the Bosnian-Serb army or related paramilitary groups.

In two judgments the Supreme Court upheld earlier judgments of The Hague Court of Appeal of 2011 (ECLI:NL:GHSGR:2011:BR0132 and ECLI:NL:GHSGR:2011: BR0133) and 2012 (ECLI:NL:GHSGR:2012:BW9015 and ECLI:NL:GHSGR:2012: BW9014) and dismissed the State's appeal in cassation against these judgments.

Background

Both cases concern events that took place shortly after the fall of the Srebrenica enclave on 11 July 1995. Hasan Nuhanović was in the employment of the United Nations. He worked as an interpreter at the compound in Potočari where Dutchbat was stationed. He had a UN pass and was on the list of local personnel who could be evacuated with Dutchbat. His father Ibro, mother Nasiha and brother Muhamed had sought refuge in the compound after the fall of the enclave. They were not on the list of local personnel and were informed on 13 July 1995 that they had to leave the compound. Shortly afterwards they were murdered by the Bosnian-Serb army or related paramilitary groups. Hasan is the plaintiff in one of these cases (and the respondent in the cassation proceedings).

Rizo Mustafić was in the employment of the Srebrenica municipal authority and had been seconded by this authority to work for Dutchbat as an electrician at the compound. After the fall of the enclave Rizo, together with his wife and children, had sought refuge in the compound. The family was informed on 13 July 1995 that they had to leave the compound. Shortly afterwards Rizo was murdered by the Bosnian-Serb army or related paramilitary groups. His wife and children survived. They are the plaintiffs in the other case (and respondents in the cassation proceedings).

Two central questions

The proceedings before the Supreme Court turn on two questions:

1. Can Dutchbat's actions be attributed to the State?
2. Were Dutchbat's actions wrongful?

Attribution?

The Supreme Court has answered the question of whether Dutchbat's conduct can be attributed to the State by reference to public international law. In doing so it has followed two sets of rules drawn up by the International Law Commission of the United Nations.

The Supreme Court has held that public international law allows conduct to be attributed not only to the United Nations, which was in charge of the peace mission, but also to the State because the latter had effective control over the disputed conduct of Dutchbat. The Court of Appeal was therefore entitled to hold that Dutchbat's conduct is attributable to the State.

Wrongful conduct?

The Court of Appeal held that Dutchbat's conduct was wrongful under the law of Bosnia and Herzegovina, which is applicable in this case. This was challenged unsuccessfully in the cassation proceedings. The Supreme Court has added that judicial restraint in the review of Dutchbat's conduct, as advocated by the State, would mean that there would be virtually no scope for the courts to assess the conduct of a troop contingent in the context of a peace mission. According to the Supreme Court, this is unacceptable. However, a court that assesses the conduct of a troop contingent in retrospect must make allowance for the fact the decisions in question were taken under great pressure in a war situation.

This is a press release issued following the judgments of the Supreme Court of 6 September 2013. The full texts of the judgments in English ([12/03324](#) and [12/03329](#)) and the advisory opinions ([12/03324](#) and [12/03329](#)) on www.hogeraad.nl, ECLI:NL:HR:2013:BZ9225 and

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